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House of Representatives

The House met at 10 a.m.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

O God, our help in ages past, our hope for years to come, we pray that You would give to us and all people the gifts of the spirit of knowledge and understanding, of gratitude and praise, of wisdom and tolerance, of justice and mercy, and of peace and goodwill. It is our petition that we would open our hearts to Your love and our souls to Your grace so that we honor You by our words and deeds and serve the people of this Nation with dignity. As You have created a whole world by Your hand, O gracious God, so recreate us in the spirit of reconciliation and unity that together as a nation we will be the people You would have us be. This is our earnest prayer. Amen.

THE JOURNAL

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

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

Mr. SOLOMON. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER. The question is on the Chair's approval of the Journal.

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

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

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 325, nays 72, answered ''present'' 9, not voting 28, as follows:

[Roll No. 495]

YEAS—325

Abercrombie
Allen
Andrews
Archer
Armey
Bachus
Baesler
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berman
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Capps
Cardin
Castle
Chabot
Chambliss
Chenoweth
Christensen
Clayton
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Coyne
Cramer
Crapo
Cubin
Cummings
Danner
Davis (IL)
Davis (VA)
Deal
DeGette
Delahunt
DeLauro
DeLay
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
Eshoo
Etheridge
Evans
Everett
Ewing
Farr
Fawell
Foley
Forbes
Ford
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gejdenson
Gekas
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Greenwood
Hall (OH)
Hall (TX)
Hamilton
Harman
Hastert
Hastings (WA)
Hayworth
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Hoyer
Hunter
Hutchinson
Inglis
Istook
Jackson (IL)
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennelly
Kildee
Kilpatrick
Kim
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaHood
Lampson
Lantos
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
Livingston
Lofgren
Lowey
Lucas
Luther
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McHale
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
Meehan
Mica
Millender-McDonald
Miller (FL)
Minge
Mink
Moakley
Moran (VA)
Morella
Murtha
Myrick
Nadler
Neal
Nethercutt
Neumann
Ney
Northup
Norwood
Nussle
Ortiz
Owens
Oxley
Packard
Pappas
Parker
Pascrell
Pastor
Paul
Paxon
Payne
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Quinn
Radanovich
Rahall
Rangel
Redmond
Regula
Riley
Rivers
Rodriguez
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun
Salmon
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schumer
Sensenbrenner
Serrano
Sessions
Shaw
Shays
Sherman
Shimkus
Shuster
Sisisky
Skaggs
Smith (NJ)
Smith (OR)
Smith (TX)
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Spratt
Stabenow
Stearns
Stokes
Stump
Sununu
Talent
Tanner
Tauscher
Tauzin
Taylor (NC)
Thomas
Thornberry
Thune
Thurman
Tiahrt
Tierney
Torres
Traficant
Turner
Upton
Walsh
Wamp
Watkins
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Wexler
Weygand
White
Whitfield
Wilson
Wise
Wolf
Woolsey
Yates
Young (AK)
Young (FL)

NAYS—72

Ackerman
Aderholt
Becerra
Berry
Bonior
Borski
Brady (PA)
Brown (CA)
Brown (FL)
Brown (OH)
Clay
Clyburn
Costello
DeFazio
English
Ensign
Fattah
Fazio
Filner
Fox
Frank (MA)
Furse
Gephardt
Gibbons
Green
Gutierrez
Gutknecht
Hansen
Hastings (FL)
Hefley
Hill
Hilliard
Hinchey
Hulshof
Jackson-Lee (TX)
Kennedy (RI)
Kucinich
LaFalce

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Printed on recycled paper.

Lee	Pickett	Taylor (MS)
Lewis (GA)	Poshard	Thompson
LoBiondo	Ramstad	Towns
Manzullo	Rogan	Velazquez
McGovern	Sabo	Vento
McNulty	Schaffer, Bob	Visclosky
Meeks (NY)	Scott	Waters
Menendez	Skelton	Weller
Moran (KS)	Smith (MI)	Wicker
Oberstar	Stark	Wynn
Olver	Stenholm	
Pallone	Stupak	

ANSWERED ''PRESENT''—9

Carson	Martinez	Reyes
Cunningham	Metcalf	Sanford
Manton	Petri	Shadegg

NOT VOTING—28

Cannon	Hyde	Pryce (OH)
Conyers	Jefferson	Riggs
Crane	Kasich	Scarborough
Davis (FL)	Maloney (CT)	Schaefer, Dan
Dixon	McCrery	Skeen
Engel	McDade	Slaughter
Hefner	Meek (FL)	Smith, Adam
Herger	Miller (CA)	Strickland
Hinojosa	Mollohan	
Houghton	Obey	

□ 1020

So the Journal was approved.

The result of the vote was announced as Clerk announced as above recorded.

PERSONAL EXPLANATION

Mr. HINOJOSA. Mr. Speaker, during rollcall vote No. 495 on the Journal I was unavoidably detained. Had I been present, I would have voted "yes."

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore (Mr. LAHOOD). Will the gentleman from New York (Mr. SOLOMON) come forward and lead the House in the Pledge of Allegiance.

Mr. SOLOMON led the Pledge of Allegiance as follows:

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

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Lundregan, one of its clerks, announced that the Senate had passed without amendment bills of the House of the following titles:

H.R. 678. An act to require the Secretary of the Treasury to mint coins in commemoration of Thomas Alva Edison and the 125th anniversary of Edison's invention of the light bulb, and for other purposes.

H.R. 1659. An act to provide for the expeditious completion of the acquisition of private mineral interests within the Mount St. Helens National Volcanic Monument mandated by the 1982 Act that established the Monument, and for other purposes.

H.R. 2000. An act to amend the Alaska Native Claims Settlement Act to make certain clarifications to the land bank protection provisions, and for other purposes.

H.R. 2411. An act to provide for a land exchange involving the Cape Cod National Seashore and to extend the authority for the Cape Cod National Seashore Advisory Commission.

H.R. 2795. An act to extend certain contracts between the Bureau of Reclamation and irrigation water contractors in Wyoming and Nebraska that receive water from Glendo Reservoir.

H.R. 4079. An act to authorize the construction of temperature control devices at Folsom Dam in California.

H.R. 4081. An act to extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Arkansas.

H.R. 4166. An act to amend the Idaho Admission Act regarding the sale or lease of school land.

H.R. 4655. An act to establish a program to support a transition to democracy in Iraq.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3528. An act to amend title 28, United States Code, with respect to the use of alternative dispute resolution processes in United States district courts, and for other purposes.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3874) ''An Act to amend the National School Lunch Act and the Child Nutrition Act of 1966 to provide children with increased access to food and nutrition assistance, to simplify program operations and improve program management, to extend certain authorities contained in those Acts through fiscal year 2003, and for other purposes.''

The message also announced that the Senate has passed bills of the following titles in which concurrence of the House is requested:

S. 736. An act to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District.

S. 744. An act to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a non-profit corporation, in the planning and construction of the water supply system, and for other purposes.

S. 1175. An act to reauthorize the Delaware Water Gap National Recreation Area Citizen Advisory Commission for 10 additional years.

S. 1637. An act to expedite State review of criminal records of applicants for bail enforcement officer employment, and for other purposes.

S. 1641. An act to direct the Secretary of the Interior to study alternatives for establishing a national historic trail to commemorate and interpret the history of women's rights in the United States.

S. 2041. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Willow Lake Natural Treatment System Project for the reclamation and reuse of water, and for other purposes.

S. 2086. An act to revise the boundaries of the George Washington Birthplace National Monument.

S. 2117. An act to authorize the construction of the Perkins County Rural Water System and authorize financial assistance to the Perkins County Rural Water System, Inc., a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes.

S. 2140. An act to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Denver Water Reuse project.

S. 2142. An act to authorize the Secretary of the Interior to convey the facilities of the Pine River Project, to allow jurisdictional transfer of lands between the Department of Agriculture, Forest Service, and the Department of the Interior, Bureau of Reclamation, and the Bureau of Indian Affairs, and for other purposes.

S. 2235. An act to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers.

S. 2239. An act to revise the boundary of Fort Matanzas National Monument, and for other purposes.

S. 2240. An act to establish the Adams National Historical Park in the Commonwealth of Massachusetts, and for other purposes.

S. 2241. An act to provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes.

S. 2246. An act to amend the Act which established the Frederick Law Olmsted National Historic Site, in the Commonwealth of Massachusetts, by modifying the boundary, and for other purposes.

S. 2247. An act to permit the payment of medical expenses incurred by the United States Park Police in the performance of duty to be made directly by the National Park Service, and for other purposes.

S. 2248. An act to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by State law, and for other purposes.

S. 2257. An act to reauthorize the National Historic Preservation Act.

S. 2284. An act to establish the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes.

S. 2285. An act to establish a commission, in honor of the 150th Anniversary of the Seneca Falls Convention, to further protect sites of importance in the historic efforts to secure equal rights for women.

S. 2309. An act to authorize the Secretary of the Interior to enter into an agreement for the construction and operation of the Gateway Visitor Center at Independence National Historical Park.

S. 2468. An act to designate the Biscayne National Park Visitor Center as the Dante Fascell Visitor Center.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of House Resolution 577, the Chair announces that he has designated this time for the taking of the official photo of the House of Representatives in session. The House will be in a brief recess while the Chamber is being prepared for the photo. The Members will please remain in place when the photographs are taken. Members will please face the camera. The process will take approximately 15 minutes. About 5 minutes after that, the House will proceed with the business of the House.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 10:50 a.m.

Accordingly (at 10 o'clock and 23 minutes a.m.), the House stood in recess until approximately 10:55 a.m.)

REQUEST TO EXTEND DEBATE ON IMPEACHMENT INQUIRY RESOLUTION

□ 1055

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that the debate on House Resolution 581 regarding proceeding with an impeachment inquiry be expanded to the time of 8 hours.

The SPEAKER. The Chair is constrained not to recognize the gentleman for that purpose at this time.

AUTHORIZING THE COMMITTEE ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT GROUNDS EXIST FOR THE IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Mr. HYDE. Mr. Speaker, by direction of the Committee on the Judiciary, I call up H. Res. 581, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 581

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach William Jefferson Clinton, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

SEC. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpoena or otherwise—

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

(2) by interrogatory, the furnishing of such information;

as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpoenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness. For the purposes of this section, ''things'' includes, without limitation, books, records, correspondence, logs, journals, memorandums, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which information can be obtained (translated if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

The SPEAKER. The resolution, since reported from the Committee on the Judiciary, constitutes a question of privilege and may be called up at this time.

Mr. HYDE. Mr. Speaker, while the normal procedure grants 1 hour of debate on a privileged resolution, I propose doubling that time.

Therefore, I ask unanimous consent that I be recognized for 2 hours for the debate on H. Res. 581, 1 hour of which I intend to yield to the gentleman from Illinois (Mr. CONYERS) for the purposes of debate only. And anybody on my side who was constrained to object, I hope they will withhold their objection so we can have the 2 hours of debate.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. CONYERS. Mr. Speaker, reserving the right to object, I appreciate the unanimous consent that is being put forward, and ask my friend, the distinguished gentleman from Illinois (Mr. HYDE), chairman of the Committee on the Judiciary, if he would add 2 hours to that request, please.

I understand the exigencies of the moment, but I have enormous pressure being put upon the ranking member for Members to merely have a chance to get in a brief expression on this historic occasion, and I ask that the gentleman give that his most generous consideration.

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

Mr. CONYERS. I yield to the gentleman from Illinois.

Mr. HYDE. Mr. Speaker, I thank the gentleman for yielding. I can only say that we have had extensive discussions and I am fearful that there would be several objectors to that. So, I am constrained to offer the extra hour only and not go beyond that.

I would suggest a special order tonight where everybody can speak as long and as loudly as they want.

□ 1100

Mr. CONYERS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request gentleman from Illinois?

There was no objection.

The SPEAKER. The gentleman from Illinois (Mr. HYDE) is recognized for 2 hours.

Mr. HYDE. Mr. Speaker, for purposes of debate only, I yield 1 hour to the distinguished minority ranking member on the Committee on the Judiciary, the gentleman from Michigan (Mr. CONYERS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

PARLIAMENTARY INQUIRY

Mr. EDWARDS. Mr. Speaker, considering the historical importance of this vote today and the precedent we will set for decades to come, would it be within the rules of the House for me at this time to ask unanimous consent that each Member of this House, who feels in his or her conscience that he or she would want to speak for 2 minutes on this issue, be allowed that opportunity as they try to represent the 560,000 people in their district?

The SPEAKER. The gentleman is not recognized for that purpose, and the House has already established by unanimous consent the 2-hour time limit.

PARLIAMENTARY INQUIRY

Mr. DINGELL. Mr. Speaker, reserving the right to object.

The SPEAKER. There is no request to be objected to at this time, but the Chair would be glad to recognize the gentleman from Michigan (Mr. DINGELL) for a parliamentary inquiry.

Mr. DINGELL. Then I will make this a parliamentary inquiry, Mr. Speaker.

Why is it we are not being afforded more time to debate this? This is one of the most important questions——

The SPEAKER. That is not a parliamentary inquiry, but that might be raised during debate, if the gentleman gets time.

PARLIAMENTARY INQUIRY

Mr. ACKERMAN. Mr. Speaker, parliamentary inquiry. I would like to inquire if a unanimous consent request is in order.

The SPEAKER. That would not be in order at this time unless the gentleman from Illinois yielded for that purpose.

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

The SPEAKER. The gentleman from Illinois (Mr. HYDE) controls the time.

Mr. ACKERMAN. Will the gentleman yield for a unanimous consent request?

Mr. HYDE. Mr. Speaker, I must insist on regular order or we will not get through with this, so I cannot yield for a unanimous consent request.

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on House Resolution 581, the resolution now under consideration.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. ACKERMAN. Mr. Speaker, reserving the right to object, we are just asking for fairness.

The SPEAKER. Does the gentleman from New York (Mr. ACKERMAN) object?

Mr. ACKERMAN. In that case, Mr. Speaker, I object.

The SPEAKER. Objection is heard.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Speaker, general leave was objected to?

The SPEAKER. General leave was objected to. The gentleman from Illinois (Mr. HYDE) controls the time and has yielded to himself.

Mr. HYDE. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

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

Mr. HYDE. Mr. Speaker, today we will vote on an historic resolution to begin an inquiry into whether the President has committed impeachable offenses. All of us are pulled in many directions by our political parties, by philosophy and friendships; we are pulled by many competing forces, but mostly we are moved by our consciences. We must listen to that still small voice that whispers in our ear, duty, duty, duty.

Some years ago Douglas MacArthur, in a famous speech at West Point, asserted the ideal of our military forces as duty, honor and country. We do not have to be a soldier in a far-off land to feel the force of those words. They are our ideal here today as well.

We have another ideal here, to attain justice through the rule of law. Justice is always and everywhere under assault, and our duty is to vindicate the rule of law as the surest protector of that fragile justice.

And so here, today, having received the referral in 17 cartons of supportive material from the Independent Counsel, the question asks itself: Shall we look further or shall we look away?

I respectfully suggest that we must look further by voting for this resolution and thus commencing an inquiry into whether or not the President has committed impeachable acts. We do not make any judgments, we do not make any charges, we simply begin a search for truth.

My colleagues will hear from our opponents that, yes, we need to look further, but do it our way. Their way imposes artificial time limits, limits our inquiry to the Lewinsky matter, and requires us to establish standards for impeachment that have never been established before, certainly not in the Nixon impeachment proceedings, which we are trying to follow to the letter.

We have followed the Rodino format. We will move with all deliberate speed. Many raise concerns about that proposition. Let me speak directly to those concerns. Some suggest the process to date has been partisan, yet every member of the Committee on the Judiciary voted for an inquiry in some form. We differ over the procedural details, not the fundamental question of whether we should go forward.

Many on the other side of the aisle worry that this inquiry will become an excuse for an open-ended attack on this administration. I understand that worry. During times when Republicans controlled the executive branch and I was in the minority, I lived where they are living now.

With that personal experience, I pledge to my colleagues the fairest and most expeditious search for the truth that I can muster. I do not expect that I will agree with my Democratic friends at each step along the way, but I know that to date we have agreed on many things. In fact, we have agreed on many more things than is generally known.

I hope at the end of this long day we will agree on the result. I am determined we will continue to look every day for common ground and to agree where we can. When we must disagree, we will do everything we can to minimize those disagreements. At all times, civility must be the watch word for Members on both sides of the aisle. Too much hangs in the balance for us not to rise above partisan politics.

I will use all my strength to ensure that this inquiry does not become a fishing expedition. Rather, I am determined that it will be a fair and expeditious search for truth. We have plenty enough to do now, we do not need to search for new material.

However, I cannot say that we will never address other subjects, nor would it be responsible to do so. I do not know what the future holds. If substantial and credible evidence of other impeachable offenses comes to us, as the Independent Counsel hinted or suggested in a letter we received only yesterday, the Constitution will demand that we do our duty. Like each of my colleagues, I took an oath to answer that call. I intend to do so, and I hope my colleagues will join with me if that day comes. I do not think we want to settle for less than the whole truth.

Some are concerned about timing. Believe me, nobody wants to end this any sooner than I do. But the Constitution demands that we take the amount of time necessary to do the right thing in the right way. A rush to judgment does not serve anybody's interest, certainly not the public's interest. As I have said publicly, my fervent hope and prayer is we can end this process by the end of the year. That is my new year's resolution. However, to agree to an artificial deadline would be irresponsible. It would only invite delay and discourage cooperation.

For those who worry about the timing, I urge them to do everything possible to encourage cooperation. No one likes to have their behavior questioned. The best way to end the questions is to answer them in a timely and truthful manner. Thorough and thoughtful cooperation will do more than anything to put this matter behind us.

Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. SOLOMON.)

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

Mr. SOLOMON. Mr. Speaker, I certainly thank the gentleman for yielding me this time, and I just rise in support of the resolution and to commend the Committee on the Judiciary.

Mr. Speaker, I rise in support of this resolution to authorize and direct the Committee on the Judiciary to investigate whether sufficient grounds exist to impeach the President of the United States.

I commend the Judiciary Committee for following the intent of the Rules Committee resolution, H. Res. 525, which passed the House overwhelmingly on September 11. That resolution instructed the Committee to carefully review and release the material in the independent Counsel's report, expunging that material in the Independent Counsel's report, expunging that material which is not relevant or may interfere with ongoing investigations.

I would say to the Committee—you have judiciously carried out the instructions given to you by the House, and I commend you for it.

The public release of the material in that report, with appropriate redactions, was necessary to give Members of the House the ability to cast informed votes here on the floor today. Members of the House and the public, unfortunately, must have a dialogue about the contents of this report.

I believe that in approving the release of this material by such a large margin, the House relied on the traditional notion that an informed citizenry is critical to the success of our republic.

In supporting this resolution before the House today, let me say to the Members that regardless of your personal feelings about the President, whether political supporters or not, you have a constitutional obligation to set aside those feelings and cast your vote solely on the basis of whether you believe the evidence submitted to this House is sufficient grounds to undertake an impeachment inquiry.

Prior to today, I have withheld judgment and made no statements to the media regarding the substantive grounds for impeachment. However, I have reviewed the evidence in the report and I find it thorough, well-documented, and exhaustive in its corroborating detail.

After reviewing all of this evidence, I believe we have an overwhelming constitutional duty to vote to proceed with an inquiry.

I for one will continue to reserve judgment on whether articles of impeachment should be brought until after the Judiciary Committee has completed its investigation and sends a further recommendation to the House.

Mr. Speaker, today we should not determine whether to impeach the man who holds the Executive Office of the President. Rather, we should ratify the Judiciary Committee's recommendation that there is enough evidence to formally ask that question.

In doing so, we affirm the grim charge handed down by the framers of the Constitution, to guard against degradation of the office by the man who happens to hold it.

During the debate on whether to include the impeachment clause in the Constitution at the convention, Governor Morris, a delegate from Pennsylvania, offered an amendment to strike the clause.

At the conclusion of the debate, he changed his mind and supported the impeachment clause and argued, ''Our executive is not like a Magistrate having a life interest, much less like one having an hereditary interest in his office.''

With the unique idea of this constitutional clause as a foundation for our deliberation, our action here today affirms that we are not like the rest of the world.

I urge support for the resolution.

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

Mr. CONYERS. Mr. Speaker, I yield myself 10 seconds.

I really want to say to the chairman of the Committee on the Judiciary, the gentleman from Illinois (Mr. HENRY HYDE), that I respect the fulsomeness and fairness of his statement. I know that he is a person of his word, and I hope that these processes within our committee and the Congress will follow along the lines that he has outlined so admirably.

Mr. Speaker, I yield 4½ minutes to the gentleman from Virginia (Mr. RICK BOUCHER), the principal architect of the alternative proposal to the motion on the floor that will be embodied in a motion to recommit.

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

Mr. BOUCHER. Mr. Speaker, I want to thank the gentleman from Michigan for yielding this time to me and commend him for the leadership that he has exerted as we have worked on this side in order to offer a fair and a balanced alternative to the resolution of inquiry.

At the conclusion of this debate, I will offer a motion to recommit the resolution offered by the gentleman from Illinois to the Committee on the Judiciary with the instruction that the committee immediately report back that resolution to the House with instructions that it contain our Democratic alternative.

While we would have preferred that Democrats have a normal opportunity to present our resolution as an amendment, the procedure that is being used by the House today does not make a Democratic amendment in regular course in order. The motion to recommit with instructions does, however, give us an opportunity to have the House adopt the Democratic plan.

The Democratic amendment is a resolution for a full and complete review by the Committee on the Judiciary of the material that has been presented to the House by the office of Independent Counsel. The Republican resolution also provides for that full and complete review. The difference between the Democratic and the Republican approaches is only over the scope of the review, only over the time that the review will take, and only over our insistence that the Committee on the Judiciary, in conducting its process, pay deference and become aware of the historical constitutional standard for impeachment that has evolved to us over the centuries and was recognized most recently by the Committee on the Judiciary in 1974 and then recognized by the full House of Representatives.

The public interest requires a fair and deliberate inquiry in this matter. Our resolution provides for that fair and deliberate inquiry. But the public interest also requires an appropriate boundary on the scope of the inquiry. It should not become an invitation for a free-ranging fishing expedition, subjecting to a formal impeachment inquiry matters that are not before the Congress today. The potential for such a venture should be strictly limited by the resolution adopted today by the House, and our Democratic proposal contains those appropriate limits. It would subject to the inquiry the material presented to us by the office of Independent Counsel, which is the only material before the House today.

The public interest also requires that the matter be brought to conclusion at the earliest possible time; that is, consistent with a thorough and complete review. The country has already undergone substantial trauma. If the committee carries this work beyond the time that is reasonably needed to conduct its complete and thorough review, that injury to the Nation will only deepen. We should be thorough, but we should also be prompt.

Mr. Speaker, given that the facts of this matter are generally well-known, given that there are only a handful of witnesses who have relevant information that can be addressed in this inquiry, and given the further fact that all of those witnesses have already been the subject of extensive review by the Grand Jury, and their testimony is available, this inquiry can, in fact, be prompt. The committee's work should not extend into next year. A careful and a thorough review can be accomplished between now and the end of this year, and our Democratic resolution provides that appropriate limitation on time.

The resolution requires that the committee hold hearings on the constitutional standard for impeachment, which was clearly stated in the conclusion of the committee's report in the Watergate years of 1974. Our substitute then directs that the committee compare the facts that are stated in the referral of the Independent Counsel to that historical constitutional standard and, if any facts rise to the level of impeachable conduct, that material would then be subjected to the thorough inquiry and review process contained within our resolution.

Under the resolution that we are putting forth, the committee will begin its work on the 12th day of October, that is next Monday, and will conclude all proceedings, including the consideration of recommendations, during the month of December.

□ 1115

There would then be ample time for the House of Representatives to consider those recommendations and conclude its work by the end of this year.

The procedure we are recommending is fair, it is thorough, it is prompt. It is a recommendation for an inquiry. It would assure an appropriate scope. It would give deference to the historical constitutional standard for impeachment, and it would assure that this matter is put behind us so the Nation can proceed with its very important business by the end of this year.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Wisconsin (Mr. SENSENBRENNER), a member of the committee.

Mr. SENSENBRENNER. Mr. Speaker, I rise in support of the resolution of inquiry.

At Monday's meeting of the Committee on the Judiciary, Investigative Counsel David Shippers informed the committee that the material received to date shows that the President may have committed 15 felonies. These alleged felonies were in the course of the President's successfully defeating Paula Jones' civil rights lawsuit, claims the Supreme Court in a 9–0 decision said that she had the right to pursue. The President denies all these allegations. Obviously someone is telling the truth and someone is lying.

The Committee on the Judiciary must be given the power to decide this issue. What is at stake here is the rule of law. Even the President of the United States has no right to break the law. If the House votes down this inquiry, in effect, it will say that even if President Clinton committed as many as 15 felonies, nothing will happen. The result will be a return to the imperial presidency of the Nixon era where the White House felt that the laws did not apply to them, since they never would be punished. That would be a national tragedy of immense consequences.

Vote for the resolution. Let the Committee on the Judiciary try to find the truth.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the able gentleman from New York (Mr. SCHUMER), a senior member of our Committee on the Judiciary.

Mr. SCHUMER. Mr. Speaker, I thank the gentleman for yielding time.

Mr. Speaker, this is a serious and solemn day. After a careful reading of the Starr report and other materials submitted by the Office of Independent Counsel as well as a study of the origins and history of the impeachment clause of the Constitution, I have come to the conclusion that, given the evidence before us, while the President deserves significant punishment, there is no basis for impeachment of the President and it is time to move on and solve the problems facing the American people, like health care, education and protecting seniors' retirement.

To me, Mr. Speaker, it is clear that the President lied when he testified before the grand jury not to cover a crime but to cover embarrassing personal behavior. While it is true that in ordinary circumstances and in most instances an ordinary person would not be punished for lying about an extramarital affair, the President has to be held to a higher standard and must be held accountable. But high crimes and misdemeanors, as defined in the Constitution and as amplified by the Federalist Papers and Justice Story, have always been intended to apply to public

actions relating to or affecting the operation of the government, not to personal or private conduct.

That said, the punishment for lying about an improper sexual relationship should fit the crime. Censure or rebuke is the appropriate punishment. Impeachment is not. It is time to move forward, not have the Congress and American people endure the specter of what could be a year-long focus on a tawdry but not impeachable affair. Today the world economy is in crisis and cries out for American leadership, without which worldwide turmoil is a grave possibility. The American people cry out for us to solve the problems facing them. This investigation, now in its fifth year, has run its course. It is time to move on.

Mr. HYDE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania (Mr. MCHALE).

Mr. MCHALE. Mr. Speaker, Franklin Roosevelt once said that ''the presidency is preeminently a place of moral leadership.''

I want my strong criticism of President Clinton to be placed in context. I voted for President Clinton in 1992 and 1996. I believed him to be the ''Man from Hope'' as he was depicted in his 1992 campaign video. I have voted for more than three-fourths of the President's legislative agenda and I would do so again. My blunt criticism of the President has nothing to do with policy. Moreover, the President has always treated me with courtesy and respect and he has been more than responsive to the concerns of my constituents.

Unfortunately, the President's misconduct has now made immaterial my past support or agreement with him on issues. Last January 17, the President of the United States attempted to cover up a sordid and irresponsible relationship by repeated deceit under oath in a Federal civil rights suit. Contrary to his later public statement, his answers were not ''legally accurate,'' they were intentionally and blatantly false. He allowed his lawyer to make arguments to the court based on an affidavit that the President knew to be false. The President later deceived the American people and belatedly admitted the truth only when confronted some 7 months later by a mountain of irrefutable evidence. I am convinced that the President would otherwise have allowed his false testimony to stand in perpetuity.

What is at stake is really the rule of law. When the President took an oath to tell the truth, he was no different at that point from any other citizen, both as a matter of morality and as a matter of legal obligation. We cannot excuse that kind of misconduct because we happen to belong to the same party as the President or agree with him on issues or feel tragically that the removal of the President from office would be enormously painful for the United States of America. The question is whether or not we will say to all of our citizens, including the President of the United States, when you take an oath, you must keep it.

Having deliberately provided false testimony under oath, the President in my judgment forfeited his right to office. It was with a deep sense of sadness that I called for his resignation. By his own misconduct, the President displayed his character and he defined it badly. His actions were not ''inappropriate.'' They were predatory, reckless, breathtakingly arrogant for a man already a defendant in a sexual harassment suit, whether or not that suit was politically motivated.

And if in disgust or dismay we were to sweep aside the President's immoral and illegal conduct, what dangerous precedent would we set for the abuse of power by some future President of the United States?

We cannot define the President's character. But we must define the Nation's. I urge an affirmative vote on the resolution.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. NADLER), who coauthored the alternative proposal that we shall shortly offer this morning.

Mr. NADLER. Mr. Speaker, the issue in the potential impeachment is whether to overturn the results of a national election, the free expression of the popular will of the American people. It is an enormous responsibility, and an extraordinary power. It is not one that should be exercised lightly. It is certainly not one which should be exercised in a manner in which or would be perceived to be unfair or partisan.

The work of this House during the Nixon impeachment investigation commanded the respect and support of the American people. A broad consensus that President Nixon had to go was developed precisely because the process was seen to be fair and deliberate. If our conduct in this matter does not earn the confidence of the American people, then any action we take, especially if we seek to overturn the result of a free election, will be viewed with great suspicion and could divide a nation for years to come.

We do not need another ''Who lost China?'' debate. We do not need a decade of candidates running for office accusing each other of railroading a democratically elected President out of office, or participating in a thinly failed coup d'etat.

The issue has the potential to be the most divisive issue in American public life since the Vietnam War. The process by which we arrive at our decision must be seen to be both nonpartisan and fair. The legitimacy of American political institutions must not be called into question.

I do not believe personally that all the allegations in the Starr report, if proven true, describe impeachable offenses. We need to remember that the framers of the Constitution did not intend impeachment as a punishment for a wrongdoing but as a protection of constitutional liberties and of the structure of the government that they were establishing against a President who might seek to become a tyrant.

The President's acts, if proven true, may be crimes, calling for prosecution or other punishment, but not impeachment. So I do not believe we need a formal impeachment inquiry. But if we are to have an inquiry, it must be fair. So far it has been anything but fair. The President was not given the Starr report before it was made public; a violation of all the precedents. No debate on the committee occurred on the merits whatsoever. We spent a month on deciding what should be released and what should be kept in private, and then we heard the report of the two counsels and then we discussed procedure but not a minute of debate on the merits on the evidence, on the standard of impeachment, on anything.

The supreme insult to the American people, an hour of debate on the House floor on whether to start, for the third time in the American history, a formal impeachment proceeding. We debated two resolutions to name post offices yesterday for an hour and a half. An hour debate on this momentous decision is an insult to the American people and another sign that this is not going to be fair.

The democratic amendment is a fair device for a fair process. It provides for a limitation in scope in time, and I urge its adoption.

POINT OF ORDER

Mr. OBEY. Mr. Speaker, I make a point of order.

The SPEAKER. The gentleman will state his point of order.

Mr. OBEY. Mr. Speaker, this is a fairly important issue. It seems to me that if Members are going to vote on it the least they could do is be here in the chamber when it is debated, and I would hope that the leadership of both parties would be sending out messages to the Members that whatever they are doing, they ought to drop it and get their tails here.

Mr. HYDE. Mr. Speaker, I yield 2½ minutes to the distinguished gentleman from Florida (Mr. CANADY), a member of the committee.

Mr. CANADY of Florida. Mr. Speaker, I rise today to support the impeachment inquiry resolution of the Committee on the Judiciary, a resolution which ensures that we expeditiously deal with the serious charges against the President in a process that is fair, thoughtful and deliberative.

In this resolution, we followed the pattern and procedures established in the Nixon impeachment inquiry. This model served the House well in the Nixon case. It has stood the test of time and there is no reason that we should abandon this model now.

The House should reject the unprecedented Democratic alternative with its unwise, arbitrary and unrealistic limitations and restrictions on the ability of the Committee on the Judiciary to

do its job. We must recognize that the Democratic alternative sets up a process that has never, not once, been followed in the more than 200-year history of impeachment under our constitution. It is totally without precedent.

Some have claimed that the charges against the President do not amount to high crimes and misdemeanors but the very report cited by the President's lawyers, which was prepared by the impeachment inquiry staff in the Nixon case, recognizes that conduct of the President which, and I quote, ''undermines the integrity of office'' is impeachable. The unavoidable consequence of perjury and obstruction of justice by a President would be to erode respect for the office of the President. Such acts inevitably subvert the respect for the law, which is essential to the well-being of our constitutional system.

If perjury and obstruction of justice do not undermine the integrity of office, what offenses would? Not long after the Constitution was adopted, one of the framers wrote, if it were to be asked what is the most sacred duty and the greatest source of security in a republic, the answer would be, an inviolable respect for the Constitution and laws. Those, therefore, who set examples which undermine or subvert the authority of the laws lead us from freedom to slavery. They incapacitate us for a government of laws.

Today, as Members of this House, it is our solemn responsibility under the Constitution to move forward with this inquiry and to set an example that strengthens the authority of the laws and preserves the liberty with which we have been blessed as Americans.

Mr. CONYERS. Mr. Speaker, I yield 1½ minutes to the gentleman from Florida (Mr. WEXLER), a valuable member of the Committee on the Judiciary.

Mr. WEXLER. Mr. Speaker, God help this Nation if today we become a Congress of endless investigation, accomplices to this unAmerican inquisition that would destroy the presidency over an extramarital affair.

The global economy is crumbling and we are talking about Monica Lewinsky.

Saddam Hussein hides weapons and we are talking about Monica Lewinsky.

□ 1130

Genocide wracks Kosovo, and we are talking about Monica Lewinsky.

Children crammed into packed classrooms, and we are talking about Monica Lewinsky.

Families cannot pay their medical bills, and we are talking about Monica Lewinsky.

God help this Nation if we trivialize the Constitution of the United States and reject the conviction of our Founding Fathers that impeachment is about no less than the subversion of the government. The President betrayed his wife; he did not betray the country. God help this Nation if we fail to recognize the difference.

Mr. HYDE. Mr. Speaker, I yield 2 minutes the distinguished gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Speaker, today we are considering a resolution of inquiry into the conduct of the President of the United States. It is not about a person, but it is about the rule of law. Each of us took a simple oath to uphold the Constitution of the United States. The Constitution provides a path to follow in these circumstances. The path may not be well worn, but it is well marked, and we will be wise to follow it rather than to concoct our own ideas on how to proceed.

The gentleman from New York concluded that the President has lied under oath, that he should be punished, but he should not be impeached. The gentleman is way ahead in his conclusion of where this process should be and where I am. I would say that this process is not about punishment. The purpose of this process is to examine the public trust, and, if it is breached, to repair it.

We have been referred serious charges of perjury, obstruction of justice and abuse of power. The President and his lawyers have denied each of these charges, as is his right to do. Our response should be that we need to examine these facts to determine the truth and to weigh the evidence, and it is our highest duty today to vote for this inquiry so that, if the result is there are no impeachable offenses, we can move on, but if there is more to be done, we can be sure that the rule of law will not be suspended or ignored by this Congress.

The Watergate model was chosen because that was what was demanded by my friends from across the aisle. This resolution does not direct the committee to go into any additional areas, but it does give the committee the authority to carry out its responsibility and to bring this matter to a conclusion without further delay.

It is my firm commitment, as an Arkansan, as an American and as someone who has tried to work with my colleagues from both side of the aisle, to be fair in every way in the search for truth. Did the President participate in a scheme to obstruct justice? Did the President commit perjury? Do these allegations, if proven, constitute impeachable offenses? We can answer these questions in a fair and bipartisan manner, and that is my commitment.

People say this is not Watergate. That is true. Every case is different. But the rule of law and our obligation to it does not change. They do not change because of position, personalities or power. The rule of law and justice depends upon this truth.

I ask my colleagues to support the resolution.

Mr. CONYERS. Mr. Speaker, I yield 1½ minutes to the gentleman from Wisconsin (Mr. BARRETT).

Mr. BARRETT of Wisconsin. Mr. Speaker, many of the President's actions were wrong. In fact, they were indefensible. But our role today is not to attack him. Our role today is to make sure that this process is defensible.

And this is not a defensible process. This Chamber spent a day, a little more than a day, debating renaming an airport, and we are spending 2 hours on deciding the future of this Presidency. That is unfair.

There should be an inquiry; we should move on. But it has to be fair, and what we are seeing today is not fair, it is not focused.

We have a report from Kenneth Starr. We should focus our inquiry on the report and any subsequent matters Ken Starr brings us.

We should have a target date of completion. We should aim to finish this by December 31. And if we cannot get it done, we can ask for an extension, and that can happen.

But the American people want this to be a fair process, and they are not stupid, and they recognize that this is not a fair process. The President may be punished, the President should be held accountable for his actions, but we have a duty, each and every person in this Chamber has a duty, to do that in a fair way.

And I think each of us has to examine our conscience and ask whether we want to have a wide-ranging fishing expedition or whether we want to focus it on the report that has been brought to us and any subsequent matters the special prosecutor brings to us. If we do that, I think we can do that on a bipartisan basis, and I think that will be fair, and that is what the American people want.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California (Mr. DREIER).

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

Mr. DREIER. Mr. Speaker, this is obviously a very difficult time for every Member of this House.

I think it was said first by the gentleman from Illinois (Mr. HYDE): Duty, duty, duty. The gentleman from Wisconsin (Mr. BARRETT) just talked about our duty. But I think, over and above our duty, I think it is important for us to recognize the words of the gentleman from Pennsylvania (Mr. MCHALE) who talked about the importance of the rule of law. That really is why we are here.

Over the past several weeks and months a number of us have dusted off our copies of the Federalist Papers, John Jay, Alexander Hamilton, James Madison—James Madison being the author, the father of the Constitution. Towards the end of the 51st Federalist, James Madison puts it perfectly as we look at the challenge that we face today. He said:

> Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained or until liberty be lost in the pursuit.

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that on the motion

to recommit we be granted 5 minutes on each side for the purpose of comments and for the purpose of debate.

The SPEAKER. Has the gentleman from Illinois yielded to the gentleman from Michigan for the purpose of that request?

Mr. HYDE. Yes, Mr. Speaker. I think 5 minutes on each side on the motion to recommit is justifiable, and I support the gentleman in his request.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield 1½ minutes to the gentleman from New Jersey (Mr. ROTHMAN), an able member of the Committee on the Judiciary.

Mr. ROTHMAN. Mr. Speaker, after 4½ years investigation of nearly every aspect of President Clinton's public and private life, Independent Counsel Ken Starr presented the House with 11 allegations of impeachment, all relating only to the President's misconduct with Monica Lewinsky. The Democrats say that these are serious allegations and that we should resolve these 11 charges by the end of this year and let the chips fall where they may. The Republicans say that they will not be limited to the 4½ year investigation by Mr. Starr. They feel that Mr. Starr was too light on President Clinton, and so they want an impeachment inquiry not only limited to Mr. Starr's charges regarding Miss Lewinski, but any other charges anyone can come up with on any subject at any time and with no time limit. And they want the American people to pay for it.

Mr. Speaker, I believe the Republican bill is unfair, it is unfair to the President, it is unfair to our country, and it is not in our national interest. We already know that what the President did was wrong, It was morally wrong, and now we need to decide what is an appropriate punishment for his offenses.

But let us reject the open-ended Republican inquiry. Let us instead follow the democratic model and resolve the 11 charges that Mr. Starr actually brought to us and do so before the end of the year so that we can get together as a Nation and address the serious and important other issues that face us here at home and around the world.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), a member of the committee.

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

Mr. CHABOT. Mr. Speaker, I rise in support of the resolution.

Our responsibility today is to determine if the evidence we have examined thus far warrants further investigation by the Committee on the Judiciary. We do not sit in judgment today. We are not here to convict or punish or sentence today. We are here to seek the truth.

To fulfill our constitutional duty we must determine if the evidence presented to date strongly suggests wrongdoing by the President and if the alleged wrongdoing likely rises to the level of an impeachable offense; that is, a high crime or misdemeanor. I would submit that strong evidence exists that the President may have committed perjury and the historic record demonstrates that perjury can be an impeachable offense.

Based on the facts and on the law, this House has a constitutional duty to proceed to a formal inquiry.

Mr. Speaker, I think I speak for most of my colleagues when I say that this is not a matter to be taken lightly. Rarely in one's political life is one forced to confront such an awesome and historic responsibility. It is my sincere hope that we can work together as the Founding Fathers envisioned, in a bipartisan fashion, to complete this task as expeditiously as possible and to do what is in the best interests of the country.

I would urge my colleagues on both sides of the aisle to rise above the partisan fires that too often burn in our Nation's capital. Consider the facts at hand and fulfill our constitutional responsibilities by moving forward with a fair and thorough investigation of this important matter.

Mr. CONYERS. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. LOFGREN), a member of the Committee on the Judiciary who has worked tirelessly on crafting a middle course for the Members of the House of Representatives.

Ms. LOFGREN. Mr. Speaker, many of us have labored very hard to craft a plan that would allow us to deal with the referral of the independent counsel in a way that is focused, in a way that is fair, in a way that is prompt and efficient, and, most of all, in a way that puts our Constitution first. I am very distressed to say that I do not see that that is going to happen today in this chamber.

Mr. Speaker, I fear what Alexander Hamilton warned against in Federalist Paper Number 65, that ''there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.'' That prophecy, that fear, is about to be realized. I believe that the majority has used its raw voting power to create a proposal that could result in a wide-ranging and lengthy impeachment inquiry. The Committee on the Judiciary may become the standing committee on impeachments. And I further fear that the rules in the Constitution may never be applied to the referral that has been sent to us. Even worse, we may end up—as happened Monday—with the majority counsel creating entirely new standards for high crimes and misdemeanors, which will have a very serious distorting effect on our constitutional system of government.

□ 1145

When we are lost, the best thing for us to do is to look to our Constitution as a beacon of light and a guideline to get us through trying times. Historically, impeachment was to be used when the misconduct of the executive was so severe that it threatened the very constitutional system of government itself. Ben Franklin described it as the alternative to assassination. It is that standard that needs to be applied in this case.

The question is not whether the President's misconduct was bad. We all know that the President's misconduct was bad. The question is, are we going to punish America instead of him for his misconduct? Are we going to trash our Constitution because of his misconduct? Are we going to make sure that this investigation goes on interminably while we ignore economic crises, or the needs of our students for education?

I fear that we are letting down our country. Twenty-four years ago, as an idealistic student, I watched this body rise to the occasion. Twenty-four years ago, as an idealistic student, I worked on the staff of a member of the Judiciary Committee, and I saw the committee, and I saw this Congress do a very hard thing: come together, become nonpartisan, and do a tough job for America.

I am very concerned that, instead of rising to this occasion today, we are falling down and lowering ourselves and America with it. I urge the adoption of the Boucher amendment.

Mr. HYDE. Mr. Speaker, I am pleased to yield 1 minute to the distinguished gentlewoman from Florida (Ms. ROS-LEHTINEN).

Ms. ROS-LEHTINEN. Mr. Speaker, our laws promise a remedy against sexual harassment. But if we say that lying about sex in court is acceptable or even expected, then we have made our sexual harassment laws nothing more than a false promise, a fraud upon our society, upon our legal system, and upon women.

Lying under oath and obstruction of justice are ancient crimes of great weight because they shield other offenses, blocking the light of truth in human affairs. There they are a dagger in the heart of our legal system and our democracy. They cannot and must not be tolerated.

The office of the presidency is due great respect, but the President is a citizen with the same duty to follow the laws as all other citizens. The world marvels that our President is not above the law, and my vote today helps assure that this rule continues.

With a commitment to the principles of the rule of law, which makes this country the beacon of hope for political refugees like myself throughout the world, I cast my vote in favor of the resolution to undertake an impeachment inquiry of the conduct of the President of the United States.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. DELAHUNT), my friend and a senior prosecutor.

Mr. DELAHUNT. Mr. Speaker, I am aware of the fact that there is limited time for this debate. I think that is, indeed, unfortunate, because I was going on to talk about how we have abdicated our constitutional duties to an unelected prosecutor, how we have released thousands of pages that none of us in good conscience can say that we have read.

We violated the sanctity of the Grand Jury so that we can arrive here today to launch an inquiry without an independent, adequate review of the allegations by this body, which is our constitutional mandate. Ken Starr is not the agent of the United States Congress. It is our responsibility.

I was going to go on and speak about the proposal put forth by the gentleman from Virginia (Mr. BOUCHER), one that would have addressed and would address all of the allegations raised in the Starr referral in a fair way and in an expeditious way without dragging this Nation through hearings that will be interminable in nature.

What it really means for this country, is all the President's, any President's, enemies have to do to commence an impeachment process is to name an independent counsel so that we can here just simply rubber stamp that independent counsel's conclusions.

I was going to speak about the letter that was referred to by the universally respected chairman of the committee and a gentleman whom I hold in high esteem, the gentleman from Illinois (Mr. HYDE), the letter where Mr. Starr is saying that he may make further referrals and keep this inquiry going on indefinitely. That is not a process, Mr. Speaker; it is a blank check. That is what I was going to talk about.

But out of deference to others that want to speak, I will conclude by saying, one hour to begin only the third impeachment inquiry in U.S. history is a travesty and a disgrace to this institution. I think that says it all, and besides, I am probably out of time.

Mr. HYDE. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Florida (Mr. MCCOLLUM), a distinguished member of the committee.

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

Mr. MCCOLLUM. Mr. Speaker, the question for us today is not whether or not the President committed impeachable offenses or whether or not we are here to impeach, the question is, do the allegations that have been presented to us by Kenneth Starr and his report merit further consideration?

Some would have us believe today that, even if all of those allegations were proven to be true, that the answer is no. They are wrong. The issue before us when we consider this matter is not Monica Lewinsky. The issue is not sex. The issue is not whether the President committed adultery or betrayed his wife.

The issue is did the President of the United States commit the felony crime of perjury by lying under oath in a deposition in a sexual harassment case. The issue is did the President of the United States commit the felony crime of perjury by lying under oath to a Grand Jury. The issue is did the President of the United States commit a felony crime of obstructing justice or the felony crime of witness tampering. If he did, are these high crimes and misdemeanors that deserve impeachment?

I would suggest that these are extraordinarily serious; that if the President of the United States is to be judged not to have committed a high crime and misdemeanor if the facts are proven, and we do not know that, that these things are true and he committed these crimes, but if he is judged not to have committed a high crime and misdemeanor for committing these other crimes of perjury, we will have determined that, indeed, he is no longer the legal officer at the highest panicle of this country.

Because to leave him sitting there is to undermine the very judicial system we have. It is to convey the message that perjury is okay, certainly at least perjury in certain matters and under certain circumstances. It is not okay. It is a very serious crime. Obstructing justice is. Witness tampering is.

One hundred fifteen people are serving in Federal prisons today who may be watching these proceedings today, serving in prison for perjury. Two judges have been impeached since I have been in Congress for nothing more than perjury, committing perjury as we call it.

What do we say in the future to all of those people who take the oath of office who say ''I swear to tell the truth, the whole truth, and nothing but the truth?'' What do we say to all of those people who swear to tell the truth, nothing but the truth, but the whole truth when they are witnesses in cases throughout this country, civil and criminal? What do we say to all of the people who we may judge in the future who may be judges or otherwise who come before us who commit perjury? Is it okay?

If we leave this President alone if he committed these crimes, then we have undermined our Constitution, and we have undermined our system of justice. This is serious. We need to investigate these allegations.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California (Mr. FAZIO), the departing chair of our caucus.

Mr. FAZIO of California. Mr. Speaker, today's proceeding is of such great historical importance that it should be approached with a deep and abiding respect for the Congress, the Constitution, and the Presidency.

We had the opportunity to develop a fair and responsible process that would protect, not only the dignity of the office of the Presidency, but create a precedent worth following. But I believe the Republican majority has squandered that, and, by doing so, has set in motion a process that is too much about partisanship and not enough about statesmanship.

The Republican proposal offers no limits on how long this partisan inquiry will go on nor on how long independent counsel Ken Starr can drag up issues that he has had 4 years to bring to this House. Sadly, there has been no willingness to limit the duration or scope of this resolution.

The Republican proposal moves ahead with an impeachment inquiry before the Committee on the Judiciary has even conducted a review of the facts and determined whether those facts constitute substantial and credible evidence. It lowers the threshold for which a President can be harassed and persecuted to the point of distraction from his constitutional duties.

From now on, any Congress dissatisfied with the policies of a particular administration or the personal behavior of any President could simply conduct an ongoing, costly, and distracting inquiry designed to dilute the authority of the Presidency.

After this election, when rational behavior returns, and cooler heads can prevail, I urge us to forge a way to rise above the nasty politics that have clouded this body.

I will not be here with those of you who return to this next Congress. I leave after 20 years with my self-respect intact. I have reached across the lines within my own party and, when necessary, across the aisle to the other party to make this House work and to get things done for this country.

I fought partisan battles. I have stood my ground on issues that matter to my district. The American people expect us to do that. But they also expect us to, each of us, to rise above the base political instincts that drive such a wedge through this institution.

In the months ahead, we must find a way, my friends, to do what is right for America to find a way to return this House to the people through a respect for law, for fairness, and due process. In the end, we must do a lot better than we will do today.

Mr. HYDE. Mr. Speaker, I am very pleased to yield 2½ minutes to the gentleman from Georgia (Mr. BARR), a distinguished member of the committee.

Mr. Speaker, will the gentleman yield to me very briefly?

Mr. BARR of Georgia. I am happy to yield to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the Committee on the Judiciary.

Mr. HYDE. Mr. Speaker, I just want the record to be clear. My good friend the gentleman from Massachusetts (Mr. DELAHUNT) talked about 60,000 pages that were released that were not reviewed or looked at.

I want him to know, and I want everyone listening to know that every single page of anything that was released was reviewed, and things that were not released were reviewed by our staff.

I also would like to point out that total time spent looking at these

records by the Democrats, members of the Committee on the Judiciary on the Democrat side, were 21.81 hours. Six of them never came over to see the material. On the Republican side, 114.59 hours, and every Member came over to look at the material.

Mr. CONYERS. Mr. Speaker, will the gentleman yield to me?

Mr. HYDE. Mr. Speaker, I will give the gentleman from Georgia additional time.

Mr. BARR of Georgia. I yield to the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member.

Mr. CONYERS. Mr. Speaker, I thank the gentleman from Illinois (Mr. HYDE). That really contributes to the comity of this body, and I am sure it is an interesting statistic that everybody ought to know about.

Mr. BARR of Georgia. Mr. Speaker, reclaiming my time, I yield to the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the committee.

Mr. HYDE. Mr. Speaker, I just want to say to my friend that when the gentleman from Massachusetts (Mr. DELAHUNT) says this has been done careless or in a slipshod manner not reviewing these things, it is important to know we took our job seriously. They were there to be reviewed. If my colleagues did not choose to do it, that is their option.

Mr. CONYERS. Thank you, Mr. HYDE.

Mr. HYDE. You are welcome, Mr. CONYERS.

Mr. BARR of Georgia. Mr. Speaker, might I inquire of the gentleman from Illinois (Mr. HYDE), the distinguished chairman of the committee, if I have, in fact, 2 minutes remaining?

Mr. HYDE. Mr. Speaker, the gentleman has every reason to inquire, and I would like to give the gentleman from Georgia (Mr. BARR) a total of 3 minutes for his generosity.

Mr. BARR of Georgia. Mr. Speaker, as the United States Attorney appointed by President Reagan, when a case was presented to me, I started at the beginning. I would look and see what the law says, and I would look and see what the history of that law said.

Here we have similarly to look at the Constitution. It is pretty clear. What makes it even clearer, though, Mr. Speaker, is if we look at the sources for Article II Section 4, which is the impeachment power, we find, for example, Mr. Speaker, that, according to the Federalist writings 211 years ago, that an impeachable offense is, quote, ''Any abuse of the great trust reposed in the President.''

□ 1200

Moreover, they tell us, as Federalist 65 did, written by that great constitutional scholar Alexander Hamilton, an impeachable offense is a ''violation of public trust.''

I did not stop there, Mr. Speaker. I looked at further constitutional scholars. I find that 24 years ago, no less a constitutional scholar than William Jefferson Clinton, defined an impeachable offense as, ''willful, reckless behavior in office.''

I did not stop there. I looked at a report coauthored by Hillary Rodham, part of the impeachment team in the Watergate years, and I find that at page 26 of their report, she and others of her colleagues define an impeachable offense as ''wrongs that undermine the integrity of office.''

Where are we now, Mr. Speaker? The step we are taking today is one I first urged nearly a year ago. All we are doing today is taking the constitutionally equivalent step of impaneling a grand jury to inquire into whether or not the evidence shall sustain that offenses have, in fact, occurred.

The passage of H.R. 581 will mark the dawn of a new era in American government. We are sending the American people a clear message, that truth is more important than partisanship, and that the Constitution cannot be sacrificed on the altar of political expediency; that no longer will we turn a blind eye to clear evidence of obstruction of justice, perjury and abuse of power. We will be sending a message to this and all future Presidents that if, in fact, the evidence establishes that you or any future President have committed perjury, obstruction of justice, subversion of our judicial system, that we will be saying, no, sir, Mr. President, these things you cannot do.

It is our job as legislators to diagnose threats to our democracy and eliminate them. By the time the damage to our system is so great that everyone can see it, the wounds will be too deep to heal. We have already waited too long to address this issue. We must move forward quickly, courageously, fairly, and most importantly, constitutionally, along the one and the one and only path charted for us in the Constitution, the impeachment process.

We must do this, Mr. Speaker, so that tomorrow morning as we in this Chamber, as teachers all across America, lead their students in the pledge of allegiance, we can look America in the eye and say, yes, at least for today the Constitution is alive and well.

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

I think it is very important for the record and for the American people to know that yes, the staff worked hard; the staff, the majority staff and the minority staff, to review 60,000 and some odd pages. But let me suggest that no Member in this House, no member in this committee in good conscience can stand here in this well today and state that he or she adequately reviewed that testimony before its release.

And this is a responsibility mandated by the Constitution to Members, not to staff, and that is what this is about today. This is not about defending the President, this is about defending the Constitution of the United States.

Mr. Speaker, I yield 3 minutes to the distinguished gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Speaker, the decision of the Republicans to limit the debate on this very important resolution to decide whether this body will move with an inquiry to impeach is a continuation of the partisan, unfair, inconsiderate actions that have dictated the management of this impeachment crisis since independent counsel Ken Starr dumped his referral in the laps of this Congress and in the laps of the public. This continuous, shameless and reckless disregard for the Constitution, basic civil rights and the citizens of this country cannot be tolerated.

This is a sad and painful time for all of us. The least we can do is handle this matter with dignity and fairness for everyone involved. Four and one-half years, $40 million. Unnecessary. Subpoenas of uninvolved individuals, and Mr. Starr's close relationships with groups and individuals, with demonstrated hatred for the President, taints the independent counsel's investigation.

This Congress does not need a protracted, open-ended witch-hunt of intimidation, embarrassment and harassment. The tawdry and trashy thousands of pages of hearsay, accusations, gossip, and stupid telephone chatter does not meet the standard of high crimes and misdemeanors.

The President's actions in this matter are disappointing and unacceptable, but not impeachable. Mr. Schippers, the general counsel for the Republicans, extended the allegations in search of something, anything that may meet the constitutional standards, and even the extended and added allegations do not comport with the Constitution.

It is time to move on. Reprimand the President, condemn him, but let us move on. These grossly unfair procedures will only tear this Congress and this Nation apart. I ask my colleagues to vote down this open-ended and unfair resolution. It does not deserve the support of this House.

Mr. Speaker, the Members of the Congressional Black Caucus have constantly warned this body about the dangers of a prosecutor run amok. They have warned this body about the abuse of the power of the majority. We ask our colleagues to listen to us as we remind our colleagues of the history of our people who have struggled against injustice and unfairness. Let us not march backwards; let us be wise enough to move forward and spend our precious time working on the issues of education, health care, senior citizens, children, and in the final analysis, Mr. Speaker, justice, and opportunity for all Americans.

Mr. HYDE. Mr. Speaker, I would like to inquire as to the time remaining on both sides.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. HYDE) has

33½ minutes; the gentleman from Massachusetts (Mr. DELAHUNT) as 34½ minutes.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from South Carolina (Mr. INGLIS), a valued member of the committee.

Mr. INGLIS of South Carolina. Mr. Speaker, we are now engaged in a constitutional process that is about the search for truth. I believe that we should do that in a fair and expeditious way, completely disregarding polls, completely disregarding the pendency of an election on November 3, and answering the question that our colleague from California just asked about whether it is appropriate just to move along.

Of course, we do want to move along to important issues facing the country. We do want to restore freedom in health care, we do want to secure the future of Medicare and Social Security, and we do want to continue the progress toward balancing the budget. All of those things we want to do.

But I would ask my colleagues to consider this. Really, this is the crucial business of the country. This is the crucial business.

As we go into the next century, the question is, does the truth even matter. Now, some would say, let us move along, it does not matter, just move along. But if we move along, what we are leaving aside is serious allegations of serious crimes.

Just this week one of my staffers was on her way over here with a staff member of one of our colleagues, the gentleman from Louisiana (Mr. COOKSEY). An accident occurred, occurred on a bicycle, struck this young lady, not my staffer, but the other staffer. She was hurt. Now, she has two duties as a citizen. One is to testify, to be a witness, to come forward; and the second is to testify truthfully when called on, if necessary, in court.

Now, what shall we say to her if we are going to just move along and say that the potential of the crime of perjury just does not matter, then what of that small case in a court here in D.C.? We say to that case, well, it is not necessary to tell the truth in court, and it is not necessary to testify, I suppose. But we must say, if we are going to preserve the rule of law in this Nation, that it does matter, and that when that young staffer is called on to testify, if she must, she must testify, and then she must tell the truth.

This is the essential work of this Congress and of this Nation.

Mr. DELAHUNT. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from North Carolina (Mr. WATT), and a distinguished member of the Committee on the Judiciary.

Mr. WATT of North Carolina. Mr. Speaker, as members of the Committee on the Judiciary, we have had the opportunity to indicate our willingness to engage in a process that is fair, measuring the President's conduct against a constitutional standard, not a bicycle standard; focused on what the independent counsel has referred or might refer to us; and timely, one that sets an objective to conclude this matter and put it behind us.

We have also had the opportunity to listen to our colleagues on the Committee on the Judiciary who want to engage in an unfair and open-ended, partisan political fishing expedition, dealing with bicycles rather than constitutional standards, some of whom have already gone on television and already declared their conclusion in this matter before a trial even begins.

We have had our opportunity.

Mr. Speaker, I would like to yield the balance of my time to a nonmember of the Committee on the Judiciary, my good colleague from Texas (Mr. EDWARDS).

Mr. EDWARDS. Mr. Speaker, I am deeply disappointed that the Republican leadership has placed an incredibly unfair gag rule on a constitutional debate of historic proportions. If this gag rule is the first test of the Republicans' fairness in this inquiry, they have failed that test.

The most important issue today, Mr. Speaker, before us is not the November 3 elections, or even the fate of President Clinton. The most important issue before us is the historical precedent we set in beginning the process of undoing an election for the most important office of our land. The right to vote is the foundation of our entire democracy. To override the votes of millions of Americans in a Presidential election is an extraordinary action. It is a radical action, and, in effect, it is allowing the votes of 535 citizens to override the votes of tens of millions of citizens.

In its rush to begin an impeachment inquiry just days before a crucial election, this Congress will have lowered the threshold for future Presidential impeachment inquiries in such a way that compromises the independence of the Presidency as a coequal branch of government.

The truth is the Committee on the Judiciary has not even had 1 day, not even 1 hour of hearings on our Founding Fathers' original intent about the threshold for impeachment. I find it ironic that the very Republicans who have preached all year long that we should impeach Federal judges for not abiding by our Founding Fathers' constitutional intentions have now decided we can start an historic constitutional process without even 1 hour of hearings. How ironic that those same Republicans will today force us to vote on a truly historic constitutional issue without even 1 hour, 1 day of hearings on our Founding Fathers' intent about high crimes and misdemeanors.

