Graham), the Senator from Mississippi (Mr. Cochran) and the Senator from Nebraska (Mr. Nelson) were added as cosponsors of S. 740, a bill to amend title XVIII of the Social Security Act to improve patient access to, and utilization of, the colorectal cancer screening benefit under the medicare program.

S. 740

At the request of Mr. Sessions, the name of the Senator from Alabama (Mr. Shelby) was added as a cosponsor of S. 740, a bill to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

S. 757

At the request of Mr. Chambliss, the name of the Senator from Georgia (Mr. Miller) was added as a cosponsor of S. 757, a bill entitled the “Guard and Reserve Commanders Pay Equity Act”.

S. 760

At the request of Mr. Grassley, the names of the Senator from Pennsylvania (Mr. Specter), the Senator from Louisiana (Ms. Landrieu), the Senator from South Dakota (Mr. Daschle) and the Senator from Maine (Ms. Collins) were added as cosponsors of S. 760, a bill to implement effective measures to stop trade in conflict diamonds, and for other purposes.

S. 783

At the request of Mr. Chambliss, the name of the Senator from South Carolina (Mr. Graham) was added as a cosponsor of S. 783, a bill to expedite the granting of posthumous citizenship to members of the United States Armed Forces.

S. 816

At the request of Mr. Conrad, the name of the Senator from Hawaii (Mr. Inouye) was added as a cosponsor of S. 816, a bill to amend title XVIII of the Social Security Act to protect and preserve access of medicare beneficiaries to health care provided by hospitals in rural areas, and for other purposes.

S. 822

At the request of Mr. Kerry, the name of the Senator from North Dakota (Mr. Dorgan) was added as a cosponsor of S. 822, a bill to create a 3-year pilot program that makes small, non-profit child care businesses eligible for SBA 504 loans.

S. 832

At the request of Mr. Leahy, his name was added as a cosponsor of S. 832, a bill to provide that bonuses and other extraordinary or excessive compensation of corporate insiders and wrongdoers may be included in the bankruptcy estate.

S. 837

At the request of Mr. Brownback, the name of the Senator from New Hampshire (Mr. Sununu) was added as a cosponsor of S. 837, a bill to establish a commission to conduct a comprehensive review of Federal agencies and programs and to recommend the elimination or realignment of duplicative, wasteful, or outdated functions, and for other purposes.

S. 845

At the request of Mr. Graham of Florida, the name of the Senator from Connecticut (Mr. Lieberman) was added as a cosponsor of S. 845, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children’s health insurance programs.

S. J. Res. 1

At the request of Mr. Kyl, the name of the Senator from Iowa (Mr. Grassley) was added as a cosponsor of S. J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

S. J. Res. 8

At the request of Mr. Biden, the name of the Senator from Wisconsin (Mr. Kohl) was added as a cosponsor of S. J. Res. 8, a joint resolution expressing the sense of Congress with respect to raising awareness and encouraging prevention of sexual assault in the United States and supporting the goals and ideals of National Sexual Assault Awareness and Prevention Month.

S. J. Res. 82

At the request of Mr. Brownback, the name of the Senator from New Hampshire (Mr. Sununu) was added as a cosponsor of S. J. Res. 82, a resolution commemorating and acknowledging the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers.

S. Res. 75

At the request of Mr. Campbell, the name of the Senator from New Hampshire (Mr. Sununu) was added as a cosponsor of S. Res. 75, a resolution expressing the sense of the Senate concerning the continuous repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women.

S. Res. 111

At the request of Mr. Hatch, the names of the Senator from Iowa (Mr. Grassley), the Senator from Texas (Mrs. Hutchison), the Senator from Colorado (Mr. Allard) and the Senator from Kansas (Mr. Brownback) were added as cosponsors of S. Res. 111, a resolution designating April 30, 2003, as “Dia de los Ninos: Celebrating Young Americans”, and for other purposes.

S. 851

At the request of Mr. ENSIGN, Mr. President, I rise to introduce the Child Custody Protection Act. This legislation makes it a Federal offense to knowingly transport a minor across a State line, with the intent that she obtain an abortion, in circumvention of a State’s parental consent or parental notification law.

I have three young children in school, including a daughter, so I know something about parental consent. My wife and I, like most parents, have to give our written consent for school activities all the time.

In most schools, an underage child cannot receive a medical vaccination on a school campus without a signed permission slip. An underage child also can’t receive mild medication at school, such as aspirin, for the alleviation of pain or discomfort unless a parent signs a release form permitting the school nurse to administer it. In some schools, a child may not take a sex education class without parental consent. Nothing, however, prevents this same child from being taken across State lines, in direct disobedience of State laws, for the purpose of undergoing a life-altering abortion.

The Child Custody Protection Act simply attempts to strengthen the effectiveness of State laws designed to protect children from the health and safety risks associated with abortion. In many cases, only a girl’s parents know of her prior psychological and medical history, including allergies to medication and anesthesia. Also, parents are usually the only people who can provide authorization for post-abortion medical procedures or the release of pertinent data from family physicians. When a pregnant girl is taken to have an abortion without her parents’ knowledge, none of these precautions can be taken. The harsh reality is that leaving parents uninformed about their underage daughter’s abortion may not only be detrimental to the physical and mental health of the child but may, in some instances, be fatal.

This legislation does not supercede, override, or in any way alter existing State parental involvement laws. It does not impose any parental notice or consent requirement on any State. The Child Custody Protection Act addresses interstate transportation of minors in order to circumvent valid, existing State laws and uses the authority of Congress to regulate interstate activity to protect those laws from evasion.

STATMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENSIGN (for himself, Mr. Brownback, Mr. Inhofe, Mr. Talent, Mr. Santorum, Mr. Grassley, Mr. Enzi, Mr. Sessions, Mr. Allen, Mr. Bunning, Mr. Fitzgerald, Mr. Chambliss, Mr. DeWine, Mr. McConnell, Mr. Coleman, Mr. Kyl, Mr. Nickles, Mr. Graham of South Carolina, Mr. Bond, Mr. Hagel, Mr. McCain, and Mr. Hatch):
CURRENTLY, forty-three States have laws requiring a minor to get the consent of or notify one or both parents prior to an abortion, but only thirty-three are enforcing those measures. Most of the statutes apply to a child under the age of 18 and provide for a court procedure should the state or minor residents be unable to involve her parents.

This legislation is a common sense solution to a dire problem. A minor who is forbidden to drink alcohol, to stay out past a certain hour, or to drive a car in some states is indeed not prepared to make a life-altering, hazardous decision, such as an abortion, without the consultation or consent of at least one parent.

In fact, a poll found that 85 percent of voters, including 75 percent of "pro-choice" voters, said "No!" when asked, "Should a person be able to take a minor across a State line to obtain an abortion without her parents' knowledge?"

I would like to thank the original co-sponsors of this bill for their support, Senators Brownback, Inhofe, Talent, Santorum, Grassley, Enzi, Sessions, Allen, Bunning, Fitzgerald, Chambliss, DeWine, McConnell, Coleman, Kyl, Nickles, Lindsey Graham, Bond, Hagel, Craig, McCain and Hatch. I look forward to working with them and other members of the Senate, to ensure that underage girls are protected from unscrupulous individuals who want them to make a life-altering decision without parental involvement.

I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 851

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

**SECTION 1. SHORT TITLE.** This Act may be cited as the "Child Custody Protection Act".

**SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION.**

(a) in General.—Title 18, United States Code, is amended by inserting after chapter 117 the following:

**CHAPTER 117A—TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION.**

"Sec. 2431. Transportation of minors in circumvention of certain laws relating to abortion.

"(a) Offense.—

"(1) Generally.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

"(2) Exceptions.—

"(I) The prohibition of subsection (a) does not apply if the abortion was performed to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the minor's own conduct.

"(II) The prohibition of subsection (a) does not apply if an abortion was performed in the State where the minor resides.

"(b) EXCEPTIONS.—

"(1) The prohibition of subsection (a) does not apply if the abortion was performed to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the minor's own conduct.

"(2) The prohibition of subsection (a) does not apply if an abortion was performed in the State where the minor resides.

"(c) GOVERNMENT.—Any person who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action.

"(d) DEFINITIONS.—For the purposes of this section—

"(I) the term 'abortion' means—

"(i) a 'law requiring parental involvement in a minor's abortion decision' means a law—

"(II) a 'law requiring parental involvement in a minor's abortion decision' means a law—

"(a) requiring, before an abortion is performed on a minor, either—

"(I) the notification to, or consent of, a parent of that minor; or

"(II) proceedings in a State court; and

"(b) a 'law requiring parental involvement in a minor's abortion decision' means a law—

"(I) the notification to, or consent of, a parent of that minor; or

"(II) proceedings in a State court; and

"(c) a 'law requiring parental involvement in a minor's abortion decision' means a law—

"(I) the notification to, or consent of, a parent of that minor; or

"(II) proceedings in a State court; and

"(d) a 'law requiring parental involvement in a minor's abortion decision' means a law—

"(I) the notification to, or consent of, a parent of that minor; or

"(II) proceedings in a State court; and

"(e) a 'law requiring parental involvement in a minor's abortion decision' means a law—

"(II) requiring, before an abortion is performed on a minor, either—

"(I) the notification to, or consent of, a parent of that minor; or

"(f) a 'law requiring parental involvement in a minor's abortion decision' means a law—

"(I) the notification to, or consent of, a parent of that minor; or

"(II) proceedings in a State court; and

"(g) The Federal Government is not trying to tell the States how they should act

"(h) The Federal Government is not trying to tell the States how they should act

"(i) The Federal Government is not trying to tell the States how they should act

"(j) The Federal Government is not trying to tell the States how they should act

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"(y) The Federal Government is not trying to tell the States how they should act

"(z) The Federal Government is not trying to tell the States how they should act

"The Child Custody Protection Act is a reasonable and rational approach to fixing a serious problem. In many places, a school nurse cannot provide an aspirin to a student for a headache without permission from the parent. Students cannot go on field trips without parental approval. Some report cards need a parent's signature to verify the parent knows how their child is performing academically.

This bill is not addressing something relatively trivial; it is drawing attention to a very serious medical procedure and protecting the health and safety of young girls. States that choose to implement parental notification laws because of their concerns with the well-being and safety of children should have every tool necessary to enforce their own laws.

An abortion is a risky medical procedure, especially for young teenagers. This bill is designed to protect children from the health and safety risks associated with abortion. In many cases, it is a serous problem. There is a strong link between a pregnant minor's physical health and the desire to have a child. Abortion is a serious medical procedure, especially for teenagers. In many places, a school nurse cannot provide an aspirin to a student for a headache without permission from the parent. Students cannot go on field trips without parental approval. Some report cards need a parent's signature to verify the parent knows how their child is performing academically.

This bill is a reasonable effort to build upon two basic points with which many agree—despite other long-standing differences. The first is the desirability of parental involvement in a minor's abortion decision, and the other is the need to protect a pregnant minor's physical health.

This bill does not supersede, override, or in any way alter existing State parental consent or notification laws. Nor does this bill require States to implement their own parental involvement laws. The Child Custody Protection Act simply makes it a Federal offense to knowingly transport a minor across a State line in circumvention of certain laws relating to abortion.

This legislation strengthens the effectiveness of State laws requiring parental consent or notification. This bill, I would emphasize, is not a Federal parental involvement law; it merely ensures that State laws are not evaded through interstate activity.

The Federal Government is not trying to tell the States how they must act and when, and this bill is not forcing parents to be good parents. This legislation strengthens the effectiveness of State laws, which is where the issue is best addressed and enforced. If we fail to pass this bill, we would be choosing to ignore the legitimacy and constitutionality of States to create and pass laws that specifically address the needs and desires of its citizens, especially when it comes to the health and safety of children.
consent of parents before they are performed. Also, parents are usually the only people who can provide authorization for post-abortion medical procedures or even release important information from family physicians. Given all of these other important medical situations that require parental consent, it is only reasonable and logical to recognize and enforce a States law asking for parental consent or notification for certain abortions.

We all know how contentious the issue of abortion can get, around here, and across the country. But this matter is not really even about abortion. This bill is simply about protecting the health and safety of minor children and the rights that their own States have concluded their parents should have.

I would urge all of my colleagues to support this legislation and prevent circumvention of State laws, especially when the health and safety of children is involved.

By Mr. DeWINE (for himself, Mr. Daschle, Mr. Smith, and Mr. Leahy):

S. 852—A bill to amend title 10, United States Code, to provide limited TRICARE program eligibility for members of the Ready Reserve of the Armed Forces, to provide financial support for continuation of health insurance for mobilized members of reserve components of the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. Daschle. Mr. President, today I join with a bipartisan group of colleagues from the Senate Guard Caucus to introduce the National Guard and Reserve Comprehensive Health Benefits Act of 2003. This bill will allow reservists and their families to receive health coverage through Tricare by paying a modest premium.

The legislation would create a better benefit package, given the dramatic expansion of their role within our military. Indeed, there is concern that the high rate of mobilizations—which no one expects to abate—will erode this force's ability to recruit and retain top-notch personnel. South Dakota Guard leaders tell me this bill would be perhaps the most powerful tool we could give them for recruiting and retention. By providing access to quality affordable health care for reservists and their families, this bill will also ensure that when they are mobilized, they are healthy and ready to go.

As I stand before you today, nearly 2,000 members of South Dakota's Guard and Reserves are deployed throughout the world—from force-protection missions at home to assignments in Europe and the Persian Gulf. Most of these reservists will be mobilized for 6 months, and some will stay activated for up to 2 years. And while South Dakota has one of the highest per-capita mobilization rates in the country, it is not unique. As the U.S. role as an international leader evolves, the National Guard and Reserves are being called upon at unprecedented rates to bolster our Nation's defense.

Indeed, since the 1991 gulf war, and particularly since the terrorists attacks of September 11, the demands on Reserves have grown markedly. The average cost of a family health care plan in South Dakota is $4,000 per year, even without the Government assistance. Tricare cost per family is only $5,173 per year. In contrast, it estimates that the Tricare cost per family is only $5,173 per year, even without the Government sharing any of the cost. With Government cost-sharing, this will be an attractively priced option for securing health coverage.

Beyond recruitment and retention, this program will improve readiness. More than 20 percent of the Ready Reserve—and as much as 40 percent of young enlisted personnel—do not currently have health insurance. Providing access to quality health care during all phases of service can drastically reduce the occurrence of situations in which large portions of a unit have to worry about when preparing, whether they could afford Tricare. That is simply unacceptable. It is the last thing a reservist should have to worry about when preparing, possibly, for deployment to a war zone.

Another challenge for families going through mobilization is learning the Tricare benefit structure and understanding its system for helping those with problems or questions. Again, all this would be eliminated if families could enroll in Tricare before mobilization. For the family help desk to function properly, the Tricare benefit structure and understanding of it would be free to remain, and, during periods of mobilization, those premiums would be partially subsidized.

We have developed this bill in consultation with leaders of the National Guard and Reserves at the State and National levels. I appreciate their concern for this problem and their work to help develop a solution. In this regard, I would particularly like to acknowledge the efforts and strong support of the South Dakota National Guard, as well as the Military Officers Association of America, the Enlisted Association of the National Guard, the National Guard Association of the United States, the Reserve Officers Association, the Marine Corps Reserve Officers Association, the National Military Family Association, the National Association for Uniformed Services, and the National Military/Veterans Association.

I would like also to thank my cosponsors, Senator Leahy, Senator DeWine, and Senator Gordon Smith, for helping advance this project.

Guaranteeing that all reservists have access to health care—either through civilian employers or Tricare—will ensure that this force is ready to fight at a moment's notice. The bill we are introducing today will not only improve the readiness of the current Reserve force, but will pay dividends for the future by improving readiness and reducing the costs of mobilization. Simply, this bill will allow reservists to go to war with the best possible health coverage.

Mr. Leahy. Mr. President, today I am joined by Senator DeWine, by our minority leader, Senator Daschle, and...
by Senator Smith in introducing legislation that will boost the readiness of our Nation’s military Reserve.

Never has our Nation relied more heavily on the Selected Reserve—more than 875,000 men and women, who stand ready or deployed at home or abroad, at a moment’s notice. More than 54 percent of the U.S. Army’s and 34 percent of the U.S. Air Force’s end strength resides in the Selected Reserve. Both the Army and the Marine Corps rely on these Reserve forces for almost 20 percent of their manpower strength. The skill, experience and professionalism of these dedicated citizens often meet and exceed those of their brave counterparts in the active force.

It is no wonder that more than 200,000 reservists have been called to duty for service that is related to the war in Iraq. Many States have thousands of their citizens who have temporarily dropped their civilian jobs and left their families for deployments halfway across the country, or in some cases, as far away as Iraq. Many reservists, sailors, airmen, and marines in my home State of Vermont are serving proudly at the moment, here and abroad. When you include the call-ups since the September 11 attacks, the numbers of reservists who cross the country far exceeds those in the first Gulf War.

These deployments have spotlighted some specific and solvable problems that have affected the readiness of the reserve and, in turn, our entire military. Some of the troops who have been called up have not been as healthy as possible. Others have faced the stress of leaving their families behind while looking back in concern as their families try to navigate the sometimes arcane military health care system. While often experiencing a loss of income, reserve family members also have had to leave their civilian doctors and join the military’s TRICARE program.

More troubling, many of the members of the Guard and Reserve who might be activated any day do not currently have access to affordable health insurance. A recent General Accounting Office report underscores the fact that most of these uninsured Guard and Reservists reside in the lower enlisted ranks, where the reserve soldiers, sailors, airmen, and marines of ten times are unemployed or switch jobs frequently, it is unfair to them and their families, and it is unwise for the preparedness of our military, to expect someone to deploy anywhere at the drop of a hat, but then to disregard whether they will be as healthy as possible when we need to call them to active duty.

These men and women are ready to make the ultimate sacrifice for their country, and so are their families. But they are performing as full-time soldiers with part-time benefits.

This situation is preventing the National Guard and the Reserve from being as ready as possible for action. At the same time, the stress and strain that activations place on families has hurt recruiting and retention. To ensure the strongest and most effective reserve and the strongest and most effective military capability, it is critical that we address these issues and provide comprehensive health insurance coverage.

The National Guard and Reserve Comprehensive Health Benefits Act of 2003 will provide seamless health coverage to our reserve forces at all phases of their service. Under our plan, if one of 876,000 members of the Selected is in a drill status, that reservist and his or her family will become eligible to join the TRICARE military health insurance program. The reservist will pay an annual premium, around 30 percent of the annual cost of providing care. For a single reservist, the premium would be about $420 per year, while for a family the annual payment would be about $1,450. This is not rock-bottom cheap health care, but our aim is to ensure that these hard-working families that may not otherwise have access to coverage.

If a reservist is activated, he or she will continue to have free health care through the military health system. But under our legislation, the reservist’s family will be able to avoid the considerable difficulties of switching doctors and health insurance. They also can apply to have their civilian health insurance reimbursed. The program will not cost any more to the Federal Government than the current arrangement because the per capita costs are capped to ensure that they are no more than the cost of TRICARE. And when a reservist comes off active duty, he or she will be able to enter the new premium-based TRICARE program, just as before deployment.

Because reservists will be able to have access to affordable insurance whatever their deployment status, this legislation is supported by several leading organizations, including the National Guard Association of the United States, NGAU, the Enlisted National Guard Association of the United States, EANGUS, the Reserve Officers Association, ROA, the Naval Reserve Association, NRA, the National Military Family Association, NMFA, Marine Corps Reserve Officers Association, the National Association for Uniformed Services, the National Association of Military Nurses and the Military Officers Association, MOA. This legislation is the top priority of The Military Coalition’s Guard/Reserve Committee.

We have worked hard to fully understand the existing problems and to construct this efficient and effective solution. I would particularly like to thank former Undersecretary of Defense Fred Pung and former House Armed Services Committee Professional Staff Member Karen Jarvis for their sage counsel and guidance on this legislation. This bill is the end result of a year of hard work by the Reserve Association, NRA, the National Military Family Association, and several others to develop the best possible legislation.

By Ms. SNOWE (for herself and Mr. KERRY): S. 853. A bill to amend title XVIII of the Social Security Act to eliminate discriminatory copayment rates for outpatient psychiatric services under the Medicare program; to the Committee on Finance.

Ms. SNOWE. Mr. President, this bill is to introduce the Medicare Mental Health Copayment Equity Act with my colleague on the Finance Committee, Senator JOHN KERRY.

In brief, my bill would a correct a serious disparity in payment for treatment with a psychiatric disorder under Medicare law. Medicare beneficiaries typically pay 20 percent copayment for outpatient services, including doctor’s visits and Medicare pays the remaining 80 percent. But for treatment of mental disorders, Medicare law requires patients pay a 50-percent copayment.

Under my bill, this copayment will be reduced over a six year period, starting in 2004, to the current 50 percent to 20 percent. This means that in 2010, patients seeking inpatient treatment for mental illness will pay the same 20 percent copayment required of Medicare patients that receive treatment for any other illness.

Let’s look at this issue in another way. If a Medicare patient has an office visit for treatment for cancer or heart disease, the patient is responsible for 20 percent of the doctor’s fee. But if a Medicare patient has an office visit with a psychiatric disorder—psychologist, social worker, or other professional for treatment for depression, schizophrenia, or any other condition diagnosed as a mental illness, the copayment for the outpatient visit for treatment of the mental illness is 50 percent. What sense does this make?

Indeed, my bill has a larger purpose, to help end an outdated distinction between physical and mental disorders, and ensure that Medicare beneficiaries have equal access to treatment for all health conditions. Perhaps this disparity would matter less if mental disorders were not so prevalent. But the Surgeon General has told us otherwise.

The Surgeon General has told us otherwise. In the last several years, the prevalence of mental illness is emphasized in a landmark report on mental health released by the Surgeon General in 1999. The Surgeon General reported mental illness was second only to cardiovascular diseases in years of healthy life lost to either premature death or disability. And the occurrence of mental illness among older adults is widespread with a substantial proportion of the population 55 and older—almost 20 percent of this age group—experiencing mental health problems that are not part of “normal” aging.

Further, older Americans have the highest rate of suicide in the country,
and the risk of suicide increases with age. In fact, in the State of Maine, the suicide rate for seniors is three times as high as the rate for adolescents. Untreated depression among the elderly substantially increases the risk of death due to suicide.

There is another sad irony. While Medicare often is viewed as health insurance for people over age 65, Medicare also provides health insurance coverage for people with severe disabilities. The most frequent cause of disability for Social Security and Medicare benefits is mental disorders— affecting almost 1.4 million of 6 million Americans who receive Social Security disability benefits. Yet, at the same time, Medicare pays less for critical mental health services needed by these beneficiaries than if they had a non-mental disability.

But there also is very good news that there are increasingly effective treatments for mental illnesses. With proper treatment, the majority of people with a mental illness can lead productive lives. By removing financial barriers that inhibit access to treatment services, we will be able to eliminate stigma and overcome a lack of understanding of mental disorders. I urge my colleagues to join with me to bring Medicare payment policy for mental disorders into the 21st century.

Mr. KERRY. Mr. President, I am pleased to join my colleague Senator Snowe in introducing the Medicare Mental Health Copayment Equity Act. This legislation will establish mental health care parity in the Medicare program.

Medicare currently requires patients to pay a 20 percent co-payment for all Part B services except mental health care services, for which patients are assessed a 50 percent co-payment. Thus, under the current system, if a Medicare patient sees an endocrinologist for diabetes treatment, an oncologist for cancer treatment, a cardiologist for heart disease treatment or an internist for treatment of the flu, the co-payment is 20 percent of the cost of the visit. If, however, a Medicare patient visits a psychiatrist for treatment of mental illness, the co-payment is 50 percent of the cost of the visit. This disparity in outpatient co-payments represents blatant discrimination against Medicare beneficiaries with mental illness.

The prevalence of mental illness in older adults is considerable. According to the U.S. Surgeon General, 20 percent of older adults in the community and 40 percent of older adults in primary care settings experience symptoms of depression, while as many as one out of every two residents in nursing homes are at risk of depression. The elderly have the highest rate of suicide in the United States, and there is a clear correlation between major depression and suicide. 10 to 20 percent of suicides among patients 75 and older are diagnosable depression. In addition to our seniors, 400,000 non-elderly disabled Medicare beneficiaries become Medicare-eligible by virtue of severe and persistent mental disorders. To subject the mentally disabled to discriminatory costs in coverage for the very conditions for which they became Medicare-eligible is illogical and unfair.

There is another barrier to mental illness care that cannot be treated. Unfortunately, those in need of treatment often do not seek it because they are ashamed of their condition. Among our Medicare population, the mentally ill face a double burden: not only must they overcome stigma about mental illness, but once they seek treatment they must pay one-half of the cost of care out of their own pocket. The Medicare Mental Health Copayment Equity Act will phase-down the 50 percent co-payment for mental health care services to 20 percent over six years. By applying the same co-payment rate to mental health services to which all other outpatient services are subjected, the Medicare Mental Health Copayment Equity Act will bring parity to the Medicare program and improve access to care for our senior and disabled beneficiaries who are living with mental illness. I urge my colleagues to join with us to pass this critical legislation.

I am encouraged by the numerous comments that several letters of support were printed in the Record. There being no objection, the letters were ordered to be printed in the Record, as follows:


DEAR SENATOR SNOWE: On behalf of the 38,000 physician members of the American Psychiatric Association (APA), and most particularly on behalf of the patients they treat, please accept my thanks for your House sponsorship of the Medicare Mental Health Copayment Equity Act of 2003.

As you know, Medicare Part B requires by statute that beneficiaries pay a copayment of 20 percent, except for the discriminatory 50 percent copayment charged for outpatient mental health treatment. It is time for Congress to end what amounts to cost-sharing discrimination by diagnosis. Benefits you are introducing with Representative Richard Neal would ultimately require Medicare beneficiaries to pay the same 20 percent co-payment amount for outpatient mental health treatment as they would otherwise pay for other Part B services. Asking our Medicare beneficiaries to pay half the cost of their mental health care out of pocket is simply unjust, and is a significant barrier to necessary treatment.

Thank you for your foresight and leadership in your lead sponsorship of the Medicare Mental Health Copayment Equity Act of 2003. Thanks are also due to the outstanding work by Catherine Finely, who ably represents you. The APA is pleased to work with you to make your bill a reality this year.

Sincerely,

PAUL S. APPELBAUM, M.D.,
President.
co-payment for most outpatient mental illness treatment services. As you know, outpatient psychotherapy services are covered at 50 percent under Medicare, with a 50 percent beneficiary co-payment requirement. This is stark contrast to the 80 percent pay- ment, and 20 percent co-payment for all other outpatient services. In NAMI’s view, this is an example of discrimination in one of the federal government’s most important health care programs—providing coverage to more than 39 million Americans—both seniors and non-elderly people with severe dis-abilities such as serious mental illnesses. We know that treatment makes a tremendous difference in the lives of persons with mental illness. Your legislation removes a signifi- cant financial barrier to such necessary care for the Medicare population.

Thank you for once again leading the way in the Congress in bringing an end to dis- crimination against persons living with se-vere mental illness.

Sincerely, RICHARD C. BIRKEL, Executive Director.

AMERICAN ASSOCIATION FOR GERIATRIC PSYCHIATRY, Bethesda, M,D, April 9, 2003.

Hon. OLYMPIA SNOWE, U.S. Senate, Washington, D.C.

DEAR SENATOR SNOWE: On behalf of the American Association for Geriatric Psychiatry (AAGP), I writing to add AAGP’s en-dorsement to legislation which you intro-ducing to Senator Kerry to end the discriminatory copayment required by Medicare for treatment of mental illness.

Medicare coverage of mental health serv-ices is fragmented and subject to arbitrary and discriminatory limitations. Although coinsurance for most services by Medicare 20 percent, current law requires a 50 percent copayment for mental health services fur-nished by psychiatrists and other health care professionals who specialize in the treatment of mental illness. This limit, which dates back to the inception of the Medicare pro-gram in 1965, is based on the outmoded as-sumption that all mental illness is chronic and requires unlimited therapeutic services. Advances in treatment have made this as-sumption highly inaccurate. Your bill would establish copayment parity between mental health benefits and other medical benefits under the Medicare program.

Your legislation stands to dramatically improve the delivery of Medicare benefits by providing them with the access to mental health care that they deserve.

AAGP commends you for your dedication to ensuring that all Americans have ade- quate access to effective mental health treatments, and we look forward to working with you to achieve the enactment of this legislation.

Sincerely, JEB E. STREIM, M.D., President.


Hon. OLYMPIA SNOWE, U.S. Senate, Washington, D.C.

DEAR SENATOR SNOWE, on behalf of the psy- chiatric physicians of the Maine Psychiatric Society, I want to offer you my sincere ap-preciation for your leadership in sponsoring the Medicare Mental Health Copayment Eq-uity Act of 2003, working to end Medicare’s historic discrimination against patients with mental illness.

Your legislation would end this discrimina- tion by requiring that discriminatory copay-ments on Medicare beneficiaries for mental illness treatment would eventually be re-duced from the current 50 percent level to the 20 percent level patients pay for other medical treatment, such as treatment for diabe-tes, heart disease, or the flu. This legisla-tion promotes parity for mental health bene-fits and improves access to mental health care for all Medicare beneficiaries in Maine and across the country.

The Maine Psychiatric Association appre-ciates your leadership in introducing with Senator Kerry to end Medicare’s discriminatory coverage of mental illness treatment.

Sincerely, EDWARD PONTIUS, M.D., Chair, Legislative Affairs Committee, Maine Psychiatric Association.

MAINE MEDICAL ASSOCIATION, April 9, 2003.

Hon. OLYMPIA SNOWE, U.S. Senate, Washington, D.C.

DEAR SENATOR SNOWE: I am writing to you on behalf of the Maine Medical Association and the Maine Psychiatric Association, representing over 2500 Maine-licensed physici-ans, to thank you sincerely for assuming the leadership in introducing the Medicare Mental Health Co-payment Equity Act of 2003, that would end Medicare’s historic discrimi-nation against patients with mental illness.

As you know, mental health illness and treatment are very often complicated by concurrent major physical illnesses, like cancer, diabetes, and other conditions. Unfortunately, co-payment for treatment of mental illnesses are two and a half times higher than that for physical illnesses. Your legisla-tion would end this discrimination by re-quiring that Medicare patients pay only the same 20 percent co-payment for mental ill-ness treatment that they would pay when seeking medical treatment for physical illnesses.

The Maine Medical Association and the Maine Psychiatric Association appreciate your ongoing commitment to persons with mental illness and your sponsorship of this most important bill to end Medicare’s dis-criminatory coverage of mental illness treat-ment.

Sincerely, KRISHNA BHATTA, M.D., President.


Hon. JOHN KERRY, U.S. Senate, Washington, D.C.

DEAR SENATOR KERRY: On behalf of the 38,000 physician members of the American Psychiatric Association (APA), and most particularly on behalf of the patients they treat, please accept my thanks for your House sponsorship of the Medicare Mental Health Copayment Equity Act of 2003.

As you know, Medicare Part B requires by statute that beneficiaries pay a copayment of 20 percent, except for the discriminatory 50 percent copayment for outpatient mental health treatment. It is time for Con-gress to end what amounts to cost-sharing discrimination by diagnosis. The bill you are introducing with Representative Richard Neal would ultimately require Medicare beneficiaries to pay the same 20 percent co-payment amount for outpatient mental health treatment as they would otherwise pay for other Part B services. Asking our Medicare beneficiaries to pay half the cost of their mental health care out of pocket is simply unjust, and a significant barrier to necessary treatment.