To begin a formal impeachment inquiry after only a cursory review of the Independent Counsel's report, in light of a standard that has not been defined, within the context of a pending congressional election weeks away, at the very least undermines the credibility of this House on this important issue, and at the very worst has set an historical precedent that we can easily begin the process of undoing the freely exercised votes of millions of Americans.

To even begin this radical process without the greatest of deliberation, regardless of one's final vote, is in itself, in my opinion, an attack upon the very core of our democracy.

□ 1215

Mr. HYDE. Mr. Speaker, I am very pleased to yield 2 minutes to the distinguished gentleman from Tennessee (Mr. BRYANT), a member of our committee.

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

Mr. BRYANT. Mr. Speaker, I want to remind our colleagues that we are not voting on impeachment today. We are here today simply to uphold our constitutional obligation to look further into the allegations of wrongdoing against this president, and not to look away.

We seem to all agree that the President's conduct was wrong, and we seem to now agree that we must continue this process toward finding the truth. But this is not about keeping political score. It is not about allowing the President to dictate the terms of this process. We are here protecting our Constitution, which we have a duty to uphold. So let us complete our task fairly and expeditiously.

I must respectfully disagree with my good friend and colleague, the gentleman from Virginia (Mr. BOUCHER) and his alternative to this. Now is not the time to set arbitrary time limits, because, as we have learned before, that encourages stonewalling. We can actually get this done quicker, as the chairman said, without time limits. Now is not the time to consider possibly piecemealing allegations. Let us get all this done, get all this behind us, and move forward.

As part and parcel of that, our responsibility to the American people is to be fair throughout this process. It is an elementary principle of this fairness that the President should not be allowed to limit or direct or influence the process that Congress uses to investigate these allegations.

At the end of the day, our Constitution will still stand as a pillar of our Nation. It will and it should, fittingly, outlast any person, whomever it might be, who has the great privilege of serving in the office of the presidency.

Mr. DELAHUNT. Mr. Speaker, I yield 10 seconds to the gentleman from New York (Mr. ACKERMAN).

MOTION OFFERED BY MR. ACKERMAN

Mr. ACKERMAN. Mr. Speaker, I move that when the House adjourn, we do so to Salem, a quaint village in the Commonwealth of Massachusetts, whose history beckons us thence.

The SPEAKER. That is not a proper motion, the Chair would say to the gentleman from New York.

Mr. DELAHUNT. Mr. Speaker, I yield 2 minutes to my friend and colleague, the gentleman from Massachusetts (Mr. MEEHAN), whose district I do not think includes the town of Salem.

Mr. MEEHAN. Mr. Speaker, this debate is as important for what it is not about as for what it is about. It is not about whether to conduct an inquiry. Both the Democratic and Republican resolutions would initiate an inquiry. It is not about who has been more faithful to the Watergate precedent. Neither side is pure on that subject.

What this debate is about is whether the Committee on the Judiciary will take up Whitewater, Travelgate, and Filegate, without a shred of paper from the Independent Counsel on this subject. It is about whether the committee will commence a fullscale impeachment hearing without asking itself, as a threshold matter, whether even Ken Starr's best case compels impeachment.

If Members can somehow convince themselves that after 4½ years and nearly $50 million in taxpayers' money, that Ken Starr has been less than aggressive in pursuing Whitewater, Travelgate, and Filegate, then Members should vote for the Republican resolution which authorizes the Committee on the Judiciary to take them up even without a referral from Kenneth Starr.

If Members believe that the committee should avoid the question of whether even Ken Starr's best case compels impeachment, and, instead, plunge blindly into a month-long evidentiary fiasco, then they should vote for the Republican resolution.

How is it in our Nation's best interest to initiate an impeachment inquiry which willfully blinds itself to the numerous constitutional scholars that say that even Ken Starr's best case does not compel impeachment? At this time of global political and economic turmoil, it is in our Nation's interest to deal with the Lewinsky matter fairly and expeditiously. Only the Democratic alternative would do that.

So please, let us put the national interest above partisanship. I ask Members to vote their conscience, vote for the Democratic alternative, and against the Republican resolution.

Mr. HYDE. Mr. Speaker, I am pleased to yield 1½ minutes to the distinguished gentleman from Ohio (Mr. DENNIS KUCINICH).

Mr. KUCINICH. Mr. Speaker, I rise today not on behalf of Democrats or Republicans, but as an American who is deeply concerned that our country bring closure to the charges against the President. A vote for an inquiry is not the same as a vote for impeachment. This vote is neither a vote to impeach nor a license to conduct a partisan witchhunt.

In fact, some have called for impeachment without a hearing. Some have called for resignation without a hearing. Some have called for exoneration without a hearing. I believe there will be no resolution without an open hearing. There will be no accountability without an open hearing. There will be no closure for this country, for this Congress, or for our president, without an open hearing.

The Nation is divided. The House is divided. A House divided against itself will not stand, so if inquire we must, let us do it fairly, and in the words of Lincoln, with malice towards none, with charity towards all, because there will be an inquiry. The American people expect it to proceed fairly, expeditiously, and then they expect it to end. The people want us to get this over with, and they will be watching.

Let the President make his case. Give him a chance to clear his name and get back to his job. Bring everything out in the open. Bring forward the accusers and subject them to the light of day, settle this, and then move forward to do the business of the people, the business for which the people elected us: to further economic growth, to protect social security, to improve health care, and to meet all the other pressing needs of the American people.

Mr. CONYERS. Mr. Speaker, it is my pleasure to yield 1 minute to the gentleman from Maine (Mr. ALLEN).

Mr. ALLEN. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, this is a solemn moment, but as theater, it is overdone. It is overdone because this vote is not about whether or not we should have an impeachment inquiry. Both resolutions call for such an inquiry, so we will have one. This vote is about what kind of impeachment inquiry we will conduct. That question is important.

The majority wants an open-ended impeachment inquiry with no limits on its scope or duration. Under their plan, the Committee on the Judiciary can investigate anything and everything it wants for 6 months, a year, or even longer. I believe their plan will inflame partisanship, and if prolonged, weaken the institution of the presidency and this country.

This is not Watergate. That committee conducted a factual inquiry. We have piles of facts from the special prosecutor. Our task is to find an appropriate consequence for behavior we know is wrong. Our alternative will provide for thorough consideration of the Starr alternative, of the Starr referral, by December 31, 1998. What is wrong with that?

I urge my colleagues to oppose an inquiry resolution that does not say when it will end or what it will cover, and instead, support the focused, fair, and expeditious Democratic alternative.

Mr. HYDE. Mr. Speaker, I am pleased to yield 2 minutes to the distinguished gentleman from Missouri (Mr. KENNY HULSHOF).

Mr. HULSHOF. Mr. Speaker, last night I addressed this body and urged my colleagues to please avoid partisan wrangling. Today I implore the Members of this body to recognize the historical gravity of the moment. Today is not the day to condemn the process or the prosecutor. Today is not the day for talking points or pointing fingers.

Mr. Speaker, in this debate, let us pledge not our loyalty to our party, let us pledge allegiance to our country. Let us not be partisans. Instead, let us be patriots.

I, too, am concerned about the open-ended nature of the investigation. I believe each one of us would fervently wish this cup would pass us by, but I have faith in the integrity and ability of the gentleman from Illinois (Mr. HYDE), and when he says this process will be handled fairly and expeditiously, I think his word deserves great weight in this body.

So the question I have for the Members is simply this: Is it possible, is it possible, that there is credible evidence that exists that would constitute grounds for an impeachment? If Members' answer is a solemn yes, then vote in favor of the resolution.

But I submit, even if Members' answer is an equivocal ''I do not know,'' then I think that the judgment of the doubt, the benefit of the doubt, must go in favor of the resolution.

Mr. Speaker, last January I was privileged to enter this Chamber for the first time, my family proudly beaming from the House gallery as I rose in unison with the Members of this body to take an oath. I pledged my sacred honor to the Constitution of the United States. That is what this vote is about.

In my humble and considered opinion, that oath requires from me a vote of aye on the resolution.

Mr. CONYERS. Mr. Speaker, it is my pleasure to yield 2 minutes to the able gentleman from New York (Mr. CHARLES RANGEL).

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

Mr. RANGEL. Mr. Speaker, I had the privilege of serving on the Watergate Committee on the Judiciary. One difference then, as opposed to now, is that we worked together as Republicans and Democrats to search for the facts and to report to the House of Representatives for them to make a determination.

Now, we do not have any question of trying to impeach the President of the United States or protecting the integrity of the Congress or the Constitution. The Republicans do not want to impeach, and would not touch it with a 10-foot political pole. They know at the end of this year that this Congress is over, and they even want to carry this over for the next 2 years, to attempt to hound this president, who has been elected twice, out of office.

The reason for it is because it is the only thing they have to take to the American people before this election. What else are they going to take? Their legislative record? The fact that they have renamed National Airport after Ronald Reagan, that they have deep-sixed the tax code to the year 2002?

On the question of social security, what have they done? Tried to rape the reserve. What have they done as it relates to minimum wage and providing jobs? What have they done for education? What have they done for the health of the people in this Nation?

They are not just going to get elected by hounding the President of the United States, because as they judge the President of the United States, the voters will be judging them on November 3.

Mr. HYDE. Mr. Speaker, I am very pleased to yield 1 minute to the distinguished gentleman from California (Mr. CHRIS COX).

Mr. COX of California. Mr. Speaker, I thank the chairman for yielding time to me.

Mr. Speaker, a member of the minority stated during the debate that the decision to limit the debate to 2 hours on this resolution is partisan. In allocating 2 hours for debate on a resolution authorizing an inquiry of impeachment, the Congress is adhering to precedent, the precedents established by the House of Representatives when it was under Democratic control. It is in fact doubling the amount of time that was spent in debate on the identical resolution in February, 1974.

Likewise, the wording of the resolution adheres directly to precedent. The minority argues today that an impeachment inquiry should be narrowly limited to the evidence we already know, but on February 6, 1974, when the Democrats were in the majority, Committee on the Judiciary Chairman Rodino stated: ''To be locked into . . . a date (for completion of the inquiry) would be totally irresponsible and unwise.'' The inquiry, he said, must be ''thorough, so that we can make a fair and responsible judgment.''

The resolution does, as it must, follow precedent. We, in undertaking this solemn constitutional duty, must follow precedent. A vote for the resolution is a vote for a fair, full, and complete inquiry today, just as in 1974.

□ 1230

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the gentleman from Rhode Island (Mr. KENNEDY).

Mr. KENNEDY of Rhode Island. Mr. Speaker, today I will cast the most important vote of my whole time here in the United States Congress. And if we are not going to listen to each other, then I would like us to listen to the eminent scholar, Lawrence Tribe, on what we are doing today.

He said that, ''Today this Congress is twisting impeachment into something else, instead of keeping it within its historical boundaries, and our Nation and its form of government are imperiled as a result.'' He went on to say that, ''Today we are losing sight of the constitutional wreckage that this vote will cause as we lay down historical precedent that a President of the United States can be impeached for something other than official misconduct as President of the United States.''

Mr. HYDE. Mr. Speaker, I yield such time as he may consume to the gentleman from Kentucky (Mr. BUNNING).

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

Mr. BUNNING. Mr. Speaker, I rise in support of the resolution.

Except for declaring war, impeachment is the most serious and sobering issue that the House can consider. The question before us today demands that we act out of statesmanship and not raw, political partisanship. Our history and our Constitution demand the best for us.

I have read the referral to the House from the Independent Counsel, Ken Starr, and I believe there is enough evidence to warrant further inquiry by the Judiciary Committee.

The Judiciary Committee's review of the evidence accumulated by the Independent Counsel indicates that there exists substantial and credible evidence of fifteen separate events directly involving the President that constitute grounds to proceed with an impeachment inquiry. The charges are troubling—perjury, obstruction of justice, witness tampering, and abuse of power. They are not simply about extra-marital affairs, or making misleading statements. Instead, the allegations touch more profoundly upon claims of criminal conduct.

I do not know if all of the allegations in the Starr report are true and factual. But, the charges are serious and some of the claims made against the President are compelling. However, the report represents only one side of the story, and the President deserves the right to exonerate himself before the Judiciary Committee, the full House and the American people.

Our Constitution and historical precedent set out a procedure to follow in proceedings such as this, and I believe we must strictly follow the letter of the law. Impeachment is a grave matter, and at this crucial moment in our history we must not rush to judgment.

The inquiry by the Judiciary Committee must be orderly, and judicious. But, it must also be expeditious. While I do not think that an arbitrary deadline should be imposed on the panel, for the good of the country I believe it is incumbent upon the Committee to work with all deliberate speed in order to conclude this matter as soon and as fairly as possible. Chairman Hyde's goal of the Committee concluding its work by the end of the year is fair and reasonable.

By the same token, I also believe that the President has a duty to work with, and not against, the Judiciary Committee to speedily resolve this matter. The sooner we can conclude these proceedings, the better it will be for the country. Now is not the time for further foot-dragging and delay by anyone.

I believe the President was right yesterday when he said members of the House should cast ''a vote of principle and conscience'' on authorizing the impeachment inquiry. I agree. Of all the votes cast in this Congress, this should be one of integrity and honor.

Mr. HYDE. Mr. Speaker, I yield 2½ minutes to the gentleman from Texas (Mr. DELAY), the distinguished whip.

Mr. DELAY. Mr. Speaker, I thank the gentleman from Illinois (Chairman HYDE) for yielding me this time.

Mr. Speaker, I do not want to be here today. I wish I could just ignore all of this and make it go away. But I have a responsibility to answer a question today and that question is: How will history judge our actions that we take today?

I believe that this Nation sits at a crossroad. One direction points to the high road of the rule of law. Sometimes hard, sometimes unpleasant. This path relies on truth, justice, and the rigorous application of the principle that no man is above the law.

Now, the other road is the path of least resistance. This is where we start making exceptions to our laws based on poll numbers and spin control. This is when we pitch the law completely overboard when the mood fits us; when we ignore the facts in order to cover up the truth.

Shall we follow the rule of law and do our constitutional duty no matter how unpleasant, or shall we follow the path of least resistance, close our eyes to the potential law breaking, forgive and forget, move on, and tear an unfixable hole in our legal system?

No man is above the law and no man is below the law. That is the principle that we all hold dear in this country. The President has many responsibilities and many privileges. His chief responsibility is to uphold the laws of this land. He does not have the privilege to break the law.

The American system of government is built on the proposition that the President of the United States can be removed if he violates his oath of office. This resolution simply starts that process of inquiry. Did the President break the law? And if he did, does that lawbreaking constitute an impeachable offense?

Closing our eyes to allegations of wrongdoing by voting ''no,'' or by limiting scope or time, constitutes a breach of our responsibilities as Members of this House. So let history judge us as having done our duty to uphold that sacred rule of law.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the able gentleman from Pennsylvania (Mr. KANJORSKI).

(Mr. KANJORSKI asked and was given permission to revise and extend his remarks and to include extraneous material.)

Mr. KANJORSKI. Mr. Speaker, I rise in opposition to any impeachment inquiry.

Mr. Speaker, I rise today with a heavy heart. Today, for only the third time in our nation's history, the House will consider whether to initiate an impeachment inquiry against the President. I take my sworn constitutional duty and responsibility in this matter very seriously.

Over the last four weeks, I have reviewed the Starr report and other material submitted by his office. I have also listened to legal experts, constitutional scholars, and my constituents about the referral. I have further studied the origins and history of our Constitution's impeachment clause. After considerable deliberation, I have determined that there is no

convincing reason to vote for an impeachment inquiry into the matters referred by the independent counsel based on the evidence that we have before us at this time.

Clearly, President Clinton behaved badly. He was wrong to engage in an inappropriate relationship with a young woman. He was wring to mislead the American people in his public statements, and he was wrong to provide misleading answers in judicial proceedings. For that wrong behavior the President should be reprimanded, but he should not be removed from office.

Our Constitution demands a higher standard for the Congress to undertake the extraordinary action of removing a duly-elected President. This Congress has not sufficiently considered what constitutes an impeachable offense. Before we irreparably damage our nation's delicate system of checks and balances among our three branches of government, it is imperative that we establish that standard in a fair, non-partisan matter. The resolution we are considering today is not about whether the man who holds the highest elected office in the country engaged in an improper relationship and then tried to conceal it. Rather, this resolution is about the standard under which the Congress has the right to overturn the will of the people who elected the President of the United States.

IMPEACHMENT DEFINITION

Both the text of the Constitution and the comments of its authors place the bar for impeachment quite high, and mandate that Congress use the impeachment process to address only the gravest of wrongs. Specifically, Article II of the Constitution states that the President may be removed from office on impeachment for, and conviction of ''treason, bribery or other high crimes and misdemeanors.''

Because this phrase is often truncated and used out of context, it is necessary to carefully examine the writings and debates of the Constitution's authors. Fortunately, evidence of the phrase's meaning and development is extensive. One individual who can provide especially helpful guidance about the meaning of the term is George Mason, the man who proposed the language adopted by the Constitutional Convention. Mr. Mason noted that ''Impeachment should be reserved for treason, bribery, and high crimes and misdemeanors where the President's actions are great and dangerous offenses or attempts to subvert the Constitution and the most extensive injustice.''

Read in their entirety the writings of the Constitution's authors firmly imply that the bar for impeachment is extremely high, and that Congress should use it to address only those Presidential actions that threaten the stability of our democracy. Moreover, the debate over the Constitution indicates that the Founders clearly intended that ''other high crimes and misdemeanors'' had to be crimes and actions against the state on the same level of magnitude as treason and bribery.

We can also look to precedent when seeking to understand the definition of impeachment and whether the actions of a President in his private life rise to the level of ''high crimes and misdemeanors.'' In 1974, the House Judiciary Committee considered substantial evidence that Richard Nixon committed tax fraud during his presidency. Although the evidence overwhelmingly indicated that President Nixon had committed such fraud, the panel concluded by a bipartisan vote of 26 to 12 that personal misconduct is not an impeachable offense. Further, the Supreme Court has ruled that other remedies exist for addressing Presidential wrongdoing, including civil lawsuits and criminal prosecutions.

Finally, it is important to note that the Founders included impeachment as a constitutional remedy because they worried about Presidential tyranny and gross abuse of power. They did not intend impeachment or the threat of its use to serve as a device for denouncing the President's private actions. Instead, they left punishment for improper private Presidential conduct to public opinion, the political process, and judicial proceedings. I support the Framers' wise counsel on impeachment. The consideration of whether to overturn a decision of the electorate should only be undertaken in extreme situations. In short, Presidents ought not to be impeached for private conduct, however reprehensible.

POOR PRECEDENT

Beyond failing to meet the standard of impeachment envisioned by our Founders and strengthened by past practice, an impeachment inquiry into the matters recently referred by the independent counsel would create dangerous and undesirable precedents for the country in at last three significant ways. First, if this politically-inspired effort ultimately succeeds, it will tip the delicate system of checks and balances in favor of Congress. The result would be a parliamentary system whereby the party in power in Congress could impeach a President and a Vice President of another party for virtually any reason. Our Founders created a government with three separate, but equal branches of government. We should remember this fact today and not upset the balance of power they so sensibly established.

Second, as noted above, the House should vote to pursue an impeachment inquiry only if it has credible evidence of action constituting fundamental injuries to the governmental process. Assuming the facts presented by the independent counsel thus far to be true, the President's conduct does not rise to the level the Founders deemed impeachable because it was not ''a serious abuse of power or a serious abuse of official duties.'' Furthermore, Congress has in more than 200 years never removed a President from office even though several Presidents have committed far more serious abuses. One must consequently ask whether this is where we want to set the bar for impeaching this and future Presidents. From my perspective it is not.

Finally, based on the facts of this referral, an impeachment inquiry would impose an extraordinary invasion of privacy. An impeachment inquiry on what is fundamentally a private matter will likely deter worthy contenders in both parties from running for political office—particularly the presiency—because they fear protracted, government-sponsored investigations into their past, current, and possibly future actions. Moreover, it could also provoke a move to impeach future Presidents every time that Congress thinks they may have made false statements.

THE SOLUTION

Like most Americans, I am personally disappointed with the President's acknowledged inappropriate personal behavior. Clearly, the President engaged in an improper relationship about which he did not want anyone to know. The President, as a result, was not forthcoming with the truth regarding this relationship, not only with the independent counsel and Congress, but also with his family and the American people. Ultimately, after months of personal turmoil the President admitted the affair, and suffered great humiliation and much public embarrassment, probably more than any other individual in our nation who has made similar mistakes.

The President's conduct was wrong and worthy of rebuke. Even if such personal behavior is not impeachable, as representatives of the people we must tell the President that his actions are not acceptable. We should, therefore, immediately consider some sort of censure against the President. Censure is a serious act that will certainly damage his standing in the public and lower his rank in history.

CONCLUSION

At the end of my prepared remarks, I will attach four excellent articles that further elaborate on the points I have made today. They include an analysis by noted constitutional scholar Cass Sunstein, thoughts by Robert F. Drinan and Wayne Owens who served as Democratic Members on the House Watergate panel, and a commentary by former Republican President Gerald R. Ford. The former President argues that instead of impeachment, the House should publicly censure the current President's behavior. I have also attached several recent statements about the Starr referral from some of the individuals integrally involved in Watergate all of whom conclude that this is vastly different form and less serious than Watergate.

Mr. Speaker, from my perspective Congress must swiftly resolve the matters referred by the independent counsel. We need to admonish the President for his inappropriate personal behavior and quickly move forward and address the nation's real priorities. We also need to ensure that we rebuke the President, and not punish the nation. The American people should not have to suffer through what could be an unlimited Congressional inquiry into a tawdry, but hardly impeachable extramarital affair. This Congress should begin the process of healing the nation's wounds. We should also begin to forgive. For these reasons, I will oppose this impeachment inquiry.

[From the Washington Post, Oct. 4, 1998]

''IMPEACHMENT? THE FRAMERS WOULDN'T BUY IT''

(By Cass Sunstein)

We all now know that, under the Constitution, the president can be impeached for ''Treason, Bribery, or other high Crimes and Misdemeanors.'' But what did the framers intend us to understand with these words? Evidence of the phrase's evolution is extensive—and it strongly suggests that, if we could solicit the views of the Constitution's authors, the current allegations against President Clinton would not be impeachable offenses.

When the framers met in Philadelphia during the stifling summer of 1787, they were seeking not only to design a new form of government, but to outline the responsibilities of the president who would head the new nation. They shared a commitment to disciplining public officials through a system of checks and balances. But they disagreed about the precise extent of presidential power and, in particular, about how, if at all, the president might be removed from office. If we judge by James Madison's characteristically detailed accounts of the debates, this question troubled and divided the members of the Constitutional Convention.

The initial draft of the Constitution took the form of resolutions presented before the 30-odd members on June 13. One read that the president could be impeached for ''malpractice, or neglect of duty,'' and, on July 20, this provision provoked extensive debate. The notes of Madison, who was representing Virginia, show that three distinct positions dominated the day's discussion. One extreme view, represented by Roger Sherman of Connecticut, was that ''the National Legislature should have the power to remove the Executive at pleasure.'' Charles Pinckney of South Carolina, Rufus King of Massachusetts and Gouvernor Morris of Pennsylvania opposed, with Pinckney arguing that the president ''ought not to be impeachable whilst in office.'' The third position, which ultimately carried the day, was that the president should be impeachable, but only for a narrow category of abuses of the public trust.

It was George Mason of Virginia who took a lead role in promoting this more moderate course. He argued that it would be necessary to counter the risk that the president might obtain his office by corrupting his electors. ''Shall that man be above'' justice, he asked, ''who can commit the most extensive injustice?'' The possibility of the new president becoming a near-monarch led the key votes—above all, Morris—to agree that impeachment might be permitted for (in Morris's words) ''corruption & some few other offences.'' Madison concurred, and Edmund Randolph of Virginia captured the emerging consensus, favoring impeachment on the grounds that the executive ''will have great opportunitys of abusing his power; particularly in time of war when the military force, and in some respect the public money, will be in his hands.'' The clear trend of the discussion was toward allowing a narrow impeachment power by which the president could be removed only for gross abuses of public authority.

To Pinckney's continued protest that the separation of powers should be paramount, Morris argued that ''no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard against it by displacing him.'' At the same time, Morris insisted, ''we should take care to provide some mode that will not make him dependent on the Legislature.'' Thus, led by Morris, the framers moved toward a position that would maintain the separation between president and Congress, but permit the president to be removed in extreme situations.

A fresh draft of the Constitution's impeachment clause, which emerged two weeks later on Aug. 6, permitted the president to be impeached, but only for treason, bribery and corruption (exemplified by the president's securing his office by unlawful means). With little additional debate, this provision was narrowed on Sept. 4 to ''treason and bribery.'' But a short time later, the delegates took up the impeachment clause anew. Mason complained that the provision was too narrow, that ''maladministration'' should be added, so as to include ''attempts to subvert the Constitution'' that would not count as treason or bribery.

But Madison, the convention's most careful lawyer, insisted that the term ''maladministration'' was ''so vague'' that it would ''be equivalent to a tenure during pleasure of the Senate,'' which is exactly what the framers were attempting to avoid. Hence, Mason withdrew ''maladministration'' and added the new terms ''other high Crimes and Misdemeanors against the State''—later unanimously changed to, according to Madison, ''against the United States'' to ''remove ambiguity.'' The phrase itself was taken from English law, where it referred to a category of distinctly political offenses against the state.

There is a further wrinkle in the clause's history. On Sept. 10, the entire Constitution was referred to the Committee on Style and Arrangement. When that committee's version appeared two days later, the words ''against the United States'' had been dropped, probably on the theory that they were redundant, although we have no direct evidence. It would be astonishing if this change were intended to have a substantive effect, for the committee had no authority to change the meaning of any provision, let alone the impeachment clause on which the framers had converged. The Constitution as a whole, including the impeachment provision, was signed by the delegates and offered to the nation on Sept. 17.

These debates support a narrow understanding of ''high Crimes and Misdemeanors,'' founded on the central notions of bribery and treason. The early history tends in the same direction. The Virginia and Delaware constitutions, providing a background for the founders' work, generally allowed impeachment for acts ''by which the safety of the State may be endangered.'' And consider the words of the highly respected (and later Supreme Court Justice) James Iredell, speaking in the North Carolina ratifying convention: ''I suppose the only instances, in which the President would be liable to impeachment, would be where he had received a bribe, or had acted from some corrupt motive or other.'' By way of explanation, Iredell referred to a situation in which ''the President has received a bribe . . . from a foreign power, and, under the influence of that bribe, had address enough with the Senate, by artifices and misrepresentations, to seduce their consent to a pernicious treaty.''

James Wilson, a convention delegate from Pennsylvania, wrote similarly in his 1791 ''Lectures on Law'': ''In the United States and in Pennsylvania, impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments.'' Another early commentator went so far as to say that ''the legitimate causes of impeachment . . . can have reference only to public character, and official duty. . . . In general, those offenses, which may be committed equally by a private person, as a public officer, are not the subjects of impeachment.''

This history casts new light on the famous 1970 statement of Gerald Ford, then a representative from Michigan, that a high crime and misdemeanor ''is whatever a majority of the House of Representatives considers it to be.'' In a practical sense, of course, Ford was right; no court would review a decision to impeach. But in a constitutional sense, he was quite wrong; the framers were careful to circumscribe the power of the House of Representatives by sharply limiting the category of legitimately impeachable offenses.

The Constitution is not always read to mean what the founders intended it to mean, and Madison's notes hardly answer every question. But under any reasonable theory of constitutional interpretation, the current allegations against Clinton fall far short of the permissible grounds for removing a president from office. Of course, perjury and obstruction of justice could be impeachable offenses if they involved, for example, lies about unlawful manipulation of elections. It might even be possible to count as impeachable ''corruption'' the extraction of sexual favors in return for public benefits of some kind. But nothing of this kind has been alleged thus far. A decision to impeach President Clinton would not and should not be subject to judicial review. But for those who care about the Constitution's words, and the judgment of its authors, there is a good argument that it would nonetheless be unconstitutional.—Cass Sunstein, who teaches at the University of Chicago School of Law, is the author of ''Legal Reasoning and Political Conflict'' (Oxford University Press).

[From the New York Times, Oct. 1, 1998]

''AN EASY LINE TO DRAW''

(By Robert F. Drinan and Wayne Owens)

This is not the first time the House Judiciary Committee has been called on to determine whether actions of the President in his private life rise to the level of ''high crimes and misdemeanors.'' In 1974, we were members of the House Judiciary Committee that considered evidence that Richard Nixon committed tax fraud while President. The panel concluded that personal misconduct is not an impeachable offense.

The evidence against President Nixon was convincing. He had claimed a $565,000 deduction on his taxes for the donation of his Vice Presidential papers, but the loophole that allowed the deduction was closed in 1969. The IRS concluded that the documents for the donation had been signed in 1970 and backdated. There was persuasive evidence that Nixon was personally involved in the decision, making him criminally liable for tax fraud.

But the committee decided by a vote of 26 to 12 that he should not be impeached for tax fraud because it did not involve official conduct or abuse of Presidential powers.

As one of the committee's most partisan Democrats, Jerry Waldie, said, ''Though I find the conduct of the President to have been shabby, to have been unacceptable, and to have been disgraceful even, this is not an abuse of power sufficient to warrant impeachment.''

This bipartisan conclusion was made easier because the first order of business when the committee convened in 1974 was to discuss what the standards should be for impeachment. Without such standards, the impeachment process could become a partisan free-for-all.

The committee stipulated from the beginning that ''because impeachment of a President is a grave step for the nation, it is predicted upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the Presidential office.''

The current House Judiciary Committee would do well to ''follow the precedents set in the Nixon hearings,'' as the chairman, Henry Hyde, recently pledged to do. If the panel applies the standard that emerged in 1974, it will decide that the charges against Clinton do not fall under the articles of impeachment.—Robert F. Drinan and Wayne Owens are former Democratic Representatives from, respectively, Massachusetts and Utah.

RECENT STATEMENTS COMPARING THE LEWINSKY MATTER TO WATERGATE BY INDIVIDUALS CLOSELY INVOLVED IN WATERGATE

''With Mr. Nixon, of course, you had really serious abuse of high office. He engaged in wiretapping of newsmen and government officials. He ordered break-ins—the staff did—of government institutions, and then there was a cover-up where there was clearly no question when you're paying hush money that you're seeking silence of those involved. So, the width and breadth of Watergate was much different than the single incident we have involved here.''—John Dean (CNN, 9/11/98)

''The offenses being investigated are totally different. . . . In the aggregate, Watergate was serious, piece-by-piece subversion of presidential accountability to the Congress and public. Those are very wide differences from Whitewater and Monica

Lewinsky.''—Elliot Richardson (Associated Press, 9/10/98)

Asked if the Starr Report established grounds for impeachment, Ben-Veniste answered, ''No, I don't. And I believe that the report itself is a flagrant and arrogant misuse of the power and the authority of an independent counsel. It had been reported that Mr. Starr was going to follow the example of the Watergate prosecutors in transmitting evidence as a statute permits him to do relating to his view of impeachable offenses. Instead, he has set himself up, not only as investigator and prosecutor, but as judge and jury and has had the arrogance to write articles of impeachment as to make an argument here, a prosecution argument for the removal of the President of the United States. This report has gone so far beyond what he was authorized to do that is has now merged Starr, the prosecutor, and Star the Supermarket tabloid.''—Richard Ben-Veniste (Meet the Press, 9/13/98)

''I think we have to remember what the crimes in Watergate were. Watergate was about a vast and pervasive abuse of power by a President who ordered break-ins; who ordered fire bombings; who ordered illegal wiretappings; who ordered a squad of goons to thwart the constitutional electoral process. We've seen nothing like that here.''—Carl Bernstein (CNN Saturday Morning News, 9/12/98)

[From the New York Times, Oct. 4, 1998]

''THE PATH BACK TO DIGNITY''

(By Gerald R. Ford)

GRAND RAPIDS, MICH.—Almost exactly 25 years have passed since Richard Nixon nominated me to replace the disgraced Spiro Agnew as Vice President. In the contentious days of autumn 1973, my confirmation was by no means assured. Indeed, a small group of House Democrats, led by Bella Abzug, risked a constitutional crisis in order to pursue their own agenda.

''We can get control and keep control,'' Ms. Abzug told the Speaker of the House, Carl Albert.

The group hoped, eventually, to replace Nixon himself with Mr. Albert.

The Speaker, true to form, refused to have anything to do with the scheme. And so on Dec. 6, 1973, the House voted 387 to 35 to confirm my nomination on accordance with the 25th Amendment to the Constitution.

When I succeeded to the Presidency, in August 1974, my immediate and overriding priority was to draw off the poison that had seeped into the nation's bloodstream during two years of scandal and sometimes ugly partisanship. Some Americans have yet to forgive me for pardoning my predecessor. In the days leading up to that hugely controversial action, I didn't take a poll for guidance, but I did say more than a few prayers. In the end I listened to only one voice, that of my conscience. I didn't issue the pardon for Nixon's sake, but for the country's.

A generation later, Americans once again confront the specter of impeachment. From the day, last January, when the Monica Lewinsky story first came to light, I have refrained publicly from making any substantive comments. I have done so because I haven't known enough of the facts—and because I know all too well that a President's responsibilities are, at the best of times, onerous. In common with the other former Presidents, I have had to wish to increase those burdens. Moreover, I resolved to say nothing unless my words added constructively to the national discussion.

This much now seems clear: whether or not President Clinton has broken any laws, he has broke faith with those who elected him. A leader of rare gifts, one who set out to change history by convincing the electorate that he and his party wore the mantle of individual responsibility and personal accountability, the President has since been forced to take refuge in legalistic evasions, while his defenders resort to the insulting mantra that ''everybody does it.''

The best evidence that everybody doesn't do it is the genuine outrage occasioned by the President's conduct and by the efforts of some White House surrogates to minimize its significance or savage his critics.

The question confronting us, then is not whether the President has done wrong, but rather, what is an appropriate form of punishment for his wrongdoing. A simple apology is inadequate, and a fine would trivialize his misconduct by treating it as a mere question of monetary restitution.

At the same time, the President is not the only one who stands before the bar of judgment. It has been said that Washington is a town of marble and mud. Often in these past few months it has seemed that we were all in danger of sinking into the mire.

Twenty-five years after leaving it, I still consider myself a man of the House. I never forget that my elevation to the Presidency came about through Congressional as well as constitutional mandate. My years in the White House were devoted to restoring public confidence in institutions of popular governance. Now as then, I care more about preserving respect for those institutions than I do about the fate of any individual temporarily entrusted with office.

This is why I think the time has come to pause and consider the long-term consequences of removing this President from office based on the evidence at hand. The President's hairsplitting legalisms, objectionable as they may be, are but the foretaste of a protracted and increasingly divisive debate over those deliberately imprecise words ''high crimes and misdemeanors.'' The Framers, after all, dealt in eternal truths, not glossy deceit.

Moving with dispatch, the House Judiciary Committee should be able to conclude a preliminary inquiry into possible grounds for impeachment before the end of the year. Once that process is completed, and barring unexpected new revelations, the full House might then consider the following resolution to the crisis.

Each year it is customary for a President to journey down Pennsylvania Avenue and appear before a joint session of Congress to deliver his State of the Union address. One of the binding rituals of our democracy, it takes on added grandeur from its surroundings—there, in that chamber where so much of the American story has been written, and where the ghosts of Woodrow Wilson, Franklin Roosevelt and Dwight Eisenhower call succeeding generations to account.

Imagine a very different kind of Presidential appearance in the closing days of this year, not at the rostrum familiar to viewers from moments of triumph, but in the well of the House. Imagine a President receiving not an ovation from the people's representatives, but a harshly worded rebuke as rendered by members of both parties. I emphasize: this would be a rebuke, not a rebuttal by the President.

On the contrary, by his appearance the President would accept full responsibility for his actions, as well as for his subsequent efforts to delay or impede the investigation of them. No spinning, no semantics, no evasiveness or blaming others for his plight.

Let all this be done without partisan exploitation or mean-spiritedness. Let it be dignified, honest and, above all, cleansing. The result, I believe, would be the first moment of majesty in an otherwise squalid year.

Anyone who confuses this scenario with a slap on the wrist, or a censure written in disappearing ink, underestimates the historic impact of such a pronouncement. Nor should anyone forget the power of television to foster indelible images in the national memory—not unlike what happened on the solemn August noontime in 1974 when I stood in the East Room and declared our long national nightmare to be over.

At 85, I have no general personal or political agenda, nor do I have any interest in ''rescuing'' Bill Clinton. But I do care, passionately, about rescuing the country I love from further turmoil or uncertainty.

More than a way out of the current mess, most Americans want a way up to something better. In the midst of a far graver national crisis, Lincoln observed, ''The occasion is piled high with difficulty, and we must rise with the occasion.'' We should remember those words in the days ahead. Better yet, we should be guided by them.—Gerald R. Ford, the 38th President of the United States, was a Republican member of the House of Representatives from 1949 to 1973.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Houston, Texas (Ms. SHEILA JACKSON-LEE), an able member of our Committee on the Judiciary who was working until midnight on the floor.

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

Ms. JACKSON-LEE. Mr. Speaker, I thank the distinguished gentleman from Michigan (Mr. CONYERS) for yielding me this time, and I thank my democratic colleagues for the convictions they have shared with America today and for helping them understand this most somber challenge and the high constitutional that we may have.

To my colleagues on the other side of the aisle, truth matters, but the Constitution also matters. The President's behavior was reprehensible, outrageous, and disappointing. But as George Mason indicated, impeachable offenses are those dangerous and great offenses against the Constitution. They constitute a subversion of the Constitution.

Members gathered in 1974 and refused to impeach Richard Nixon on the personal charge of tax evasion. It must be that we understand what these constitutional standards are for impeachment high crimes and misdemeanors—would that be private sexual acts—it appears not.

Mr. Speaker, I wish in my Republican friends' attempt to explain to the American people that they stand by the Constitution that they would have implored their own counsel, Mr. Shippers, and, of course, Mr. Starr, not to hide the truth, for the presentations made by both men did not forthrightly acknowledge that Monica Lewinsky said, ''No one ever asked me to lie and I was never promised a job for my silence.'' I am concerned about this uneven presenting of the facts.

Democrats do not want a cover-up. We simply want to have an inquiry that is fair, that is expeditious, and is not open-ended and is not a fishing expedition.

What is perjury? Perjury is lying; however perjury must be proven. Sev-

eral defenses if raised would disprove lying—such truth, or whether the proponent thought he or she was telling the truth, and materiality. My friends on the other side of the aisle are rushing to judgment. But I am reminded of the words of Congresswoman Barbara Jordan, ''It is reason and not passion which must guide our deliberations, guide our debate, and guide our decision.'' We must proceed deliberately—not eager to accuse without the facts.

Mr. Speaker, I implore my colleagues, to let reason guide us. And then let me say to my constituents and those who face a moral dilemma, I have been in churches in my district, they believe in redemption. And, yes, the President has sinned. But those of you who want to rise and cast the first stone, my question is: Who has not sinned?

And whatever we do today, those of us who have received death threats in our office, attacks against our children because of the hysteria that has been created by this Congress, I simply ask that we give this proceeding a chance to be fair, to act judiciously, and to follow the Constitution.

Lastly, might I say I believe that we will survive this together as a Nation and we will do this if we let constitutional principals guide us for Isaiah 40:31 says, ''They that wait upon the Lord shall renew their strength. They shall mount up with wings as eagles and they shall walk and not be faint.''

Mr. Speaker, I will stand for the preservation of the Constitution.

It is fate that has put us all here today.

But history will reflect—and tell the story of how we acted today—whether or not the Constitution matters. Truth does matter, but the Constitution dictates that impeachable offenses be grounded in attempts to subvert the Constitution. I am supporting the democratic amendment today that focuses our review, establishes the constitutional standards, and allows us to bring this inquiry to closure by the end of the year.

Truth matters and the Constitution matters. The President is not above the law, however, neither is he beneath the law. We need to act with reason, not fury, harmony not acrimony, with deliberation, not recklessness, with constitutional discharge, and not with opinion, and speculation with justice and fairness and not injustice and unfairness.

Mr. Speaker, in November of 1992 President William Jefferson Clinton was elected President of the United States by focusing on the economy and using the slogan ''It's the Economy Stupid.'' I come here today with mixed feelings. We come here today not to focus on the economy, but the Constitution. It's the Constitution that matters!

Article II, Section IV states that,

> the President . . . shall be removed from Office on Impeachment for, and Conviction of, treason, Bribery, or other High Crimes and Misdemeanors.

It's the Constitution that matters! The Framers of our Constitution set the standard. George Mason, one of the Framers, stated that ''high crimes and misdemeanors'' refers to Presidential actions that are ''great and dangerous offenses'' to attempt to subvert the Constitution.'' The noted legal scholar from Yale University Professor, Charles Black, writes in his Impeachment Handbook that,

> In the English practice from which the Framers borrowed the phrase, ''High Crimes and Misdemeanors'' . . . was intended to redress public offenses committed by public officials in violation of the public trust and duties. It was designed to be justified for the gravest wrongs—offenses against the Constitution itself.

This is our standard. It is clear that while we have no conduct or allegations showing the President to have committed either treason or bribery, we must focus our attention on two questions. One, what is a ''high crime and misdemeanor or an impeachable offense?, and two, did the President of the United States commit any high crimes and misdemeanors or an impeachable offense? Those are the questions, and it is up to the Congress to find the answers.

We are at this point today because the President of the United States had an affair with a White House intern and he didn't want anyone to know about it, and that was wrong. However, what we have heard or seen thus far does not set out a prima facie case for impeachment.

On the floor for consideration today is a Republican ''privileged resolution'' on the question to launch an impeachment inquiry ''to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach the President.'' There are no limits to their investigation and no establishment of the necessary constitutional standards.

Twenty-five years ago, this committee undertook the constitutional task of considering the impeachment of President Nixon. The process was painstaking, careful, and deliberative, and both the Nation and the world were reassured that America's 200 year-old Constitution worked.

Impeachment is final, nonappealable without further remedy, a complete rejection of the people's will and thereby, I believe it must be done fully beyond a doubt and without rancor or vengeance—complying with every woven thread of the Constitution. Today, by contrast, the world and the American people have been alternatively puzzled, confused, and appalled by the reckless media circus our automatic dumping of documents has produced.

On July 24, 1974, the House Judiciary Committee had a meeting to consider the Impeachment of President Richard Nixon. One of my predecessors of the 18th Congressional District of Texas, the late, great, Barbara Jordan said that,

> My faith in the Constitution is whole, it is complete, it is total. I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution.

So I, like my predecessor come not to subvert or destroy the Constitution, but to uphold it.

I am fully aware like most of my colleagues, that this privileged resolution only allows for a 10-minute motion to recommit, and not the regular full time allotted to consider a Democratic amendment. In order for this process to be fair and balanced and for the American people to truly hear both sides of this debate the House should waive House Rule IX, and allow the Democratic amendment to be considered, for a certain designated time. The Republicans refused that request.

While the Republican resolution does not have a time certain for the inquiry to end, the Democratic amendment calls for the Judiciary Committee to make a full recommendation to the House concerning Articles of Impeachment by no later than December 31, 1998. This is a compromise. There must be fairness and balance. The Democrats have also yielded on the provision which allows the House to consider other pertinent matters, as long as it is referred by the Independent Counsel, and not arbitrarily decided by Congress. This impeachment inquiry must be limited in scope and have a time certain. On February 6, 1974, Congressman Hutchinson, then the ranking Republican on the committee spoke on the floor of the House about the Watergate inquiry and said,

> The resolution before you carries no cutoff date. Although charges have raged in the media there has yet to be demonstrated any evidence of impeachable conduct. Therefore, if by the end of April no such evidence has been produced, the committee should so report to the House and end its labors.

The American people have spoken and they have said that this has gone on too long. This can not be an endless process. There must be time certain or the House should ''end its labors.''

So far what we have in Congress is the word of one man, an Independent Counsel who is not duly elected by the people. We have convoluted facts, inconsistent stories and versions, possible illegal tape recordings, but no real hard evidence.

In Act V of Macbeth, William Shakespeare writes,

> Life's but a walking shadow, a poor player That struts and frets his hour upon the stage, And then is heard no more; it is a tale Told by an idiot, full of sound and fury, Signifying nothing.

That's what we have so far Mr. Speaker. We have fury, but no facts, and a tale told by a nonelected official that is full of allegations, not yet fact signifying anything. As the Watergate Committee's February 1974 Staff Report explained, ''In an impeachment proceeding a President is called to account for abusing powers that only a President possesses.'' In Watergate, as in all prior impeachments, the allegations concerned official misconduct that threatened to subvert the constitutional order or balance, not private misbehavior. Impeachment is not a personal punishment. In all of American history, no official has been impeached for misbehavior unrelated to his official responsibilities. I make no attempt to excuse the President's behavior, but as we vote on whether to launch a full scale impeachment inquiry, I admonish my colleagues that we must adhere to the constitution and the writings of the Framers. It's the Constitution that matters!

As James Wilson explained in the Pennsylvania ratification convention: ''far from being above the laws, [the President] is amenable to them in this private character as [a] citizen, and in his public character by impeachment.'' The Constitution imposes a grave and serious responsibility on us to protect the fabric of the Constitution. To perform our job requires that we investigate the facts thoroughly before we begin dealing with what our predecessors called ''delicate issues of basic constitutional

law.'' We must avoid prejudging the issues or turning this solemn duty into another forum for partisan wrangling. The Republican resolution on the floor today, which may result in the House acting without all the facts, weakens the foundation of the Constitution.

The former Congressman and now a renowned Georgetown Law Professor, Father Drinan, who served on the House Judiciary Committee during the Watergate Impeachment hearings stated that,

> There is no such thing as a Democratic or Republican approach to the allegation of impeachment, The House of Representatives is now involved in a proceeding which was described by George Mason [a Founding Father] as the Constitution providing for the regular punishment of the executive when his misconduct should deserve it'' but also ''for his honorable acquittal when he should be unjustly accused.

It was George Washington, the first President of the United States who said in his Farewell Address on September 17, 1796, ''Let me now . . . warn you in the most solemn manner against the baneful effects of the spirit of party.''

This should be a nonpartisan debate, and a constitutional debate. We need to act with reason, not fury, harmony not acrimony, with deliberation . . . not recklessness, with constitutional discharge, and not with opinions and speculation, with justice and fairness, and not injustice and unfairness.

I hope my colleagues will allow for full consideration and debate of the Democratic amendment which is focused and fair. I leave you with the words of Martin Luther King, who said, ''Injustice anywhere is a threat to justice everywhere . . . whatever affects one directly, affects all indirectly.'' It's the Constitution that matters Mr. Speaker, and I hope today it will rule.

Mr. HYDE. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. SMITH), a distinguished member of the committee.

(Mr. SMITH of Texas asked and was given permission to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, others continue to argue or continue to imply that this inquiry is only about a personal relationship, but that is like saying Watergate was only about picking a lock or that the Boston Tea Party was only about tea.

During a similar investigation of President Nixon 24 years ago, there was little focus on the burglary. The Committee on the Judiciary and the special prosecutor rightly wanted to know, as we should today, whether the President lied to the American people, obstructed justice or abused his office.

While some try to describe this scandal as private, the President's own Attorney General found that there existed credible evidence of criminal wrongdoing.

This is not a decision to go forward with an inquiry into a personal relationship. It is about examining the most public of relationships, between a witness and the courts, between the President and the American people.

It is about respect for the law, respect for the office of the presidency, respect for the American people, respect for the officers of the Court, respect for women and ultimately about self-respect.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. ACKERMAN).

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

Mr. ACKERMAN. Mr. Speaker, I rise in passionate objection and opposition to the resolution.

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Speaker, I thank the gentleman from Michigan (Mr. CONYERS) for yielding.

Mr. Speaker, I rise in opposition to the Hyde resolution, and in doing so point out the inconsistency of the Republican majority. At the start of this Congress, the Republican majority gave you, Mr. Speaker, the highest honor this House can bestow: The speakership. For the freshman Republicans, this was the first vote that they cast in this House. The Republican majority did this after you, Mr. Speaker, were charged with and admitted to lying under oath to the Ethics Committee about the conduct of your political affairs.

How inconsistent then, Mr. Speaker, for this same Republican majority to move to an impeachment inquiry of the President for lying about his personal life. Our Republican majority have said lying under oath is a dagger in the heart of the legal system. We all agree that lying is wrong, but why the double standard?

I urge my colleagues to reject this Republican double standard which exalts the Speaker and moves to impeach the President. I urge my colleagues to vote no on the Hyde resolution.

Mr. HYDE. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Utah (Mr. CANNON), a member of the Committee on the Judiciary.

Mr. CANNON. Mr. Speaker, I would like to associate myself with the views expressed by the chairman, the gentleman from Illinois (Mr. HYDE), and also by those expressed by the gentleman from Ohio (Mr. KUCINICH).

I am proud that my Republican colleagues have spent more than 5 times as much time reviewing the Starr referral material than my Democratic colleagues.

This is a solemn occasion and I feel the full weight of the responsibility that we are assuming today.

Some would trivialize this debate by giving it the name of a young intern or by referring to other important matters that face the Nation. They know that this is or they should know that this is inappropriate. Americans want this matter brought to closure. That can only occur if we fully determine the facts, place those facts in the context of the law and weigh the proper response that will preserve the integrity of the office of the presidency and the integrity of our Nation.

Mr. Speaker, as a member of the Committee on the Judiciary, I pledge to work diligently to move this matter forward.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois (Mr. DAVIS).

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Speaker, I rise in opposition to the Hyde resolution.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Oregon (Mr. DEFAZIO).

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

Mr. DEFAZIO. Mr. Speaker, I rise in support of the Democratic alternative and in opposition to the open-ended Republican resolution of inquiry.

Mr. Speaker, the question of impeaching a sitting President has only come before the House of Representatives three times in our nation's history. There's a very good reason this has happened so seldom. Our nation's founders deliberately set very high standards for impeachment in order to spare the nation the trauma of such an inherently divisive debate and to maintain a strong and independent Presidency. At a time like this, we all have a responsibility to rise above party politics and short term political considerations. We are not just debating the fate of this President. We are setting precedents that will have a profound and long-lasting effect on our constitutional system of government.

The issue before the House today is whether we will initiate a lengthy and open-ended impeachment inquiry that will paralyze our government and throw this nation into a prolonged constitutional crisis, or whether we will demand a focused and speedy resolution of this matter. After carefully considering the evidence so far produced by Independent Counsel Kenneth Starr, I have concluded that the nation's interests are best served by an impeachment inquiry that is thorough, but focused—comprehensive, but promptly concluded.

This debate is already preventing Congress from addressing important issues facing the nation—including issues like the future of Social Security, health care reform and improving our educational system. There is no profit to the people of the United States in a drawn-out impeachment debate that could go on for another year or more. We have the information we need to conclude this matter by the end of this year. The Republican leadership should work with Democratic leaders to make that happen.

President Clinton's behavior has been outrageous, reckless and morally offensive. He flatly lied to the American people and may have committed perjury in a civil lawsuit. Mr. Starr also alleges that the President obstructed justice and otherwise abused his office.

Reasonable people can differ over whether these charges—if true—constitute the kind of offenses that warrant the national trauma of impeachment. For that reason, if for no other, I believe the Judiciary Committee should consider the evidence brought forward by the Independent Counsel, as well as any new evidence he sees fit to refer to us, and decide

without delay whether to forward articles of impeachment to the House. But I strongly disagree with the delay tactics and the blatantly unfair and partisan approach adopted by Republican leaders—a strategy aimed more at improving their party's election prospects than at promoting the national interest.

Impeachment of a President is not a matter for Congress to take lightly or use for narrow partisan purposes. By its very nature, impeachment repudiates the will of the people as expressed in a popular election. it severely undermines the separation of powers, which is at the core of our system of government. And in the long term, it would weaken not only the office of the President, but the nation's strength and prestige in international affairs.

For those reasons and others, I oppose the Republican leadership's drawn-out and open-ended impeachment inquiry proposal and will vote today in favor of the alternative: a prompt and focused impeachment inquiry aimed at resolving this crisis and putting these issues behind us, one way or another.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from Washington (Mr. MCDERMOTT), my dear friend.

(Mr. MCDERMOTT asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. MCDERMOTT. Mr. Speaker, I rise in opposition to the Hyde amendment.

Mr. MCDERMOTT. Mr. Speaker, in 1789, the Founding Fathers wrote a Constitution designed to create a stable government. They established a democracy of the people—not a parliamentary democracy—because they did not want a government that would change whenever the executive fell into disfavor with the majority party. The Founding Fathers wanted a government of laws, not people, so they made only one option available to change the chief executive outside of an election by the people—impeachment. Impeachment was prescribed only in unique and extraordinary circumstances.

The impeachment process was vaguely outlined in the Constitution and the established criteria are very few. Article II, Section 4 says that the President, ''Shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.'' Impeachment does not require criminal acts. In fact, the House Report on the Constitutional Grounds of Presidential Impeachment states, ''the emphasis has been on the significant effects of the conduct—undermining the integrity of the office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, adverse impact on the system of government.'' The bar was set high so that impeachment would be neither casual nor easy for fear that we would undermine the stability of the office. Alexander Hamilton summed up the dangers of impeachment by saying, ''there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.''

Hamilton's warning seems prophetic today. Aside from its partisan nature, the situation before us is quite unusual. It is the first time an Independent Counsel has presented findings to the Congress for determination of the need for an impeachment process. Secondly, the House of Representatives undermined the process when they ignored the precedents which have been followed in the evaluation and released large volumes of testimony and documents collected in the grand jury process to not only the Congress but to the world at large.

This has allowed the full membership of the House of Representatives and the public to come to conclusions before the process of impeachment has begun. The polls would suggest that the public does not favor removing the President from office but it is less clear what they feel is an adequate sanction.

Today, the members of the House will be confronted with the question of whether or not an impeachment inquiry should begin. I will vote against an inquiry for the following reason:

The evidence presented to the Congress by Mr. Starr does not support the charge of an impeachable offense. When all is said and done, the President made some false statements under oath about a sexual relationship and lied to many people about that relationship. While I in no way condone the President's behavior, I have concluded that it requires no further investigation and does not support impeachment.

The framers of the Constitution did not anticipate litigation against a president in a sexual harassment case or investigation by an independent counsel. The framers limited impeachment to the kinds of improprieties—treason, bribery, and the like—that threatened the nation for the benefit of the individual. We have no such case before us. His actions, while totally unacceptable, do not rise to the level of a high crime or misdemeanor. The President's actions do not threaten our ability to act decisively in the world of politics for the benefit of all Americans, sadly, the House of Representative's actions do.

[From the National Law Journal, Oct. 5, 1998]

TOP PROFS: NOT ENOUGH TO IMPEACH

NLJ 'JURY' OF 12 CON-LAW EXPERTS WEIGHS EVIDENCE

(By Harvey Berkman)

ON A 'JURY' OF 12 constitutional law professors, all but two told The National Law Journal that, from a constitutional standpoint, President Clinton should not be impeached for the things Independent Counsel Kenneth W. Starr claims he did.

Some of the scholars call the question a close one, but most suggest that it is not; they warn that impeaching William Jefferson Clinton for the sin he admits or the crimes he denies would flout the Founding Fathers' intentions.

''On the charges as we now have them, assuming there is no additional report [from Mr. Starr], impeaching the president would probably be unconstitutional,'' asserts Cass R. Sunstein, co-author of a treatise on constitutional law, who teaches at the University of Chicago Law School.

The first reason for this conclusion is that the one charge indisputably encompassed by the concept of impeachment—abuse of power—stands on the weakest argument and evidence.

''The allegations that invoking privileges and otherwise using the judicial system to shield information . . . is an abuse of power that should lead to impeachment and removal from office is not only frivolous, but also dangerous,'' says Laurence H. Tribe, of Harvard Law School.

The second reason is that the Starr allegation for which the evidence is disturbingly strong—perjury—stems directly from acts the Founders would have considered personal, not governmental, and so is not the sort of issue they intended to allow Congress to cite to remove a president from office.

NO 'LARGE-SCALE INFIDELITY'

Says Professor Sunstein, ''Even collectively, the allegations don't constitute the kind of violation of loyalty to the United States or large-scale infidelity to the Constitution that would justify impeachment, given the Framers' decision that impeachment should follow only from treason, bribery or other like offenses . . . What we have in the worst case here is a pattern of lying to cover up a sexual relationship, which is very far from what the Framers thought were grounds for getting rid of a president.''

Douglas W. Kmiec, who spent four years in the Justice Department's Office of Legal Counsel and now teaches at Notre Dame Law School, agrees: ''The fundamental point is the one that Hamilton makes in Federalist 65: Impeachment is really a remedy for the republic; it is not intended as personal punishment for a crime.

''There's no question that William Jefferson Clinton has engaged in enormous personal misconduct and to some degree has exhibited disregard for the public interest in doing so, he says. But does that mean that it is gross neglect—gross in the sense of being measured not by whether we have to remove the children from the room when the president's video is playing, but by whether [alleged terrorist Osama] bin Laden is now not being properly monitored or budget agreements aren't being made?''

Adds Prof. John E. Nowak, of the University of Illinois College of Law, the impeachment clause was intended ''to protect political stability in this country, rather than move us toward a parliamentary system whereby the dominant legislative party can decide that the person running the country is a bad person and get rid of him.'' Mr. Nowak co-authored a constitutional law hornbook and a multivolume treatise with fellow Illinois professor Ronald Rotunda, with whom he does not discuss these matters because Professor Rotunda is an adviser to Mr. Starr.

''It seems hard to believe that anything in the report . . . could constitute grounds for an impeachment on other than purely political grounds.'' Professor Nowak says. ''If false statements by the president to other members of the executive branch are the equivalent of a true misuse of office . . . I would think that the prevailing legislative party at any time in our history when the president was of a different party could have cooked up . . . ways that he had misused the office.''

And that, says Prof. A.E. Dick Howard, who has been teaching constitutional law and history for 30 years, would be a step in a direction the Founders never intended to go.

''The Framers started from a separation-of-powers basis and created a presidential system, not a parliamentary system, and they meant for it to be difficult for Congress to remove a president—not impossible, but difficult,'' says Professor Howard, of the University of Virginia School of Law. ''We risk diluting that historical meaning if we permit a liberal reading of the impeachment power—which is to say: If in doubt, you don't impeach.''

Many of the scholars point to the White House's acquisition of FBI files on Republicans as an example of something that could warrant the Clintons' early return to Little Rock—but only if it were proved that these files were acquired intentionally and malevolently misused. The reason that would be

grounds for impeachment, while his activities surrounding Monica Lewinsky would not, the professors say, is that misuse of FBI files would implicate Mr. Clinton's powers as president. But if Mr. Starr has found any such evidence, he has not sent it to Congress, which he is statutorily bound to do.

One professor who believes there is no doubt that President Clinton's behavior in the Lewinsky matter merits his impeachment is John O. McGinnis, who teaches at Yeshiva University, Benjamin N. Cardozo School of Law. ''I don't think we want a parliamentary system, although I would point out that it's not as though we're really going to have a change in power. If Clinton is removed there will be Gore, sort of a policy clone of Clinton. A parliamentary system suggests a change in party power. That fear is somewhat overblown.''

Professor McGinnis considers the reasons for impeachment obvious. ''I don't think the Constitution cares one whit what sort of incident [the alleged felonies] come from,'' he says. ''The question is, 'Can you have a perjurer and someone who obstructs justice as president?' And it seems to me self-evident that you cannot. The whole structure of our country depends on giving honest testimony under law. That's the glue of the rule of law. You can go back to Plato, who talks about the crucial-ness of oaths in a republic. It's why perjury and obstruction of justice are such dangerous crimes.''

This argument has some force, says Professor Kmiec, but the public is hesitant to impeach in this case because of a feeling that ''the entire process started illegitimately, that the independent counsel statute is flawed and that the referral in this case was even more flawed, in that it was done somewhat hastily by the attorney general.''

Jesse H. Choper, a professor at the University of California at Berkeley School of Law (Boalt Hall) and co-author of a con-law casebook now in its seventh edition, agrees that perjury, committed for any reason, can count as an impeachable offense. ''The language says 'high crimes and misdemeanor.' and [perjury] is a felony, so my view is that it comes within the [constitutional] language. But whether we ought to throw a president out of office because he lied under oath in order to cover up an adulterous affair . . . my judgment as a citizen would be that it's not enough.''

A JUDGE WOULD BE IMPEACHED

Many of the professors say Mr. Clinton would almost certainly be impeached for precisely what he has done, were he a judge rather than the president. That double standard, they say, is contemplated by the Constitution in a roundabout way. Says Professor Kmeic, ''The places where personal misbehavior is raised have entirely been in the context of judicial officers. There is a healthy amount of scholarship that suggests that one of the things true about judicial impeachments (which is not true of executive impeachments) is the additional phraseology saying that judges serve in times of good behavior. The counterargument is that there is only one impeachment clause, applying to executive and judicial alike. But . . . our history is that allegations of profanity and drunkenness, gross personal misbehavior, have come up only in the judicial context.''

In addition to history, there is another reason for making it harder to impeach presidents, says Akhil Reed Amar, who teaches constitutional law at Yale Law School and who recently published a book on the Bill of Rights: ''When you impeach a judge, you're not undoing a national election . . . The questions to ask is whether [President Clinton's] misconduct is so serious and malignant as to justify undoing a national election, canceling the votes of millions and putting the nation through a severe trauma.''

THEY'RE UNCOMFORTABLE

None of these arguments, however, is to suggest that the professors are comfortable with what they believe the president may well be doing: persistently repeating a single, essential lie—that his encounters did not meet the definition of sexual relations at his Paula Jones deposition. Mr. Clinton admits that this definition means he could never have touched any part of her body with the intent to inflame or satiate her desire. It is an assertion that clashes not only with Ms. Lewinsky's recounting of her White House trysts to friends, erstwile friends and the grand jury, but also with human nature.

''That's one of the two things that trouble me most about his testimony—that he continues to insist on the quite implausible proposition [of] 'Look, Ma, no hands,' which is quite inconsistent with Monica Lewinsky's testimony, and that he's doing that in what appears to be quite a calculated way,'' Professor Tribe laments. ''But I take some solace in the fact that [a criminal prosecution of perjury] awaits him when he leaves office.''

Professor Amar agrees that ''whatever . . . crimes he may have committed, he'll have to answer for it when he leaves office, and that is the punishment that will fit his crime.''

Also disturbing to Professor Tribe is the president's apparent comfort with a peculiar concept of what it means to tell the truth, a concept the professor describes as ''It may be deceptive, but if you can show it's true under a magnifying glass tilted at a certain angle, you're OK.''

But even that distortion, he believes, does not reach the high bar the Founders set for imposing on presidents the political equivalent of capital punishment.

''It would be a disastrous precedent to say that when one's concept of truth makes it harder for people to trust you, that that fuzzy fact is enough to say there has been impeachable conduct,'' Professor Tribe says. ''That would move us very dramatically toward a parliamentary system. Whether someone is trustworthy is very much in the eye of the beholder. The concept of truth revealed in his testimony makes it much harder to have confidence in him, but the impeachment process cannot be equated with a vote of no confidence without moving us much closer to a parliamentary system.''

Professor Kmiec does suggest that something stronger than simple ''no confidence'' might form the possible basis for impeachment. Call it ''no confidence at all.'' ''It is possible that one could come to the conclusion that the president's credibility is so destroyed that he'd have difficulty functioning as an effective president,'' Professor Kmiec says, ''But the public doesn't seem to think so, and I don't know that foreign leaders think so,'' given the standing ovation Mr. Clinton received at the United Nations.

In the end, Professor Howard says that he opposes impeachment under these conditions not only because the past suggests it is inappropriate, but also because of the dangerous precedent it would set. ''Starting with the Supreme Court's devastatingly unfortunate and totally misconceived opinion [in Clinton v. Jones, which allowed Ms. Jones's suit to proceed against the president while he was still in office], this whole controversy has played out in a way that makes it possible for every future president to be harassed at every turn by his political enemies,'' Professor Howard warns. ''To draw fine lines and say that any instance of stepping across that line becomes impeachable invites a president's enemies to lay snares at every turn in the path. I'm not sure we want a system that works that way.''

The other ''jurors'' on this panel of constitutional law professors were:

The one essentially abstaining ''juror'': Michael J. Gerhardt, of the College of William and Mary, Marshall-Wythe School of Law.

Douglas Laycock, of The University of Texas School of Law.

Thomas O. Sargentich, co-director of the program on law and government at American University, Washington College of Law.

Suzanna A. Sherry, professor at the University of Minnesota Law School.

N O T I C E

Incomplete record of House proceedings. Except for concluding business which follows, today's House proceedings will be continued in the next issue of the Record.

CONFERENCE REPORT ON H.R. 1853, CARL D. PERKINS VOCATIONAL-TECHNICAL EDUCATION ACT OF 1998

Mr. Goodling submitted the following conference report and statement on the bill (H.R. 1853) to amend the Carl D. Perkins Vocational and Applied Technology Education Act:

CONFERENCE REPORT (105–800)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1853), to amend the Carl D. Perkins Vocational and Applied Technology Education Act, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; AMENDMENT.

(a) SHORT TITLE.—This Act may be cited as the ''Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998''.

(b) AMENDMENT.—The Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.) is amended to read as follows:

''SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

''(a) SHORT TITLE.—This Act may be cited as the 'Carl D. Perkins Vocational and Technical Education Act of 1998.

''(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

''Sec. 1. Short title; table of contents.
''Sec. 2. Purpose.
''Sec. 3. Definitions.
''Sec. 4. Transition provisions.
''Sec. 5. Privacy.
''Sec. 6. Limitation.
''Sec. 7. Special rule.
''Sec. 8. Authorization of appropriations.

''TITLE I—VOCATIONAL AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES

''PART A—ALLOTMENT AND ALLOCATION

''Sec. 111. Reservations and State allotment.
''Sec. 112. Within State allocation.
''Sec. 113. Accountability.
''Sec. 114. National activities.
''Sec. 115. Assistance for the outlying areas.
''Sec. 116. Native American program.
''Sec. 117. Tribally controlled postsecondary vocational and technical institutions.
''Sec. 118. Occupational and employment information.

''PART B—STATE PROVISIONS

''Sec. 121. State administration.
''Sec. 122. State plan.
''Sec. 123. Improvement plans.
''Sec. 124. State leadership activities.

''PART C—LOCAL PROVISIONS

''Sec. 131. Distribution of funds to secondary school programs.
''Sec. 132. Distribution of funds for postsecondary vocational and technical education programs.
''Sec. 133. Special rules for vocational and technical education.
''Sec. 134. Local plan for vocational and technical education programs.
''Sec. 135. Local uses of funds.

''TITLE II—TECH-PREP EDUCATION

''Sec. 201. Short title.
''Sec. 202. Definitions.
''Sec. 203. State allotment and application.
''Sec. 204. Tech-prep education.
''Sec. 205. Consortium applications.
''Sec. 206. Report.
''Sec. 207. Demonstration program.
''Sec. 208. Authorization of appropriations.

''TITLE III—GENERAL PROVISIONS

''PART A—FEDERAL ADMINISTRATIVE PROVISIONS

''Sec. 311. Fiscal requirements.
''Sec. 312. Authority to make payments.
''Sec. 313. Construction.
''Sec. 314. Voluntary selection and participation.
''Sec. 315. Limitation for certain students.
''Sec. 316. Federal laws guaranteeing civil rights.
''Sec. 317. Authorization of Secretary.
''Sec. 318. Participation of private school personnel.

''PART B—STATE ADMINISTRATIVE PROVISIONS

''Sec. 321. Joint funding.
''Sec. 322. Prohibition on use of funds to induce out-of-State relocation of businesses.
''Sec. 323. State administrative costs.
''Sec. 324. Limitation on Federal regulations.
''Sec. 325. Student assistance and other Federal programs.

''SEC. 2. PURPOSE.

''The purpose of this Act is to develop more fully the academic, vocational, and technical skills of secondary students and postsecondary students who elect to enroll in vocational and technical education programs, by—

''(1) building on the efforts of States and localities to develop challenging academic standards;

''(2) promoting the development of services and activities that integrate academic, vocational, and technical instruction, and that link secondary and postsecondary education for participating vocational and technical education students;

''(3) increasing State and local flexibility in providing services and activities designed to develop, implement, and improve vocational and technical education, including tech-prep education; and

''(4) disseminating national research, and providing professional development and technical assistance, that will improve vocational and technical education programs, services, and activities.

''SEC. 3. DEFINITIONS.

''In this Act:

''(1) ADMINISTRATION.—The term 'administration', when used with respect to an eligible agency or eligible recipient, means activities necessary for the proper and efficient performance of the eligible agency or eligible recipient's duties under this Act, including supervision, but does not include curriculum development activities, personnel development, or research activities.

''(2) ALL ASPECTS OF AN INDUSTRY.—The term 'all aspects of an industry' means strong experience in, and comprehensive understanding of, the industry that the individual is preparing to enter.

''(3) AREA VOCATIONAL AND TECHNICAL EDUCATION SCHOOL.—The term 'area vocational and technical education school' means—

''(A) a specialized public secondary school used exclusively or principally for the provision of vocational and technical education to individuals who are available for study in preparation for entering the labor market;

''(B) the department of a public secondary school exclusively or principally used for providing vocational and technical education in not fewer than 5 different occupational fields to individuals who are available for study in preparation for entering the labor market;

''(C) a public or nonprofit technical institution or vocational and technical education school used exclusively or principally for the provision of vocational and technical education to individuals who have completed or left secondary school and who are available for study in preparation for entering the labor market, if the institution or school admits as regular students both individuals who have completed secondary school and individuals who have left secondary school; or

''(D) the department or division of an institution of higher education, that operates under the policies of the eligible agency and that provides vocational and technical education in not fewer than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if the department or division admits as regular students both individuals who have completed secondary school and individuals who have left secondary school.

''(4) CAREER GUIDANCE AND ACADEMIC COUNSELING.—The term 'career guidance and academic counseling' means providing access to information regarding career awareness and planning with respect to an individual's occupational and academic future that shall involve guidance and counseling with respect to career options, financial aid, and postsecondary options.

''(5) CHARTER SCHOOL.—The term 'charter school' has the meaning given the term in section 10306 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8066).

''(6) COOPERATIVE EDUCATION.—The term 'cooperative education' means a method of instruction of education for individuals who, through written cooperative arrangements between a school and employers, receive instruction, including required academic courses and related vocational and technical education instruction, by alternation of study in school with a job in any occupational field, which alternation shall be planned and supervised by the school and employer so that each contributes to the education and employability of the individual, and may include an arrangement in which work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

''(7) DISPLACED HOMEMAKER.—The term 'displaced homemaker' means an individual who—

''(A)(i) has worked primarily without remuneration to care for a home and family, and for that reason has diminished marketable skills;

''(ii) has been dependent on the income of another family member but is no longer supported by that income; or

''(iii) is a parent whose youngest dependent child will become ineligible to receive assistance under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) not later than 2 years after the date on which the parent applies for assistance under this title; and

''(B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

''(8) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965.

''(9) ELIGIBLE AGENCY.—The term 'eligible agency' means a State board designated or created consistent with State law as the sole State agency responsible for the administration of vocational and technical education or for supervision of the administration of vocational and technical education in the State.

''(10) ELIGIBLE INSTITUTION.—The term 'eligible institution' means—

''(A) an institution of higher education;

''(B) a local educational agency providing education at the postsecondary level;

''(C) an area vocational and technical education school providing education at the postsecondary level;

''(D) a postsecondary educational institution controlled by the Bureau of Indian Affairs or operated by or on behalf of any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act or the Act of April 16, 1934 (48 Stat. 596; 25 U.S.C. 452 et seq.);

''(E) an educational service agency; or

''(F) a consortium of 2 or more of the entities described in subparagraphs (A) through (E).

''(11) ELIGIBLE RECIPIENT.—The term 'eligible recipient' means—

''(A) a local educational agency, an area vocational and technical education school, an educational service agency, or a consortium, eligible to receive assistance under section 131; or

''(B) an eligible institution or consortium of eligible institutions eligible to receive assistance under section 132.

''(12) GOVERNOR.—The term 'Governor' means the chief executive officer of a State or an outlying area.

''(13) INDIVIDUAL WITH LIMITED ENGLISH PROFICIENCY.—The term 'individual with limited English proficiency' means a secondary school student, an adult, or an out-of-school youth, who has limited ability in speaking, reading, writing, or understanding the English language, and—

''(A) whose native language is a language other than English; or

''(B) who lives in a family or community environment in which a language other than English is the dominant language.

''(14) INDIVIDUAL WITH A DISABILITY.—

''(A) IN GENERAL.—The term 'individual with a disability' means an individual with any disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

''(B) INDIVIDUALS WITH DISABILITIES.—The term 'individuals with disabilities' means more than 1 individual with a disability.

''(15) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has

the meaning given the term in section 101 of the Higher Education Act of 1965.

''(16) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

''(17) NONTRADITIONAL TRAINING AND EMPLOYMENT.—The term 'nontraditional training and employment' means occupations or fields of work, including careers in computer science, technology, and other emerging high skill occupations, for which individuals from one gender comprise less than 25 percent of the individuals employed in each such occupation or field of work.

''(18) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

''(19) POSTSECONDARY EDUCATIONAL INSTITUTION.—The term 'postsecondary educational institution' means—

''(A) an institution of higher education that provides not less than a 2-year program of instruction that is acceptable for credit toward a bachelor's degree;

''(B) a tribally controlled college or university; or

''(C) a nonprofit educational institution offering certificate or apprenticeship programs at the postsecondary level.

''(20) SCHOOL DROPOUT.—The term 'school dropout' means an individual who is no longer attending any school and who has not received a secondary school diploma or its recognized equivalent.

''(21) SECONDARY SCHOOL.—The term 'secondary school' has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

''(22) SECRETARY.—The term 'Secretary' means the Secretary of Education.

''(23) SPECIAL POPULATIONS.—The term 'special populations' means—

''(A) individuals with disabilities;

''(B) individuals from economically disadvantaged families, including foster children;

''(C) individuals preparing for nontraditional training and employment;

''(D) single parents, including single pregnant women;

''(E) displaced homemakers; and

''(F) individuals with other barriers to educational achievement, including individuals with limited English proficiency.

''(24) STATE.—The term 'State', unless otherwise specified, means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each outlying area.

''(25) SUPPORT SERVICES.—The term 'support services' means services related to curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

''(26) TECH-PREP PROGRAM.—The term 'tech-prep program' means a program of study that—

''(A) combines at least 2 years of secondary education (as determined under State law) and 2 years of postsecondary education in a nonduplicative sequential course of study;

''(B) strengthens the applied academic component of vocational and technical education through the integration of academic, and vocational and technical, instruction;

''(C) provides technical preparation in an area such as engineering technology, applied science, a mechanical, industrial, or practical art or trade, agriculture, a health occupation, business, or applied economics;

''(D) builds student competence in mathematics, science, and communications (including through applied academics) in a coherent sequence of courses; and

''(E) leads to an associate degree or a certificate in a specific career field, and to high skill, high wage employment, or further education.

''(27) TRIBALLY CONTROLLED COLLEGE OR UNIVERSITY.—The term 'tribally controlled college or university' has the meaning given such term in section 2 of the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

''(28) TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL AND TECHNICAL INSTITUTION.—The term 'tribally controlled postsecondary vocational and technical institution' means an institution of higher education (as defined in section 101 of the Higher Education Act of 1965, except that paragraph (2) of such section shall not be applicable and the reference to Secretary in paragraph (5)(A) of such section shall be deemed to refer to the Secretary of the Interior) that—

''(A) is formally controlled, or has been formally sanctioned or chartered, by the governing body of an Indian tribe or Indian tribes;

''(B) offers a technical degree or certificate granting program;

''(C) is governed by a board of directors or trustees, a majority of whom are Indians;

''(D) demonstrates adherence to stated goals, a philosophy, or a plan of operation, that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

''(E) has been in operation for at least 3 years;

''(F) holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational and technical education; and

''(G) enrolls the full-time equivalent of not less than 100 students, of whom a majority are Indians.

(29) VOCATIONAL AND TECHNICAL EDUCATION.—The term 'vocational and technical education' means organized educational activities that—

''(A) offer a sequence of courses that provides individuals with the academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a baccalaureate, master's, or doctoral degree) in current or emerging employment sectors; and

''(B) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills, of an individual.

''(30) VOCATIONAL AND TECHNICAL STUDENT ORGANIZATION.—

''(A) IN GENERAL.—The term 'vocational and technical student organization' means an organization for individuals enrolled in a vocational and technical education program that engages in vocational and technical activities as an integral part of the instructional program.

''(B) STATE AND NATIONAL UNITS.—An organization described in subparagraph (A) may have State and national units that aggregate the work and purposes of instruction in vocational and technical education at the local level.

"SEC. 4. TRANSITION PROVISIONS.

''The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of this Act from any authority under provisions of the Carl D. Perkins Vocational and Applied Technology Education Act, as such Act was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998.

"SEC. 5. PRIVACY.

''(a) GEPA.—Nothing in this Act shall be construed to supersede the privacy protections afforded parents and students under section 444 of the General Education Provisions Act (20 U.S.C. 1232g), as added by the Family Educational Rights and Privacy Act of 1974 (section 513 of Public Law 93–380; 88 Stat. 571).

''(b) PROHIBITION ON DEVELOPMENT OF NATIONAL DATABASE.—Nothing in this Act shall be construed to permit the development of a national database of personally identifiable information on individuals receiving services under this Act.

"SEC. 6. LIMITATION.

''All of the funds made available under this Act shall be used in accordance with the requirements of this Act. None of the funds made available under this Act may be used to provide funding under the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6101 et seq.) or to carry out, through programs funded under this Act, activities that were funded under the School-To-Work Opportunities Act of 1994, unless the programs funded under this Act serve only those participants eligible to participate in the programs under this Act.

"SEC. 7. SPECIAL RULE.

''In the case of a local community in which no employees are represented by a labor organization, for purposes of this Act the term 'representatives of employees' shall be substituted for 'labor organization'.

"SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this Act (other than sections 114, 117, and 118, and title II) such sums as may be necessary for each of the fiscal years 1999 through 2003.

"TITLE I—VOCATIONAL AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES

"PART A—ALLOTMENT AND ALLOCATION

"SEC. 111. RESERVATIONS AND STATE ALLOTMENT.

''(a) RESERVATIONS AND STATE ALLOTMENT.—

''(1) RESERVATIONS.—From the sum appropriated under section 8 for each fiscal year, the Secretary shall reserve—

''(A) 0.2 percent to carry out section 115;

''(B) 1.50 percent to carry out section 116, of which—

''(i) 1.25 percent of the sum shall be available to carry out section 116(b); and

''(ii) 0.25 percent of the sum shall be available to carry out section 116(h); and

''(C) in the case of each of the fiscal years 2000 through 2003, 0.54 percent to carry out section 503 of Public Law 105–220.

''(2) STATE ALLOTMENT FORMULA.—Subject to paragraphs (3) and (4), from the remainder of the sums appropriated under section 8 and not reserved under paragraph (1) for a fiscal year, the Secretary shall allot to a State for the fiscal year—

''(A) an amount that bears the same ratio to 50 percent of the sums being allotted as the product of the population aged 15 to 19 inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

''(B) an amount that bears the same ratio to 20 percent of the sums being allotted as the product of the population aged 20 to 24, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

''(C) an amount that bears the same ratio to 15 percent of the sums being allotted as the product of the population aged 25 to 65, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States; and

''(D) an amount that bears the same ratio to 15 percent of the sums being allotted as the amounts allotted to the State under subparagraphs (A), (B), and (C) for such years bears to the sum of the amounts allotted to all the States under subparagraphs (A), (B), and (C) for such year.

''(3) MINIMUM ALLOTMENT.—

''(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraphs

(B) and (C), and paragraph (4), no State shall receive for a fiscal year under this subsection less than ½ of 1 percent of the amount appropriated under section 8 and not reserved under paragraph (1) for such fiscal year. Amounts necessary for increasing such payments to States to comply with the preceding sentence shall be obtained by ratably reducing the amounts to be paid to other States.

''(B) REQUIREMENT.—No State, by reason of the application of subparagraph (A), shall receive for a fiscal year more than 150 percent of the amount the State received under this subsection for the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998).

''(C) SPECIAL RULE.—

''(i) IN GENERAL.—Subject to paragraph (4), no State, by reason of the application of subparagraph (A), shall be allotted for a fiscal year more than the lesser of—

''(I) 150 percent of the amount that the State received in the preceding fiscal year (or in the case of fiscal year 1999 only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998); and

''(II) the amount calculated under clause (ii).

''(ii) AMOUNT.—The amount calculated under this clause shall be determined by multiplying—

''(I) the number of individuals in the State counted under paragraph (2) in the preceding fiscal year; by

''(II) 150 percent of the national average per pupil payment made with funds available under this section for that year (or in the case of fiscal year 1999, only, under section 101 of the Carl D. Perkins Vocational and Applied Technology Education Act, as such section was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998).

''(4) HOLD HARMLESS.—

''(A) IN GENERAL.—No State shall receive an allotment under this section for a fiscal year that is less than the allotment the State received under part A of title I of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2311 et seq.) (as such part was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998) for fiscal year 1998.

''(B) RATABLE REDUCTION.—If for any fiscal year the amount appropriated for allotments under this section is insufficient to satisfy the provisions of subparagraph (A), the payments to all States under such subparagraph shall be ratably reduced.

''(b) REALLOTMENT.—If the Secretary determines that any amount of any State's allotment under subsection (a) for any fiscal year will not be required for such fiscal year for carrying out the activities for which such amount has been allotted, the Secretary shall make such amount available for reallotment. Any such reallotment among other States shall occur on such dates during the same year as the Secretary shall fix, and shall be made on the basis of criteria established by regulation. No funds may be reallotted for any use other than the use for which the funds were appropriated. Any amount reallotted to a State under this subsection for any fiscal year shall remain available for obligation during the succeeding fiscal year and shall be deemed to be part of the State's allotment for the year in which the amount is obligated.

''(c) ALLOTMENT RATIO.—

''(1) IN GENERAL.—The allotment ratio for any State shall be 1.00 less the product of—

''(A) 0.50; and

''(B) the quotient obtained by dividing the per capita income for the State by the per capita income for all the States (exclusive of the Commonwealth of Puerto Rico and the United States Virgin Islands), except that—

''(i) the allotment ratio in no case shall be more than 0.60 or less than 0.40; and

''(ii) the allotment ratio for the Commonwealth of Puerto Rico and the United States Virgin Islands shall be 0.60.

''(2) PROMULGATION.—The allotment ratios shall be promulgated by the Secretary for each fiscal year between October 1 and December 31 of the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be computed on the basis of the average of the appropriate per capita incomes for the 3 most recent consecutive fiscal years for which satisfactory data are available.

''(3) DEFINITION OF PER CAPITA INCOME.—For the purpose of this section, the term 'per capita income' means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year.

''(4) POPULATION DETERMINATION.—For the purposes of this section, population shall be determined by the Secretary on the basis of the latest estimates available to the Department of Education.

''(d) DEFINITION OF STATE.—For the purpose of this section, the term 'State' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

''SEC. 112. WITHIN STATE ALLOCATION.

''(a) IN GENERAL.—From the amount allotted to each State under section 111 for a fiscal year, the State board (hereinafter referred to as the 'eligible agency') shall make available—

''(1) not less than 85 percent for distribution under section 131 or 132, of which not more than 10 percent of the 85 percent may be used in accordance with subsection (c);

''(2) not more than 10 percent to carry out State leadership activities described in section 124, of which—

''(A) an amount equal to not more than 1 percent of the amount allotted to the State under section 111 for the fiscal year shall be available to serve individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities; and

''(B) not less than $60,000 and not more than $150,000 shall be available for services that prepare individuals for nontraditional training and employment; and

''(3) an amount equal to not more than 5 percent, or $250,000, whichever is greater, for administration of the State plan, which may be used for the costs of—

''(A) developing the State plan;

''(B) reviewing the local plans;

''(C) monitoring and evaluating program effectiveness;

''(D) assuring compliance with all applicable Federal laws; and

''(E) providing technical assistance.

''(b) MATCHING REQUIREMENT.—Each eligible agency receiving funds made available under subsection (a)(3) shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds received under subsection (a)(3).

''(c) RESERVE.—

''(1) IN GENERAL.—From amounts made available under subsection (a)(1) to carry out this subsection, an eligible agency may award grants to eligible recipients for vocational and technical education activities described in section 135 in—

''(A) rural areas;

''(B) areas with high percentages of vocational and technical education students; and

''(C) areas with high numbers of vocational and technical students; and

''(D) communities negatively impacted by changes resulting from the amendments made by the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998 to the within State allocation under section 231 of the Carl D. Perkins Vocational and Applied Technology Education Act (as such section 231 was in effect on the day before the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998).

''(2) SPECIAL RULE.—Each eligible agency awarding a grant under this subsection shall use the grant funds to serve at least 2 of the categories described in subparagraphs (A) through (D) of paragraph (1).

''SEC. 113. ACCOUNTABILITY.

''(a) PURPOSE.—The purpose of this section is to establish a State performance accountability system, comprised of the activities described in this section, to assess the effectiveness of the State in achieving statewide progress in vocational and technical education, and to optimize the return of investment of Federal funds in vocational and technical education activities.

''(b) STATE PERFORMANCE MEASURES.—

''(1) IN GENERAL.—Each eligible agency, with input from eligible recipients, shall establish performance measures for a State that consist of—

''(A) the core indicators of performance described in paragraph (2)(A);

''(B) any additional indicators of performance (if any) identified by the eligible agency under paragraph (2)(B); and

''(C) a State adjusted level of performance described in paragraph (3)(A) for each core indicator of performance, and State levels of performance described in paragraph (3)(B) for each additional indicator of performance.

''(2) INDICATORS OF PERFORMANCE.—

''(A) CORE INDICATORS OF PERFORMANCE.—Each eligible agency shall identify in the State plan core indicators of performance that include, at a minimum, measures of each of the following:

''(i) Student attainment of challenging State established academic, and vocational and technical, skill proficiencies.

''(ii) Student attainment of a secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school diploma, or a postsecondary degree or credential.

''(iii) Placement in, retention in, and completion of, postsecondary education or advanced training, placement in military service, or placement or retention in employment.

''(iv) Student participation in and completion of vocational and technical education programs that lead to nontraditional training and employment.

''(B) ADDITIONAL INDICATORS OF PERFORMANCE.—An eligible agency, with input from eligible recipients, may identify in the State plan additional indicators of performance for vocational and technical education activities authorized under the title.

''(C) EXISTING INDICATORS.—If a State previously has developed State performance measures that meet the requirements of this section, the State may use such performance measures to measure the progress of vocational and technical education students.

''(D) STATE ROLE.—Indicators of performance described in this paragraph shall be established solely by each eligible agency with input from eligible recipients.

''(3) LEVELS OF PERFORMANCE.—

''(A) STATE ADJUSTED LEVELS OF PERFORMANCE FOR CORE INDICATORS OF PERFORMANCE.—

''(i) IN GENERAL.—Each eligible agency, with input from eligible recipients, shall establish in the State plan submitted under section 122, levels of performance for each of the core indicators of performance described in paragraph (2)(A) for vocational and technical education activities authorized under this title. The levels of performance established under this subparagraph shall, at a minimum—

''(I) be expressed in a percentage or numerical form, so as to be objective, quantifiable, and measurable; and

''(II) require the State to continually make progress toward improving the performance of vocational and technical education students.

''(ii) IDENTIFICATION IN THE STATE PLAN.—Each eligible agency shall identify, in the State plan submitted under section 122, levels of performance for each of the core indicators of performance for the first 2 program years covered by the State plan.

''(iii) AGREEMENT ON STATE ADJUSTED LEVELS OF PERFORMANCE FOR FIRST 2 YEARS.—The Secretary and each eligible agency shall reach agreement on the levels of performance for each of the core indicators of performance, for the first 2 program years covered by the State plan, taking into account the levels identified in the State plan under clause (ii) and the factors described in clause (vi). The levels of performance agreed to under this clause shall be considered to be the State adjusted level of performance for the State for such years and shall be incorporated into the State plan prior to the approval of such plan.

''(iv) ROLE OF THE SECRETARY.—The role of the Secretary in the agreement described in clauses (iii) and (v) is limited to reaching agreement on the percentage or number of students who attain the State adjusted levels of performance.

''(v) AGREEMENT ON STATE ADJUSTED LEVELS OF PERFORMANCE FOR 3RD, 4TH AND 5TH YEARS.—Prior to the third program year covered by the State plan, the Secretary and each eligible agency shall reach agreement on the State adjusted levels of performance for each of the core indicators of performance for the third, fourth and fifth program years covered by the State plan, taking into account the factors described in clause (vi). The State adjusted levels of performance agreed to under this clause shall be considered to be the State adjusted levels of performance for the State for such years and shall be incorporated into the State plan.

''(vi) FACTORS.—The agreement described in clause (iii) or (v) shall take into account—

''(I) how the levels of performance involved compare with the State adjusted levels of performance established for other States taking into account factors including the characteristics of participants when the participants entered the program and the services or instruction to be provided; and

''(II) the extent to which such levels of performance promote continuous improvement on the indicators of performance by such State.

''(vii) REVISIONS.—If unanticipated circumstances arise in a State resulting in a significant change in the factors described in clause (vi)(II), the eligible agency may request that the State adjusted levels of performance agreed to under clause (iii) or (vi) be revised. The Secretary shall issue objective criteria and methods for making such revisions.

''(B) LEVELS OF PERFORMANCE FOR ADDITIONAL INDICATORS.—Each eligible agency shall identify in the State plan, State levels of performance for each of the additional indicators of performance described in paragraph (2)(B). Such levels shall be considered to be the State levels of performance for purposes of this title.

''(c) REPORT.—

''(1) IN GENERAL.—Each eligible agency that receives an allotment under section 111 shall annually prepare and submit to the Secretary a report regarding—

''(A) the progress of the State in achieving the State adjusted levels of performance on the core indicators of performance; and

''(B) information on the levels of performance achieved by the State with respect to the additional indicators of performance, including the levels of performance for special populations.

''(2) SPECIAL POPULATIONS.—The report submitted by the eligible agency in accordance with paragraph (1) shall include a quantifiable description of the progress special populations participating in vocational and technical education programs have made in meeting the State adjusted levels of performance established by the eligible agency.

''(3) INFORMATION DISSEMINATION.—The Secretary—

''(A) shall make the information contained in such reports available to the general public;

''(B) shall disseminate State-by-State comparisons of the information; and

''(C) shall provide the appropriate committees of Congress copies of such reports.

''SEC. 114. NATIONAL ACTIVITIES.

''(a) PROGRAM PERFORMANCE INFORMATION.—

''(1) IN GENERAL.—The Secretary shall collect performance information about, and report on, the condition of vocational and technical education and on the effectiveness of State and local programs, services, and activities carried out under this title in order to provide the Secretary and Congress, as well as Federal, State, local, and tribal agencies, with information relevant to improvement in the quality and effectiveness of vocational and technical education. The Secretary annually shall report to Congress on the Secretary's aggregate analysis of performance information collected each year pursuant to this title, including an analysis of performance data regarding special populations.

''(2) COMPATIBILITY.—The Secretary shall, to the extent feasible, ensure that the performance information system is compatible with other Federal information systems.

''(3) ASSESSMENTS.—As a regular part of its assessments, the National Center for Education Statistics shall collect and report information on vocational and technical education for a nationally representative sample of students. Such assessment may include international comparisons.

''(b) MISCELLANEOUS PROVISIONS.—

''(1) COLLECTION OF INFORMATION AT REASONABLE COST.—The Secretary shall take such action as may be necessary to secure at reasonable cost the information required by this title. To ensure reasonable cost, the Secretary, in consultation with the National Center for Education Statistics, the Office of Vocational and Adult Education, and an entity assisted under section 118 shall determine the methodology to be used and the frequency with which information is to be collected.

''(2) COOPERATION OF STATES.—All eligible agencies receiving assistance under this Act shall cooperate with the Secretary in implementing the information systems developed pursuant to this Act.

''(c) RESEARCH, DEVELOPMENT, DISSEMINATION, EVALUATION AND ASSESSMENT.—

''(1) SINGLE PLAN.—

''(A) IN GENERAL.—The Secretary may, directly or through grants, contracts, or cooperative agreements, carry out research, development, dissemination, evaluation and assessment, capacity building, and technical assistance with regard to the vocational and technical education programs under this Act. The Secretary shall develop a single plan for such activities.

''(B) PLAN.—Such plan shall—

''(i) identify the vocational and technical education activities described in subparagraph (A) the Secretary will carry out under this section;

''(ii) describe how the Secretary will evaluate such vocational and technical education activities in accordance with paragraph (3); and

''(iii) include such other information as the Secretary determines to be appropriate.

''(2) INDEPENDENT ADVISORY PANEL.—The Secretary shall appoint an independent advisory panel, consisting of vocational and technical education administrators, educators, researchers, and representatives of labor organizations, businesses, parents, guidance and counseling professionals, and other relevant groups, to advise the Secretary on the implementation of the assessment described in paragraph (3), including the issues to be addressed, the methodology of the studies involved, and the findings and recommendations resulting from the assessment. The panel shall submit to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary an independent analysis of the findings and recommendations resulting from the assessment described in paragraph (3). The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the panel established under this subsection.

''(3) EVALUATION AND ASSESSMENT.—

''(A) IN GENERAL.—From amounts made available under paragraph (8), the Secretary shall provide for the conduct of an independent evaluation and assessment of vocational and technical education programs under this Act through studies and analyses conducted independently through grants, contracts, and cooperative agreements that are awarded on a competitive basis.

''(B) CONTENTS.—The assessment required under paragraph (1) shall include descriptions and evaluations of—

''(i) the extent to which State, local, and tribal entities have developed, implemented, or improved State and local vocational and technical education programs and the effect of programs assisted under this Act on that development, implementation, or improvement, including the capacity of State, tribal, and local vocational and technical education systems to achieve the purpose of this Act;

''(ii) the extent to which expenditures at the Federal, State, tribal, and local levels address program improvement in vocational and technical education, including the impact of Federal allocation requirements (such as within-State allocation formulas) on the delivery of services;

''(iii) the preparation and qualifications of teachers of vocational and technical, and academic, curricula in vocational and technical education programs, as well as shortages of such teachers;

''(iv) participation of students in vocational and technical education programs;

''(v) academic and employment outcomes of vocational and technical education, including analyses of—

''(I) the number of vocational and technical education students and tech-prep students who meet State adjusted levels of performance;

''(II) the extent and success of integration of academic, and vocational and technical, education for students participating in vocational and technical education programs; and

''(III) the extent to which vocational and technical education programs prepare students for subsequent employment in high-wage, high-skill careers or participation in postsecondary education;

''(vi) employer involvement in, and satisfaction with, vocational and technical education programs;

''(vii) the use and impact of educational technology and distance learning with respect to vocational and technical education and tech-prep programs; and

''(viii) the effect of State adjusted levels of performance and State levels of performance on the delivery of vocational and technical education services.

''(C) REPORTS.—

''(i) IN GENERAL.—The Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

''(I) an interim report regarding the assessment on or before January 1, 2002; and

''(II) a final report, summarizing all studies and analyses that relate to the assessment and that are completed after the assessment, on or before July 1, 2002.

''(ii) PROHIBITION.—Notwithstanding any other provision of law, the reports required by

this subsection shall not be subject to any review outside the Department of Education before their transmittal to the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Secretary, but the President, the Secretary, and the independent advisory panel established under paragraph (2) may make such additional recommendations to Congress with respect to the assessment as the President, the Secretary, or the panel determine to be appropriate.

''(4) COLLECTION OF STATE INFORMATION AND REPORT.—

''(A) IN GENERAL.—The Secretary may collect and disseminate information from States regarding State efforts to meet State adjusted levels of performance described in section 113.

''(B) REPORT.—The Secretary shall gather any information collected pursuant to subparagraph (A) and submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

''(5) RESEARCH.—

''(A) IN GENERAL.—The Secretary, after consulting with the States, shall award grants, contracts, or cooperative agreements on a competitive basis to an institution of higher education, a public or private nonprofit organization or agency, or a consortium of such institutions, organizations, or agencies to establish a national research center or centers—

''(i) to carry out research for the purpose of developing, improving, and identifying the most successful methods for successfully addressing the education, employment, and training needs of participants in vocational and technical education programs, including research and evaluation in such activities as—

''(I) the integration of vocational and technical instruction, and academic, secondary and postsecondary instruction;

''(II) education technology and distance learning approaches and strategies that are effective with respect to vocational and technical education;

''(III) State adjusted levels of performance and State levels of performance that serve to improve vocational and technical education programs and student achievement; and

''(IV) academic knowledge and vocational and technical skills required for employment or participation in postsecondary education;

''(ii) to carry out research to increase the effectiveness and improve the implementation of vocational and technical education programs, including conducting research and development, and studies, providing longitudinal information or formative evaluation with respect to vocational and technical education programs and student achievement;

''(iii) to carry out research that can be used to improve teacher training and learning in the vocational and technical education classroom, including—

''(I) effective inservice and preservice teacher education that assists vocational and technical education systems; and

''(II) dissemination and training activities related to the applied research and demonstration activities described in this subsection, which may also include serving as a repository for information on vocational and technical skills, State academic standards, and related materials; and

''(iv) to carry out such other research as the Secretary determines appropriate to assist State and local recipients of funds under this Act.

''(B) REPORT.—The center or centers conducting the activities described in subparagraph (A) shall annually prepare a report of key research findings of such center or centers and shall submit copies of the report to the Secretary, the Committee on Education and the Workforce of the House of Representatives, the Committee on Labor and Human Resources of the Senate, the Library of Congress, and each eligible agency.

''(C) DISSEMINATION.—The center or centers shall conduct dissemination and training activities based upon the research described in subparagraph (A).

''(6) DEMONSTRATIONS AND DISSEMINATION.—

''(A) DEMONSTRATION PROGRAM.—The Secretary is authorized to carry out demonstration vocational and technical education programs, to replicate model vocational and technical education programs, to disseminate best practices information, and to provide technical assistance upon request of a State, for the purposes of developing, improving, and identifying the most successful methods and techniques for providing vocational and technical education programs assisted under this Act.

''(B) DEMONSTRATION PARTNERSHIP.—

''(i) IN GENERAL.—The Secretary shall carry out a demonstration partnership project involving a 4-year, accredited postsecondary institution, in cooperation with local public education organizations, volunteer groups, and private sector business participants to provide program support, and facilities for education, training, tutoring, counseling, employment preparation, specific skills training in emerging and established professions, and for retraining of military medical personnel, individuals displaced by corporate or military restructuring, migrant workers, as well as other individuals who otherwise do not have access to such services, through multisite, multistate distance learning technologies.

''(ii) PROGRAM.—Such program may be carried out directly or through grants, contracts, cooperative agreements, or through the national center or centers established under paragraph (5).

''(7) DEFINITION.—In this section, the term 'institution of higher education' has the meaning given the term in section 101 of the Higher Education Act of 1965.

''(8) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 1999 and each of the 4 succeeding fiscal years.

''SEC. 115. ASSISTANCE FOR THE OUTLYING AREAS.

''(a) OUTLYING AREAS.—From funds reserved pursuant to section 111(a)(1)(A), the Secretary shall—

''(1) make a grant in the amount of $500,000 to Guam; and

''(2) make a grant in the amount of $190,000 to each of American Samoa and the Commonwealth of the Northern Mariana Islands.

''(b) REMAINDER.—Subject to the provisions of subsection (a), the Secretary shall make a grant of the remainder of funds reserved pursuant to section 111(a)(1)(A) to the Pacific Region Educational Laboratory in Honolulu, Hawaii, to make grants for vocational and technical education and training in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, for the purpose of providing direct vocational and technical educational services, including—

''(1) teacher and counselor training and retraining;

''(2) curriculum development; and

''(3) the improvement of vocational and technical education and training programs in secondary schools and institutions of higher education, or improving cooperative education programs involving both secondary schools and institutions of higher education.

''(c) LIMITATION.—The Pacific Region Educational Laboratory may use not more than 5 percent of the funds received under subsection (b) for administrative costs.

''(d) RESTRICTION.—Notwithstanding any other provision of law, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall not receive any funds under this title for any fiscal year that begins after September 30, 2001.

''SEC. 116. NATIVE AMERICAN PROGRAM.

''(a) DEFINITIONS.—In this section:

''(1) ALASKA NATIVE.—The term 'Alaska Native' means a Native as such term is defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

''(2) BUREAU FUNDED SCHOOL.—The term 'Bureau funded school' has the meaning given the term in section 1146 of the Education Amendments of 1978 (25 U.S.C. 2026).

''(3) INDIAN, INDIAN TRIBE, AND TRIBAL ORGANIZATION.—The terms 'Indian', 'Indian tribe', and 'tribal organization' have the meanings given the terms in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(4) NATIVE HAWAIIAN.—The term 'Native Hawaiian' means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

''(5) NATIVE HAWAIIAN ORGANIZATION.—The term 'Native Hawaiian organization' has the meaning given the term in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).

''(b) PROGRAM AUTHORIZED.—

''(1) AUTHORITY.—From funds reserved under section 111(a)(1)(B)(i), the Secretary shall make grants to and enter into contracts with Indian tribes, tribal organizations, and Alaska Native entities to carry out the authorized programs described in subsection (d), except that such grants or contracts shall not be awarded to secondary school programs in Bureau funded schools.

''(2) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—The grants or contracts described in this section (other than in subsection (i)) that are awarded to any Indian tribe or tribal organization shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f) and shall be conducted in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, which are relevant to the programs administered under this subsection.

''(3) SPECIAL AUTHORITY RELATING TO SECONDARY SCHOOLS OPERATED OR SUPPORTED BY THE BUREAU OF INDIAN AFFAIRS.—An Indian tribe, a tribal organization, or an Alaska Native entity, that receives funds through a grant made or contract entered into under paragraph (1) may use the funds to provide assistance to a secondary school operated or supported by the Bureau of Indian Affairs to enable such school to carry out vocational and technical education programs.

''(4) MATCHING.—If sufficient funding is available, the Bureau of Indian Affairs shall expend an amount equal to the amount made available under this subsection, relating to programs for Indians, to pay a part of the costs of programs funded under this subsection. During each fiscal year the Bureau of Indian Affairs shall expend not less than the amount expended during the prior fiscal year on vocational and technical education programs, services, and technical activities administered either directly by, or under contract with, the Bureau of Indian Affairs, except that in no year shall funding for such programs, services, and activities be provided from accounts and programs that support other Indian education programs. The Secretary and the Assistant Secretary of the Interior for Indian Affairs shall prepare jointly a plan for the expenditure of funds made available and for the evaluation of programs assisted under this subsection. Upon the completion of a joint plan for the expenditure of the funds and the evaluation of the programs, the Secretary shall assume responsibility for the administration of the program, with the assistance and consultation of the Bureau of Indian Affairs.

''(5) REGULATIONS.—If the Secretary promulgates any regulations applicable to subsection (b)(2), the Secretary shall—

''(A) confer with, and allow for active participation by, representatives of Indian tribes, tribal organizations, and individual tribal members; and

''(B) promulgate the regulations under subchapter III of chapter 5 of title 5, United States Code, commonly known as the ''Negotiated Rulemaking Act of 1990''.

''(6) APPLICATION.—Any Indian tribe, tribal organization, or Bureau funded school eligible to receive assistance under subsection (b) may apply individually or as part of a consortium with another such Indian tribe, tribal organization, or Bureau funded school.

''(c) AUTHORIZED ACTIVITIES.—

''(1) AUTHORIZED PROGRAMS.—Funds made available under this section shall be used to carry out vocational and technical education programs consistent with the purpose of this Act.

''(2) STIPENDS.—

''(A) IN GENERAL.—Funds received pursuant to grants or contracts awarded under subsection (b) may be used to provide stipends to students who are enrolled in vocational and technical education programs and who have acute economic needs which cannot be met through work-study programs.

''(B) AMOUNT.—Stipends described in subparagraph (A) shall not exceed reasonable amounts as prescribed by the Secretary.

''(d) GRANT OR CONTRACT APPLICATION.—In order to receive a grant or contract under this section an organization, tribe, or entity described in subsection (b) shall submit an application to the Secretary that shall include an assurance that such organization, tribe, or entity shall comply with the requirements of this section.

''(e) RESTRICTIONS AND SPECIAL CONSIDERATIONS.—The Secretary may not place upon grants awarded or contracts entered into under subsection (b) any restrictions relating to programs other than restrictions that apply to grants made to or contracts entered into with States pursuant to allotments under section 111(a). The Secretary, in awarding grants and entering into contracts under this paragraph, shall ensure that the grants and contracts will improve vocational and technical education programs, and shall give special consideration to—

''(1) programs that involve, coordinate with, or encourage tribal economic development plans; and

''(2) applications from tribally controlled colleges or universities that—

''(A) are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational and technical education; or

''(B) operate vocational and technical education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational and technical education programs.

''(f) CONSOLIDATION OF FUNDS.—Each organization, tribe, or entity receiving assistance under this section may consolidate such assistance with assistance received from related programs in accordance with the provisions of the Indian Employment, Training and Related Services Demonstration Act of 1992 (25 U.S.C 3401 et seq.).

''(g) NONDUPLICATIVE AND NONEXCLUSIVE SERVICES.—Nothing in this section shall be construed—

''(1) to limit the eligibility of any organization, tribe, or entity described in subsection (b) to participate in any activity offered by an eligible agency or eligible recipient under this title; or

''(2) to preclude or discourage any agreement, between any organization, tribe, or entity described in subsection (b) and any eligible agency or eligible recipient, to facilitate the provision of services by such eligible agency or eligible recipient to the population served by such eligible agency or eligible recipient.

''(h) NATIVE HAWAIIAN PROGRAMS.—From the funds reserved pursuant to section 111(a)(1)(B)(ii), the Secretary shall award grants to or enter into contracts with organizations primarily serving and representing Native Hawaiians which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this section for the benefit of Native Hawaiians.

''SEC. 117. TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL AND TECHNICAL INSTITUTIONS.

''(a) GRANTS AUTHORIZED.—The Secretary shall, subject to the availability of appropriations, make grants pursuant to this section to tribally controlled postsecondary vocational and technical institutions to provide basic support for the education and training of Indian students.

''(b) USE OF GRANTS.—Amounts made available pursuant to this section shall be used for vocational and technical education programs.

''(c) AMOUNT OF GRANTS.—

''(1) IN GENERAL.—If the sums appropriated for any fiscal year for grants under this section are not sufficient to pay in full the total amount which approved applicants are eligible to receive under this section for such fiscal year, the Secretary shall first allocate to each such applicant who received funds under this part for the preceding fiscal year an amount equal to 100 percent of the product of the per capita payment for the preceding fiscal year and such applicant's Indian student count for the current program year, plus an amount equal to the actual cost of any increase to the per capita figure resulting from inflationary increases to necessary costs beyond the institution's control.

''(2) PER CAPITA DETERMINATION.—For the purposes of paragraph (1), the per capita payment for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled postsecondary vocational and technical institutions under this section for such program year by the sum of the Indian student counts of such institutions for such program year. The Secretary shall, on the basis of the most accurate data available from the institutions, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this section.

''(d) APPLICATIONS.—Any tribally controlled postsecondary vocational and technical institution that desires to receive a grant under this section shall submit an application to the Secretary in such manner and form as the Secretary may require.

''(e) EXPENSES.—

''(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, provide for each program year to each tribally controlled postsecondary vocational and technical institution having an application approved by the Secretary, an amount necessary to pay expenses associated with—

''(A) the maintenance and operation of the program, including development costs, costs of basic and special instruction (including special programs for individuals with disabilities and academic instruction), materials, student costs, administrative expenses, boarding costs, transportation, student services, daycare and family support programs for students and their families (including contributions to the costs of education for dependents), and student stipends;

''(B) capital expenditures, including operations and maintenance, and minor improvements and repair, and physical plant maintenance costs, for the conduct of programs funded under this section; and

''(C) costs associated with repair, upkeep, replacement, and upgrading of the instructional equipment.

''(2) ACCOUNTING.—Each institution receiving a grant under this section shall provide annually to the Secretary an accurate and detailed accounting of the institution's operating and maintenance expenses and such other information concerning costs as the Secretary may reasonably require.

''(f) OTHER PROGRAMS.—

''(1) IN GENERAL.—Except as specifically provided in this Act, eligibility for assistance under this section shall not preclude any tribally controlled postsecondary vocational and technical institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965, or any other applicable program for the benefit of institutions of higher education or vocational and technical education.

''(2) PROHIBITION ON ALTERATION OF GRANT AMOUNT.—The amount of any grant for which tribally controlled postsecondary vocational and technical institutions are eligible under this section shall not be altered because of funds allocated to any such institution from funds appropriated under the Act of November 2, 1921 (commonly known as the 'Snyder Act') (42 Stat. 208, chapter 115; 25 U.S.C. 13).

''(3) PROHIBITION ON CONTRACT DENIAL.—No tribally controlled postsecondary vocational and technical institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921, may be denied a contract for such portion under the Indian Self-Determination and Education Assistance Act (except as provided in that Act), or denied appropriate contract support to administer such portion of the appropriated funds.

''(g) NEEDS ESTIMATE AND REPORT ON FACILITIES AND FACILITIES IMPROVEMENT.—

''(1) NEEDS ESTIMATE.—The Secretary shall, based on the most accurate data available from the institutions and Indian tribes whose Indian students are served under this section, and in consideration of employment needs, economic development needs, population training needs, and facilities needs, prepare an actual budget needs estimate for each institution eligible under this section for each subsequent program year, and submit such budget needs estimate to Congress in such a timely manner as will enable the appropriate committees of Congress to consider such needs data for purposes of the uninterrupted flow of adequate appropriations to such institutions. Such data shall take into account the purposes and requirements of part A of title IV of the Social Security Act.

''(2) STUDY OF TRAINING AND HOUSING NEEDS.—

''(A) IN GENERAL.—The Secretary shall conduct a detailed study of the training, housing, and immediate facilities needs of each institution eligible under this section. The study shall include an examination of—

''(i) training equipment needs;

''(ii) housing needs of families whose heads of households are students and whose dependents have no alternate source of support while such heads of households are students; and

''(iii) immediate facilities needs.

''(B) REPORT.—The Secretary shall report to Congress not later than July 1, 2000, on the results of the study required by subparagraph (A).

''(C) CONTENTS.—The report required by subparagraph (B) shall include the number, type, and cost of meeting the needs described in subparagraph (A), and rank each institution by relative need.

''(D) PRIORITY.—In conducting the study required by subparagraph (A), the Secretary shall give priority to institutions that are receiving assistance under this section.

''(3) LONG-TERM STUDY OF FACILITIES.—

''(A) IN GENERAL.—The Secretary shall provide for the conduct of a long-term study of the facilities of each institution eligible for assistance under this section.

''(B) CONTENTS.—The study required by subparagraph (A) shall include a 5-year projection

of training facilities, equipment, and housing needs and shall consider such factors as projected service population, employment, and economic development forecasting, based on the most current and accurate data available from the institutions and Indian tribes affected.

''(C) SUBMISSION.—The Secretary shall submit to Congress a detailed report on the results of such study not later than the end of the 18-month period beginning on the date of enactment of this Act.

''(h) DEFINITIONS.—In this section:

''(1) INDIAN.—The terms 'Indian' and 'Indian tribe' have the meanings given the terms in section 2 of the Tribally Controlled College or University Assistance Act of 1978.

''(2) INDIAN STUDENT COUNT.—The term 'Indian student count' means a number equal to the total number of Indian students enrolled in each tribally controlled postsecondary vocational and technical institution, determined as follows:

''(A) REGISTRATIONS.—The registrations of Indian students as in effect on October 1 of each year.

''(B) SUMMER TERM.—Credits or clock hours toward a certificate earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

''(C) ADMISSION CRITERIA.—Credits or clock hours toward a certificate earned in classes during a summer term shall be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of such student on the basis of the student's ability to benefit from the education or training offered. The institution shall be presumed to have established such criteria if the admission procedures for such studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. No credit earned by such student for purposes of obtaining a secondary school degree or its recognized equivalent shall be counted toward the computation of the Indian student count.

''(D) DETERMINATION OF HOURS.—Indian students earning credits in any continuing education program of a tribally controlled postsecondary vocational and technical institution shall be included in determining the sum of all credit or clock hours.

''(E) CONTINUING EDUCATION.—Credits or clock hours earned in a continuing education program shall be converted to the basis that is in accordance with the institution's system for providing credit for participation in such programs.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $4,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.

"SEC. 118. OCCUPATIONAL AND EMPLOYMENT INFORMATION.

''(a) NATIONAL ACTIVITIES.—From funds appropriated under subsection (f), the Secretary, in consultation with appropriate Federal agencies, is authorized—

''(1) to provide assistance to an entity to enable the entity—

''(A) to provide technical assistance to State entities designated under subsection (b) to enable the State entities to carry out the activities described in subsection (b);

''(B) to disseminate information that promotes the replication of high quality practices described in subsection (b);

''(C) to develop and disseminate products and services related to the activities described in subsection (b); and

''(2) to award grants to States that designate State entities in accordance with subsection (b) to enable the State entities to carry out the State level activities described in subsection (b).

''(b) STATE LEVEL ACTIVITIES.—In order for a State to receive a grant under this section, the eligible agency and the Governor of the State shall jointly designate an entity in the State—

''(1) to provide support for a career guidance and academic counseling program designed to promote improved career and education decisionmaking by individuals (especially in areas of career information delivery and use);

''(2) to make available to students, parents, teachers, administrators, and counselors, and to improve accessibility with respect to, information and planning resources that relate educational preparation to career goals and expectations;

''(3) to equip teachers, administrators, and counselors with the knowledge and skills needed to assist students and parents with career exploration, educational opportunities, and education financing.

''(4) to assist appropriate State entities in tailoring career-related educational resources and training for use by such entities;

''(5) to improve coordination and communication among administrators and planners of programs authorized by this Act and by section 15 of the Wagner-Peyser Act at the Federal, State, and local levels to ensure nonduplication of efforts and the appropriate use of shared information and data; and

''(6) to provide ongoing means for customers, such as students and parents, to provide comments and feedback on products and services and to update resources, as appropriate, to better meet customer requirements.

''(c) NONDUPLICATION.—

''(1) WAGNER-PEYSER ACT.—The State entity designated under subsection (b) may use funds provided under subsection (b) to supplement activities under section 15 of the Wagner-Peyser Act to the extent such activities do not duplicate activities assisted under such section.

''(2) PUBLIC LAW 105-220.—None of the functions and activities assisted under this section shall duplicate the functions and activities carried out under Public Law 105-220.

''(d) FUNDING RULE.—Of the amounts appropriated to carry out this section, the Federal entity designated under subsection (a) shall use—

''(1) not less than 85 percent to carry out subsection (b); and

''(2) not more than 15 percent to carry out subsection (a).

''(e) REPORT.—The Secretary, in consultation with appropriate Federal agencies, shall prepare and submit to the appropriate committees of Congress, an annual report that includes—

''(1) an identification of activities assisted under this section during the prior program year;

''(2) a description of the specific products and services assisted under this section that were delivered in the prior program year; and

''(3) an assessment of the extent to which States have effectively coordinated activities assisted under this section with activities authorized under section 15 of the Wagner-Peyser Act.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 1999 through 2003.

"PART B—STATE PROVISIONS

"SEC. 121. STATE ADMINISTRATION.

''(a) ELIGIBLE AGENCY RESPONSIBILITIES.—

''(1) IN GENERAL.—The responsibilities of an eligible agency under this title shall include—

''(A) coordination of the development, submission, and implementation of the State plan, and the evaluation of the program, services, and activities assisted under this title, including preparation for nontraditional training and employment;

''(B) consultation with the Governor and appropriate agencies, groups, and individuals including parents, students, teachers, representatives of businesses, labor organizations, eligible recipients, State and local officials, and local program administrators, involved in the planning, administration, evaluation, and coordination of programs funded under this title;

''(C) convening and meeting as an eligible agency (consistent with State law and procedure for the conduct of such meetings) at such time as the eligible agency determines necessary to carry out the eligible agency's responsibilities under this title, but not less than 4 times annually; and

''(D) the adoption of such procedures as the eligible agency considers necessary to—

''(i) implement State level coordination with the activities undertaken by the State boards under section 111 of Public Law 105–220; and

''(ii) make available to the service delivery system under section 121 of Public Law 105–220 within the State a listing of all school dropout, postsecondary, and adult programs assisted under this title.

''(2) EXCEPTION.—Except with respect to the responsibilities set forth in paragraph (1), the eligible agency may delegate any of the other responsibilities of the eligible agency that involve the administration, operation, supervision of activities assisted under this title, in whole or in part, to 1 or more appropriate State agencies.

"SEC. 122. STATE PLAN.

''(a) STATE PLAN.—

''(1) IN GENERAL.—Each eligible agency desiring assistance under this title for any fiscal year shall prepare and submit to the Secretary a State plan for a 5-year period, together with such annual revisions as the eligible agency determines to be necessary.

''(2) REVISIONS.—Each eligible agency—

''(A) may submit such annual revisions of the State plan to the Secretary as the eligible agency determines to be necessary; and

''(B) shall, after the second year of the 5 year State plan, conduct a review of activities assisted under this title and submit any revisions of the State plan that the eligible agency determines necessary to the Secretary.

''(3) HEARING PROCESS.—The eligible agency shall conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public and interested organizations and groups (including employers, labor organizations, and parents), an opportunity to present their views and make recommendations regarding the State plan. A summary of such recommendations and the eligible agency's response to such recommendations shall be included in the State plan.

''(b) PLAN DEVELOPMENT.—

''(1) IN GENERAL.—The eligible agency shall develop the State plan in consultation with teachers, eligible recipients, parents, students, interested community members, representatives of special populations, representatives of business and industry, and representatives of labor organizations in the State, and shall consult the Governor of the State with respect to such development.

''(2) ACTIVITIES AND PROCEDURES.—The eligible agency shall develop effective activities and procedures, including access to information needed to use such procedures, to allow the individuals described in paragraph (1) to participate in State and local decisions that relate to development of the State plan.