Thank you for your foresight and leader-ship in your lead sponsorship of the Medicare Mental Health Copayment Equity Act of 2003. Thanks are also due to the outstanding work by Kelly Bovio, who ably represented you. The APA looks forward to working with you to make your bill a reality this year.

Sincerely, PAUL S. APPLEBAUM, M.D., President.

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. 854. A bill to authorize a comprehensive program of support for vic-tims of torture, and for other purposes; to the Committee on Foreign Rela-tions.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the bill I intro-duce today to authorize a com-prehensive program of support for vic-tims of torture be printed in the RECORD.

There being on objection, the bill was ordered to be printed in the RECORD, as follows:

S. 854

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE. This Act may be cited as the ‘‘Torture Vic-tims Relief Reauthorization Act of 2003’’.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN TREATMENT CENTERS FOR VICTIMS OF TORTURE.

(a) AUTHORIZATION OF APPROPRIATIONS.— Section 4(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended to read as follows:

“(1) AUTHORIZATION OF APPROPRIATIONS.— Of the amounts authorized to be appro-priated for fiscal years 2004, 2005, and 2006 pursuant to chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) there are authorized to be appropriated to the President to carry out section 130 of such Act $11,000,000 for fiscal year 2004, $12,000,000 for fiscal year 2005, and $13,000,000 for fiscal year 2006.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect Oc-tober 1, 2003.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES VOLUNTARY FUND FOR VICTIMS OF TERRORISM.

(a) AUTHORIZATION OF APPROPRIATIONS.— Section 5(b)(1) of the Torture Victims Relief Act of 1996 (22 U.S.C. 2152 note) is amended to read as follows:

“(1) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appro-priated for the Department of Health and Human Services for fiscal years 2004, 2005, and 2006 there are authorized to be appro-priated to carry out subsection (a) $20,000,000 for fiscal year 2004, $25,000,000 for fiscal year 2005, and $30,000,000 for fiscal year 2006.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect Oc-tober 1, 2003.
By Ms. SNOWE (for herself, Mr. BOND, and Mr. GRASSLEY):

S. 855. A bill to amend the Internal Revenue Code of 1986 to modify the unrelated business income limitation on investment in certain debt-financed properties; to the Committee on Finance.

Ms. SNOWE. Mr. President, I rise today to introduce the Small Business Investment Company Capital Access Act of 2003 whose purpose is to increase the availability of venture capital available to small businesses. As the chair of the Committee on Small Business and Entrepreneurship, I am pleased that my good friend and former chairman of the Committee, Senator Bond, and the chairman of the Senate Finance Committee, Senator Grassley, have agreed to be the principal cosponsors of this important bill.

During the past 2 years, there has been a significant contraction of the private market for venture capital. During this same period, the Small Business Administration’s Small Business Investment Company program has taken on a significant role in providing venture capital to small businesses seeking investments in the range of $500,000 to $3 million.

Small Business Investment Companies are government-licensed, government-regulated, privately managed venture capital firms created to invest only in debt and equity securities of U.S. small businesses that meet size standards set by law. In the current economic environment, the SBIC program represents an increasingly important source of capital for small enterprises.

While debenture SBICs qualify for SBA-guaranteed borrowed capital, the Government guarantee forces a number of potential investors, namely pension funds and university endowment funds, to avoid investing in SBICs because they expect to be subject to tax on unrelated business taxable income. More often than not, tax-exempt investors opt to invest in venture capital funds that do not create UBTI. As a result an estimated 60 percent of the private capital potentially available to these SBICs is effectively off limits.

The Small Business Investment Company Capital Access Act of 2003 would correct this problem by excluding government-guaranteed capital of debenture SBICs from UBTI. During this the UBTI rules. This change would permit tax-exempt organizations to invest in SBICs without the burdens of UBTI recordkeeping or tax liability.

In 1998, Congress created the SBIC program to assist small businesses owners in obtaining investment capital. More than 40 years later, small businesses continue to experience difficulty in obtaining investment capital from banks and traditional investment sources. Although investment capital is readily available to large businesses from traditional Wall Street investment firms, small businesses seeking investments in the range of $500,000 to $3 million have to look elsewhere. SBICs are frequently the only sources of investment capital for growing small businesses.

Often we are reminded that the SBIC program has helped some of our Nation’s best-known companies. It has provided a financial boost at critical points in the early growth period for many companies that are familiar to all of us. For example, when Federal Express needed help from reluctant creditors, it received a needed infusion of capital from two SBIC-licensed SBICs at a critical juncture in its development stage. The SBIC program also helped other well-known companies, when they were not so well known, such as Intel, Outback Steakhouse, America Online, and Callaway Golf.

What is not well known is the extraordinary help the SBIC program provides to main street America small businesses. These are companies we know from hometowns all over the United States. Main street companies provide both stability and growth in our local business communities. In 1991, the SBIC program was experiencing major losses, and the future of the program was in doubt. Consequently, in 1992 and 1996, the Committee on Small Business worked closely with the Small Business Administration to correct deficiencies in the law in order to ensure the future of the program.

Today, the SBIC program is expanding rapidly in an effort to meet the growing demands of small business owners for debt and equity investment capital. And it is important to focus on the significant role that is played by the SBIC program in support of growing small businesses. When Fortune Small Business compiled its list of 100 fastest growing small companies in 2000, six of the top 12 businesses on the list were SBICs, all recently receiving funding during their critical growth year.

The Small Business Investment Company Capital Access Act of 2003 is important for one simple reason: once enacted it paves the way for more investment capital to be available for more small businesses that are seeking to grow and hire new employees. According to the National Association of Small Business Investment Companies, a conservative estimate of the effect of this bill would be to increase investments in debenture SBICs by $200 million per year from tax-exempt investors. Together with SBA-guaranteed leverage, that will mean as much as $500 million per year in new capital assets for debenture SBICs to invest in U.S. small businesses.

According to the SBA, one job is created for every $36,000 invested in a small company. At that rate, this bill could be responsible for the creation of as many as 16,600 new jobs—within companies receiving investments directly as well as within those firms benefiting indirectly through increased sales of goods and services to the former companies. In short, this bill is a jobs creator.

And the cost? The Joint Committee on Taxation estimated in the last Congress that this bill would result in tax revenue loss of only $1 million per year for the next 10 years.

Mr. President, the cost is low and the potential for economic gain is great. Passage of the bill will make the Government’s existing SBIC program more effective in providing growth capital for America’s small business entrepreneurs.

And most importantly, it will provide sorely needed capital for the sector of our economy that provides a majority of the net new jobs in this country—small businesses. That is a real stimulus that would cause new investments to be made and the creation of critically needed new jobs. Our economy is primed for this kind of support, and I urge my colleagues to support this important bill.

I ask unanimous consent that the text of the bill and a summary of its provisions be printed in the RECORD.

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

"SMALL BUSINESS INVESTMENT COMPANY CAPITAL ACCESS ACT OF 2003" DESCRIPTION OF PROVISIONS

The bill amends section 514(a) of the Internal Revenue Code to exclude government-guaranteed capital borrowed by Debenture Small Business Investment Companies (SBICs) from debt for purposes of the Unrelated Business Taxable Income (UBTI) rules. This change would permit tax-exempt organizations to invest in SBICs without the burdens of UBTI recordkeeping or tax liability.

Currentl, while Debenture SBICs qualify for borrowed capital guaranteed by the Small Business Administration, the government guarantee forces a number of potential investors, namely pension funds and university endowment funds, to avoid investing in SBICs because they would be subject to tax liability for UBTI. Frequently, tax-exempt investors generally opt to invest in venture capital funds that do not create UBTI. As a result, an estimated 60 percent of the private capital potentially available to these SBICs is effectively "off-limits."

S. 855

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Small Business Investment Company Capital Access Act of 2003."

SEC. 2. MODIFICATION OF UNRELATED BUSINESS INCOME LIMITATION ON INVESTMENT IN CERTAIN DEBT-FINANCED PROPERTIES.

(a) In general.—Section 514(c)(6) of the Internal Revenue Code of 1986 (relating to acquisition indebtedness) is amended—

(1) by striking "include an obligation" and inserting "include an obligation,"

(2) (A) an obligation;";

(3) by striking the period at the end and inserting ", or,"

(b) by adding at the end the following:—

(8) indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 which is evidenced by a debenture, or;

(9) issued by such company under section 303(a) of such Act, or;"
April 10, 2003

CONGRESSIONAL RECORD — SENATE

By Mr. ROCKEFELLER (for himself, Mr. HARKIN, Mr. DASCHLE, and Mr. JOHNSON):

S. 856. A bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. DEWINE, Ms. LANDRIEU, and Mr. COCHRAN):

S. 857. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to individuals teaching in elementary and secondary schools located in rural or high unemployment areas and to individuals who achieve certification from the National Board for Professional Teaching Standards, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, today I am introducing two key educational initiatives designed to address the quality education across our country and respond to the compelling needs in our schools. When I meet with teachers and parents, and even business leaders in West Virginia, everyone is concerned about the condition of our school buildings and the importance of qualified committed teachers working in those classrooms.

To address these clear and compelling needs, I am introducing two education bills. The first initiative, America's Better Classroom Act of 2003, is a school construction initiative to respond to the overwhelming needs for school construction. The Department of Education reports that the average public school building is 42 years old. In 1998, Congress authorized that we needed $12 billion for school construction and renovations. A more recent survey in 2001 in the Journal of Education Finance indicates that the need is increasing, and the unmet need for school infrastructure over the next decade is over $200 billion. My State of West Virginia will need as much as $2 billion for school construction and renovations.

America's Better Classroom Act provides the financial tools to help build and renovate our schools. It will continue the Qualified Zone Academy Bonding, QZAB, Program that has helped economically disadvantaged communities. This provision would provide $2.8 billion to continue and expand the successful QZAB Program. In recent years, this program has provided $4.2 million for support school construction and renovations in disadvantaged communities. Effective programs have earned continued support.

But the truth is that many schools districts need help with school construction and renovations, which is why the America's Better Classroom Act creates a $22 billion Qualified School Bonding Program. Funding will be allocated to the states based on the Title I formula so it is targeted, but the states will have flexibility in allocating support to districts. Last summer, I toured two schools in Berkeley County, WV—Martinsburg High School and South Middle School. The high school was built in 1928, but it had been renovated. The middle school was built as built with serious work. The cafeteria had to serve as a part-time classroom, and they used portable trailers. These schools are in our eastern panhandle which is the region of the greatest population growth, so Berkeley County predicts that it will need to build or renovate nine schools over the next 10 years. Given the current state fiscal crisis, states and communities need the America's Better Classroom Act so that we can make needed investments. Also school construction can play a positive role in helping to stimulate our economy and create needed jobs. School construction is a more reliable economic stimulus, and an important investment in our children’s education.

I am proud to have Senators HARKIN, DASCHLE, and JOHNSON as cosponsors of this important initiative. Senator HARKIN has been a true leader on education issues throughout this career, including school construction and renovations.

The next initiative to improve education is a bipartisan bill, known as Incentives to Educate American Children Act, or I TEACH. I am proud to have Senators DEWINE, LANDRIEU, and COCHRAN as cosponsors.

Under No Child Left Behind, every classroom should have a qualified teacher. Studies suggest that an estimated 2 million new teachers will be needed in our classrooms over the next three decades. What will be needed to ensure that we recruit and retain good teachers in every classroom, including our most disadvantaged schools and our rural schools, which often have more trouble recruiting and keeping teachers. Unfortunately, without our help, America's disadvantaged and rural schools may not be able to attract the qualified teachers required by the No Child Left Behind Act. Isolated and impoverished high-paying and well-funded school districts for scarce classroom talent, they are already facing a desperate shortage of qualified teachers. As pressure to hire increases, that shortage could become a crisis, and children already at a disadvantage in relation to their more affluent and less isolated peers will be the ones who suffer most. Principals in West Virginia already are reporting shortages of trained teachers.

By Mr. CORZINE (for himself, Ms. SNOWE, Ms. CANTWELL, Mr. SMITH, Mr. DODD, Mr. LEAHY, Mrs. MURRAY, Mr. DURBIN, Mr. LAUTENBERG, and Mr. BINGAMAN):

S. 859. A bill to amend the Public Health Service Act with respect to facilitating the development of microbicides for preventing transmission of HIV and other diseases; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORZINE. Mr. President, I rise today to introduce legislation, the...
Microbicides Development Act of 2003. I am very pleased to be introducing this bipartisan bill along with my colleagues, Senators SNOWE, CANTWELL, GORDON SMITH, DODD, LEAHY, MURRAY, DURBIN, and LAUTENBERG. I thank my colleagues for their support of this important legislation, which we believe is vital to the pursuit of combating the global HIV/AIDS crisis.

As you know, recently released UN reports proclaim a most horrendous picture yet of the HIV epidemic, with AIDS continuing to kill more people worldwide than any other infectious disease, and sparing no corner of the world. According to the UN, China could have more than 10 million HIV-infected people by 2010. Infection rates in Russia and Eastern Europe are rising faster than anywhere else. India may soon have the largest number of people living with HIV/AIDS in the world. An S'Saharan Africa, 58 percent of adult HIV/AIDS cases were found in women, and in hard-hit nations such as Zambia, girls are five times more likely than boys to be HIV positive. Here in the United States, 30 percent of new HIV infections each year occur among women, most of whom, 64 percent, are African-American. The majority of U.S. women, 75 percent, acquire the disease through heterosexual transmission. My own State of New Jersey has the nation's highest HIV/AIDS infection rate among women and the sixth highest infection rate among all adults. And here in our nation's capital, one in three people with HIV now is a woman.

Biologically, women are four times more vulnerable to HIV infection. Their vulnerability increases due to their lack of economic and social power. This trend devastates families and puts children at risk. This astounding reality bears restating: The single greatest risk factor for a woman in the developing world of contracting the HIV virus is being married.

Women need HIV-prevention tools that they can control to safeguard their health and that of their families and communities. And consequently, there exists absolutely no HIV or STD prevention method that is within a woman's personal control. Condom use must be negotiated with a partner. We are all aware that for too many women, particularly low-income women in the developing world and many in our own country who rely upon a male partner for economic support, there is no power of negotiation. We know these women are at risk—yet, we expect them to protect themselves without any tools.

Today we have the opportunity to invest in groundbreaking research that can produce these tools, and ultimately, empower women. Microbicides are self-administered products that work outside the body to prevent transmission of STDs, including HIV/AIDS. I say "could" because due to insufficient research investments, no microbicides have been brought to market. This legislation would expand federal investments in research. According to the National Institutes for Health, NIH, the Centers for Disease Control and Prevention, CDC, and the United States Agency for International Development, USAID.

Microbicides Development Act will expedite the implementation of the NIH's five-year strategic plan for microbicide research, as well as expand coordination among Federal agencies already involved in this research, including NIH, CDC, and the United States Agency on International Development, USAID.

Perhaps most importantly, the legislation calls for the establishment of a Microbicide Research and Development Branch within the National Institute of Allergy and Infectious Diseases. The National Institutes of Health, principally through the National Institute of Allergy and Infectious Diseases, NIAID, spends the majority of Federal dollars in this area. However, microbicide research at NIH is currently conducted with no single line of administrative accountability or specific funding allocation. In addition, other federal agencies such as CDC and USAID undertake microbicide research and development activities. Because there is no federal coordination, however, there is the risk that inefficiencies and duplication of effort could result. Through a variety of committees Congress has requested that NIH and its Office of AIDS Research provide Congress with a "national coordination plan" for research and development in this area, but formal submission of this plan has been repeatedly delayed.

A branch dedicated to microbicide research and development at the NIH is essential to providing the appropriate staff and funding for the coordination of these activities at the NIH and across agencies. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "Microbicide Development Act of 2003".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) During 2002, AIDS caused the deaths of an estimated 3,010,000 people, including 1,200,000 women and 650,000 children under 15 years of age. An estimated 34,000,000 children living today have lost one or both parents due to AIDS.

(2) Worldwide, heterosexual transmission is accounting for an increasing share of new HIV infections, with adolescents, women, and disadvantaged people of particular risk.

(3) In the United States, for example, African American and Latina women account for 64 percent and 17 percent of HIV cases, respectively, even though they represent only 25 percent of the total United States female population.

(4) Half of the 38,600,000 adults living today with HIV/AIDS are women.

(5) Biological, cultural, economic, and social factors combine to make women and girls particularly vulnerable to HIV and other sexually transmitted diseases (referred to in this section as "STDs"). In the hardest hit areas of Africa, almost one-quarter of 15 to 19-year-old girls and boys are infected with HIV, compared to 4 percent of their male peers.

(6) In addition to HIV, other STDs can cause serious, costly, even deadly conditions for women and their children, including infertility, pregnancy complications, cervical cancer, infant mortality, and higher risk of contracting HIV. When women infected with HIV, they risk passing along the infection to their infants, either through pregnancy, childbirth, or breastfeeding.

Regrettably, too often, prevention methods do not meet the needs of the millions of women worldwide who, for cultural, economic, and social reasons, cannot insist on protective measures such as abstinence, condom use, or mutual monogamy.

(8) A large majority of women become infected with HIV with only one partner—their husbands. Women need preventative measures that they can use consistently within ongoing, long-term relationships.

(9) Microbicides are a promising new technology complementary to vaccines, that could put the power of prevention into women's hands. Formulated as gels, creams, or films, microbicides inactivate, block, or otherwise interfere with the pathogen that cause HIV/AIDS and other STDs.

(10) Even a moderately effective microbicide could have a substantial impact on the HIV epidemic. The London School of Hygiene and Tropical Medicine estimates that a 60 percent efficacious microbicide introduced into the 73 poorest countries could aver 2,500,000 HIV infections in men, women, and children over 3 years.

(11) Microbicides would also benefit men, because their protective effect is likely to be bilateral.

(12) Numerous potential microbicides are poised for successful development.
products are in clinical trials and approximately 50 compounds exist that could be investigated further. There is a backlog in the research and development pipeline, however, so that the National Institutes of Health, the Centers for Disease Control and Prevention, and the United States Agency for International Development—have played important roles in progressing to date, but strong, effective, well-coordinated, and visible public sector leadership will be essential for the promise of microbicides to be realized.

(14) A microbicidal agent could be available within 5 to 7 years if sufficient public sector funding were made available to accelerate research and support the necessary clinical trials.

(15) Microbicidal research and development currently receive only 2 percent of the AIDS research budget from the National Institutes of Health, not nearly enough to keep pace with public health needs and scientific opportunities.

(16) The United States Agency for International Development sustains strong partnerships with public and private organizations working on microbicidal research, importation, and field development in developing countries where its experience is extensive. The long experience of such Agencies in logistics management, service delivery, provider training, and social marketing positioning it well to prepare for and implement the introduction of microbicides once they are available.

(17) The Centers for Disease Control and Prevention also engages in critical microbicidal research and clinical testing, and has a long history of conducting field trials in developing countries.

(18) For the microbicidal pipeline to advance significantly and the essential clinical trials to be fielded soon, the current amount of Federal investment needs to increase to $300,000,000 in fiscal year 2004 and to $100,000,000 in fiscal year 2005.

TITLE I—MICROBICIDAL RESEARCH AT THE NATIONAL INSTITUTES OF HEALTH

SEC. 201. OFFICE OF AIDS RESEARCH; PROGRAM REGARDING MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Subpart I of part D of title XXIII of the Public Health Service Act (42 U.S.C. 300c-40 et seq.) is amended by inserting after section 2591 the following:

"SEC. 2591A. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

"(a) Federal Strategic Plan.—

(1) In general.—The Director of the Office of AIDS Research shall develop and implement a Federal strategic plan for the conduct and support of microbicidal research and shall biannually review and as appropriate revise the plan.

(2) Coordination.—In developing, implementing, and reviewing the plan, the Director of the Office of AIDS Research shall coordinate with—

(A) other Federal agencies, including the Director of the Centers for Disease Control and Prevention and the Administrator of the United States Agency for International Development, involved in microbicidal research; and

(B) the microbicidal research community; and

(c) health advocates.

(b) Expansion and Coordination of Activities.—The Director of the Office of AIDS Research, acting in coordination with other relevant institutes and offices, shall expand, intensify, and coordinate the activities of all appropriate institutes and components of the National Institutes of Health, including NIAID, NCI, NIBR, NINDS, NIDDK, and NHLBI, in research on the development of microbicides to prevent the transmission of HIV and other sexually transmitted diseases.

(c) Microbicidal Development.—In carrying out subsection (b), the Director of the National Institute of Allergy and Infectious Diseases shall establish within the National Institute of Allergy and Infectious Diseases of the Division of AIDS in the Institute, a branch charged with carrying out microbicidal research and development. In establishing such branch the Director shall ensure that there are a sufficient number of employees dedicated to carry out the mission of the branch.

(d) Report to Congress.—

(1) In general.—Not later than 1 year after the date on which the initial Federal strategic plan is developed under subsection (a), and biannually thereafter, the Director of the Office of AIDS Research shall submit to the appropriate committees of Congress a report that reflects the Federal strategies being implemented by the Federal Government regarding microbicidal research and development. Each such report shall include—

(A) a description of activities with respect to microbicidal research and supported by the Federal Government;

(B) a summary and analysis of expenditures, during the period for which the report is prepared, for activities with respect to microbicidal-specific research and development, including the number of employees involved in these activities within each agency;

(C) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides; and

(D) a review of the remaining scientific and programmatic obstacles with respect to microbicides; and

(e) an updated Federal Strategic Plan, including professional judgment funding projections.

(2) Appropriate Congressional Committees Definition.—For the purposes of this subsection, the term ‘appropriate committees’ of Congress means the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives and the Committee on Health, Education, Labor, and the Committee on Appropriations of the Senate.

(f) HIV Definition.—For purposes of this section, the term ‘HIV’ means the human immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

(g) Authorization of Appropriations.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.

TITLE II—MICROBICIDAL RESEARCH AT THE CENTERS FOR DISEASE CONTROL AND PREVENTION

SEC. 202. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended—

(1) by transferring section 317R so as to appear after section 317X and

(2) by inserting after section 317R (as so transferred) the following:

"SEC. 317Z. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER DISEASES.

"(a) Development and Implementation of the Microbicidal Agenda Supported by the Centers for Disease Control and Prevention.—The Director of the Centers for Disease Control and Prevention shall fully implement the Center’s 5-year topical microbicidal agenda to support microbicidal research and development. Such an agenda shall include—

(1) conducting laboratory research in preparation for, and support of, clinical microbicidal trials;

(2) conducting behavioral research in preparation for, and support of, clinical microbicidal trials;

(3) developing and characterizing domestic populations and international cohorts appropriate for Phase I, II, and III clinical trials of candidate topical microbicides;

(4) conducting Phase I and II clinical trials to assess the safety and acceptability of candidate microbicides;

(5) conducting Phase III clinical trials to assess the efficacy of candidate microbicides; and

(6) providing technical assistance to, and consulting with, a wide variety of domestic and international entities involved in developing and evaluating microbicides, including health agencies, extramural researchers, industry, health advocates, and nonprofit organizations; and

(7) developing and evaluating the diffusion and effects of implementation strategies for use of effective topical microbicides.

(b) Staffing.—In carrying out the microbicidal agenda, the Centers for Disease Control and Prevention shall ensure that there are sufficient numbers of dedicated employees for carrying out the agenda under section (a).

(c) Report to Congress.—

(1) In general.—Not later than 1 year after the date of enactment of this section, and biannually thereafter, the Director of the Centers for Disease Control and Prevention shall submit to the appropriate committees of Congress, a report on the strategies being implemented by the Centers for Disease Control and Prevention with respect to microbicidal research and development. Such report shall be submitted alone or as part of the overall Federal budget on microbicides compiled annually by the National Institutes of Health Office of AIDS Research and under section 2591A. Such report shall include—

(A) a description of activities with respect to microbicides conducted and supported by the Centers for Disease Control and Prevention;

(B) a summary and analysis of expenditures, during the period for which the report is prepared, for activities subject to microbicidal-specific research and development, including the number of employees involved in these activities;

(C) an updated Federal Strategic Plan, including professional judgment funding projections;

(D) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides; and

(E) a review of the remaining scientific and programmatic obstacles with respect to microbicides.

(Appropriate Congressional Committees Definition.—For the purposes of this subsection, the term ‘appropriate committees’ of Congress means the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives and the Committee on Health, Education, Labor, and the Committee on Appropriations of the Senate.

(F) HIV Definition.—For purposes of this section, the term ‘HIV’ means the human immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

(G) Authorization of Appropriations.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.

HIV Definition.—For purposes of this section, the term ‘HIV’ means the human immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).
immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

(e) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.

TITLE III—MICROBICIDE RESEARCH AT THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 301. MICROBICIDES FOR PREVENTING TRANSMISSION OF HIV AND OTHER SEXUALLY TRANSMITTED DISEASES.

(a) DEVELOPMENT AND IMPLEMENTATION OF THE MICROBICIDE AGENDA SUPPORTED BY THE AGENCY FOR INTERNATIONAL DEVELOPMENT.—The Office of HIV/AIDS of the Agency for International Development, in conjunction with other offices within the Agency for International Development, shall fully implement the Agency’s microbicidal agenda supporting development of microbicides, and facilitate wide-scale introduction once microbicidal products are available. Such an agenda shall include—

(1) support for the discovery, development, and preclinical evaluation of topical microbicides;

(2) support for the conduct of clinical studies of microbicides to assess safety, acceptability, and effectiveness in reducing HIV and other sexually transmitted diseases;

(3) support for behavioral and social science research relevant to microbicidal development, testing, acceptability, and use;

(4) support for preintroduction and introductory studies of safe and effective microbicides in developing countries; and

(5) facilitation of access to microbicides as they become available to women at highest risk for HIV and other sexually transmitted diseases as soon as possible.

(b) STAFFING.—The Office of HIV/AIDS of the Agency for International Development shall have a sufficient number of dedicated employees for purposes of carrying out the agenda under subsection (a).

(c) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, and biannually thereafter, the Administrator of the Agency for International Development shall submit to the appropriate committees of Congress a report on the strategies being implemented by the Agency for International Development with respect to microbicidal research and development. Such report shall be submitted alone or as part of the overall Federal strategic plan on microbes compiled annually by the National Institutes of Health of the Agency for International Development.

(2) a summary and analysis of expenditures, if any, for which the report is prepared, for activities with respect to microbicide-specific research and development, including the number of employees involved in these activities;

(3) a description and evaluation of the progress made, during the period for which such report is prepared, towards the development of effective, reliable, and acceptable microbicides;

(4) a review of the remaining scientific and programmatic obstacles with respect to microbicides; and

(5) a description of the steps being taken to increase access and availability of approved microbicidal products to prevent HIV and other sexually transmitted diseases.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES' DEFINITION.—For the purposes of this subsection, the term ‘appropriate committees of Congress’ means the Committee on International Relations and the Committee on Appropriations of the House of Representatives and the Senate Committee on Foreign Relations and the Committee on Appropriations of the Senate.

(d) DEFINITION.—For the purposes of this section, the term ‘HIV’ means the human immunodeficiency virus. Such term includes acquired immune deficiency syndrome (AIDS).

(e) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 and 2005, and such sums as may be necessary in subsequent fiscal years to sustain multiyear funding at a productive level.

Mr. DURBIN. Mr. President, I am honored to be a cosponsor of the Microbicides Development Act of 2003. The legislation calls for a redoubling of the effort by the National Institutes of Health and the Centers for Disease Control to develop microbicides, a class of products that can prevent transmission of HIV and other sexually transmitted diseases in women and their partners.

As this Congress continues to fight AIDS, taking tiny steps in pursuit of a challenge racing away from us, I see the development of microbicides as an "tiny" step forward. I believe microbicides are an important addition to the arsenal to fighting AIDS, and indeed the Global AIDS bill I introduced, The Global CARE Act of 2003, S. 250, includes microbicides among the preventative measures the U.S. should support.

I, and the other cosponsors of this important legislation, see a real need and urgency to expand the range of preventive interventions for HIV transmission. The ABC options for preventing HIV infection, which remain a key part of our response and contribute to the world's ability to slow the spread of HIV/AIDS, have not changed since the 1980s: A, abstinence when it comes to sexual activity; B, be faithful to one partner; C, if you are going to ignore the other two, use a condom. Despite the effectiveness of the ABCs, however, it is unlikely that they will be available before 2007, which leads to the general perception that there has been insufficient progress in this area. Three versions are currently in the final stages of clinical trials to determine whether they are safe and effective. Many factors contribute to this slow progress. The National Institutes of Health, NIH, reports that microbicide research requires huge and complex efficacy and effectiveness studies that must be conducted in areas with high HIV incidence rates. Such rates occur predominantly in developing countries where the research infrastructure is underdeveloped. Given this dependency on poorer, developing nations, it is not surprising that no large pharmaceutical company is interested in funding microbicide development. A second obstacle to microbicide development is the ethical obligation to provide counseling and make condoms available to the study subjects, which adds to the complexity and
size of the trials. As a result, NIH explains, few Phase III efficacy trials have been completed. Of those completed, few have yielded promising results.

Reflecting on the reality of the global epidemic, United Nations Secretary General Kofi Annan stated that the face of the HIV epidemic is that of a woman. “If you want to save Africa,” Annan says, “you must save the African woman first. It is they who care for the young, the sick, and the dying. It is they who nurture social networks that help societies share burdens.”

Lack of access to treatment and care means that for the majority of HIV-positive women throughout the world, HIV infection is a death sentence. In Haiti, for example, AIDS is now the leading cause of death for women of childbearing age.

Microbicides will never become a viable option for prevention unless a serious amount of money is invested in their development. Senator Corzine’s legislation will make microbicide research a priority, calling for the expansion and coordination of microbicide activities at the National Institutes of Health and other agencies working in this field. The bill requires the Centers for Disease Control to implement a 5-year topical research plan and requires the U.S. Agency for International Development to develop and implement a microbicide agenda.

I am proud to join Senator Corzine as a cosponsor of this legislation and hope that the Sciences will join us as we determine the next steps in our battle against AIDS, including the development of prevention efforts that may help women take control of their lives and their survival.

By Mr. Hollings (for himself, Mr. Gregg, Mr. Kerry, Ms. Snowe, Mr. Inouye, Mr. Reed, Mr. Breaux, Mr. DeWine, Mr. Sarbanes, Mr. Kennedy, Mr. Mikulski, Mr. Cochran, Mr. Murray, Mr. Corzine, Mr. Collins, Mr. Dodd, Mr. Levin, Mr. Nelson of Florida, Mr. Wyden, Mr. Lieberman, Mrs. Feinstein, Mr. Lautenberg, Ms. Cantwell, and Mr. Chafee):

S. 861. A bill to authorize the acquisition of interests in undeveloped coastal areas in order to better ensure their protection from development; to the Committee on Commerce, Science, and Transportation.

Mr. Hollings. Mr. President, I rise today with my colleague Senator Gregg to introduce the Coastal and Estuarine Land Protection Act of 2003. Senator Gregg and I introduced this bill last session, and it was reported favorably by the Commerce Committee, but time did not permit action to be completed before the end of the Congress. My colleagues and I will work hard to pass this important piece of legislation during the 108th Congress.

I would like to thank our cosponsors, 24 in all, Senators Kerry, Snowe, Inouye, Jack Reed, Breaux, DeWine, Sarbanes, Biden, Kennedy, Mikulski, Cochran, Murray, Corzine, Collins, Dodd, Levin, Bill Nelson, Wyden, Lieberman, Feinstein, Lautenberg, Cantwell, and Chafee for their strong support of this bill, which marks another important chapter of our thirty year effort to put coastal and ocean issues at the forefront of environmental policy.

I am also proud to say that the bill is strongly supported by The Trust for Public Land, Coastal States Organization, The Nature Conservancy, Land Trust Alliance, International Association of Fish and Wildlife Agencies, American Sportfishing Association, and the South Carolina Wildlife Federation. I understand that the U.S. Commission on Ocean Policy will also endorse this approach.

When I was Governor of South Carolina over 30 years ago, I experienced firsthand the need for Federal direction and assistance to the States to enable them to effectively and sustainably manage and develop coastal resources. My experiences during a series of coastal hearings and continued research in the Senate led me to write the Coastal Zone Management Act of 1972, which provided clear policy objectives for states to establish coordinated coastal zone management programs to help manage coastal development and protect.

But we appear to need more tools to help States continue the job we started in 1972. In the year 2003, as our population grows, more and more people are moving to the coast to enjoy its beauty, its recreational opportunities, and this is true up and down the Atlantic coast, which contains 37 percent of the Nation’s estuarine areas.

The good news is that there are ways we can make a difference, and we have some good models we can turn to. I am proud to say my home State of South Carolina is a leader in this area. The past decade I have led an extensive cooperative conservation effort, bringing together the State of South Carolina, private landowners, groups like The Nature Conservancy, Ducks Unlimited and federal partners like NOAA and the Fish and Wildlife Service to protect the ACE Basin. It is now the largest protected estuarine area on the East Coast, a 350,000-acre area at the convergence of the Edisto, Ashepoo and Combahee Rivers, which comprises many ecologically important habitats that are home to many fish and bird species, including a number of endangered species. An outcome of these efforts is that the ACE Basin, already home to a National Wildlife Refuge, was declared a National Estuarine Research Reserve in 1992, and has been pronounced in size and scope. In both the ACE Basin, the partnership worked creatively and in a coordinated manner, and we successfully obtained land acquisition funds through a variety of
federal sources, including the Forest Legacy Program.

What became clear, however, is that there is no Federal program explicitly setting aside funding for conservation of coastal lands, where the needs are clearly the greatest. That is exactly what the Coastal and Estuarine Land Protection Act of 2003 will do. It authorizes a competitive matching grant program in NOAA to enable states to permanently protect important coastal areas.

Under this NOAA program, coastal states can compete for matching funds of up to 75 percent to acquire land or easements for the protection of endangered coastal areas that have considerable conservation, recreation, ecological, historical, or aesthetic values threatened by development or conversion. The bill also provides funding for a regional watershed demonstration project that can be used as a model for future watershed-scale programs. The program also authorizes $75 million for the fiscal year 2004 and beyond, with an additional $5 million for the regional watershed demonstration project.

By establishing a plan for the preservation of our coastal areas, the Coastal and Estuarine Land Protection Act will build on the foundation laid down by the CZMA, all in stride with the changing times, growing number of people, and limited resources available today. When it comes to the environment, rules and regulations sometimes can’t keep up. Sometimes cooperative actions work better and we can turn to models that encourage joint conservation projects among folks who all want the same thing—sustainable coastal communities.

Partnership programs among federal government, state agencies, local governments, private landowners and nonprofits, like the ACE Basin Project, work and we need to encourage these partnerships in all our coastal areas if we are to prevent degradation of our coastal areas. The good news is that we can make a difference today by providing the funding for land conservation partnerships provided for by the Coastal and Estuarine Land Protection Act. I am proud to be a sponsor of this bill, which will not only improve the quality of the coastal areas and marine life it supports, but also sustain surrounding communities and their way of life.

I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 861

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coastal and Estuarine Land Protection Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Coastal and estuarine areas provide important nursery habitat for two-thirds of the nation’s commercial fish and shellfish, provide nesting and foraging habitat for coastal birds, harbor significant natural plant communities, and serve to facilitate coastal flood control and protection.

(2) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) recognizes the national importance of coastal areas and their ecological vulnerability to anthropogenic activities by establishing a comprehensive Federal-State partnership for protecting natural resources and managing growth in these areas.

(3) The National Estuarine Research Reserve system established under that Act represents the first federal program to designate estuarine and marine areas for long-term protection and for the conduct of education and research critical to the protection and conservation of coastal and estuarine resources.

(4) Intense development pressures within the coastal zone are driving the need to provide coastal managers with a wider range of tools to protect and conserve important coastal and estuarine areas.

(5) Protection of undeveloped coastal lands through the acquisition of interests in property from a willing seller are a cost-effective means of providing these areas with permanent protection.

(6) Permanent protection of lands in the coastal zone is a necessary component of any program to maintain and enhance coastal and estuarine areas for the benefit of the Nation, including protection of water quality, access to public beachfront, conserving wildlife habitat, and sustaining sport and commercial fisheries.

(7) Federal-State-nongovernmental organization pilot land acquisition projects have already substantially contributed to the long-term health and viability of coastal and estuarine systems.

(8) Enhanced protection of estuarine and coastal areas can be attained through water-shed-based acquisition strategies coordinated through Federal, State, regional, and local efforts.

SEC. 3. ESTABLISHMENT OF COASTAL AND ESTUARINE LAND PROTECTION PROGRAM.

(a) IN GENERAL.—The Secretary of Commerce shall establish a Coastal and Estuarine Land Protection Program, in cooperation with appropriate State, regional, and local entities under subsection (b), for the purposes of protecting the environmental integrity of important coastal and estuarine areas, including wetlands and forests, that have significant ecological, cultural, historical, or aesthetic values, and that are threatened by conversion from their natural, undeveloped, or recreational state to other uses. The program shall be administered by the National Ocean Service of the National Oceanic and Atmospheric Administration through the Office of Ocean and Coastal Resource Management.

(b) PROPERTY ACQUISITION GRANTS.—The Secretary shall make grants under the program to coastal States, except coastal States that have less than 1 percent of their wetlands to development or conversion to other uses by the date of enactment of this Act, with approved coastal zone management plans or National Estuarine Research Reserve units for the purpose of acquiring property or interests in property described in subsection (a) that will further the goals of—

(1) a Coastal Zone Management Plan or Program approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); or

(2) a National Estuarine Research Reserve management plan; or

(3) a state or local watershed protection plan involving coastal States with approved coastal zone management plans.

(c) GRANT PROCESS.—The Secretary shall allocate funds to coastal States or National Estuarine Research Reserves under this section through a competitive grant process in accordance with guidelines that meet the following requirements:

(1) The Secretary shall consult with the State’s coastal zone management program, the National Estuarine Reserve in that State, and the lead agency designated by the Governor for coordinating the establishment and implementation of this Act (if different from the coastal zone management program).

(2) Each participating State shall identify priority conservation needs within the State, the threats to be posed by development of lands of the program, and the threats to those values that should be avoided.

(3) Each participating State shall evaluate how the acquisition of property or easements might impact working waterfront needs.

(4) The applicant shall identify the values to be protected by inclusion of the lands in the programs, management activities that are planned and the manner in which they may affect the values identified, and any data that are relevant to administration and management of the land.

(5) Awards shall be based on demonstrated need for protection and the ability to successfully leverage funds among participating entities, including Federal programs, regional organizations, State and other governmental units, landowners, corporations, or private organizations.

(6) Applications must be determined to be consistent with the State’s or territory’s approved coastal zone plan, program and policies prior to submittal to the Secretary.

(7) Priority shall be given to lands described in subsection (a) that can be effectively managed and protected and that have significant ecological or watershed protection values.

(8) In developing guidelines under this section, the Secretary shall consult with other Federal agencies and non-governmental entities expert in land acquisition and conservation procedures.

(9) Eligible States or National Estuarine Research Reserves may allocate grants to local governments or agencies eligible for assistance under section 304(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455a) and may acquire lands in cooperation with nongovernmental entities and Federal agencies.

(10) The Secretary shall develop performance measures that will provide periodic evaluation of the program’s effectiveness in meeting the purposes of this section and such evaluation shall be reported to Congress.

MATCHING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may not make a grant under the program unless the Federal funds are matched by non-Federal funds in accordance with this subsection.

(2) MAXIMUM FEDERAL FUNDS.—

(A) 75 PERCENT FEDERAL FUNDS.—No more than 75 percent of the funding for any grant under this section shall be derived from Federal sources, unless such requirement is specifically waived by the Secretary.

(B) WAIVER OF REQUIREMENT.—The Secretary may grant a waiver of the limitation in subparagraph (A) for underserved communities, communities that have an inability to draw on other sources of funding because of the small population or low income of the community, or for other reasons the Secretary deems appropriate.

(3) OTHER FEDERAL FUNDS.—Where financial assistance awarded under this section represents only a portion of the total cost of a project, funding from other Federal sources...
may be applied to the cost of the project. Each portion shall be subject to match requirements under the applicable provision of law.

(4) Source of matching cost share.—For purposes of paragraph (2)(A), the non-Federal cost share for a project may be determined by taking into account the following:

(A) Federal share of the non-Federal match if the lands are identified in project plans and acquired within three years prior to the submission of the project application or after the submission of a project application until the project grant is closed (not to exceed 3 years). The appraised value of the land at the time of project closing will be considered to be the correct value.

(B) Costs associated with land acquisition, land management planning, remediation, restoration, and enhancement may be used as non-Federal match if the activities are identified in the plan and expenses are incurred within the period of the grant award.

These costs may include either case or in-kind contributions.

(e) Regional Watershed Demonstration Project.—The Secretary may provide up to $5,000,000 to fund demonstration projects that the Secretary determines will meet the requirements of this section, and—

(1) leverages land acquisition funding from other Federal, State, and non-Federal programs that other Federal contributions, at a minimum, equal the amounts provided by the Secretary.

(ii) provides a model for future regional watershed protection projects.

(iii) provides for the creation of conservation corridors and preservation of unique coastal habitat;

(iv) provides largely unfragmented habitat under imminent threat of development or conversion;

(v) provides water quality protection for areas set aside for research under the National Estuarine Research Reserve program; and

(vi) provides a model for future regional watershed protection projects.

(f) Reservation of Funds for National Estuarine Research Reserve Sites.—No less than 15 percent of funds made available under this section shall be available for acquisition of properties under the National Estuarine Research Reserve acquisitions.

(g) Limit on Administrative Costs.—No more than 5 percent of the funds made available under this section shall be used by the Secretary for planning or administration of the program. The Secretary shall provide a report to Congress with an account of all expenditures under this section for fiscal year 2004, fiscal year 2005, and triennially thereafter.

(h) Title and Management of Acquired Property.—

(1) In general.—If any property is acquired in whole or in part with funds made available under this section, the grant recipient shall provide such assurances as the Secretary may require that—

(A) the title to the property will be held by the grant recipient or other appropriate public agency designated by the recipient in perpetuity;

(B) the property will be managed in a manner that is consistent with the purposes for which the land entered into the program and shall not convert such property to other uses; and

(C) if the property or interest in land is sold, exchanged, or divested, funds equal to the correct value will be returned to the Secretary, for re-distribution in the grant process.

(2) Conservation easement.—In this subsection, the term “conservation easement” includes an easement, recorded deed, or interest deed where the grantee acquires all rights, title, and interest in a property, that do not conflict with the goals of this Act except those rights, title, and interests that may run with the land that are expressly reserved by the Secretary for the purchase or maintenance of property that the land entered into the program and any other requirements of this section.

(i) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary—

(1) $50,000,000 for each of fiscal years 2004 through 2007 to carry out this section (other than subsection (e)); and

(2) $5,000,000 for fiscal year 2004 to carry out subsection (e), such sum to remain available without fiscal year limitation.

SEC. 4. Assistance from other Agencies.

Section 301(a) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456(a)) is amended by striking "any qualified person" for the purposes of carrying out this section, and inserting "any other Federal agencies (including interagency financing of Coastal America activities) and any other qualification (except the purposes of carrying out this section)."

Mr. GREGG. Mr. President, I rise today along with Senator HOLLINGS to introduce the Coastal and Estuarine Land Protection Act. We are introducing this much-needed coastal protection act that I have discussed with Senator KERRY, SNOWE, INOUYE, REED, BREAUX, DEWINE, SARABANES, BIDEN, KENNEDY, MIKULSKI, COCHRAN, MURRAY, CORZINE, COLLINS, DODD, LEVIN, NELSON, WYDEN, LIEBERMAN, FEINSTEIN, LAUTENBERG, CANTWELL, and CHAFEE. In addition, this legislation is supported by the Trust for Public Land, the Coastal Conservation Association, and the Land Trust Alliance.

The Coastal and Estuarine Land Protection Act promotes coordinated land acquisition and protection efforts in coastal and estuarine areas by fostering partnerships between non-governmental organizations and Federal, State, and local governments. With Americans rapidly moving to the coast, pressures to develop critical coastal ecosystems are increasing. There are fewer undeveloped and pristine areas left in the Nation’s coastal and estuarine watersheds. These areas provide important nursery habitat for two-thirds of the Nation’s commercial fish and shellfish, provide nesting and foraging habitat for coastal birds, harbor significant natural communities, and serve to facilitate coastal flood control and pollutant filtration.

The Coastal and Estuarine Land Protection Act pairs willing sellers through community-based initiatives with sources of Federal funds to enhance environmental protection. Lands can be acquired in full or through easements, and none of the lands purchased through this program would be held by the Federal Government. This bill puts land conservation initiatives in the hands of state and local communities. This new program, authorized through the National Oceanic and Atmospheric Administration at $50,000,000 per year, will provide Federal assistance to States with approved conservation management programs or to National Estuarine Research Reserves through a competitive grant process. Federal matching funds may not exceed 75 percent of the cost of a project under this program, and non-Federal funds may account in-kind support toward their portion of the cost share.

This coastal land protection program provides much-needed support for local coastal conservation initiatives throughout the country. In my role on the Commerce, Justice, State Appropriations Subcommittee, I have been able to secure significant funds for the Great Bay estuary in New Hampshire. This estuary is the jewel of the sea-coast region, and is home to a wide variety of plants and animal species that are particularly threatened by encroaching development and environmental pollutants. By working with local communities to purchase lands or easements on these valuable parcels of land, New Hampshire has been able to successfully conserve the natural and scenic heritage of this vital estuary.

Programs like the Coastal and Estuarine Land Protection Program will now enable other States to participate in these community-based conservation efforts in coastal areas. This program was modeled after the U.S. Department of Agriculture’s successful Forest Legacy Program, which has conserved millions of acres of productive and ecologically significant forest land around the country.

I welcome the opportunity to offer this important legislation, with my close friend, Senator HOLLINGS. I am thankful for his strong leadership on this issue, and look forward to working with him to make the vision for this legislation a reality, and to successfully conserve our coastal lands for their ecological, historical, recreational, and aesthetic values.

By Mr. ROCKEFELLER (for himself, Mr. DEWINE, Ms. LANDRIEU, Ms. COLLINS, Mr. LEVIN, and Mr. JOHNSON):

S. 862. A bill to promote the adoption of children with special needs; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce the Adoption Equity Act of 2003. I am proud to have a bipartisan group of cosponsors including Senators DEWINE, LANDRIEU, COLLINS, LEVIN, and JOHNSON. Work on this legislation is based on the bipartisan work of the Senate coalition that supported the 1997 Adoption and Safe Families Act, and an historic effort to ensure that a child’s safety and health are paramount, and that every child should have a permanent home.
The Adoption and Safe Families Act was the most sweeping and comprehensive piece of child welfare legislation passed in over a decade, and since its enactment, adoptions from our foster care system have nearly doubled. In my State of West Virginia, adoptions have nearly tripled. Those adopted children now have a permanent home. But there are still 131,000 in foster care nationwide who have the goal of adoption but are still waiting. In West Virginia, we have 520 children in foster care. By definition, those children might qualify for support. I believe each child with special needs who is waiting for adoption deserves help but under current law only some do. They are the innocent ones who were victims of abuse and neglect. Clearly we must do more for those children.

Throughout the process of developing the Adoption Act we heard about the challenging circumstances facing children--involving special needs''. These include children who are the most difficult to place into permanent homes, often due to their age, disability or status as part of a group of siblings needing to be placed together. One significant provision of ASFA was the assurance of ongoing health care coverage for all children with special needs who move from foster care to adoption. Parents willing to adopt such children were promised health care coverage in 1997 which is essential.

While all special needs children that are adopted maintain health care coverage, only half are eligible for adoption assistance payments. Current law provides for the payment of federal adoption subsidies to families who adopt only those special needs children whose biological family would have qualified for welfare benefits under the 1996 AFDC standards. Federal adoption subsides are a vital link in securing adoptive homes for special needs children who by definition would not be adopted without support.

Under current law, a child's eligibility for adoption assistance benefits is dependent on the income of his or her biological parents even though these parents' legal rights to the child have been terminated, and these are the parents who either abused or neglected the child. This is simply, wrong. The Adoption Equality Act will eliminate this anomaly in Federal law by making all special needs children eligible for Federal adoption subsidies.

The Adoption Equality Act is the next logical step for family preservation and promote adoptions from foster care. The bill is designed to "level the playing field" by ensuring that all children with special needs, and the loving families who adopt them, have the support they need to grow and develop.

First, the bill removes the requirement that an income eligibility determination be made in regard to the child's biological parents, whom the child is leaving. By ensuring Federal adoption subsidy to be paid to all families who adopt children who meet the definition of special needs.

Second, the bill continues to give states flexibility to determine the definition of a child with special needs, but it is clear that adoption subsidies should only be provided if the child could not be adopted without such assistance.

Third, the bill requires that States reinforce the monies they save as a result of this bill back into their state child abuse and neglect programs which should help promote prevention and family support.

When we talk about how to help abused and neglected children in this country, many complex questions are raised about what constitutes best policy, and how Federal tax dollars should be spent. Yet, at the heart of all the questions is the determination that an income eligibility determination be made in regard to the child's biological parents, whom the child is leaving. By ensuring Federal adoption subsidies should only be provided if the child could not be adopted without such assistance.

We've come to rely on them to fight side-by-side with full-time active duty soldiers. Each time our Nation has needed them, the Guard and Reserves have stepped up to the plate. Between 1945 and 1989, the Guard and Reserves were activated four times. Only four times in 45 years. Between 1990 and the present, in less than 15 years, the Guard and Reserves were activated six times. They have become "a central element of our national defense."

Today, I am introducing two new pieces of legislation to address unique difficulties facing Guard and Reserve members and, in fact, all of our military. It's hard to believe, but 20 percent of the men and women in the Guard and Reserves don't even have health insurance. Some have left their jobs, their homes, and their families to serve this nation with pride and distinction. They are doing their patriotic duty to support their families, in order to assist the parent and guardians of certain military dependents, in order to assist the parent and guardians in paying for the cost of child care services provided to the dependents, in order to assist the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. Mr. President, I rise today to introduce two important pieces of legislation that offer a help to the members of the National Guard, the Reserves, and the regular active-duty military.

The National Guard and Reserves used to be called "forces of last resort," but they have become much more. Between 1945 and 1989, the Guard and Reserves were activated four times. Only four times in 45 years. Between 1990 and the present, in less than 15 years, the Guard and Reserves were activated six times. They have become "a central element of our national defense."

Mr. MURRAY. By Mr. EDWARDS (for himself, Mr. MILLER, Mr. BINGAMAN, Ms. MIKULSKI, and Mrs. MURRAY):

S. 864. A bill to amend the Child Care and Development Block Grant Act of 1990 to provide for grants to parents and guardians of certain military dependents, in order to assist the parent and guardians in paying for the cost of child care services provided to the dependents, in order to assist the Committee on Health, Education, Labor, and Pensions.

Mr. EDWARDS. Mr. President, I rise today to introduce two important pieces of legislation that offer a help to the members of the National Guard, the Reserves, and the regular active-duty military.

The National Guard and Reserves used to be called "forces of last resort," but they have become much more. Between 1945 and 1989, the Guard and Reserves were activated four times. Only four times in 45 years. Between 1990 and the present, in less than 15 years, the Guard and Reserves were activated six times. They have become "a central element of our national defense."

We've come to rely on them to fight side-by-side with full-time active duty soldiers. Each time our Nation has needed them, the Guard and Reserves have stepped up to the plate. Between 1945 and 1989, the Guard and Reserves were activated four times. Only four times in 45 years. Between 1990 and the present, in less than 15 years, the Guard and Reserves were activated six times. They have become "a central element of our national defense."

Today, I am introducing two new pieces of legislation to address unique difficulties facing Guard and Reserve members and, in fact, all of our military. It's hard to believe, but 20 percent of the men and women in the Guard and Reserves don't even have health insurance. Some have left their jobs, their homes, and their families to serve this nation with pride and distinction. They are doing their patriotic duty to support their families, in order to assist the parent and guardians of certain military dependents, in order to assist the Committee on Health, Education, Labor, and Pensions.

S. 864. A bill to amend the Child Care and Development Block Grant Act of 1990 to provide for grants to parents and guardians of certain military dependents, in order to assist the parent and guardians in paying for the cost of child care services provided to the dependents, in order to assist the Committee on Health, Education, Labor, and Pensions.

By Mr. EDWARDS (for himself, Mr. BINGAMAN, Mrs. MURRAY):
Reserves take a pay cut, making it more difficult to hire help.

Families can get child care on a military base, which is great for some families. But members of the Guard in North Wilkesboro, for example, live 173 miles away from the nearest military installation. Those families are totally left out.

My National Guard and Reserve Child Care Relief Act would give families financial help for child care in their hometown. We would help families with a mom or dad called away on active duty. This is a concrete, practical way to make a difference in people’s lives.

I also have a bill to provide some help paying for education for the men and women who serve our country in the military. Nearly a quarter of Guardsmen and Reservists are college students, and many more are graduates with student loans.

While our patriots are fighting for their country overseas, we charge them interest on their student loans here at home. This happens even if they’re serving on the frontlines in Iraq; even if they took a huge pay cut because they’re in the Guard or Reserves; even if they have a very low income to begin with.

For somebody with an average size loan of $17,000, this can add up to as much as $1,400 in interest a year. That’s not right. No one should return to civilian life deeper in debt because they took time off to serve their country. We should waive the interest on these Federal loans.

The Secretary of Education has the authority to waive interest under the HEROES Act of 2003, but he has chosen not to exercise it. My Fairness for America’s Soldiers in Higher Education Act would require him to do just that.

It would also permanently end an Education Department policy-suspended during the current conflict—that makes many Guardsmen and reservists who have to drop college courses when they are activated pay back student aid.

As we consider trillion-dollar budgets, these are modest ideas, but they would make a real difference in the lives of Americans serving their country and signal our appreciation for their sacrifice.

I urge my colleagues to support these important bills. I ask unanimous consent that the text of the bills be printed in the RECORD.

There being no objection, the texts of the bills were ordered to be printed in the RECORD, as follows:

S. 863

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “National Guard and Reserve Child Care Relief Act.”

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—The Secretary shall make grants to eligible persons to assist the persons in paying for the cost of child care services provided to dependents by eligible child care providers.

(b) ELIGIBLE PERSON AND DEPENDENT.—In this section:

(1) DEFENDANT.—The term ‘defendant’ means an individual who—

(A) is a parent of one or more dependents of—

(I) a member of a reserve component of the Armed Forces serving on active duty for a period of more than 30 days in support of a military operation pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code; or

(ii) any other member of the Armed Forces on active duty who, as determined by
the Secretary of the military department concerned, is involved in a military opera-

ration;

(B) has the primary responsibility for the care of dependents such dependents; and

(C) resides permanently at a location at

least 50 miles from—

(i) the nearest military installation of the Department; or

(ii) the nearest facilities or programs available for use by dependents of the member; and

"(i) the nearest military installation of the Department; or

(ii) the nearest child development center or family home that is funded in whole or in part with appropriations available to the Department of Defense and is available for use by dependents of the member.

"(3) MILITARY OPERATION.—The term ‘mili-
nary operation’ means—

(A) Operation Enduring Freedom;

(B) Operation Iraqi Freedom;

(C) Operation Noble Eagle;

(D) any successor operation of the United States Armed Forces to an operation named in subparagraph (A), (B), or (C).

"(c) APPLICATIONS.—To be eligible to re-

cieve a grant under this section, a person shall submit an application to the Secretary, at such time, in such manner, and con-
taining such information as the Secretary may require, including a description of the eligi-
le child care provider who provides the child care services assisted through the grant.

"(d) RULE.—The provisions of this sub-

chapter shall be applied consistent with pro-

visions referenced in section 658B, that apply to assistance provided under this subchapter shall not apply to assistance provided under this section.

SEC. 4. CONFORMING AMENDMENTS.

Section 6580 of the Child Care and Devel-

opment Block Grant Act of 1990 (42 U.S.C. 9857m) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "appro-

riated under this subchapter" and inserting "appropriated under section 658B(a); and

(B) in paragraph (2), by striking "appro-

riated under section 658B" and inserting "appropriated under section 658B(a); and

(2) in subsection (b)(3), by striking "appro-

riated under section 658B" and inserting "appropriated under section 658B(a).

By Mr. McCAIN (for himself, Mr. DORGAN, Mr. BROWNBACK, and Mr. ENSIGN):

S. 865. A bill to amend the National Telecommunications and Information Administration Organization Act to fa-
cilitate the reallocation of spectrum from governmental to commercial users; to the Committee on Commerce, Science, and Transportation.

Mr. McCAIN. Mr. President, today I am joined by Senators DORGAN, BROWNBACK, and ENSIGN in introducing the Commercial Spectrum Enhance-

ment Act. This bill is designed to streamline the process of relocating government users from spectrum re-

allocated for commercial use.

The bill establish a separate fund on the books of the United States Treasury called the Spectrum Reloca-

tion Fund. When spectrum occupied by a Federal agency is auctioned, the pro-

ceeds from the auction would be depos-

ited into the fund. Federal agencies would also be able to withdraw from the fund the estimated expenses associated with the relocation, with additional ex-

penses being approved by the Office of

Management and Budget, with notice provided to Congress and the General Accounting Office, GAO, as necessary.

Currently, when spectrum assigned to a Government agency is auctioned, the law requires the agency to nego-
tiate with the highest bidder to deter-
mine the price of purchasing or return-
ing new equipment necessary for the agency to transfer out of the spectrum band. These negotiated would be time-consuming and difficult for both parties. This bill would eliminate the need for lengthy negotiations between these parties. Thus it would accelerate the pace of introduction of new services using the spectrum.

Spectrum is a critical resource of our armed services. It is important that any relocation process consider the needs of our military operations. I be-

lieve that this bill would allow our military to have confidence that its re-

location costs will be fully and timely reimbursed, while providing commer-
cial users with the full cost of the right to use the spectrum and the ability to use it in a timely fashion.

Finally, the bill provides important oversight functions for Congress and the GAO. It is intended to be used in a manner that is fair and justified. In this way, American taxpayers are assured that their resources are used most efficiently.

Mr. President, I ask unanimous con-

sent that the text of the bill be printed in the Record.

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

(THE BILL WILL BE PRINTED IN A FUTURE EDITION OF THE RECORD.)

By Mr. KOHL (for himself, Mr. DURBIN, Mr. SCHUMER, Mr. CORZINE, Mrs. FEINSTEIN, Mr. REED, and Mr. LAUTENBERG):

S. 866. A bill to amend section 44 of title 18, United States Code, to require the provi-
sion of a child safety lock in connection with the transfer of a handgun and provide safety standards for child safety locks; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Child Safety Lock Act of 2003, on behalf of myself, Senator DURBIN, Senator SCHUMER, Senator CORZINE, and Senator FEIN-

STEIN. Our measure will save children’s lives by reducing the senseless tragedies that result when children get their hands on improperly stored and un-

locked handguns.

Each year, children and teenagers are involved in more than 10,000 accidental shootings in which close to 800 of them die. In addition, each year more than 1,000 young people killed themselves with a firearm—that is almost three per day. Safety locks can be effective in preventing or defending many of these incidents.

The sad truth is that we are inviting disaster every time an unlocked gun is stored in a place that is still accessible to children. Parents take a number of precautions to ensure their children’s safety, from equipping them with bike helmets, to securing them in automobiles, to changing smoke detector batteries. Unfortunately, not all par-

ents are as safety conscious about child proofing their firearms.

Guns are kept in 43 percent of Amer-

ican households with children. In 23 percent of these households, the guns are kept loaded. And alarmingly, in one out of every eight of those homes that the loaded guns are kept unloaded.

This is wrong and unacceptable.

Such startlingly cold statistics cannot even begin to describe in human terms the daily tragedies that could be prevented by the use of a safety lock.

For example, in January a 21-month-

old little boy was fatally shot when he tipped over a laundry hamper con-

taining a loaded handgun. The handgun did not have a lock. The boy had no sup-

ervision. The resulting death would have also saved the life of a four-

year-old in Florida who shot himself playing with his grandfather’s gun while the rest of his family was sleep-

ing. Last September, a Detroit mother lost her son because he accidentally shot himself with a safety lock bor-

rowed to protect herself. And, of course, no one will ever forget the Santana High School shooting two years ago, when a high school freshman opened fire on his classmates, killing two and injuring 13 others. The handgun and multiple rounds of ammuni-

tion he found at home.

Our legislation will help prevent tragedies like these. It is simple, effective, and straightforward. It requires that a child safety device—or trigger lock—be sold with every handgun. These devices vary in form, but the most common resemble a padlock that wraps around the gun trigger and im-

mobilizes it. Trigger locks can be pur-

chased in virtually any gun store for less than ten dollars. They are already used by tens of thousands of responsible gun owners to protect their firearms from unauthorized use and have surely saved many lives.

Protection is only as good as the safety lock itself, therefore the Child Safety Lock Act of 2003 includes stand-

ards for the safety locks. Studies by the Consumer Product Safety Commis-

sion and recalls by safety lock manu-

facturers conclusively demonstrate the child safety locks are often not made well en-

ough. A lock that is easily picked or one that breaks apart with little force defeats the purpose of this bill. We would not use a lock that is less than foolproof to guard our most valuable possessions. We should not use defective locks to protect what is most valuable to us—our children.

Support for this simple, common sense proposal is widespread. In 1999, a safety lock provision passed the Senate by an overwhelming vote of 78 to 20 as an amendment during the juve-
nile justice debate. This proposal is as popular with the rest of the country.
and the law enforcement community as it was with the 106th Senate. Polls show that between 75 and 80 percent of the American public, including gun owners, favor the mandatory sale of child safety locks with guns. When I surveyed almost 500 of Wisconsin’s police chiefs and sheriffs last summer, 90 percent of respondents agreed that child safety locks should be sold with each gun.

During his campaign, President Bush indicated that if Congress passes a bill making child safety locks mandatory he would sign it into law. Two years ago, Attorney General Ashcroft affirmed the Administration’s support of the mandatory sale of child safety locks during his confirmation hearings before the Senate Judiciary Committee.

Mr. President, this legislation is necessary to ensure that safety locks are provided with all handguns so that numerous lives are not lost in easily preventable accidents. We already protect children by requiring that seat belts be installed in all automobiles and that childproof safety caps be provided on medicine bottles. We should be no less vigilant when it comes to gun safety. I hope that the Senate will move to pass the Child Safety Lock Act of 2003 so that further unnecessary death and injury can be avoided.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 866

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

SEC. 1. SHORT TITLE.---This Act may be cited as the "Child Safety Lock Act of 2003".