''(c) PLAN CONTENTS.—The State plan shall include information that—

''(1) describes the vocational and technical education activities to be assisted that are designed to meet or exceed the State adjusted levels of performance, including a description of—

''(A) the secondary and postsecondary vocational and technical education programs to be carried out, including programs that will be carried out by the eligible agency to develop, improve, and expand access to quality, state-of-the-art technology in vocational and technical education programs;

''(B) the criteria that will be used by the eligible agency in approving applications by eligible recipients for funds under this title;

''(C) how such programs will prepare vocational and technical education students for opportunities in postsecondary education or entry

into high skill, high wage jobs in current and emerging occupations; and

''(D) how funds will be used to improve or develop new vocational and technical education courses;

''(2) describes how comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel will be provided;

''(3) describes how the eligible agency will actively involve parents, teachers, local businesses (including small- and medium-sized businesses), and labor organizations in the planning, development, implementation, and evaluation of such vocational and technical education programs;

''(4) describes how funds received by the eligible agency through the allotment made under section 111 will be allocated—

''(A) among secondary school vocational and technical education, or postsecondary and adult vocational and technical education, or both, including the rationale for such allocation; and

''(B) among any consortia that will be formed among secondary schools and eligible institutions, and how funds will be allocated among the members of the consortia, including the rationale for such allocation;

''(5) describes how the eligible agency will—

''(A) improve the academic and technical skills of students participating in vocational and technical education programs, including strengthening the academic, and vocational and technical, components of vocational and technical education programs through the integration of academics with vocational and technical education to ensure learning in the core academic, and vocational and technical, subjects, and provide students with strong experience in, and understanding of, all aspects of an industry; and

''(B) ensure that students who participate in such vocational and technical education programs are taught to the same challenging academic proficiencies as are taught to all other students;

''(6) describes how the eligible agency will annually evaluate the effectiveness of such vocational and technical education programs, and describe, to the extent practicable, how the eligible agency is coordinating such programs to ensure nonduplication with other existing Federal programs;

''(7) describes the eligible agency's program strategies for special populations;

''(8) describes how individuals who are members of the special populations—

''(A) will be provided with equal access to activities assisted under this title;

''(B) will not be discriminated against on the basis of their status as members of the special populations; and

''(C) will be provided with programs designed to enable the special populations to meet or exceed State adjusted levels of performance, and prepare special populations for further learning and for high skill, high wage careers;

''(9) describe what steps the eligible agency shall take to involve representatives of eligible recipients in the development of the State adjusted levels of performance;

''(10) provides assurances that the eligible agency will comply with the requirements of this title and the provisions of the State plan, including the provision of a financial audit of funds received under this title which may be included as part of an audit of other Federal or State programs;

''(11) provides assurances that none of the funds expended under this title will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity, the employees of the purchasing entity, or any affiliate of such an organization;

''(12) describes how the eligible agency will report data relating to students participating in vocational and technical education in order to adequately measure the progress of the students, including special populations;

''(13) describes how the eligible agency will adequately address the needs of students in alternative education programs, if appropriate;

''(14) describes how the eligible agency will provide local educational agencies, area vocational and technical education schools, and eligible institutions in the State with technical assistance;

''(15) describes how vocational and technical education relates to State and regional occupational opportunities;

''(16) describes the methods proposed for the joint planning and coordination of programs carried out under this title with other Federal education programs;

''(17) describes how funds will be used to promote preparation for nontraditional training and employment;

''(18) describes how funds will be used to serve individuals in State correctional institutions;

''(19) describes how funds will be used effectively to link secondary and postsecondary education;

''(20) describes how the eligible agency will ensure that the data reported to the eligible agency from local educational agencies and eligible institutions under this title and the data the eligible agency reports to the Secretary are complete, accurate, and reliable; and

''(21) contains the description and information specified in sections 112(b)(8) and 121(c) of Public Law 105–220 concerning the provision of services only for postsecondary students and school dropouts.

''(d) PLAN OPTION.—The eligible agency may fulfill the requirements of subsection (a) by submitting a plan under section 501 of Public Law 105–220.

''(e) PLAN APPROVAL.—

''(1) IN GENERAL.—The Secretary shall approve a State plan, or a revision to an approved State plan, unless the Secretary determines that—

''(A) the State plan, or revision, respectively, does not meet the requirements of this section; or

''(B) the State's levels of performance on the core indicators of performance consistent with section 113 are not sufficiently rigorous to meet the purpose of this Act.

''(2) DISAPPROVAL.—The Secretary shall not finally disapprove a State plan, except after giving the eligible agency notice and an opportunity for a hearing.

''(3) CONSULTATION.—The eligible agency shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult vocational and technical education, postsecondary vocational and technical education, tech-prep education, and secondary vocational and technical education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other 2-year postsecondary institutions primarily engaged in providing postsecondary vocational and technical education, and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, the State agency shall file such objections with the eligible agency. The eligible agency shall respond to any objections of the State agency in the State plan submitted to the Secretary.

''(4) TIMEFRAME.—A State plan shall be deemed approved by the Secretary if the Secretary has not responded to the eligible agency regarding the State plan within 90 days of the date the Secretary receives the State plan.

''(f) TRANSITION.—This section shall be subject to section 4 for fiscal year 1999 only, with respect to activities under this section.

''SEC. 123. IMPROVEMENT PLANS.

''(a) STATE PROGRAM IMPROVEMENT PLAN.—If a State fails to meet the State adjusted levels of performance described in the report submitted under section 113(c), the eligible agency shall develop and implement a program improvement plan in consultation with appropriate agencies, individuals, and organizations for the first program year succeeding the program year in which the eligible agency failed to meet the State adjusted levels of performance, in order to avoid a sanction under subsection (d).

''(b) LOCAL EVALUATION.—Each eligible agency shall evaluate annually, using the State adjusted levels of performance, the vocational and technical education activities of each eligible recipient receiving funds under this title.

''(c) LOCAL IMPROVEMENT PLAN.—

''(1) IN GENERAL.—If, after reviewing the evaluation, the eligible agency determines that an eligible recipient is not making substantial progress in achieving the State adjusted levels of performance, the eligible agency shall—

''(A) conduct an assessment of the educational needs that the eligible recipient shall address to overcome local performance deficiencies;

''(B) enter into an improvement plan based on the results of the assessment, which plan shall include instructional and other programmatic innovations of demonstrated effectiveness, and where necessary, strategies for appropriate staffing and staff development; and

''(C) conduct regular evaluations of the progress being made toward reaching the State adjusted levels of performance.

''(2) CONSULTATION.—The eligible agency shall conduct the activities described in paragraph (1) in consultation with teachers, parents, other school staff, appropriate agencies, and other appropriate individuals and organizations.

''(d) SANCTIONS.—

''(1) TECHNICAL ASSISTANCE.—If the Secretary determines that an eligible agency is not properly implementing the eligible agency's responsibilities under section 122, or is not making substantial progress in meeting the purpose of this Act, based on the State adjusted levels of performance, the Secretary shall work with the eligible agency to implement improvement activities consistent with the requirements of this Act.

''(2) FAILURE.—If an eligible agency fails to meet the State adjusted levels of performance, has not implemented an improvement plan as described in paragraph (1), has shown no improvement within 1 year after implementing an improvement plan as described in paragraph (1), or has failed to meet the State adjusted levels of performance for 2 or more consecutive years, the Secretary may, after notice and opportunity for a hearing, withhold from the eligible agency all, or a portion of, the eligible agency's allotment under this title. The Secretary may waive the sanction under this paragraph due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State.

''(3) FUNDS RESULTING FROM REDUCED ALLOTMENTS.—

''(A) IN GENERAL.—The Secretary shall use funds withheld under paragraph (2), for a State served by an eligible agency, to provide (through alternative arrangements) services and activities within the State to meet the purpose of this Act.

''(B) REDISTRIBUTION.—If the Secretary cannot satisfactorily use funds withheld under paragraph (2), then the amount of funds retained by the Secretary as a result of a reduction in an allotment made under paragraph (2) shall be redistributed to other eligible agencies in accordance with section 111.

''SEC. 124. STATE LEADERSHIP ACTIVITIES.

''(a) GENERAL AUTHORITY.—From amounts reserved under section 112(a)(2), each eligible agency shall conduct State leadership activities.

''(b) REQUIRED USES OF FUNDS.—The State leadership activities described in subsection (a) shall include—

''(1) an assessment of the vocational and technical education programs carried out with funds under this title that includes an assessment of how the needs of special populations are being met and how such programs are designed to enable special populations to meet State adjusted levels of performance and prepare the special populations for further learning or for high skill, high wage careers;

''(2) developing, improving, or expanding the use of technology in vocational and technical education that may include—

''(A) training of vocational and technical education personnel to use state-of-the-art technology, that may include distance learning;

''(B) providing vocational and technical education students with the academic, and vocational and technical, skills that lead to entry into the high technology and telecommunications field; or

''(C) encouraging schools to work with high technology industries to offer voluntary internships and mentoring programs;

''(3) professional development programs, including providing comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel, that—

''(A) will provide inservice and preservice training in state-of-the-art vocational and technical education programs and techniques, effective teaching skills based on research, and effective practices to improve parental and community involvement; and

''(B) will help teachers and personnel to assist students in meeting the State adjusted levels of performance established under section 113;

''(C) will support education programs for teachers of vocational and technical education in public schools and other public school personnel who are involved in the direct delivery of educational services to vocational and technical education students to ensure that such teachers stay current with the needs, expectations, and methods of industry; and

''(D) is integrated with the professional development activities that the State carries out under title II of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6001 et seq.) and title II of the Higher Education Act of 1965;

''(4) support for vocational and technical education programs that improve the academic, and vocational and technical, skills of students participating in vocational and technical education programs by strengthening the academic, and vocational and technical, components of such vocational and technical education programs through the integration of academics with vocational and technical education to ensure learning in the core academic, and vocational and technical, subjects;

''(5) providing preparation for nontraditional training and employment;

''(6) supporting partnerships among local educational agencies, institutions of higher education, adult education providers, and, as appropriate, other entities, such as employers, labor organizations, parents, and local partnerships, to enable students to achieve State academic standards, and vocational and technical skills;

''(7) serving individuals in State institutions, such as State correctional institutions and institutions that serve individuals with disabilities; and

''(8) support for programs for special populations that lead to high skill, high wage careers.

''(c) PERMISSIBLE USES OF FUNDS.—The leadership activities described in subsection (a) may include—

''(1) technical assistance for eligible recipients;

''(2) improvement of career guidance and academic counseling programs that assist students in making informed academic, and vocational and technical education, decisions;

''(3) establishment of agreements between secondary and postsecondary vocational and technical education programs in order to provide postsecondary education and training opportunities for students participating in such vocational and technical education programs, such as tech-prep programs;

''(4) support for cooperative education;

''(5) support for vocational and technical student organizations, especially with respect to efforts to increase the participation of students who are members of special populations;

''(6) support for public charter schools operating secondary vocational and technical education programs;

''(7) support for vocational and technical education programs that offer experience in, and understanding of, all aspects of an industry for which students are preparing to enter;

''(8) support for family and consumer sciences programs;

''(9) support for education and business partnerships;

''(10) support to improve or develop new vocational and technical education courses;

''(11) providing vocational and technical education programs for adults and school dropouts to complete their secondary school education; and

''(12) providing assistance to students, who have participated in services and activities under this title, in finding an appropriate job and continuing their education.

''(d) RESTRICTION ON USES OF FUNDS.—An eligible agency that receives funds under section 112(a)(2) may not use any of such funds for administrative costs.

''PART C—LOCAL PROVISIONS

''SEC. 131. DISTRIBUTION OF FUNDS TO SECONDARY SCHOOL PROGRAMS.

''(a) DISTRIBUTION FOR FISCAL YEAR 1999.—Except as provided in section 133 and as otherwise provided in this section, each eligible agency shall distribute the portion of the funds made available under section 112(a)(1) to carry out this section for fiscal year 1999 to local educational agencies within the State as follows:

''(1) SEVENTY PERCENT.—From 70 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 70 percent as the amount such local educational agency was allocated under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the preceding fiscal year bears to the total amount received under such section by all local educational agencies in the State for such preceding fiscal year.

''(2) TWENTY PERCENT.—From 20 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 20 percent as the number of students with disabilities who have individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)) served by such local educational agency for the preceding fiscal year bears to the total number of such students served by all local educational agencies in the State for such preceding fiscal year.

''(3) TEN PERCENT.—From 10 percent of such portion, each local educational agency shall be allocated an amount that bears the same relationship to such 10 percent as the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of such local educational agency for the preceding fiscal year bears to the number of students enrolled in schools and adults enrolled in training programs under the jurisdiction of all local educational agencies in the State for such preceding fiscal year.

''(b) SPECIAL DISTRIBUTION RULES FOR SUCCEEDING FISCAL YEARS.—Except as provided in section 133 and as otherwise provided in this section, each eligible agency shall distribute the portion of funds made available under section 112(a)(1) to carry out this section for fiscal year 2000 and succeeding fiscal years to local educational agencies within the State as follows:

''(1) 30 PERCENT.—30 percent shall be allocated to such local educational agencies in proportion to the number of individuals aged 15 through 19, inclusive, who reside in the school district served by such local educational agency for the preceding fiscal year compared to the total number of such individuals who reside in the school districts served by all local educational agencies in the State for such preceding fiscal year.

''(2) 70 PERCENT.—70 percent shall be allocated to such local educational agencies in proportion to the number of individuals aged 15 through 19, inclusive, who reside in the school district served by such local educational agency from families with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2))) applicable to a family of the size involved for the fiscal year for which the determination is made compared to the number of such individuals who reside in the school districts served by all the local educational agencies in the State for such preceding fiscal year.

''(c) WAIVER FOR MORE EQUITABLE DISTRIBUTION.—The Secretary may waive the application of subsection (b) in the case of any eligible agency that submits to the Secretary an application for such a waiver that—

''(1) demonstrates that a proposed alternative formula more effectively targets funds on the basis of poverty (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) to local educational agencies within the State than the formula described in subsection (b); and

''(2) includes a proposal for such an alternative formula.

''(d) MINIMUM ALLOCATION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a local educational agency shall not receive an allocation under subsection (a) unless the amount allocated to such agency under subsection (a) is greater than $15,000. A local educational agency may enter into a consortium with other local educational agencies for purposes of meeting the minimum allocation requirement of this paragraph.

''(2) WAIVER.—The eligible agency shall waive the application of paragraph (1) in any case in which the local educational agency—

''(A)(i) is located in a rural, sparsely populated area, or

''(ii) is a public charter school operating secondary vocational and technical education programs; and

''(B) demonstrates that the local educational agency is unable to enter into a consortium for purposes of providing activities under this part.

''(3) REDISTRIBUTION.—Any amounts that are not allocated by reason of paragraph (1) or paragraph (2) shall be redistributed to local educational agencies that meet the requirements of paragraph (1) or (2) in accordance with the provisions of this section.

''(e) LIMITED JURISDICTION AGENCIES.—

''(1) IN GENERAL.—In applying the provisions of subsection (a), no eligible agency receiving assistance under this title shall allocate funds to a local educational agency that serves only elementary schools, but shall distribute such funds to the local educational agency or regional educational agency that provides secondary school services to secondary school students in the same attendance area.

''(2) SPECIAL RULE.—The amount to be allocated under paragraph (1) to a local educational agency that has jurisdiction only over secondary schools shall be determined based on the number of students that entered such secondary schools in the previous year from the elementary schools involved.

''(f) ALLOCATIONS TO AREA VOCATIONAL AND TECHNICAL EDUCATION SCHOOLS AND EDUCATIONAL SERVICE AGENCIES.—

''(1) IN GENERAL.—Each eligible agency shall distribute the portion of funds made available under section 112(a)(1) for any fiscal year by such eligible agency for secondary school vocational and technical education activities under this section to the appropriate area vocational and technical education school or educational service agency in any case in which the area vocational and technical education school or educational service agency, and the local educational agency concerned—

''(A) have formed or will form a consortium for the purpose of receiving funds under this section; or

''(B) have entered into or will enter into a cooperative arrangement for such purpose.

''(2) ALLOCATION BASIS.—If an area vocational and technical education school or educational service agency meets the requirements of paragraph (1), then the amount that would otherwise be distributed to the local educational agency shall be allocated to the area vocational and technical education school, the educational service agency, and the local educational agency based on each school, agency or entity's relative share of students who are attending vocational and technical education programs (based, if practicable, on the average enrollment for the preceding 3 years;

''(3) APPEALS PROCEDURE.—The eligible agency shall establish an appeals procedure for resolution of any dispute arising between a local educational agency and an area vocational and technical education school or an educational service agency with respect to the allocation procedures described in this section, including the decision of a local educational agency to leave a consortium or terminate a cooperative arrangement.

''(g) CONSORTIUM REQUIREMENTS.—

''(1) ALLIANCE.—Any local educational agency receiving an allocation that is not sufficient to conduct a program which meets the requirements of section 135 is encouraged to—

''(A) form a consortium or enter into a cooperative agreement with an area vocational and technical education school or educational service agency offering programs that meet the requirements of section 135; and

''(B) transfer such allocation to the area vocational and technical education school or educational service agency; and

''(C) operate programs that are of sufficient size, scope, and quality to be effective.

''(2) FUNDS TO CONSORTIUM.—Funds allocated to a consortium formed to meet the requirements of this paragraph shall be used only for purposes and programs that are mutually beneficial to all members of the consortium and can be used only for programs authorized under this title. Such funds may not be reallocated to individual members of the consortium for purposes or programs benefiting only one member of the consortium.

''(h) DATA.—The Secretary shall collect information from eligible agencies regarding the specific dollar allocations made available by the eligible agency for vocational and technical education programs under subsections (a), (b), (c), and (d) and how these allocations are distributed to local educational agencies, area vocational and technical education schools, and educational service agencies, within the State in accordance with this section.

''(i) SPECIAL RULE.—Each eligible agency distributing funds under this section shall treat a secondary school funded by the Bureau of Indian Affairs within the State as if such school were a local educational agency within the State for the purpose of receiving a distribution under this section.

"SEC. 132. DISTRIBUTION OF FUNDS FOR POST-SECONDARY VOCATIONAL AND TECHNICAL EDUCATION PROGRAMS.

''(a) ALLOCATION.—

''(1) IN GENERAL.—Except as provided in subsections (b) and (c) and section 133, each eligible agency shall distribute the portion of the funds made available under section 112(a)(1) to carry out this section for any fiscal year to eligible institutions or consortia of eligible institutions within the State.

''(2) FORMULA.—Each eligible institution or consortium of eligible institutions shall be allocated an amount that bears the same relationship to the portion of funds made available under section 112(a)(1) to carry out this section for any fiscal year as the sum of the number of individuals who are Federal Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs meeting the requirements of section 135 offered by such institution or consortium in the preceding fiscal year bears to the sum of the number of such recipients enrolled in such programs within the State for such year.

''(3) CONSORTIUM REQUIREMENTS.—

''(A) IN GENERAL.—In order for a consortium of eligible institutions described in paragraph (2) to receive assistance pursuant to such paragraph, such consortium shall operate joint projects that—

''(i) provide services to all postsecondary institutions participating in the consortium; and

''(ii) are of sufficient size, scope, and quality to be effective.

''(B) FUNDS TO CONSORTIUM.—Funds allocated to a consortium formed to meet the requirements of this section shall be used only for purposes and programs that are mutually beneficial to all members of the consortium and shall be used only for programs authorized under this title. Such funds may not be reallocated to individual members of the consortium for purposes or programs benefiting only one member of the consortium.

''(4) WAIVER.—The eligible agency may waive the application of paragraph (3)(A)(i) in any case in which the eligible institution is located in a rural, sparsely populated area.

''(b) WAIVER FOR MORE EQUITABLE DISTRIBUTION.—The Secretary may waive the application of subsection (a) if an eligible agency submits to the Secretary an application for such a waiver that—

''(1) demonstrates that the formula described in subsection (a) does not result in a distribution of funds to the eligible institutions or consortia within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula will result in such a distribution; and

''(2) includes a proposal for such an alternative formula.

''(c) MINIMUM GRANT AMOUNT.—

''(1) IN GENERAL.—No institution or consortium shall receive an allocation under this section in an amount that is less than $50,000.

''(2) REDISTRIBUTION.—Any amounts that are not distributed by reason of paragraph (1) shall be redistributed to eligible institutions or consortia in accordance with this section.

"SEC. 133. SPECIAL RULES FOR VOCATIONAL AND TECHNICAL EDUCATION.

''(a) SPECIAL RULE FOR MINIMAL ALLOCATION.—

''(1) GENERAL AUTHORITY.—Notwithstanding the provisions of sections 131 and 132 and in order to make a more equitable distribution of funds for programs serving the areas of greatest economic need, for any program year for which a minimal amount is made available by an eligible agency for distribution under section 131 or 132, such State may distribute such minimal amount for such year—

''(A) on a competitive basis; or

''(B) through any alternative method determined by the State.

''(2) MINIMAL AMOUNT.—For purposes of this section, the term 'minimal amount' means not more than 15 percent of the total amount made available for distribution under section 112(a)(1).

''(b) REDISTRIBUTION.—

''(1) IN GENERAL.—In any academic year that an eligible recipient does not expend all of the amounts the eligible recipient is allocated for such year under section 131 or 132, such eligible recipient shall return any unexpended amounts to the eligible agency to be reallocated under section 131 or 132, as appropriate.

''(2) REDISTRIBUTION OF AMOUNTS RETURNED LATE IN AN ACADEMIC YEAR.—In any academic year in which amounts are returned to the eligible agency under section 131 or 132 and the eligible agency is unable to reallocate such amounts according to such sections in time for such amounts to be expended in such academic year, the eligible agency shall retain such amounts for distribution in combination with amounts provided under section 112(a)(1) for the following academic year.

''(c) CONSTRUCTION.—Nothing in section 131 or 132 shall be construed—

''(1) to prohibit a local educational agency or a consortium thereof that receives assistance under section 131, from working with an eligible institution or consortium thereof that receives assistance under section 132, to carry out secondary school vocational and technical education programs in accordance with this title;

''(2) to prohibit an eligible institution or consortium thereof that receives assistance under section 132, from working with a local educational agency or consortium thereof that receives assistance under section 131, to carry out postsecondary and adult vocational and technical education programs in accordance with this title; or

''(3) to require a charter school, that provides vocational and technical education programs and is considered a local educational agency under State law, to jointly establish the charter school's eligibility for assistance under this title unless the charter school is explicitly permitted to do so under the State's charter school statute.

''(d) CONSISTENT APPLICATION.—For purposes of this section, the eligible agency shall provide funds to charter schools offering vocational and technical education programs in the same manner as the eligible agency provides those funds to other schools. Such vocational and technical education programs within a charter school shall be of sufficient size, scope, and quality to be effective.

"SEC. 134. LOCAL PLAN FOR VOCATIONAL AND TECHNICAL EDUCATION PROGRAMS.

''(a) LOCAL PLAN REQUIRED.—Any eligible recipient desiring financial assistance under this part shall, in accordance with requirements established by the eligible agency (in consultation with such other educational entities as the eligible agency determines to be appropriate) submit a local plan to the eligible agency. Such local plan shall cover the same period of time as the period of time applicable to the State plan submitted under section 122.

''(b) CONTENTS.—The eligible agency shall determine requirements for local plans, except that each local plan shall—

''(1) describe how the vocational and technical education programs required under section 135(b) will be carried out with funds received under this title;

''(2) describe how the vocational and technical education activities will be carried out with respect to meeting State adjusted levels of performance established under section 113;

''(3) describe how the eligible recipient will—

''(A) improve the academic and technical skills of students participating in vocational and technical education programs by strengthening the academic, and vocational and technical, components of such programs through the integration of academics with vocational and technical education programs through a coherent sequence of courses to ensure learning in the core academic, and vocational and technical, subjects;

''(B) provide students with strong experience in and understanding of all aspects of an industry; and

''(C) ensure that students who participate in such vocational and technical education programs are taught to the same challenging academic proficiencies as are taught for all other students;

''(4) describe how parents, students, teachers, representatives of business and industry, labor organizations, representatives of special populations, and other interested individuals are involved in the development, implementation, and evaluation of vocational and technical education programs assisted under this title, and how such individuals and entities are effectively informed about, and assisted in understanding, the requirements of this title;

''(5) provide assurances that the eligible recipient will provide a vocational and technical education program that is of such size, scope, and quality to bring about improvement in the quality of vocational and technical education programs;

''(6) describe the process that will be used to independently evaluate and continuously improve the performance of the eligible recipient;

''(7) describe how the eligible recipient—

''(A) will review vocational and technical education programs, and identify and adopt strategies to overcome barriers that result in lowering rates of access to or lowering success in the programs, for special populations; and

''(B) will provide programs that are designed to enable the special populations to meet the State adjusted levels of performance;

''(8) describe how individuals who are members of the special populations will not be discriminated against on the basis of their status as members of the special populations;

''(9) describe how funds will be used to promote preparation for nontraditional training and employment; and

''(10) describe how comprehensive professional development (including initial teacher preparation) for vocational and technical, academic, guidance, and administrative personnel will be provided.

''SEC. 135. LOCAL USES OF FUNDS.

''(a) GENERAL AUTHORITY.—Each eligible recipient that receives funds under this part shall use such funds to improve vocational and technical education programs.

''(b) REQUIREMENTS FOR USES OF FUNDS.—Funds made available to eligible recipients under this part shall be used to support vocational and technical education programs that—

''(1) strengthen the academic, and vocational and technical, skills of students participating in vocational and technical education programs by strengthening the academic, and vocational and technical, components of such programs through the integration of academics with vocational and technical education programs through a coherent sequence of courses to ensure learning in the core academic, and vocational and technical, subjects;

''(2) provide students with strong experience in and understanding of all aspects of an industry;

''(3) develop, improve, or expand the use of technology in vocational and technical education, which may include—

''(A) training of vocational and technical education personnel to use state-of-the-art technology, which may include distance learning;

''(B) providing vocational and technical education students with the academic, and vocational and technical, skills that lead to entry into the high technology and telecommunications field; or

''(C) encouraging schools to work with high technology industries to offer voluntary internships and mentoring programs;

''(4) provide professional development programs to teachers, counselors, and administrators, including—

''(A) inservice and preservice training in state-of-the-art vocational and technical education programs and techniques, in effective teaching skills based on research, and in effective practices to improve parental and community involvement;

''(B) support of education programs for teachers of vocational and technical education in public schools and other public school personnel who are involved in the direct delivery of educational services to vocational and technical education students, to ensure that such teachers and personnel stay current with all aspects of an industry;

''(C) internship programs that provide business experience to teachers; and

''(D) programs designed to train teachers specifically in the use and application of technology;

''(5) develop and implement evaluations of the vocational and technical education programs carried out with funds under this title, including an assessment of how the needs of special populations are being met;

''(6) initiate, improve, expand, and modernize quality vocational and technical education programs;

''(7) provide services and activities that are of sufficient size, scope, and quality to be effective; and

''(8) link secondary vocational and technical education and postsecondary vocational and technical education, including implementing tech-prep programs.

''(c) PERMISSIVE.—Funds made available to an eligible recipient under this title may be used—

''(1) to involve parents, businesses, and labor organizations as appropriate, in the design, implementation, and evaluation of vocational and technical education programs authorized under this title, including establishing effective programs and procedures to enable informed and effective participation in such programs;

''(2) to provide career guidance and academic counseling for students participating in vocational and technical education programs;

''(3) to provide work-related experience, such as internships, cooperative education, school-based enterprises, entrepreneurship, and job shadowing that are related to vocational and technical education programs;

''(4) to provide programs for special populations;

''(5) for local education and business partnerships;

''(6) to assist vocational and technical student organizations;

''(7) for mentoring and support services;

''(8) for leasing, purchasing, upgrading or adapting equipment, including instructional aides;

''(9) for teacher preparation programs that assist individuals who are interested in becoming vocational and technical education instructors, including individuals with experience in business and industry;

''(10) for improving or developing new vocational and technical education courses;

''(11) to provide support for family and consumer sciences programs;

''(12) to provide vocational and technical education programs for adults and school dropouts to complete their secondary school education;

''(13) to provide assistance to students who have participated in services and activities under this title in finding an appropriate job and continuing their education;

''(14) to support nontraditional training and employment activities; and

''(15) to support other vocational and technical education activities that are consistent with the purpose of this Act.

''(d) ADMINISTRATIVE COSTS.—Each eligible recipient receiving funds under this part shall not use more than 5 percent of the funds for administrative costs associated with the administration of activities assisted under this section.

''TITLE II—TECH-PREP EDUCATION

''SEC. 201. SHORT TITLE.

''This title may be cited as the 'Tech-Prep Education Act'.

''SEC. 202. DEFINITIONS.

''(a) In this title:

''(1) ARTICULATION AGREEMENT.—The term 'articulation agreement' means a written commitment to a program designed to provide students with a non duplicative sequence of progressive achievement leading to degrees or certificates in a tech-prep education program.

''(2) COMMUNITY COLLEGE.—The term 'community college'—

''(A) means an institution of higher education, as defined in section 101 of the Higher Education Act of 1965, that provides not less than a 2-year program that is acceptable for full credit toward a bachelor's degree; and

''(B) includes tribally controlled colleges or universities.

''(3) TECH-PREP PROGRAM.—The term 'tech-prep program' means a program of study that—

''(A) combines at a minimum 2 years of secondary education (as determined under State law) with a minimum of 2 years of postsecondary education in a nonduplicative, sequential course of study;

''(B) integrates academic, and vocational and technical, instruction, and utilizes work-based and worksite learning where appropriate and available;

''(C) provides technical preparation in a career field such as engineering technology, applied science, a mechanical, industrial, or practical art or trade, agriculture, health occupations, business, or applied economics;

''(D) builds student competence in mathematics, science, reading, writing, communications, economics, and workplace skills through applied, contextual academics, and integrated instruction, in a coherent sequence of courses;

''(E) leads to an associate or a baccalaureate degree or a postsecondary certificate in a specific career field; and

''(F) leads to placement in appropriate employment or to further education.

''SEC. 203. STATE ALLOTMENT AND APPLICATION.

''(a) IN GENERAL.—For any fiscal year, the Secretary shall allot the amount made available under section 206 among the States in the same manner as funds are allotted to States under paragraph (2) of section 111(a).

''(b) PAYMENTS TO ELIGIBLE AGENCIES.—The Secretary shall make a payment in the amount of a State's allotment under subsection (a) to the eligible agency that serves the State and has an application approved under subsection (c).

''(c) STATE APPLICATION.—Each eligible agency desiring assistance under this title shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

''SEC. 204. TECH-PREP EDUCATION.

''(a) GRANT PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—From amounts made available to each eligible agency under section 203, the eligible agency, in accordance with the provisions of this title, shall award grants, on a competitive basis or on the basis of a formula determined by the eligible agency, for tech-prep education programs described in subsection (c). The grants shall be awarded to consortia between or among—

''(A) a local educational agency, an intermediate educational agency or area vocational and technical education school serving secondary school students, or a secondary school funded by the Bureau of Indian Affairs; and

''(B)(i) a nonprofit institution of higher education that offers—

''(I) a 2-year associate degree program, or a 2-year certificate program, and is qualified as institutions of higher education pursuant to section 102 of the Higher Education Act of 1965, including an institution receiving assistance under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and a tribally controlled postsecondary vocational and technical institution; or

''(II) a 2-year apprenticeship program that follows secondary instruction,

if such nonprofit institution of higher education is not prohibited from receiving assistance under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) pursuant to the provisions of section 435(a)(3) of such Act (20 U.S.C. 1083(a)); or

''(ii) a proprietary institution of higher education that offers a 2-year associate degree program and is qualified as an institution of higher education pursuant to section 102 of the Higher Education Act of 1965, if such proprietary institution of higher education is not subject to a default management plan required by the Secretary.

''(2) SPECIAL RULE.—In addition, a consortium described in paragraph (1) may include 1 or more—

''(A) institutions of higher education that award a baccalaureate degree; and

''(B) employer or labor organizations.

''(b) DURATION.—Each grant recipient shall use amounts provided under the grant to develop and operate a 4- or 6-year tech-prep education program described in subsection (c).

''(c) CONTENTS OF TECH-PREP PROGRAM.—Each tech-prep program shall—

''(1) be carried out under an articulation agreement between the participants in the consortium;

''(2) consist of at least 2 years of secondary school preceding graduation and 2 years or more of higher education, or an apprenticeship program of at least 2 years following secondary instruction, with a common core of required proficiency in mathematics, science, reading, writing, communications, and technologies designed to lead to an associate's degree or a postsecondary certificate in a specific career field;

''(3) include the development of tech-prep programs for both secondary and postsecondary, including consortium, participants in the consortium that—

''(A) meets academic standards developed by the State;

''(B) links secondary schools and 2-year postsecondary institutions, and if possible and practicable, 4-year institutions of higher education through nonduplicative sequences of courses in career fields, including the investigation of opportunities for tech-prep secondary students to enroll concurrently in secondary and postsecondary coursework;

''(C) uses, if appropriate and available, workbased or worksite learning in conjunction with business and all aspects of an industry; and

''(D) uses educational technology and distance learning, as appropriate, to involve all the consortium partners more fully in the development and operation of programs;

''(4) include in-service training for teachers that—

''(A) is designed to train vocational and technical teachers to effectively implement tech-prep programs;

''(B) provides for joint training for teachers in the tech-prep consortium;

''(C) is designed to ensure that teachers and administrators stay current with the needs, expectations, and methods of business and all aspects of an industry;

''(D) focuses on training postsecondary education faculty in the use of contextual and applied curricula and instruction; and

''(E) provides training in the use and application of technology;

''(5) include training programs for counselors designed to enable counselors to more effectively—

''(A) provide information to students regarding tech-prep education programs;

''(B) support student progress in completing tech-prep programs;

''(C) provide information on related employment opportunities;

''(D) ensure that such students are placed in appropriate employment; and

''(E) stay current with the needs, expectations, and methods of business and all aspects of an industry;

''(6) provide equal access, to the full range of technical preparation programs, to individuals who are members of special populations, including the development of tech-prep program services appropriate to the needs of special populations; and

''(7) provide for preparatory services that assist participants in tech-prep programs.

''(d) ADDITIONAL AUTHORIZED ACTIVITIES.—Each tech-prep program may—

''(1) provide for the acquisition of tech-prep program equipment;

''(2) acquire technical assistance from State or local entities that have designed, established, and operated tech-prep programs that have effectively used educational technology and distance learning in the delivery of curricula and services and in the articulation process; and

''(3) establish articulation agreements with institutions of higher education, labor organizations, or businesses located inside or outside the State and served by the consortium, especially with regard to using distance learning and educational technology to provide for the delivery of services and programs.

"SEC. 205. CONSORTIUM APPLICATIONS.

''(a) IN GENERAL.—Each consortium that desires to receive a grant under this title shall submit an application to the eligible agency at such time and in such manner as the eligible agency shall prescribe.

''(b) PLAN.—Each application submitted under this section shall contain a 5-year plan for the development and implementation of tech-prep programs under this title, which plan shall be reviewed after the second year of the plan.

''(c) APPROVAL.—The eligible agency shall approve applications based on the potential of the activities described in the application to create an effective tech-prep program.

''(d) SPECIAL CONSIDERATION.—The eligible agency, as appropriate, shall give special consideration to applications that—

''(1) provide for effective employment placement activities or the transfer of students to baccalaureate degree programs;

''(2) are developed in consultation with business, industry, institutions of higher education, and labor organizations;

''(3) address effectively the issues of school dropout prevention and reentry and the needs of special populations;

''(4) provide education and training in areas or skills in which there are significant workforce shortages, including the information technology industry; and

''(5) demonstrate how tech-prep programs will help students meet high academic and employability competencies.

''(e) EQUITABLE DISTRIBUTION OF ASSISTANCE.—In awarding grants under this title, the eligible agency shall ensure an equitable distribution of assistance between urban and rural consortium participants.

"SEC. 206. REPORT.

''Each eligible agency that receives a grant under this title annually shall prepare and submit to the Secretary a report on the effectiveness of the tech-prep programs assisted under this title, including a description of how grants were awarded within the State.

"SEC. 207. DEMONSTRATION PROGRAM.

''(a) DEMONSTRATION PROGRAM AUTHORIZED.—From funds appropriated under subsection (e) for a fiscal year, the Secretary shall award grants to consortia described in section 204(a) to enable the consortia to carry out tech-prep education programs.

''(b) PROGRAM CONTENTS.—Each tech-prep program referred to in subsection (a)—

''(1) shall—

''(A) involve the location of a secondary school on the site of a community college;

''(B) involve a business as a member of the consortium; and

''(C) require the voluntary participation of secondary school students in the tech-prep education program; and

''(2) may provide summer internships at a business for students or teachers.

''(c) APPLICATION.—Each consortium desiring a grant under this section shall submit an application to the Secretary at such time, in such manner and accompanied by such information as the Secretary may require.

''(d) APPLICABILITY.—The provisions of sections 203, 204, 205, and 206 shall not apply to this section, except that—

''(1) the provisions of section 204(a) shall apply for purposes of describing consortia eligible to receive assistance under this section;

''(2) each tech-prep education program assisted under this section shall meet the requirements of paragraphs (1), (2), (3)(A), (3)(B), (3)(C), (3)(D), (4), (5), (6), and (7) of section 204(c), except that such paragraph (3)(B) shall be applied by striking '', and if possible and practicable, 4-year institutions of higher education through nonduplicative sequences of courses in career fields''; and

''(3) in awarding grants under this section, the Secretary shall give special consideration to consortia submitting applications under subsection (c) that meet the requirements of paragraphs (1), (3), (4), and (5) of section 205(d), except that such paragraph (1) shall be applied by striking ''or the transfer of students to baccalaureate degree programs''.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $25,000,000 for fiscal year 1999 and each of the 4 succeeding fiscal years.

"SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to carry out this title (other than section 207) such sums as may be necessary for fiscal year 1999 and each of the 4 succeeding fiscal years.

"TITLE III—GENERAL PROVISIONS

"PART A—FEDERAL ADMINISTRATIVE PROVISIONS

"SEC. 311. FISCAL REQUIREMENTS.

''(a) SUPPLEMENT NOT SUPPLANT.—Funds made available under this Act for vocational and technical education activities shall supplement, and shall not supplant, non-Federal funds expended to carry out vocational and technical education activities and tech-prep activities.

''(b) MAINTENANCE OF EFFORT.—

''(1) DETERMINATION.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), no payments shall be made under this Act for any fiscal year to a State for vocational and technical education programs or tech-prep programs unless the Secretary determines that the fiscal effort per student or the aggregate expenditures of such State for vocational and technical education programs for the fiscal year preceding the fiscal year for which the determination is made, equaled or exceeded such effort or expenditures for vocational and technical education programs, for the second fiscal year preceding the fiscal year for which the determination is made.

''(B) COMPUTATION.—In computing the fiscal effort or aggregate expenditures pursuant to subparagraph (A), the Secretary shall exclude capital expenditures, special one-time project costs, and the cost of pilot programs.

''(C) DECREASE IN FEDERAL SUPPORT.—If the amount made available for vocational and technical education programs under this Act for a fiscal year is less than the amount made available for vocational and technical education programs under this Act for the preceding fiscal year, then the fiscal effort per student or the aggregate expenditures of a State required by subparagraph (B) for such preceding fiscal year shall be decreased by the same percentage as the percentage decrease in the amount so made available.

''(2) WAIVER.—The Secretary may waive the requirements of this section, with respect to not more than 5 percent of expenditures by any eligible agency for 1 fiscal year only, on making a

determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the eligible agency to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort or aggregate expenditures required under this section for years subsequent to the year covered by such waiver. The fiscal effort or aggregate expenditures for the subsequent years shall be computed on the basis of the level of funding that would, but for such waiver, have been required.

"SEC. 312. AUTHORITY TO MAKE PAYMENTS.

''Any authority to make payments or to enter into contracts under this Act shall be available only to such extent or in such amounts as are provided in advance in appropriation Acts.

"SEC. 313. CONSTRUCTION.

''Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of a private, religious, or home school, regardless of whether a home school is treated as a private school or home school under State law. This section shall not be construed to bar students attending private, religious, or home schools from participation in programs or services under this Act.

"SEC. 314. VOLUNTARY SELECTION AND PARTICIPATION.

''No funds made available under this Act shall be used—

''(1) to require any secondary school student to choose or pursue a specific career path or major; and

''(2) to mandate that any individual participate in a vocational and technical education program, including a vocational and technical education program that requires the attainment of a federally funded skill level, standard, or certificate of mastery.

"SEC. 315. LIMITATION FOR CERTAIN STUDENTS.

''No funds received under this Act may be used to provide vocational and technical education programs to students prior to the seventh grade, except that equipment and facilities purchased with funds under this Act may be used by such students.

"SEC. 316. FEDERAL LAWS GUARANTEEING CIVIL RIGHTS.

''Nothing in this Act shall be construed to be inconsistent with applicable Federal law prohibiting discrimination on the basis of race, color, sex, national origin, age, or disability in the provision of Federal programs or services.

"SEC. 317. AUTHORIZATION OF SECRETARY.

''For the purposes of increasing and expanding the use of technology in vocational and technical education instruction, including the training of vocational and technical education personnel as provided in this Act, the Secretary is authorized to receive and use funds collected by the Federal Government from fees for the use of property, rights-of-way, and easements under the control of Federal departments and agencies for the placement of telecommunications services that are dependent, in whole or in part, upon the utilization of general spectrum rights for the transmission or reception of such services.

"SEC. 318. PARTICIPATION OF PRIVATE SCHOOL PERSONNEL.

''An eligible agency or eligible recipient that uses funds under this Act for inservice and preservice vocational and technical education professional development programs for vocational and technical education teachers, administrators, and other personnel may, upon request, permit the participation in such programs of vocational and technical education teachers, administrators, and other personnel in nonprofit private schools offering vocational and technical education programs located in the geographical area served by such agency or recipient.

"PART B—STATE ADMINISTRATIVE PROVISIONS

"SEC. 321. JOINT FUNDING.

''(a) GENERAL AUTHORITY.—Funds made available to eligible agencies under this Act may be used to provide additional funds under an applicable program if—

''(1) such program otherwise meets the requirements of this Act and the requirements of the applicable program;

''(2) such program serves the same individuals that are served under this Act;

''(3) such program provides services in a coordinated manner with services provided under this Act; and

''(4) such funds are used to supplement, and not supplant, funds provided from non-Federal sources.

''(b) APPLICABLE PROGRAM.—For the purposes of this section, the term ''applicable program'' means any program under any of the following provisions of law:

''(1) Chapters 4 and 5 of subtitle B of title I of Public Law 105–220.

''(2) The Wagner-Peyser Act.

''(c) USE OF FUNDS AS MATCHING FUNDS.—For the purposes of this section, the term 'additional funds' does not include funds used as matching funds.

"SEC. 322. PROHIBITION ON USE OF FUNDS TO INDUCE OUT-OF-STATE RELOCATION OF BUSINESSES.

''No funds provided under this Act shall be used for the purpose of directly providing incentives or inducements to an employer to relocate a business enterprise from one State to another State if such relocation will result in a reduction in the number of jobs available in the State where the business enterprise is located before such incentives or inducements are offered.

"SEC. 323. STATE ADMINISTRATIVE COSTS.

''(a) GENERAL RULE.—Except as provided in subsection (b), for each fiscal year for which an eligible agency receives assistance under this Act, the eligible agency shall provide, from non-Federal sources for the costs the eligible agency incurs for the administration of programs under this Act an amount that is not less than the amount provided by the eligible agency from non-Federal sources for such costs for the preceding fiscal year.

''(b) EXCEPTION.—If the amount made available for administration of programs under this Act for a fiscal year is less than the amount made available for administration of programs under this Act for the preceding fiscal year, the amount the eligible agency is required to provide from non-Federal sources for costs the eligible agency incurs for administration of programs under this Act shall be the same percentage as the amount made available for administration of programs under this Act.

"SEC. 324. LIMITATION ON FEDERAL REGULATIONS.

''The Secretary may issue regulations under this Act only to the extent necessary to administer and ensure compliance with the specific requirements of this Act.

"SEC. 325. STUDENT ASSISTANCE AND OTHER FEDERAL PROGRAMS.

''(a) ATTENDANCE COSTS NOT TREATED AS INCOME OR RESOURCES.—The portion of any student financial assistance received under this Act that is made available for attendance costs described in subsection (b) shall not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

''(b) ATTENDANCE COSTS.—The attendance costs described in this subsection are—

''(1) tuition and fees normally assessed a student carrying an academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in that course of study; and

''(2) an allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

''(c) COSTS OF VOCATIONAL AND TECHNICAL EDUCATION SERVICES.—Funds made available under this Act may be used to pay for the costs of vocational and technical education services required in an individualized education plan developed pursuant to section 614(d) of the Individuals with Disabilities Education Act and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to vocational and technical education.''.

SEC. 2. PROMOTING SCHOLAR-ATHLETE COMPETITIONS.

Section 10104 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8004) is amended—

(1) in subsection (a), by striking ''to be held in 1995'' and inserting ''to be held in 1999''; and

(2) in subsection (b)—

(A) in paragraph (4), by striking ''in the summer of 1995'' and inserting ''in the summer of 1999'';

(B) in paragraph (5), by striking ''in 1996 and thereafter, as well as replicate such program''; and

(C) in paragraph (6), by striking ''1995'' and inserting ''1999''.

SEC. 3. REFERENCES TO CARL D. PERKINS VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION ACT.

(a) IMMIGRATION AND NATIONALITY ACT.—Section 245A(h)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1255a(h)(4)(C)) is amended by striking ''Vocational Education Act of 1963'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998''.

(b) NATIONAL DEFENSE AUTHORIZATION ACT.—Section 4461 of the National Defense Authorization Act for Fiscal Year 1993 (10 U.S.C. 1143 note) is amended—

(1) by striking paragraph (4); and

(2) by redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(1) in section 1114(b)(2)(C)(v) (20 U.S.C. 6314(b)(2)(C)(v)), by striking ''Carl D. Perkins Vocational and Applied Technical Education Act,'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998'';

(2) in section 9115(b)(5) (20 U.S.C. 7815(b)(5)), by striking ''Carl D. Perkins Vocational and Technical Education Act'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998'';

(3) in section 14302(a)(2) (20 U.S.C. 8852(a)(2))—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (C), (D), and (E), respectively; and

(4) in the matter preceding subparagraph (A) of section 14307(a)(1) (20 U.S.C. 8857(a)(1)), by striking ''Carl D. Perkins Vocational and Applied Technology Technical Education Act'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998''.

(d) EQUITY IN EDUCATIONAL LAND-GRANT STATUS ACT OF 1994.—Section 533(c)(4)(A) of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note) is amended by striking ''(20 U.S.C. 2397h(3)'' and inserting '', as such section was in effect on the day preceding the date of enactment of the Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998''.

(e) IMPROVING AMERICA'S SCHOOLS ACT OF 1994.—Section 563 of the Improving America's Schools Act of 1994 (20 U.S.C. 6301 note) is amended by striking ''the date of enactment of an Act reauthorizing the Carl D. Perkins Vocational and Technical Education Act (20 U.S.C. 2301 et seq.)'' and inserting ''July 1, 1999''.

(f) WORKFORCE INVESTMENT ACT OF 1998.—Section 101(3) of the Workforce Investment Act of 1998 (29 U.S.C. 2801(3)) is amended by striking ''section 521 of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471)'' and inserting ''section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998''.

(g) APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965.—Section 214(c) of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 214(c)) is amended by striking ''Carl D. Perkins Vocational Education Act'' and inserting ''Carl D. Perkins Vocational and Technical Education Act of 1998''.

(h) VOCATIONAL EDUCATION AMENDMENTS OF 1968.—Section 104 of the Vocational Education Amendments of 1968 (82 Stat. 1091) is amended by striking ''section 3 of the Carl D. Perkins Vocational Education Act'' and inserting ''the Carl D. Perkins Vocational and Technical Education Act of 1998''.

(i) OLDER AMERICANS ACT OF 1965.—The Older Americans Act of 1965 (42 U.S.C. 3001 et seq.) is amended—

(1) in section 502(b)(1)(N)(i) (42 U.S.C. 3056(b)(1)(N)(i)), by striking ''or the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)''; and

(2) in section 505(d)(2) (42 U.S.C. 3056c(d)(2))—

(A) by striking ''employment and training programs'' and inserting ''workforce investment activities''; and

(B) by striking ''the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 et seq.)'' and inserting ''the Carl D. Perkins Vocational and Technical Education Act of 1998''.

SEC. 4. ADULT EDUCATION AND FAMILY LITERACY.

The Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.) is amended—

(1) in section 224, by adding at the end the following:

''(g) TRANSITION.—The provisions of this section shall be subject to section 506(b).''; and

(2) by amending paragraph (2) of section 506(b) to read as follows:

''(2) LIMITATION.—The authority to take actions under paragraph (1) shall apply until July 1, 2000.''.

SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.

(a) WORKFORCE INVESTMENT ACT OF 1998.—Section 121 of the Workforce Investment Act of 1998 (29 U.S.C. 2841) is amended—

(1) in subsection (b)(1)(B)(iv), by inserting before the semicolon the following: ''(other than part C of title I of such Act and subject to subsection (f))''; and

(2) by adding at the end the following:

''(f) APPLICATION TO CERTAIN VOCATIONAL REHABILITATION PROGRAMS.—

''(1) LIMITATION.—Nothing in this section shall be construed to apply to part C of title I of the Rehabilitation Act of 1973 (29 U.S.C. 741).

''(2) CLIENT ASSISTANCE.—Nothing in this Act shall be construed to require that any entity carrying out a client assistance program authorized under section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732)—

''(A) violate the requirement of section 112(c)(1)(A) of that Act that the entity be independent of any agency which provides treatment, services, or rehabilitation to individuals under that Act; or

''(B) carry out any activity not authorized under section 112 of that Act (including appropriate Federal regulations).''.

(b) WAGNER-PEYSER ACT.—

(1) IN GENERAL.—Section 15 of the Wagner-Peyser Act (as added by section 309 of the Workforce Investment Act of 1998) is amended—

(A) in subsection (a)(2)(A)(i), by striking ''under'' and all that follows through ''for which'' and inserting ''under the provisions of this section for any purpose other than the statistical purposes for which''; and

(B) in subsection (e)(2)(G), by striking ''complementary'' and inserting ''complementarity''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) take effect July 2, 1999.

(c) REHABILITATION ACT OF 1973.—Section 725(c)(7) of the Rehabilitation Act of 1973 (as amended by section 410 of the Workforce Investment Act of 1998) is amended by striking ''management,'' and all that follows and inserting ''management;''.

SEC. 6. REPEALS AND EXTENSIONS OF PREVIOUS HIGHER EDUCATION AMENDMENTS PROVISIONS.

(a) HIGHER EDUCATION AMENDMENTS OF 1986.—Title XIII of the Higher Education Amendments of 1986 (Public Law 99–498) is repealed.

(b) HIGHER EDUCATION AMENDMENTS OF 1992.—The following provisions of the Higher Education Amendments of 1992 (Public Law 102–325) are repealed:

(1) Parts E, F, and G of title XIII.

(2) Title XIV.

(3) Parts A, B, C, and D of title XV.

And the Senate agree to the same.

BILL GOODLING,
HOWARD ''BUCK'' MCKEON,
FRANK RIGGS,
JOHN E. PETERSON,
SAM JOHNSON,
BILL CLAY,
MATTHEW G. MARTINEZ,
DALE E. KILDEE,
Managers on the Part of the House.

JIM JEFFORDS,
DAN COATS,
JUDD GREGG,
BILL FRIST,
MIKE DEWINE,
MICHAEL B. ENZI,
TIM HUTCHINSON,
SUSAN COLLINS,
MITCH MCCONNELL,
TED KENNEDY,
CHRIS DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
PAUL WELLSTONE,
JACK REED,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1853) to amend the Carl D. Perkins Vocational and Applied Technology Education Act, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

TITLE I—VOCATIONAL AND TECHNICAL EDUCATION ASSISTANCE TO THE STATES

The Conference agreement improves vocational and technical education by strengthening academics, broadening vocational opportunities for students, sending more money to the local level, and increasing flexibility for State and local program needs.

FORMULA PROVISIONS

The Conference agreement authorizes such sums for Fiscal Years 1999–2003.

Federal to State formula

The House bill changes the formula provisions in the Act. The Federal to State formula allots basic State grant funds to States based upon two populations. Fifty percent would be sent based upon the population aged 15–19 in each State, and 50 percent based upon the population aged 20–24 in the State. This distribution would be subject to each State receiving a minimum amount of one half of one percent of the total grant amounts (small state minimum). State allotments would be adjusted by the per capita income of the State, with the maximum adjustment ratio being 0.55 and the minimum being 0.4.

The Senate bill follows current law.

The Conference agreement follows the Senate bill.

Outlying areas

Both bills provide for grants of $500,000 made to Guam, and $190,000 each to American Samoa, and the Commonwealth of the Northern Marianna Islands from reserved funds. In addition, both bills require the Freely Associated States (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) to compete for their allotment with Guam and American Samoa.

The House bill terminates funding for the Freely Associated States (the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau) on September 30, 2001.

The Senate bill terminates funding for the Freely Associated States (the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau) on September 30, 2004.

The Conference agreement follows the House bill.

Within State formula

The House bill requires States to send 90 percent of their basic State grant to the local level for secondary, postsecondary, and adult vocational education activities. Of this 90 percent, a State may reserve up to ten percent for rural (five percent) and urban (five percent) areas in the State. A State is required to reserve eight percent of the basic State grant for State leadership activities and two percent for administrative activities.

The Senate bill maintains several key set-asides found in current law. The Senate bill allocates 75 percent of the State grant for secondary, postsecondary, and adult vocational and technical education activities. The bill allows States to reserve 14 percent of their allotment for State leadership activities, ten percent for administration, and one percent for programming for criminal offenders.

The Conference agreement allocates 85 percent of the State grant for secondary, postsecondary, and adult vocational and technical education programs at the local level. Of this allocation, ten percent may be made available to award grants to rural areas; areas with high percentages of vocational and technical education students; areas with high numbers of vocational and technical education students; and communities negatively impacted as a result of changes in the new within State formula. In adopting this change, the Conferees recognize the inequities inherent in any formula toward rural areas and provide through this reserve a mechanism for States to compensate for these inequities. In addition to rural areas, the Conferees realize that the formula may not adequately reflect those schools or local areas that have a high percentage or population of students in vocational technical education programs.

The agreement also authorizes the State eligible agency to reserve an amount equal to ten percent of the total allotment for State leadership activities. Included in the funds reserved for State Leadership activities, up to one percent of the total allotment shall be used to serve criminal offenders, and not less than $60,000 but no more than $150,000 shall be used for services targeting

preparation for nontraditional training and employment. The Conference agreement authorizes the State eligible agency to reserve up to five percent of the total allotment, or $250,000 (whichever is greater), for State administrative activities. This may be used for the costs of developing a State plan, reviewing a local plan, monitoring and evaluating the effectiveness of a program, assuring the compliance with all of the applicable federal laws, or providing technical assistance. Each State that receives this financial assistance shall match the reserve funds on a dollar-for-dollar basis.

NATIONAL ACTIVITIES

Both bills require the Secretary to develop and implement a plan for evaluation and dissemination of vocational and technical education programs. Both bills include provisions with regard to what is to be included in the evaluation and assessment plans. In addition, both bills allow the Secretary to award grants to establish national research centers. Demonstration and dissemination activities are also included. Both bills also require information collection on vocational and technical education programs. Adequate information on access to vocational and technical education by secondary students with disabilities is maintained in the data system.

The House bill extends the authorization of the National Occupational Information Coordinating Committee.

The Senate bill had no comparable provision.

The Conference agreement includes authority for the Secretary of Education to designate an entity at the national level to carry out certain functions related to occupational and employment information for vocational and technical education programs. The agreements also gives authority to the Secretary to award grants to designated State entities, which may include State Occupational Information Coordinating Committees established prior to enactment of this Act, to carry out State activities related to such information. The agreement prohibits any duplication of activities authorized under section 15 of the Wagner-Peyser Act. The Conferees expect the Secretary of Education, in carrying out this section, to consult with the Bureau of Labor Statistics and the Employment and Training Administration in order to avoid any duplication of activities.

INDIAN AND NATIVE HAWAIIAN PROGRAM AND TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL AND TECHNICAL INSTITUTIONS

Section 103 of the House bill authorizes grants to Indian tribes, tribal organizations, and Alaska Native entities for the purposes of carrying out vocational and technical education, but bars Bureau Funded secondary schools from receiving assistance under this Section. The Secretary is also directed to enter into contracts with organizations primarily serving Native Hawaiian programs. In addition, section 104 of the House bill also authorizes the Secretary to make grants to tribally controlled postsecondary vocational and technical institutions.

Section 114 of the Senate bill authorizes the Secretary to enter into grants or contracts to Indian tribes, tribal organizations, Bureau funded schools, and organizations primarily serving native Hawaiians for the purposes of carrying out vocational and technical education programs. Any organization that receives a grant or enters into a contract would be required to establish adjusted levels of performance to be achieved by students served and evaluate the quality and effectiveness of the program. In addition, the Section 115 of the Senate bill also authorizes the Secretary to make grants to tribally controlled postsecondary vocational and technical institutions.

The Conference agreement follows the Senate bill with regard to the issuance of grants or contracts to Indian tribes, tribal organizations, but adds Alaska Native entities as eligible to receive a grant or enter into a contract. The agreement follows the House bill with regard to the majority of the provisions relating to tribally controlled postsecondary vocational and technical education institutions, including the maintenance of a separate authorization of appropriations for these activities. In addition, the agreement follows the Senate bill on the requirement to conduct needs estimates and reports on facility quality. The Conference agreement closely follows current law on these provisions.

STATE ORGANIZATIONAL AND PLANNING RESPONSIBILITIES

State plan

The House bill requires a State plan to be for a minimum of five years. The plan would describe the vocational and technical education programs that would be carried out with funds received by the State. In addition, the plan would describe how funds received by the State would be allocated; describe how the State would improve the academic and technical skills of vocational technical education students; ensure that participating students are taught to the same academic proficiencies as are provided all other students; and describe how the State would evaluate the effectiveness of the programs annually.

The Senate bill requires a State plan to be for a minimum of three years. The plan would describe the vocational education activities designed to meet the State adjusted levels of performance. It would also describe how funds would be allocated. The plan would describe how funds would be used to expand and improve technology in instruction; to serve individuals in correctional institutions; and to link secondary and postsecondary education.

The Conference agreement follows the House bill with a few modifications. The State plan is to include information that describes the vocational education activities to be assisted that are designed to meet the State adjusted levels of performance. The plan is to be reviewed prior to the third program year. In addition, the plan describes the eligible agency's program strategies for special populations.

State leadership

Required use of funds

The House bill requires State leadership funds to be used for activities targeting the use of technology, professional development, and support for programs that improve the academic and technical skills of participating vocational technical education students.

The Senate bill requires State leadership funds be used for monitoring and evaluating the quality and improvement of vocational and technical education activities and for improving and expanding technology. In addition, the bill requires that funds be used to provide comprehensive professional development. The bill also requires that funds be used to: provide preparation for nontraditional training and employment; support tech-prep education activities; support partnerships among LEAs, institutions of higher education, adult education providers, and other entities; and to serve individuals in State institutions.

The Conference agreement merges the provisions of the two bills. The agreement also includes support for programs for special populations, and describes how funds will be used to serve individuals in correctional institutions.

Permissive use of funds

The House bill allows State leadership funds to be used for technical support of eligible recipients and to establish agreements between secondary and postsecondary programs. It also allows funds to be used for: support for programs for special populations; cooperative education; vocational student organizations; support for public charter schools operating secondary vocational and technical education programs; and programs that offer experience in all aspects of an industry for which students would be preparing to enter. In addition funds may be used for: family and consumer sciences programs; corrections education; education and business partnerships; and to improve or develop new vocational and technical education courses.

The Senate bill permits funds to be used for an array of activities, including support for vocational student organizations, and to provide programs for adults and school dropouts. It also allows funds to be used to provide assistance to participating students in finding a job and continuing their education.

The Conference agreement merges the provisions of the two bills.

Substate formula at the secondary level

The House bill phases in a new secondary substate formula over five years. Year one would operate under current law, and subsequent years would transition to a formula based 60 percent on poverty of individuals aged 15–19, and 40 percent on the population of individuals aged 15–19. The minimum grant would be $10,000. The House bill also includes a waiver ability for States that develop an alternative formula that more effectively targets funds on the basis of poverty to Local Educational Agencies (LEAs).

The Senate bill follows current law on the distribution of funds, but raises the minimum grant to $25,000.

The Conference agreement changes the secondary substate formula over two years. In the first year of the reauthorization, funds for secondary activities would be distributed under current law. Beginning in year two, seventy percent of the funds would be distributed based upon each LEA's share of the individuals aged 15–19 from economically disadvantaged families, and 30 percent distributed based upon the LEA's share of population aged 15–19. The agreement follows the House bill with regard to the waiver authority, and maintains current law with regard to the minimum grant of $15,000.