SEC. 2. REQUIREMENT OF CHILD HANDGUN SAFETY LOCKS.

(a) Definitions.---Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

"(2) Locking Devices.—

(1) In General.—Except as provided under paragraph (2), it shall be unlawful for any licensed manufacturer, licensed importer, or a licensed dealer to transfer, to or possession by, any person who does not have in his or her possession, a handgun designed to prevent discharge of the firearm; or

(2) Exceptions.—Paragraph (1) shall not apply to

(A) the manufacture for, transfer to, or possession by, the United States or a State or a department or agency of the United States, or a State, county, city, or local governmental subdivision of a State, of a firearm;

(B) transfer to, or possession by, a law enforcement officer employed by the United States or a State, or a political subdivision thereof, except to the extent that such provisions of State law are inconsistent with any provision of this section.

(c) Effective date.—The consumer product safety standard promulgated under this paragraph shall take effect 6 months after the date on which the final standard is promulgated.

(d) Standard requirements.—The standard promulgated under this paragraph shall require locking devices that

(1) are sufficiently difficult for children to deactivate or remove;

(2) prevent the discharge of the handgun unless the locking device has been de-activated or removed;

(3) are not inconsistent with any provision of law of any State or any political subdivision thereof; except to the extent that such provisions of State law are inconsistent with any provision of this section and then only to the extent of such inconsistency.

(2) Clarification.—A provision of State law is not inconsistent with this section if such provision affords greater protection to children from handguns than is afforded by this section.

(e) Enforcement.—Notwithstanding subsection (a), the consumer product safety standard promulgated under this section shall not apply to any consumer product safety standard described under section 7(a).

(f) No Effect on State Law.—(1) In General.—Notwithstanding section 26, this section shall not annull, alter, impair, affect, or exempt any person subject to the provisions of this section from complying with any provision of law of any State or any political subdivision thereof, except to the extent that such provisions of State law are inconsistent with any provision of this section and then only to the extent of such inconsistency.

(g) Definitions.—In this section, the following definitions shall apply:

(1) The term 'child' means an individual who has not attained the age of 13 years.

(2) Locking Device.—The term 'locking device' has the meaning given that term in clauses (i) and (ii) of section 921(a)(16) of title 18, United States Code.

SEC. 3. AMENDMENT TO CONSUMER PRODUCT SAFETY ACT.

(a) In General.—The Consumer Product Safety Act (15 U.S.C. 2051 et seq.) is amended by adding at the end the following:

"(2) Locking Devices.—

(1) In General.—Except as provided under paragraph (2), it shall be unlawful for any licensed manufacturer, licensed importer, or a licensed dealer to transfer, to or possession by, any person who does not have in his or her possession, a handgun designed to prevent discharge of the firearm to any person other than a licensed manufacturer, licensed importer, or licensed dealer, unless the transferee is provided with a locking device for that handgun.

(2) Exceptions.—Paragraph (1) shall not apply to

(A) the manufacture for, transfer to, or possession by, the United States or a State or a department or agency of the United States, or a State, county, city, or local governmental subdivision of a State, of a firearm;

(B) transfer to, or possession by, a law enforcement officer employed by a rail carrier and certified or commissioned as a police officer under State law of a firearm for purposes of law enforcement (whether on or off duty).

(c) Effective date.—The consumer product safety standard promulgated under this paragraph shall take effect 6 months after the date on which the final standard is promulgated.

(d) Standard requirements.—The standard promulgated under this paragraph shall require locking devices that

(1) are sufficiently difficult for children to deactivate or remove;

(2) prevent the discharge of the handgun unless the locking device has been de-activated or removed;

(3) are not inconsistent with any provision of law of any State or any political subdivision thereof; except to the extent that such provisions of State law are inconsistent with any provision of this section and then only to the extent of such inconsistency.

(2) Clarification.—A provision of State law is not inconsistent with this section if such provision affords greater protection to children from handguns than is afforded by this section.

(e) Enforcement.—Notwithstanding subsection (a), the consumer product safety standard promulgated under this section shall not apply to any consumer product safety standard described under section 7(a).

(f) No Effect on State Law.—(1) In General.—Notwithstanding section 26, this section shall not annull, alter, impair, affect, or exempt any person subject to the provisions of this section from complying with any provision of law of any State or any political subdivision thereof, except to the extent that such provisions of State law are inconsistent with any provision of this section and then only to the extent of such inconsistency.

(g) Definitions.—In this section, the following definitions shall apply:

(1) The term 'child' means an individual who has not attained the age of 13 years.

(2) Locking Device.—The term 'locking device' has the meaning given that term in clauses (i) and (ii) of section 921(a)(16) of title 18, United States Code.

SEC. 4. CONFORMING AMENDMENT.---Section 1 of the Consumer Product Safety Act is amended by adding at the end of the title of the contents the following:

"Sec. 39. Child handgun safety locks.".

S. 9192

CONGRESSIONAL RECORD — SENATE
April 10, 2003
provisions of section 39 of the Consumer Product Safety Act, as added by this Act.

(2) AVAILABILITY.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

By Mr. BURNS:

S. 867. A bill to designate the facility of the U.S. Postal Service located at 710 Wick Lane in Billings, Montana, as the "Ronald Reagan Postal Office Building"; to the Committee on Governmental Affairs.

Mr. BURNS. Mr. President, I would like to introduce a bill which names one of our post offices in Billings, Montana, after one of this Nation's greatest leaders and true patriot: former President Ronald Reagan. His legacy extends far beyond his Presidency.

I think it's only fitting that I introduce this legislation today, since President Reagan worked tirelessly to end the Cold War and liberate millions of people, and we see the same dedication today to free the people of Iraq. President Reagan spoke about the threat posed by Saddam Hussein, and asked, "will we be ready to respond?" He went on to answer this question by saying, "In the end, it all comes down to leadership. This country is looking forward now. It was leadership here at home that gave us strong American influence abroad and the collapse of imperial communism. Great nations have responsibilities to lead and we should always be ready to respond to the threat posed by Saddam Hussein, and asked, "will we be ready to respond?"

By Mr. SMITH:

S. 868. A bill to amend the Coos, Lower Umpqua, and Siuslaw Restoration Act to provide for the cultural restoration and economic self-sufficiency of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians of Oregon, and for other purposes; to the Committee on Indian Affairs.

Mr. SMITH. Mr. President, I rise today to introduce legislation that will restore to the members of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians a small portion of their ancestral homelands.

The story of these Tribes' experience is well worth hearing. For many of my colleagues, parts of it will sound familiar, as it reflects the history of the early west. In 1850, gold was discovered at a place known as Eight Dollar Bar, near what we now call Cave Junction, OR. Legend had it that thousands of miners with gold fever moved into the area. Indians struggled to protect their land while miners aggressively pursued their vision of the American dream.

In 1855, Joel Palmer, an Indian Agent for the Oregon Territory was sent in by the Federal Government to negotiate treaties with Oregon tribes. Treaties with the tribes of the Rogue River, Umpqua/Cow Creek, and Calapooyas were established, but not the tribes of the central and southern Oregon coast. Much of this land is now in the Siuslaw National Forest.

The Coos, Lower Umpqua and Siuslaw Indians were not a warring tribe. They were prepared to share their ancestral homelands, which appeared on maps from the coast mountain range, living on a small portion of the land and receiving compensation for the balance. In 1855 and in good faith the tribes signed the Empire Treaty with the Federal Government. But, somewhere between Empire, Oregon and the floor of the U.S. Senate the treaty was lost. No land was allotted for their reservation and no compensation given.

In 1856 the Rogue River War began and the Lower Umpqua and Siuslaw Indians were marched north and held prisoner in what was called the Coast Reservation. They were held against their will until the mid-1870s. It was during this dark period in their history that over half their population died.

With their release, tribal members returned to their homelands, only to find they had neither land nor resources left. At this point, the tribes formed a Confederation. In 1914, by Presidential order the Confederation's tribal status was terminated. These decades were difficult ones for these Tribes to their ancestral homelands.

The story of these Tribes' experience is well worth hearing. For many of my colleagues, parts of it will sound familiar, as it reflects the history of the early west.

The Coos, Lower Umpqua and Siuslaw Restoration Proposal has led to a clear understanding of what activities can occur on these lands which is reflected in the legislation that I have introduced today.

I am proud to introduce legislation today that will return approximately 63,000 acres of their ancestral homeland to the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. These U.S. Forest Service lands encompass a portion of the Siuslaw National Forest.

In 1984, the Oregon congressional delegation sought and achieved federal recognition for the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians. At the same time, no reservation lands were granted to the tribe and no compensation offered. The tribe received a donation of approxi-
State and Federal laws will be followed. Payments to county governments will not be impacted under this proposal. Timber harvested from this land will be processed domestically by local mills. Twenty percent of the revenues from this land will be reinvested in watershed management activities to restore habitat. These lands contain some significant environmental sites. They will be preserved. These lands are not suitable for nor will the laws allow gaming to occur on them.

Revenue gained from activities on these lands will help meet the self-sufficiency goals of the Confederated Tribes. It will be used to assist seniors through elder housing programs, youth through scholarships, low income housing for a bill in need and provide health care benefits for all of the Tribal members.

The Confederated Tribes of the Coos, Lower Umpqua and Siuslaw are the only federally recognized tribe in Oregon that has received land or compensation for the loss of their homeland from the United States Government. This legislation works to right that wrong, to restore a Tribe, to restore a forest, and to restore a very special relationship between the two.

By Mr. HARKIN (for himself, Ms. SNOWE, Mr. INOUYE, Mr. GRAHAM of South Carolina, Mr. MURRAY, Mr. CORZINE, Mr. BIDEN, Mr. SPECKER, Ms. LANDRIEU, Mr. JOHNSON, Mrs. LINCOLN, Mr. HOLLINGS, Ms. MIKULSKI, Mrs. CLINTON, and Ms. COLLINS):

S. 869. A bill to amend title XVIII of the Social Security Act to provide for enhanced reimbursement under the medicare program for screening and diagnostic mammography services, and for other purposes; to the Committee on Finance.

Mr. HARKIN. Mr. President. Today I am introducing legislation, the Assurance Access to Mammography Act of 2003, on behalf of myself and my colleagues, Senators SNOWE, INOUYE, GRAHAM of South Carolina, MURRAY, CORZINE, BIDEN, SPECKER, LANDRIEU, JOHNSON, LINCOLN, HOLLINGS, MIKULSKI, CLINTON, and Ms. COLLINS to ensure women have full and timely access to preventive breast cancer screenings. As you know, the earlier a woman is diagnosed with breast cancer, the earlier she can begin to receive treatment and the more likely she will survive.

Unfortunately, due to inadequate reimbursement rates for mammograms, women increasingly are having problems getting the mammograms they need. Across the nation, there have been reports of women waiting up to six months for an appointment for this simple procedure. While mammograms often cost up to $150 to administer, Medicare's reimbursement rate is currently set at about $82, barely over half the actual cost of the procedure. This disparity increasingly makes access a real problem, forcing many private centers to shut down and creating a shortage of providers willing to provide services significantly below cost.

The Assurance Access to Mammography Act would reverse this growing and alarming trend by correcting the two primary causes of this problem. First, it would increase Medicare reimbursement to radiologists to a reasonable level to ensure health care providers are reimbursed fairly for mammography services. Second, the bill would increase the Graduate Medical Education payments to provide for three additional radiologists in each teaching hospital. Finally, the Assurance Access to Mammography Act would provide a MEDPAC study on the Medicare reimbursement structure for gender specific medical procedures so that Congress and CMS have the tools we need to make appropriate health policy decisions.

This is an issue that hits close to home for me. Both of my sisters died of breast cancer, at a time when mammograms were not readily available. While imperfect, mammograms are the best-known way to diagnose breast cancer at an early stage in order to reduce mortality. As our society ages, one million additional women each year are needing regular mammograms. The Assurance Access to Mammography Act will provide the resources our health care system needs to guarantee all women access to the mammograms they need to ensure that breast cancer is detected early enough to apply appropriate treatments effectively.

I'm happy to announce that Senators LUGAR, MR. KENNEDY, HAGEL, MR. DOMENICI, and Mr. FEINGOLD:

S. 876. A bill to provide for global pathogen surveillance and response, to the Committee on Foreign Relations.

Mr. President, I am pleased to reintroduce today the “Global Pathogen Surveillance Act.”

Last year, this bill passed the Senate by unanimous consent on August 1st, but died when the House of Representatives failed to take timely action.

The Global Pathogen Surveillance Act authorizes $150 million over the next two years to help developing nations improve global disease surveillance.

That will go a long way to prevent and contain both biological weapons attacks, if God forbid, it happens, and naturally occurring infectious disease outbreaks around the world. I'm happy to announce that Senators LUGAR, KENNEDY, HAGEL, DOMENICI, and FEINGOLD are joining me in co-sponsoring this bill.

The mysterious global outbreaks of severe respiratory syndrome, or SARS, is an unfortunate reminder of why this bill is so important. We've heard a lot about it. We don't know much about it yet.

We know it's a contagious respiratory illness which apparently originated in the Guangdong province of China last November, has stricken more than 2600 individuals in 17 countries, taking the lives of at least 100 individuals.

The World Health Organization is concerned. They've issued a rare global health alert and discouraged travel to certain nations as authorities struggle to determine the cause of this flu-like illness. But no one knows what viral or infectious agent is involved.

The WHO has not ruled out bioterrorism as a potential cause for the epidemic, although it is unlikely that a disease with only a 4 to 5 percent mortality rate is this epidemic.

What's so scary about this outbreak is that doctors and nurses taking care of sick patients have fallen ill themselves; initial tests have not revealed evidence of infection with any previously known virus or pathogen; and patients are not being cured by standard treatments, although the vast majority do recover.

How would better disease surveillance be developed in dealing with this kind of crisis?

Experts suspect this epidemic first originated in the Guangdong province in southern China in November, but peaked in early February. A comprehensive surveillance network might have picked up the unique symptoms of this epidemic earlier...might have led to quicker diagnosis and better containment measures.

We would have had a better chance to keep the epidemic contained within China, before the pathogen spread to neighboring nations, and now to Canada and the United States.

Over the last eighteen months, Americans have become all too familiar with the threat of bioterrorism and the army of deadly agents capable of spreading death and disease—anthrax, Ebola, and smallpox are just the most sensational examples. We had to strengthen our homeland defenses—not just against terrorists armed with bombs and explosives—but against shadowy figures carrying viars of deadly pathogens.

But all in all, this country is making important advances on the domestic front in bioterrorism defense.

Last year, the President signed into law the Bioterrorism Prevention Act of 2002, a comprehensive domestic initiative co-sponsored by Senators Kennedy and Frist.

In January, the Centers for Disease Control announced an initiative to establish electronic surveillance systems in eight American cities as the cornerstone of an eventual national network.

In Delaware, we're developing the very first, comprehensive, state-wide electronic reporting system for infectious diseases.

It'll serve as a prototype for other states by enabling much earlier detection of infectious disease outbreaks.

But a domestic defense against biological weapons isn't sufficient alone.
Biological weapons are a global threat with no respect for borders. A dangerous pathogen released on another continent can quickly spread to the United States in a matter of days, if not hours. A bioweapon or terrorist group could launch a biological weapons attack in Mexico in the expectation that the United States would quickly spread to the United States.

A rogue state might experiment with new disease strains in another country, intending to later release them there. And international trade, travel, and migration patterns offer unlimited opportunities for pathogens to spread across national borders and to move from one continent to another.

We should make no mistake: in today’s world, all infectious disease epidemics, wherever they occur and whether they are deliberately engineered or are naturally occurring, are a potential threat to all nations, including the United States. Such a threat need not begin in the United States to reach our shores.

For that reason, our response cannot be limited to the United States alone.

Global disease surveillance, a system to track emerging disease outbreaks as they occur and evolve around the world, is essential to any real international response.

Why is disease surveillance so important? A biological weapons attack succeeds partly through the element of surprise.

As Dr. Alan P. Zelicoff of the Sandia National Laboratory testified before the Senate Foreign Relations Committee last spring, early warning of a suspicious epidemic has emerged, doctors as just the flu when in fact it may be anthrax or smallpox.

Unfortunately, developing nations—those nations most likely to experience rapid disease outbreaks—simply don’t have the trained personnel, the laboratory equipment, or the public health infrastructure to do the job... to track evolving disease patterns or detect emerging pathogens.

Disease surveillance is a fancy phrase for a comprehensive reporting system to quickly identify and communicate abnormal patterns of symptoms and illnesses that can quickly alert doctors across a region that a suspicious disease outbreak has occurred.

Epidemiological specialists can then investigate and combat the outbreak. And if it’s a new disease or strain, we can begin to develop treatments that much earlier.

An effective disease surveillance system helps even in the absence of biological weapons attacks. Bubonic plague is bubonic plague, whether it is deliberately engineered or naturally occurring.

Just as disease surveillance can help contain a biological weapons attack, it can also help contain a naturally occurring outbreak of infectious disease. According to the World Health Organization, thirty new infectious diseases have emerged over the past thirty years; between 1996 and 2001 alone, more than 800 infectious disease outbreaks occurred around the world, on every continent.

The SARS epidemic is only the most recent such outbreak. With better surveillance, we can do a better job of mitigating the consequences of these disease outbreaks.

A good surveillance system requires trained epidemiological personnel, adequate laboratory tools for quick diagnosis, and working communications equipment to circulate information.

Even here, in the most advanced Nation in the world, many States and cities rely on old-fashioned pencil and paper methods of tracking disease patterns.

Thankfully, the comprehensive bioterrorism legislation enacted into law last year is beginning to correct that.

Now, it is vitally important that we extend these initiatives into the international arena.

In 2000, the World Health Organization established the first truly global disease surveillance system, the Global Alert and Response Network, to monitor and track infectious disease outbreaks everywhere.

The WHO has done an impressive job so far with this initiative, working on a shoestring budget. But this global network is only as good as its components—individual nations.

Second, it provides assistance to developing nations to acquire basic laboratory equipment, including items as basic as microscopes, so they can quickly diagnose pathogens.

Third, it enables developing nations to obtain communications equipment to quickly transmit data on disease patterns and pathogen diagnoses, both inside a nation and to regional organizations and the WHO.

Again, we’re not talking about fancy high-tech equipment, but basics like fax machines and Internet-equipped computers.

Finally—to create a real incentive for nations to promptly report suspected disease outbreaks and offer international health authorities prompt access—the bill gives preference to those countries that agree to let international health experts investigate any suspicious disease outbreaks.

If passed, the Global Pathogen Surveillance Act will go a long way in ensuring that developing nations acquire the basic disease surveillance capabilities to link up effectively with the WHO global network.

It’s an inexpensive and common sense solution to a problem of global proportions—the dual threat of biological weapons and naturally occurring infectious diseases.

Make no mistake—this bill will contribute to our homeland security. The funding authorized is only a tiny fraction of what we will spend domestically on bioterrorism defenses, but this investment will pay enormous dividends in terms of our national security.
take a leadership role in promoting the implementation of a comprehensive system of surveillance for global infectious diseases that builds on the current global capacity of infectious disease monitoring. By introducing this bill, I hope that our nation can begin to assume that mantle of leadership in this critical area.

Let me close with an excerpt of testimony from a Foreign Relations Committee hearing held on September 5, 2001. Dr. D.A. Henderson, the man who spearheaded the successful international campaign to eradicate smallpox in the 1970's, most recently served as the principal advisor to Secretary of Health and Human Services Tommy Thompson in organizing the nation's defenses against bioterrorism.

Dr. Henderson, who at the time of the hearing was a private citizen, was very clear on the value of global disease surveillance. In cooperation with the WHO and other organizations, we need to strengthen greatly our intelligence gathering capability. A focus on international surveillance and on scientist-to-scientist communication will be necessary if we are to have an early warning about the possible development and production of biological weapons by rogue nations or groups.

Dr. Henderson is exactly right. We cannot leave the rest of the world to fend for itself in combating biological weapons and infectious diseases if we are to ensure America's security. I ask unanimous consent that the text of the "Global Pathogen Surveillance Act of 2003" be printed in the RECORD, as follows:

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

SECTION 1. SHORT TITLE. This Act may be cited as the "Global Pathogen Surveillance Act of 2003".

SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) The United States should enhance cooperation with the World Health Organization, national health organizations, and individual countries, including data sharing with foreign governments and international organizations, to help detect and quickly contain infectious disease outbreaks or bioterrorism agents before they can spread.

(2) The World Health Organization (WHO) has done an impressive job in monitoring infectious disease outbreaks around the world, including the recent emergence of the severe acute respiratory syndrome (SARS) epidemic, particularly with the establishment in April 2000 of the Global Outbreak Alert and Response Network.

(3) The capabilities of the World Health Organization are inherently limited by the quality of the data and information it receives from member countries, the narrow range of diseases (plague, cholera, and yellow fever) upon which its disease surveillance and monitoring is based, and the consensus process it uses to add new diseases to the list. Developing countries in particular often cannot devote the necessary resources to build and maintain public health infrastructure adequate to the task. In particular, developing countries could benefit from:

(A) better trained public health professionals and epidemiologists to recognize disease patterns;

(B) appropriate laboratory equipment for disease diagnosis and monitoring;

(C) disease reporting is based on symptoms and signs (known as "syndrome surveillance"), enabling the earliest possible opportunity to conduct an effective response;

(D) a narrowing of the existing technology gap in syndrome surveillance capabilities and real-time information dissemination to public health agencies in member countries, including inexpensive, Internet-based Geographic Information Systems (GIS) and relevant telecommunication systems for early recognition and diagnosis of diseases;

(E) an effective international capability to monitor and quickly diagnose infectious disease outbreaks will offer dividends not only in the containment of biological weapons, detection, testing, production, and attack, but also in the more likely cases of naturally occurring infectious disease outbreaks that could threaten the United States. Furthermore, a robust surveillance system will serve to deter terrorist use of biological weapons, as early detection will help mitigate the intended effects of such malevolent uses.

(F) The purposes of this Act are as follows:

(1) To enhance the capability and cooperation of the international community, including the World Health Organization and individual countries, through enhanced pathogen surveillance and detection, to detect, identify, and contain infectious disease outbreaks, whether the cause of those outbreaks is intentional human action or natural in origin.

(2) To enhance the training of public health professionals and epidemiologists from eligible developing countries in advanced Internet-based and other electronic disease surveillance systems, in addition to traditional epidemiology methods, so that they may better detect, diagnose, and contain infectious disease outbreaks, especially those due to pathogens most likely to be used in a biological weapons attack.

(3) To provide assistance to developing countries to purchase appropriate communications equipment and information technology to efficiently transmit information and data with regional and international organizations, including inexpensive, Internet-based Geographic Information Systems (GIS) and relevant telecommunication systems for early recognition and diagnosis of diseases.

(4) To provide assistance to developing countries to purchase appropriate communication equipment and information technology, including, as appropriate, relevant security measures, to enhance the disease surveillance and diagnostic capabilities of countries.

(5) To make available greater numbers of United States Government public health professionals to international health organizations.

(6) To establish "lab-to-lab" cooperative relationships between United States public health laboratories and established foreign counterparts.

(7) To expand the training and outreach activities of overseas United States laboratories, including Centers for Disease Control and Prevention and Department of Defense entities, to enhance the disease surveillance and diagnostic capabilities of developing countries.

(8) To provide appropriate technical assistance to existing regional health networks using appropriate, seed money for new regional networks.

SEC. 3. DEFINITIONS.

In this Act:

(1) ELIGIBLE DEVELOPING COUNTRY.—The term 'eligible developing country' means any developing country that—

(A) is a state party to the Biological Weapons Convention;

(B) is a state party to the Chemical Weapons Convention;

(C) disease reporting is based on symptoms and signs (known as "syndrome surveillance"), enabling the earliest possible opportunity to conduct an effective response;

(D) a narrowing of the existing technology gap in syndrome surveillance capabilities and real-time information dissemination to public health agencies in member countries, including inexpensive, Internet-based Geographic Information Systems (GIS) and relevant telecommunication systems for early recognition and diagnosis of diseases.

(2) ELIGIBLE NATIONAL.—The term "eligible national" means any citizen or national of an eligible developing country who is eligible to receive a visa under the provisions of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) and section 21 of the Arms Export Control Act (22 U.S.C. 2371), or section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405), to have repeatedly provided support for acts of international terrorism, unless the Secretary exercises a waiver certifying that it is in the national interest of the United States to provide assistance under the provisions of this Act; and

(C) is a state party to the Biological Weapons Convention.

(2) ELIGIBLE NATIONAL.—The term 'eligible national' means any citizen or national of an eligible developing country who is eligible to receive a visa under the provisions of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) and section 21 of the Arms Export Control Act (22 U.S.C. 2371), or section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405), to have repeatedly provided support for acts of international terrorism, unless the Secretary exercises a waiver certifying that it is in the national interest of the United States to provide assistance under the provisions of this Act; and

(C) is a state party to the Biological Weapons Convention.

(3) INTERNATIONAL HEALTH ORGANIZATION.—The term "international health organization" includes the World Health Organization and the Pan American Health Organization.

(4) LABORATORY.—The term "laboratory" means a facility for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological, or other examination of materials pertinent to human health for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(5) SECRETARY.—Unless otherwise provided, the term "Secretary" means the Secretary of State.

(6) SELECT AGENT.—The term "select agent" has the meaning given such term for purposes of section 726 of title 42, Code of Federal Regulations.

(7) SYNDROME SURVEILLANCE.—The term "syndrome surveillance" means the recording of symptoms (patient complaints) and signs (derived from physical examination) and their association with similar symptoms and signs to track the emergence of a disease in a population.
SEC. 4. PRIORITY FOR CERTAIN COUNTRIES.

Priority in the provision of United States assistance for eligible developing countries under all the provisions of this Act shall be given to those countries that permit personnel from the World Health Organization and the Centers for Disease Control and Prevention to investigate outbreaks of infectious diseases on their territories, provide early notification of disease outbreaks, and provide pathogen surveillance data to appropriate United States departments and agencies in connection to international health organizations.

SEC. 5. RESTRICTION.

Notwithstanding any other provision of this Act, no foreign nationals participating in programs authorized under this Act shall have access, during the course of such participation, to select agents that may be used as, or in, biological weapons, except in a supervised and controlled setting.

SEC. 6. FELLOWSHIP PROGRAM.

(a) Establishment.—There is established a fellowship program (in this section referred to as the "program") under which the Secretary, in consultation with the Secretary of Health and Human Services, and, subject to the availability of appropriations, award fellowships to individuals to pursue public health education or training, as follows:

(1) Master of Public Health Degree.—Graduate courses of study leading to a master of public health degree with a concentration in epidemiology from an institution of higher education in the United States, with Center for Public Health Preparedness, as determined by the Centers for Disease Control and Prevention.

(2) Advanced Public Health Epidemiology Training.—Advanced public health training in epidemiology to be carried out at the Centers for Disease Control and Prevention (or equivalent State facility), or other Federal facility (excluding the Department of Defense, United States National Laboratories), for a period of not less than 6 months or more than 12 months.

(b) Specialization in Bioterrorism.—In addition to the education or training specified in subsection (a), each recipient of a fellowship under this section (in this section referred to as a "fellow") may take courses of study at the Centers for Disease Control and Prevention or at an equivalent facility on diagnosis and containment of likely bioterrorism agents.

(c) Fellowship Agreement.—

(1) In General.—In awarding a fellowship under the program, the Secretary, in consultation with the Secretary of Health and Human Services, shall require the recipient to enter into an agreement under which, in exchange for such assistance, the recipient—

(A) maintain satisfactory academic progress (as determined in accordance with regulations issued by the Secretary and confirmed in regularly scheduled updates to the Secretary by the institution providing the education or training on the progress of the recipient's education or training);

(B) will, upon completion of such education or training, return to the recipient's country of nationality or last habitual residence (so long as it is an eligible developing country) and complete at least four years of employment in a public health position in a public health facility (excluding the Department of Defense, United States National Laboratories), for a period of not less than 6 months or more than 12 months.

(c) Rule of Construction.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

SEC. 7. IN-COUNTRY TRAINING IN LABORATORY TECHNIQUES AND SYNDROME SURVEILLANCE.

(a) In General.—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, support short training courses in-country (not in the United States) to laboratory technicians and other public health personnel from eligible developing countries in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for possible infectious disease outbreaks. Training under this section may be conducted via the Internet or in appropriate United States United States National Laboratories.

(b) Training in Syndrome Surveillance.—In conjunction with the Centers for Disease Control and Prevention and the Department of Defense, the Secretary shall, subject to the availability of appropriations, support short training courses in-country (not in the United States) to public health personnel from eligible developing countries in laboratory techniques relating to the identification, diagnosis, and tracking of pathogens responsible for possible infectious disease outbreaks. Training under this section may be conducted via the Internet or in appropriate facilities as determined by the Secretary.

(c) Rule of Construction.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

SEC. 8. ASSISTANCE FOR THE PURCHASE AND MAINTENANCE OF PUBLIC HEALTH LABORATORY EQUIPMENT.

(a) Authorization.—The President may, in appropriate circumstances and after consultation with the Secretary of State, purchase and maintain public health laboratory equipment described in subsection (b).

(b) Equipment Covered.—Equipment described in this subsection is equipment that—

(1) appropriate, where possible, for use in the intended geographic area;

(2) necessary to collect, analyze, and identify pathogenically significant pathogenic agents or pathogenic conditions of pathogenic agents, including mutant strains, which may cause disease outbreaks or may be used as a biological weapon;

(3) compatible with general standards set forth, as appropriate, by the World Health Organization and the Centers for Disease Control and Prevention, to ensure interoperability with regional and international public health networks; and

(4) not defense articles or defense services as those terms are defined under section 47 of the Arms Export Control Act.

(c) Rule of Construction.—Nothing in this section shall be construed to exempt the importing of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

SEC. 9. ASSISTANCE FOR STANDARIZATION OF PUBLIC HEALTH INFORMATION SYSTEMS.

(a) Assistance for Purchase of Communication Equipment and Information Technology.—The President is authorized to provide, on such terms and conditions as the President may determine, assistance to eligible developing countries for the purchase and maintenance of communications equipment (including information technology) described in this subsection that—

(1) is suitable for use under the particular conditions of the area of intended use;

(2) meets appropriate World Health Organization standards to ensure interoperability with like equipment of other countries and to provide the resources, infrastructure, and other assets required to house, maintain, support, secure, and maximize use of this equipment and appropriate technical personnel;

(3) is not defense articles or defense services as those terms are defined under section 47 of the Arms Export Control Act.

(c) Rule of Construction.—Nothing in this section shall be construed to exempt the exporting of goods and technology from compliance with applicable provisions of the Export Administration Act of 1979 (or successor statutes).

(d) Limitation.—Amounts appropriated to carry out this section shall not be made available for the purchase from a foreign country of equipment that, if made in the United States, would be subject to the Arms Export Control Act or likely be barred or subject to special conditions under the Export Administration Act of 1979 (or successor statutes).
President may determine, technical assistance and grant assistance to international health organizations to facilitate standardization in the reporting of public health information among developing countries and international health organizations.

(ii) HOST COUNTRY'S COMMITMENTS.—The assistance provided under this section shall be contingent upon the host country's commitment to provide the resources, infrastructure, and other assets required to house, support, maintain, secure, and maximize use of this equipment and appropriate technical personnel.

SEC. 10. ASSIGNMENT OF PUBLIC HEALTH PERSONNEL TO INTERNATIONAL ORGANIZATIONS AND AMONG LABORATORIES.

(a) IN GENERAL.—Upon the request of a United States chief diplomatic mission or an international health organization, and with the concurrence of the Secretary of State, the head of a Federal agency may assign to the respective United States mission or organization any officer or employee of the agency occupying a public health position within the agency for the purpose of enhancing disease and pathogen surveillance efforts in developing countries.

(b) REIMBURSEMENT.—The costs incurred by a Federal agency by reason of the detail of personnel under subsection (a) may be reimbursed to that agency out of the applicable appropriations account of the Department of State if the Secretary determines that the relevant agency may otherwise be unable to assign such personnel on a non-reimbursable basis.

SEC. 11. EXPANSION OF CERTAIN UNITED STATES GOVERNMENT LABORATORIES ABROAD.

(a) IN GENERAL.—Subject to the availability of appropriations, the Centers for Disease Control and Prevention and the Department of Defense shall each—

(1) increase the number of personnel assigned to laboratories of the Centers or the Department, as appropriate, located in eligible developing countries that conduct research and other activities with respect to infectious diseases; and

(2) expand the operations of those laboratories, especially with respect to the implementation of on-site training of foreign nationals and regional outreach efforts involving neighboring countries.

(b) COOPERATION AND COORDINATION BETWEEN LABORATORIES.—Subsection (a) shall be carried out in such a manner as to foster cooperation and avoid duplication between and among laboratories.

(c) RELATION TO CORE MISSIONS AND SECURITY.—The expansion of the operations of overseas laboratories of the Centers or the Department under this section shall not—

(1) affect from an established core mission of the laboratories; or

(2) compromise the security of those laboratories, as well as their research, equipment, and materials.

SEC. 12. ASSISTANCE FOR REGIONAL HEALTH NETWORKS AND EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.

(a) AUTHORITY.—The President is authorized, on such terms and conditions as the President may determine, to provide assistance for the purposes of—

(1) enhancing the surveillance and reporting capabilities for the World Health Organization and existing regional health networks; and

(2) developing new regional health networks.

(b) EXPANSION OF FOREIGN EPIDEMIOLOGY TRAINING PROGRAMS.—The Secretary of Health and Human Services is authorized to establish new country or regional Foreign Epidemiology Training Programs in eligible developing countries.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Subject to subsection (c), there are authorized to be appropriated $70,000,000 for the fiscal year 2004 and $80,000,000 for fiscal year 2005, to carry out this Act.

(2) ALLOCATION OF FUNDS.—Of the amounts made available under paragraph (1)─

(A) $50,000,000 for the fiscal year 2004 and $50,000,000 for the fiscal year 2005 are authorized to be available to carry out sections 6, 7, 8, and 9;

(B) $2,000,000 for the fiscal year 2004 and $2,000,000 for the fiscal year 2005 are authorized to be available to carry out section 10;

(C) $8,000,000 for the fiscal year 2004 and $18,000,000 for the fiscal year 2005 are authorized to be available to carry out section 11;

and

(D) $10,000,000 for the fiscal year 2004 and $10,000,000 for the fiscal year 2005 are authorized to be available to carry out section 12.

(b) AVALIABILITY OF FUNDS.—The amount appropriated pursuant to subsection (a) is authorized to remain available until expended.

(c) REPORTING REQUIREMENT.—

(1) REPORT.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit a report, in conjunction with the Secretary of Health and Human Services and the Secretary of Defense, containing—

(A) a description of the implementation of programs under this Act; and

(B) an estimate of the level of funding required to carry out those programs at a sufficient level.

(2) LIMITATION ON OBLIGATION OF FUNDS.—Not more than 10 percent of the amount appropriated pursuant to subsection (a) may be obligated before the date on which a report is submitted, or required to be submitted, whichever first occurs, under paragraph (1).

By Mr. BINGAMAN:

S. 873. A bill to authorize funding for catalysis science and engineering research and development at the Department of Energy through 2009; and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to introduce a bill entitled the Department of Energy Catalysis Research and Development Act.

Catalysis is at the heart of fuels production in the petroleum and chemical industries. Catalytic converters help reduce emissions of cars. Catalysis can help reduce carbon dioxide from industrial plants, which can contribute to global warming. The science of catalysis can help our pharmaceutical industry by one day mimicking nature's enzymes which are nature's catalysts. The industries I just mentioned contribute over $500 trillion in national product; they all rely on catalysis to produce new compounds as efficiently as possible.

The catalysis science program is one of the hidden gems at the Department of Energy's Office of Science. The Department supports over 60 percent of the catalysis research in the Federal Government. I feel it is important that our energy bill highlights its basic research, and recommends a steady increase in funding levels for it.

The bill seeks to help the Department meet what it called the 'grand challenge' in catalytic chemistry. The 'grand challenge' which this bill seeks to address first, the ability to design, at the atom level, catalytic structures to control 'catalytic activity', or the rate at which a chemical reaction proceeds. The second part of this 'grand challenge' is to control the selectivity of a catalytic reaction. After the ability of a catalytic compound to precisely seek out other chemicals through which to start a reaction. To achieve this 'grand challenge', this bill directs the Department to design new catalytic compounds using the latest advancements in scientific computing. Today's computers are rapidly approaching a point where we can model a chemical reaction by simulating its atom level constituents. This bill extends the Department to utilize its state-of-the-art diagnostic equipment at its national laboratories and universities to analyze catalytic reactions in real-time, and at the atomic level. These diagnostics will be used to validate computer models being developed in the advanced scientific computing program. This bill directs the Department to use the emerging field of nanoscience to tailor new catalytic compounds atom by atom, so as to accelerate reactions to produce clean fuels at rates that far exceed what we know today. In that regard, I expect the Department to utilize its nanoscience facilities to help design these new compounds. If we are successful in meeting this grand challenge, we will bring fuels to market quicker to meet increasing energy demands, while using less overall energy to produce them.

Finally, the bill directs the Secretary to fund these efforts in multidisciplinary teams including computer scientists, chemists, biochemists, materials scientists, and physicists. It requires the Department to transfer its catalysis research to industry so that they can bring the market the full fruits of our Government's advanced energy research in the shortest time possible.

We are currently debating an energy bill in the Energy and Natural Resources Committee. We plan to shortly markup the research and development section, and, I think it is vitally important that this section address the topic of catalysis to produce future fuels for our Nation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 873

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Department of Energy Catalysis Research and Development Act”.

April 10, 2003
SEC. 2. FINDINGS.

The Congress finds that catalysis science is critical to the production of fuels for energy generation, the reduction of toxic waste stream emissions, and the development of compounds to reduce global warming.

SEC. 3. DEPARTMENT OF ENERGY PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy, through the Director of the Office of Science of the Department of Energy, shall establish a program of research and development in catalysis science consistent with the Secretary's statutory authorities related to research and development.

(b) SCOPE OF THE PROGRAM.—The program shall include efforts to—

(i) develop catalytic design using—

(ii) combined experimental and mechanistic methodologies, and

(iii) computational modeling of catalytic reactions at the molecular level;

(b) develop techniques for—

(i) high throughout synthesis of catalysts and novel assays for rapid throughout catalysis testing of small quantities of catalysts on diverse processes,

(ii) reducing the analytical cycle time by parallel operation and automation,

(iii) characterizing catalysts at the 0.1 to 2 nanometer scale, and

(iv) characterizing catalysts in situ under actual operating conditions at high temperature and pressure.

(c) DUTIES OF THE DIRECTOR OF THE OFFICE OF SCIENCE.—In carrying out the program under this Act, the Director of the Office of Science of the Department of Energy, shall—

(i) support both individual investigators and multidisciplinary teams of investigators that include teams drawing upon the expertise of homogeneous, heterogeneous, and biomolecular catalytic research to pioneer new approaches in catalytic design;

(ii) conduct, plan, construct, acquire, share, or operate special equipment or facilities for the use of investigators conducting research and development in catalysis science in collaboration with national user facilities such as national user facilities;

(iii) synthesize catalysts with specific site architecture,

(iv) conduct research in the use of precious metals for catalysis (excluding platinum, palladium, and rhodium),

(v) translate molecular (picoscale) and nanoscale fundamentals to the design of catalytic components,

(vi) support technology transfer activities to benefit industry and other users of catalysis science and engineering; and

(vi) coordinate research and development activities with industry and other federal agencies.

(d) MERIT REVIEW REQUIRED.—All grants, contracts, cooperative agreements, or other financial assistance awards under this Act shall be made only after an independent merit review.

(e) TRIENNIAL ASSESSMENT.—The National Academy of Sciences shall review the catalysis program every three years to report on major advances, gaps in our fundamental science of catalysis and its progress made towards developing new fuels for energy production, material fabrication processes and methods to reduce emissions.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

The following sums are authorized to be appropriated to the Secretary of Energy, to remain available until expended, for the purposes of carrying out this Act:—

$33,000,000 for fiscal year 2004.

$35,000,000 for fiscal year 2005.

$36,500,000 for fiscal year 2006.

$38,000,000 for fiscal year 2007.

$40,100,000 for fiscal year 2008.

$42,100,000 for fiscal year 2009.
Both legislative bodies look forward to working with SCDDA to fight this good fight and to secure the resources required to address the very unique needs of patients, families and communities affected by SCD.

I ask that my colleagues in the Senate—Senator SCHUMER and GRAHAM, and Representatives DAVIS and BURR in helping us to find a cure to help the approximately 70,000 Americans who have SCD and the approximately 1,800 American babies who are born with this disease each year in supporting the Sickle Cell Treatment Act of 2003.

I ask unanimous consent that the text of the bill printed in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 874

(a) AN INTRODUCTION—This Act may be cited as the “Sickle Cell Treatment Act of 2003”.

(b) FINDINGS.—Congress makes the following findings:

(1) Sickle cell anemia is a genetic disease that affects an estimated 80,000 Americans, mostly African-Americans, with the sickle cell trait.

(2) The American Society of Human Genetics estimates that 1 in every 14 infants born in the United States is a carrier of sickle cell disease.

(3) In the United States, SCD is most common in African-Americans and those of Hispanic, Mediterranean, and Middle Eastern ancestry. Among newborn African-American infants, SCD occurs in approximately 1 in 300 African-Americans, 1 in 36,000 Hispanics, and 1 in 80,000 Caucasians.

(4) More than 2,500,000 Americans, mostly African-Americans, have SCD and approximately 1,800 American babies are born with the disease each year. SCD also is a global problem with more than 300,000 babies born annually with the disease.

(5) Children with SCD may exhibit frequent pain episodes, entrapment of blood within the spleen, acute chest pain, acute lung complications, and priapism. During episodes of severe pain, spleen enlargement, or acute lung complications, life-threatening complications can develop rapidly. Children with SCD are also at risk for septicemia, meningitis, and stroke. Children with SCD at high-risk for stroke can be identified and, thus, treated to prevent blood transfusions for stroke prevention.

(6) The most feared complication for children with SCD is a stroke (either overt or silent) occurring in 30 percent of the children with sickle cell anemia prior to their 18th birthday and occurring in infants as young as 18 months of age. Students with SCD and silent strokes may not have any physical signs of such disease or strokes but may have a lower educational attainment when compared to children with SCD and no such strokes. More than 60 percent of students with silent strokes have difficulty in school, require special education, or both.

(7) Many adults with SCD have acute problems, such as pain episodes and acute lung complications that can result in death. Adults with SCD can also develop chronic problems, including pulmonary disease, pulmonary hypertension, degenerative changes in the shoulder and hip joints, poor vision, and kidney failure.

The average life span for an adult with SCD is the mid-40s. While some patients can remain without symptoms for years, many others may not survive infancy or early childhood. Causes of death include bacterial infection, stroke, and lung, kidney, heart, or liver failure. Bacterial infections and lung injuries are leading causes of death in children and adults with SCD.

(8) The average life span for an adult with SCD is the mid-40s. While some patients can remain without symptoms for years, many others may not survive infancy or early childhood. Causes of death include bacterial infection, stroke, and lung, kidney, heart, or liver failure. Bacterial infections and lung injuries are leading causes of death in children and adults with SCD.

(9) As a complex disorder with multisystem manifestations, SCD requires specialized comprehensive and continuous care to achieve the best possible newborn screening, genetic counseling, and education of patients and family members. Comprehensive preventative care strategies and policies to decrease morbidity and mortality by preventing complications in-patient hospital stays, and increased overall costs of care.

(10) Stroke in the adult SCD population can result in both mental and physical disabilities for life.

(11) Currently, one of the most effective treatments for stroke in SCD is hematopoietic stem cell transplant, which is at least partially covered by Medicaid.

(12) SCD and AIDS are major public health issues surrounding sickle cell disease. A majority of patients, families and communities are affected by SCD.

(13) Legislation has been enacted into law. My colleagues have a lower educational attainment when compared to children with SCD and no such strokes. More than 60 percent of students with silent strokes have difficulty in school, require special education, or both.

(14) As a complex disorder with multisystem manifestations, SCD requires specialized comprehensive and continuous care to achieve the best possible newborn screening, genetic counseling, and education of patients and family members. Comprehensive preventative care strategies and policies to decrease morbidity and mortality by preventing complications, in-patient hospital stays, and increased overall costs of care.

(15) Stroke in the adult SCD population can result in both mental and physical disabilities for life.

(16) Currently, one of the most effective treatments for stroke in SCD is hematopoietic stem cell transplant, which is at least partially covered by Medicaid.

(17) SCD and AIDS are major public health issues surrounding sickle cell disease. A majority of patients, families and communities are affected by SCD.
are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who have Sickle Cell Disease; plus”.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date, without regard to whether final regulations to carry out such amendments have been promulgated by such date.

SEC. 4. DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.

(a) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

(1) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

(A) the coordination of service delivery for individuals with Sickle Cell Disease;

(B) genetic counseling and testing;

(C) the bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

(D) the training of health professionals; and

(E) the identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity care programs for individuals with Sickle Cell Disease.

(2) GRANT AWARD REQUIREMENTS.—

(A) GEOGRAPHIC DIVERSITY.—The Administrator shall give priority to awarding grants to eligible entities located in different regions of the United States.

(B) PRIORITY.—In awarding grants under this section, the Administrator shall give priority to awarding grants to eligible entities that are—

(i) a Federally-qualified health center that has a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health; or

(ii) a Federally-qualified health center that intends to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

(c) NATIONAL COORDINATING CENTER.—

(1) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this section.

(2) ACTIVITIES DESCRIBED.—The National Coordinating Center shall perform the following activities:

(A) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

(B) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

(C) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

(D) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this section and such direct outcome measures as—

(i) the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

(ii) the number of individuals that were tested and subsequently received genetic counseling for Sickle Cell Trait.

(d) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

(e) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Health Resources and Services Administration.

(2) ELIGIBLE ENTITY.—The term “eligible entity” means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary care to individuals who have Sickle Cell Disease; and

(3) FEDERALLY-QUALIFIED HEALTH CENTER.—

(A) the term “Federally-qualified health center” has the meaning given the term in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B)).
Among with a lack of available homes in urban and rural areas, our nation is also facing an affordable rental housing crisis. Thousands of low-income families with children, the disabled, and the elderly are finding it difficult to obtain affordable rental housing. Recent changes in the housing market have limited the availability of affordable housing across the country, while the growth in our economy in the last decade has dramatically increased the costs of the housing that remains. Constructing new housing will help many families move out of rental housing and help increase the number of available rental housing units and help ease the affordable housing crisis we now face.

The story of Benjamin and Rita Okafor shows how working families in Massachusetts have great difficulty obtaining a decent home of their own. For many years, the Okafor’s and their young children were forced to live in a one-bedroom apartment. Benjamin Okafor, who worked full time as a cab driver in Boston, spent days and months looking for a bigger apartment for his family. However, the lack of affordable housing in Boston made it impossible for him to find anything appropriate. When his wife Rita became pregnant with their third child, the Okafor’s knew something had to change in their living situation. Luckily, Ben was accepted into the Habitat for Humanity program and worked 300 sweat equity hours constructing a house. In August 2000, the Okafor family moved into a new home of their own in Dorchester. Ben says that this new home gives them the hope and stability they need. Yet, there are still far too many working families living in substandard housing and many more families that desperately need assistance to become homeowners. A new tax incentive for developers to build affordable homes in distressed areas will help working families like the Okafor’s to afford a home for the first time.

The benefits of owning a home can bring families financial rewards and personal satisfaction with a deep sense of security. Real estate values have historically risen over time. Homeowners may deduct mortgage interest and property taxes as an expense against income. Real estate has generally been seen as marketable, allowing for a future driver in Boston, spent days and months looking for a bigger apartment for his family. However, the lack of affordable housing in Boston made it impossible for him to find anything appropriate. When his wife Rita became pregnant with their third child, the Okafor’s knew something had to change in their living situation. Luckily, Ben was accepted into the Habitat for Humanity program and worked 300 sweat equity hours constructing a house. In August 2000, the Okafor family moved into a new home of their own in Dorchester. Ben says that this new home gives them the hope and stability they need. Yet, there are still far too many working families living in substandard housing and many more families that desperately need assistance to become homeowners. A new tax incentive for developers to build affordable homes in distressed areas will help working families like the Okafor’s to afford a home for the first time.

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April 10, 2003

CONGRESSIONAL RECORD — SENATE
S5203

project as owner-occupied residences. Then individual developers along with investors can apply to the state to be awarded a tax credit for developing a property in a low- or moderate-income area. If chosen by the state, investors can claim the tax credit and be recaptured by the Federal Government. In the first two years, 100 percent of the gain and 80, 70 and 60 percent in the third, fourth, and fifth years, respectively, would be recaptured.

The Community Development Homeownership Tax Credit Act that I am introducing today will positively affect the lives for approximately 500,000 families over the next 10 years, help resolve the affordable rental housing crisis we face, and help create jobs and grow our economy. I ask all of my colleagues to help expand the foundation of the American Dream by supporting this new tax incentive to encourage the construction and rehabilitation of homes for low- and moderate-income families in economically distressed areas.

This legislation is supported by the U.S. Conference of Mayors, Fannie Mae, Freddie Mac, the Enterprise Foundation, Habitat for Humanity International, Habitat for Humanity International, USAID, and the United States Agency for International Development, USAID, and other Federal agencies are using to hand out in Iraqi work.

There are dollars-and-cents reasons for doing this. The potential cost of rebuilding Iraq has been estimated at around $100 billion. That’s a lot of taxpayer money. And the U.S. General Accounting Office, GAO, reports that sole-source and limited-source contracts aren’t usually the best buy. Investigator found that Army officials often just took whatever level of services the contractor gave, without ever asking if it could be done more efficiently or at a lower cost.

Despite that, sole-source and limited-source contracts aren’t usually the best buy. In-vestigator found that Army officials often just took whatever level of services the contractor gave, without ever asking if it could be done more efficiently or at a lower cost.

Let me give you two concrete examples of the kind of secrecy I’m talking about. A lot of the known details come out full and open competition shall publish information. I am pleased that Senators COLLINS, CLINTON, BYRD and LIEBERMAN are joining me in introducing this legislation to bring greater accountability and openness to the contracting for Iraq reconstruction.

There are too many questions and the stakes are too high for Congress not to demand public disclosure of this information. I am pleased that Senators COLLINS, CLINTON, BYRD and LIEBERMAN are joining me in introducing this legislation to bring greater accountability and openness to the contracting for Iraq reconstruction.

I ask unanimous consent that a copy of our bill be printed in the RECORD. There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 876

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sunshine in Iraq Reconstruction Contracting Act of 2003”.

SEC. 2. PUBLIC DISCLOSURE OF NONCOMPETITIVE CONTRACTING FOR THE RECONSTRUCTION OF INFRASTRUCTURE IN IRAQ.

(a) DISCLOSURE REQUIRED.—

(1) PUBLICATION AND PUBLIC AVAILABILITY.—

The head of an executive agency of the United States that enters into a contract for the construction, reconstruction, rehabilitation, or maintenance of infrastructure in Iraq without full and open competition shall publish in the Federal Register or Commerce Business Daily and otherwise make available to the public, not later than 30 days after the date on which the contract is entered into, the following information:

(A) The amount of the contract.

(B) A brief description of the scope of the contract.

(C) A discussion of how the executive agency identified, and sole-sourced contracts, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offer.

(D) The justification and approval documents on which was based the determination
to use procedures other than procedures that provide for full and open competition.

(2) INAPPLICABILITY TO CONTRACTS AFTER FISCAL YEAR 2002.—Paragraph (1) does not apply to a contract entered into after September 30, 2013.

(b) CLASSIFIED INFORMATION.—

(1) AUTHORITY TO WITHOLD.—The head of an executive agency—

(A) withhold from publication and disclosure under subsection (a) any document that is classified for restricted access in accordance with section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(B) readact any part so classified that is in a document not so classified before publication and disclosure of the document under subsection (a).

(2) AVAILABILITY TO CONGRESS.—In any case in which the head of an executive agency withholds information under paragraph (1), the head of such executive agency shall make available an unredacted version of the document containing such information to the chairman and ranking member of each of the following committees of Congress:

(A) The Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(B) The Committees on Appropriations of the Senate and the House of Representatives.

(C) Each committee that the head of the executive agency determines has legislative jurisdiction for the operations of such department or agency to which the information relates.

(D) FISCAL YEAR 2003 CONTRACTS.—This section shall apply to contracts entered into on or after October 1, 2002, except that, in the case of a contract entered into before the date of the enactment of this Act, subsection (a) shall be applied as if the contract had been entered into on the date of the enactment of this Act.

(e) DEFINITIONS.—In this section, the terms "executive agency" and "full and open competition" have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).
such “opt-out” mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(9) A company, or a group of companies, or any other entity, acting in concert or combination, shall be treated as a single entity for purposes of this Act if the contents or circumstances of the messages indicate that the messages were sent or delivered and were intended, in whole or in part, to constitute commercial advertisements or solicitations.

(10) An increasing number of senders of unsolicited commercial electronic mail purposefully disguise the source of such mail so as to prevent recipients from responding to such mail quickly and accurately.

(11) In legislating against certain abuses on the Internet, Congress should be very careful to avoid any way of circumventing constitutionally protected rights, including the rights of assembly, free speech, and privacy.

(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of unsolicited commercial electronic mail;

(2) senders of unsolicited commercial electronic mail should not mislead recipients as to the identity of such mail;

(3) recipients of unsolicited commercial electronic mail have a right to decline to receive additional unsolicited commercial electronic mail from the same source.

SEC. 3. DEFINITIONS.

In this Act:

(1) AFFIRMATIVE CONSENT.—The term “affirmative consent”, when used with respect to a commercial electronic mail message, means that the recipient has expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient’s own initiative.

(2) COMMERCIAL ELECTRONIC MESSAGE.—

(A) IN GENERAL.—The term “commercial electronic mail message” means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not cause such message to be treated as a commercial electronic mail message for purposes of this Act if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(C) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(D) DOMAIN NAME.—The term “domain name” means any alphanumeric designation which is registered with or assigned by any domain authority, domain registrar, or domain name registration authority as part of an electronic address on the Internet.

(E) ELECTRONIC MAIL ADDRESS.—The term “electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), to which an electronic mail message may be sent or delivered.

(F) ELECTRONIC MAIL MESSAGE.—The term “electronic mail message” means a message sent to an electronic mail address.

(G) HEADER INFORMATION.—The term “header information” means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address.

(H) IMPLIED CONSENT.—The term “implied consent”, when used with respect to a commercial electronic mail message, means—

(A) within the 3-year period ending upon receipt of such message, there has been a business relationship between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient);

(B) the recipient was, at the time of such transaction or thereafter in the first electronic mail message received from the sender after the effective date of this Act, provided a clear and conspicuous notice of an opportunity not to receive unsolicited commercial electronic mail messages from the sender and has not exercised such opportunity.

If a sender operates through separate lines of business or divisions and holds itself out to the recipient, both at the time of the transaction described in subparagraph (A) and at the time the notice under subparagraph (B) was provided to the recipient, as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the source for purposes of this paragraph.

(I) INITIATE.—The term “initiate”, when used with respect to a commercial electronic mail message, means to originate such message, to procure the origination of such message, but shall not include actions that constitute routine conveyance of such message.

(J) INTERNET.—The term “Internet” has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 et seq.).

(K) INTERNET ACCESS SERVICE.—The term “Internet access service” has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(L) PROTECTED COMPUTER.—The term “protected computer” has the meaning given that term in section 1030(e)(2) of title 18, United States Code.

(M) RECIPENT.—The term “recipient”, when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, domain name registrar, domain authority, or domain name registration authority after the effective date of this Act, the person to whom the message was sent or delivered after the effective date of this Act shall be treated as the recipient.

(N) ROUTINE CONVEYANCE.—The term “routine conveyance” means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which an authorized user has provided and selected the recipient addresses.

(O) TAMPER WITH MESSAGE.—The term “tamper with message”, when used with respect to any electronic mail message, means to alter, modify, destroy, or otherwise prevent recipients from viewing the messages.

(P) TRANSMISSION INFORMATION.—It is unlawful to use a computer or Internet web site to advertise or promote, or Internet web site is advertised or promoted, unsolicited commercial electronic mail message, means any electronic mail address to which a protected computer is addressed.

(Q) TRANSMISSION INFORMATION.—It is unlawful to use a computer or Internet web site to advertise or promote, or Internet web site is advertised or promoted, unsolicited commercial electronic mail message, means any electronic mail address to which a protected computer is addressed.

(R) UNRELATED PERSON.—The term “unrelated person” means a recipient whose primary purpose other than commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose) is served by the receipt of such electronic mail message.

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(Z) UNRELATED PERSON.—The term “unrelated person” means a recipient whose primary purpose other than commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose) is served by the receipt of such electronic mail message.
knows would be likely to mislead a recipient, acting reasonably under the circumstances, about the contents or subject matter of the message.

(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—

(A) In general.—It is unlawful for any person to initiate the transmission to a protected computer of an unsolicited commercial electronic mail message that does not contain a functioning return electronic mail address or other comparable mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified by the sender, a reply electronic mail message or other form of net-based communication requesting not to receive any future unsolicited commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) MORE DETAILED OPTIONS POSSIBLE.—The sender of an unsolicited commercial electronic mail message may comply with paragraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any unsolicited commercial electronic mail messages from the sender.

(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to comply with the requirements of paragraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to technical or capacity problems, if the problem with receiving messages or processing requests is corrected within a reasonable time period.

(4) PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—If a recipient makes a request to a sender, using a mechanism provided pursuant to paragraph (3), not to receive any unsolicited commercial electronic mail messages from that sender, the sender shall not transmit to that recipient any unsolicited commercial electronic mail message that falls within the scope of the request, if the message was received—

(A) clear and conspicuous identification that the message is an advertisement or solicitation;

(B) clear and conspicuous notice of the opportunity to decline to receive further unsolicited commercial electronic mail messages from the sender; and

(C) a valid physical postal address of the sender.

(b) PROHIBITION OF TRANSMISSION OF UNLAWFUL UNSOLICITED COMMERCIAL ELECTRONIC MAIL TO CERTAIN HARVESTED ELECTRONIC MAIL ADDRESSES.—

(I) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such a message through the provision or solicitation of an address to which the message will be sent, if such person knows that, or acts with reckless disregard as to whether—

(A) the electronic mail address of the recipient was obtained, using an automated means, from an Internet website or proprietary online service operated by another person; or

(B) the website or proprietary online service from which the address was obtained included, at the time the address was obtained, a notice indicating that such a website or proprietary online service will not give, sell, or otherwise transfer addresses maintained by such site or service to any other party for the purpose of initiating, or enabling others to initiate, unsolicited electronic mail messages.

(2) DISCLAIMER.—Nothing in this subsection creates an ownership or proprietary interest in such electronic mail addresses.

(c) COMPLIANCE PROCEDURES.—An action for violation of paragraph (2), (3), (4), or (5) of subsection (a) may not proceed if the person against whom the action is brought demonstrates that—

(A) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of such paragraph; and

(B) the violation occurred despite good faith efforts to maintain compliance with such practices and procedures.

SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 5(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

(I) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818); and

(A) national banks, and Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union, and any subsidiaries of such a credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(b) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (a) of any authority conferred on it by law specifically referred to in that subsection, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(c) ACTIONS BY THE COMMISSION.—The Commission may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.
and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

(e) Enforcement by States.—(1) In general.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(b) Service of Process.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(7) Limitation on Exceptions.—Paragraph (3) shall include in the report required by subsection (i) of section 19 of the Federal Trade Commission Act for materially false or deceptive representations in commercial electronic mail messages.

(b) STATE LAW.—

(1) In general.—This Act supersedes any State or local government statute, regulation, or rule that differs from the provisions of this Act.

(b) Required Analysis.—The Commission shall include in the report required by subsection (a)(2) of section 10 of the Communications Act of 1934 (47 U.S.C. 231) an analysis of whether the Commission’s actions have been consistent with the public interest, the consumer’s interest, and the need for the protection against, and the prevention of, the rising tide of unsolicited commercial electronic mail, commonly known as “spam.”

The Commission shall submit to the Congress a report on the effectiveness of the provisions of this Act and the need (if any) for the Congress to modify such provisions.
40 percent of all e-mail traffic in the United States is spam, up from 8 percent in late 2001 and nearly doubling in the past six months. By 2004, according to some estimates, a typical company that fails to take defensive action could spend 8 percent of its computing time dealing with spam. If nothing is done, the situation is likely to get worse. The fundamental problem—and what makes spam different from other types of marketing—is that it is so cheap to send huge volumes of messages. With the stroke of a key, the spammer can let fly a massive torrent of e-mails.

And since the sender doesn’t pay any per-message postage, the incentive is to send as many as possible. The cost of all these extra messages is borne by the Internet service providers, ISPs, and the recipients, not by the sender. So as far as the spammer is concerned, the sky is the limit.

Anyone who uses e-mail should be deeply concerned about this trend. In a few short years, e-mail quickly went from a novelty to a core medium of communication for millions of Americans. They came to rely on it daily, for business and personal communications alike. It seemed as if e-mail rose to prominence, its usefulness could dwindle—buried under an avalanche of endless “Get Rich Quick,” “Lose Weight Fast,” and offensive pornographic marketing pitches. As consumers grow frustrated with boated in-boxes, and as ISP networks and e-commerce websites are slowed by mounting junk e-mail traffic jams, enthusiasm for the entire medium of e-mail and e-commerce could sour.

Right users and ISPs are trying to manage the problem as best they can. They use filtering software, or lists of known spammers, or sign up for special anti-spam services. But these tactics can be burdensome, costly, and only partially effective. The fact is, existing laws do not provide sufficient tools. More help is needed.

Many States have moved to address the issue. But e-mail is not a medium that respects, or even recognizes, State borders. It’s hard enough to tell the sender to stop. The basic goal is simple: give the consumer more control.

Specifically, the bill would prohibit the use of falsified or deceptive headers or headers that can’t or won’t identify the true source of the message. A sender of unsolicited marketing e-mail would also be required to provide the recipient with a return address or similar mechanism by which the sender will be identified. The Federal Trade Commission would have authority to impose civil fines. State attorneys general would be able to bring suit on behalf of the citizens of their states. And ISPs would be able to bring true spam off their networks. In all cases, particularly high penalties would be available for true “bad actors”—the shady, high-volume spammers who have no intention of behaving in a lawful and responsible manner.