Substate funding at the postsecondary level

The House bill follows current law on the postsecondary substate formula, which is based upon an institution's share of Pell Grant recipients. It sets the minimum grant at $35,000. The bill also allows the Secretary to waive requirements to permit alternative formulas.

The Senate bill follows current law for the postsecondary substate formula, but sets the minimum grant at $65,000.

The Conference agreement follows current law with regard to the formula, the minimum grant of $50,000, and waiver authority.

ACCOUNTABILITY

The House bill requires the State to develop performance measures to measure the progress of the State. If the State has not demonstrated improvement in meeting its performance measures for 2 or more consecutive years, the Secretary may withhold all, or a portion of, the allotment. In addition, each eligible agency that receives an allotment must annually prepare and submit a report to the Secretary on the State's performance. This report is to include, in addition to other things, a description of the progress of special populations.

The Senate bill requires the Secretary to publish performance measures to assess the

progress of each eligible agency. Each eligible agency is to negotiate with the Secretary the adjusted levels of performance. Each eligible agency is to annually evaluate the vocational and technical education and tech-prep activities to determine the progress. If an organization is not making substantial progress, it is to conduct an assessment, enter into an improvement plan based on the assessment, and conduct regular evaluations of the progress being made. If the organization continues to not demonstrate improvement, the Secretary may withhold all, or a portion of, the allotment. The eligible agency that receives the allotment is to report annually on the progress made, including a description of the progress of special populations.

The Conference agreement requires the State performance measures to be established solely by the State, and are to include core indicators of performance. The State adjusted levels of performance shall be agreed upon by the State adjusted levels of performance shall be agreed upon by the State eligible agency (with input from local eligible recipients) and the Secretary for the first two program years covered by the State plan. Prior to the third program year, the Secretary and eligible agency shall reach agreement on the core indicators of performance for the third, fourth and fifth program years. Each eligible agency that receives this allotment shall prepare and submit an annual report to the Secretary describing the agency's progress.

LOCAL PROVISIONS

LOCAL USES OF FUNDS

Required use of funds

The House bill requires funds to be used for strengthening the academic and technical skills of participating students by strengthening the program components through the integration of academics with vocational and technical education; developing, improving, or expanding the use of technical in vocational and technical education; and providing professional development programs.

The Senate bill requires funds to be used to integrate academic education with vocational and technical education for particapting student; to improve or expand the use of technology in vocational and technical education, including professional development; to provide professional development activities to teachers, counselors, and administrators; to develop and implement performance management systems and evaluations; to initiate and improve quality programs; to link secondary and postsecondary education, including tech-prep programs; to develop implement programs that provide access to quality programs for participating students, including special populations; to promote preparation for nontraditional training and employment.

The Conference agreement follows the majority of the provisions in the House bill. The agreement also requires funds to be used for programs designed to train teachers specifically in the use of technology; to provide services and activities that are of sufficient size, scope, and quality to be effective; and to link, secondary and postsecondary vocational and technical education, including implementing tech-prep programs.

Permissive use of funds

The House bill permits funds to be used for establishing agreements between secondary and postsecondary vocational and technical education programs; involving parents, businesses, and employee representatives in the design and implementation of programs; providing career counseling; providing work related experience; programs for special populations; local education and business partnerships; vocational and technical student organizations; mentoring and support services; equipment used on the programs; establishing programs and procedures that allow students and their parents to participate directly in decisions that influence the programs; teacher preparation programs; improving or developing new vocational and technical education programs; and support for family and consumer sciences programs.

The Senate bill allows funds to be used for providing guidance and counseling to participating students; supporting vocational and technical student organizations; student internships; providing vocational and technical education programs for adults and school dropouts; acquiring and adapting equipment; providing assistance to students in finding an appropriate job and continuing their education; and supporting other vocational and technical education activities.

The Conference agreement merges the two bills.

TITLE II—TECH-PREP PROGRAMS

The House bill permits the eligible agency to award grants to consortia on a competitive basis or on the basis of formula, in order to develop and operate a four to six year tech-prep education program. The tech-prep program is to be carried out with agreement among the participants in the consortium; consist of at least two years secondary school and two years higher education or a two year apprenticeship program; include the development of tech-prep education program components appropriate to the participants; include in-service training for teachers and training programs for counselors; provide equal access to tech-prep programs; and provide for preparatory services that assist participants.

The Senate bill permits the eligible agency to award grants to consortia for the development and operation of programs designed to provide tech-prep education. The tech-prep program is to be carried out with agreement among the participants; consist of at least two years of secondary school, two years of higher education or a two year apprenticeship program; include the development of tech-prep education programs for participants; meet State academic standards; link secondary schools and two-year postsecondary institutions; use work-based or worksite learning along with business and industry; use educational technology and distance learning; include a professional development program for teachers and training programs for counselors; provide equal access to tech-prep programs; and provide preparatory programs to assist special populations.

Both bills include provisions regarding the application process. The Conference agreement provides for grants to be awarded. These grants are to be awarded on a competitive basis or on the basis of formula. The agreement merges the House and the Senate bill with regard to the contents of the program. In addition, the agreement authorizes additional activities, including the acquisition of tech-prep education equipment, acquisition of technical assistance from State or local entities, the establishment of articulation agreements. The agreement also follows the House bill on the allotment provisions, but the Senate bill on appropriations and demonstration programs.

TITLE III—GENERAL PROVISIONS

Both bills clarify that the funds received under this Act shall be used to supplement, not supplant, the amount of funds that would be made available from non-Federal sources for vocational and technical education. Both bills also mandate that nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of a private, religious, or home school.

The House bill includes provisions clarifying that: none of the funds under this Act shall be used for students prior to the seventh grade; and that none of the funds under the Act shall be used to require any secondary school student to choose or pursue a specific career path or major or to mandate participation in a vocational and technical education program or attain a federally funded skill level, standard, or certificate of mastery. the bill further includes provisions clarifying that: nothing in the Act shall be construed to be inconsistent with Federal laws guaranteeing civil rights; permits the participation of personnel in non-profit private schools; allows the State to use additional funds under applicable programs; and prohibits funds to be used for the sole purpose of providing incentives to relocate a business from one State to another.

The Conference agreement generally follows the House bill, but merges provisions from both bills.

DEFINITIONS

SPECIAL POPULATIONS

The House bill includes individuals with disabilities, economically disadvantaged individuals, individuals with limited English proficiency, and individuals participating in nontraditional training and employment when describing special populations.

The Senate bill includes low-income individuals including foster children, individuals with disabilities, single parents and displaced homemakers, and individuals with other barriers to educational achievement including individuals with limited English proficiency when describing special populations.

The Conference agreement defines special populations as individuals with disabilities; individuals from economically disadvantaged families, including foster children; individuals preparing for non-traditional training and employment; single parents, including single pregnant women; displaced homemakers; and individuals with other barriers to educational achievement, including individuals with limited English proficiency.

BILL GOODLING,
HOWARD ''BUCK'' MCKEON,
FRANK RIGGS,
JOHN E. PETERSON,
SAM JOHNSON,
BILL CLAY,
MATTHEW G. MARTINEZ,
DALE E. KILDEE,
Managers on the Part of the House.

JIM JEFFORDS,
DAN COATS,
JUDD GREGG,
BILL FRIST,
MIKE DEWINE,
MICHAEL B. ENZI,
TIM HUTCHINSON,
SUSAN COLLINS,
MITCH MCCONNELL,
TED KENNEDY,
CHRIS DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
PAUL WELLSTONE,
JACK REED,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 2281, DIGITAL MILLENNIUM COPYRIGHT ACT

Mr. COBLE submitted the following conference report and statement on the bill (H.R. 2281) to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes:

CONFERENCE REPORT (H. REPT. 105–796)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2281), to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Digital Millennium Copyright Act''.

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—WIPO TREATIES IMPLEMENTATION

Sec. 101. Short title.
Sec. 102. Technical amendments.
Sec. 103. Copyright protection systems and copyright management information.
Sec. 104. Evaluation of impact of copyright law and amendments on electronic commerce and technological development.
Sec. 105. Effective date.

TITLE II—ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

Sec. 201. Short title.
Sec. 202. Limitations on liability for copyright infringement.
Sec. 203. Effective date.

TITLE III COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

Sec. 301. Short title.
Sec. 302. Limitations on exclusive rights; computer programs.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Provisions Relating to the Commissioner of Patents and Trademarks and the Register of Copyrights.
Sec. 402. Ephemeral recordings.
Sec. 403. Limitations on exclusive rights; distance education.
Sec. 404. Exemption for libraries and archives.
Sec. 405. Scope of exclusive rights in sound recordings; ephemeral recordings.
Sec. 406. Assumption of contractual obligations related to transfers of rights in motion pictures.
Sec. 407. Effective date.

TITLE V—PROTECTION OF CERTAIN ORIGINAL DESIGNS

Sec. 501. Short title.
Sec. 502. Protection of certain original designs.
Sec. 503. Conforming amendments.
Sec. 504. Joint study of the effect of this title.
Sec. 505. Effective date.

TITLE I—WIPO TREATIES IMPLEMENTATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998''.

SEC. 102. TECHNICAL AMENDMENTS.

(a) DEFINITIONS.—Section 101 of title 17, United States Code, is amended—

(1) by striking the definition of ''Berne Convention work'';

(2) in the definition of ''The 'country of origin' of a Berne Convention work''—

(A) by striking ''The 'country of origin' of a Berne Convention work, for purposes of section 411, is the United States if'' and inserting ''For purposes of section 411, a work is a 'United States work' only if'';

(B) in paragraph (1)—

(i) in subparagraph (B) by striking ''nation or nations adhering to the Berne Convention'' and inserting ''treaty party or parties'';

(ii) in subparagraph (C) by striking ''does not adhere to the Berne Convention'' and inserting ''is not a treaty party''; and

(iii) in subparagraph (D) by striking ''does not adhere to the Berne Convention'' and inserting ''is not a treaty party''; and

(C) in the matter following paragraph (3) by striking ''For the purposes of section 411, the 'country of origin' of any other Berne Convention work is not the United States.'';

(3) by inserting after the definition of ''fixed'' the following:

''The 'Geneva Phonograms Convention' is the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded at Geneva, Switzerland, on October 29, 1971.'';

(4) by inserting after the definition of ''including'' the following:

''An 'international agreement' is—

''(1) the Universal Copyright Convention;

''(2) the Geneva Phonograms Convention;

''(3) the Berne Convention;

''(4) the WTO Agreement;

''(5) the WIPO Copyright Treaty;

''(6) the WIPO Performances and Phonograms Treaty; and

''(7) any other copyright treaty to which the United States is a party.'';

(5) by inserting after the definition of ''transmit'' the following:

''A 'treaty party' is a country or intergovernmental organization other than the United States that is a party to an international agreement.'';

(6) by inserting after the definition of ''widow'' the following:

''The 'WIPO Copyright Treaty' is the WIPO Copyright Treaty concluded at Geneva, Switzerland, on December 20, 1996.'';

(7) by inserting after the definition of ''The 'WIPO Copyright Treaty' '' the following:

''The 'WIPO Performances and Phonograms Treaty' is the WIPO Performances and Phonograms Treaty concluded at Geneva, Switzerland, on December 20, 1996.''; and

(8) by inserting after the definition of ''work made for hire'' the following:

''The terms 'WTO Agreement' and 'WTO member country' have the meanings given those terms in paragraphs (9) and (10), respectively, of section 2 of the Uruguay Round Agreements Act.''.

(b) SUBJECT MATTER OF COPYRIGHT; NATIONAL ORIGIN.—Section 104 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking ''foreign nation that is a party to a copyright treaty to which the United States is also a party'' and inserting ''treaty party'';

(B) in paragraph (2) by striking ''party to the Universal Copyright Convention'' and inserting ''treaty party'';

(C) by redesignating paragraph (5) as paragraph (6);

(D) by redesignating paragraph (3) as paragraph (5) and inserting it after paragraph (4);

(E) by inserting after paragraph (2) the following:

''(3) the work is a sound recording that was first fixed in a treaty party; or'';

(F) in paragraph (4) by striking ''Berne Convention work'' and inserting ''pictorial, graphic, or sculptural work that is incorporated in a building or other structure, or an architectural work that is embodied in a building and the building or structure is located in the United States or a treaty party''; and

(G) by inserting after paragraph (6), as so redesignated, the following:

''For purposes of paragraph (2), a work that is published in the United States or a treaty party within 30 days after publication in a foreign nation that is not a treaty party shall be considered to be first published in the United States or such treaty party, as the case may be.''; and

(2) by adding at the end the following new subsection:

''(d) EFFECT OF PHONOGRAMS TREATIES.—Notwithstanding the provisions of subsection (b), no works other than sound recordings shall be eligible for protection under this title solely by virtue of the adherence of the United States to the Geneva Phonograms Convention or the WIPO Performances and Phonograms Treaty.''.

(c) COPYRIGHT IN RESTORED WORKS.—Section 104A(h) of title 17, United States Code, is amended—

(1) in paragraph (1), by striking subparagraphs (A) and (B) and inserting the following:

''(A) a nation adhering to the Berne Convention;

''(B) a WTO member country;

''(C) a nation adhering to the WIPO Copyright Treaty;

''(D) a nation adhering to the WIPO Performances and Phonograms Treaty; or

''(E) subject to a Presidential proclamation under subsection (g).'';

(2) by amending paragraph (3) to read as follows:

''(3) The term 'eligible country' means a nation, other than the United States, that—

''(A) becomes a WTO member country after the date of the enactment of the Uruguay Round Agreements Act;

''(B) on such date of enactment is, or after such date of enactment becomes, a nation adhering to the Berne Convention;

''(C) adheres to the WIPO Copyright Treaty;

''(D) adheres to the WIPO Performances and Phonograms Treaty; or

''(E) after such date of enactment becomes subject to a proclamation under subsection (g).'';

(3) in paragraph (6)—

(A) in subparagraph (C)(iii) by striking ''and'' after the semicolon;

(B) at the end of subparagraph (D) by striking the period and inserting ''; and''; and

(C) by adding after subparagraph (D) the following:

''(E) if the source country for the work is an eligible country solely by virtue of its adherence to the WIPO Performances and Phonograms Treaty, is a sound recording.'';

(4) in paragraph (8)(B)(i)—

(A) by inserting ''of which'' before ''the majority''; and

(B) by striking ''of eligible countries''; and

(5) by striking paragraph (9).

(d) REGISTRATION AND INFRINGEMENT ACTIONS.—Section 411(a) of title 17, United States Code, is amended in the first sentence—

(1) by striking ''actions for infringement of copyright in Berne Convention works whose country of origin is not the United States and''; and

(2) by inserting ''United States'' after ''no action for infringement of the copyright in any''.

(e) STATUTE OF LIMITATIONS.—Section 507(a) of title 17, United State Code, is amended by striking ''No'' and inserting ''Except as expressly provided otherwise in this title, no''.

SEC. 103. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION.

(a) IN GENERAL.—Title 17, United States Code is amended by adding at the end the following new chapter:

''CHAPTER 12—COPYRIGHT PROTECTION AND MANAGEMENT SYSTEMS

''Sec.
''1201. Circumvention of copyright protection systems.
''1202. Integrity of copyright management information.
''1203. Civil remedies.
''1204. Criminal offenses and penalties.
''1205. Savings clause.

''§ 1201. Circumvention of copyright protection systems

''(a) VIOLATIONS REGARDING CIRCUMVENTION OF TECHNOLOGICAL MEASURES.—(1)(A) No person shall circumvent a technological measure that effectively controls access to a work protected under this title. The prohibition contained in the preceding sentence shall take effect at the end of the 2-year period beginning on the date of the enactment of this chapter.

''(B) The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

''(C) During the 2-year period described in subparagraph (A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding on the record for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works. In conducting such rulemaking, the Librarian shall examine—

''(i) the availability for use of copyrighted works;

''(ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;

''(iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;

''(iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and

''(v) such other factors as the Librarian considers appropriate.

''(D) The Librarian shall publish any class of copyrighted works for which the Librarian has determined, pursuant to the rulemaking conducted under subparagraph (C), that noninfringing uses by persons who are users of a copyrighted work are, or are likely to be, adversely affected, and the prohibition contained in subparagraph (A) shall not apply to such users with respect to such class of works for the ensuing 3-year period.

''(E) Neither the exception under subparagraph (B) from the applicability of the prohibition contained in subparagraph (A), nor any determination made in a rulemaking conducted under subparagraph (C), may be used as a defense in any action to enforce any provision of this title other than this paragraph.

''(2) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

''(A) is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected under this title;

''(B) has only limited commercially significant purpose or use other than to circumvent a technological measure that effectively controls access to a work protected under this title; or

''(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing a technological measure that effectively controls access to a work protected under this title.

''(3) As used in this subsection—

''(A) to 'circumvent a technological measure' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and

''(B) a technological measure 'effectively controls access to a work' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

''(b) ADDITIONAL VIOLATIONS.—(1) No person shall manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, device, component, or part thereof, that—

''(A) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof;

''(B) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof; or

''(C) is marketed by that person or another acting in concert with that person with that person's knowledge for use in circumventing protection afforded by a technological measure that effectively protects a right of a copyright owner under this title in a work or a portion thereof.

''(2) As used in this subsection—

''(A) to 'circumvent protection afforded by a technological measure' means avoiding, bypassing, removing, deactivating, or otherwise impairing a technological measure; and

''(B) a technological measure 'effectively protects a right of a copyright owner under this title' if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits the exercise of a right of a copyright owner under this title.

''(c) OTHER RIGHTS, ETC., NOT AFFECTED.—(1) Nothing in this section shall affect rights, remedies, limitations, or defenses to copyright infringement, including fair use, under this title.

''(2) Nothing in this section shall enlarge or diminish vicarious or contributory liability for copyright infringement in connection with any technology, product, service, device, component, or part thereof.

''(3) Nothing in this section shall require that the design of, or design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as such part or component, or the product in which such part or component is integrated, does not otherwise fall within the prohibitions of subsection (a)(2) or (b)(1).

''(4) Nothing in this section shall enlarge or diminish any rights of free speech or the press for activities using consumer electronics, telecommunications, or computing products.

''(d) EXEMPTION FOR NONPROFIT LIBRARIES, ARCHIVES, AND EDUCATIONAL INSTITUTIONS.—(1) A nonprofit library, archives, or educational institution which gains access to a commercially exploited copyrighted work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this title shall not be in violation of subsection (a)(1)(A). A copy of a work to which access has been gained under this paragraph—

''(A) may not be retained longer than necessary to make such good faith determination; and

''(B) may not be used for any other purpose.

''(2) The exemption made available under paragraph (1) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

''(3) A nonprofit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates paragraph (1)—

''(A) shall, for the first offense, be subject to the civil remedies under section 1203; and

''(B) shall, for repeated or subsequent offenses, in addition to the civil remedies under section 1203, forfeit the exemption provided under paragraph (1).

''(4) This subsection may not be used as a defense to a claim under subsection (a)(2) or (b), nor may this subsection permit a nonprofit library, archives, or educational institution to manufacture, import, offer to the public, provide, or otherwise traffic in any technology, product, service, component, or part thereof, which circumvents a technological measure.

''(5) In order for a library or archives to qualify for the exemption under this subsection, the collections of that library or archives shall be—

''(A) open to the public; or

''(B) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field.

''(e) LAW ENFORCEMENT, INTELLIGENCE, AND OTHER GOVERNMENT ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term 'information security' means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

''(f) REVERSE ENGINEERING.—(1) Notwithstanding the provisions of subsection (a)(1)(A), a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analyzing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent any such acts of identification and analysis do not constitute infringement under this title.

''(2) Notwithstanding the provisions of subsections (a)(2) and (b), a person may develop and employ technological means to circumvent a technological measure, or to circumvent protection afforded by a technological measure, in order to enable the identification and analysis under paragraph (1), or for the purpose of enabling interoperability of an independently created computer program with other programs, if such means are necessary to achieve such interoperability, to the extent that doing so does not constitute infringement under this title.

''(3) The information acquired through the acts permitted under paragraph (1), and the means permitted under paragraph (2), may be made available to others if the person referred to in paragraph (1) or (2), as the case may be, provides such information or means solely for the purpose of enabling interoperability of an independently created computer program with other programs, and to the extent that doing so does not constitute infringement under this title or violate applicable law other than this section.

''(4) For purposes of this subsection, the term 'interoperability' means the ability of computer programs to exchange information, and of such programs mutually to use the information which has been exchanged.

''(g) ENCRYPTION RESEARCH.—

''(1) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'encryption research' means activities necessary to identify and analyze flaws and vulnerabilities of encryption technologies applied to copyrighted works, if these activities are conducted to advance the state of knowledge in the field of encryption technology or to assist in the development of encryption products; and

''(B) the term 'encryption technology' means the scrambling and descrambling of information using mathematical formulas or algorithms.

''(2) PERMISSIBLE ACTS OF ENCRYPTION RESEARCH.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that

subsection for a person to circumvent a technological measure as applied to a copy, phonorecord, performance, or display of a published work in the course of an act of good faith encryption research if—

''(A) the person lawfully obtained the encrypted copy, phonorecord, performance, or display of the published work;

''(B) such act is necessary to conduct such encryption research;

''(C) the person made a good faith effort to obtain authorization before the circumvention; and

''(D) such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

''(3) FACTORS IN DETERMINING EXEMPTION.—In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include—

''(A) whether the information derived from the encryption research was disseminated, and if so, whether it was disseminated in a manner reasonably calculated to advance the state of knowledge or development of encryption technology, versus whether it was disseminated in a manner that facilitates infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security;

''(B) whether the person is engaged in a legitimate course of study, is employed, or is appropriately trained or experienced, in the field of encryption technology; and

''(C) whether the person provides the copyright owner of the work to which the technological measure is applied with notice of the findings and documentation of the research, and the time when such notice is provided.

''(4) USE OF TECHNOLOGICAL MEANS FOR RESEARCH ACTIVITIES.—Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to—

''(A) develop and employ technological means to circumvent a technological measure for the sole purpose of that person performing the acts of good faith encryption research described in paragraph (2); and

''(B) provide the technological means to another person with whom he or she is working collaboratively for the purpose of conducting the acts of good faith encryption research described in paragraph (2) or for the purpose of having that other person verify his or her acts of good faith encryption research described in paragraph (2).

''(5) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this chapter, the Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly report to the Congress on the effect this subsection has had on—

''(A) encryption research and the development of encryption technology;

''(B) the adequacy and effectiveness of technological measures designed to protect copyrighted works; and

''(C) protection of copyright owners against the unauthorized access to their encrypted copyrighted works.

The report shall include legislative recommendations, if any.

''(h) EXCEPTIONS REGARDING MINORS.—In applying subsection (a) to a component or part, the court may consider the necessity for its intended and actual incorporation in a technology, product, service, or device, which—

''(1) does not itself violate the provisions of this title; and

''(2) has the sole purpose to prevent the access of minors to material on the Internet.

''(i) PROTECTION OF PERSONALLY IDENTIFYING INFORMATION.—

(1) CIRCUMVENTION PERMITTED.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to circumvent a technological measure that effectively controls access to a work protected under this title, if—

''(A) the technological measure, or the work it protects, contains the capability of collecting or disseminating personally identifying information reflecting the online activities of a natural person who seeks to gain access to the work protected;

''(B) in the normal course of its operation, the technological measure, or the work it protects, collects or disseminates personally identifying information about the person who seeks to gain access to the work protected, without providing conspicuous notice of such collection or dissemination to such person, and without providing such person with the capability to prevent or restrict such collection or dissemination;

''(C) the act of circumvention has the sole effect of identifying and disabling the capability described in subparagraph (A), and has no other effect on the ability of any person to gain access to any work; and

''(D) the act of circumvention is carried out solely for the purpose of preventing the collection or dissemination of personally identifying information about a natural person who seeks to gain access to the work protected, and is not in violation of any other law.

''(2) INAPPLICABILITY TO CERTAIN TECHNOLOGICAL MEASURES.—This subsection does not apply to a technological measure, or a work it protects, that does not collect or disseminate personally identifying information and that is disclosed to a user as not having or using such capability.

''(j) SECURITY TESTING.—

''(1) DEFINITION.—For purposes of this subsection, the term 'security testing' means accessing a computer, computer system, or computer network, solely for the purpose of good faith testing, investigating, or correcting, a security flaw or vulnerability, with the authorization of the owner or operator of such computer, computer system, or computer network.

''(2) PERMISSIBLE ACTS OF SECURITY TESTING.—Notwithstanding the provisions of subsection (a)(1)(A), it is not a violation of that subsection for a person to engage in an act of security testing, if such act does not constitute infringement under this title or a violation of applicable law other than this section, including section 1030 of title 18 and those provisions of title 18 amended by the Computer Fraud and Abuse Act of 1986.

''(3) FACTORS IN DETERMINING EXEMPTION.—In determining whether a person qualifies for the exemption under paragraph (2), the factors to be considered shall include—

''(A) whether the information derived from the security testing was used solely to promote the security of the owner or operator of such computer, computer system or computer network, or shared directly with the developer of such computer, computer system, or computer network; and

''(B) whether the information derived from the security testing was used or maintained in a manner that does not facilitate infringement under this title or a violation of applicable law other than this section, including a violation of privacy or breach of security.

''(4) USE OF TECHNOLOGICAL MEANS FOR SECURITY TESTING.—Notwithstanding the provisions of subsection (a)(2), it is not a violation of that subsection for a person to develop, produce, distribute or employ technological means for the sole purpose of performing the acts of security testing described in subsection (2), provided such technological means does not otherwise violate section (a)(2).

''(k) CERTAIN ANALOG DEVICES AND CERTAIN TECHNOLOGICAL MEASURES.—

''(1) CERTAIN ANALOG DEVICES.—

''(A) Effective 18 months after the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in any—

''(i) VHS format analog video cassette recorder unless such recorder conforms to the automatic gain control copy control technology;

''(ii) 8mm format analog video cassette camcorder unless such camcorder conforms to the automatic gain control technology;

''(iii) Beta format analog video cassette recorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 1,000 Beta format analog video cassette recorders sold in the United States in any one calendar year after the date of the enactment of this chapter;

''(iv) 8mm format analog video cassette recorder that is not an analog video cassette camcorder, unless such recorder conforms to the automatic gain control copy control technology, except that this requirement shall not apply until there are 20,000 such recorders sold in the United States in any one calendar year after the date of the enactment of this chapter; or

''(v) analog video cassette recorder that records using an NTSC format video input and that is not otherwise covered under clauses (i) through (iv), unless such device conforms to the automatic gain control copy control technology.

''(B) Effective on the date of the enactment of this chapter, no person shall manufacture, import, offer to the public, provide or otherwise traffic in—

''(i) any VHS format analog video cassette recorder or any 8mm format analog video cassette recorder if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the automatic gain control copy control technology no longer conforms to such technology; or

''(ii) any VHS format analog video cassette recorder, or any 8mm format analog video cassette recorder that is not an 8mm analog video cassette camcorder, if the design of the model of such recorder has been modified after such date of enactment so that a model of recorder that previously conformed to the four-line colorstripe copy control technology no longer conforms to such technology.

Manufacturers that have not previously manufactured or sold a VHS format analog video cassette recorder, or an 8mm format analog cassette recorder, shall be required to conform to the four-line colorstripe copy control technology in the initial model of any such recorder manufactured after the date of the enactment of this chapter, and thereafter to continue conforming to the four-line colorstripe copy control technology. For purposes of this subparagraph, an analog video cassette recorder 'conforms to' the four-line colorstripe copy control technology if it records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits, on a reference display device, a display containing distracting visible lines through portions of the viewable picture.

''(2) CERTAIN ENCODING RESTRICTIONS.—No person shall apply the automatic gain control copy control technology or colorstripe copy control technology to prevent or limit consumer copying except such copying—

''(A) of a single transmission, or specified group of transmissions, of live events or of audiovisual works for which a member of the public has exercised choice in selecting the transmissions, including the content of the transmissions or the time of receipt of such transmissions, or both, and as to which such member is charged a separate fee for each such transmission or specified group of transmissions;

''(B) from a copy of a transmission of a live event or an audiovisual work if such transmission is provided by a channel or service where payment is made by a member of the public for such channel or service in the form of a subscription fee that entitles the member of the public to receive all of the programming contained in such channel or service;

''(C) from a physical medium containing one or more prerecorded audiovisual works; or

''(D) from a copy of a transmission described in subparagraph (A) or from a copy made from a physical medium described in subparagraph (C).

In the event that a transmission meets both the conditions set forth in subparagraph (A) and those set forth in subparagraph (B), the transmission shall be treated as a transmission described in subparagraph (A).

''(3) INAPPLICABILITY.—This subsection shall not—

''(A) require any analog video cassette camcorder to conform to the automatic gain control copy control technology with respect to any video signal received through a camera lens;

''(B) apply to the manufacture, importation, offer for sale, provision of, or other trafficking in, any professional analog video cassette recorder; or

''(C) apply to the offer for sale or provision of, or other trafficking in, any previously owned analog video cassette recorder, if such recorder was legally manufactured and sold when new and not subsequently modified in violation of paragraph (1)(B).

''(4) DEFINITIONS.—For purposes of this subsection:

''(A) An 'analog video cassette recorder' means a device that records, or a device that includes a function that records, on electromagnetic tape in an analog format the electronic impulses produced by the video and audio portions of a television program, motion picture, or other form of audiovisual work.

''(B) An 'analog video cassette camcorder' means an analog video cassette recorder that contains a recording function that operates through a camera lens and through a video input that may be connected with a television or other video playback device.

''(C) An analog video cassette recorder 'conforms' to the automatic gain control copy control technology if it—

''(i) detects one or more of the elements of such technology and does not record the motion picture or transmission protected by such technology; or

''(ii) records a signal that, when played back, exhibits a meaningfully distorted or degraded display.

''(D) The term 'professional analog video cassette recorder' means an analog video cassette recorder that is designed, manufactured, marketed, and intended for use by a person who regularly employs such a device for a lawful business or industrial use, including making, performing, displaying, distributing, or transmitting copies of motion pictures on a commercial scale.

''(E) The terms 'VHS format,' '8mm format,' 'Beta format,' 'automatic gain control copy control technology,' 'colorstripe copy control technology,' 'four-line version of the colorstripe copy control technology,' and 'NTSC' have the meanings that are commonly understood in the consumer electronics and motion picture industries as of the date of the enactment of this chapter.

''(5) VIOLATIONS.—Any violation of paragraph (1) of this subsection shall be treated as a violation of subsection (b)(1) of this section. Any violation of paragraph (2) of this subsection shall be deemed an 'act of circumvention' for the purposes of section 1203(c)(3)(A) of this chapter.

''§ 1202. Integrity of copyright management information

''(a) FALSE COPYRIGHT MANAGEMENT INFORMATION.—No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement—

''(1) provide copyright management information that is false, or

''(2) distribute or import for distribution copyright management information that is false.

''(b) REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION.—No person shall, without the authority of the copyright owner or the law—

''(1) intentionally remove or alter any copyright management information,

''(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

''(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

''(c) DEFINITION.—As used in this section, the term 'copyright management information' means any of the following information conveyed in connection with copies or phonorecords of a work or performances or displays of a work, including in digital form, except that such term does not include any personally identifying information about a user of a work or of a copy, phonorecord, performance, or display of a work:

''(1) The title and other information identifying the work, including the information set forth on a notice of copyright.

''(2) The name of, and other identifying information about, the author of a work.

''(3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.

''(4) With the exception of public performances of works by radio and television broadcast stations, the name of, and other identifying information about, a performer whose performance is fixed in a work other than an audiovisual work.

''(5) With the exception of public performances of works by radio and television broadcast stations, in the case of an audiovisual work, the name of, and other identifying information about, a writer, performer, or director who is credited in the audiovisual work.

''(6) Terms and conditions for use of the work.

''(7) Identifying numbers or symbols referring to such information or links to such information.

''(8) Such other information as the Register of Copyrights may prescribe by regulation, except that the Register of Copyrights may not require the provision of any information concerning the user of a copyrighted work.

''(d) LAW ENFORCEMENT, INTELLIGENCE, AND OTHER GOVERNMENT ACTIVITIES.—This section does not prohibit any lawfully authorized investigative, protective, information security, or intelligence activity of an officer, agent, or employee of the United States, a State, or a political subdivision of a State, or a person acting pursuant to a contract with the United States, a State, or a political subdivision of a State. For purposes of this subsection, the term 'information security' means activities carried out in order to identify and address the vulnerabilities of a government computer, computer system, or computer network.

''(e) LIMITATIONS ON LIABILITY.—

''(1) ANALOG TRANSMISSIONS.—In the case of an analog transmission, a person who is making transmissions in its capacity as a broadcast station, or as a cable system, or someone who provides programming to such station or system, shall not be liable for a violation of subsection (b) if—

''(A) avoiding the activity that constitutes such violation is not technically feasible or would create an undue financial hardship on such person; and

''(B) such person did not intend, by engaging in such activity, to induce, enable, facilitate, or conceal infringement of a right under this title.

''(2) DIGITAL TRANSMISSIONS.—

''(A) If a digital transmission standard for the placement of copyright management information for a category of works is set in a voluntary, consensus standard-setting process involving a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to the particular copyright management information addressed by such standard if—

''(i) the placement of such information by someone other than such person is not in accordance with such standard; and

''(ii) the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title.

''(B) Until a digital transmission standard has been set pursuant to subparagraph (A) with respect to the placement of copyright management information for a category or works, a person identified in paragraph (1) shall not be liable for a violation of subsection (b) with respect to such copyright management information, if the activity that constitutes such violation is not intended to induce, enable, facilitate, or conceal infringement of a right under this title, and if—

''(i) the transmission of such information by such person would result in a perceptible visual or aural degradation of the digital signal; or

''(ii) the transmission of such information by such person would conflict with—

''(I) an applicable government regulation relating to transmission of information in a digital signal;

''(II) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted by a voluntary consensus standards body prior to the effective date of this chapter; or

''(III) an applicable industry-wide standard relating to the transmission of information in a digital signal that was adopted in a voluntary, consensus standards-setting process open to participation by a representative cross-section of broadcast stations or cable systems and copyright owners of a category of works that are intended for public performance by such stations or systems.

''(3) DEFINITIONS.—As used in this subsection—

''(A) the term 'broadcast station' has the meaning given that term in section 3 of the Communications Act of 1934 (47 U.S.C. 153)); and

''(B) the term 'cable system' has the meaning given that term in section 602 of the Communications Act of 1934 (47 U.S.C. 522)).

''§ 1203. Civil remedies

''(a) CIVIL ACTIONS.—Any person injured by a violation of section 1201 or 1202 may bring a civil action in an appropriate United States district court for such violation.

''(b) POWERS OF THE COURT.—In an action brought under subsection (a), the court—

''(1) may grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation, but in no event shall impose a prior restraint on free speech or the press protected under the 1st amendment to the Constitution;

''(2) at any time while an action is pending, may order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation;

''(3) may award damages under subsection (c);

''(4) in its discretion may allow the recovery of costs by or against any party other than the United States or an officer thereof;

''(5) in its discretion may award reasonable attorney's fees to the prevailing party; and

''(6) may, as part of a final judgment or decree finding a violation, order the remedial modification or the destruction of any device or product

involved in the violation that is in the custody or control of the violator or has been impounded under paragraph (2).

''(c) AWARD OF DAMAGES.—

''(1) IN GENERAL.—Except as otherwise provided in this title, a person committing a violation of section 1201 or 1202 is liable for either—

''(A) the actual damages and any additional profits of the violator, as provided in paragraph (2), or

''(B) statutory damages, as provided in paragraph (3).

''(2) ACTUAL DAMAGES.—The court shall award to the complaining party the actual damages suffered by the party as a result of the violation, and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages, if the complaining party elects such damages at any time before final judgment is entered.

''(3) STATUTORY DAMAGES.—(A) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1201 in the sum of not less than $200 or more than $2,500 per act of circumvention, device, product, component, offer, or performance of service, as the court considers just.

''(B) At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500 or more than $25,000.

''(4) REPEATED VIOLATIONS.—In any case in which the injured party sustains the burden of proving, and the court finds, that a person has violated section 1201 or 1202 within three years after a final judgment was entered against the person for another such violation, the court may increase the award of damages up to triple the amount that would otherwise be awarded, as the court considers just.

''(5) INNOCENT VIOLATIONS.—

''(A) IN GENERAL.—The court in its discretion may reduce or remit the total award of damages in any case in which the violator sustains the burden of proving, and the court finds, that the violator was not aware and had no reason to believe that its acts constituted a violation.

''(B) NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTIONS.—In the case of a nonprofit library, archives, or educational institution, the court shall remit damages in any case in which the library, archives, or educational institution sustains the burden of proving, and the court finds, that the library, archives, or educational institution was not aware and had no reason to believe that its acts constituted a violation.

''§ 1204. Criminal offenses and penalties

''(a) IN GENERAL.—Any person who violates section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain—

''(1) shall be fined not more than $500,000 or imprisoned for not more than 5 years, or both, for the first offense; and

''(2) shall be fined not more than $1,000,000 or imprisoned for not more than 10 years, or both, for any subsequent offense.

''(b) LIMITATION FOR NONPROFIT LIBRARY, ARCHIVES, OR EDUCATIONAL INSTITUTION.—Subsection (a) shall not apply to a nonprofit library, archives, or educational institution.

''(c) STATUTE OF LIMITATIONS.—No criminal proceeding shall be brought under this section unless such proceeding is commenced within five years after the cause of action arose.

''§ 1205. Savings clause

''Nothing in this chapter abrogates, diminishes, or weakens the provisions of, nor provides any defense or element of mitigation in a criminal prosecution or civil action under, any Federal or State law that prevents the violation of the privacy of an individual in connection with the individual's use of the Internet.''.

(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by adding after the item relating to chapter 11 the following:

''12. Copyright Protection and Management Systems ..... 1201''.

SEC. 104. EVALUATION OF IMPACT OF COPYRIGHT LAW AND AMENDMENTS ON ELECTRONIC COMMERCE AND TECHNOLOGICAL DEVELOPMENT.

(a) EVALUATION BY THE REGISTER OF COPYRIGHTS AND THE ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION.—The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall jointly evaluate—

(1) the effects of the amendments made by this title and the development of electronic commerce and associated technology on the operation of sections 109 and 117 of title 17, United States Code; and

(2) the relationship between existing and emergent technology and the operation of sections 109 and 117 of title 17, United States Code.

(b) REPORT TO CONGRESS.—The Register of Copyrights and the Assistant Secretary for Communications and Information of the Department of Commerce shall, not later than 24 months after the date of the enactment of this Act, submit to the Congress a joint report on the evaluation conducted under subsection (a), including any legislative recommendations the Register and the Assistant Secretary may have.

SEC. 105. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) AMENDMENTS RELATING TO CERTAIN INTERNATIONAL AGREEMENTS.—(1) The following shall take effect upon the entry into force of the WIPO Copyright Treaty with respect to the United States:

(A) Paragraph (5) of the definition of ''international agreement'' contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(6) of this Act.

(C) Subparagraph (C) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(D) Subparagraph (C) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(2) The following shall take effect upon the entry into force of the WIPO Performances and Phonograms Treaty with respect to the United States:

(A) Paragraph (6) of the definition of ''international agreement'' contained in section 101 of title 17, United States Code, as amended by section 102(a)(4) of this Act.

(B) The amendment made by section 102(a)(7) of this Act.

(C) The amendment made by section 102(b)(2) of this Act.

(D) Subparagraph (D) of section 104A(h)(1) of title 17, United States Code, as amended by section 102(c)(1) of this Act.

(E) Subparagraph (D) of section 104A(h)(3) of title 17, United States Code, as amended by section 102(c)(2) of this Act.

(F) The amendments made by section 102(c)(3) of this Act.

TITLE II—ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Online Copyright Infringement Liability Limitation Act''.

SEC. 202. LIMITATIONS ON LIABILITY FOR COPYRIGHT INFRINGEMENT.

(a) IN GENERAL.—Chapter 5 of title 17, United States Code, is amended by adding after section 511 the following new section:

''§ 512. Limitations on liability relating to material online

''(a) TRANSITORY DIGITAL NETWORK COMMUNICATIONS.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider's transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

''(1) the transmission of the material was initiated by or at the direction of a person other than the service provider;

''(2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

''(3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;

''(4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

''(5) the material is transmitted through the system or network without modification of its content.

''(b) SYSTEM CACHING.—

''(1) LIMITATION ON LIABILITY.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which—

''(A) the material is made available online by a person other than the service provider,

''(B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person, and

''(C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A),

if the conditions set forth in paragraph (2) are met.

(2) CONDITIONS.—The conditions referred to in paragraph (1) are that—

''(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

''(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

''(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology—

''(i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

''(ii) is consistent with generally accepted industry standard communications protocols; and

''(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

''(D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

''(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c)(3), except that this subparagraph applies only if—

''(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

''(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.

''(c) INFORMATION RESIDING ON SYSTEMS OR NETWORKS AT DIRECTION OF USERS.—

''(1) IN GENERAL.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

''(A)(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

''(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

''(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

''(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

''(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

''(2) DESIGNATED AGENT.—The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, substantially the following information:

''(A) the name, address, phone number, and electronic mail address of the agent.

''(B) other contact information which the Register of Copyrights may deem appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, in both electronic and hard copy formats, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

''(3) ELEMENTS OF NOTIFICATION.—

''(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

''(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

''(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

''(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

''(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

''(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

''(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

''(B)(i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1)(A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.

''(ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

''(d) INFORMATION LOCATION TOOLS.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider—

''(1)(A) does not have actual knowledge that the material or activity is infringing;

''(B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

''(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

''(2) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

''(3) upon notification of claimed infringement as described in subsection (c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

''(e) LIMITATION ON LIABILITY OF NONPROFIT EDUCATIONAL INSTITUTIONS.—(1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if—

''(A) such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;

''(B) the institution has not, within the preceding 3-year period, received more than 2 notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and

''(C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

''(2) INJUNCTIONS.—For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

''(f) MISREPRESENTATIONS.—Any person who knowingly materially misrepresents under this section—

''(1) that material or activity is infringing, or

''(2) that material or activity was removed or disabled by mistake or misidentification,

shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

''(g) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABILITY.—

''(1) NO LIABILITY FOR TAKING DOWN GENERALLY.—Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

''(2) EXCEPTION.—Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider—

''(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

''(B) upon receipt of a counter notification described in paragraph (3), promptly provides the

person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

''(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

''(3) CONTENTS OF COUNTER NOTIFICATION.—To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

''(A) A physical or electronic signature of the subscriber.

''(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

''(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

''(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

''(4) LIMITATION ON OTHER LIABILITY.—A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

''(h) SUBPOENA TO IDENTIFY INFRINGER.—

''(1) REQUEST.—A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

''(2) CONTENTS OF REQUEST.—The request may be made by filing with the clerk—

''(A) a copy of a notification described in subsection (c)(3)(A);

''(B) a proposed subpoena; and

''(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

''(3) CONTENTS OF SUBPOENA.—The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

''(4) BASIS FOR GRANTING SUBPOENA.—If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.

''(5) ACTIONS OF SERVICE PROVIDER RECEIVING SUBPOENA.—Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.

''(6) RULES APPLICABLE TO SUBPOENA.—Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum.

''(i) CONDITIONS FOR ELIGIBILITY.—

''(1) ACCOMMODATION OF TECHNOLOGY.—The limitations on liability established by this section shall apply to a service provider only if the service provider—

''(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

''(B) accommodates and does not interfere with standard technical measures.

''(2) DEFINITION.—As used in this subsection, the term 'standard technical measures' means technical measures that are used by copyright owners to identify or protect copyrighted works and—

''(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

''(B) are available to any person on reasonable and nondiscriminatory terms; and

''(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

''(j) INJUNCTIONS.—The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

''(1) SCOPE OF RELIEF.—(A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:

''(i) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.

''(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

''(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.

''(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

''(i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

''(ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

''(2) CONSIDERATIONS.—The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider—

''(A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

''(B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

''(C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

''(D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

''(3) NOTICE AND EX PARTE ORDERS.—Injunctive relief under this subsection shall be available only after notice to the service provider and an opportunity for the service provider to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.

''(k) DEFINITIONS.—

''(1) SERVICE PROVIDER.—(A) As used in subsection (a), the term 'service provider' means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

''(B) As used in this section, other than subsection (a), the term 'service provider' means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

''(2) MONETARY RELIEF.—As used in this section, the term 'monetary relief' means damages, costs, attorneys' fees, and any other form of monetary payment.

''(l) OTHER DEFENSES NOT AFFECTED.—The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

''(m) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on—

''(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or

''(2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

''(n) CONSTRUCTION.—Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end the following:

''512. Limitations on liability relating to material online.''.

SEC. 203. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE III-COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

SEC. 301. SHORT TITLE.

This title may be cited as the ''Computer Maintenance Competition Assurance Act''.

SEC. 302. LIMITATIONS ON EXCLUSIVE RIGHTS; COMPUTER PROGRAMS.

Section 117 of title 17, United States Code, is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) MAKING OF ADDITIONAL COPY OR ADAPTATION BY OWNER OF COPY.—Notwithstanding'';

(2) by striking ''Any exact'' and inserting the following:

''(b) LEASE, SALE, OR OTHER TRANSFER OF ADDITIONAL COPY OR ADAPTATION.—Any exact''; and

(3) by adding at the end the following:

''(c) MACHINE MAINTENANCE OR REPAIR.—Notwithstanding the provisions of section 106, it is not an infringement for the owner or lessee of a machine to make or authorize the making of a copy of a computer program if such copy is made solely by virtue of the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, if—

''(1) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

''(2) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine.

''(d) DEFINITIONS.—For purposes of this section—

''(1) the 'maintenance' of a machine is the servicing of the machine in order to make it work in accordance with its original specifications and any changes to those specifications authorized for that machine; and

''(2) the 'repair' of a machine is the restoring of the machine to the state of working in accordance with its original specifications and any changes to those specifications authorized for that machine.''.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. PROVISIONS RELATING TO THE COMMISSIONER OF PATENTS AND TRADEMARKS AND THE REGISTER OF COPYRIGHTS

(a) COMPENSATION.—(1) Section 3(d) of title 35, United States Code, is amended by striking ''prescribed by law for Assistant Secretaries of Commerce'' and inserting ''in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code''.

(2) Section 701(e) of title 17, United States Code, is amended—

(A) by striking ''IV'' and inserting ''III''; and

(B) by striking ''5315'' and inserting ''5314''.

(3) Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

''Register of Copyrights.''.

(b) CLARIFICATION OF AUTHORITY OF THE COPYRIGHT OFFICE.—Section 701 of title 17, United States Code, is amended—

(1) by redesignating subsections (b) through (e) as subsections (c) through (f), respectively; and

(2) by inserting after subsection (a) the following:

''(b) In addition to the functions and duties set out elsewhere in this chapter, the Register of Copyrights shall perform the following functions:

''(1) Advise Congress on national and international issues relating to copyright, other matters arising under this title, and related matters.

''(2) Provide information and assistance to Federal departments and agencies and the Judiciary on national and international issues relating to copyright, other matters arising under this title, and related matters.

''(3) Participate in meetings of international intergovernmental organizations and meetings with foreign government officials relating to copyright, other matters arising under this title, and related matters, including as a member of United States delegations as authorized by the appropriate Executive branch authority.

''(4) Conduct studies and programs regarding copyright, other matters arising under this title, and related matters, the administration of the Copyright Office, or any function vested in the Copyright Office by law, including educational programs conducted cooperatively with foreign intellectual property offices and international intergovernmental organizations.

''(5) Perform such other functions as Congress may direct, or as may be appropriate in furtherance of the functions and duties specifically set forth in this title.''

SEC. 402. EPHEMERAL RECORDINGS.

Section 112(a) of title 17, United States Code, is amended—

(1) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(2) by inserting ''(1)'' after ''(a)'';

(3) by inserting after ''under a license'' the following: '', including a statutory license under section 114(f),'';

(4) by inserting after ''114(a),'' the following: ''or for a transmitting organization that is a broadcast radio or television station licensed as such by the Federal Communications Commission and that makes a broadcast transmission of a performance of a sound recording in a digital format on a nonsubscription basis,''; and

(5) by adding at the end the following:

''(2) In a case in which a transmitting organization entitled to make a copy or phonorecord under paragraph (1) in connection with the transmission to the public of a performance or display of a work is prevented from making such copy or phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the work, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such copy or phonorecord as permitted under that paragraph, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such copies or phonorecords as permitted under paragraph (1) of this subsection.''.

SEC. 403. LIMITATIONS ON EXCLUSIVE RIGHTS; DISTANCE EDUCATION.

(a) RECOMMENDATIONS BY REGISTER OF COPYRIGHTS.—Not later than 6 months after the date of the enactment of this Act, the Register of Copyrights, after consultation with representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives, shall submit to the Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the needs of users of copyrighted works. Such recommendations shall include any legislation the Register of Copyrights considers appropriate to achieve the objective described in the preceding sentence.

(b) FACTORS.—In formulating recommendations under subsection (a), the Register of Copyrights shall consider—

(1) the need for an exemption from exclusive rights of copyright owners for distance education through digital networks;

(2) the categories of works to be included under any distance education exemption;

(3) the extent of appropriate quantitative limitations on the portions of works that may be used under any distance education exemption;

(4) the parties who should be entitled to the benefits of any distance education exemption;

(5) the parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) whether and what types of technological measures can or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition of eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2) of title 17, United States Code;

(7) the extent to which the availability of licenses for the use of copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

SEC. 404. EXEMPTION FOR LIBRARIES AND ARCHIVES.

Section 108 of title 17, United States Code, is amended—

(1) in subsection (a)—

(A) by striking ''Notwithstanding'' and inserting ''Except as otherwise provided in this title and notwithstanding'';

(B) by inserting after ''no more than one copy or phonorecord of a work'' the following: '', except as provided in subsections (b) and (c)''; and

(C) in paragraph (3) by inserting after ''copyright'' the following: ''that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section'';

(2) in subsection (b)—

(A) by striking ''a copy or phonorecord'' and inserting ''three copies or phonorecords'';

(B) by striking ''in facsimile form''; and

(C) by striking ''if the copy or phonorecord reproduced is currently in the collections of the library or archives.'' and inserting ''if—

''(1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and

''(2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.''; and

(3) in subsection (c)—

(A) by striking ''a copy or phonorecord'' and inserting ''three copies or phonorecords'';

(B) by striking ''in facsimile form'';

(C) by inserting ''or if the existing format in which the work is stored has become obsolete,'' after ''stolen,''; and

(D) by striking ''if the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price.'' and inserting ''if—

''(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

''(2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.''; and

(E) by adding at the end the following:

''For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.''.

SEC. 405. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS; EPHEMERAL RECORDINGS.

(a) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114 of title 17, United States Code, is amended as follows:

(1) Subsection (d) is amended—

(A) in paragraph (1) by striking subparagraph (A) and inserting the following:

''(A) a nonsubscription broadcast transmission;''; and

(B) by amending paragraph (2) to read as follows:

''(2) STATUTORY LICENSING OF CERTAIN TRANSMISSIONS.—The performance of a sound recording publicly by means of a subscription digital audio transmission not exempt under paragraph (1), an eligible nonsubscription transmission, or a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service shall be subject to statutory licensing, in accordance with subsection (f) if—

''(A)(i) the transmission is not part of an interactive service;

''(ii) except in the case of a transmission to a business establishment, the transmitting entity does not automatically and intentionally cause any device receiving the transmission to switch from one program channel to another; and

''(iii) except as provided in section 1002(e), the transmission of the sound recording is accompanied, if technically feasible, by the information encoded in that sound recording, if any, by or under the authority of the copyright owner of that sound recording, that identifies the title of the sound recording, the featured recording artist who performs on the sound recording, and related information, including information concerning the underlying musical work and its writer;

''(B) in the case of a subscription transmission not exempt under paragraph (1) that is made by a preexisting subscription service in the same transmission medium used by such service on July 31, 1998, or in the case of a transmission not exempt under paragraph (1) that is made by a preexisting satellite digital audio radio service—

''(i) the transmission does not exceed the sound recording performance complement; and

''(ii) the transmitting entity does not cause to be published by means of an advance program schedule or prior announcement the titles of the specific sound recordings or phonorecords embodying such sound recordings to be transmitted; and

''(C) in the case of an eligible nonsubscription transmission or a subscription transmission not exempt under paragraph (1) that is made by a new subscription service or by a preexisting subscription service other than in the same transmission medium used by such service on July 31, 1998—

''(i) the transmission does not exceed the sound recording performance complement, except that this requirement shall not apply in the case of a retransmission of a broadcast transmission if the retransmission is made by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broadcast transmission, unless—

''(I) the broadcast station makes broadcast transmissions—

''(aa) in digital format that regularly exceed the sound recording performance complement; or

''(bb) in analog format, a substantial portion of which, on a weekly basis, exceed the sound recording performance complement; and

''(II) the sound recording copyright owner or its representative has notified the transmitting entity in writing that broadcast transmissions of the copyright owner's sound recordings exceed the sound recording performance complement as provided in this clause;

''(ii) the transmitting entity does not cause to be published, or induce or facilitate the publication, by means of an advance program schedule or prior announcement, the titles of the specific sound recordings to be transmitted, the phonorecords embodying such sound recordings, or, other than for illustrative purposes, the names of the featured recording artists, except that this clause does not disqualify a transmitting entity that makes a prior announcement that a particular artist will be featured within an unspecified future time period, and in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, the requirement of this clause shall not apply to a prior oral announcement by the broadcast station, or to an advance program schedule published, induced, or facilitated by the broadcast station, if the transmitting entity does not have actual knowledge and has not received written notice from the copyright owner or its representative that the broadcast station publishes or induces or facilitates the publication of such advance program schedule, or if such advance program schedule is a schedule of classical music programming published by the broadcast station in the same manner as published by that broadcast station on or before September 30, 1998;

''(iii) the transmission—

''(I) is not part of an archived program of less than 5 hours duration;

''(II) is not part of an archived program of 5 hours or greater in duration that is made available for a period exceeding 2 weeks;

''(III) is not part of a continuous program which is of less than 3 hours duration; or

''(IV) is not part of an identifiable program in which performances of sound recordings are rendered in a predetermined order, other than an archived or continuous program, that is transmitted at—

''(aa) more than 3 times in any 2-week period that have been publicly announced in advance, in the case of a program of less than 1 hour in duration, or

''(bb) more than 4 times in any 2-week period that have been publicly announced in advance, in the case of a program of 1 hour or more in duration,

except that the requirement of this subclause shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

''(iv) the transmitting entity does not knowingly perform the sound recording, as part of a service that offers transmissions of visual images contemporaneously with transmissions of sound recordings, in a manner that is likely to cause confusion, to cause mistake, or to deceive, as to the affiliation, connection, or association of the copyright owner or featured recording artist with the transmitting entity or a particular product or service advertised by the transmitting entity, or as to the origin, sponsorship, or approval by the copyright owner or featured recording artist of the activities of the transmitting entity other than the performance of the sound recording itself;

''(v) the transmitting entity cooperates to prevent, to the extent feasible without imposing substantial costs or burdens, a transmission recipient or any other person or entity from automatically scanning the transmitting entity's transmissions alone or together with transmissions by other transmitting entities in order to select a particular sound recording to be transmitted to the transmission recipient, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed by the Federal Communications Commission, on or before July 31, 1998;

''(vi) the transmitting entity takes no affirmative steps to cause or induce the making of a phonorecord by the transmission recipient, and if the technology used by the transmitting entity enables the transmitting entity to limit the making by the transmission recipient of phonorecords of the transmission directly in a digital format, the transmitting entity sets such technology to limit such making of phonorecords to the extent permitted by such technology;

''(vii) phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the transmission from a phonorecord lawfully made under the authority of the copyright owner, except that the requirement of this clause shall not apply to a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, unless the transmitting entity is given notice in writing by the copyright owner of the sound recording that the broadcast station makes broadcast transmissions that regularly violate such requirement;

''(viii) the transmitting entity accommodates and does not interfere with the transmission of technical measures that are widely used by sound recording copyright owners to identify or protect copyrighted works, and that are technically feasible of being transmitted by the transmitting entity without imposing substantial costs on the transmitting entity or resulting in perceptible aural or visual degradation of the digital signal, except that the requirement of this clause shall not apply to a satellite digital audio service that is in operation, or that is licensed under the authority of the Federal Communications Commission, on or before July 31, 1998, to the extent that such service has designed, developed, or made commitments to procure equipment or technology that is not compatible with such technical measures before such technical measures are widely adopted by sound recording copyright owners; and

''(ix) the transmitting entity identifies in textual data the sound recording during, but not before, the time it is performed, including the title of the sound recording, the title of the phonorecord embodying such sound recording, if any, and the featured recording artist, in a manner to permit it to be displayed to the transmission recipient by the device or technology intended for receiving the service provided by the transmitting entity, except that the obligation in this clause shall not take effect until 1 year after the date of the enactment of the Digital Millennium Copyright Act and shall not apply in the case of a retransmission of a broadcast transmission by a transmitting entity that does not have the right or ability to control the programming of the broadcast transmission, or in the case in which devices or technology intended for receiving the service provided by the transmitting entity that have the capability to display such textual data are not common in the marketplace.''.

(2) Subsection (f) is amended—

(A) in the subsection heading by striking ''NONEXEMPT SUBSCRIPTION'' and inserting ''CERTAIN NONEXEMPT'';

(B) in paragraph (1)—

(i) in the first sentence—

(I) by striking ''(1) No'' and inserting ''(1)(A) No'';

(II) by striking ''the activities'' and inserting ''subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services''; and

(III) by striking ''2000'' and inserting ''2001''; and

(ii) by amending the third sentence to read as follows: ''Any copyright owners of sound recordings, preexisting subscription services, or preexisting satellite digital audio radio services may submit to the Librarian of Congress licenses

covering such subscription transmissions with respect to such sound recordings.''; and

(C) by striking paragraphs (2), (3), (4), and (5) and inserting the following:

''(B) In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph. In establishing rates and terms for preexisting subscription services and preexisting satellite digital audio radio services, in addition to the objectives set forth in section 801(b)(1), the copyright arbitration royalty panel may consider the rates and terms for comparable types of subscription digital audio transmission services and comparable circumstances under voluntary license agreements negotiated as provided in subparagraph (A).

''(C)(i) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in subparagraph (A) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe—

''(I) no later than 30 days after a petition is filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational; and

''(II) in the first week of January, 2001, and at 5-year intervals thereafter.

''(ii) The procedures specified in subparagraph (B) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

''(I) 6 months after publication of a notice of the initiation of voluntary negotiation proceedings under subparagraph (A) pursuant to a petition under clause (i)(I) of this subparagraph; or

''(II) on July 1, 2001, and at 5-year intervals thereafter.

''(iii) The procedures specified in subparagraph (B) shall be concluded in accordance with section 802.

''(2)(A) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmissions and transmissions by new subscription services specified by subsection (d)(2) during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services and new subscription services then in operation and shall include a minimum fee for each such type of service. Any copyright owners of sound recordings or any entities performing sound recordings affected by this paragraph may submit to the Librarian of Congress licenses covering such eligible nonsubscription transmissions and new subscription services with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

''(B) In the absence of license agreements negotiated under subparagraph (A), during the 60-day period commencing 6 months after publication of the notice specified in subparagraph (A), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (3), shall be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services then in operation and shall include a minimum fee for each such type of service, such differences to be based on criteria including, but not limited to, the quantity and nature of the use of sound recordings and the degree to which use of the service may substitute for or may promote the purchase of phonorecords by consumers. In establishing rates and terms for transmissions by eligible nonsubscription services and new subscription services, the copyright arbitration royalty panel shall establish rates and terms that most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive and programming information presented by the parties, including—

''(i) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise may interfere with or may enhance the sound recording copyright owner's other streams of revenue from its sound recordings; and

''(ii) the relative roles of the copyright owner and the transmitting entity in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements negotiated under subparagraph (A).