The bill includes strong enforcement provisions to ensure compliance. Spammers that intentionally disguise their identities would be subject to misdemeanor criminal penalties. The Federal Trade Commission would have authority to impose civil fines. State attorneys general would be able to bring suit on behalf of the citizens of their states. And ISPs would be able to bring true spam off their networks. In all cases, particularly high penalties would be available for true “bad actors”—the shady, high-volume spammers who have no intention of behaving in a lawful and responsible manner.

Our goal here is not to discourage legitimate online communications between businesses and their customers. Senator Burns and I have no intention of interfering with a company’s ability to use e-mail to inform customers of warranty information, provide account holders with monthly account statements, and so forth. Rather, we want to go after those unscrupulous individuals who use e-mail in an annoying and misleading fashion. This bill strikes that important balance.

Senator Burns and I have been at this for three years now, and have worked with many different groups in shaping the legislation. We believe we have made real progress in addressing some of the legitimate concerns that were raised about previous versions of the bill. Naturally, there are interested parties who have additional ideas for measures they would like to see. We welcome those ideas; we will work with them, and I would also point out that the bill calls for a study to evaluate this initial Federal step against spam and to determine whether further provisions are needed. But the bill we are introducing today offers a workable, common-sense approach that should be politically viable this year.

I am pleased that Senators Breaux, Landrieu, Schumer, and Thomas are joining Senator Burns and me in co-sponsoring this legislation. I urge the rest of my Senate colleagues to join us on moving it forward as promptly as possible, so that the Senate won’t still be debating the issue, with no action taken, several years from now.

By Mr. Smith.

S. 899. A bill to amend the Internal Revenue Code of 1986 to increase and extend the special depreciation allowance, and for other purpose; to the Committee on Finance.

Mr. Smith. Mr. President, rise to introduce the Economic Stimulus Act of 2003, legislation that will allow a 50 percent bonus depreciation over a 5 year period. Last year I was proud to introduce and pass a 30 percent bonus depreciation incentive as part of legislation signed into law in March 2002. We had great bipartisan support on this issue and I hope that similar action will take place during consideration of this year’s tax bill.

I introduce the Economic Stimulus Act of 2003 to build on last year’s effort by both increasing that bonus to 50 percent and extending it through 2008. Our economy clearly needs a boost, and this provision will complement many of the provisions in President Bush’s economic growth package.

Recently, U.S. Department of Commerce data revealed that private investment in high tech equipment ended the year with an ability to save family-wage jobs and put additional employees to work in Oregon. For example, the rail supply industry has been hit hard, and though there is a need for investment, there has been a reluctance to invest significant sums that are necessary to sustain this industry. Bonus depreciation provisions is an additional incentive that will lead institutional investors, leasing companies, shippers and railroads to invest in new rail equipment.

In Oregon’s high-tech sector the strong increase in the first year depreciation amount will have a real and positive impact on the investment environment for high tech equipment, such as computer hardware, software and broadband network infrastructure. This legislation will definitely stimulate the demand for the software and the whole high-tech sector. In Oregon, the hi-tech sector has been a major component of the economic growth and I am intent that this engine of growth continue to provide stimulus to the economy.
I note that there are a myriad of budgetary incentives, but none that provide enough lead time to make real and substantive business decisions. The current downturn is caused in part by a decline in business investment. So what kind of investment can be stimulated by a year-long depreciation incentive? It probably gives business people time to buy a chair and some new wastebaskets.

But a year is not enough time to start a major project that can employ thousands of people. It doesn't allow time to build heavy equipment, modernize a lumber mill, revamp a corporate computer system, repair a railroad, or construct an airplane. It doesn't allow enough time to obtain building permits, perform environmental reviews, or complete architectural or engineering studies.

We need to create a booming economy not just for today, but for the next several years. So I must emphasize that short depreciation proposals lack economic weight.

Bonus depreciation is probably the best idea in the stimulus proposal, I ask that all my colleagues consider and support the Economic Stimulus Act of 2003. I ask unanimous consent that the text of this bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 879

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Economic Stimulus Act of 2003.”

SEC. 2. EXPANSION OF SPECIAL DEPRECIATION ALLOWANCE.

(a) IN GENERAL.—Subsection (k) of section 168 (relating to the accelerated cost recovery system) is amended—

(1) by adding at the end of paragraph (1) the following new flush sentence:

“In the case of any qualified property acquired by the taxpayer pursuant to a written binding contract which was entered into after the date of the enactment of the Economic Stimulus Act of 2003, subparagraph (A) shall be applied by substituting ‘50 percent’ for ‘30 percent’.”;

(2) by redesignating subclauses (III) and (IV) of paragraph (2)(A)(ii) as subclauses (IV) and (V), respectively;

(b) IN THE CASE OF TRANSPORTATION PROPERTY.—In the case of transportation property, described in subparagraph (A), before January 1, 2011.’’,
(b) FINDINGS.—Congress makes the following findings:

(1) Variations in the physician work adjustment factors under section 1848(e) of the Social Security Act (42 U.S.C. 1395w–4w(e)) result in a physician work payment inequity between urban and rural localities under the Medicare physician fee schedule.

(2) The amount the medicare program spends on its beneficiaries varies substantially across the country, far more than can be accounted for by differences in the cost of living in rural States.

(3) Since beneficiaries and others pay into the program on the basis of income and wages, they pay the same premium for part B services, these payments result in substantial cross-subsidies from people living in low payment States with conservatively practice styles or beneficiary preferences.

(4) Congress has been mindful of these variations when it comes to capitation payments made to managed care plans under the Medicare-Choice program and has put in place formula adjustments that increase monthly payments by more than one-third in some of the lowest payment counties over what would otherwise occur. But this change addresses only a very small fraction of Medicare beneficiaries who are presently enrolled in Medicare-Choice plans operating in low payment counties.

(5) Congress has only begun to address the underlying problem of substantial geographic variations in fee-for-service spending under traditional Medicare. Improvements in rural hospital payment systems under the medicare program help to reduce aggregate per capita payment variation as rural hospitals are in large part located in rural payment counties.

(6) Many rural communities have great difficulty attracting and retaining physicians and other skilled health professionals.

(7) Targeted efforts to provide relief to rural doctors in low payment localities would further reduce variation by improving access to primary and tertiary services along with more equitable payment.

(8) Geographic adjustment factors in the medicare program’s resource-based relative value scale unfairly suppress fee-for-service payments to rural providers.

(9) Actual costs are not presently being measured accurately and payments do not reflect the severity of providing care.

(10) Unless something is done about medicare payment in rural areas, as the baby boom cohort ages into medicare, the financial demands on rural communities to subsidize care for their aged and disabled medicare beneficiaries will progress from difficult to impossible in another 10 years.

(11) The amount the medicare program pays to rural health care infrastructures will be first felt in economically depressed rural areas where the ability to shift costs is already limited.

SEC. 2. PHYSICIAN WAGE SCHEDULE WAGE INDEX REVISION

Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4w(e)(1)) is amended—

(1) in subparagraph (A), by striking “subparagraphs (B) and (C)” and inserting “subparagraphs (B), (C), and (E)”;

(2) in subparagraph (B), by inserting “subparagraphs (B), (C), and (E)”;

(3) in subparagraph (C), by striking “subparagraph (A)(iii)” and inserting “subparagraph (A)(iii)”; and

(4) by adding at the end of the following new subparagraph:

“(E) FLOOR FOR WORK GEOGRAPHIC INDICES.—

(i) IN GENERAL.—Notwithstanding the work geographic index otherwise calculated under subparagraph (A)(iii), in no case may the work geographic index applied for payment under this section be less than—

(ii) 0.967 for services furnished during 2005; and

(iii) 0.995 for services furnished during 2006; and

(iv) 1.000 for services furnished during 2007 and subsequent years.

“(ii) LIMITATION ON ANNUAL ADJUSTMENTS.—The increase in expenditures attributable to clause (i) shall not be taken into account in applying subsection (c)(2)(B)(iii)(II):”

NRA SUPPORTS “EQUAL PAY FOR EQUAL WORK.”

WASHINGTON, D.C.—May 7—The National Rural Health Association (NRHA) today strongly endorsed legislation introduced by Representative Doug Bereuter (R.—Neb) that would provide rural physicians with Medicare payment parity with their urban counterparts. The Rural Equity Payment Index Reform Act addresses the little known fact that the federal government pays rural doctors at a lower rate.

“An office visit to a rural physician is no different than an office visit to an urban physician,” NRHA President Wayne Myers, M.D., said. “The idea that physicians are reimbursed for their work and their skills at a lower rate simply on the basis that they choose to practice in a rural area and serve our rural communities is completely ludicrous.”

The Bereuter bill would lessen the disparity that exists between urban and rural areas. By gradually phasing in a floor that upwardly adjusts reimbursement rates for rural providers, without lowering the reimbursement in urban areas, the discrepancy in payment will progressively be corrected.

“These health care providers put as much or even more time, skill and intensity into a patient’s rural counterparts,” Rep. Bereuter said, “yet they are paid less for their work under the medicare program. This is a formula that is punishing non-metropolitan communities.”

Under the current medicare physician payment formula, residents of non-metropolitan areas essentially subsidize the delivery of health care in metropolitan areas. Even though rural areas tend to have larger populations of medicare beneficiaries, they are subsidizing health care in urban areas, while their own communities are struggling to attract health care professionals.

“This is a top priority issue for the NRHA,” Myers said. “In fact, this disparity is a hidden economic recession that NRHA exists. “For far too long, rural American health care has been overlooked in Washington. We applaud Congressman Bereuter for his leadership in working with him to ensure rural physicians—rural citizens alike—receive an equitable deal.”

The NRHA is a national nonprofit membership organization that provides leadership on rural health issues. The association’s mission is to improve the health of rural Americans and to provide leadership on rural health issues through advocacy, communications, education and research. The NRHA membership is made up of a diverse collection of individuals and organizations.

AMERICAN PHYSICAL THERAPY ASSOCIATION

WASHINGTON, D.C.—March 25, 2003

Hon. Doug Bereuter (R–NE), Rayburn House Office Building, Washington, DC.

DEAR CONGRESSMAN BEREEUTER: The American Physical Therapy Association (APTA) would like to express its appreciation for your legislation to correct an inequity in the Medicare payment for rural health care providers. APTA strongly supports HR 33. The Rural Equity Payment Index Reform (REPAIR) Act. This legislation is a positive step to ensuring improved access to quality health care services, including those delivered by licensed physical therapists, in rural America.

The current inequity in payment to health care providers under the Medicare physician fee schedule and its Geographic Medical Practice Index needs to be corrected so that quality health care can continue to serve the needs of our rural communities.

Physical therapists are highly qualified and recognized providers under Medicare who bill for their services under the Medicare Physician Fee Schedule. Your legislation (HR 33) would improve access and payment for appropriate physical therapy services in rural America. Under the current legislation would also go a long way to attract and retain physical therapist to consider rural areas for practice and service. Access to qualified health care providers is a growing problem in rural America and your legislation is one of many steps to reverse this trend.

We applaud your dedication to rural health and express our support that Congress pass HR 33. The Rural Equity Payment Index Reform (REPAIR) Act in this Congress. If you have questions, please feel free to contact Justin Moore at 703–706–3162 or justinmoore@apta.org.

Sincerely,

G. DAVID MASON,
Vice President, Government Affairs.

By Mr. BAUCUS (for himself and Mr. GRASSLEY):

S. 882. A bill to amend the Internal Revenue Code of 1986 to provide improvements in tax administration and taxpayer safeguards, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today we are introducing the Tax Administration Good Government Act.

The legislation contains five major components. First, it provides additional safeguards for taxpayers. Second, the legislation significantly simplifies the current interest and penalty regimes. Third, the Act also includes the proposals passed out of the Finance Committee on April 2, 2003 and included in the bill introduced by Senators HATCH and BREAUX to modernize the United States Tax Court.

Fourth, our legislation also includes several provisions, some of which were requested by the Treasury Department and the Joint Committee on Taxation, to strike an appropriate balance in protecting taxpayer confidentiality through disclosure reforms. Finally, the legislation takes a small, but important step toward simplification of the tax code through the elimination of obsolete provisions.

We have worked closely with the Treasury Department, the Internal Revenue Service, the National Taxpayer Advocate and the Joint Committee on Taxation to develop this package of proposals to promote good government in the administration of our tax code.

Congress’s responsibility for the tax system does not stop after we pass tax law changes. We have an oversight responsibility to ensure that taxpayer rights are protected, that our tax laws are not administered counter to Congressional intent, that the judicial
body with primary jurisdiction over the tax laws has the tools necessary to provide independent review of controversies between taxpayers and the Internal Revenue Service, and to take steps to simplify the tax code whenever possible.

It is our intention to pass a package of tax administration good government proposals out of the Finance Committee in the coming months. We urge our colleagues to support this important legislation.

We also submit for the RECORD a more detailed description of the specific provisions included in the Tax Administration Good Government Act.

I ask unanimous consent that the text of the bill and the description be printed in the RECORD.

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

S. 882
Bill entitled enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE; ETC.
(a) SHORT TITLE.—This Act may be cited as the "Tax Administration Good Government Act".
(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.
(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:
   Sec. 1. Short title; etc.

TITLE I—IMPROVEMENTS IN TAX ADMINISTRATION AND TAXPAYER SAFEGUARDS
Subtitle A—Improving Efficiency and Safeguards in Internal Revenue Service Collection
Sec. 101. Waiver of user fee for installment agreements using automated withdrawals.
Sec. 102. Partial payment of tax liability in installment agreements.
Sec. 103. Termination of installment agreements.
Sec. 104. Office of Chief Counsel review of offers in compromise.
Sec. 105. Seven-day threshold on tolling of statute of limitations during National Taxpayer Advocate review.
Sec. 106. Increase in penalty for bad checks or money orders.
Sec. 107. Financial management service fees.
Sec. 108. Elimination of restriction on offsetting refunds from former residents.

Subtitle B—Processing and Personal
Sec. 111. Explanation of statute of limitations and consequences of failure to file.
Sec. 112. Disclosure of tax information to favorable taxpayer who has obtained employment tax reporting.
Sec. 113. Expansion of declaratory judgment remedy to tax-exempt organizations.
Sec. 114. Amendment to Treasury auction reforms.
Sec. 115. Revisions relating to termination of employment of Internal Revenue Service employees for misconduct.

Sec. 116. IRS Oversight Board approval of use of critical pay authority.
Sec. 117. Low-income taxpayer clinics.
Sec. 118. Enrollment agents.
Sec. 119. Establishment of disaster response team.
Sec. 120. Accelerated tax refunds.
Sec. 121. Schedule for claiming record-keeping responsibilities.
Sec. 122. Streamline reporting process for National Taxpayer Advocate.

Subtitle C—Other Provisions
Sec. 131. Penalty on failure to report interest in foreign financial accounts.
Sec. 132. Repeal of personal holding company.

TITLE II—REFORM OF PENALTY AND INTEREST
Sec. 201. Individual estimated tax.
Sec. 203. Increase in large corporation threshold for estimated tax payments.
Sec. 204. Abatement of interest.
Sec. 205. Deposits made to suspend running of interest on potential underpayments.
Sec. 206. Fresh start provision regarding suspension of interest where Secretary fails to contact taxpayer.
Sec. 207. Expansion of interest netting.
Sec. 208. Clarification of application of Federal tax deposit penalty.
Sec. 209. Fresh starts of overpayments.

TITLE III—UNITED STATES TAX COURT MODERNIZATION
Subtitle A—Tax Court Procedure
Sec. 301. Jurisdiction of Tax Court over collection due process cases.
Sec. 302. Authority for special trial judges to hear and decide certain employment status cases.
Sec. 303. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment.
Sec. 304. Tax Court filing fee in all cases commenced by filing petition.
Sec. 305. Amendments to appoint employees.
Sec. 306. Expanded use of Tax Court practice fee for pro se taxpayers.

Subtitle B—Tax Court Pension and Compensation
Sec. 311. Annuities for survivors of Tax Court judges who are assassinated.
Sec. 312. Cost-of-living adjustments for Tax Court judicial survivor annuities.
Sec. 313. Life insurance coverage for Tax Court judges.
Sec. 314. Cost of life insurance coverage for Tax Court judges age 65 or over.
Sec. 315. Modification of timing of lump-sum payment of judges' accrued annual leave.
Sec. 316. Participation of Tax Court judges in the Thrift Savings Plan.
Sec. 317. Exception of teaching compensation of retired judges from limitation on outside earned income.
Sec. 318. General provisions relating to magistrate judges of the Tax Court.
Sec. 319. Annuities to surviving spouses and dependents of children of magistrate judges of the Tax Court.
Sec. 320. Retirement and annuity program.
Sec. 321. Ineligibility of magistrate judges of the Tax Court.
Sec. 322. Provisions for recall.
Sec. 323. Effective date.

TITLE IV—FUNDAMENTALITY AND DISCLOSURE
Sec. 401. Clarification of definition of church tax inquiry.
Sec. 402. Collection activities with respect to joint return disclosable to either spouse based on oral request.
Sec. 403. Taxpayer representatives not subject to examination on sole basis of representation of taxpayer.
Sec. 404. Ban of disclosure of taxpayer identifying number with respect to disclosure of accepted offers-in-compromise.
Sec. 405. Compliance by contractors and other agents with confidentiality safeguards.
Sec. 406. Higher standards for requests for and consents to disclosure.
Sec. 407. Civil damages for unauthorized inspection or disclosure.
Sec. 408. Expanded disclosure in emergency circumstances.
Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
Sec. 410. Disclosure to State officials of proposed actions related to section 501(c) organizations.
Sec. 411. Treatment of public records.
Sec. 412. Investigative disclosures.
Sec. 413. TIN matching.
Sec. 414. Form 6830 disclosures.
Sec. 415. Technical amendment.

TITLE V—SIMPLIFICATION THROUGH ELIMINATION OF INOPERATIVE PROVISIONS
Sec. 501. Simplification through elimination of federal tax code.

Subtitle A—Improving Efficiency and Safeguards in Internal Revenue Service Collection
 Sec. 101. WAIVER OF USER FEE FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.
   (a) IN GENERAL.—Section 6159 (relating to agreements for payment of tax liability in installments) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following:
   "(e) WAIVER OF USER FEES FOR INSTALLMENT AGREEMENTS USING AUTOMATED WITHDRAWALS.—In the case of a taxpayer who enters into an installment agreement in which automated installment payments are agreed to, the Secretary shall waive the fee if any for entering into the installment agreement."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

TITLE II—REFORM OF PENALTY AND INTEREST
Sec. 201. Individual estimated tax.
Sec. 203. Increase in large corporation threshold for estimated tax payments.
Sec. 204. Abatement of interest.
Sec. 205. Deposits made to suspend running of interest on potential underpayments.
Sec. 206. Fresh start provision regarding suspension of interest where Secretary fails to contact taxpayer.
Sec. 207. Expansion of interest netting.
Sec. 208. Clarification of application of Federal tax deposit penalty.
Sec. 209. Fresh starts of overpayments.

TITLE III—UNITED STATES TAX COURT MODERNIZATION
Subtitle A—Tax Court Procedure
Sec. 301. Jurisdiction of Tax Court over collection due process cases.
Sec. 302. Authority for special trial judges to hear and decide certain employment status cases.
Sec. 303. Confirmation of authority of Tax Court to apply doctrine of equitable recoupment.
Sec. 304. Tax Court filing fee in all cases commenced by filing petition.
Sec. 305. Amendments to appoint employees.
Sec. 306. Expanded use of Tax Court practice fee for pro se taxpayers.

Subtitle B—Tax Court Pension and Compensation
Sec. 311. Annuities for survivors of Tax Court judges who are assassinated.
Sec. 312. Cost-of-living adjustments for Tax Court judicial survivor annuities.
Sec. 313. Life insurance coverage for Tax Court judges.
Sec. 314. Cost of life insurance coverage for Tax Court judges age 65 or over.
Sec. 315. Modification of timing of lump-sum payment of judges' accrued annual leave.
Sec. 316. Participation of Tax Court judges in the Thrift Savings Plan.
Sec. 317. Exception of teaching compensation of retired judges from limitation on outside earned income.
Sec. 318. General provisions relating to magistrate judges of the Tax Court.
Sec. 319. Annuities to surviving spouses and dependents of children of magistrate judges of the Tax Court.
Sec. 320. Retirement and annuity program.
Sec. 321. Ineligibility of magistrate judges of the Tax Court.
Sec. 322. Provisions for recall.
Sec. 323. Effective date.

TITLE IV—FUNDAMENTALITY AND DISCLOSURE
Sec. 401. Clarification of definition of church tax inquiry.
Sec. 402. Collection activities with respect to joint return disclosable to either spouse based on oral request.
Sec. 403. Taxpayer representatives not subject to examination on sole basis of representation of taxpayer.
Sec. 404. Ban of disclosure of taxpayer identifying number with respect to disclosure of accepted offers-in-compromise.
Sec. 405. Compliance by contractors and other agents with confidentiality safeguards.
Sec. 406. Higher standards for requests for and consents to disclosure.
Sec. 407. Civil damages for unauthorized inspection or disclosure.
Sec. 408. Expanded disclosure in emergency circumstances.
Sec. 409. Disclosure of taxpayer identity for tax refund purposes.
Sec. 410. Disclosure to State officials of proposed actions related to section 501(c) organizations.
Sec. 411. Treatment of public records.
Sec. 412. Investigative disclosures.
Sec. 413. TIN matching.
Sec. 414. Form 6830 disclosures.
Sec. 415. Technical amendment.
an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.”.

(c) Effective Date.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 103. MODIFICATION OF INSTALLMENT AGREEMENTS.

(a) In General.—Section 6159(b)(4) (relating to failure to pay an installment or any other tax liability when due or to provide requested financial information) is amended by striking “or” at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting after subparagraph (B) the following:—

“(C) to make a Federal tax deposit under section 6302 at the time such deposit is required to be made,”

“(D) to file a return of tax imposed under this title by its due date (including extensions), or

“(E) conforming amendment.—Section 6159(b)(4) is amended by inserting “Failure to make tax deposits under section 6302” before “tax liability on account of such decision is at least 7 days after the date of the taxpayer’s application”.

SEC. 104. OFFICE OF CHIEF COUNSEL REVIEW OF OFFERS IN COMPROMISE.

(a) In General.—Section 7122(b) (relating to record) is amended by striking “Whenever a compromise is made” and all that follows through “his delegate” and inserting “If the Secretary determines that an opinion of the General Counsel for the Department of the Treasury, or the Counsel’s delegate, is required with respect to a compromise, there shall be placed on file in the office of the Secretary such opinion.”

(b) Conforming Amendment.—Section 7122(b) is amended by striking the second and third sentences.

(c) Effective Date.—The amendments made by this section shall apply to failures occurring on or after the date of the enactment of this Act.

SEC. 105. SEVEN-DAY THRESHOLD ON TOLLING OF LIMITATION PERIOD DURING NATIONAL TAXPAYER ADVOCATE REVIEW.

(a) In General.—Section 7811(d)(1) (relating to suspension of running of period of limitation) is amended by inserting after “application,” the following:— “but only if the date of such decision is at least 7 days after the date of the taxpayer’s application.”

(b) Effective Date.—The amendment made by this section shall apply to applications filed after the date of the enactment of this Act.

SEC. 106. INCREASE IN PENALTY FOR BAD CHECKS OR MONEY ORDERS.

(a) In General.—Section 6675 (relating to bad checks) is amended—

(1) by striking “$750” and inserting “$1,250”, and

(2) by striking “$5” and inserting “$25”.

(b) Effective Date.—The amendments made by this section apply to checks or money orders received after December 31, 2003.

SEC. 107. FINANCIAL MANAGEMENT SERVICE FEES.

Notwithstanding any other provision of law, the Financial Management Service may charge the Internal Revenue Service for the use of the Internal Revenue Service may pay the Financial Management Service, a fee sufficient to cover the full cost of implementing a continuous levy program under subsection (h) of section 6331 of the Internal Revenue Code of 1986. Any such fee shall be based on actual costs incurred by the Financial Management Service by the retention of a portion of amounts collected by levy pursuant to that subsection. Amounts received under a continuous levy shall be deposited in the account of the Secretary if there is a final administrative or judicial determination that such amount is due to the United States.

SEC. 108. ELIMINATION OF RESTRICTION ON OFF-SHOT REFUNDS FROM FORMER RESIDENTS.

Section 6041(b)(2) (relating to collection of past-due, legally enforceable State income tax obligations) is amended by striking paragraph (2) and by redesigning paragraphs (3), 5, 6, and 7 as paragraphs (2), (3), (4), (5), and (6), respectively.

Subtitle B—Processing and Personnel

SEC. 111. EXPLANATION OF STATUTE OF LIMITATIONS AND CONSEQUENCES OF FAILURE TO FILE.

The Secretary of the Treasury or the Secretary’s delegate shall, as soon as practicable, no later than 7 days after the date of the enactment of this Act, revise the statement required by section 6227 of the Omnibus Taxpayer Bill of Rights (Internal Revenue Service Publication No. 1), and any instructions booklet accompanying a general income tax return form for taxable years beginning after 2001 (including forms 1040, 1040A, 1040EZ, and successors) (forms relating thereto), to provide for an explanation of—

(1) the limitations imposed by section 6501 of the Internal Revenue Code of 1986 on credits and refunds; and

(2) the consequences under such section 6501 of the failure to file a return of tax.

SEC. 112. DISCLOSURE OF TAX INFORMATION TO FACILITATE COMBINED EMPLOYMENT TAX REPORTING.

Section 6602(d)(3) is amended to read as follows:

“5) Disclosure for combined employment tax reporting.—The Secretary may disclose information to a designated federal tax employer, or any State, or the Internal Revenue Service if there is a final administrative or judicial determination that such employer committed any act or omission described in subsection (b) in the performance of the taxpayer’s official duties. Such determination shall be a removal for cause on charges of misconduct.

“6) Acts or Omissions.—The acts or omissions described under this subsection are—

(ii) willful failure to obtain the required approval signatures on documents authorizing the seizure of a taxpayer’s home, personal belongings, or business assets,

(ii) providing a false statement under oath with respect to a material matter involving a taxpayer or taxpayer representative,

(iii) with respect to a taxpayer or taxpayer representative, the violation of—

(i) any right under the Constitution of the United States, or

(ii) any right described under—

(ii) title VI or VII of the Civil Rights Act of 1964,

(ii) title IX of the Education Amendments of 1972,

(ii) the Age Discrimination in Employment Act of 1967,

(ii) the Age Discrimination in Employment Act of 1975,

(ii) section 501 or 504 of the Rehabilitation Act of 1973,

(ii) title I of the Americans with Disabilities Act of 1990,

(ii) falsifying or destroying documents to conceal mistakes made by any employee with respect to a material matter involving a taxpayer or taxpayer representative,

(ii) any act or omission by a court in a civil case, with respect to the assualt or battery,

(ii) any violation of the law, regulations, or policies of the Internal Revenue Service (including the Internal Revenue Manual) for the purpose of
(A) IN GENERAL.—The term 'qualified return preparation clinic' means a clinic which—
(i) does not charge more than a nominal fee for its services (except for reimbursement of actual costs incurred), and
(ii) operates programs which assist low-income taxpayers in preparing and filing their Federal income tax returns, including schedules reporting sole proprietorship or farm income.

(B) ASSISTANCE TO LOW-INCOME TAXPAYERS.—A clinic is treated as assisting low-income taxpayers under subparagraph (A)(i) if at least 90 percent of the taxpayers assisted by the clinic have incomes which do not exceed 250 percent of the poverty level, as determined in accordance with criteria established by the Director of the Office of Management and Budget.

(2) CLINIC.—The term 'clinic' includes—
(A) a clinical program at an eligible educational institution (as defined in section 529(e)(5)) which satisfies the requirements of paragraph (1) through student assistance of taxpayers in return preparation and filing, and
(B) an organization described in section 501(c) and exempt from tax under section 501(a) which satisfies the requirements of paragraph (1).

(3) SPECIAL RULES AND LIMITATIONS.—(A) AGGREGATION.—Unless otherwise provided by specific appropriation, the Secretary shall not allocate more than $10,000,000 per year (exclusive of costs of administering the program) to grants under this section.

(4) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—(A) IN GENERAL.—Section 7526(c) (relating to special rules and limitations) is amended by adding at the end the following new paragraph:

"(B) USE OF GRANTS FOR OVERHEAD EXPENSES PROHIBITED.—No grant made under this section may be used for the overhead expenses of any clinic or of any institution sponsoring such clinic."

SEC. 119. ESTABLISHMENT OF DISASTER RESPONSE TEAM.

(a) IN GENERAL.—Section 7508A (relating to personnel of disaster response team) is amended by adding after the date of the enactment of this Act.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 77 is amended by adding at the end the following new item:

"Sec. 7527. Enrolled agents."

(c) PRIOR RULES.—Nothing in the amendments made by this section shall be construed to supersede the provisions of section 7804(c)(1), 7804(c)(2), or 7804(c)(3), of the Internal Revenue Code of 1986, or any other Federal rule or regulation issued before the date of the enactment of this Act.
SEC. 120. ACCELERATED TAX REFUNDS.

(a) NA D TRA NSMISSION.—The Treasury shall study the implementation of an accelerated refund program for taxpayers who—

(1) maintain the same filing characteristics from year to year, and

(2) elect the direct deposit option for any refund under the program.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 121. STUDY ON CLARIFYING RECORD-KEEPING RESPONSIBILITIES.

(a) STUDY.—The Secretary of the Treasury shall study—

(1) the scope of the records required to be maintained by taxpayers under section 6001 of the Internal Revenue Code of 1986.

(2) the utility of requiring taxpayers to maintain all records indefinitely.

(3) the requirement given the necessity to upgrade technological storage for outdated records.

(4) the number of negotiated records retention agreements requested by taxpayers and the number entered into by the Internal Revenue Service.

(5) proposals regarding taxpayer record-keeping.

(b) REPORT.—Not later than the date which is 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall transmit a report of the study described in subsection (a), including recommendations, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

SEC. 122. STREAMLINING REPORTING PROCESS FOR NATIONAL TAXPAYER ADVOCATE.

(a) ONE ANNUAL REPORT.—Subparagraph (B) of section 7803(c)(2) (relating to functions of Office) is amended—

(1) by striking all matter preceding subclauses (I) of clause (ii) and inserting the following:

"(B) ANNUAL REPORT.—"

"(I) IN GENERAL.—Not later than December 31 of each year, the National Taxpayer Advocate shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

(2) SEC. 122(c)(2) is amended by striking paragraph (B)(ii) and redesignating paragraph (C) as paragraph (B)(ii) and redesignating paragraph (B)(ii) as paragraph (C)."

"(I) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—"

"(i) $25,000, or

"(ii) the amount (not exceeding $100,000) determined under subparagraph (A) with respect to any violation if—"

"(I) such violation was due to reasonable cause, and

"(II) the amount of the transaction or the balance of the account at the time of the transaction was properly reported.

(C) WILLFUL VIOLATIONS.—In the case of any violation of, or willfully causing any violation of, any provision of section 3303—"

"(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—"

"(I) $25,000, or

"(II) the amount (not exceeding $100,000) determined under subparagraph (A) with respect to any violation if—"

"(I) such violation was due to reasonable cause, and

"(II) the amount of the transaction or the balance of the account at the time of the transaction was properly reported.

"(2) ANNUAL REPORT.—"

"(A) STUDY.—The Secretary of the Treasury shall study—"

"(i) the scope of the records required to be maintained by taxpayers under section 6001 of the Internal Revenue Code of 1986.

"(2) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of subsection (a)(3)—"

"(1) any excluded amount under subsection (a) allowed for purposes of this subtitle (other than section 531) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 for the prior taxable year, and

"(2) where any excluded amount under subsection (a) was not allowed as a deduction for federal income tax purposes for taxable years of this subtitle other than section 531 but was allowable for the same taxable year under section 531, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531."
paragraph (3) shall be considered as owned by him under subsection (a)(3). The requirement under the preceding sentence that all convertible securities must be included if any are to be included shall be subject to the exception that, where some of the outstanding convertible securities are not included only after a later date than in the case of others, the clause having a prior conversion date shall be included although the others are not included, but no convertible securities shall be included unless all outstanding securities having a prior conversion date are also included."

(D) Section 465(c)(7)(B) is amended by striking clause (i) and by redesignating clause (ii) as clause (i) and (ii), respectively.

(E) Section 465(c)(7)(G) is amended to read as follows:

"(G) LOSS OF 1 MEMBER OF AFFILIATED GROUP MAY NOT OFFSET INCOME OF PERSONAL SERVICE CORPORATION.—Nothing in this paragraph shall permit any loss of a member of an affiliated group to be offset against the income of any other member of such group which is a personal service corporation (as defined in section 269(a) but determined by substituting "5 percent" for "10 percent" in section 269(a)(2))."

(14) Sections 508(d), 4947, and 4948(c)(4) are each amended by striking "546(b)(2)," each place it appears.

(15) Section 532(b) is amended by striking paragraph (1) and by redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(16) Sections 536(b)(1) and 556(b)(1) are each amended by striking "section 541" and inserting "section 541 as in effect before its repeal."

(17)(A) Section 553(a)(1) is amended by striking "section 543(d)" and inserting "subsection (c)"

(B) Section 553 is amended by adding at the end the following new subsection:

"(c) ACTIVE BUSINESS COMPUTER SOFTWARE ROYALTIES.

(1) IN GENERAL.—For purposes of subsection (a), the term 'active business computer software royalties' means any royalties:

(A) received by any corporation during the taxable year in connection with the licensing of computer software, and

(B) with respect to which the requirements of paragraphs (2), (3), (4), and (5) are met.

(2) ROYALTIES MUST BE RECEIVED BY CORPORATION ACTIVELY ENGAGED IN COMPUTER SOFTWARE BUSINESS.—The requirements of this paragraph are met if the royalties described in paragraph (1)—

(A) are received by a corporation engaged in the trade or business of developing, manufacturing, or producing computer software, and

"(B) are attributable to computer software which—

(i) is developed, manufactured, or produced by such corporation (or its predecessor in interest) or any trade or business described in subparagraph (A), or

(ii) is directly related to such trade or business.

(3) ROYALTIES MUST CONSTITUTE AT LEAST 50 PERCENT OF INCOME.—The requirements of this paragraph are met if the royalties described in paragraph (1) constitute at least 50 percent of the gross income of the corporation for the taxable year.

(4) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction for dividends paid deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation. For purposes of the preceding sentence, individuals holding less than 5 percent of such corporation shall not be treated as stockholders for purposes of section 162 if it is specifically allowable under another section.

(5) LIMITATION ON ALLOWABLE DEDUCTIONS.—For purposes of paragraph (1), no deduction may be allowed for dividends paid deduction if the average of such deductions for the 5-taxable year period ending with such taxable year equals or exceeds 25 percent of the average ordinary gross income of such corporation for such taxable year, or equals or exceeds 25 percent of the ordinary gross income of such corporation for such taxable year.

If a corporation has not been in existence during the 5-taxable year period described in clause (ii), then the period of existence of such corporation shall be substituted for such 5-taxable year period.

(6) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction for dividends paid deduction shall not be treated as allowable under section 162 if it is specifically allowable under section 162.

(7) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction for dividends paid deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of the corporation.

(8) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction for dividends paid deduction shall not be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of such corporation.

(9) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction for dividends paid deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of such corporation.

(10) DEDUCTIONS ALLOWABLE UNDER SECTION 162.—For purposes of subparagraph (A), a deduction for dividends paid deduction shall be taken into account with respect to compensation for personal services rendered by the 5 individual shareholders holding the largest percentage (by value) of the outstanding stock of such corporation.

"(B) DISTRIBUTIONS IN LIQUIDATION.—Except in the case of a foreign personal holding company described in section 552—

(1) in the case of amounts distributed in liquidation, the part of such distribution which is proportionate to the earnings and profits accumulated after February 28, 1933, shall be treated as a dividend for purposes of computing the dividends paid deduction, and

(2) in the case of a complete liquidation occurring within 24 months after the adoption of a plan of liquidation, any distribution within such period pursuant to such plan shall be treated as a dividend for purposes of computing the dividends paid deduction.

For purposes of paragraph (1), a liquidation includes a redemption of stock to which section 302 applies. Except to the extent provided in regulations, the preceding sentence shall not apply in the case of any mere holding or investment company which is not a regulated investment company which is properly chargeable to earnings and profits described in section 712.

(15) Section 1202(e)(8) is amended by striking "section 543(d)(2)" and inserting "section 543(d)(3)".

(16) Section 1202(e)(8) is amended by adding at the end the following new sentence: "References to sections 542 and 543 in the preceding sentence shall be treated as references to such sections as in effect on the day before their repeal."
(d) Effective Date.—The amendments made by this Act shall apply to taxable years beginning after December 31, 2003.

TITLE II—REFORM OF PENALTY AND INTEREST

SEC. 201. INDIVIDUAL ESTIMATED TAX. 
(a) Increase in Exception for Individuals Owning Small Amount of Tax.—Section 6654(e)(1) (relating to exception where tax is small) is amended—
(1) by striking ''$1,000,000'' and inserting ''$2,000,000.''

(b) Computation of Addition to Tax.—Subsections (a) and (b) of section 6654 (relating to additional tax on underpayments) are amended to read as follows:
(1) A addition to the tax.—(I) In general.—Except as otherwise provided in this section, if any underpayment of tax on any day shall be the excess of—
(A) the sum of the required installments for the taxable year the due dates for which are on or before such day, over
(B) the sum of the amounts (if any) of estimated tax payments made on or before such day on such required installments.
(II) Effective date.—For purposes of this subsection—
(A) the date on which the term is applicable is amended by striking ''penalty or addition'' and inserting ''interest on underpayment; interest rate—The amount of the underpayment under subparagraph (A) is increased by inserting ''the applicable amount'', such day on such required installments.
(II) Effective date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 204. ABATEMENT OF INTEREST.
(a) Abatement of Interest for Periods Attributable to Any Unreasonable IRS Error.—Delay.—Section 6604(e)(1) is amended—
(1) by striking ''in performing a ministerial or managerial act'' in subparagraphs (A) and (B),
(2) by striking ''deficiency'' in subparagraph (A) and inserting ''underpayment of any tax, addition to tax, or penalty imposed by this title'', and
(3) by striking ''tax described in section 6223(a)'' in subparagraph (B) and inserting ''tax addition to tax, or penalty imposed by this title''.

(b) Abatement of Interest to Extent Interest Is Attributable to Taxpayer Reliance on Written Representation of the IRS.—(1) In the subsection, by striking ''penalty or addition'' and inserting ''interest, penalty, or addition''.

(c) Effective Date.—The amendments made by this section shall apply with respect to interest accruing on or after the date of the enactment of this Act.

SEC. 205. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.
(a) In General.—Subchapter A of chapter 67 is amended by adding at the end the following new section:

"SEC. 6603. Deposits made to suspend running of interest on potential underpayments.

"(a) Authority To Make Deposits Other Than Cash.—The Secretary may require the taxpayer to make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

"(b) No Interest Imposed.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

"(c) Return of Deposit.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

"(I) Payment of Interest.—(I) In General.—For purposes of section 6611 (relating to interest on overpayments), a deposit which is returned to a taxpayer shall be treated as a payment of tax for payee period to the extent (and only to the extent) attributable to a deductible tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

"(II) Disputable Tax.—(A) In General.—For purposes of this section, a 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputation of items.

"(B) Safe Harbor Based on 30-Day Letter.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

"(C) Definitions.—For purposes of paragraph (2)—
(1) Disputable item.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—
(I) has a reasonable basis for its treatment of such item, and
(II) reasonably believes that the Secretary has a reasonable basis for disallowing the taxpayer's treatment of such item.

(2) 30-Day Letter.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

"(D) Rate of Interest.—The rate of interest allowable under this subsection shall be the Federal short-term rate determined under section 6622(b), compounded daily.

"(E) Returns of Deposits.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.

"(F) Clerical Amendment.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

"Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.

"(c) Effective Date.—(1) In General.—The amendments made by this section shall apply to deposits made after December 31, 2003.

(2) Coordination with Deposits Made Under Revenue Procedure 84–58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84–58, the date that the taxpayer identifies such amount as a deposit under this section and the internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 206. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.
(a) In General.—Section 6004(g) (relating to suspension of interest and certain penalties where secretory fails to contact taxpayer) is amended by striking "1-year period (30-month period in the case of taxable years beginning before January 1, 2004)'' both places it appears and inserting "18-month period".

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 207. EXPANSION OF INTEREST NETTING.
(a) In General.—Subsection (d) of section 6621 (relating to elimination of interest on overlapping periods of tax overpayments and underpayments) is amended by adding at the end the following: "So long as the overpayment is determined as a refundable tax, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputation of items.

(b) Effective Date.—The amendment made by this section shall apply to interest accrued after December 31, 2003.
promote compliance with and administra-
that the Secretary determines meets the re-
shall not include in such list any position
revise) a list of positions which the Sec-
Altities.—The penalties imposed by this sec-
altities; and
issue for hearing before levy) is amended by
reduces the procedure to an extent that it is a
lied as frivolous under subsection (c), or
2. FRIVOLOUS REQUESTS FOR HEARING, ETC.—Notwithstanding any other provision
section (a)(3)(B)'' and inserting ''in writing
6330(c)(4) is amended—
(A) by striking ''(A)'' and inserting '':'';
and'' at the end of paragraph (4), by redesig-
"(e) PENALTIES IN ADDITION TO OTHER PEN-
"(d) REDUCTION OF PENALTY.—The Sec-
"(c) LISTING OF FRIVOLOUS POSITIONS.—The
Secretary has identified as being frivolous for
revises) a list of positions which the Sec-
the Secretary has identified as frivolous under sub-
revised) a list of positions which the Sec-
metes the requirement of clause (i) or (ii) of
and'' at the end of paragraph (4), by redesig-
"(B) contains information that on its face
"(A) does not contain information on
"(B) reflects a desire to delay or impede
"(A) SPECIFIED FRIVOLOUS SUBMISSION.—
means a specified submission if any portion of
which the Secretary has identified as frivolous under subsection (c), or
(ii) reflects a desire to delay or impede
"(B) SPECIFIED SUBMISSION.—The term
"(i) is based on a position which the Sec-
"(ii) is based on a position which the Sec-
metes the requirement of clause (i) or (ii) of
that any portion of a request for a hearing under this section or section 6320 meets the
requirement of clause (i) or (ii) of section 6702(b)(2)(A), then the Secretary may treat
such portion as if it were never submitted and such portion shall not be subject to any
further administrative or judicial review.''

(2) PREFERENCE FROM RAISING FRIVOLOUS
HEARINGS UPON FILING OF NOTICE OF LIEN.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting '':'';

(B) by striking ''(B)'' and inserting '':'';

(C) by striking the period at the end of the first sentence and inserting ''or''; and

(D) by inserting after paragraph (A)(i) (as so redesignated) the following:

"(B) the issue meets the requirement of
Clause (i) or (ii) of section 6702(b)(2)(A)."

(3) OPPORTUNITY TO WITHDRAW SUBMISSION.—If the Secretary provides a person
with an opportunity to withdraw a specified frivolous submission and such person
withdraws such submission promptly after such notice, the penalty imposed under paragraph (1) shall not apply with respect to such submission.

(c) LISTING OF FRIVOLOUS POSITIONS.—The Secretary shall prescribe (and periodically revise) a list of positions which the Sec-
retary has identified as being frivolous for purposes of this subsection. The Secretary shall not include in such list any position that the Secretary determines meets the re-

(d) REDUCTION OF PENALTY.—The Sec-
retary determines that such reduction would promote compliance with and administra-
ion and revise) a list of positions which the Sec-
the Secretary determines that such reduction would promote compliance with and administra-
ion of such a list.

(e) PENALTIES IN ADDITION TO OTHER PEN-
alties.—The penalties imposed by this sec-
shall be in addition to any other penalty
provided by law.''

(b) TREATMENT OF FRIVOLOUS REQUESTS
FOR HEARINGS BEFORE LEVY.—(1) FRIVOLOUS REQUESTS DISREGARDED.—Section 6330 (relating to notice and opportu-
nity for hearing before levy) is amended by adding at the end the following new sub-
section:

"(g) FRIVOLOUS REQUESTS FOR HEARING,
ETC.—Notwithstanding any other provision
of this section, if the Secretary determines
that any portion of a request for a hearing
under this section or section 6320 meets the
requirement of clause (i) or (ii) of section
6702(b)(2)(A), then the Secretary may treat
such portion as if it were never submitted and such portion shall not be subject to any
further administrative or judicial review.''

(2) PREFERENCE FROM RAISING FRIVOLOUS
REQUESTS FOR HEARINGS UPON FILING OF
NOTICE OF LIEN.—Section 6330(c)(4) is amended—

(A) by striking ''(A)'' and inserting '':'';

(B) by striking ''(B)'' and inserting '':'';

(C) by striking the period at the end of the first sentence and inserting ''or''; and

(D) by inserting after paragraph (A)(i) (as so redesignated) the following:

"(B) the issue meets the requirement of
Clause (i) or (ii) of section 6702(b)(2)(A).

302. AUTHORITY FOR SPECIAL TRIAL
JUDGES TO HEAR AND DECIDE CERTAIN
EMPLOYMENT STATUS CASES.

(a) IN GENERAL.—Section 7443A(b) (relating
to special trial judges which the Secretary is
able to appoint) is amended by striking "and
at the end of paragraph (4), by redesign-
ing paragraph (5) as paragraph (6), and by
inserting after paragraph (4) the following new
paragraph:

"(5) any proceeding under section 7436(c), and
"(b) CONFORMING AMENDMENT.—Section
7443A(c) is amended by striking "or" and
inserting "(4)" and "(5)."

303. CONFIRMATION OF AUTHORITY OF
TAX COURT TO APPLY DOCTRINE OF EQUIT-
ABLE RECUPERCATION.

(a) CONFIRMATION OF AUTHORITY OF TAX
COURT TO APPLY DOCTRINE OF EQUITABLE
RECUPERCATION.—Section 6214(b) (relating to jur-
isdiction over other years and quarters) is
amended by adding after subsection (2) the
following new sentence: "Notwithstanding the
preceding sentence, the Tax Court may apply
the doctrine of equitable recoupment to the same extent that it is available in
general tax cases before the district courts of the United States and the United States Court of Fed-
eral Claims.''

(b) EFFECTIVE DATE.—The amendment
made by this section shall apply to any pro-
cedure or proceeding in the United States Tax Court with respect to which a decision has not become final (as determined under section 7481 of such Code) before the date of the enactment of this Act.

304. TAX COURT FILING FEE IN ALL CASES
COMMENCED BY FILING PETITION.

(a) IN GENERAL.—Section 7451 (relating to fee
for filing a Tax Court petition) is amend-
ed by striking all that follows "petition" and
inserting a period.

(b) EFFECTIVE DATE.—The amendment
made by this section shall take effect on the
date of the enactment of this Act.

305. AMENDMENTS TO APPOINTMENT
PROVISIONS.

(a) IN GENERAL.—Subsection (a) of section
7471 (relating to Tax Court employees) is
amended to read as follows:

"(a) APPOINTMENT AND COMPENSATION.—

(1) CLERK.—The Tax Court may appoint a
clerk with such grade provided for in chapter 51
of title 5, United States Code, governing ap-
pointments in the competitive service. The
clerk shall serve at the pleasure of the Tax
Court.

(2) LAW CLERKS AND SECRETARIES.—

(a) IN GENERAL.—The Tax Court may
appoint law clerks and secretaries in such
numbers as the Tax Court may approve, with
such qualifications, and at such salary, as the
Tax Court may prescribe and, in such numbers
and manner, as the Tax Court may require.

(b) EXEMPTION FROM FEDERAL LEAVE PRO-
VISIONS.—A law clerk appointed under this
subsection shall be exempt from the provi-
sions of chapter 63 of title 5, United States
Code. Any unused sick leave or annual leave standing to the employee's

attachment.
credit as of the effective date of this subsection shall remain credited to the employee and shall be available to the employee upon separation from the Federal Government. Such an employee may file an appeal with the Tax Court or make a request that such a child be restored to preference eligibles in the executive branch, the Tax Court will provide preference for that individual in a manner and to an extent consistent with preference accorded to preference eligibles in the executive branch.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date the United States Tax Court adopts a personnel management system after the date of the enactment of this Act.

SEC. 306. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7455(b) (relating to use of fees) is amended by inserting before the period at the end and "to provide services to pro se taxpayers".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection 7448(a) (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

(1) THE ANNUITY TO A JUDGE DESCRIBED IN PARAGRAPH (2) IS TO BE PAID TO A JUDGE (DETERMINED IN ACCORDANCE WITH SUBSECTION (M)) OR WHO WAS AN EMPLOYEE OF THE TAX COURT WHO HAD ACTUALLY BEEN MADE.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

"(2) COVERED JUDGES.—Paragraph (1) applies to the Merit Systems Protection Board under chapter 75 of title 5, United States Code.

(3) DEPUTIES AND OTHER EMPLOYEES.—The Tax Court may fix and adjust the compensation for the clerks and other employees of the Tax Court without regard to the provisions of chapter 51 of title 5, section 5303 or section 5373 of title 5, United States Code. To the maximum extent feasible, the Tax Court shall compensate employees at rates consistent with those for employees holding comparable positions in the judicial branch.

(5) PROGRAMS.—The Tax Court may establish programs for employee evaluations, incentive awards, flexible work schedules, premium pay, and resolution of employee grievances.

(6) DISCRIMINATION PROHIBITED.—The Tax Court may not discriminate on the basis of race, color, religion, sex, national origin, political affiliation, marital status, or handicap in the employment of an employee described under section 2302(b) of title 5, United States Code, or on behalf of such child or children.

(7) EXPERTS AND CONSULTANTS.—The Tax Court may procure the services of experts and consultants under section 3109 of title 5, United States Code.

(8) RIGHTS TO CERTAIN APPEALS RESERVED.—Notwithstanding any other provision of law, an individual who is an employee of the Tax Court on the day before the effective date of this subsection and who, as of that day, was entitled to—

(A) a reduction in grade or removal to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

(B) an adverse action to the Merit Systems Protection Board under chapter 75 of title 5, United States Code,

(c) AMENDMENTS TO EXPANSION OF USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.—Paragraph (7) of section 7455(b) (relating to use of fees) is amended by inserting before the period at the end and "to provide services to pro se taxpayers".

(d) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

"(a) IN GENERAL.—Section 7455(b) (relating to use of fees) is amended by inserting before the period at the end and "to provide services to pro se taxpayers".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection 7448(a) (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

(1) THE ANNUITY TO A JUDGE DESCRIBED IN PARAGRAPH (2) IS TO BE PAID TO A JUDGE (DETERMINED IN ACCORDANCE WITH SUBSECTION (M)) OR WHO WAS AN EMPLOYEE OF THE TAX COURT WHO HAD ACTUALLY BEEN MADE.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 306. EXPANDED USE OF TAX COURT PRACTICE FEE FOR PRO SE TAXPAYERS.

(a) IN GENERAL.—Section 7455(b) (relating to use of fees) is amended by inserting before the period at the end and "to provide services to pro se taxpayers".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection 7448(a) (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

(1) THE ANNUITY TO A JUDGE DESCRIBED IN PARAGRAPH (2) IS TO BE PAID TO A JUDGE (DETERMINED IN ACCORDANCE WITH SUBSECTION (M)) OR

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection 7448(a) (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

(1) THE ANNUITY TO A JUDGE DESCRIBED IN PARAGRAPH (2) IS TO BE PAID TO A JUDGE (DETERMINED IN ACCORDANCE WITH SUBSECTION (M)) OR

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection 7448(a) (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

(1) THE ANNUITY TO A JUDGE DESCRIBED IN PARAGRAPH (2) IS TO BE PAID TO A JUDGE (DETERMINED IN ACCORDANCE WITH SUBSECTION (M)) OR

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

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(1) THE ANNUITY TO A JUDGE DESCRIBED IN PARAGRAPH (2) IS TO BE PAID TO A JUDGE (DETERMINED IN ACCORDANCE WITH SUBSECTION (M)) OR

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

Subtitle B—Tax Court Pension and Compensation

SEC. 311. ANNUITIES FOR SURVIVORS OF JUDGES WHO ARE ASSASSINATED.

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection 7448(a) (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

(1) THE ANNUITY TO A JUDGE DESCRIBED IN PARAGRAPH (2) IS TO BE PAID TO A JUDGE (DETERMINED IN ACCORDANCE WITH SUBSECTION (M)) OR

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.
upon the average annual salary received by such judge for judicial service.'

(e) Other Benefits.—Section 7448 is amended by adding at the end the following:

"(d) In General.—Section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

"(a) (1) In General.—Section 7447 (relating to retirement of judges), as amended by this Act, is amended by adding at the end the following subsection:

"(j) Thrift Savings Plan.—

"(k) Life Insurance Coverage.—For purposes of chapter 87 of title 5, United States Code, any individual who is serving as a judge of the Tax Court may elect to contribute to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

"(l) Teaching Compensation of Retired Judges.—

"(m) Exemption from Federal Leave Provisions.—

"(n) Exception.—Notwithstanding subsection (c), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount equal to the average of the nonforfeitable account balances of judges who meet the age and service requirements set forth under section 7451(b)(5) of title 5, United States Code, the amount of such judge's nonforfeitable account balance shall be increased at the same time and in the same manner as the nonforfeitable account balances of such judges who meet the age and service requirements set forth under section 7451(b)(5) of title 5, United States Code.

"(n) Exception.—Notwithstanding subsection (c), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount equal to the average of the nonforfeitable account balances of judges who meet the age and service requirements set forth under section 7451(b)(5) of title 5, United States Code, the amount of such judge's nonforfeitable account balance shall be increased at the same time and in the same manner as the nonforfeitable account balances of such judges who meet the age and service requirements set forth under section 7451(b)(5) of title 5, United States Code.

"(n) Exception.—Notwithstanding subsection (c), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount equal to the average of the nonforfeitable account balances of judges who meet the age and service requirements set forth under section 7451(b)(5) of title 5, United States Code, the amount of such judge's nonforfeitable account balance shall be increased at the same time and in the same manner as the nonforfeitable account balances of such judges who meet the age and service requirements set forth under section 7451(b)(5) of title 5, United States Code.

"(n) Exception.—Notwithstanding subsection (c), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge's nonforfeitable account balance is less than an amount equal to the average of the nonforfeitable account balances of judges who meet the age and service requirements set forth under section 7451(b)(5) of title 5, United States Code, the amount of such judge's nonforfeitable account balance shall be increased at the same time and in the same manner as the nonforfeitable account balances of such judges who meet the age and service requirements set forth under section 7451(b)(5) of title 5, United States Code.
deemed to have remained to the individual's credit.

"(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity, and who serves without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit in such individual was evacuated from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

"(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vacation balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.

SEC. 319. ANNUITIES TO SURVIVING SPOUSES AND DEPENDENT CHILDREN OF MAGISTRATE JUDGES OF THE TAX COURT.

(a) DEFINITIONS.—Section 7448(a) (relating to definitions), as amended by this Act, is amended—

(A) by striking the subsection heading and inserting "MAGISTRATE JUDGES OF THE TAX COURT";

(B) by inserting "or magistrate judge" before "of the United States Tax Court"; and

(C) by striking the subsection heading and inserting "7447(f)(4)".

(b) ELECTION.—Subsection (b) of section 7448 is amended by inserting "and magistrate judges" after "judges".

(c) MAGISTRATE JUDGES.—Any magistrate judge may by written election filed with the chief judge bring himself or herself within the purview of this section. Such election shall be filed not later than the later of 6 months after—

"(A) 6 months after the date of the enactment of this paragraph.

"(B) the date the judge takes office, or

"(C) the date the judge marries.".

(d) CONFORMING AMENDMENTS.—(1) The heading of section 7448 is amended by inserting AND MAGISTRATE JUDGES after JUDGES.

(2) The item relating to section 7448 in the table of sections of subchapter chapter 76 is amended by inserting AND magistrate judges after judges.

(3) Subsections (c)(1), (d), (f), (g), (h), (i), (m), (n), and (o) of section 7448, as amended by this Act, are each amended—

(A) by inserting or magistrate judge after judge each place it appears other than in the phrase "chief judge", and

(B) by inserting or magistrate judge's after judge's each place it appears.

(4) Section 7448(c) is amended—

(A) in paragraph (1), by striking "special trial judges" and inserting "magistrate judges";

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting "and section 7443(d)" after "(a)(4)"; and

(ii) in subparagraph (B), by striking "subsection (a)" and inserting "subsections (a) and (b)".

(5) Section 7448(g) is amended by inserting or section 7443(c) after section 7447 after each place it appears, and by inserting or an annuity after "annuity" after "(2) or (3)".

(6) Section 7448(i)(1) is amended—

(A) in subparagraph (A), by striking "service or retired" and inserting "service, retired", and

(B) in subparagraph (B), by striking any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code, after section 7447.

(7) Section 7448(m)(1), as amended by this Act, is amended—

(A) by inserting or any annuity under section 7443B or chapters 83 or 84 of title 5, United States Code, after "7447(d)"; and

(B) by inserting or section 7443B(m)(3) after "7447(f)(4)".

(8) Section 7448(n) is amended by inserting his years of service pursuant to any appointment under this section 7443A, after section 7447.

(9) Section 3212(b)(5)(E) is amended by inserting or magistrate judge before of the United States Tax Court.

(10) Section 201(a)(5)(E) of the Social Security Act is amended by inserting or magistrate judge before of the United States Tax Court.

SEC. 320. RETIREMENT AND ANNUITY PROGRAM.

(a) RETIREMENT AND ANNUITY PROGRAM.—Part I of subchapter C of chapter 76 is amended by section 7443A the following new section:

"SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF THE TAX COURT.

(a) RETIREMENT BASED ON YEARS OF SERVICE.—A magistrate judge of the Tax Court to whom this section applies and who retires after 14 years of service, not to exceed 14 years, bears to 14.

(b) RETIREMENT UPON FAILURE OF RETIREMENT OR REMOVAL OR, IN THE CASE OF A MAGISTRATE JUDGE'S LIFE; ANNUITY EQUAL TO THE SALARY RECEIVED AT THE TIME THE MAGISTRATE JUDGE LEFT OFFICE, AND NOT LATER THAN 6 MONTHS BEFORE SUCH MAGISTRATE JUDGE NOTIFIED THE CHIEF JUDGE OF THE TAX COURT OR THE MAGISTRATE JUDGE'S LIFETIME, ANNUITY EQUAL TO THE SALARY RECEIVED AT THE TIME THE MAGISTRATE JUDGE LEAVES OFFICE WHICH THE AGGREGATE NUMBER OF YEARS OF SERVICE, NOT TO EXCEED 14, BEARS TO 14.

"(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNUITIES.—(1) A magistrate judge of the Tax Court who is entitled to an annuity under this section is also entitled to a cost-of-living adjustment in such annuity, calculated and payable in the same manner as adjustments under section 5307 of title 5, United States Code, except that any such annuity, as increased under this subsection, may not exceed the salary then payable for the position from which the magistrate judge retired or was removed.

(2) An election by a magistrate judge under this section applies and who retires after 14 years of service, not to exceed 14 years, bears to 14 years.
(2) Annuity in Lieu of Other Annuity.—A magistrate judge who elects to receive an annuity under this section shall not be entitled to receive—

(A) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under chapter 84 (except for subchapters III and VII), of title 5, United States Code. Service performed as a magistrate or otherwise, (B) an annuity or salary in senior status or retirement under section 371 or 372 of title 28, United States Code.

(C) retired pay under section 7447, or

(D) retired pay under section 7296 of title 38, United States Code.

(3) Coordination with Title V.—A magistrate judge of the Tax Court who elects to receive an annuity under this section—

(A) shall not be subject to deductions and contributions otherwise required by section 8334(a) of title 5, United States Code.

(B) shall be excluded from the operation of chapter 84 (other than subchapters III and VII) of such title 5.

(C) is entitled to a lump-sum credit under section 8324(a) or 8424 of such title 5, as the case may be, on the fractional part of any month shall not be credited.

(D) may be considered an employee for purposes of any statute of the United States in lieu of any other employee of the United States.

(E) is entitled to receive a lump-sum payment of the annuity due under section 8334(a) or 8424 of such title 5, if he or she—

(i) becomes a sequestered magistrate judge under title 28, United States Code, or

(ii) retires under this section and who thereafter serves in any executive branch agency of the United States as a magistrate judge of the Tax Court.

(4) Calculation of Service.—For purposes of calculating an annuity under this section—

(A) as a magistrate judge of the Tax Court to whom this section applies may be credited, and

(B) each month of service shall be credited as if the service occurred on the 1st day of the month.

(5) Covered Positions and Service.—This section applies to any magistrate judge of the United States Tax Court appointed under such subchapter III (other than for the performance of duties).

(6) Calculation of Service.—For purposes of purposes of an annuity under this section, any day on which any service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the monthly salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(7) Individual Retirement Accounts.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge who elects to receive an annuity under this subsection if and to the extent that contributions otherwise required by section 8334(a) of title 5, United States Code, for service as a magistrate judge under subchapter III of chapter 83, or under subchapter III of chapter 84, is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(8) Deposits for Prior Service.—Each magistrate judge of the Tax Court who elects to receive an annuity under this section, and for such a deposit, shall be credited, and

(A) any annuity to which such magistrate judge would otherwise have been entitled under this section, and

(B) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under subchapter III of chapter 84, is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(9) Consent to Deductions; Discharge of Claims.—Each magistrate judge of the Tax Court who elects to receive an annuity under this section shall be deemed to consent and agree to the deductions from salary which are made under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under subsection (f) is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(10) Calculation of Service.—For purposes of purposes of an annuity under this section, any day on which any service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the monthly salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(11) Individual Retirement Accounts.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge who elects to receive an annuity under this subsection if and to the extent that contributions otherwise required by section 8334(a) of title 5, United States Code, for service as a magistrate judge under subchapter III of chapter 83, or under subchapter III of chapter 84, is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(12) Deposits for Prior Service.—Each magistrate judge of the Tax Court who elects to receive an annuity under this section, and for such a deposit, shall be credited, and

(A) any annuity to which such magistrate judge would otherwise have been entitled under this section, and

(B) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under subchapter III of chapter 84, is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(13) Consent to Deductions; Discharge of Claims.—Each magistrate judge of the Tax Court who elects to receive an annuity under this section shall be deemed to consent and agree to the deductions from salary which are made under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under subsection (f) is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(14) Calculation of Service.—For purposes of purposes of an annuity under this section, any day on which any service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the monthly salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(15) Individual Retirement Accounts.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge who elects to receive an annuity under this subsection if and to the extent that contributions otherwise required by section 8334(a) of title 5, United States Code, for service as a magistrate judge under subchapter III of chapter 83, or under subchapter III of chapter 84, is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(16) Deposits for Prior Service.—Each magistrate judge of the Tax Court who elects to receive an annuity under this section, and for such a deposit, shall be credited, and

(A) any annuity to which such magistrate judge would otherwise have been entitled under this section, and

(B) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under subchapter III of chapter 84, is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(17) Consent to Deductions; Discharge of Claims.—Each magistrate judge of the Tax Court who elects to receive an annuity under this section shall be deemed to consent and agree to the deductions from salary which are made under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under subsection (f) is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(18) Calculation of Service.—For purposes of purposes of an annuity under this section, any day on which any service performed before such election for which contributions may be made under this section, an amount equal to 1 percent of the monthly salary received for that service. Credit for any period covered by that service may not be allowed for purposes of an annuity under this section until a deposit under this subsection has been made for that period.