''(C)(i) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in subparagraph (A) shall be repeated in accordance with regulations that the Librarian of Congress shall prescribe—

''(I) no later than 30 days after a petition is filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational; and

''(II) in the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with subparagraph (A).

''(ii) The procedures specified in subparagraph (B) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1) during a 60-day period commencing—

''(I) 6 months after publication of a notice of the initiation of voluntary negotiation proceedings under subparagraph (A) pursuant to a petition under clause (i)(I); or

''(II) on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with subparagraph (A).

''(iii) The procedures specified in subparagraph (B) shall be concluded in accordance with section 802.

''(3) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more entities performing sound recordings shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

''(4)(A) The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by entities performing sound recordings.

''(B) Any person who wishes to perform a sound recording publicly by means of a transmission eligible for statutory licensing under this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording—

''(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

''(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

''(C) Any royalty payments in arrears shall be made on or before the twentieth day of the month next succeeding the month in which the royalty fees are set.''.

(3) Subsection (g) is amended—

(A) in the subsection heading by striking ''SUBSCRIPTION'';

(B) in paragraph (1) in the matter preceding subparagraph (A), by striking ''subscription transmission licensed'' and inserting ''transmission licensed under a statutory license'';

(C) in subparagraphs (A) and (B) by striking ''subscription''; and

(D) in paragraph (2) by striking ''subscription''.

(4) Subsection (j) is amended—

(A) by striking paragraphs (4) and (9) and redesignating paragraphs (2), (3), (5), (6), (7), and (8) as paragraphs (3), (5), (9), (12), (13), and (14), respectively;

(B) by inserting after paragraph (1) the following:

''(2) An 'archived program' is a predetermined program that is available repeatedly on the demand of the transmission recipient and that is performed in the same order from the beginning, except that an archived program shall not include a recorded event or broadcast transmission that makes no more than an incidental use of sound recordings, as long as such recorded event or broadcast transmission does not contain an entire sound recording or feature a particular sound recording.'';

(C) by inserting after paragraph (3), as so redesignated, the following:

''(4) A 'continuous program' is a predetermined program that is continuously performed in the same order and that is accessed at a point in the program that is beyond the control of the transmission recipient.'';

(D) by inserting after paragraph (5), as so redesignated, the following:

''(6) An 'eligible nonsubscription transmission' is a noninteractive nonsubscription digital audio transmission not exempt under subsection (d)(1) that is made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including retransmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

''(7) An 'interactive service' is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on request, a transmission of a particular sound recording, whether or not as part

of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large, or in the case of a subscription service, by all subscribers of the service, does not make a service interactive, if the programming on each channel of the service does not substantially consist of sound recordings that are performed within 1 hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and noninteractive services (either concurrently or at different times), the noninteractive component shall not be treated as part of an interactive service.

''(8) A 'new subscription service' is a service that performs sound recordings by means of noninteractive subscription digital audio transmissions and that is not a preexisting subscription service or a preexisting satellite digital audio radio service.'';

(E) by inserting after paragraph (9), as so redesignated, the following:

''(10) A 'preexisting satellite digital audio radio service' is a subscription satellite digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998, and any renewal of such license to the extent of the scope of the original license, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.

''(11) A 'preexisting subscription service' is a service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service.''; and

(F) by adding at the end the following:

''(15) A 'transmission' is either an initial transmission or a retransmission.''.

(5) The amendment made by paragraph (2)(B)(i)(III) of this subsection shall be deemed to have been enacted as part of the Digital Performance Right in Sound Recordings Act of 1995, and the publication of notice of proceedings under section 114(f)(1) of title 17, United States Code, as in effect upon the effective date of that Act, for the determination of royalty payments shall be deemed to have been made for the period beginning on the effective date of that Act and ending on December 1, 2001.

(6) The amendments made by this subsection do not annul, limit, or otherwise impair the rights that are preserved by section 114 of title 17, United States Code, including the rights preserved by subsections (c), (d)(4), and (i) of such section.

(b) EPHEMERAL RECORDINGS.—Section 112 of title 17, United States Code, is amended—

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

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

''(e) STATUTORY LICENSE.—(1) A transmitting organization entitled to transmit to the public a performance of a sound recording under the limitation on exclusive rights specified by section 114(d)(1)(C)(iv) or under a statutory license in accordance with section 114(f) is entitled to a statutory license, under the conditions specified by this subsection, to make no more than 1 phonorecord of the sound recording (unless the terms and conditions of the statutory license allow for more), if the following conditions are satisfied:

''(A) The phonorecord is retained and used solely by the transmitting organization that made it, and no further phonorecords are reproduced from it.

''(B) The phonorecord is used solely for the transmitting organization's own transmissions originating in the United States under a statutory license in accordance with section 114(f) or the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).

''(C) Unless preserved exclusively for purposes of archival preservation, the phonorecord is destroyed within 6 months from the date the sound recording was first transmitted to the public using the phonorecord.

''(D) Phonorecords of the sound recording have been distributed to the public under the authority of the copyright owner or the copyright owner authorizes the transmitting entity to transmit the sound recording, and the transmitting entity makes the phonorecord under this subsection from a phonorecord lawfully made and acquired under the authority of the copyright owner.

''(3) Notwithstanding any provision of the antitrust laws, any copyright owners of sound recordings and any transmitting organizations entitled to a statutory license under this subsection may negotiate and agree upon royalty rates and license terms and conditions for making phonorecords of such sound recordings under this section and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

''(4) No later than 30 days after the date of the enactment of the Digital Millennium Copyright Act, the Librarian of Congress shall cause notice to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining reasonable terms and rates of royalty payments for the activities specified by paragraph (2) of this subsection during the period beginning on the date of the enactment of such Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. Any copyright owners of sound recordings or any transmitting organizations entitled to a statutory license under this subsection may submit to the Librarian of Congress licenses covering such activities with respect to such sound recordings. The parties to each negotiation proceeding shall bear their own costs.

''(5) In the absence of license agreements negotiated under paragraph (3), during the 60-day period commencing 6 months after publication of the notice specified in paragraph (4), and upon the filing of a petition in accordance with section 803(a)(1), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the Federal Register a schedule of reasonable rates and terms which, subject to paragraph (6), shall be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the period beginning on the date of the enactment of the Digital Millennium Copyright Act and ending on December 31, 2000, or such other date as the parties may agree. Such rates shall include a minimum fee for each type of service offered by transmitting organizations. The copyright arbitration royalty panel shall establish rates that most clearly represent the fees that would have been negotiated in the marketplace between a willing buyer and a willing seller. In determining such rates and terms, the copyright arbitration royalty panel shall base its decision on economic, competitive, and programming information presented by the parties, including—

''(A) whether use of the service may substitute for or may promote the sales of phonorecords or otherwise interferes with or enhances the copyright owner's traditional streams of revenue; and

''(B) the relative roles of the copyright owner and the transmitting organization in the copyrighted work and the service made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, and risk.

In establishing such rates and terms, the copyright arbitration royalty panel may consider the rates and terms under voluntary license agreements negotiated as provided in paragraphs (3) and (4). The Librarian of Congress shall also establish requirements by which copyright owners may receive reasonable notice of the use of their sound recordings under this section, and under which records of such use shall be kept and made available by transmitting organizations entitled to obtain a statutory license under this subsection.

''(6) License agreements voluntarily negotiated at any time between 1 or more copyright owners of sound recordings and 1 or more transmitting organizations entitled to obtain a statutory license under this subsection shall be given effect in lieu of any determination by a copyright arbitration royalty panel or decision by the Librarian of Congress.

''(7) Publication of a notice of the initiation of voluntary negotiation proceedings as specified in paragraph (4) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, in the first week of January 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph (4). The procedures specified in paragraph (5) shall be repeated, in accordance with regulations that the Librarian of Congress shall prescribe, upon filing of a petition in accordance with section 803(a)(1), during a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter, except to the extent that different years for the repeating of such proceedings may be determined in accordance with paragraph (4). The procedures specified in paragraph (5) shall be concluded in accordance with section 802.

''(8)(A) Any person who wishes to make a phonorecord of a sound recording under a statutory license in accordance with this subsection may do so without infringing the exclusive right of the copyright owner of the sound recording under section 106(1)—

''(i) by complying with such notice requirements as the Librarian of Congress shall prescribe by regulation and by paying royalty fees in accordance with this subsection; or

''(ii) if such royalty fees have not been set, by agreeing to pay such royalty fees as shall be determined in accordance with this subsection.

''(B) Any royalty payments in arrears shall be made on or before the 20th day of the month next succeeding the month in which the royalty fees are set.

''(9) If a transmitting organization entitled to make a phonorecord under this subsection is prevented from making such phonorecord by reason of the application by the copyright owner of technical measures that prevent the reproduction of the sound recording, the copyright owner shall make available to the transmitting organization the necessary means for permitting the making of such phonorecord as permitted under this subsection, if it is technologically feasible and economically reasonable for the copyright owner to do so. If the copyright owner fails to do so in a timely manner in light of the transmitting organization's reasonable business requirements, the transmitting organization shall not be liable for a violation of section 1201(a)(1) of this title for engaging in such activities as are necessary to make such phonorecords as permitted under this subsection.

''(10) Nothing in this subsection annuls, limits, impairs, or otherwise affects in any way the existence or value of any of the exclusive rights of the copyright owners in a sound recording, except as otherwise provided in this subsection, or in a musical work, including the exclusive rights to reproduce and distribute a sound recording or musical work, including by means of

a digital phonorecord delivery, under section 106(1), 106(3), and 115, and the right to perform publicly a sound recording or musical work, including by means of a digital audio transmission, under sections 106(4) and 106(6).''.

(c) SCOPE OF SECTION 112(a) OF TITLE 17 NOT AFFECTED.—Nothing in this section or the amendments made by this section shall affect the scope of section 112(a) of title 17, United States Code, or the entitlement of any person to an exemption thereunder.

(d) PROCEDURAL AMENDMENTS TO CHAPTER 8.—Section 802 of title 17, United States Code, is amended—

(1) in subsection (f)—

(A) in the first sentence by striking ''60'' and inserting ''90''; and

(B) in the third sentence by striking ''that 60-day period'' and inserting ''an additional 30-day period''; and

(2) in subsection (g) by inserting after the second sentence the following: ''When this title provides that the royalty rates or terms that were previously in effect are to expire on a specified date, any adjustment by the Librarian of those rates or terms shall be effective as of the day following the date of expiration of the rates or terms that were previously in effect, even if the Librarian's decision is rendered on a later date.''.

(e) CONFORMING AMENDMENTS.—(1) Section 801(b)(1) of title 17, United States Code, is amended in the second sentence by striking ''sections 114, 115, and 116'' and inserting ''sections 114(f)(1)(B), 115, and 116''.

(2) Section 802(c) of title 17, United States Code, is amended by striking ''section 111, 114, 116, or 119, any person entitled to a compulsory license'' and inserting ''section 111, 112, 114, 116, or 119, any transmitting organization entitled to a statutory license under section 112(f), any person entitled to a statutory license''.

(3) Section 802(g) of title 17, United States Code, is amended by striking ''sections 111, 114'' and inserting ''sections 111, 112, 114''.

(4) Section 802(h)(2) of title 17, United States Code, is amended by striking ''section 111, 114'' and inserting ''section 111, 112, 114''.

(5) Section 803(a)(1) of title 17, United States Code, is amended by striking ''sections 114, 115'' and inserting ''sections 112, 114, 115''.

(6) Section 803(a)(5) of title 17, United States Code, is amended—

(A) by striking ''section 114'' and inserting ''section 112 or 114''; and

(B) by striking ''that section'' and inserting ''those sections''.

SEC. 406. ASSUMPTION OF CONTRACTUAL OBLIGATIONS RELATED TO TRANSFERS OF RIGHTS IN MOTION PICTURES.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 180—ASSUMPTION OF CERTAIN CONTRACTUAL OBLIGATIONS

''Sec. 4001. Assumption of contractual obligations related to transfers of rights in motion pictures.

"§ 4001. Assumption of contractual obligations related to transfers of rights in motion pictures

''(a) ASSUMPTION OF OBLIGATIONS.—(1) In the case of a transfer of copyright ownership under United States law in a motion picture (as the terms 'transfer of copyright ownership' and 'motion picture' are defined in section 101 of title 17) that is produced subject to 1 or more collective bargaining agreements negotiated under the laws of the United States, if the transfer is executed on or after the effective date of this chapter and is not limited to public performance rights, the transfer instrument shall be deemed to incorporate the assumption agreements applicable to the copyright ownership being transferred that are required by the applicable collective bargaining agreement, and the transferee shall be subject to the obligations under each such assumption agreement to make residual payments and provide related notices, accruing after the effective date of the transfer and applicable to the exploitation of the rights transferred, and any remedies under each such assumption agreement for breach of those obligations, as those obligations and remedies are set forth in the applicable collective bargaining agreement, if—

''(A) the transferee knows or has reason to know at the time of the transfer that such collective bargaining agreement was or will be applicable to the motion picture; or

''(B) in the event of a court order confirming an arbitration award against the transferor under the collective bargaining agreement, the transferor does not have the financial ability to satisfy the award within 90 days after the order is issued.

''(2) For purposes of paragraph (1)(A), 'knows or has reason to know' means any of the following:

''(A) Actual knowledge that the collective bargaining agreement was or will be applicable to the motion picture.

''(B)(i) Constructive knowledge that the collective bargaining agreement was or will be applicable to the motion picture, arising from recordation of a document pertaining to copyright in the motion picture under section 205 of title 17 or from publication, at a site available to the public on-line that is operated by the relevant union, of information that identifies the motion picture as subject to a collective bargaining agreement with that union, if the site permits commercially reasonable verification of the date on which the information was available for access.

''(ii) Clause (i) applies only if the transfer referred to in subsection (a)(1) occurs—

''(i) after the motion picture is completed, or

''(ii) before the motion picture is completed and—

''(I) within 18 months before the filing of an application for copyright registration for the motion picture under section 408 of title 17, or

''(II) if no such application is filed, within 18 months before the first publication of the motion picture in the United States.

''(C) Awareness of other facts and circumstances pertaining to a particular transfer from which it is apparent that the collective bargaining agreement was or will be applicable to the motion picture.

''(b) SCOPE OF EXCLUSION OF TRANSFERS OF PUBLIC PERFORMANCE RIGHTS.—For purposes of this section, the exclusion under subsection (a) of transfers of copyright ownership in a motion picture that are limited to public performance rights includes transfers to a terrestrial broadcast station, cable system, or programmer to the extent that the station, system, or programmer is functioning as an exhibitor of the motion picture, either by exhibiting the motion picture on its own network, system, service, or station, or by initiating the transmission of an exhibition that is carried on another network, system, service, or station. When a terrestrial broadcast station, cable system, or programmer, or other transferee, is also functioning otherwise as a distributor or as a producer of the motion picture, the public performance exclusion does not affect any obligations imposed on the transferee to the extent that it is engaging in such functions.

''(c) EXCLUSION FOR GRANTS OF SECURITY INTERESTS.—Subsection (a) shall not apply to—

''(1) a transfer of copyright ownership consisting solely of a mortgage, hypothecation, or other security interest; or

''(2) a subsequent transfer of the copyright ownership secured by the security interest described in paragraph (1) by or under the authority of the secured party, including a transfer through the exercise of the secured party's rights or remedies as a secured party, or by a subsequent transferee.

The exclusion under this subsection shall not affect any rights or remedies under law or contract.

''(d) DEFERRAL PENDING RESOLUTION OF BONA FIDE DISPUTE.—A transferee on which obligations are imposed under subsection (a) by virtue of paragraph (1) of that subsection may elect to defer performance of such obligations that are subject to a bona fide dispute between a union and a prior transferor until that dispute is resolved, except that such deferral shall not stay accrual of any union claims due under an applicable collective bargaining agreement.

''(e) SCOPE OF OBLIGATIONS DETERMINED BY PRIVATE AGREEMENT.—Nothing in this section shall expand or diminish the rights, obligations, or remedies of any person under the collective bargaining agreements or assumption agreements referred to in this section.

''(f) FAILURE TO NOTIFY.—If the transferor under subsection (a) fails to notify the transferee under subsection (a) of applicable collective bargaining obligations before the execution of the transfer instrument, and subsection (a) is made applicable to the transferee solely by virtue of subsection (a)(1)(B), the transferor shall be liable to the transferee for any damages suffered by the transferee as a result of the failure to notify.

''(g) DETERMINATION OF DISPUTES AND CLAIMS.—Any dispute concerning the application of subsections (a) through (f) shall be determined by an action in United States district court, and the court in its discretion may allow the recovery of full costs by or against any party and may also award a reasonable attorney's fee to the prevailing party as part of the costs.

''(h) STUDY.—The Comptroller General, in consultation with the Register of Copyrights, shall conduct a study of the conditions in the motion picture industry that gave rise to this section, and the impact of this section on the motion picture industry. The Comptroller General shall report the findings of the study to the Congress within 2 years after the effective date of this chapter.''.

(b) CONFORMING AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

"180. Assumption of Certain Contractual Obligations ..... 4001".

SEC. 407. EFFECTIVE DATE.

Except as otherwise provided in this title, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

TITLE V—PROTECTION OF CERTAIN ORIGINAL DESIGNS

SEC. 501. SHORT TITLE.

This Act may be referred to as the ''Vessel Hull Design Protection Act''.

SEC. 502. PROTECTION OF CERTAIN ORIGINAL DESIGNS.

Title 17, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 13—PROTECTION OF ORIGINAL DESIGNS

''Sec.
''1301. Designs protected.
''1302. Designs not subject to protection.
''1303. Revisions, adaptations, and rearrangements.
''1304. Commencement of protection.
''1305. Term of protection.
''1306. Design notice.
''1307. Effect of omission of notice.
''1308. Exclusive rights.
''1309. Infringement.
''1310. Application for registration.
''1311. Benefit of earlier filing date in foreign country.
''1312. Oaths and acknowledgments.
''1313. Examination of application and issue or refusal of registration.

''1314. Certification of registration.
''1315. Publication of announcements and indexes.
''1316. Fees.
''1317. Regulations.
''1318. Copies of records.
''1319. Correction of errors in certificates.
''1320. Ownership and transfer.
''1321. Remedy for infringement.
''1322. Injunctions.
''1323. Recovery for infringement.
''1324. Power of court over registration.
''1325. Liability for action on registration fraudulently obtained.
''1326. Penalty for false marking.
''1327. Penalty for false representation.
''1328. Enforcement by Treasury and Postal Service .
''1329. Relation to design patent law.
''1330. Common law and other rights unaffected.
''1331. Administrator; Office of the Administrator.
''1332. No retroactive effect.

''§ 1301. Designs protected

''(a) DESIGNS PROTECTED.—

''(1) IN GENERAL.—The designer or other owner of an original design of a useful article which makes the article attractive or distinctive in appearance to the purchasing or using public may secure the protection provided by this chapter upon complying with and subject to this chapter.

''(2) VESSEL HULLS.—The design of a vessel hull, including a plug or mold, is subject to protection under this chapter, notwithstanding section 1302(4).

''(b) DEFINITIONS.—For the purpose of this chapter, the following terms have the following meanings:

''(1) A design is 'original' if it is the result of the designer's creative endeavor that provides a distinguishable variation over prior work pertaining to similar articles which is more than merely trivial and has not been copied from another source.

''(2) A 'useful article' is a vessel hull, including a plug or mold, which in normal use has an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article which normally is part of a useful article shall be deemed to be a useful article.

''(3) A 'vessel' is a craft, especially one larger than a rowboat, designed to navigate on water, but does not include any such craft that exceeds 200 feet in length.

''(4) A 'hull' is the frame or body of a vessel, including the deck of a vessel, exclusive of masts, sails, yards, and rigging.

''(5) A 'plug' means a device or model used to make a mold for the purpose of exact duplication, regardless of whether the device or model has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

''(6) A 'mold' means a matrix or form in which a substance for material is used, regardless of whether the matrix or form has an intrinsic utilitarian function that is not only to portray the appearance of the product or to convey information.

''§ 1302. Designs not subject to protection

''Protection under this chapter shall not be available for a design that is—

''(1) not original;

''(2) staple or commonplace, such as a standard geometric figure, a familiar symbol, an emblem, or a motif, or another shape, pattern, or configuration which has become standard, common, prevalent, or ordinary;

''(3) different from a design excluded by paragraph (2) only in insignificant details or in elements which are variants commonly used in the relevant trades;

''(4) dictated solely by a utilitarian function of the article that embodies it; or

''(5) embodied in a useful article that was made public by the designer or owner in the United States or a foreign country more than 1 year before the date of the application for registration under this chapter.

''§ 1303. Revisions, adaptations, and rearrangements

''Protection for a design under this chapter shall be available notwithstanding the employment in the design of subject matter excluded from protection under section 1302 if the design is a substantial revision, adaptation, or rearrangement of such subject matter. Such protection shall be independent of any subsisting protection in subject matter employed in the design, and shall not be construed as securing any right to subject matter excluded from protection under this chapter or as extending any subsisting protection under this chapter.

''§ 1304. Commencement of protection

''The protection provided for a design under this chapter shall commence upon the earlier of the date of publication of the registration under section 1313(a) or the date the design is first made public as defined by section 1310(b).

''§ 1305. Term of protection

''(a) IN GENERAL.—Subject to subsection (b), the protection provided under this chapter for a design shall continue for a term of 10 years beginning on the date of the commencement of protection under section 1304.

''(b) EXPIRATION.—All terms of protection provided in this section shall run to the end of the calendar year in which they would otherwise expire.

''(c) TERMINATION OF RIGHTS.—Upon expiration or termination of protection in a particular design under this chapter, all rights under this chapter in the design shall terminate, regardless of the number of different articles in which the design may have been used during the term of its protection.

''§ 1306. Design notice

''(a) CONTENTS OF DESIGN NOTICE.—(1) Whenever any design for which protection is sought under this chapter is made public under section 1310(b), the owner of the design shall, subject to the provisions of section 1307, mark it or have it marked legibly with a design notice consisting of—

''(A) the words 'Protected Design', the abbreviation 'Prot'd Des.', or the letter 'D' with a circle, or the symbol *D*;

''(B) the year of the date on which protection for the design commenced; and

''(C) the name of the owner, an abbreviation by which the name can be recognized, or a generally accepted alternative designation of the owner.

Any distinctive identification of the owner may be used for purposes of subparagraph (C) if it has been recorded by the Administrator before the design marked with such identification is registered.

''(2) After registration, the registration number may be used instead of the elements specified in subparagraphs (B) and (C) of paragraph (1).

''(b) LOCATION OF NOTICE.—The design notice shall be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce.

''(c) SUBSEQUENT REMOVAL OF NOTICE.—When the owner of a design has complied with the provisions of this section, protection under this chapter shall not be affected by the removal, destruction, or obliteration by others of the design notice on an article.

''§ 1307. Effect of omission of notice

''(a) ACTIONS WITH NOTICE.—Except as provided in subsection (b), the omission of the notice prescribed in section 1306 shall not cause loss of the protection under this chapter or prevent recovery for infringement under this chapter against any person who, after receiving written notice of the design protection, begins an undertaking leading to infringement under this chapter.

''(b) ACTIONS WITHOUT NOTICE.—The omission of the notice prescribed in section 1306 shall prevent any recovery under section 1323 against a person who began an undertaking leading to infringement under this chapter before receiving written notice of the design protection. No injunction shall be issued under this chapter with respect to such undertaking unless the owner of the design reimburses that person for any reasonable expenditure or contractual obligation in connection with such undertaking that was incurred before receiving written notice of the design protection, as the court in its discretion directs. The burden of providing written notice of design protection shall be on the owner of the design.

''§ 1308. Exclusive rights

''The owner of a design protected under this chapter has the exclusive right to—

''(1) make, have made, or import, for sale or for use in trade, any useful article embodying that design; and

''(2) sell or distribute for sale or for use in trade any useful article embodying that design.

''§ 1309. Infringement

''(a) ACTS OF INFRINGEMENT.—Except as provided in subjection (b), it shall be infringement of the exclusive rights in a design protected under this chapter for any person, without the consent of the owner of the design, within the United States and during the term of such protection, to—

''(1) make, have made, or import, for sale or for use in trade, any infringing article as defined in subsection (e); or

''(2) sell or distribute for sale or for use in trade any such infringing article.

''(b) ACTS OF SELLERS AND DISTRIBUTORS.—A seller or distributor of an infringing article who did not make or import the article shall be deemed to have infringed on a design protected under this chapter only if that person—

''(1) induced or acted in collusion with a manufacturer to make, or an importer to import such article, except that merely purchasing or giving an order to purchase such article in the ordinary course of business shall not of itself constitute such inducement or collusion; or

''(2) refused or failed, upon the request of the owner of the design, to make a prompt and full disclosure of that person's source of such article, and that person orders or reorders such article after receiving notice by registered or certified mail of the protection subsisting in the design.

''(c) ACTS WITHOUT KNOWLEDGE.—It shall not be infringement under this section to make, have made, import, sell, or distribute, any article embodying a design which was created without knowledge that a design was protected under this chapter and was copied from such protected design.

''(d) ACTS IN ORDINARY COURSE OF BUSINESS.—A person who incorporates into that person's product of manufacture an infringing article acquired from others in the ordinary course of business, or who, without knowledge of the protected design embodied in an infringing article, makes or processes the infringing article for the account of another person in the ordinary course of business, shall not be deemed to have infringed the rights in that design under this chapter except under a condition contained in paragraph (1) or (2) of subsection (b). Accepting an order or reorder from the source of the infringing article shall be deemed ordering or reordering within the meaning of subsection (b)(2).

''(e) INFRINGING ARTICLE DEFINED.—As used in this section, an 'infringing article' is any article the design of which has been copied from a design protected under this chapter, without the consent of the owner of the protected design. An infringing article is not an illustration or picture of a protected design in an advertisement,

book, periodical, newspaper, photograph, broadcast, motion picture, or similar medium. A design shall not be deemed to have been copied from a protected design if it is original and not substantially similar in appearance to a protected design.

''(f) ESTABLISHING ORIGINALITY.—The party to any action or proceeding under this chapter who alleges rights under this chapter in a design shall have the burden of establishing the design's originality whenever the opposing party introduces an earlier work which is identical to such design, or so similar as to make prima facie showing that such design was copied from such work.

''(g) REPRODUCTION FOR TEACHING OR ANALYSIS.—It is not an infringement of the exclusive rights of a design owner for a person to reproduce the design in a useful article or in any other form solely for the purpose of teaching, analyzing, or evaluating the appearance, concepts, or techniques embodied in the design, or the function of the useful article embodying the design.

''§ 1310. Application for registration

''(a) TIME LIMIT FOR APPLICATION FOR REGISTRATION.—Protection under this chapter shall be lost if application for registration of the design is not made within two years after the date on which the design is first made public.

''(b) WHEN DESIGN IS MADE PUBLIC.—A design is made public when an existing useful article embodying the design is anywhere publicly exhibited, publicly distributed, or offered for sale or sold to the public by the owner of the design or with the owner's consent.

''(c) APPLICATION BY OWNER OF DESIGN.—Application for registration may be made by the owner of the design.

''(d) CONTENTS OF APPLICATION.—The application for registration shall be made to the Administrator and shall state—

''(1) the name and address of the designer or designers of the design;

''(2) the name and address of the owner if different from the designer;

''(3) the specific name of the useful article embodying the design;

''(4) the date, if any, that the design was first made public, if such date was earlier than the date of the application;

''(5) affirmation that the design has been fixed in a useful article; and

''(6) such other information as may be required by the Administrator.

The application for registration may include a description setting forth the salient features of the design, but the absence of such a description shall not prevent registration under this chapter.

''(e) SWORN STATEMENT.—The application for registration shall be accompanied by a statement under oath by the applicant or the applicant's duly authorized agent or representative, setting forth, to the best of the applicant's knowledge and belief—

''(1) that the design is original and was created by the designer or designers named in the application;

''(2) that the design has not previously been registered on behalf of the applicant or the applicant's predecessor in title; and

''(3) that the applicant is the person entitled to protection and to registration under this chapter.

If the design has been made public with the design notice prescribed in section 1306, the statement shall also describe the exact form and position of the design notice.

''(f) EFFECT OF ERRORS.—(1) Error in any statement or assertion as to the utility of the useful article named in the application under this section, the design of which is sought to be registered, shall not affect the protection secured under this chapter.

''(2) Errors in omitting a joint designer or in naming an alleged joint designer shall not affect the validity of the registration, or the actual ownership or the protection of the design, unless it is shown that the error occurred with deceptive intent.

''(g) DESIGN MADE IN SCOPE OF EMPLOYMENT.—In a case in which the design was made within the regular scope of the designer's employment and individual authorship of the design is difficult or impossible to ascribe and the application so states, the name and address of the employer for whom the design was made may be stated instead of that of the individual designer.

''(h) PICTORIAL REPRESENTATION OF DESIGN.—The application for registration shall be accompanied by two copies of a drawing or other pictorial representation of the useful article embodying the design, having one or more views, adequate to show the design, in a form and style suitable for reproduction, which shall be deemed a part of the application.

''(i) DESIGN IN MORE THAN ONE USEFUL ARTICLE.—If the distinguishing elements of a design are in substantially the same form in different useful articles, the design shall be protected as to all such useful articles when protected as to one of them, but not more than one registration shall be required for the design.

''(j) APPLICATION FOR MORE THAN ONE DESIGN.—More than one design may be included in the same application under such conditions as may be prescribed by the Administrator. For each design included in an application the fee prescribed for a single design shall be paid.

''§ 1311. Benefit of earlier filing date in foreign country

''An application for registration of a design filed in the United States by any person who has, or whose legal representative or predecessor or successor in title has, previously filed an application for registration of the same design in a foreign country which extends to designs of owners who are citizens of the United States, or to applications filed under this chapter, similar protection to that provided under this chapter shall have that same effect as if filed in the United States on the date on which the application was first filed in such foreign country, if the application in the United States is filed within 6 months after the earliest date on which any such foreign application was filed.

''§ 1312. Oaths and acknowledgments

''(a) IN GENERAL.—Oaths and acknowledgments required by this chapter—

''(1) may be made—

''(A) before any person in the United States authorized by law to administer oaths; or

''(B) when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any official authorized to administer oaths in the foreign country concerned, whose authority shall be proved by a certificate of a diplomatic or consular officer of the United States; and

''(2) shall be valid if they comply with the laws of the State or country where made.

''(b) WRITTEN DECLARATION IN LIEU OF OATH.—(1) The Administrator may by rule prescribe that any document which is to be filed under this chapter in the Office of the Administrator and which is required by any law, rule, or other regulation to be under oath, may be subscribed to by a written declaration in such form as the Administrator may prescribe, and such declaration shall be in lieu of the oath otherwise required.

''(2) Whenever a written declaration under paragraph (1) is used, the document containing the declaration shall state that willful false statements are punishable by fine or imprisonment, or both, pursuant to section 1001 of title 18, and may jeopardize the validity of the application or document or a registration resulting therefrom.

''§ 1313. Examination of application and issue or refusal of registration

''(a) DETERMINATION OF REGISTRABILITY OF DESIGN; REGISTRATION.—Upon the filing of an application for registration in proper form under section 1310, and upon payment of the fee prescribed under section 1316, the Administrator shall determine whether or not the application relates to a design which on its face appears to be subject to protection under this chapter, and, if so, the Register shall register the design. Registration under this subsection shall be announced by publication. The date of registration shall be the date of publication.

''(b) REFUSAL TO REGISTER; RECONSIDERATION.—If, in the judgment of the Administrator, the application for registration relates to a design which on its face is not subject to protection under this chapter, the Administrator shall send to the applicant a notice of refusal to register and the grounds for the refusal. Within 3 months after the date on which the notice of refusal is sent, the applicant may, by written request, seek reconsideration of the application. After consideration of such a request, the Administrator shall either register the design or send to the applicant a notice of final refusal to register.

''(c) APPLICATION TO CANCEL REGISTRATION.—Any person who believes he or she is or will be damaged by a registration under this chapter may, upon payment of the prescribed fee, apply to the Administrator at any time to cancel the registration on the ground that the design is not subject to protection under this chapter, stating the reasons for the request. Upon receipt of an application for cancellation, the Administrator shall send to the owner of the design, as shown in the records of the Office of the Administrator, a notice of the application, and the owner shall have a period of 3 months after the date on which such notice is mailed in which to present arguments to the Administrator for support of the validity of the registration. The Administrator shall also have the authority to establish, by regulation, conditions under which the opposing parties may appear and be heard in support of their arguments. If, after the periods provided for the presentation of arguments have expired, the Administrator determines that the applicant for cancellation has established that the design is not subject to protection under this chapter, the Administrator shall order the registration stricken from the record. Cancellation under this subsection shall be announced by publication, and notice of the Administrator's final determination with respect to any application for cancellation shall be sent to the applicant and to the owner of record.

''§ 1314. Certification of registration

''Certificates of registration shall be issued in the name of the United States under the seal of the Office of the Administrator and shall be recorded in the official records of the Office. The certificate shall state the name of the useful article, the date of filing of the application, the date of registration, and the date the design was made public, if earlier than the date of filing of the application, and shall contain a reproduction of the drawing or other pictorial representation of the design. If a description of the salient features of the design appears in the application, the description shall also appear in the certificate. A certificate of registration shall be admitted in any court as prima facie evidence of the facts stated in the certificate.

''§ 1315. Publication of announcements and indexes

''(a) PUBLICATIONS OF THE ADMINISTRATOR.—The Administrator shall publish lists and indexes of registered designs and cancellations of designs and may also publish the drawings or other pictorial representations of registered designs for sale or other distribution.

''(b) FILE OF REPRESENTATIVES OF REGISTERED DESIGNS.—The Administrator shall establish and maintain a file of the drawings or other pictorial representations of registered designs. The file shall be available for use by the public under such conditions as the Administrator may prescribe.

"§ 1316. Fees

''The Administrator shall by regulation set reasonable fees for the filing of applications to register designs under this chapter and for other services relating to the administration of this chapter, taking into consideration the cost of providing these services and the benefit of a public record.

"§ 1317. Regulations

''The Administrator may establish regulations for the administration of this chapter.

"§ 1318. Copies of records

''Upon payment of the prescribed fee, any person may obtain a certified copy of any official record of the Office of the Administrator that relates to this chapter. That copy shall be admissible in evidence with the same effect as the original.

"§ 1319. Correction of errors in certificates

''The Administrator may, by a certificate of correction under seal, correct any error in a registration incurred through the fault of the Office, or, upon payment of the required fee, any error of a clerical or typographical nature occurring in good faith but not through the fault of the Office. Such registration, together with the certificate, shall thereafter have the same effect as if it had been originally issued in such corrected form.

"§ 1320. Ownership and transfer

''(a) PROPERTY RIGHT IN DESIGN.—The property right in a design subject to protection under this chapter shall vest in the designer, the legal representatives of a deceased designer or of one under legal incapacity, the employer for whom the designer created the design in the case of a design made within the regular scope of the designer's employment, or a person to whom the rights of the designer or of such employer have been transferred. The person in whom the property right is vested shall be considered the owner of the design.

''(b) TRANSFER OF PROPERTY RIGHT.—The property right in a registered design, or a design for which an application for registration has been or may be filed, may be assigned, granted, conveyed, or mortgaged by an instrument in writing, signed by the owner, or may be bequeathed by will.

''(c) OATH OR ACKNOWLEDGEMENT OF TRANSFER.—An oath or acknowledgment under section 1312 shall be prima facie evidence of the execution of an assignment, grant, conveyance, or mortgage under subsection (b).

''(d) RECORDATION OF TRANSFER.—An assignment, grant, conveyance, or mortgage under subsection (b) shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, unless it is recorded in the Office of the Administrator within 3 months after its date of execution or before the date of such subsequent purchase or mortgage.

"§ 1321. Remedy for infringement

''(a) IN GENERAL.—The owner of a design is entitled, after issuance of a certificate of registration of the design under this chapter, to institute an action for any infringement of the design.

''(b) REVIEW OF REFUSAL TO REGISTER.—(1) Subject to paragraph (2), the owner of a design may seek judicial review of a final refusal of the Administrator to register the design under this chapter by bringing a civil action, and may in the same action, if the court adjudges the design subject to protection under this chapter, enforce the rights in that design under this chapter.

''(2) The owner of a design may seek judicial review under this section if—

''(A) the owner has previously duly filed and prosecuted to final refusal an application in proper form for registration of the design;

''(B) the owner causes a copy of the complaint in the action to be delivered to the Administrator within 10 days after the commencement of the action; and

''(C) the defendant has committed acts in respect to the design which would constitute infringement with respect to a design protected under this chapter.

''(c) ADMINISTRATOR AS PARTY TO ACTION.—The Administrator may, at the Administrator's option, become a party to the action with respect to the issue of registrability of the design claim by entering an appearance within 60 days after being served with the complaint, but the failure of the Administrator to become a party shall not deprive the court of jurisdiction to determine that issue.

''(d) USE OF ARBITRATION TO RESOLVE DISPUTE.—The parties to an infringement dispute under this chapter, within such time as may be specified by the Administrator by regulation, may determine the dispute, or any aspect of the dispute, by arbitration. Arbitration shall be governed by title 9. The parties shall give notice of any arbitration award to the Administrator, and such award shall, as between the parties to the arbitration, be dispositive of the issues to which it relates. The arbitration award shall be unenforceable until such notice is given. Nothing in this subsection shall preclude the Administrator from determining whether a design is subject to registration in a cancellation proceeding under section 1313(c).

§ 1322. Injunctions

''(a) IN GENERAL.—A court having jurisdiction over actions under this chapter may grant injunctions in accordance with the principles of equity to prevent infringement of a design under this chapter, including, in its discretion, prompt relief by temporary restraining orders and preliminary injunctions.

''(b) DAMAGES FOR INJUNCTIVE RELIEF WRONGFULLY OBTAINED.—A seller or distributor who suffers damage by reason of injunctive relief wrongfully obtained under this section has a cause of action against the applicant for such injunctive relief and may recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the injunctive relief was sought in bad faith, and, unless the court finds extenuating circumstances, reasonable attorney's fees.

"§ 1323. Recovery for infringement

''(a) DAMAGES.—Upon a finding for the claimant in an action for infringement under this chapter, the court shall award the claimant damages adequate to compensate for the infringement. In addition, the court may increase the damages to such amount, not exceeding $50,000 or $1 per copy, whichever is greater, as the court determines to be just. The damages awarded shall constitute compensation and not a penalty. The court may receive expert testimony as an aid to the determination of damages.

''(b) INFRINGER'S PROFITS.—As an alternative to the remedies provided in subsection (a), the court may award the claimant the infringer's profits resulting from the sale of the copies if the court finds that the infringer's sales are reasonably related to the use of the claimant's design. In such a case, the claimant shall be required to prove only the amount of the infringer's sales and the infringer shall be required to prove its expenses against such sales.

''(c) STATUTE OF LIMITATIONS.—No recovery under subsection (a) or (b) shall be had for any infringement committed more than 3 years before the date on which the complaint is filed.

''(d) ATTORNEY'S FEES.—In an action for infringement under this chapter, the court may award reasonable attorney's fees to the prevailing party.

''(e) DISPOSITION OF INFRINGING AND OTHER ARTICLES.—The court may order that all infringing articles, and any plates, molds, patterns, models, or other means specifically adapted for making the articles, be delivered up for destruction or other disposition as the court may direct.

"§ 1324. Power of court over registration

''In any action involving the protection of a design under this chapter, the court, when appropriate, may order registration of a design under this chapter or the cancellation of such a registration. Any such order shall be certified by the court to the Administrator, who shall make an appropriate entry upon the record.

"§ 1325. Liability for action on registration fraudulently obtained

''Any person who brings an action for infringement knowing that registration of the design was obtained by a false or fraudulent representation materially affecting the rights under this chapter, shall be liable in the sum of $10,000, or such part of that amount as the court may determine. That amount shall be to compensate the defendant and shall be charged against the plaintiff and paid to the defendant, in addition to such costs and attorney's fees of the defendant as may be assessed by the court.

"§ 1326. Penalty for false marking

''(a) IN GENERAL.—Whoever, for the purpose of deceiving the public, marks upon, applies to, or uses in advertising in connection with an article made, used, distributed, or sold, a design which is not protected under this chapter, a design notice specified in section 1306, or any other words or symbols importing that the design is protected under this chapter, knowing that the design is not so protected, shall pay a civil fine of not more than $500 for each such offense.

''(b) SUIT BY PRIVATE PERSONS.—Any person may sue for the penalty established by subsection (a), in which event one-half of the penalty shall be awarded to the person suing and the remainder shall be awarded to the United States.

"§ 1327. Penalty for false representation

''Whoever knowingly makes a false representation materially affecting the rights obtainable under this chapter for the purpose of obtaining registration of a design under this chapter shall pay a penalty of not less than $500 and not more than $1,000, and any rights or privileges that individual may have in the design under this chapter shall be forfeited.

"§ 1328. Enforcement by Treasury and Postal Service

''(a) REGULATIONS.—The Secretary of the Treasury and the United States Postal Service shall separately or jointly issue regulations for the enforcement of the rights set forth in section 1308 with respect to importation. Such regulations may require, as a condition for the exclusion of articles from the United States, that the person seeking exclusion take any one or more of the following actions:

''(1) Obtain a court order enjoining, or an order of the International Trade Commission under section 337 of the Tariff Act of 1930 excluding, importation of the articles.

''(2) Furnish proof that the design involved is protected under this chapter and that the importation of the articles would infringe the rights in the design under this chapter.

''(3) Post a surety bond for any injury that may result if the detention or exclusion of the articles proves to be unjustified.

''(b) SEIZURE AND FORFEITURE.—Articles imported in violation of the rights set forth in section 1308 are subject to seizure and forfeiture in the same manner as property imported in violation of the customs laws. Any such forfeited articles shall be destroyed as directed by the Secretary of the Treasury or the court, as the case may be, except that the articles may be returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury that the importer had no reasonable grounds for believing that his or her acts constituted a violation of the law.

"§ 1329. Relation to design patent law

''The issuance of a design patent under title 35 for an original design for an article of manufacture shall terminate any protection of the original design under this chapter.

"§ 1330. Common law and other rights unaffected

''Nothing in this chapter shall annul or limit—

''(1) common law or other rights or remedies, if any, available to or held by any person with respect to a design which has not been registered under this chapter; or

''(2) any right under the trademark laws or any right protected against unfair competition.

"§ 1331. Administrator; Office of the Administrator

''In this chapter, the 'Administrator' is the Register of Copyrights, and the 'Office of the Administrator' and the 'Office' refer to the Copyright Office of the Library of Congress.

"§ 1332. No retroactive effect

''Protection under this chapter shall not be available for any design that has been made public under section 1310(b) before the effective date of this chapter.''.

SEC. 503. CONFORMING AMENDMENTS.

(a) TABLE OF CHAPTERS.—The table of chapters for title 17, United States Code, is amended by adding at the end the following:

"13. Protection of Original Designs .... 1301".

(b) JURISDICTION OF DISTRICT COURTS OVER DESIGN ACTIONS.—(1) Section 1338(c) of title 28, United States Code, is amended by inserting '', and to exclusive rights in designs under chapter 13 of title 17,'' after ''title 17''.

*(2)(A) The section heading for section 1338 of title 28, United States Code, is amended by inserting ''**designs,**'' after ''**mask works,**''.*

(B) The item relating to section 1338 in the table of sections at the beginning of chapter 85 of title 28, United States Code, is amended by inserting ''designs,'' after ''mask works,''.

(c) PLACE FOR BRINGING DESIGN ACTIONS.—(1) Section 1400(a) of title 28, United States Code, is amended by inserting ''or designs'' after ''mask works''.

(2) The section heading for section 1400 of title 28, United States Code is amended to read as follows:

"§ Patents and copyrights, mask works, and designs".

(3) The item relating to section 1400 in the table of sections at the beginning of chapter 87 of title 28, United States Code, is amended to read as follows:

''1400. Patents and copyrights, mask works, and designs.''.

(d) ACTIONS AGAINST THE UNITED STATES.—Section 1498(e) of title 28, United States Code, is amended by inserting '', and to exclusive rights in designs under chapter 13 of title 17,'' after ''title 17''.

SEC. 504. JOINT STUDY OF THE EFFECT OF THIS TITLE.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and not later than 2 years after such date of enactment, the Register of Copyrights and the Commissioner of Patents and Trademarks shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a joint report evaluating the effect of the amendments made by this title.

(b) ELEMENTS FOR CONSIDERATION.—In carrying out subsection (a), the Register of Copyrights and the Commissioner of Patents and Trademarks shall consider—

(1) the extent to which the amendments made by this title has been effective in suppressing infringement of the design of vessel hulls;

(2) the extent to which the registration provided for in chapter 13 of title 17, United States Code, as added by this title, has been utilized;

(3) the extent to which the creation of new designs of vessel hulls have been encouraged by the amendments made by this title;

(4) the effect, if any, of the amendments made by this title on the price of vessels with hulls protected under such amendments; and

(5) such other considerations as the Register and the Commissioner may deem relevant to accomplish the purposes of the evaluation conducted under subsection (a).

SEC. 505. EFFECTIVE DATE.

The amendments made by sections 502 and 503 shall take effect on the date of the enactment of this Act and shall remain in effect until the end of the 2-year period beginning on such date of enactment. No cause of action based on chapter 13 of title 17, United States Code, as added by this title, may be filed after the end of that 2-year period.

Amend the title so as to read: ''A bill to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes.''.

And the Senate agree to the same.

From the Committee on Commerce, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

TOM BLILEY,
BILLY TAUZIN,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

HENRY J. HYDE,
HOWARD COBLE,
BOB GOODLATTE,
JOHN CONYERS, Jr.,
HOWARD L. BERMAN,
Managers on the Part of the House.

ORRIN G. HATCH,
STROM THURMOND,
PATRICK J. LEAHY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2281) to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

TITLE I—WIPO TREATIES IMPLEMENTATION

This title implements two new intellectual property treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, signed in Geneva, Switzerland in December 1996.

SECTION 101. SHORT TITLE

The House recedes to the Senate section 101. This section sets forth the short title of the Act. As between the short titles in the House bill and the Senate amendment, it is believed that the title in Section 101 of the Senate amendment more accurately reflects the effect of the Act.

SECTION 102. TECHNICAL AMENDMENTS

The Senate recedes to House section 102. This section makes technical and conforming amendments to the U.S. Copyright Act in order to comply with the obligations of the two WIPO treaties.

SECTION 103. COPYRIGHT PROTECTION SYSTEMS AND COPYRIGHT MANAGEMENT INFORMATION

The Senate recedes to House section 103 with modification. The two new WIPO Treaties include substantively identical provisions on technological measures of protection (also commonly referred to as the ''black box'' or ''anticircumvention'' provisions). These provisions require contracting parties to provide ''adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.''

Both of the new WIPO treaties also include substantively identical provisions requiring contracting parties to protect the integrity of copyright management information. The treaties define copyright management information as ''information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.''

Legislation is required to comply with both of these provisions. To accomplish this, both the House bill and the Senate amendment, in section 103, would add a new chapter (chapter twelve) to title 17 of the United States Code. This new chapter twelve includes five sections—(1) section 1201, which prohibits the circumvention of technological measures of protection; (2) section 1202, which protects the integrity of copyright management information; (3) section 1203, which provides for civil remedies for violations of sections 1201 and 1202; (4) section 1204, which provides for criminal penalties for violations of sections 1201 and 1202; and (5) section 1205, which provides a savings clause to preserve the effectiveness of federal and state laws in protecting individual privacy on the Internet. The House bill and the Senate amendment differ in several respects, primarily related to the scope and availability of exemptions from the prohibitions under section 1201.

Section 1201(a)(1)—Rulemaking by the Librarian of Congress. Section 1201(a)(1)(C) provides that the determination of affected classes of works described in subparagraph (A) shall be made by the Librarian of Congress ''upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation.'' The determination will be made in a rulemaking proceeding on the record. It is the intention of the conferees that, as is typical with other rulemaking under title 17, and in recognition of the expertise of the Copyright Office, the Register of Copyrights will conduct the rulemaking, including providing notice of the rulemaking, seeking comments from the public, consulting with the Assistant Secretary for Communications and Information

of the Department of Commerce and any other agencies that are deemed appropriate, and recommending final regulations in the report to the Librarian.

Section 1201(a) and 1202—technological measures. It is the understanding of the conferees that technological measures will most often be developed through consultative, private sector efforts by content owners, and makers of computers, consumer electronics and telecommunications devices. The conferees expect this consultative approach to continue as a constructive and positive method. One of the benefits of such consultation is to allow testing of proposed technologies to determine whether there are adverse effects on the ordinary performance of playback and display equipment in the marketplace, and to take steps to eliminate or substantially mitigate those effects before technologies are introduced. The public interest is well-served by such activities.

Persons may also choose to implement a technological measure without vetting it through an inter-industry consultative process, or without regard to the input of affected parties. Under such circumstances, such a technological measure may materially degrade or otherwise cause recurring appreciable adverse effects on the authorized performance or display of works. Steps taken by the makers or servicers of consumer electronics, telecommunications or computing products used for such authorized performances or displays solely to mitigate these adverse effects on product performance (whether or not taken in combination with other lawful product modifications) shall not be deemed a violation of sections 1201(a) or (b).

However, this construction is not meant to afford manufacturers or servicers an opportunity to give persons unauthorized access to protected content, or to exercise the rights under the Copyright Act of copyright owners in such works, under the guise of ''correcting'' a performance problem that results from the implementation of a particular technological measure. Thus, it would violate sections 1201(a) or (b) for a manufacturer or servicer to take remedial measures if they are held out for or undertaken with, or result in equipment with only limited commercially significant use other than, the prohibited purpose of allowing users to gain unauthorized access to protected content or to exercise the rights under the Copyright Act of copyright owners in such works.

With regard to section 1202, product adjustments made to eliminate recurring appreciable adverse effects on the authorized performance or display of works caused by copyright management information will not be deemed a violation of section 1202 unless such steps are held out for or undertaken with a prohibited purpose, or the requisite knowledge, of inducing, enabling, facilitating or concealing infringement of rights of copyright owners under the Copyright Act.

Section 1201(e) and 1202(d)—Law enforcement, intelligence, and other government activities. Sections 1201(e) and 1202(d) create and exception to the prohibitions of sections 1201 and 1202 for the lawfully authorized investigative, protective, or intelligence activities of an officer, agent, or employee of, the United States, a State, or a political subdivision of a State, or of persons acting pursuant to a contract with such an entity. The anticircumvention provisions of this legislation might be read to prohibit some aspects of the information security testing that is critical to preventing cyber attacks against government computers, computer systems, and computer networks. The conferees have added language to sections 1201(e) and 1202(d) to make it clear that the anticircumvention prohibition does not apply to lawfully authorized information security activities of the federal government, the states, political subdivisions of states, or persons acting within the scope of their government information security contract. In this way, the bill will permit the continuation of information security activities that protect the country against one of the greatest threats to our national security as well as to our economic security.

At the same time, this change is narrowly drafted so that it does not open the door to the very piracy the treaties are designed to prevent. For example, the term ''information security'' activities is intended to include presidential directives and executive orders concerning the vulnerabilities of a computer, computer system, or computer network. By this, the conferees intent to include the recently-issued Presidential Decision Directive 63 on Critical Infrastructure Protection. PDD–63 contains a number of initiatives to ensure that the United States takes all necessary measures to swiftly eliminate any significant vulnerability to both physical and cyber attacks on the nation's critical infrastructures, including especially our cyber systems.

The Term ''computer system'' has the same definition for purposes of this section as that term is defined in the Computer Security Act, 15 U.S.C. §278g–3(d)(1).

Subsection 1201(g)—Encryption Research. Subsection (g) permits the circumvention of access control technologies in certain circumstances for the purpose of good faith encryption research. The conferees note that section 1201(g)(3)(A) does not imply that the results of encryption research must be disseminated. There is no requirement that legitimate encryption researchers disseminate their findings in order to quality for the encryption research exemption in section 1201(g). Rather, the subsection describes circumstances in which dissemination, if any, would be weighed in determining eligibility.

Section 1201(j)—Security Testing. Subsection (j) clarifies the intended effect of the bill with respect to information security. The conferees understand this act to prohibit unauthorized circumvention of technological measures applied to works protected under title 17. The conferees recognize that technological measures may also be used to protect the integrity and security of computers, computer systems or computer networks. It is not the intent of this act to prevent persons utilizing technological measures in respect of computers, computer systems or networks from testing the security value and effectiveness of the technological measures they employ, or from contracting with companies that specialize in such security testing.

Thus, in addition to the exception for good faith encryption research contained in Section 1201(g), the conferees have adopted Section 1201(j) to resolve additional issues related to the effect of the anti-circumvention provision on legitimate information security activities. First, the conferees were concerned that Section 1201(g)'s exclusive focus on encryption-related research does not encompass the entire range of legitimate information security activities. Not every technological means that is used to provide security relies on encryption technology, or does so to the exclusion of other methods. Moreover, an individual who is legitimately testing a security technology may be doing so not to advance the state of encryption research or to develop encryption products, but rather to ascertain the effectiveness of that particular security technology.

The conferees were also concerned that the anti-circumvention provision of Section 1201(a) could be construed to inhibit legitimate forms of security testing. It is not unlawful to test the effectiveness of a security measure before it is implemented to protect the work covered under title 17. Not it is unlawful for a person who has implemented a security measure to test its effectiveness. In this respect, the scope of permissible security testing under the Act should be the same as permissible testing of a simple door lock; a prospective buyer may test the lock at the store with the store's consent, or may purchase the lock and test it at home in any manner that he or she sees fit—for example, by installing the lock on the front door and seeing if it can be picked. What that person may not do, however, it test the lock once it has been installed on someone's else's door, without the consent of the person whose property is protected by the lock.

In order to resolve these concerns, Section 1201(j) creates a exception of ''security testing.'' Section 1201(j)(1) defines ''security testing'' as obtaining access to a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting a security flaw or vulnerability, provided that the person engaging in such testing is doing so with the consent of the owner or operator of the computer, computer system, or computer network. Section 102(j)(2) provides that, notwithstanding the provisions of Section 1201(a), a person may engage in such testing, provided that the act does not constitute infringement or violate any other applicable law. Section 1201(j)(3) provides a non-exclusive list of factors that a court shall consider in determining whether a person benefits from this exception.

Section 1201(j)(4) permits an individual, notwithstanding the prohibition contained in Section 1201(a)(2), to develop, produce, distribute, or employ technological means for the sole purpose of performing acts of good faith security testing under Section 1201(j)(2), provided that technological means do not otherwise violate section 1201(a)(2). It it Congress' intent for this subsection to have application only with respect to good faith security testing. The intent is to ensure that parties engaged in good faith security testing have the tools available to them to complete such acts. The conferees understand that such tools may be coupled with additional tools that serve purposes wholly unrelated to the purposes of this Act. Eligibility for this exemption should not be precluded because these tools are coupled in such a way. The exemption would not be available, however, when such tools are coupled with a product or technology that violates section 1201(a)(2),

Section 1201(k)—Certain Analog Devices and Certain Technological Measures.—The conferees included a provision in the final legislation to require that analog video cassette recorders must conform to the two forms of copy control technology that are in wide use in the market today—the automatic gain control copy control technology and the colorstripe copy control technology. Neither are currently required elements of any format of video recorder, and the ability of each technology to work as intended depends on the consistency of design of video recorders or on incorporation of specific response elements in video recorders. Moreover, they do not employ encryption or scrambling of the content being protected.

As a consequence, these analog copy control technologies may be rendered ineffective either by redesign of video recorders or by intervention of ''black box'' devices or software ''hacks''. The conferees believe, and specifically intend, that the general circumvention prohibition in Section 1201(b)(2) will prohibit the manufacture and sale of ''black box'' devices that defeat these technologies. Moreover, the conferees believe and intend that the term ''technology'' should be read to include the software ''hacks'' of this

type, and that such ''hacks'' are equally prohibited by the general circumvention provision. Devices have been marketed that claim to ''fix'' television picture disruptions allegedly caused by these technologies. However, as described in more detail below, there is no justification for the existence of any intervention device to ''fix'' such problems allegedly caused by these technologies, including ''fixes'' allegedly related to stabilization or clean up of the picture quality. Such devices should be seen for what they are—circumvention devices prohibited by this legislation.

The conferees emphasize that this particular provision is being included in this bill in order to deal with a very specific situation involving the protection of analog television programming and prerecorded movies and other audiovisual works in relation to recording capabilities of ordinary consumer analog video cassette recorders. The conferees also acknowledge that numerous other activities are underway in the private sector to develop, test, and apply copy control technologies, particularly in the digital environment. Subject to the other requirements of this section, circumvention of these technologies may be prohibited under this Act. Moreover, in some cases, these technologies are subject to licensing arrangements that provide legally enforceable obligations. The conferees applaud these undertakings and encourage their continuation, including the inter-industry meetings and working groups that are essential to their success. If, as a result of such activities, the participants request further Congressional action, the conferees expect that the Congress, and the committees involved in this Conference specifically, will consider whether additional statutory requirements are necessary and appropriate.

Before agreeing to include this requirement in the final legislation, the conferees assured themselves in relation to two critical issues—that these analog copy control technologies do not create ''playability'' problems on normal consumer electronics products and that the intellectual property necessary for the operation of these technologies will be available on reasonable and non-discriminatory terms.

In relation to the playability issue, the conferees have received authoritative assurances that playability issues have already been resolved in relation to the current specifications for these technologies and that an inter-industry forum will be established to resolve any playability issues that may arise in the future in relation to either revisions to the copy control specifications or development of new consumer technologies and products.

As further explanation on the playability issue, the conferees understand that the existing technologies were the subject of extensive testing that included all or virtually all of the major consumer electronics manufacturers and that this testing resulted in modification of the specifications to assure that the technologies do not produce noticeable adverse effects on the normal display of content that is protected utilizing these technologies. Currently, all manufacturers are effectively ''on notice'' of the existence of these technologies and their specifications and should be able to design their products to avoid any adverse effects.

In relation to the intellectual property licensing issues, the owner of the analog copy control intellectual property—Macrovision Corporation—has written a letter to the Chairman of the Conference Committee to provide the following assurances in relation to the licenses for intellectual property necessary to implement these analog copy control technologies: (1) that its intellectual property is generally available on reasonable and non-discriminatory terms, as that phrase is used in normal industry parlance; (2) that manufacturers of the analog video cassette recorders that are required by this legislation to conform to the technologies will be provided royalty-free licenses for the use of its relevant intellectual property in any device that plays back packaged, prerecorded content, or that reads and responds to or generates or carries forward the elements of these technologies associated with such content; (3) in the same circumstances as described in (2), other manufacturers of devices that generate, carry forward, or read and respond to these technologies will be provided licenses carrying only modest fees (in the range of $25,000—in current dollars—initial payment and lesser amounts as recurring annual fees); (4) that manufacturers of other products, including set-top-boxes and devices that perform similar functions (including integrated devices containing such functionality), will receive licenses on reasonable and non-discriminatory terms, including royalty terms and other considerations; and (5) that playability issues will not be the subject of license requirements but rather will be handled through an inter-industry forum that is being established for this purpose. The conferees emphasize the need for the technology's proprietor to adhere to these assurances in all future licensing.

With regard to the specific elements of this provision:

First, these technologies operate within the general NTSC television signal environment, and the conferees understand that this means that they work in relation to television signals that are of the 525/60 interlaced type, i.e., the standard definition television signal that has been used in the United States. The S-video and Hi-8 versions of covered devises are, of course, included with the coverage. Further, the new format analog video cassette recorders that are covered by paragraph (1)(A)(v) are those that receive the 525/60 interlaced type of input.

Second, it is the conferees understanding that not all analog video signals will utilize this technology, and, obviously, a device that receives a signal that does not contain these technologies need not read and respond to what might have been there if the signal had utilized the technology.

Third, a violation of paragraph (1) is a form of circumvention under Section 1201(b)(1). Accordingly, the enforcement of this provision is through the penalty provisions applicable to Section 1201 generally. A violation of paragraph (2) is also a violation of Section 1201 and hence subject to those penalty provisions. The inclusion of paragraph (5) with regard to enforcement of paragraph (2) is intended merely to allow the particular statutory damage provisions of Section 1203 to apply to violations of this subsection.

Fourth, the conferees understand that minor modifications may be necessary in the specifications for these technologies and intend that any such modifications (and related new ''revised specifications'') should not negate in any way the requirements imposed by this subsection. The modifications should, however, be sufficiently minor that manufacturers of analog video cassette recorders should be free to continue to design products to conform to these technologies on the basis of the specifications existing, or actually implemented by manufacturers, as of the date of enactment of this Act.

Fifth, the provisions of paragraph (2) are intended to operate to allow copyright owners to use these technologies to prevent the making of a viewable copy of a pay-per-view, near video on demand, or video on demand transmission or prerecorded tape or disc containing one or more motion pictures or other audiovisual works, at the same time as consumers are afforded their customary ability to make analog copies of programming offered through other channels or services. Copyright owners may utilize these technologies to prevent the making of a ''second generation'' copy where the original transmission was through a pay television service (such as HBO, Showtime, or the like). The basic and extended basic tiers of programming services, whether provided through cable or other wireline, satellite, or future over the air terrestrial systems, may not be encoded with these technologies at all. The inclusion of paragraph (2)(D) is not intended to be read to authorize the making of a copy by consumers or others in relation to pay-per-view, near video on demand or video-on-demand transmissions or prerecorded media.

Sixth, the exclusion of professional analog video cassette recorders is necessary in order to allow the motion picture, broadcasting, and other legitimate industries and individual businesses to obtain and use equipment that is essential to their normal, lawful business operations. As a further explanation of the types of equipment that are to be subject to this exception, the following factors should be used in evaluating whether a specific product is a ''professional'' product:

(1) whether, in the preceding year, only a small number of the devices that are of the same kind, nature, and description were sold to consumers other than professionals employing such devices in a lawful business or industrial use;

(2) whether the device has special features designed for use by professionals employing the device in a lawful business or industrial use;

(3) whether the advertising, promotional and descriptive literature or other materials used to market the device were directed at professionals employing such devices in a lawful business or industrial use;

(4) whether the distribution channels and retail outlets through which the device is distributed and sold are ones used primarily to make sales to professionals employing such devices in a lawful business or industrial use; and

(5) whether the uses to which the device is most commonly put are those associated with the work of professionals employing the device in a lawful business or industrial use.

Seventh, paragraph (1)(B) contains a number of points worthy of explanation. In general, the requirement in paragraph (1)(B) is that manufacturers not materially reduce the responsiveness of their existing products and is also intended to be carried forward in the introduction of new models. This is particularly important in relation to the four-line colorstripe copy control technology, where the basic requirement in the statute is that a model of a recorder not be modified to eliminate conformance with the four-line colorstripe technology and where the standard for ''conformance'' is simply that the lines be visible and distracting in the display of a copy of material that was protected with the technology when the copy is played back, in normal viewing mode, by the recorder that made the copy and displayed on a reference display device. Specific elements of that requirement include:

(1) ''Normal viewing mode'' is intended to mean the viewing of a program in its natural sequence at the regular speed for playback and is not intended to allow ''AGC-stripping viewing modes'' to be developed. It is intended to exclude still frame or slow motion viewing from this definition.

(2) The ''reference display device'' concept is used in the legislation to acknowledge that manufacturers of analog video cassette

recorders may use a specific display device to test their responsiveness to the colorstripe technology and then may use the level of such responsiveness as their baseline to achieve compliance. The reference display device for manufacturers that make televisions is intended to be a television set also made by that manufacturer. Where an analog video cassette recorder manufacturer does not make display devices, that manufacturer may choose a display device made by another manufacturer to serve as a reference. In general, a reference display device should be one that is generally representative of display devices in the U.S. market at the time of the testing.

(3) The conferees intend that the word ''model'' should be interpreted broadly and is not to be determined exclusively by alphabetic, numeric, name, or other label. Courts should look with suspicion at ''new models'' that reduce or eliminate conformance with this technology, as compared with that manufacturer's ''previous models.'' Further, a manufacturer should not replace a previous model that showed intense lines with a model that shows weak lines in the played back picture.

For any new entrant into the VHS format analog video cassette recorder manufacturing business, the legislation provides that such a manufacturer will build its initial devices so as to be in conformance with the four-line colorstripe copy control technology based on the playback on a reference display device and thereafter not modify the design so that its products no longer conform to this technology.

Finally, the proprietor of the colorstripe copy control technology has supplied the Committee with a description of how the technology should work so as to provide the desired copy protection benefits. That description is as follows: the colorstripe copy control technology works as intended if a recorder records a signal that, when played back by the playback function of that recorder in the normal viewing mode, exhibits on a reference display device a significant distortion of color on the lines which begin with a colorstripe colorburst, or a complete or intermittent loss of color throughout at least 50% of the visible image. While the conferees realize that there may be variations among recorders in relation to this technology, the conferees expect the affected manufacturers to work with the proprietor of the technology to ensure that the basic goal of content protection through this technology is achieved. The conferees understand that content protection through this technology is to the manufacturers' benefit, as well, since it encourages content providers to release more valuable content than they might otherwise release without such protection. The conferees further intend that manufacturers should seek to respond to the colorstripe technology at the highest feasible level and should not modify their recorder designs, or substitute weaker responding recorders for stronger responding recorders in order to avoid the requirements of this subsection.

Eighth, the type of colorstrip copy control technology to which the legislation requires conformance is the four-line ''half burst'' type version of this technology. The content provider may shift, in an adaptive fashion, from no colorstripe encoding to the two-line version to the four-line version, in order to balance the copy control features of the technology against the possible playback distortion that the four-line technology occasionally creates. This legislation requires conformance only to the four-line version, but prohibits any effort to eliminate or reduce materially the effectiveness of the two-line version in relation to any particular analog video cassette recorder that, in fact, provides a response to the two-line version. The legislation also applies the ''encoding rules'' in paragraph (2) to either the two-line or four-line versions of this technology.

SECTION 104. EVALUATION OF IMPACT OF COPYRIGHT LAW AND AMENDMENTS ON ELECTRONIC COMMERCE AND TECHNOLOGICAL DEVELOPMENT

The Senate recedes to House section 105 with modification.

SECTION 105. EFFECTIVE DATE

The Senate recedes to House section 106. This section sets forth the effective date of the amendments made by this title. The corresponding sections of the House bill and the Senate amendment are substantively identical.

TITLE II—ONLINE COPYRIGHT INFRINGEMENT LIABILITY LIMITATION

Title II preserves strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements that take place in the digital networked environment. At the same time, it provides greater certainty to service providers concerning their legal exposure for infringements that may occur in the course of their activities.

SECTION 201. SHORT TITLE

The Senate recedes to House section 201. This section sets forth the short title of the Act. The Senate accepts the House formulation.

SECTION 202. LIMITATIONS ON LIABILITY FOR COPYRIGHT INFRINGEMENT

The Senate recedes to House section 202 with modification. This section amends chapter 5 of the Copyright Act (17 U.S.C. 501, *et. seq.*) to create a new section 512, titled ''Limitations on liability relating to material online.'' New Section 512 contains limitations on service providers' liability for five general categories of activity set forth in subsections (a) through (d) and subsection (g). As provided in subsection (l), Section 512 is not intended to imply that a service provider is or is not liable as an infringer either for conduct that qualifies for a limitation of liability or for conduct that fails to so qualify. Rather, the limitations of liability apply if the provider is found to be liable under existing principles of law. This legislation is not intended to discourage the service provider from monitoring its service for infringing material. Courts should not conclude that the service provider loses eligibility for limitations on liability under section 512 solely because it engaged in a monitoring program.

The limitations in subsections (a) through (d) protect qualifying service providers from liability for all monetary relief for direct, vicarious and contributory infringement. Monetary relief is defined in subsection (k)(2) as encompassing damages, costs, attorneys' fees, and any other form of monetary payment. These subsections also limit injunctive relief against qualifying service providers to the extent specified in subsection (j). To qualify for these protections, service providers must meet the conditions set forth in subsection (i), and service providers' activities at issue must involve a function described in subsection (a), (b), (c), (d) or (g), respectively. The liability limitations apply to networks ''operated by or for the service provider,'' thereby protecting both service providers who offer a service and subcontractors who may operate parts of, or an entire, system or network for another service provider.

Subsection (b) provides for a limitation on liability with respect to certain acts of ''system caching''. Paragraphs (5) and (6) of this subsection refer to industry standard communications protocols and technologies that are only now in the initial stages of development and deployment. The conferees expect that the Internet industry standards setting organizations, such as the Internet Engineering Task Force and the World Wide Web Consortium, will act promptly and without delay to establish these protocols so that subsection (b) can operate as intended.

Subsection (e) is included by the conferees in order to clarify the provisions of the bill with respect to the liability of nonprofit institutions of higher learning that act as service providers. This provision serves as a substitute for section 512(c)(2) of the House bill and for the study proposed by section 204 of the Senate amendment.

In general, Title II provides that a university or other public or nonprofit institution of higher education which is also a ''service provider'' (as that term is defined in title II) is eligible for the limitations on liability provided in title II to the same extent as any other service provider.

However, the conferees recognize that the university environment is unique. Ordinarily, a service provider may fail to qualify for the liability limitations in Title II simply because the knowledge or actions of one of its employees may be imputed to it under basic principles of respondeat superior and agency law. The special relationship which exists between universities and their faculty members (and their graduate student employees) when they are engaged in teaching or research is different from the ordinary employer-employee relationship. Since independence—freedom of thought, word and action—is at the core of academic freedom, the actions of university faculty and graduate student teachers and researchers warrant special consideration in the context of this legislation. This special consideration is embodied in new subsection (e), which provides special rules for determining whether universities, in their capacity as a service provider, may or may not be liable for acts of copyright infringement by faculty members or graduate students in certain circumstances.

Subsection (e)(1) provides that the online infringing actions of faculty members or graduate student employees, which occur when they are ''performing a teaching or research function,'' will not be attributed to an institution of higher education in its capacity as their employer for purposes of section 512, if certain conditions are met. For the purposes of subsections (a) and (b) of section 512, such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) of section 512 the faculty member's or graduate student's knowledge or awareness of his or her infringing activities will not be attributed to the institution, when they are performing a teaching or research function and the conditions in paragraphs (A)–(C) are met.

When the faculty member or the graduate student employee is performing a function other than teaching or research, this subsection provides no protection against liability for the institution if infringement occurs. For example, a faculty member or graduate student is performing a function other than teaching or research when the faculty member or graduate student is exercising institutional administrative responsibilities, or is carrying out operational responsibilities that relate to the institution's function as a service provider. Further, for the exemption to apply on the basis of research activity, the research must be a genuine academic exercise—i.e. a legitimate scholarly or scientific investigation or inquiry—rather than an activity which is claimed to be research

but is undertaken as a pretext for engaging in infringing activity.

In addition to the ''teaching or research function'' test, the additional liability protections contained in subsection (e)(1) do not apply unless the conditions in paragraphs (A) through (C) are satisfied. First, paragraph (A) requires that the infringing activities must not involve providing online access to instructional materials that are ''required or recommended'' for a course taught by the infringing faculty member and/or the infringing graduate student within the last three years. The reference to ''providing online access'' to instructional materials includes the use of e-mail for that purpose. The phrase ''required or recommended'' is intended to refer to instructional materials that have been formally and specifically identified in a list of course materials that is provided to all students enrolled in the course for credit; it is not intended, however, to refer to the other materials which, from time to time, the faculty member or graduate student may incidentally and informally bring to the attention of students for their consideration during the course of instruction.

Second, under paragraph (B) the institution must not have received more than two notifications of claimed infringement with respect to the particular faculty member or particular graduate student within the last three years. If more than two such notifications have been received, the institution may be considered to be on notice of a pattern of infringing conduct by the faculty member or graduate student, and the limitation of subsection (e) does not apply with respect to the subsequent infringing actions of that faculty member or that graduate student. Where more than two notifications have previously been received with regard to a particular faculty member or graduate student, the institution will only become potentially liable for the infringing actions of that faculty member or that graduate student. Any notification of infringement that gives rise to a cause of action for misrepresentation under subsection (f) does not count for purposes of paragraph (B).

Third, paragraph (C) states that the institution must provide to the users of its system or network—whether they are administrative employees, faculty, or students—materials that accurately describe and promote compliance with copyright law. The legislation allows, but does not require, the institutions to use relevant informational materials published by the U.S. Copyright Office in satisfying the condition imposed by paragraph (C).

Subsection (e)(2) defines the terms and conditions under which an injunction may be issued against an institution of higher education that is a service provider in cases to which subsection (e)(1) applies. First, all the factors and considerations taken into account by a court under 17 U.S.C. §502 will apply in the case of any application for an injunction in cases covered by this subsection. In addition, the court is also required to consider the factors of particular significance in the digital environment listed in subsection (j)(2). Finally, the provisions contained in (j)(3), concerning notice to the service provider and the opportunity to appear, are also applicable in cases to which subsection (e)(1) applies.

The conferees also want to emphasize that nothing contained in subsection (e) should be interpreted to establish new liability for institutions of higher education, including under the doctrines of respondeat superior, or of contributory liability, where liability does not now exist. Further, subsection (e) does not alter any of the existing limitations on the rights of copyright owners that are already contained in the Copyright Act. So, for example, subsection (e) has no impact on the fair use (section 107) doctrine or the availability of fair use in a university setting; similarly, section 110 of the Copyright Act dealing with classroom performance and distance learning is not changed by subsection (e). In this regard, subsection (e) is fully consistent with the rest of section 512, which neither creates any new liabilities for service providers, nor affects any defense to infringement available to a service provider. Finally, subsection (e) has no applicability to any case asserting that a university is liable for copyright infringement in any capacity other than as a service provider.

SECTION 203. EFFECTIVE DATE

The Senate recedes to House section 203. This section sets forth the effective date of the amendments made by this title. The corresponding sections of the House bill and the Senate amendment are substantively identical.

TITLE III—COMPUTER MAINTENANCE OR REPAIR COPYRIGHT EXEMPTION

SECTIONS 301–302

The Senate recedes to the House sections 301–302. These sections effect a minor, yet important clarification in section 117 of the Copyright Act to ensure that the lawful owner or lessee of a computer machine may authorize an independent service provider—a person unaffiliated with either the owner or lessee of the machine—to activate the machine for the sole purpose of servicing its hardware components. When a computer is activated, certain software or parts thereof is automatically copied into the machine's random access memory, or ''RAM''. A clarification in the Copyright Act is necessary in light of judicial decisions holding that such copying is a ''reproduction'' under section 106 of the Copyright Act (17 U.S.C. 106),[1] thereby calling into question the right of an independent service provider who is not the licensee of the computer program resident on the client's machine to even activate that machine for the purpose of servicing the hardware components. This section does not in any way alter the law with respect to the scope of the term ''reproduction'' as it is used the Copyright Act. Rather, this section it is narrowly crafted to achieve the objectives just described—namely, ensuring that an independent service provider may turn on a client's computer machine in order to service its hardware components, provided that such service provider complies with the provisions of this section designed to protect the rights of copyright owners of computer software. The corresponding sections of the House bill and the Senate amendment are substantively identical.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. PROVISIONS RELATING TO THE COMMISSIONER OF PATENTS AND TRADEMARKS AND THE REGISTER OF COPYRIGHTS

The Senate recedes to the House sections 401–402 with modification. This section provides parity in compensation between the Register of Copyrights and the Commissioner of Patent and Trademarks and clarifies the duties and functions of the Register of Copyrights.

The new subsection to be added to 17 U.S.C. §701 sets forth in express statutory language the functions presently performed by the Register of Copyrights under her general administrative authority under subsection 701(a). Like the Library of Congress, its parent agency, the Copyright Office is a hybrid entity that historically has performed both legislative and executive or administrative functions. *Eltra Corp.* v. *Ringer*, 579 F.2d 294 (4th Cir. 1978). Existing subsection 701(a) addresses some of the latter functions. New subsection 701(b) is intended to codify the other traditional roles of the Copyright Office and to confirm the Register's existing areas of jurisdiction.

Paragraph (1) of new subsection 701(b) reflects the Copyright Office's longstanding role as advisor to Congress on matters within its competence. This includes copyright and all matters within the scope of title 17 of the U.S. Code. Such advice, which often takes the form of testimony of pending legislation, is separate from testimony or other recommendations by the Administration pursuant to the President's concurrent constitutional power to make recommendations to Congress.

Paragraph (2) reflects the Copyright Office's longstanding role in advising federal agencies on matters within its competence. For example, the Copyright Office advises the U.S. Trade Representative and the State Department on an ongoing basis on the adequacy of foreign copyright laws, and serves as a technical consultant to those agencies in bilateral, regional and multilateral consultations or negotiations with other countries on copyright-related issues.

Paragraph (3) reflects the Copyright Office's longstanding role as a key participant in international meetings of various kinds, including as part of U.S. delegations as authorized by the Executive Branch, serving as substantive experts on matters within the Copyright Office's competence. Recent examples of the Copyright Office acting in the capacity include its central role on the U.S. delegation that negotiated the two new WIPO treaties at the 1996 Diplomatic Conference in Geneva, and its ongoing contributions of technical assistance in the TRIPS Council of the World Trade Organization and the Register's role as a featured speaker at numerous WIPO conferences.

Paragraph (4) describes the studies and programs that the Copyright Office has long carried out as the agency responsible for administering the copyright law and other chapters of title 17. Among the most important of these studies historically was a series of comprehensive reports on various issues produced in the 1960's as the foundation of the last general revision of U.S. copyright law, enacted as the 1976 Copyright Act. Most recently the Copyright Office has completed reports on the cable and satellite compulsory licenses, legal protection for databases, and the economic and policy implications of term extension. Consistent with the Copyright Office's role as a legislative branch agency, these studies have often included specific policy recommendations to Congress. The reference to ''programs'' includes such projects as the conferences the Copyright Office cosponsored in 1996–97 on the subject of technology-based intellectual property management, and the International Copyright Institutes that the Copyright Office has conducted for foreign government officials at least annually over the past decade, often in cooperation with WIPO.

Paragraph (5) makes clear that the functions and duties set forth in this subsection are illustrative, not exhaustive. The Register of Copyrights would continue to be able to carry out other functions under her general authority under subsection 701(a), or as Congress may direct. The latter may include specific requests by Committees for studies and recommendations on subjects within the Copyright Office's area of competence. It may also include, when appropriate or required for constitutional reasons, directions to the Office in separate legislation.

SEC. 402. EPHEMERAL RECORDINGS

The Senate recedes to House section 411 with modification. This section amends section 112 of the Copyright Act (17 U.S.C. 112)

[1] *See MAI Sys. Corp.* v. *Peak Computer*, 991 F. 2d 511 (9th Cir. 1993), cert. denied, 114 S. Ct. 671 (1994).

to address two issues concerning the application of the ephemeral recording exemption in the digital age. The first of these issues is the relationship between the ephemeral recording exemption and the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA''). The DPRA granted sound recording copyright owners the exclusive right to perform their works publicly by means of digital audio transmission, subject to certain limitations, particularly those set forth in section 114(d). Among those limitations is an exemption for nonsubscription broadcast transmissions, which are defined as those made by terrestrial broadcast stations licensed as such by the FCC. 17 U.S.C. §§114(d)(1)(A)(iii) and (j)(2). The ephemeral recording exemption presently privileges certain activities of a transmitting organization when it is entitled to transmit a performance or display under a license or transfer of copyright ownership or under the limitations on exclusive rights in sound recordings specified by section 114(a). The House bill and the Senate amendment propose changing the existing language of the ephemeral recording exemption (redesignated as 112(a)(1)) to extend explicitly to broadcasters the same privilege they already enjoy with respect to analog broadcasts.

The second of these issues is the relationship between the ephemeral recording exemption and the anticircumvention provisions that the bill adds as section 1201 of the Copyright Act. Concerns were expressed that if use of copy protection technologies became widespread, a transmitting organization might be prevented from engaging in its traditional activities of assembling transmission programs and making ephemeral recordings permitted by section 112 for purposes of its own transmissions within its local service area and of archival preservation and security. To address this concern, the House bill and the Senate amendment propose adding to section 112 a new paragraph that permits transmitting organizations to engage in activities that otherwise would violate section 1201(a)(1) in certain limited circumstances when necessary for the exercise of the transmitting organization's privilege to make ephemeral recordings under redesignated section 112(a)(1). By way of example, if a radio station could not make a permitted ephemeral recording from a commercially available phonorecord without violating section 1201(a)(1), then the radio station could request from the copyright owner the necessary means of making a permitted ephemeral recording. If the copyright owner did not then either provide a phonorecord that could be reproduced or otherwise provide the necessary means of making a permitted ephemeral recording from the phonorecord already in the possession of the radio station, the radio station would not be liable for violating section 1201(a)(1) for taking the steps necessary for engaging in activities permitted under section 112(a)(1). The radio station would, of course, be liable for violating section 1201(a)(1) if it engaged in activities prohibited by that section in other than the limited circumstances permitted by section 112(a)(1).

House section 411 is modified in two respects. First, the House provision is modified by adding a new paragraph (3) to include specific reference to section 114(f) in section 112(a) of the Copyright Act. The addition to section 112(a) of a reference to section 114(f) is intended to make clear that subscription music services, webcasters, satellite digital audio radio services and others with statutory licenses for the performance of sound recordings under section 114(f) are entitled to the benefits of section 112(a) with repsect to the sound recordings they transmit.

Second, the House provision is modified in paragraph (4). This amendment to section 112(a) is intended to clarify the application of section 112(a) to FCC-licensed broadcasters with respect to digital nonsubscription broadcast transmissions. Notwithstanding this clarification, neither the amendment in paragraph (4) of section 411 nor the creation of a statutory license in section 112(e) is in any manner intended to narrow the scope of section 112(a) or the entitlement of any transmitting entity to the exemption provided thereunder with respect to copies made for other transmissions.

SECTION 403. LIMITATIONS ON EXCLUSIVE RIGHTS; DISTANCE EDUCATION

The Senate recedes to House section 412. The corresponding sections of the House bill and the Senate amendment are substantively identical.

SECTION 404. EXEMPTION FOR LIBRARIES AND ARCHIVES

The Senate recedes to House section 413. The corresponding sections of the House bill and the Senate amendment are substantively identical.

SECTION 405. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS; EPHEMERAL RECORDINGS

The Senate recedes to section 415 of the House bill with modification.

The amendments to sections 112 and 114 of the Copyright Act that are contained in this section of the bill are intended to achieve two purposes: first, to further a stated objective of Congress when it passed the Digital Performance Right in Sound Recordings Act of 1995 (''DPRA'') to ensure that recording artists and record companies will be protected as new technologies affect the ways in which their creative works are used; and second, to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services. This section contains amendments to sections 112 and 114 of Title 17 as follows:

Section 114(d)(1). Exempt Transmissions and Retransmissions. Section 114(d)(1)(A) is amended to delete two exemptions that were either the cause of confusion as to the application of the DPRA to certain nonsubscription services (especially webcaster) or which overlapped with other exemptions (such as the exemption in subsection (A)(iii) for nonsubscription broadcast transmissions). The deletion of these two exemptions is not intended to affect the exemption for nonsubscription broadcast transmissions.

Section 114(d)(2). Statutory Licensing of Certain Transmissions. The amendment to subsection (d)(2) extends the availability of a statutory license for subscription transmissions to cover certain eligible nonsubscription transmissions. ''Eligible nonsubscription transmissions'' are defined in subsection (j)(6). The amendment subdivides subsection (d)(2) into three subparagraphs ((A), (B), and (C)), each of which contains conditions of a statutory license for certain nonexempt subscription and eligible nonsubscription transmissions.

The conferees note that if a sound recording copyright owner authorizes a transmitting entity to take an action with respect to that copyright owner's sound recordings that is inconsistent with the requirements set forth in section 114(d)(2), the conferees do not intend that the transmitting entity be disqualified from obtaining a statutory license by virtue of such authorized actions.

The conferees intend that counts considering claims of infringement involving violation of the requirements set forth in section 114(d)(2) should judiciously apply the doctrine of de minimis non curat lex. A transmitting entity's statutory license should not be lost, and it becomes subject to infringement damages for transmissions that have been made as part of its service, merely because, through error, it has committed nonmaterial violations of these conditions that, once recognized, are not repeated. Similarly, if a service has multiple channels, the transmitting entity's statutory license should not be lost, and it become subject to infringement damages for transmissions that have been made on other channels, merely because of a violation in connection with one channel. Conversely, courts should not apply such doctrine in cases in which repeated or intentional violations occur.

Subparagraph (A) sets forth three conditions of a statutory license applicable to all nonexempt subscription and eligible nonsubscription transmissions. These three conditions are taken from previous subsection (d)(2).

Subparagraphs (B) and (C) are alternatives: a service is subject to the conditions in one or the other in addition to those in subparagraph (A). Subparagraph (B) contains conditions applicable only to nonexempt subscription transmissions made by a preexisting subscription service in the same transmission medium as was used by the service on July 31, 1998 or a preexisting satellite digital audio radio service. A preexisting subscription service is defined in subsection (j)(11); a preexisting satellite digital audio radio service is defined in (j)(10). The purpose of distinguishing preexisting subscription services making transmissions in the same medium as on July 31, 1998, was to prevent disruption of the existing operations by such services. There was only three such services that exist: DMX (operated by TCI Music), Music Choice (operated by Digital Cable Radio Associates), and the DiSH Network (operated by Muzak). As of July 31, 1998, DMX and Music Choice made transmissions via both cable and satellite media; the DiSH Network was available only via satellite. The purpose of distinguishing the preexisting satellite digital audio radio services is similar. The two preexisting satellite digital audio radio services, CD Radio and American Mobile Radio Corporation, have purchased licenses at auction from the FCC and have begun developing their satellite systems.

The two conditions contained in subparagraph (B) are taken directly from previous subsection (d)(2). Thus, preexisting satellite digital audio radio services and the historical operations of preexisting subscription services are subject to the same five conditions for eligibility for a statutory license, as set forth in subparagraphs (A) and (B), as have applied previously to these services.

Subparagraph (C) sets forth additional conditions for a statutory license applicable to all transmissions not subject to subparagraph (B), namely all eligible nonsubscription transmissions, subscription transmissions made by a new subscription service, and subscription transmissions made by a preexisting subscription service other than those made in the same transmission medium. Subparagraph (C) contains nine conditions.

Subparagraph (C)(i) requires that transmissions subject to a statutory license cannot exceed the sound recording performance complement defined in subsection (j)(13), which is unchanged by this amendment. Subparagraph (C)(i) eliminates this requirement for retransmissions of over-the-air broadcast transmissions by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the initial broadcast transmission, subject to two limitations.

First, the retransmissions are not eligible for statutory licensing if the retransmitted

broadcast transmissions are in digital format and regularly exceed the sound recording performance complement. Second, the retransmissions are not eligible for statutory licensing if the retransmitted broadcast transmissions are in analog format and a substantial portion of the transmissions, measured on a weekly basis, violate the sound recording performance complement. In both cases, however, the retransmitter is disqualified from making its transmissions under a statutory license only if the sound recording copyright owner or its representative notifies the retransmitter in writing that the broadcast transmissions exceed the sound recording performance complement. Once notification is received, the transmitting entity making the retransmissions must cease retransmitting those broadcast transmissions that exceed the sound recording performance complement.

Subparagraph (C)(ii) imposes limitations on the types of prior announcements, in text, video or audio, that may be made by a service under the statutory license. Services may not publish advance program schedules or make prior announcements of the titles of specific sound recordings or the featured artists to be performed on the service. Moreover, services may not induce or facilitate the advance publication of schedules or the making of prior announcements, such as by providing a third party the list of songs or artists to be performed by the transmitting entity for publication or announcement by the third party. The conferees do not intend that the term ''prior announcement'' preclude a transmitting entity from identifying specific sound recordings immediately before they are performed.

However, services may generally use the names of several featured recording artists to illustrate the type of music being performed on a particular channel. Subparagraph (C)(iii) addresses limitations for archived programs and continuous programs, which are defined in subsections (j)(2) and (j)(4), respectively. Subparts (I) and (II) address archived programs. Archived programs often are available to listeners indefinitely or for a substantial period of time, thus permitting listeners to hear the same songs on demand any time the visitor wishes. Transmissions that are part of archived programs that are less than five hours long are ineligible for a statutory license. Transmissions that are part of archived programs more than five hours long are eligible only if the archived program is available on the webcaster's site or a related site for two weeks or less. The two-week limitation is to be applied in a reasonable manner to achieve the objectives of this subparagraph, so that, for example, archived programs that have been made available for two weeks are not removed from a site for a short period of time and then made available again. Furthermore, altering an archived program only in insignificant respects, such as by replacing or reordering only a small number of the songs comprising the program, does not render the program eligible for statutory licensing.

Subparagraph (C)(iii) also limits eligibility for a statutory license to transmissions that are not part of a continuous program of less than three hours duration (subparagraph (C)(iii)(III)). A listener to a continous program hears that portion of the program that is being transmitted to all listeners at the particular time that the listener accesses the program, much like a person who tunes in to an over-the-air broadcast radio station.

Finally, subparagraph (C)(iii)(IV) limits eligibility for a statutory license to transmissions that are not part of an identifiable program in which performances of sound recordings are rendered in a predetermined order that is transmitted at (a) more than three times in any two week period, which times have been publicly announced in advance, if the program is of less than one hour duration, or (b) more than four times in any two week period, which times have been publicly announced in advance, if the program is one hour or more. It is the conferee's intention that the two-week limitation in subclause (IV) be applied in a reasonable manner consistent with its purpose so that, for example, a transmitting entity does not regularly make all of the permitted repeat performances within several days.

Subparagraph (C)(iv) states that the transmitting entity may not avail itself of a statutory license if it knowingly performs a sound recording, as part of a service that offers transmissions of visual images contemporaneous with transmissions of sound recordings, in a manner that is likely to cause a listener to believe that there is an affiliation or association between the sound recording copyright owner or featured artist and a particular product or service advertised by the transmitting entity. This would cover, for example, transmitting an advertisement for a particular product or service every time a particular sound recording or artist is transmitted; it would not cover more general practices such as targeting advertisements of particular products or services to specific channels of the service according to user demographics. If, for example, advertisements are transmitted randomly while sound recordings are performed, this subparagraph would be satisfied.

Subparagraph (C)(v) provides that, in order to qualify for a statutory license, a transmitting entity must cooperate with sound recording copyright owners to prevent a transmission recipient from scanning the transmitting entity's transmissions to select particular sound recordings. In the future, a device or software may be developed that would enable its user to scan one or more digital transmissions to select particular sound recordings or artists requested by its user. Such devices or software would be the equivalent of an on demand service that would not be eligible for the statutory license. Technology may be developed to defeat such scanning, and transmitting entities taking a statutory license are required to cooperate with sound recording copyright owners to prevent such scanning, provided that such cooperation does not impose substantial costs or burdens on the transmitting entity. This requirement does not apply to a satellite digital audio service, including a preexisting satellite digital audio radio service, that is in operation, or that is licensed by the FCC, on or before July 31, 1998.

Subparagraph (C)(vi) requires that if the technology used by the transmitting entity enables the transmitting entity to limit the making by the transmission recipient of phonorecords in a digital format directly of the transmission, the transmitting entity sets such technology to limit such making of phonorecords to the extent permitted by such technology. The conferees note that some software used to ''stream'' transmissions of sound recordings enables the transmitting entity to disable such direct digital copying of the transmitted data by transmission recipients. In such circumstances the transmitting entity must disable that direct copying function. Likewise, a transmitting entity may not take affirmative steps to cause or induce the making of any copies by a transmission recipient. For example, a transmitting entity may not encourage a transmission recipient to make either digital or analog copies of the transmission such as by suggesting that recipients should record copyrighted programming transmitted by the entity.

Subparagraph (C)(vii) requires that each sound recording transmitted by the transmitting entity must have been distributed to the public under authority of the copyright owner or provided to the transmitting entity with authorization that the transmitting entity may perform such sound recording. The conferees recognize that a disturbing trend on the Internet is the unauthorized performance of sound recordings not yet released for broadcast or sale to the public. The transmission of such pre-released sound recordings is not covered by the statutory license unless the sound recording copyright owner has given explicit authorization to the transmitting entity. This subparagraph also requires that the transmission be made from a phonorecord lawfully made under the authority of the copyright owner. A phonorecord provided by the copyright owner or an authorized phonorecord purchased through commercial distribution channels would qualify. However, the transmission of bootleg sound recordings (e.g., the recording of a live musical performance without the authority of the performer, as prohibited by Chapter 11) is ineligible for a statutory license.

Subparagraph (C)(viii) conditions a statutory license on whether a transmitting entity has accommodated and does not interfere with technical measures widely used by sound recording copyright owners to identify or protect their copyrighted works. Thus, the transmitting entity must ensure that widely used forms of identifying information, embedded codes, encryption or the like are not removed during the transmission process, provided that accommodating such measures is technologically feasible, does not impose substantial costs or burdens on the transmitting entity, and does not result in perceptible degradation of the digital audio or video signals being transmitted. This requirement shall not apply to a satellite digital audio service, including a preexisting satellite digital audio radio service, that is in operation, or that is licensed under the authority of the Federal communications Commission, on or before July 31, 1998, to the extent that such service has designed, developed or made commitments to procure equipment or technology that is not compatible with such technical measures before such technical measures are widely adopted by sound recording copyright owners.

Subparagraph (C)(ix) requires transmitting entities eligible for the statutory license to identify in textual data the title of the sound recording, the title of the album on which the sound recording appears (if any), and the name of the featured recording artist. These titles and names must be made during, but not before, the performance of the sound recording. A transmitting entity must ensure that the identifying information can easily be seen by the transmission recipient in visual form. For example, the information might be displayed by the software player used on a listener's computer to decode and play the sound recordings that are transmitted. Many webcasters already provide such information, but in order to give those who do not an adequate opportunity to do so this obligation does not take effect until one year after the effective date of the amendment. This requirement does not apply to the retransmission of broadcast transmissions by a transmitting entity that does not have the right or ability to control the programming of the broadcast station making the broadcast transmission, or where devices or technology intended for receiving the service that have the capability to display the identifying information are not common in the marketplace.

Section 114(f). Licenses for Certain Nonexempt Transmissions. Section 114(f) is amended to

set forth procedures for determining reasonable rates and terms for those transmissions that qualify for statutory licensing under section 114(d)(2). Section 114(f) is divided into two parts: one applying to transmissions by preexisting subscription services and preexisting satellite digital audio radio services (subsection (f)(1)), and the other applying to transmissions by new subscription services (including subscription transmissions made by a preexisting subscription service other than those that qualify under subsection (f)(1)) as well as eligible nonsubscription transmissions (subsection (f)(2)).

Subsection (f)(1) provides for procedures applicable to subscription transmission by preexisting subscription services and preexisting satellite digital audio radio services. The conferees note that this subsection applies only to the three services considered preexisting subscription services, DMX, Music Choice and the DiSH Network, and the two services considered preexisting satellite digital audio radio services, CD Radio and American Mobile Radio Corporation. The procedures in this subsection remain the same as those applicable before the amendment, except that the rate currently in effect under prior section 114(f) is extended from December 31, 2000 until December 31, 2001. That rate currently applies to the three preexisting subscription services, and the Conferees take no position on its applicability to the two preexisting satellite digital audio radio services. Likewise, the initiation of the next voluntary negotiation period shall take place in the first week of January 2001 instead of January 2000 (subsection (f)(1)(C)(i)). These extensions are made purely to facilitate the scheduling of proceedings.

Subsection (f)(1)(B), which sets forth procedures for arbitration in the absence of negotiated license agreement, continues to provide that a copyright arbitration royalty panel should consider the objectives set forth in section 801(b)(1) as well as rates and terms for comparable types of subscription services.

Subsection (f)(2) addresses procedures applicable to eligible nonsubscription transmissions and subscription transmissions by new subscription services. The first such voluntary negotiation proceeding is to commence within 30 days after the enactment of this amendment upon publication by the Librarian of Congress of a notice in the Federal Register. The terms and rates established will cover qualified transmissions made between the effective date of this amendment and December 31, 2000, or such other date as the parties agree.

Subsection (f)(2) directs that rates and terms must distinguish between the different types of eligible nonsubscription transmission services and new subscription services then in operation. The conferees recognize that the nature of qualified transmissions may differ significantly based on a variety of factors. The conferees intend that criteria including, but not limited to, the quantity and nature of the use of sound recordings, and the degree to which use of the services substitutes for or promotes the purchase of phonorecords by consumers may account for differences in rates and terms between different types of transmissions.

Subsection (f)(2) also directs that a minimum fee should be established for each type of service. A minimum fee should ensure that copyright owners are fairly compensated in the event that other methodologies for setting rates might deny copyright owners an adequate royalty. For example, a copyright arbitration royalty panel should set a minimum fee that guarantees that a reasonable royalty rate is not diminished by different types of marketing practices or contractual relationships. For example, if the base royalty for a service were a percentage of revenues, the minimum fee might be a flat rate per year (or a flat rate per subscriber per year for a new subscription service).

Also, although subsection (f)(1) remains silent on the setting of a minimum fee for preexisting subscription services and preexisting satellite digital audio radio services, the Conferees do not intend that silence to mean that a minimum fee may or may not be established in appropriate circumstances when setting rates under subsection (f)(1) for preexisting subscription services and preexisting satellite digital audio radio services. Likewise, the absence of criteria that should be taken into account for distinguishing rates and terms for different services in subsection (f)(1) does not mean that evidence relating to such criteria may not be considered when adjusting rates and terms for preexisting subscription services and preexisting satellite digital audio radio services in the future.

Subsection (f)(2)(B) sets forth procedures in the absence of a negotiated license agreement for rates and terms for qualifying transmissions under this subsection. Consistent with existing law, a copyright arbitration proceeding should be empaneled to determine reasonable rates and terms. The test applicable to establishing rates and terms is what a willing buyer and willing seller would have arrived at in marketplace negotiations. In making that determination, the copyright arbitration royalty panel shall consider economic, competitive and programming information presented by the parties including, but not limited to, the factors set forth in clauses (i) and (ii).

Subsection (f)(2)(C) specifies that rates and terms for new subscription and eligible nonsubscription transmissions should be adjusted every two years, unless the parties agree as to another schedule. These two-year intervals are based upon the conferees' recognition that the types of transmission services in existence and the media in which they are delivered can change significantly in a short period of time.

Subsection (j)(2)—''archived program.'' A program is considered an ''archived program'' if it is prerecorded or preprogrammed, available repeatedly on demand to the public and is performed in virtually the same order from the beginning.

The exception to the definition of ''archived program'' for a recorded event or broadcast transmission is intended to allow webcasters to make available on demand transmissions of recorded events or broadcast shows that do not include performances of entire sound recordings or feature performances of sound recordings (such as a commercially released sound recording used as a theme song), but that instead use sound recordings only in an incidental manner (such as in the case of brief musical transitions in and out of commercials and music played in the background at sporting events). Some broadcast shows may be part of series that do not regularly feature performances of sound recordings but that occasionally prominently include a sound recording (such as a performance of a sound recording in connection with an appearance on the show by the recording artist). The recorded broadcast transmission of the show should not be considered an ''archived program'' merely because of such a prominent performance in a show that is part of a series that does not regularly feature performances of sound recordings. The inclusion of this exception to the definition of ''archived program'' is not intended to impose any new license requirement where the broadcast programmer or syndicator grants the webcaster the right to transmit a sound recording, such as may be the case where the sound recording has been specially created for use in a broadcast show.

Subsection 114(j)(4)—''continuous program.'' A ''continuous program'' is one that is continuously performed in the same predetermined order. Such a program generally takes the form of a loop whereby the same set of sound recordings is performed repeatedly; rather than stopping at the end of the set, the program automatically restarts generally without interruption. In contrast to an archived program (which always is accessed from the beginning of the program), a transmission recipient typically accesses a continuous program in the middle of the program. Minor alterations in the program should not render a program outside the definition of ''continuous program.''

Subsection 114(j)(6)—''eligible nonsubscription transmission''. An ''eligible nonsubscription transmission'' is one that meets the following criteria. First, the transmission must be noninteractive and nonsubscription in nature. Second, the transmission must be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings. Third, the purpose of the transmission service must be to provide audio or entertainment programming, not to sell, advertise or promote particular goods or services. Thus, for example, an ordinary commercial Web site that was primarily oriented to the promotion of a particular company or to goods or services that are unrelated to the sound recordings or entertainment programming, but that provides background music would not qualify as a service that makes eligible nonsubscription transmissions. The site's background music transmissions would need to be licensed through voluntary negotiations with the copyright owners. However, the sale or promotion of sound recordings, live concerts or other musical events does not disqualify a service making a nonsubscription transmission. Furthermore, the mere fact that a transmission service is advertiser-based or may promote itself or an affiliated entertainment service does not disqualify it from being considered an eligible nonsubscription transmission service.

Subsection 114(j)(7)—''interactive service.'' The definition of ''interactive service'' is amended in several respects. First, personalized tranmissions—those that are specially created for a particular individual—are to be considered interactive. The recipient of the transmission need not select the particular recordings in the program for it to be considered personalized, for example, the recipient might identify certain artists that become the basis of the personal program. The conferees intend that the phrase ''program specially created for the recipient'' be interpreted reasonably in light of the remainder of the definition of ''interactive service.'' For example, a service would be interactive if it allowed a small number of individuals to request that sound recordings be performed in a program specially created for that group and not available to any individuals outside of that group. In contrast, a service would not be interactive if it merely transmitted to a large number of recipients of the service's transmissions a program consisting of sound recordings requested by a small number of those listeners.

Second, a transmission of a particular sound recording on request is considered interactive ''whether or not [the sound recording is] part of a program.'' This language clarifies that if a transmission recipient is permitted to select particular sound recordings in a prerecorded or predetermined program, the transmission is considered interactive. For example, if a transmission recipient has the ability to move forward and

backward between songs in a program, the transmission is interactive. It is not necessary that the transmission recipient be able to select the actual songs that comprise the program. Additionally, a program consisting only of one sound recording would be considered interactive.

Third, the definition of ''interactive service'' is amended to clarify that certain channels or programs are not considered interactive provided that they do not substantially consist of requested sound recordings that are performed within one hour of the request or at a designated time. Thus, a service that engaged in the typical broadcast programming practice of including selections requested by listeners would not be considered interactive, so long as the programming did not substantially consist of requests regularly performed within an hour of the request, or at a time that the transmitting entity informs the recipient it will be performed.

The last sentence of the definition is intended to make clear that if a transmitting entity offers both interactive and noninteractive services then the noninteractive components are not to be treated as part of an interactive service, and thus are eligible for statutory licensing (assuming the other requirements of the statutory license are met). For example, if a Web site offered certain programming that was transmitted to all listeners who chose to receive it at the same time and also offered certain sound recordings that were transmitted to particular listeners on request, the fact that the latter are interactive transmissions would not preclude statutory licensing of the former.

Subsection 114(j)(8)—''new subscription service.'' A ''new subscription service'' is any service that is not a preexisting subscription service as defined in subsection (j)(11) or a preexisting satellite digital audio radio service as defined in subsection (j)(10).

Subsection 114(j)(10)—''preexisting satellite digital audio radio service.'' A ''preexisting satellite digital audio service'' is a subscription digital audio radio service provided pursuant to a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998. Subscription services offered by these licensed entities do not qualify as ''preexisting subscription services'' under section 114(j)(11) because they had not commenced making transmissions to the public for a fee on or before July 31, 1998. Only two entities received these licenses: CD Radio and American Mobile Radio Corporation.

A ''preexisting satellite digital audio radio service'' and ''preexisting subscription service'' may both include a limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service. Such sample channels are to be treated as part of the subscription service and should be considered in determining the royalty rate for such subscription service. The conferees do not intend that the ability to offer such sample channels be used as a means to offer a nonsubscription service under the provisions of section 114 applicable to subscription services. The term ''limited number'' should be evaluated in the context of the overall service. For example, a service consisting of 100 channels should have no more than a small percentage of its channels as sample channels.

Subsection 114(j)(11)—''preexisting subscription service.'' A ''preexisting subscription service'' is a noninteractive subscription service that was in existence and was making transmissions to the public on or before July 31, 1998, and which is making transmissions similar in character to such transmissions made on or before July 31, 1998. Only three services qualify as a preexisting subscription service—DMX, Music Choice and the DiSH Network. As of July 31, 1998, DMX and Music Choice made transmissions via both cable and satellite media; the DiSH Network was available only via satellite.

In grandfathering these services, the conferee's objective was to limit the grandfather to their existing services in the same transmission medium and to any new services in a new transmission medium where only transmissions similar to their existing service are provided. Thus, if a cable subscription music service making transmissions on July 31, 1998, were to offer the same music service through the Internet, then such Internet service would be considered part of a preexisting subscription service.

If, however, a subscription service making transmissions on July 31, 1998, were to offer a new service either in the same or new transmission medium by taking advantages of the capabilities of that medium, such new service would not qualify as a preexisting subscription service. For example, a service that offers video programming, such as advertising or other content, would not qualify as a preexisting service, provided that the video programming is not merely information about the service itself, the sound recordings being transmitted, the featured artists, composers or songwriters, or an advertisement to purchase the sound recording transmitted.

Section 114 in General. These amendments are fully subject to all the existing provisions of section 114. Specifically, these amendments and the statutory licenses they create are all fully subject to the safeguards for copyright owners of sound recordings and musical works contained in sections 114(c), 114(d)(4) and 114(i), as well as the other provisions of section 114. In addition, the conferees do not intend to affect any of the rights in section 115 that were clarified and confirmed in the DPRA.

Section 112(e)—Statutory License. Section 112(e) creates a statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. The new statutory license in section 112(e) is intended primarily for the benefit of entities that transmit performances of sound recordings to business establishments pursuant to the limitation on exclusive rights set forth in section 114(d)(1)(C)(iv). However, the new section 112(e) statutory license also is available to a transmitting entity with a statutory license under section 114(f) that chooses to avail itself of the section 112(e) statutory license to make more than the one phonorecord it is entitled to make under section 112(a). For example, the conferees understand that a webcaster might wish to reproduce multiple copies of a sound recording to use on different servers or to make transmissions at different transmission rates or using different transmission software. Under section 112(a), as amended by this bill, a webcaster with a section 114(f) statutory license is entitled to make only a single copy of the sound recording. Thus, the webcaster might choose to obtain a statutory license under section 112(e) to allow it to make such multiple copies. The conferees intend that the royalty rate payable under the statutory license may reflect the number of phonorecords of a sound recording made under a statutory license for use in connection with each type of service.

Ephemeral recordings of sound recordings made by certain transmitting organizations under section 112(e) may embody copyrighted musical compositions. The making of an ephemeral recording by such a transmitting organization of each copyrighted musical composition embodied in a sound recording it transmits is governed by existing section 112(a) (or section 112(a)(1) as revised by the Digital Millennium Copyright Act), and, pursuant to that section, authorization for the making of an ephemeral recording is conditioned in part on the transmitting organization being entitled to transmit to the public the performance of a musical composition under a license or transfer of the copyright.

The conditions listed in section 112(e)(1), most of which are also found in section 112(a), must be met before a transmitting organization is eligible for statutory licensing in accordance with section 112(e). First, paragraph (1)(A) provides that the transmitting organization may reproduce and retain only one phonorecord, solely for its own use (unless the terms and conditions of the statutory license allow for more). Thus, trafficking in ephemeral recordings, such as by preparing prerecorded transmission programs for use by third parties, is not permitted. This paragraph provides that the transmitting organization may reproduce and retain more than one ephemeral recording, in the manner permitted under the terms and conditions as negotiated or arbitrated under the statutory license. This provision is intended to facilitate efficient transmission technologies, such as the use of phonorecords encoded for optimal performance at different transmission rates or use of different software programs to receive the transmissions.

Second, paragraph (1)(B) requires that the phonorecord be used only for the transmitting organization's own transmissions originating in the United States, and such transmissions must be made under statutory license pursuant to section 114(f) or the exemption in section 114(d)(1)(C)(iv). Third, paragraph (1)(C) mandates that, unless preserved exclusively for archival purposes, the phonorecord be destroyed within six months from the time that the sound recording was first performed publicly by the transmitting organization. Fourth, paragraph (1)(D) limits the statutory license to reproductions of sound recordings that have been distributed to the public and that are made from a phonorecord lawfully made and acquired under the authority of the copyright owner.

Subsection (e)(3) clarifies the applicability of the antitrust laws to the use of common agents in negotiations and agreements relating to statutory licenses and other licenses. Under this subsection, the copyright owners of sound recordings and transmitting organizations entitled to obtain the statutory license in this section may negotiate collectively regarding rates and terms for the statutory license or other licenses. This subsection provides that such copyright owners and transmitting organizations may designate common agents to represent their interests to negotiate or administer such license agreements. This subsection closely follows the language of existing antitrust exemptions in copyright law, including the exemption found in the statutory licenses for transmitting sound recordings by digital audio transmission found in section 114(f).

Subsections (e)(4) and (5) address the procedures for determining rates and terms for the statutory license provided for in this section. These procedures are parallel to the procedures found in section 114(f)(2) for public performances of sound recordings by digital audio transmission by new subscription services and services making eligible Nonsubscription transmissions.

Subsection (e)(4) provides that the Librarian of Congress should publish notice of voluntary negotiation proceedings 30 days after enactment of this amendment. Such voluntary negotiation proceedings should address rates and terms for the making of ephemeral recordings under the conditions of

this section for the period beginning on the date of enactment and ending on December 31, 2000. This subsection requires that a minimum fee be established as part of the rates and terms.

In the event that interested parties do not arrive at negotiated rates and terms during the voluntary negotiation proceedings, subsection (e)(5) provides for the convening of a copyright arbitration royalty panel to determine reasonable rates and terms for the making of ephemeral recordings under this subsection. This paragraph requires the copyright arbitration royalty panel to establish rates that reflect the fees that a willing buyer and seller would have agreed to in marketplace negotiations. In so doing, the copyright arbitration royalty panel should base its decision on economic, competitive and programming information presented by the parties, including, but not limited to, such evidence as described in subparagraphs (A) and (B).

Subseciton (e)(7) states that rates and terms either negotiated or established pursuant to arbitration shall be effective for two-year periods, and the procedures set forth in subsections (e)(4) and (5) shall be repeated every two years unless otherwise agreed to by the parties.

The conferees intend that the amendments regarding the statutory licenses in sections 112 and 114 contained in section 415 of this bill apply only to those statutory licenses.

SECTION 406. ASSUMPTION OF CONTRACTUAL OBLIGATIONS RELATED TO TRANSFERS OF RIGHTS IN MOTION PICTURES

The Senate recedes to House section 416 with modification.

Paragraph (a)—Assumption of obligations. The conferees have added to paragraph (a) language that defines more specifically the meaning of the ''knows or has reason to know'' standard in subsection (a)(1). There are three ways to satisfy this standard. The first is actual knowledge that a motion picture is or will be covered by a collective bargaining agreement. Subparagraph (ii) provides for constructive knowledge, established through two alternative mechanisms: recordation with the Copyright Office or identification of the motion picture on an online web site maintained by the relevant Guild, where the site makes it possible for users to verify their access date in a commercially reasonable way. In order to ensure that the transferee has a reasonable opportunity to obtain the relevant information, these mechanisms for providing constructive notice apply with respect to transfers that take place after the motion picture is completed. They also apply to transfer that take place before the motion picture is completed, but only if the transfer is within eighteen months prior to the filing of an application for copyright registration for the motion picture or, if there is no application for registration, within eighteen months of its first publication in the United States.

The constructive notice established by recordation for purposes of application of this section is entirely separate and independent from the constructive notice established by recordation under section 205(c) of the Copyright Act. This section does not condition constructive notice on prior registration of the motion picture with the Copyright Office, and does not have any hearing on the issue of priority between conflicting transfers as described in section 205(d) of the Copyright Act.

Subparagraph (iii) provides a more general standard for circumstances where the transferee does not have actual knowledge or constructive knowledge through one of the two mechanisms set out in subparagraph (ii), but is aware of facts and circumstances about the transfer that make it apparent that the motion picture is subject to a collective bargaining agreement. Such facts and information might include, for example, budget, location of principal photography, the identity of the talent associated with a project, or the existence of a personal service contract that references terms or conditions of collective bargaining agreements.

Paragraph (b)—Scope of exclusion of transfer of public performance rights.—New paragraph (b) clarifies that the ''public performance'' exclusion from the operation of paragraph (a) is intended to include performances described in paragraph (b) that reach viewers through transmission or retransmission of programming or program services via satellite, MMDS, cable, and other means of carriage. This paragraph does not expand or restrict in any way what constitutes a ''public performance'' for any other purpose. The public performance exclusion would not be rendered inoperable simply because a transfer of public performance rights is accompanied by a transfer of limited, incidental other rights necessary to implement or facilitate the exercise of the performance rights.

Paragraph (c)—Exclusion for grants of security interests.—The purpose of this paragraph is to ensure that banks and others providing financing for motion pictures will not be made subject to the assumption of obligations required by this section merely because they obtain a security interest in the motion picture. Because the term ''transfer of copyright ownership'' is defined in section 101 of the Copyright Act to include a ''mortgage . . . or hypothecation'' of any exclusive copyright right, this could be the unintended result of the statutory language. Under this exclusion, a bank or other party would not be subject to the application of paragraph (a) based solely on the acts of taking a security interest in a motion picture, foreclosing on that interest or otherwise exercising its rights as a secured party, or transferring or authorizing transfer of copyright ownership rights secured by its security interest to a third party. Neither would any subsequent transferee downstream from the initial secured party be subject to paragraph (a). The exclusion would apply irreespective of the form or language used to grant or create the security interest.

It should be clear that the only agreements whose terms are enforced by this section are collective bargaining agreements and assumption agreements. In the course of financing a motion picture, a lender, other financier or completion guarantor may execute an inter-creditor or subordination agreement with a union including obligations with respect to the payment of residuals or the obtaining of assumption agreements. Such agreements are not within the scope of this section, and nothing in this section obligates lenders, other financiers or completion guarantors to enter into these agreements, enforces any terms thereof or diminishes any rights that the parties may have under these agreements.

Paragraph (d)—Deferral pending resolution of bona fide dispute. Paragraph (d) allows a remote transferee obligated under paragraph (a)(1) to stay enforcement of this section while there exists a bona fide dispute between the applicable union and a prior transferor regarding obligations under this section. It contemplates that union claims not subject to bona fide dispute will be payable when due under the applicable collective bargaining agreement or through application of this section. Such disputes may be manifested through grievance or arbitration claims, litigation, or other claims resolution procedures in effect between the applicable parties.

Paragraph (e)—Scope of obligations determined by private agreement. Paragraph (e) states explicitly the basic principle of operation of this section. It makes clear that the section simply provides an enforcement mechanism for obligations that have already been agreed to in a collective bargaining agreement. It is not intended to affect in any way the scope or interpretation of the provisions of, or the acts required by, any collective bargaining agreement. The rights and obligations themselves, as well as the remedies for breach, are those that have been agreed to among the parties. Accordingly, they can be changed at any time by agreement.

The collective bargaining agreements contemplate that producers will obtain assumption agreements from distributors in certain circumstances. The statute states that where a producer does not comply with the obligation and obtain an assumption agreement where required, the law will act as though the producer has in fact done so. Thus, it removes the possibility of noncompliance with the obligation to obtain an assumption agreement. It does not require assumption agreements to be obtained in circumstances where the collective bargaining agreement would not require it. If there is a dispute over the meaning and applicabiity of provisions in the collective bargaining agreement, for example over the question of which distributors must be required to execute an assumption agreement, the statue does not resolve the dispute. It only requires whatever the collective bargaining agreement would require, and relegates the parties to the dispute mechanisms set out in that agreement.

This section does not expand or diminish rights or obligations under other laws that might regulate contractual obligations beyond the purpose of enforcing assumption agreements required by applicable collective bargaining agreements. Nor does this section prevent a person or entity that is subject to obligations under an assumption agreement (whether through application of this section or otherwise) from transferring any such obligations to a subsequent transferee of the applicable copyright rights, and thereby being relieved of its own obligations under the assumption agreement, to the extent permitted by, and under the conditions established in, the applicable assumption agreements.

TITLE V—PROTECTION OF CERTAIN ORIGINAL DESIGNS

Sections 501–505. The Senate recedes to House sections 601–602 with modification.

From the Committee on Commerce for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

TOM BLILEY,
BILLY TAUZIN,
JOHN D. DINGELL,

From the Committee on Judiciary for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

HENRY J. HYDE,
HOWARD COBLE,
BOB GOODLATTE,
JOHN CONYERS, Jr.,
HOWARD L. BERMAN,
Managers on the Part of the House.

ORRIN G. HATCH,
STROM THURMOND,
PATRICK J. LEAHY,
Managers on the Part of the Senate.

□ 0140

ADJOURNMENT

Mr. LEACH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 40 minutes a.m.), the House adjourned until 9 a.m. today.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. YATES (at the request of Mr. GEPHARDT) for after 6 p.m. on Thursday, October 8, on account of wife's illness.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LAFALCE) to revise and extend their remarks and include extraneous material:)

Mr. BLUMENAUER, for 5 minutes, today.

Mr. HINCHEY, for 5 minutes, today.

Mr. SKAGGS, for 5 minutes, today.

Mr. CONYERS, for 5 minutes, today.

Mr. FILNER, for 5 minutes, today.

Ms. JACKSON LEE of Texas, for 5 minutes, today.

Mr. FALEOMAVAEGA, for 5 minutes, today.

Ms. CARSON, for 5 minutes today.

(The following Members (at the request of Mr. LEACH) to revise and extend their remarks and include extraneous material:)

Mr. PAUL, for 5 minutes, today.

Mr. FOX of Pennsylvania.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. LAFALCE) and to include extraneous material:)

Mr. KIND.

Mr. MATSUI.

Mr. DINGELL.

Mrs. MEEK of Florida.

Mr. PAYNE.

Mr. LEVIN.

Mr. MILLER of California.

Mr. GUTIERREZ.

Mr. HAMILTON.

Mr. HINOJOSA.

Mr. STARK.

Mr. KUCINICH.

Mrs. CAPPS.

Ms. JACKSON-LEE of Texas.

Ms. EDDIE BERNICE JOHNSON of Texas.

Mr. DEUTSCH.

Ms. PELOSI.

Mr. LANTOS.

Mr. VISCLOSKY.

Mr. EVANS.

Mr. MARTINEZ.

Mr. SANDERS.

Ms. KAPTUR.

Mr. RANGEL.

Mr. HALL of Ohio.

Mr. TORRES.

Mr. BERMAN.

Mr. ROEMER.

Mr. BONIOR.

Mr. ABERCROMBIE.

Mr. CLEMENT.

Mr. UNDERWOOD.

Mr. BORSKI.

(The following Members (at the request of Mr. LEACH) and to include extraneous material:)

Mr. OXLEY.

Mr. CAMPBELL.

Mr. GILMAN.

Mr. BARR of Georgia.

Mr. MICA.

Mr. CRANE.

Mr. EHLERS.

Mr. MILLER of Florida.

Mr. LEWIS of California.

Mr. BEREUTER.

Mr. SHUSTER.

Mr. FRELINGHUYSEN.

Mr. SMITH of New Jersey.

Mr. SOLOMON.

Ms. ROS-LEHTINEN.

Mr. MANZULLO.

Mr. FORBES.

Mrs. KELLY.

Mr. CALLAHAN.

Mr. STUMP.

BILLS PRESENTED TO THE PRESIDENT

Mr. THOMAS, from the Committee on House Oversight, reported that that committee did on this day present to the President, for his approval, bills of the House of the following titles:

H.R. 449. To provide for the orderly disposal of certain Federal lands in Clark County, Nevada, and to provide for the acquisition of environmentally sensitive lands in the State of Nevada.

H.R. 930. To require Federal employees to use Federal travel charge cards for all payments of expenses of official Government travel, to amend title 31, United States Code, to establish requirements for prepayment audits of Federal agency transportation expenses, to authorize reimbursement of Federal agency employees for taxes incurred on travel or transportation reimbursements, and to authorize test programs for the payment of Federal employee travel expenses and relocation expenses.

H.R. 1481. To amend the Great Lakes Fish and Wildlife Restoration Act of 1990 to provide for implementation of recommendations of the United States Fish and Wildlife Service contained in the Great Lakes Fishery Resources Restoration Study.

H.R. 1836. To amend chapter 89 of title 5, United States Code, to improve administration of sanctions against unfit health care providers under the Federal Employees Health Benefits Program, and for other purposes.

H.R. 3381. To direct the Secretary of the Interior to exchange land and other assets with Big Sky Lumber Co, and other entities.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 744. An act to authorize the construction of the Fall River Water Users District Rural Water System and authorize financial assistance to the Fall River Water Users District, a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Resources.

S. 736. An act to convey certain real property within the Carlsbad Project in New Mexico to the Carlsbad Irrigation District; to the Committee on Resources.

S. 1175. An act to reauthorize the Delaware Water Gap National Recreation Area Citizen Advisory Commission for 10 additional years; to the Committee on Resources.

S. 1637. An act to expedite State review of criminal records of applicants for bail enforcement officer employment, and for other purposes; to the Committee on Judiciary.

S. 1641. An act to direct the Secretary of the Interior to study alternatives for establishing a national historic trail to commemorate and interpret the history of women's rights in the United States; to the Committee on Resources.

S. 2041. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Willow Lake Natural Treatment System Project for the reclamation and reuse of water, and for other purposes; to the Committee on Resources.

S. 2086. An act to revise the boundaries of the George Washington Birthplace National Monument; to the Committee on Resources.

S. 2117. An act to authorize the construction of the Perkins County Rural Water System and authorize financial assistance to the Perkins County Rural Water System, Inc., a nonprofit corporation, in the planning and construction of the water supply system, and for other purposes; to the Committee on Resources.

S. 2140. An act to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to authorize the Secretary of the Interior to participate in the design, planning, and construction of the Denver Water Reuse project; to the Committee on Resources.

S. 2142. An act to authorize the Secretary of the Interior to convey the facilities of the Pine River Project, to allow jurisdictional transfer of lands between the Department of Agriculture, Forest Service, and the Department of the Interior, Bureau of Reclamation, and the Bureau of Indian Affairs; and for other purposes; to the Committee on Resources.

S. 2235. An act to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers; to the Committee on the Judiciary and Education and the Workforce.

S. 2239. An act to revise the boundary of Fort Matanzas National Monument, and for other purposes; to the Committee on Resources.

S. 2240. An act to establish the Adams National Historical Park in the Commonwealth of Massachusetts, and for other purposes; to the Committee on Resources.

S. 2241. An act to provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes; to the Committee on Resources.

S. 2246. An act to amend the Act which established the Frederick Law Olmsted National Historic Site, in the Commonwealth of Massachusetts, by modifying the boundary, and for other purposes; to the Committee on Resources.

S. 2247. An act to permit the payment of medical expenses incurred by the United States Park Police in the performance of

duty to be made directly by the National Park Service, and for other purposes; to the Committee on Government Reform and Oversight.

S. 2248. An act to allow for waiver and indemnification in mutual law enforcement agreements between the National Park Service and a State or political subdivision, when required by State law, and for other purposes; to the Committee on Resources.

S. 2284. An act to establish the Minuteman Missile National Historic Site in the State of South Dakota, and for other purposes; to the Committee on Resources and National Security.

S. 2285. An act to establish a commission, in honor of the 150th Anniversary of the Seneca Falls Convention, to further protect sites of importance in the historic efforts to secure equal rights for women, to the Committee on Resources.

S. 2309. An act to authorize the Secretary of the Interior to enter into an agreement for the construction and operation of the Gateway Visitor Center at Independence National Historical Park; to the Committee on Resources.

S. 2468. An act to designate the Biscayne National Park Visitor Center as the Dante Fascell Visitor Center; to the Committee on Resources.

S. 2584. An act to provide aviator continuation pay for military members killed in Operation Desert Shield; to the Committee on National Security.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. COBLE: Committee of Conference. Conference report on H.R. 2281. A bill to amend title 17, United States Code, to implement the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty (Rept. 105–796). Ordered to be printed.

Mr. HANSEN: Committee on Standards of Official Conduct. Report in the matter of Representative Jay Kim (Rept. 105–797). Referred to the House Calendar.

Mr. DREIER: Committee of Rules. House Resolution 584. Resolution further providing for consideration of the bill (H.R. 4274) making appropriations for the Department of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1999, and for other purposes (Rept. 105–798). Referred to the House Calendar.

Mr. LINDER: Committee on Rules. House Resolution 586. Resolution waiving points of order against the conference report to accompany the bill (H.R. 3150) to amend title 11 of the United States Code, and for other purposes (Rept. 105–799). Referred to the House Calendar.

Mr. GOODLING: Committee of Conference. Conference report on H.R. 1853. A bill to amend the Carl D. Perkins Vocational and Applied Technology Education Act (Rept. 105–800). Ordered to be printed.

Mr. BLILEY: Committee on Commerce. H.R. 3888. A bill to amend the Communications Act of 1934 to improve the protection of consumers against ''slamming'' by telecommunications carriers, and for other purposes; with an amendment (Rept. 105–801). Referred to the Committee of the Whole House on the State of the Union.

Mr. BLILEY: Committee on Commerce. H.R. 4353. A bill to amend the Securities Exchange Act of 1934 and the Foreign Corrupt Practices Act of 1977 to improve the competitiveness of American business and promote foreign commerce, and for other purposes (Rept. 105–802). Referred to the Committee of the Whole House on the State of the Union.

REPORTED BILL SEQUENTIALLY REFERRED

Under clause 5 of rule X, bills and reports were delivered to the Clerk for printing, and bills referred as follows:

[Omitted from the RECORD of October 6, 1998]

Mr. BLILEY: Committee on Commerce. H.R. 3610. A bill to authorize and facilitate a program to enhance training, research and development, energy conservation and efficiency, and consumer education in the oilheat industry for the benefit of oilheat consumers and the public, and for other purposes, with an amendment; referred to the Committee on Science for a period ending not later than October 7, 1998, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X. (Rept. 105–787, Pt. 1). Ordered to be printed.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of Rule X and clause 4 of Rule XXII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. MATSUI (for himself and Mr. NEAL of Massachusetts):

H.R. 4732. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of bonds issued to finance electric output facilities, and for other purposes; to the Committee on Ways and Means.

By Mr. MATSUI (for himself and Mr. BONIOR):

H.R. 4733. A bill to amend the Trade Act of 1974 to consolidate and enhance the trade adjustment assistance and NAFTA transitional adjustment assistance programs under that Act, and for other purposes; to the Committee on Ways and Means.

By Mr. WELLER:

H.R. 4734. A bill to amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to reduce the local matching amount to ensure more local communities can qualify for a grant to hire additional police officers; to the Committee on the Judiciary.

By Mr. HANSEN:

H.R. 4735. A bill to make technical corrections to the Omnibus Parks and Public Lands Management Act of 1996; to the Committee on Resources.

By Mr. BENTSEN (for himself, Mr. CRANE, Mr. GANSKE, Mr. CARDIN, Mr. RANGEL, Mr. STARK, and Mr. JEFFERSON):

H.R. 4736. A bill to amend title XVIII of the Social Security Act to ensure the proper payment of approved nursing and paramedical education programs under the Medicare Program; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. KELLY (for herself, Mr. FROST, Mr. GANSKE, Mrs. MCCARTHY of New York, Mr. GILMAN, Mr. CONDIT, Mr. LOBIONDO, and Mrs. MALONEY of New York):

H.R. 4737. A bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to require that group and individual health insurance coverage and group health plans provide coverage for treatment of a minor child's congenital or developmental deformity or disorder due to trauma, infection, tumor, or disease; to the Committee on Commerce, and in addition to the Committees on Education and the Workforce, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ARCHER:

H.R. 4738. A bill to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, provide tax relief for farmers and small businesses, and for other purposes; to the Committee on Ways and Means.

By Mr. CARDIN (for himself, Mr. STARK, and Mr. JEFFERSON):

H.R. 4739. A bill to amend the Internal Revenue Code of 1986 and title XVIII of the Social Security Act to provide for comprehensive financing for graduate medical education; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CRANE:

H.R. 4740. A bill to amend the Internal Revenue Code of 1986 to permit early distributions from employee stock ownership plans for higher education expenses and first-time homebuyer purchases; to the Committee on Ways and Means.

By Mr. CRANE:

H.R. 4741. A bill to amend the Internal Revenue Code of 1986 to permit 401(k) contributions which would otherwise be limited by employer contributions to employee stock ownership plans; to the Committee on Ways and Means.

By Mr. DEFAZIO (for himself, Mr. SANDERS, and Ms. KAPTUR):

H.R. 4742. A bill to improve consumers' access to airline industry information, to promote competition in the aviation industry, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. FRANK of Massachusetts (for himself and Mr. NEAL of Massachusetts):

H.R. 4743. A bill to reauthorize the Public Safety and Community Policing Grants, and for other purposes; to the Committee on the Judiciary.

By Mr. GREENWOOD (for himself and Mr. GINGRICH):

H.R. 4744. A bill to amend the Public Health Service Act to provide for a system of sanctuaries for chimpanzees that have been designated as being no longer needed in research conducted or supported by the Public Health Service, and for other purposes; to the Committee on Commerce.

By Mr. GUTIERREZ:

H.R. 4745. A bill to establish a program to assist homeowners experiencing unavoidable, temporary difficulty making payments on mortgages insured under the National Housing Act; to the Committee on Banking and Financial Services.

By Mr. HANSEN:

H.R. 4746. A bill to provide for the settlement of the reserved water rights of the Shivwits and for the construction of certain water projects; to the Committee on Resources.

By Mr. MINGE (for himself and Mr. POMEROY):

H.R. 4747. A bill to respond to the needs of United States farmers experiencing exceptionally low commodity prices and extensive crop failures; to the Committee on Agriculture, and in addition to the Committee on

the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. QUINN:

H.R. 4748. A bill to amend title XVIII of the Social Security Act to require 6-months' advance notice to enrollees of Medicare managed care plans of termination of hospital participation under such plans; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SAXTON (by request):

H.R. 4749. A bill to approve a governing international fishery agreement between the United States and the Republic of Estonia; to the Committee on Resources.

By Mr. SAXTON (by request):

H.R. 4750. A bill to approve a governing international fishery agreement between the United States and the Republic of Lithuania; to the Committee on Resources.

By Mr. SNYDER (for himself, Mr. EVANS, Mr. KENNEDY of Massachusetts, Mr. ABERCROMBIE, Mr. PETERSON of Minnesota, Ms. CARSON, Mr. MASCARA, Mr. FILNER, Mr. RODRIGUEZ, Ms. SANCHEZ, Mr. JOHNSON of Wisconsin, Mrs. CAPPS, and Mr. MALONEY of Connecticut):

H.R. 4751. A bill to amend title 38, United States Code, to establish a presumption of service connection for the occurrence of hepatitis C in certain veterans; to the Committee on Veterans' Affairs.

By Mr. SOLOMON:

H.R. 4752. A bill to prohibit the construction of any monument, memorial, or other structure at the site of the Iwo Jima Memorial in Arlington, Virginia, until such time as an environmental impact statement is prepared for the construction; to the Committee on Resources.

By Mr. STARK:

H.R. 4753. A bill to amend title XVIII of the Social Security Act to provide for coverage of outpatient presciption drugs and home infusion drug therapy under the Medicare Program; to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. THOMPSON (for himself, Mr. DICKEY, Mr. STUPAK, Mr. PICKERING, and Mr. CALLAHAN):

H.R. 4754. A bill to direct the Secretary of the Interior to conduct a 12-month study of the effects of double-crested cormorants on commercial and recreational fish species, and to require the Secretary to prepare a long-term, comprehensive population management strategy for double-crested cormorants; to the Committee on Resources.

By Mr. YOUNG of Alaska:

H.R. 4755. A bill to provide for the collection and interpretation of state of the art, non-intrusive 3-dimensional seismic data on certain federal lands in Alaska, and for other purposes; to the Committee on Resources.

By Mr. SMITH of New Jersey:

H.J. Res. 132. A joint resolution commending the veterans of service in the Army who fought in the Battle of the Bulge during World War II, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. GILMAN:

H. Con. Res. 336. Concurrent resolution condemning the Taliban regime and supporting a broad based government in Afghanistan; to the Committee on International Relations.

By Mr. CAMPBELL (for himself and Mr. PAYNE):

H. Con. Res. 337. Concurrent resolution expressing the sense of Congress that the total debt owed by 31 of the 40 Heavily Indebted Poor Countries (HIPC) to the United States should be forgiven; to the Committee on Banking and Financial Services.

By Mr. CAMPBELL:

H. Con. Res. 338. Concurrent resolution expressing the sense of the Congress that the people of Taiwan deserve to be represented in international institutions; to the Committee on International Relations.

By Mr. CAMPBELL (for himself and Mr. PAYNE):

H. Con. Res. 339. Concurrent resolution concerning economic, humanitarian, and other assistance to the northern part of Somalia; to the Committee on International Relations.

By Mr. DELAY (for himself, Mr. ROHRABACHER, Mr. HEFLEY, Mr. WELDON of Pennsylvania, Mr. FORBES, Mr. BACHUS, Mr. ADERHOLT, Mr. GIBBONS, Mr. TALENT, Mr. SESSIONS, Mr. WATTS of Oklahoma, Mr. MILLER of Florida, Mr. HAYWORTH, Mr. CRANE, Mr. SALMON, Mr. JENKINS, and Mr. PETERSON of Pennsylvania):

H. Con. Res. 340. Concurrent resolution expressing the sense of the Congress that Iraq is in unacceptable and material breach of its international obligations, that the United States should insist on the removal, destruction, or otherwise rendering harmless of Iraq's programs for biological, chemical, and nuclear weapons, and that the United States should fully support the right of inspectors with the United Nations Special Commission on Iraq to unfettered and unannounced inspections of suspected weapons facilities; to the Committee on International Relations.

By Mr. DELAY (for himself, Mr. ROHRABACHER, Mr. HEFLEY, Mr. WELDON of Pennsylvania, Mr. FORBES, Mr. BACHUS, Mr. ADERHOLT, Mr. GIBBONS, Mr. TALENT, Mr. SESSIONS, Mr. WATTS of Oklahoma, Mr. MILLER of Florida, Mr. HAYWORTH, and Mr. KNOLLENBERG):

H. Con. Res. 341. Concurrent resolution expressing the sense of the Congress that the commitment made by the United States, in conjunction with South Korea and Japan, to arrange financing and construction of 2 nuclear reactors for North Korea, and to provide fuel oil and other assistance to North Korea, should be suspended until North Korea no longer poses a nuclear threat to the peace and security of Northeast Asia or the United States; to the Committee on International Relations.

By Mr. DELAY (for himself, Mr. ROHRABACHER, Mr. HEFLEY, Mr. WELDON of Pennsylvania, Mr. FORBES, Mr. BACHUS, Mr. ADERHOLT, Mr. GIBBONS, Mr. TALENT, Mr. SESSIONS, Mr. WATTS of Oklahoma, Mr. MILLER of Florida, Mr. HAYWORTH, and Mr. CRANE):

H. Con. Res. 342. Concurrent resolution expressing the sense of the Congress that the United States should impose sanctions under the Arms Export Control Act and the Iran-Iraq Arms Non-Proliferation Act of 1992 with respect to the acquisition by Iran of advanced missile technology from other countries and should take steps to expedite the development of a missile defense system for the United States and for United States forces wherever deployed to deal with the Iranian missile threat, and should assist Israel in the acquisition of a missile defense system capable of defending all Israeli territory against Iranian missile attack; referred to the Committee on International Relations, and in addition to the Committe on National Security, for a period to be subsequently determiend by the Speaker, in each case for consideration of such provisions as fall within the jurisdiciton of the committee concerned.

By Mrs. FOWLER (for herself, Mr. SPENCE, Mr. CUNNINGHAM, Mr. ROHRABACHER, Mr. SAM JOHNSON of Texas, Mr. HEFLEY, Mr. GOODLING, Mr. SMITH of Texas, Mr. DELAY, Mr. LINDER, Mr. RILEY, Mr. MCKEON, Mr. LEWIS of California, Mr. SOLOMON, Mr. MANZULLO, Mr. COBURN, Mr. BOB SCHAFFER, Mr. MCINTOSH, Mr. GRAHAM, Mr. JENKINS, Mr. NEUMANN, Mr. SUNUNU, Mr. OXLEY, Mr. MCCOLLUM, Mr. HOBSON, Mr. BEREUTER, Mr. TAUZIN, Mr. BILIRAKIS, Mr. TRAFICANT, Mr. REDMOND, Mrs. CUBIN, Ms. DUNN of Washington, Mr. HERGER, Mr. MCINNIS, Mr. LARGENT, Mr. FOLEY, Mr. SAXTON, Mr. JONES, Mr. MCCRERY, Mr. BAKER, Mr. HAYWORTH, Mr. COLLINS, Mr. BOEHNER, Mr. NETHERCUTT, Mr. DEAL of Georgia, Mr. WICKER, and Mr. STEARNS):

H. Con. Res. 343. Concurrent resolution expressing the opposition of Congress to any deployment of United States ground forces in Kosovo, a province in southern Serbia, for peacemaking or peacekeeping purposes; to the Committee on International Relations.

By Mr. PALLONE:

H. Con. Res. 344. Concurrent resolution to express the sense of the Congress regarding North Atlantic swordfish and other highly migratory species of fish; to the Committee on Resources.

By Mr. SAXTON (for himself, Mr. SALMON, and Mr. DELAY):

H. Con. Res. 345. Concurrent resolution expressing the sense of the Congress that the President should reassert the traditional opposition of the United States to the unilateral declaration of a Palestinian State; to the Committee on International Relations.

By Mr. SMITH of Oregon (for himself, Mr. BARRETT of Nebraska, Mr. THUNE, and Mr. HILL):

H. Res. 583. A resolution expressing the sense of the House with respect to barriers between the United States and Canada with regard to certain agriculture products; referred to the Committee on Ways and Means, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiciton of the committee concerned.

By Mr. SESSIONS (for himself, Mr. BONILLA, Mr. COMBEST, Mr. THORNBERRY, Mr. SMITH of Texas, Ms. GRANGER, Mr. BRADY of Texas, Mr. BARTON of Texas, and Mr. PAUL):

H. Res. 585. A resolution expressing the sense of the House of Representatives that the Health Care Financing Administration should adhere to the statutory deadlines for implementation of the prospective payment system for home health services furnished under the Medicare Program; referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. ROUKEMA (for herself and Ms. KAPTUR):

H. Res. 587. A resolution expressing the sense of the House of Representatives with respect to the seriousness of the national problems associated with mental illness and with respect to congressional intent to establish a mental illness task force; to the Committee on Commerce.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 59: Mrs. WILSON.
H.R. 778: Mrs. CAPPS.
H.R. 779: Mrs. CAPPS.
H.R. 780: Mrs. CAPPS.
H.R. 857: Mr. BOSWELL.
H.R. 1711: Mr. ISTOOK.
H.R. 1816: Mr. FORBES.
H.R. 2001: Mr. SCARBOROUGH.
H.R. 2174: Mr. RANGEL.
H.R. 2397: Mr. BERRY, Mr. THORNBERRY, Mr. GOODLING, and Mr. HEFNER.
H.R. 2635: Mr. ADAM SMITH of Washington, Mr. HALL of Ohio, and Mr. BERMAN.
H.R. 2708: Mr. SMITH of Texas and Mr. NUSSLE.
H.R. 2882: Mr. SMITH of Texas.
H.R. 3333: Mr. OLVER.
H.R. 3435: Mr. ALLEN.
H.R. 3503: Mr. BLUMENAUER and Mr. PETRI.
H.R. 3511: Mr. OBERSTAR, Mr. WELDON of Florida, Mr. INGLIS of South Carolina, Mr. HULSHOF, Mrs. MINK of Hawaii, and Mr. STUPAK.
H.R. 3514: Mr. MASCARA.
H.R. 3622: Mr. ALLEN, Mr. DOYLE, Mr. ACKERMAN, and Ms. DEGETTE.
H.R. 3684: Mr. BACHUS.
H.R. 3794: Ms. MCCARTHY of Missouri, Mr. SANDLIN, Mr. MASCARA, and Mr. TIERNEY.
H.R. 3828: Mr. ALLEN, Ms. SLAUGHTER, Mr. THOMPSON, Mr. NORWOOD, Mrs. WILSON, Mr. STENHOLM, and Mr. CONDIT.
H.R. 4031: Mr. DAVIS of Illinois.
H.R. 4070: Mr. WEXLER.
H.R. 4175: Ms. KILPATRICK, Mr. WATT of North Carolina, and Ms. SLAUGHTER.
H.R. 4180: Mr. HINCHEY.
H.R. 4182: Mr. KANJORSKI and Mr. VISCLOSKY.
H.R. 4203: Mr. PAYNE, Mrs. TAUSCHER, and Mr. BALDACCI.
H.R. 4214: Mr. OLVER and Mrs. CAPPS.
H.R. 4291: Mr. DEGGETTE, Mr. FROST, and Mrs. THURMAN.
H.R. 4403: Ms. DELAURO.
H.R. 4415: Mr. DAN SCHAEFER of Colorado.
H.R. 4448: Mr. FORD, Mr. HASTINGS of Florida, Mr. MCNULTY, Ms. DELAURO, and Mr. GUTIERREZ.
H.R. 4449: Mr. MORAN of Kansas, Mr. MILLER of California, and Mr. SMITH of Oregon.
H.R. 4467: Mr. GEJDENSON.
H.R. 4476: Mr. DOYLE and Mr. RUSH.
H.R. 4513: Mr. BOEHLERT.
H.R. 4538: Mrs. CAPPS and Mr. HOLDEN.
H.R. 4567: Mr. BILIRAKIS, Mr. STUMP, Mrs. NORTHUP, and Mr. SUNUNU.
H.R. 4590: Ms. KAPTUR and Mr. FORBES.
H.R. 4621: Mr. BOSWELL.
H.R. 4634: Mr. PALLONE and Mr. MCGOVERN.
H.R. 4648: Mr. DELAHUNT and Mr. TIERNEY.
H.R. 4659: Mr. ENGEL.
H.R. 4674: Mr. OLVER.
H.R. 4684: Mr. ENGLISH of Pennsylvania.
H.R. 4692: Mr. SANDLIN.
H. Con. Res. 154: Mr. MCDERMOTT.
H. Con. Res. 290: Mr. METCALF, Mr. MASCARA, Mr. BOYD, Mr. GEKAS, Mr. ADAM SMITH of Washington, Mr. MCINTOSH, Mr. BURTON of Indiana, Mr. BUYER, Mr. SHADEGG, and Mr. GIBBONS.
H. Con. Res. 213: Ms. KILPATRICK.
H. Con. Res. 328: Mr. KANJORSKI, Mr. SHIMKUS, Ms. CARSON, Mr. ACKERMAN, Mr. HOUGHTON, Mr. SANDERS, Mr. MCNULTY, and Mr. PRICE of North Carolina.
H. Res. 359: Mr. MATSUI, Mr. NEAL of Massachusetts, Mr. WALSH, Mr. WOLF, Mr. SNYDER, and Mr. MEEKS of New York.
H. Res. 460: Mr. MASCARA.
H. Res. 479: Mr. TIERNEY.
H. Res. 561: Mr. GOODLING and Mr. UNDERWOOD.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 4567: Mr. ALLEN, Mr. STUPAK, and Mr. OBERSTAR.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 4567

OFFERED BY: MR. THOMAS

(Amendments in the Nature of a Substitute)

AMENDMENT NO. 1: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare Home Health and Veterans Health Care Improvement Act of 1998''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—MEDICARE HOME HEALTH CARE INTERIM PAYMENT SYSTEM REFINEMENT
Sec. 101. Increase in per beneficiary limits and per visit payment limits for payment for home health services.
TITLE II—VETERANS MEDICARE ACCESS IMPROVEMENT
Sec. 201. Improvement in veterans' access to services.
TITLE III—AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO IMPOSITION OF PENALTIES FOR CERTAIN INDUCEMENTS
Sec. 301. Authorization of additional exceptions to imposition of penalties for providing inducements to beneficiaries.
TITLE IV—EXPANSION OF MEMBERSHIP OF THE MEDICARE PAYMENT ADVISORY COMMISSION
Sec. 401. Expansion of membership of MedPAC to 17.
TITLE V—REVENUE OFFSET
Sec. 501. Revenue offset.

TITLE I—MEDICARE HOME HEALTH CARE INTERIM PAYMENT SYSTEM REFINEMENT

SEC. 101. INCREASE IN PER BENEFICIARY LIMITS AND PER VISIT PAYMENT LIMITS FOR PAYMENT FOR HOME HEALTH SERVICES.

(a) INCREASE IN PER BENEFICIARY LIMITS.—Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)) is amended—

(1) in the first sentence of clause (v), by inserting ''subject to clause (viii)(I),'' before ''the Secretary'';

(2) in clause (vi)(I), by inserting ''subject to clauses (viii)(II) and (viii)(III)'' after ''fiscal year 1994''; and

(3) by adding at the end the following new clause:

''(viii)(I) In the case of a provider with a 12-month cost reporting period ending in fiscal year 1994, if the limit imposed under clause (v) (determined without regard to this subclause) for a cost reporting period beginning during or after fiscal year 1999 is less than the median described in clause (vi)(I) (but determined as if any reference in clause (v) to '98 percent' were a reference to '100 percent'), the limit otherwise imposed under clause (v) for such provider and period shall be increased by ½ of such difference.

''(II) Subject to subclause (IV), for new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994, but for which the first cost reporting period begins before fiscal year 1999, for cost reporting periods beginning during or after fiscal year 1999, the per beneficiary limitation described in clause (vi)(I) shall be equal to 50 percent of the median described in such clause plus 50 percent of the sum of 75 percent of such median and 25 percent of 98 percent of the standardized regional average of such costs for the agency's census division, described in clause (v)(I). However, in no case shall the limitation under this subclause be less than the median described in clause (vi)(I) (determined as if any reference in clause (v) to '98 percent' were a reference to '100 percent').

''(III) Subject to subclause (IV), in the case of a new home health agency for which the first cost reporting period begins during or after fiscal year 1999, the limitation applied under clause (vi)(I) (but only with respect to such provider) shall be equal to 75 percent of the median described in clause (vi)(I).

''(IV) In the case of a new provider or a provider without a 12-month cost reporting period ending in fiscal year 1994, subclause (II) shall apply, instead of subclause (III), to a home health agency which filed an application for home health agency provider status under this title before September 15, 1998, or which was approved as a branch of its parent agency before such date and becomes a subunit of the parent agency or a separate agency on or after such date.

''(V) Each of the amounts specified in subclauses (I) through (III) are such amounts as adjusted under clause (iii) to reflect variations in wages among different areas.''.

(b) REVISION OF PER VISIT LIMITS.—Section 1861(v)(1)(L)(i) of such Act (42 U.S.C. 1395x(v)(1)(L)(i)) is amended—

(1) in subclause (III), by striking ''or'';

(2) in subclause (IV)—

(A) by inserting ''and before October 1, 1998,'' after ''October 1, 1997,''; and

(B) by striking the period at the end and inserting '', or''; and

(3) by adding at the end the following new subclause:

''(V) October 1, 1998, 108 percent of such median.''.

(c) EXCLUSION OF ADDITIONAL PART B COSTS FROM DETERMINATION OF PART B MONTHLY PREMIUM.—Section 1839 of such Act (42 U.S.C. 1395r) is amended—

(1) in subsection (a)(3), by inserting ''(except as provided in subsection (g))'' after ''year that''; and

(2) by adding at the end the following new subsection:

''(g) In estimating the benefits and administrative costs which will be payable from the Federal Supplementary Medical Insurance Trust Fund for a year for purposes of determining the monthly premium rate under subsection (a)(3), the Secretary shall exclude an estimate of any benefits and administrative costs attributable to the application of section 1861(v)(1)(L)(viii) or to the establishment under section 1861(v)(1)(L)(i)(V) of a per visit limit at 108 percent of the median (instead of 105 percent of the median), but only to the extent payment for home health services under this title is not being made under section 1895 (relating to prospective payment for home health services).''.

(d) REPORTS ON SUMMARY OF RESEARCH CONDUCTED BY THE SECRETARY ON THE PROSPECTIVE PAYMENT SYSTEM.—By not later than January 1, 1999, the Secretary of Health and Human Services shall submit to Congress a report on the following matters:

(1) RESEARCH.—A description of any research paid for by the Secretary on the development of a prospective payment system for home health services furnished under the

medicare care program under title XVIII of the Social Security Act, and a summary of the results of such research.

(2) SCHEDULE FOR IMPLEMENTATION OF SYSTEM.—The Secretary's schedule for the implementation of the prospective payment system for home health services under section 1895 of the Social Security Act (42 U.S.C. 1395fff).

(3) ALTERNATIVE TO 15 PERCENT REDUCTION IN LIMITS.—The Secretary's recommendations for one or more alternative means to provide for savings equivalent to the savings estimated to be made by the mandatory 15 percent reduction in payment limits for such home health services for fiscal year 2000 under section 1895(b)(3)(A) of the Social Security Act (42 U.S.C. 1395fff(b)(3)(A)), or, in the case the Secretary does not establish and implement such prospective payment system, under section 4603(e) of the Balanced Budget Act of 1997.

(e) MEDPAC REPORTS.—

(1) REVIEW OF SECRETARY'S REPORT.—Not later than 60 days after the date the Secretary of Health and Human Services submits to Congress the report under subsection (d), the Medicare Payment Advisory Commission (established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6)) shall submit to Congress a report describing the Commission's analysis of the Secretary's report, and shall include the Commission's recommendations with respect to the matters contained in such report.

(2) ANNUAL REPORT.—The Commission shall include in its annual report to Congress for June 1999 an analysis of whether changes in law made by the Balanced Budget Act of 1997, as modified by the amendments made by this section, with respect to payments for home health services furnished under the medicare program under title XVIII of the Social Security Act impede access to such services by individuals entitled to benefits under such program.

(f) GAO AUDIT OF RESEARCH EXPENDITURES.—The Comptroller General of the United States shall conduct an audit of sums obligated or expended by the Health Care Financing Administration for the research described in subsection (d)(1), and of the data, reports, proposals, or other information provided by such research.

(g) PROMPT IMPLEMENTATION.—The Secretary of Health and Human Services shall promptly issue (without regard to chapter 8 of title 5, United States Code) such regulations or program memoranda as may be necessary to effect the amendments made by this section for cost reporting periods beginning on or after October 1, 1998. In effecting the amendments made by subsection (a) for cost reporting periods beginning in fiscal year 1999, the ''median'' referred to in section 1861(v)(1)(L)(vi)(I) of the Social Security Act for such periods shall be the national standardized per beneficiary limitation specified in Table 3C published in the Federal Register on August 11, 1998, (63 FR 42926) and the ''standardized regional average of such costs'' referred to in section 1861(v)(1)(L)(v)(I) of such Act for a census division shall be the sum of the labor and nonlabor components of the standardized per-beneficiary limitation for that census division specified in Table 3B published in the Federal Register on that date (63 FR 42926) (or in Table 3D as so published with respect to Puerto Rico and Guam).

TITLE II—VETERANS MEDICARE ACCESS IMPROVEMENT

SEC. 201. IMPROVEMENT IN VETERANS' ACCESS TO SERVICES.

(a) IN GENERAL.—Title XVIII of the Social Security Act, as amended by sections 4603, 4801, and 4015(a) of the Balanced Budget Act of 1997, is amended by adding at the end the following:

''IMPROVING VETERANS' ACCESS TO SERVICES

''SEC. 1897. (a) DEFINITIONS.—In this section:

''(1) ADMINISTERING SECRETARIES.—The term 'administering Secretaries' means the Secretary of Health and Human Services and the Secretary of Veterans Affairs acting jointly.

''(2) PROGRAM.—The term 'program' means the program established under this section with respect to category A medicare-eligible veterans.

''(3) DEMONSTRATION PROJECT; PROJECT.—The terms 'demonstration project' and 'project' mean the demonstration project carried out under this section with respect to category C medicare-eligible veterans.

''(4) MEDICARE-ELIGIBLE VETERANS.—

''(A) CATEGORY A MEDICARE-ELIGIBLE VETERAN.—The term 'category A medicare-eligible veteran' means an individual—

''(i) who is a veteran (as defined in section 101(2) of title 38, United States Code) and is described in paragraph (1) or (2) of section 1710(a) of title 38, United States Code;

''(ii) who is entitled to hospital insurance benefits under part A of the medicare program and is enrolled in the supplementary medical insurance program under part B of the medicare program; and

''(iii) for whom the medical center of the Department of Veterans Affairs that is closest to the individual's place of residence is geographically remote or inaccessible from such place.

''(B) CATEGORY C MEDICARE-ELIGIBLE VETERAN.—The term 'category C medicare-eligible veteran' means an individual who—

''(i) is a veteran (as defined in section 101(2) of title 38, United States Code) and is described in section 1710(a)(3) of title 38, United States Code; and

''(ii) is entitled to hospital insurance benefits under part A of the medicare program and is enrolled in the supplementary medical insurance program under part B of the medicare program.

''(5) MEDICARE HEALTH CARE SERVICES.—The term 'medicare health care services' means items or services covered under part A or B of this title.

''(6) TRUST FUNDS.—The term 'trust funds' means the Federal Hospital Insurance Trust Fund established in section 1817 and the Federal Supplementary Medical Insurance Trust Fund established in section 1841.

''(b) PROGRAM AND DEMONSTRATION PROJECT.—

''(1) IN GENERAL.—

''(A) ESTABLISHMENT.—The administering Secretaries are authorized to establish—

''(i) a program (under an agreement entered into by the administering Secretaries) under which the Secretary of Health and Human Services shall reimburse the Secretary of Veterans Affairs, from the trust funds, for medicare health care services furnished to category A medicare-eligible veterans; and

''(ii) a demonstration project (under such an agreement) under which the Secretary of Health and Human Services shall reimburse the Secretary of Veterans Affairs, from the trust funds, for medicare health care services furnished to category C medicare-eligible veterans.

''(B) AGREEMENT.—The agreement entered into under subparagraph (A) shall include at a minimum—

''(i) a description of the benefits to be provided to the participants of the program and the demonstration project established under this section;

''(ii) a description of the eligibility rules for participation in the program and demonstration project, including any cost sharing requirements;

''(iii) a description of the process for enrolling veterans for participation in the program, which process may, to the extent practicable, be administered in the same or similar manner to the registration process established to implement section 1705 of title 38, United States Code;

''(iv) a description of how the program and the demonstration project will satisfy the requirements under this title;

''(v) a description of the sites selected under paragraph (2);

''(vi) a description of how reimbursement requirements under subsection (g) and maintenance of effort requirements under subsection (h) will be implemented in the program and in the demonstration project;

''(vii) a statement that all data of the Department of Veterans Affairs and of the Department of Health and Human Services that the administering Secretaries determine is necessary to conduct independent estimates and audits of the maintenance of effort requirement, the annual reconciliation, and related matters required under the program and the demonstration project shall be available to the administering Secretaries;

''(viii) a description of any requirement that the Secretary of Health and Human Services waives pursuant to subsection (d);

''(ix) a requirement that the Secretary of Veterans Affairs undertake and maintain outreach and marketing activities, consistent with capacity limits under the program, for category A medicare-eligible veterans;

''(x) a description of how the administering Secretaries shall conduct the data matching program under subparagraph (F), including the frequency of updates to the comparisons performed under subparagraph (F)(ii); and

''(xi) a statement by the Secretary of Veterans Affairs that the type or amount of health care services furnished under chapter 17 of title 38, United States Code, to veterans who are entitled to benefits under part A or enrolled under part B, or both, shall not be reduced by reason of the program or project.

''(C) COST-SHARING UNDER DEMONSTRATION PROJECT.—Notwithstanding any provision of title 38, United States Code, in order—

''(i) to maintain and broaden access to services,

''(ii) to encourage appropriate use of services, and

''(iii) to control costs,

the Secretary of Veterans Affairs may establish enrollment fees and copayment requirements under the demonstration project under this section consistent with subsection (d)(1). Such fees and requirements may vary based on income.

''(D) HEALTH CARE BENEFITS.—The administering Secretaries shall prescribe the minimum health care benefits to be provided under the program and demonstration project to medicare-eligible veterans enrolled in the program or project. Those benefits shall include at least all medicare health care services covered under this title.

''(E) ESTABLISHMENT OF SERVICE NETWORKS.—

''(i) USE OF VA OUTPATIENT CLINICS.—The Secretary of Veterans Affairs, to the extent practicable, shall use outpatient clinics of the Department of Veterans Affairs in providing services under the program.

''(ii) AUTHORITY TO CONTRACT FOR SERVICES.—The Secretary of Veterans Affairs may enter into contracts and arrangements with entities (such as private practitioners, providers of services, preferred provider organizations, and health care plans) for the provision of services for which the Secretary of Health and Human Services is responsible

under the program or project under this section and shall take into account the existence of qualified practitioners and providers in the areas in which the program or project is being conducted. Under such contracts and arrangements, such Secretary of Health and Human Services may require the entities to furnish such information as such Secretary may require to carry out this section.

''(F) DATA MATCH.—

''(i) ESTABLISHMENT OF DATA MATCHING PROGRAM.—The administering Secretaries shall establish a data matching program under which there is an exchange of information of the Department of Veterans Affairs and of the Department of Health and Human Services as is necessary to identify veterans who are entitled to benefits under part A or enrolled under part B, or both, in order to carry out this section. The provisions of section 552a of title 5, United States Code, shall apply with respect to such matching program only to the extent the administering Secretaries find it feasible and appropriate in carrying out this section in a timely and efficient manner.

''(ii) PERFORMANCE OF DATA MATCH.—The administering Secretaries, using the data matching program established under clause (i), shall perform a comparison in order to identify veterans who are entitled to benefits under part A or enrolled under part B, or both. To the extent such Secretaries deem appropriate to carry out this section, the comparison and identification may distinguish among such veterans by category of veterans, by entitlement to benefits under this title, or by other characteristics.

''(iii) DEADLINE FOR FIRST DATA MATCH.—The administering Secretaries shall first perform a comparison under clause (ii) by not later than October 31, 1998.

''(iv) CERTIFICATION BY INSPECTOR GENERAL.—

''(I) IN GENERAL.—The administering Secretaries may not conduct the program unless the Inspector General of the Department of Health and Human Services certifies to Congress that the administering Secretaries have established the data matching program under clause (i) and have performed a comparison under clause (ii).

''(II) DEADLINE FOR CERTIFICATION.—Not later than December 15, 1998, the Inspector General of the Department of Health and Human Services shall submit a report to Congress containing the certification under subclause (I) or the denial of such certification.

''(2) NUMBER OF SITES.—The program and demonstration project shall be conducted in geographic service areas of the Department of Veterans Affairs, designated jointly by the administering Secretaries after review of all such areas, as follows:

''(A) PROGRAM SITES.—

''(i) IN GENERAL.—Except as provided in clause (ii), the program shall be conducted in not more than 3 such areas with respect to category A medicare-eligible veterans.

''(ii) ADDITIONAL PROGRAM SITES.—Subject to the certification required under subsection (h)(1)(B)(iii), for a year beginning on or after January 1, 2003, the program shall be conducted in such areas as are designated jointly by the administering Secretaries after review of all such areas.

''(B) PROJECT SITES.—

''(i) IN GENERAL.—The demonstration project shall be conducted in not more than 3 such areas with respect to category C medicare-eligible veterans.

''(ii) MANDATORY SITE.—At least one of the areas designated under clause (i) shall encompass the catchment area of a military medical facility which was closed pursuant to either the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) or title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note).

''(3) RESTRICTION.—Funds from the program or demonstration project shall not be used for—

''(A) the construction of any treatment facility of the Department of Veterans Affairs; or

''(B) the renovation, expansion, or other construction at such a facility.

''(4) DURATION.—The administering Secretaries shall conduct and implement the program and the demonstration project as follows:

''(A) PROGRAM.—

''(i) IN GENERAL.—The program shall begin on January 1, 2000, in the sites designated under paragraph (2)(A)(i) and, subject to subsection (h)(1)(B)(iii)(II), for a year beginning on or after January 1, 2003, the program may be conducted in such additional sites designated under paragraph (2)(A)(ii).

''(ii) LIMITATION ON NUMBER OF VETERANS COVERED UNDER CERTAIN CIRCUMSTANCES.—If for a year beginning on or after January 1, 2003, the program is conducted only in the sites designated under paragraph (2)(A)(i), medicare health care services may not be provided under the program to a number of category-A medicare-eligible veterans that exceeds the aggregate number of such veterans covered under the program as of December 31, 2002.

''(B) PROJECT.—The demonstration project shall begin on January 1, 1999, and end on December 31, 2001.

''(C) IMPLEMENTATION.—The administering Secretaries may implement the program and demonstration project through the publication of regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

''(5) REPORTS.—

''(A) PROGRAM.—By not later than September 1, 1999, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) with respect to the program to Congress.

''(B) PROJECT.—By not later than November 1, 1998, the administering Secretaries shall submit a copy of the agreement entered into under paragraph (1) with respect to the project to Congress.

''(6) REPORT ON MAINTENANCE OF LEVEL OF HEALTH CARE SERVICES.—

''(A) IN GENERAL.—The Secretary of Veterans Affairs may not implement the program at a site designated under paragraph (2)(A) unless, by not later than 90 days before the date of the implementation, the Secretary of Veterans Affairs submits to Congress and to the Comptroller General of the United States a report that contains the information described in subparagraph (B). The Secretary of Veterans Affairs shall periodically update the report under this paragraph as appropriate.

''(B) INFORMATION DESCRIBED.—For purposes of subparagraph (A), the information described in this subparagraph is a description of the operation of the program at the site and of the steps to be taken by the Secretary of Veterans Affairs to prevent the reduction of the type or amount of health care services furnished under chapter 17 of title 38, United States Code, to veterans who are entitled to benefits under part A or enrolled under part B, or both, within the geographic service area of the Department of Veterans Affairs in which the site is located by reason of the program or project.

''(c) CREDITING OF PAYMENTS.—A payment received by the Secretary of Veterans Affairs under the program or demonstration project shall be credited to the applicable Department of Veterans Affairs medical care appropriation (and within that appropriation). Any such payment received during a fiscal year for services provided during a prior fiscal year may be obligated by the Secretary of Veterans Affairs during the fiscal year during which the payment is received.

''(d) APPLICATION OF CERTAIN MEDICARE REQUIREMENTS.—

''(1) AUTHORITY.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), the program and the demonstration project shall meet all requirements of Medicare+Choice plans under part C and regulations pertaining thereto, and other requirements for receiving medicare payments, except that the prohibition of payments to Federal providers of services under sections 1814(c) and 1835(d), and paragraphs (2) and (3) of section 1862(a) shall not apply.

''(B) WAIVER.—Except as provided in paragraph (2), the Secretary of Health and Human Services is authorized to waive any requirement described under subparagraph (A), or approve equivalent or alternative ways of meeting such a requirement, but only if such waiver or approval—

''(i) reflects the unique status of the Department of Veterans Affairs as an agency of the Federal Government; and

''(ii) is necessary to carry out the program or demonstration project.

''(2) BENEFICIARY PROTECTIONS AND OTHER MATTERS.—The program and the demonstration project shall comply with the requirements of part C of this title that relate to beneficiary protections and other matters, including such requirements relating to the following areas, to the extent not inconsistent with subsection (b)(1)(B)(iii):

''(A) Enrollment and disenrollment.

''(B) Nondiscrimination.

''(C) Information provided to beneficiaries.

''(D) Cost-sharing limitations.

''(E) Appeal and grievance procedures.

''(F) Provider participation.

''(G) Access to services.

''(H) Quality assurance and external review.

''(I) Advance directives.

''(J) Other areas of beneficiary protections that the administering Secretaries determine are applicable to such program or project.

''(e) INSPECTOR GENERAL.—Nothing in the agreement entered into under subsection (b) shall limit the Inspector General of the Department of Health and Human Services from investigating any matters regarding the expenditure of funds under this title for the program and demonstration project, including compliance with the provisions of this title and all other relevant laws.

''(f) VOLUNTARY PARTICIPATION.—Participation of a category A medicare-eligible veteran in the program or category C medicare-eligible veteran in the demonstration project shall be voluntary.

''(g) PAYMENTS BASED ON REGULAR MEDICARE PAYMENT RATES.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary of Health and Human Services shall reimburse the Secretary of Veterans Affairs for services provided under the program or demonstration project at a rate equal to 95 percent of the amount paid to a Medicare+Choice organization under part C of this title with respect to such an enrollee. In cases in which a payment amount may not otherwise be readily computed, the Secretary of Health and Human Services shall establish rules for computing equivalent or comparable payment amounts.

''(2) EXCLUSION OF CERTAIN AMOUNTS.—In computing the amount of payment under paragraph (1), the following shall be excluded:

''(A) SPECIAL PAYMENTS.—Any amount attributable to an adjustment under subparagraphs (B) and (F) of section 1886(d)(5) and subsection (h) of such section.

''(B) PERCENTAGE OF CAPITAL PAYMENTS.—An amount determined by the administering Secretaries for amounts attributable to payments for capital-related costs under subsection (g) of such section.

''(3) PERIODIC PAYMENTS FROM MEDICARE TRUST FUNDS.—Payments under this subsection shall be made—

''(A) on a periodic basis consistent with the periodicity of payments under this title; and

''(B) in appropriate part, as determined by the Secretary of Health and Human Services, from the trust funds.

''(4) CAP ON REIMBURSEMENT AMOUNTS.—The aggregate amount to be reimbursed under this subsection pursuant to the agreement entered into between the administering Secretaries under subsection (b) is as follows:

''(A) PROGRAM.—With respect to category A medicare-eligible veterans, such aggregate amount shall not exceed—

''(i) for 2000, a total of $50,000,000;

''(ii) for 2001, a total of $75,000,000; and

''(iii) subject to subparagraph (B), for 2002 and each succeeding year, a total of $100,000,000.

''(B) EXPANSION OF PROGRAM.—If for a year beginning on or after January 1, 2003, the program is conducted in sites designated under subsection (b)(2)(A)(ii), the limitation under subparagraph (A)(iii) shall not apply to the program for such a year.

''(C) PROJECT.—With respect to category C medicare-eligible veterans, such aggregate amount shall not exceed a total of $50,000,000 for each of calendar years 1999 through 2001.

''(h) MAINTENANCE OF EFFORT.—

''(1) MONITORING EFFECT OF PROGRAM AND DEMONSTRATION PROJECT ON COSTS TO MEDICARE PROGRAM.—

''(A) IN GENERAL.—The administering Secretaries, in consultation with the Comptroller General of the United States, shall closely monitor the expenditures made under this title for category A and C medicare-eligible veterans compared to the expenditures that would have been made for such veterans if the program and demonstration project had not been conducted. The agreement entered into by the administering Secretaries under subsection (b) shall require the Department of Veterans Affairs to maintain overall the level of effort for services covered under this title to such categories of veterans by reference to a base year as determined by the administering Secretaries.

''(B) DETERMINATION OF MEASURE OF COSTS OF MEDICARE HEALTH CARE SERVICES.—

''(i) IMPROVEMENT OF INFORMATION MANAGEMENT SYSTEM.—Not later than October 1, 2001, the Secretary of Veterans Affairs shall improve its information management system such that, for a year beginning on or after January 1, 2002, the Secretary of Veterans Affairs is able to identify costs incurred by the Department of Veterans Affairs in providing medicare health care services to medicare-eligible veterans for purposes of meeting the requirements with respect to maintenance of effort under an agreement under subsection (b)(1)(A).

''(ii) IDENTIFICATION OF MEDICARE HEALTH CARE SERVICES.—The Secretary of Health and Human Services shall provide such assistance as is necessary for the Secretary of Veterans Affairs to determine which health care services furnished by the Secretary of Veterans Affairs qualify as medicare health care services.

''(iii) CERTIFICATION BY HHS INSPECTOR GENERAL.—

''(I) REQUEST FOR CERTIFICATION.—The Secretary of Veterans Affairs may request the Inspector General of the Department of Health and Human Services to make a certification to Congress that the Secretary of Veterans Affairs has improved its management system under clause (i) such that the Secretary of Veterans Affairs is able to identify the costs described in such clause in a reasonably reliable and accurate manner.

''(II) REQUIREMENT FOR EXPANSION OF PROGRAM.—The program may be conducted in the additional sites under paragraph (2)(A)(ii) and cover such additional category A medicare eligible veterans in such additional sites only if the Inspector General of the Department of Health and Human Services has made the certification described in subclause (I).

''(III) DEADLINE FOR CERTIFICATION.—Not later than the date that is the earlier of the date that is 60 days after the Secretary of Veterans Affairs requests a certification under subclause (I) or June 1, 2002, the Inspector General of the Department of Health and Human Services shall submit a report to Congress containing the certification under subclause (I) or the denial of such certification.

''(C) MAINTENANCE OF LEVEL OF EFFORT.—

''(i) REPORT BY SECRETARY OF VETERANS AFFAIRS ON BASIS FOR CALCULATION.—Not later than the date that is 60 days after the date on which the administering Secretaries enter into an agreement under subsection (b)(1)(A), the Secretary of Veterans Affairs shall submit a report to Congress and the Comptroller General of the United States explaining the methodology used and basis for calculating the level of effort of the Department of Veterans Affairs under the program and project.

''(ii) REPORT BY COMPTROLLER GENERAL.—Not later than the date that is 180 days after the date described in clause (i), the Comptroller General of the United States shall submit to Congress and the administering Secretaries a report setting forth the Comptroller General's findings, conclusion, and recommendations with respect to the report submitted by the Secretary of Veterans Affairs under clause (i).

''(iii) RESPONSE BY SECRETARY OF VETERANS AFFAIRS.—The Secretary of Veterans Affairs shall submit to Congress not later than 60 days after the date described in clause (ii) a report setting forth such Secretary's response to the report submitted by the Comptroller General under clause (ii).

''(D) ANNUAL REPORT BY THE COMPTROLLER GENERAL.—Not later than December 31 of each year during which the program and demonstration project is conducted, the Comptroller General of the United States shall submit to the administering Secretaries and to Congress a report on the extent, if any, to which the costs of the Secretary of Health and Human Services under the medicare program under this title increased during the preceding fiscal year as a result of the program or demonstration project.

''(2) REQUIRED RESPONSE IN CASE OF INCREASE IN COSTS.—

''(A) IN GENERAL.—If the administering Secretaries find, based on paragraph (1), that the expenditures under the medicare program under this title increased (or are expected to increase) during a fiscal year because of the program or demonstration project, the administering Secretaries shall take such steps as may be needed—

''(i) to recoup for the medicare program the amount of such increase in expenditures; and

''(ii) to prevent any such increase in the future.

''(B) STEPS.—Such steps—

''(i) under subparagraph (A)(i) shall include payment of the amount of such increased expenditures by the Secretary of Veterans Affairs from the current medical care appropriation for the Department of Veterans Affairs to the trust funds; and

''(ii) under subparagraph (A)(ii) shall include lowering the amount of payment under the program or project under subsection (g)(1), and may include, in the case of the demonstration project, suspending or terminating the project (in whole or in part).

''(i) EVALUATION AND REPORTS.—

''(1) INDEPENDENT EVALUATION BY GAO.—

''(A) IN GENERAL.—The Comptroller General of the United States shall conduct an evaluation of the program and an evaluation of the demonstration project, and shall submit annual reports on the program and demonstration project to the administering Secretaries and to Congress.

''(B) FIRST REPORT.—The first report for the program or demonstration project under subparagraph (A) shall be submitted not later than 12 months after the date on which the Secretary of Veterans Affairs first provides services under the program or project, respectively.

''(C) FINAL REPORT ON DEMONSTRATION PROJECT.—A final report shall be submitted with respect to the demonstration project not later than 3½ years after the date of the first report on the project under subparagraph (B).

''(D) CONTENTS.—The evaluation and reports under this paragraph for the program or demonstration project shall include an assessment, based on the agreement entered into under subsection (b), of the following:

''(i) Any savings or costs to the medicare program under this title resulting from the program or project.

''(ii) The cost to the Department of Veterans Affairs of providing care to category A medicare-eligible veterans under the program or to category C medicare-eligible veterans under the demonstration project, respectively.

''(iii) An analysis of how such program or project affects the overall accessibility of medical care through the Department of Veterans Affairs, and a description of the unintended effects (if any) upon the patient enrollment system under section 1705 of title 38, United States Code.

''(iv) Compliance by the Department of Veterans Affairs with the requirements under this title.

''(v) The number of category A medicare-eligible veterans or category C medicare-eligible veterans, respectively, opting to participate in the program or project instead of receiving health benefits through another health insurance plan (including benefits under this title).

''(vi) A list of the health insurance plans and programs that were the primary payers for medicare-eligible veterans during the year prior to their participation in the program or project, respectively, and the distribution of their previous enrollment in such plans and programs.

''(vii) Any impact of the program or project, respectively, on private health care providers and beneficiaries under this title that are not enrolled in the program or project.

''(viii) An assessment of the access to care and quality of care for medicare-eligible veterans under the program or project, respectively.

''(ix) An analysis of whether, and in what manner, easier access to medical centers of the Department of Veterans Affairs affects the number of category A medicare-eligible veterans or C medicare-eligible veterans, respectively, receiving medicare health care services.

''(x) Any impact of the program or project, respectively, on the access to care for category A medicare-eligible veterans or C medicare-eligible veterans, respectively, who

did not enroll in the program or project and for other individuals entitled to benefits under this title.

''(xi) A description of the difficulties (if any) experienced by the Department of Veterans Affairs in managing the program or project, respectively.

''(xii) Any additional elements specified in the agreement entered into under subsection (b).

''(xiii) Any additional elements that the Comptroller General of the United States determines is appropriate to assess regarding the program or project, respectively.

''(2) REPORTS BY SECRETARIES ON PROGRAM AND DEMONSTRATION PROJECT WITH RESPECT TO MEDICARE-ELIGIBLE VETERANS.—

''(A) DEMONSTRATION PROJECT.—Not later than 6 months after the date of the submission of the final report by the Comptroller General of the United States on the demonstration project under paragraph (1)(C), the administering Secretaries shall submit to Congress a report containing their recommendation as to—

''(i) whether there is a cost to the health care program under this title in conducting the demonstration project;

''(ii) whether to extend the demonstration project or make the project permanent; and

''(iii) whether the terms and conditions of the project should otherwise be continued (or modified) with respect to medicare-eligible veterans.

''(B) PROGRAM.—Not later than 6 months after the date of the submission of the report by the Comptroller General of the United States on the third year of the operation of the program, the administering Secretaries shall submit to Congress a report containing their recommendation as to—

''(i) whether there is a cost to the health care program under this title in conducting the program under this section;

''(ii) whether to discontinue the program with respect to category A medicare-eligible veterans; and

''(iii) whether the terms and conditions of the program should otherwise be continued (or modified) with respect to medicare-eligible veterans.

''(j) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) shall apply to enrollment (and termination of enrollment) in the demonstration project, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice organization in a Medicare+Choice plan.

''(2) In applying paragraph (1)—

''(A) any reference in clause (v) or (vi) of section 1882(s)(3)(B) to 12 months is deemed a reference to 36 months; and

''(B) the notification required under section 1882(s)(3)(D) shall be provided in a manner specified by the Secretary of Veterans Affairs.''.

(b) REPEAL OF PLAN REQUIREMENT.—Subsection (b) of section 4015 of the Balanced Budget Act of 1997 (relating to an implementation plan for Veterans subvention) is repealed.

(c) REPORT TO CONGRESS ON A METHOD TO INCLUDE THE COSTS OF VETERANS AFFAIRS AND MILITARY FACILITY SERVICES TO MEDICARE-ELIGIBLE BENEFICIARIES IN THE CALCULATION OF MEDICARE+CHOICE PAYMENT RATES.—The Secretary of Health and Human Services shall report to the Congress by not later than January 1, 2001, on a method to phase-in the costs of military facility services furnished by the Department of Veterans Affairs or the Department of Defense to medicare-eligible beneficiaries in the calculation of an area's Medicare+Choice capitation payment. Such report shall include on a county-by- county basis—

(1) the actual or estimated cost of such services to medicare-eligible beneficiaries;

(2) the change in Medicare+Choice capitation payment rates if such costs are included in the calculation of payment rates;

(3) one or more proposals for the implementation of payment adjustments to Medicare+Choice plans in counties where the payment rate has been affected due to the failure to calculate the cost of such services to medicare-eligible beneficiaries; and

(4) a system to ensure that when a Medicare+Choice enrollee receives covered services through a facility of the Department of Veterans Affairs or the Department of Defense there is an appropriate payment recovery to the medicare program.

TITLE III—AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO IMPOSITION OF PENALTIES FOR CERTAIN INDUCEMENTS

SEC. 301. AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO IMPOSITION OF PENALTIES FOR PROVIDING INDUCEMENTS TO BENEFICIARIES.

(a) IN GENERAL.—Subparagraph (B) of section 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a–7a(i)(6)) is amended to read as follows:

''(B) any permissible practice described in any subparagraph of section 1128B(b)(3) or in regulations issued by the Secretary;''.

(b) EXTENSION OF ADVISORY OPINION AUTHORITY.—Section 1128D(b)(2)(A) of such Act (42 U.S.C. 1320a–7d(b)(2)(A)) is amended by inserting ''or section 1128A(i)(6)'' after ''1128B(b)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(d) INTERIM FINAL RULEMAKING AUTHORITY.—The Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment, in order to implement the amendments made by this section in a timely manner.

TITLE IV—EXPANSION OF MEMBERSHIP OF THE MEDICARE PAYMENT ADVISORY COMMISSION

SEC. 401. EXPANSION OF MEMBERSHIP OF MEDPAC TO 17.

(a) IN GENERAL.—Section 1805(c)(1) of the Social Security Act (42 U.S.C. 1395b–6(c)(1)), as added by section 4022 of the Balanced Budget Act of 1997, is amended by striking ''15'' and inserting ''17''.

(b) INITIAL TERMS OF ADDITIONAL MEMBERS.—

(1) IN GENERAL.—For purposes of staggering the initial terms of members of the Medicare Payment Advisory Commission (under section 1805(c)(3) of such Act (42 U.S.C. 1395b–6(c)(3)), the initial terms of the two additional members of the Commission provided for by the amendment under subsection (a) are as follows:

(A) One member shall be appointed for one year.

(B) One member shall be appointed for two years.

(2) COMMENCEMENT OF TERMS.—Such terms shall begin on May 1, 1999.

TITLE V—REVENUE OFFSET

SEC. 501. REVENUE OFFSET.

(a) IN GENERAL.—Subparagraph (B) of section 408A(c)(3) of the Internal Revenue Code of 1986 is amended by striking ''relates'' and all that follows and inserting ''relates, the taxpayer's adjusted gross income exceeds $145,000 ($290,000 in the case of a joint return).''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to distributions after December 31, 1998.