(19) Individual Retirement Accounts.—The amounts deducted and withheld under subsection (j), and the amounts deposited under subsection (k), shall be credited to individual accounts in the name of each magistrate judge who elects to receive an annuity under this subsection if and to the extent that contributions otherwise required by section 8334(a) of title 5, United States Code, for service as a magistrate judge under subchapter III of chapter 83, or under subchapter III of chapter 84, is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(20) Deposits for Prior Service.—Each magistrate judge of the Tax Court who elects to receive an annuity under this section, and for such a deposit, shall be credited, and

(A) any annuity to which such magistrate judge would otherwise have been entitled under this section, and

(B) any annuity to which such magistrate judge would otherwise have been entitled under subchapter III of chapter 83, or under subchapter III of chapter 84, is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).

(21) Consent to Deductions; Discharge of Claims.—Each magistrate judge of the Tax Court who elects to receive an annuity under this section shall be deemed to consent and agree to the deductions from salary which are made under subsection (f) shall be deemed to consent and agree to the deductions from salary which are made under subsection (f) is a full and complete discharge of all claims and demands for all services rendered by such magistrate judge during the period covered by such payment, except the right to those benefits to which the magistrate judge is entitled under this section (and section 7448).
shall invest, in interest bearing securities of
the United States, such currently available
portions of the Tax Court Judicial Officers' Retirement Fund as are not immediately re-
quired for payments from the Fund. The in-
terest and income derived from these investments con-
stitutes a part of the Fund.

(3) UNFUNDED LIABILITY.—
(A) IN GENERAL.—There are authorized to be ap-
plied to the Tax Court Judicial Officers' Retirement Fund amounts required to re-
duce to zero the unfunded liability of the Fund.

(4) OFFSET.—In the case of a magistrate judge
who receives a refund in the Thrift Savings Fund and who later receives an
annuity under this section, that annuity shall be offset by an amount equal to the
amount which represents the Government's contribution to that person's Thrift Sav-
ing Account, without regard to earnings attrib-
utable to that amount. Where such an offset
appears to have been in excess of the amount received in the first year, the offset may be
divided equally over the first 2 years in
which that person receives the annuity.

(6) EXCEPTION.—Notwithstanding clauses (i) and (ii) of paragraph (3)(C), if any mag-
istrate judge retires under circumstances
making such magistrate judge eligible to
make an election under subsection (b) of
section 8433 of title 5, United States Code,
as such a magistrate judge otherwise invokes
the annuity otherwise provided under the amendments made by this title, to—

(1) an annuity under subchapter III of chapter 83, or under chapter 84 (except for
subsections (b) and (c) and subsection (g) of section 8440f of title 5, United States Code, as the case may be), to cred-
itable service before the date on which ser-
vice would begin to be credited for purposes of paragraph (2); and

(2) an annuity calculated under subsection (b) or (c) and subsection (g) of section 7443B of the Internal Revenue Code of 1986, as amended, to service as a mag-
istrate judge of the United States Tax Court in active service on the date of the enactment of this Act, to

(3) UNFUNDED LIABILITY.—For purposes of
paragraph (A), there are authorized to be re-
quired for payments from the Fund. The in-
terest and income derived from these investments con-
stitutes a part of the Fund.

(3) UNFUNDED LIABILITY.—For purposes of
paragraph (A), there are authorized to be re-
quired for payments from the Fund. The in-
terest and income derived from these investments con-
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(3) UNFUNDED LIABILITY.—For purposes of
paragraph (A), there are authorized to be re-
quired for payments from the Fund. The in-
terest and income derived from these investments con-
stitutes a part of the Fund.
for the magistrate judge which is in effect on the day before the retirement becomes effective.

(b) **FILING OF NOTICE OF ELECTION.**—A magistrate judge of the United States Tax Court shall be entitled to an annuity under this section if the magistrate judge files a notice of that election with the chief judge of the United States Tax Court specifying the date on which such service would begin to be credited under section 7443B of the Internal Revenue Code of 1986, as added by this Act, in lieu of chapter 83 or chapter 84 of title 5, United States Code. Such notice shall be filed in accordance with such procedures as the chief judge of the United States Tax Court shall prescribe.

(c) **LUMP-SUM CREDIT UNDER TITLE 5.**—A magistrate judge of the United States Tax Court who makes an election under subsection (b) shall be entitled to a lump-sum credit under section 8342 or 8424 of title 5, United States Code, as the case may be, for any service performed under section 7443B of the Internal Revenue Code of 1986, as added by this Act, pursuant to that election, and with respect to which any contributions were made by or on behalf of the magistrate judge under the applicable provisions of title 5, United States Code.

(d) **RECALL.**—With respect to any magistrate judge of the United States Tax Court receiving an annuity under this section who is recalled to serve under section 7443C of the Internal Revenue Code of 1986, as added by this Act:

(1) the amount of compensation which such recalled magistrate judge receives under such section 7443C shall be calculated on the basis of such annuity received under this section, and

(2) such recalled magistrate judge of the United States Tax Court may serve as a re-empaneled consultant to the extent permitted under title 5, United States Code. Section 7443B(m)(4) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to service as a re-emppaneled consultant to the extent described in paragraph (2).

SEC. 322. PROVISIONS FOR RECALL.

(a) **IN GENERAL.**—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

``SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX COURT.

'(a) **RECALLING THE RETIRED MAGISTRATE JUDGES.**—Any individual who has retired pursuant to section 7443B or the applicable provisions of title 5, United States Code, upon reaching the age and service requirements established therein, may at or after retirement be called upon by the chief judge of the Tax Court to perform such judicial duties with the Tax Court as may be required of such individual for any period or periods specified by the chief judge; except that in the case of any such individual—

'(1) such periods in any 1 calendar year shall not (without such individual's consent) exceed 90 calendar days, and

'(2) such individual shall be relieved of performing such duties during any period in which illness or disability precludes the performance of such duties.

Any act, or failure to act, by an individual performing judicial duties pursuant to this subsection shall have the same force and effect as if it were the act (or failure to act) of a magistrate judge of the Tax Court.

(b) **COMPENSATION.**—For the year in which a period of recall occurs, the magistrate judge shall receive, in addition to the annuity provided by subsection (a), an amount equal to the difference between that annuity and the current salary of the office to which the magistrate judge is recalled. The annuity of the magistrate judge who completes that period of service on a basis other than that prescribed under this subsection, and who retired under section 7443B, shall be equal to the salary in effect at the end of the year in which the period of recall occurs, less the office from which such individual retired.

'(c) **RULEMAKING AUTHORITY.**—The provisions of this section may be implemented under such rules as may be promulgated by the Tax Court.''

SEC. 323. **EFFECTIVE DATE.**—Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

TITLE IV—CONFIDENTIALITY AND DISCLOSURES

SEC. 401. CLARIFICATION OF DEFINITION OF CHURCH TAX INQUIRY.

Subsection (i) of section 7611 (relating to church tax investigation, etc.) is amended by striking "or" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting "or" after the word "about", and by inserting after paragraph (5) the following:

"'(f) information provided by the Secretary related to the standards for exemption from Federal tax under this title and the requirements under this title relating to unrelated business taxable income.'

SEC. 402. COLLECTION ACTIVITIES WITH RESPECT TO TAX RETURNS DISCLOSEABLE TO EITHER Spouse BASED ON ORAL REQUEST.

(a) **IN GENERAL.**—Paragraph (8) of section 6103(e) (relating to disclosure of collection activities with respect to joint return) is amended by striking "in writing" the first place it appears.

(b) **ELIMINATION OF REPORTING REQUIREMENT.**—Section 7803(d)(1) (relating to annual reporting) is amended by striking subparagraph (B) and inserting after subparagraphs (C), (D), (E), (F), and (G) as subparagraphs (B), (C), (D), (E), and (F), respectively:

'(C) the findings of the most recent mid-year review by the Internal Revenue Service, to the extent such review is conducted for the current period of the tax year, and in the case of such review made by the Treasury, or the most recent annual period of the tax year, to the extent such review is conducted for the current period of the tax year, and to the extent such review is conducted, to the extent such review is conducted; and

'(D) the findings of the most recent mid-year review by the Internal Revenue Service, to the extent such review is conducted for the current period of the tax year, and in the case of such review made by the Treasury, or the most recent annual period of the tax year, to the extent such review is conducted for the current period of the tax year, and to the extent such review is conducted, to the extent such review is conducted; and

(c) **EFFECTIVE DATES.**—

(1) **SUBSECTION (A).**—The amendment made by subsection (a) shall apply to requests made after the date of the enactment of this Act.

(2) **SUBSECTION (B).**—The amendment made by subsection (b) shall apply to reports made after the date of the enactment of this Act.

SEC. 403. TAXPAYERS REPRESENTATIVES NOT SUBJECT TO EXAMINATION ON SOLE BASIS OF REPRESENTATION OF TAXPAYER.

(a) **IN GENERAL.**—Paragraph (1) of section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended—

'(1) by striking "TREASURY—Returns and return information" and inserting "TREASURY—Returns and return information", and

'(A) **IN GENERAL.**—Returns and return information, and

'(B) **TAXPAYER REPRESENTATIVES.**—Notwithstanding subparagraph (A), the return or return information of the representative of a taxpayer whose return is being examined by an officer or employee of the Department of the Treasury shall not be open to inspection by such officer or employee on the sole basis of the representative's relationship to the taxpayer unless a supervisor of such officer or employee has approved the inspection of the return or return information of such representative in lieu of chapter 83 or chapter 84 of title 5, United States Code.
(a) Notice to Taxpayer.—Subsection (e) of section 7431 (relating to notification of unlawful inspections) is amended by adding at the end the following: "The Secretary shall also notify such taxpayer if the Internal Revenue Service or, upon notice to the Secretary by a Federal or State agency, if such Federal or State agency, proposes an administrative determination as to disciplinary or adverse action against an employee arising from the employee's unauthorized inspection or disclosure of the taxpayer's return or return information. The notice described in this subsection shall include the date of the inspection or disclosure and the rights of the taxpayer under such administrative determination.".

(b) Exhaustion of Administrative Remedies Required.—Section 7431, as amended by this Act, is amended by adding at the end the following new subsection:

(i) Exhaustion of Administrative Remedies Required.—In the case of an organization to which paragraph (1) applies, the Secretary may disclose to the appropriate State officer designated as the individual who may be designated by such State for the purposes of this paragraph, returns or return information under this section (a) shall apply to requests for or consent made after 3 months after the date of the enactment of this Act.

(c) Payment Authority Clarified.—

(I) In General.—Section 7431, as amended by this section shall apply to determinations made after the date of the enactment of this Act.

II. Disclosures to State Officials of Proposed Actions Related to Section 501(c) Organizations.

(a) In General.—Subsection (c) of section 6103 is amended by striking paragraph (2) and inserting the following new paragraphs:

(2) Disclosure of Taxpayer Identity Information to Other Media.—The Secretary may disclose to other media, and through any other means of communication, taxpayer identity information to the press without consent, if the Secretary determines that disclosure is necessary or appropriate to better achieve the purposes of this section and, if so, how; and

(b) Conforming Amendments.—Section 6103(b) is amended—

(1) by striking "(B)(i), (B)(ii), and (B)(iii)" and by inserting "(B)(i), (B)(ii), and (B)(iii)".

(2) by striking paragraph (2) and inserting the following:

(2) by striking "(B)(i), (B)(ii), and (B)(iii)" and by inserting "(B)(i), (B)(ii), and (B)(iii)".

(c) Effective Date.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

III. Disclosure of Taxpayer Identity Information for Tax Refund Purposes.

(a) In General.—Section 6103(m) (relating to tax refunds) is amended by striking "taxpayer identity information to the press and other media" and by inserting "a person's name and the city, State, and zip code of the person's mailing address to the press, other media, and through any other means of mass communication,".

(b) Effective Date.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

IV. Disclosure to State Officials of Proposed Actions Related to Section 501(c) Organizations.

(a) In General.—Subsection (c) of section 6103 is amended by striking paragraph (2) and inserting the following new paragraphs:

(2) Disclosure of Taxpayer Identity Information to Other Media.—The Secretary may disclose to other media, and through any other means of communication, taxpayer identity information to the press without consent, if the Secretary determines that disclosure is necessary or appropriate to better achieve the purposes of this section and, if so, how; and

(b) Conforming Amendments.—Section 6103(b) is amended—

(1) by striking "(B)(i), (B)(ii), and (B)(iii)" and by inserting "(B)(i), (B)(ii), and (B)(iii)".

(2) by striking paragraph (2) and inserting the following:

(2) by striking "(B)(i), (B)(ii), and (B)(iii)" and by inserting "(B)(i), (B)(ii), and (B)(iii)".

(c) Effective Date.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

V. Disclosure of Taxpayer Identity Information for Tax Refund Purposes.

(a) In General.—Section 6103(m) (relating to tax refunds) is amended by striking "taxpayer identity information to the press and other media" and by inserting "a person's name and the city, State, and zip code of the person's mailing address to the press, other media, and through any other means of mass communication,".

(b) Effective Date.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

VI. Disclosure to State Officials of Proposed Actions Related to Section 501(c) Organizations.

(a) In General.—Subsection (c) of section 6103 is amended by striking paragraph (2) and inserting the following new paragraphs:

(2) Disclosure of Taxpayer Identity Information to Other Media.—The Secretary may disclose to other media, and through any other means of communication, taxpayer identity information to the press without consent, if the Secretary determines that disclosure is necessary or appropriate to better achieve the purposes of this section and, if so, how; and

(b) Conforming Amendments.—Section 6103(b) is amended—

(1) by striking "(B)(i), (B)(ii), and (B)(iii)" and by inserting "(B)(i), (B)(ii), and (B)(iii)".

(2) by striking paragraph (2) and inserting the following:

(2) by striking "(B)(i), (B)(ii), and (B)(iii)" and by inserting "(B)(i), (B)(ii), and (B)(iii)".

(c) Effective Date.—The amendments made by this Act shall take effect on the date of the enactment of this Act.

VII. Disclosure of Taxpayer Identity Information for Tax Refund Purposes.

(a) In General.—Section 6103(m) (relating to tax refunds) is amended by striking "taxpayer identity information to the press and other media" and by inserting "a person's name and the city, State, and zip code of the person's mailing address to the press, other media, and through any other means of mass communication,".

(b) Effective Date.—The amendments made by this Act shall take effect on the date of the enactment of this Act.
(6) Paragraph (2) of section 7223(a) is amended by inserting "or 6103c)" after "6103c)."

(7) Paragraph (4) of section 7412(a) is amended by inserting "(including any disclosure in violation of section 6104c)" after "6104c)."

(c) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act but shall not apply to requests made before such date. Sec. 411. TREATMENT OF PUBLIC RECORDS.

(a) In General.—Section 6103 (relating to definitions) is amended by adding at the end the following new paragraph:

"(q) Investigative disclosures.—Nothing in this section may be construed to prohibit investigative agents of the Internal Revenue Service from identifying themselves, their organizational affiliation, and the criminal nature of an investigation when contacting third parties in writing or in person." (b) Effective Date.—The amendment made by this section shall take effect before, on, and after the date of the enactment of this Act.

Sec. 412. INVESTIGATIVE DISCLOSURES.

(a) In General.—Section 6103 (confidentiality and disclosure of returns and return information) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

"(q) Investigative disclosures.—Nothing in this section may be construed to prohibit investigative agents of the Internal Revenue Service from identifying themselves, their organizational affiliation, and the criminal nature of an investigation when contacting third parties in writing or in person." (b) Effective Date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Sec. 413. TIN MATCHING.

(a) In General.—Section 6103 (relating to disclosure of certain returns and return information for tax administration purposes) is amended by adding at the end the following new paragraph:

"(10) TIN matching.—The Secretary may disclose to any person required to provide a taxpayer identification number, as described in section 6109 to the Secretary whether such information matches records maintained by the Secretary." (b) Effective Date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Sec. 414. FORM 8300 DISCLOSURES.

(a) In General.—Section 6103 (relating to disclosure of returns and return information under section 6104c) after "this section" in paragraph (2), and

(b) by striking "or subsection (n)" in paragraph (2) and inserting "subscription (n), or section 6104c)."

(2) SUBPARAGRAPH ADDITION.—(A) portion (A) of section 6103 (relating to disclosure of certain returns and return information under section 6104c) after "this section" in paragraph (2), and

(b) by striking "or subsection (n)" in paragraph (2) and inserting "subscription (n), or section 6104c)."

(3) Paragraph (4) of section 6103p, as amended by section 202(b)(2)(b) of the Trade Act of 2002 (Public Law 107-210, 116 Stat. 961), is amended by inserting after "any other person described in subsection (i)(16)" each place it appears and inserting "or (18) or any appropriate State officer (as defined in section 6103d)"

(4) The heading for paragraph (3) of section 6103c is amended by inserting "for charitable organizations" after "disclosure" in the first sentence.

(5) Paragraph (2) of section 7223(a) is amended by inserting "or under section 6104c)" after "6103c)"

Sec. 415. TECHNICAL AMENDMENT.

(a) In General.—Section 6103 (relating to disclosure of returns and return information for tax administration purposes) is amended by adding at the end the following new clause:

"(v) Taxpayer identity.—For purposes of this subparagraph, a taxpayer's identity shall not be treated as taxpayer return information." (b) Effective Date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Sec. 416. FEDERATION AND LIFE INSURANCE CONTRACTS.

(a) In General.—Section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

"(q) Investigative disclosures.—Nothing in this section may be construed to prohibit investigative agents of the Internal Revenue Service from identifying themselves, their organizational affiliation, and the criminal nature of an investigation when contacting third parties in writing or in person." (b) Effective Date.—The amendment made by this section shall take effect before, on, and after the date of the enactment of this Act.

Sec. 417. FORM 8300 DISCLOSURES.

(a) In General.—Section 6103 (relating to disclosure of certain returns and return information for tax administration purposes) is amended by adding at the end the following new paragraph:

"(10) TIN Matching.—The Secretary may disclose to any person required to provide a taxpayer identification number, as described in section 6109 to the Secretary whether such information matches records maintained by the Secretary." (b) Effective Date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

Sec. 418. EARNED INCOME CREDIT.

(a) Paragraph (1) of section 32(b) is amended—

(A) by striking subparagraphs (B) and (C), and

(b) in subparagraph (A) by striking "(A) in general.—" In the case of the taxable years beginning after December 31, 1992, clause and inserting "Clauses".

(b) ITEMS OF TAX PREFERENCE; DEPLETION.— Paragraph (1) of section 57(a) is amended by striking paragraphs (1) through (8) and by redesignating paragraphs (9) and (10) as paragraphs (1) and (2), respectively.

(2) ADJUSTMENTS BASED ON ADJUSTED CURRENT EARNINGS.—Clause (ii) of section 56(g)(4)(F) is amended by striking "In the case of any taxable year beginning after December 31, 1992, clause and inserting "Clauses".

(3) ANNUITIES; CERTAIN PROCEEDS OF EMPLOYMENT AND LIFE INSURANCE CONTRACTS.—Section 72 is amended—

(A) in subsection (c)(4) by striking "; except that if such date was before January 1, 1954, then the annuitant starting date is January 1, 1954," and

(B) in subsection (g)(3) by striking "(January 1, 1954, or; and", whichever is later.

(4) ACCIDENT AND HEALTH PLANS.—Section 105(f) is amended by striking "or (d)".

(a) FLEXIBLE SPENDING ARRANGEMENTS.—Section 105(c)(1) is amended by striking "of effective on and after January 1, 1997, gross and inserting "Gross".

(b) CERTAIN COMBAT ZONE COMPENSATION OF MEMBERS OF THE ARMED FORCES.—Subsection (c) of section 501 is amended—

(A) by striking "(after June 24, 1959)" in paragraph (2), and

(b) by striking "and", and all that follows in paragraph (3) and inserting "such zone, or the Secretary of the Treasury shall prescribe."
(15) CERTAIN REDUCED UNIFORMED SERVICES RETIREMENT PAY.—Section 122(b)(1) is amended by striking “after December 31, 1965.”.

(16) GREAT PLAINS CONSERVATION PROGRAM.—Subsection (b) is amended by striking paragraph (8) and by redesignating paragraphs (7), (8), (9), and (10) as paragraphs (6), (7), (8), and (9), respectively.

(17) MORTGAGE REVENUE BONDS FOR RESIDENCES IN FEDERAL DISASTER AREAS.—Section 143(k) is amended by striking paragraph (11).

(26) AMORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—Paragraph (1) is amended by striking “beginning after December 31, 1953.”.

(27) SOIL AND WATER CONSERVATION EXPENDITURES.—Paragraph (1) of section 175(d) is amended to read as follows:

“(1) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in subsection (a) are paid or incurred.”

(28) ACTIVITIES NOT ENGAGED IN FOR PROFIT.—Section 183(e)(1) is amended by striking the last sentence.

(29) DIVIDENDS RECEIVED ON CERTAIN PREFERRED STOCK AND DIVIDENDS PAID ON CERTAIN PREFERRED STOCK OF PUBLIC UTILITIES.—(A) Sections 244 and 247 are hereby repealed and the table of sections for part VII of chapter 1 of this title amended by striking the items relating to sections 244 and 247.

(30) RETIREMENT PAY.—Section 122(b)(1) is amended by striking “after December 31, 1963,”.

(31) A MORTIZATION OF CERTAIN RESEARCH AND EXPERIMENTAL EXPENDITURES.—Subparagraph (A) of section 174(a)(2) is amended to read as follows:

“(A) WITHOUT CONSENT.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this section for his first taxable year for which expenditures described in paragraph (1) are paid or incurred.”

(32) LIMITATION ON DEDUCTIONS FOR CERTAIN FARMING EXPENSES.—Paragraph (1) of section 212(b)(4) is amended by striking “subsection (b)(1)(E)” each place it appears and inserting “subsection (b)(1)(D)”.

(33) ACQUISITIONS MADE TO EVADE OR AVOID INCOME TAX.—Paragraphs (1) and (2) of section 269(a) are each amended by striking “or acquired on or after October 8, 1940,”.

(34) RETIREMENT ACCOUNTS OF ANOTHER CORPORATION.—In subsection (b), by striking “after October 9, 1969,” and inserting “after December 31, 1967,”.

(35) SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS.—Paragraph (4) of section 291(a) is amended by striking “in the case of the taxpayer” and in subsection (d), by striking “after December 31, 1984,” and inserting “Section”.

(36) QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.—Section 409 is amended by striking subsections (a), (g), and (q).

(37) FUNDING STANDARDS.—Section 412(m)(4) is amended by striking “the applicable percentage” in subparagraph (A) and inserting “25 percent”,.

(38) RETIREE HEALTH ACCOUNTS.—Section 421 is amended.—

(A) by striking paragraph (4) in subsection (b) and by redesigning paragraph (5) as paragraph (4), and

(B) by amending paragraph (2) of subsection (c) to read as follows:

“(2) REQUIREMENTS RELATING TO PENSION BENEFITS ACCRUING BEFORE TRANSFER.—The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).”.

(39) EMPLOYEE STOCK PURCHASE PLANS.—Section 423 is amended by striking “after December 31, 1963.”.

(40) LIMITATION ON DEDUCTIONS FOR CERTAIN FARMING.—Section 464 is amended.—

(A) by striking “the applicable percentage” (as defined in subsection (c)) each place it appears in subsections (a) and (b) and inserting “any taxpayer to whom subsection (f) applies”,.

(B) by striking subsection (g).

(41) DEDUCTIONS LIMITED TO AMOUNT AT RISK.—Paragraph (3) of section 465(c) is amended by striking “in the case of taxable years beginning after December 31, 1978,” and inserting “This paragraph applies to years beginning after December 31, 1978.”.

(42) NUCLEAR DECOMMISSIONING COSTS.—Section 469(a)(2)(A) is amended—

(A) by striking “at the rate set forth in subparagraph (B)” in subparagraph (A) and inserting “at a rate of 20 percent”, and

(B) by redesigning subparagraphs (C) and (D) by redesigning paragraphs (A) and (D) as paragraphs (B) and (C), respectively.

(43) PASSIVE ACTIVITY LOSSES AND CREDITS.—Paragraph (3) of section 469 is amended by striking “in the case of taxable years beginning after December 31, 1978,” and inserting “This paragraph applies to years beginning after December 31, 1978.”.

(44) DEDUCTIONS LIMITED TO AMOUNT AT RISK.—(A) Section 469 is amended by striking “in the case of taxable years beginning after December 31, 1978,” and inserting “This paragraph applies to years beginning after December 31, 1978.”.

(B) By redesigning paragraph (2) as paragraph (1), by striking paragraph (2), and by redesigning paragraphs (A) and (D) as paragraphs (B) and (C), respectively.

(C) By redesigning paragraphs (A) and (D) as paragraphs (B) and (C), respectively.

(45) PASSIVE ACTIVITY LOSSES AND CREDITS.—Section 469(a)(2)(A) is amended—

(A) by striking “at the rate set forth in subparagraph (B)” in subparagraph (A) and inserting “at a rate of 20 percent”, and

(B) by redesigning subparagraphs (C) and (D) by redesigning paragraphs (A) and (D) as paragraphs (B) and (C), respectively.

(C) By redesigning paragraphs (A) and (D) as paragraphs (B) and (C), respectively.

(46) PASSIVE ACTIVITY LOSSES AND CREDITS.—Section 469(a)(2)(A) is amended—

(A) by striking “at the rate set forth in subparagraph (B)” in subparagraph (A) and inserting “at a rate of 20 percent”, and

(B) by redesigning subparagraphs (C) and (D) by redesigning paragraphs (A) and (D) as paragraphs (B) and (C), respectively.
(44) Aggregate requirements for changes in method of accounting.—Section 481(b)(3) is amended by striking subparagraph (C).

(45) Exemption from tax on corporations, certain trusts, etc.—Section 501 is amended by striking subsection (p).

(46) Requirements for exemption.—
(A) Section 503(a)(1) is amended to read as follows:

"(1) General rule.—An organization described in paragraph (17) or (18) of section 501(a) or described in section 4947(a) and referred to in section 4947(g)(2) or (3) shall not be exempt from taxation under section 501(a) if it has engaged in a prohibited transaction.

(B) By inserting a new subsection (q) to read as follows:

"(q) Exempt organizations.—(1) In general.—The prohibitions against engaged in any prohibited transaction shall apply to any tax-exempt organization, regardless of whether the prohibited transaction is described in section 503(a)(1) or 503(a)(2).

(60) Treatment of amounts received on retirement or sale or exchange of debt instruments.—Section 1271(c)(2) is amended to read as follows:

"(c) In general.—Subsection (c) of section 1271 is amended as follows:

(1) by striking "(a)(2)" in subsection (c)(1) and inserting "(a)(3)”; and

(2) by striking "(a)(1)" in subsection (c)(1) and inserting "(a)(2)".

(66) Definition of wages.—Section 3121(b) is amended by striking paragraph (17).

(70) Credits against tax.—
(A) Paragraph (4) of section 3302(f) is amended by striking "subsection (b)(1)" and all that follows through "(A) in general.—", by striking subparagraph (B), by redesignating clauses (ii) and (iii) as subparagraphs (A) and (B), respectively, and by inserting the text of such subparagraphs as so redesignated before the end.

(B) Paragraph (5) of section 3302(f) is amended by striking subsection (b)(2) and by redesignating subparagraph (A) as subsection (b)(2).

(72) Domestic service employment taxes.—Section 501 is amended by striking paragraph (4).

(77) Information returns.—Subsection (a) of section 6061 is amended by striking "beginning after December 31, 1971, and".

(79) Returns.—Subsection (a) of section 6401 is amended by striking "year" and all that follows and inserting "3 percent of the amount of the self-employment income for such taxable year.”

(82) Valuation tables.—Paragraph (3) of section 7526(c) is amended by striking paragraph (17).
(B) by striking “thereafter” in the last sentence thereof.

(A) Administration and Collection of Taxes in Possessions.—Section 7561 is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(B) Definition of Employee.—(A) Section 7701(a)(20) is amended by striking “chapter 21” and all that follows and inserting “chapter 21.”

(C) Effective Date.—(1) General Rule.—Except as otherwise provided in paragraph (2), the amendments made by subsection (a) shall take effect on the date of enactment of this Act.

(2) Savings Provisions.—(A) any provision amended or repealed by subsection (a) to apply—

(i) any transaction occurring before the date of the enactment of this Act,

(ii) any property acquired before such date of enactment, or

(iii) any item of income, loss, deduction, or credit taken into account before such date of enactment,

(B) the treatment of such transaction, property, or item under such provision would (without regard to the amendments made by subsection (a)) affect the liability for taxes for periods ending after such date of enactment, nothing in the amendments made by subsection (a) shall be construed to preclude the treatment of such transaction, property, or item for purposes of determining liability for tax for periods ending after such date of enactment.

TAX ADMINISTRATION GOOD GOVERNMENT ACT INTRODUCED APRIL 10, 2003

1. IMPROVE TAX ADMINISTRATION AND ESTABLISH TAXPAYER SAFEGUARDS

Collection

Waiver of user fee for installment agreements using automated withdrawals. The IRS is currently required to charge a user fee on taxpayers entering into an installment agreement. The proposal would waive the user fee if the taxpayer agrees to automated withdrawal of installment payments from a bank account. This proposal will help facilitate collection through automated withdrawals.

Authorize partial pay installment agreements. The proposal restores authority that the IRS had prior to 1998 to allow IRS to enter into installment agreements with taxpayers who cannot pay their liabilities but cannot afford to make payments large enough to fully pay the liability at the end of the term of the installment agreement. The proposal would permit the collection of taxes from cases that are otherwise placed in the currently not collectible inventory.

Terminate installment agreements for failure to file returns and failure to make tax deposits. The proposal would stop the downward spiral where taxpayers owe more and the Government collects less. Although a significant number of taxpayers violate the terms of their installment agreements by failing to pay their tax payments or make required Federal tax deposits, the IRS is not permitted to terminate installment agreements for these reasons.

Remove 120-day-dollar threshold requirement for office of chief counsel review of offers in compromise—IRC section 7122(b). The proposal would remove the dollar threshold for the IRS discretion in determining when a Chief Counsel opinion is necessary. IRS attorneys are presently required to review offers where the tax assessed, including penalties and interest, exceeds $50,000. As a practical matter, IRS lawyer offer little in the way of review and often contribute to the delay in settling cases.

Seven-day threshold on tolling of statute of limitations during National Taxpayer Advocate review. The proposal provides additional time, without tolling the statute of limitations, for review by the National Taxpayer Advocate for taxpayer assistance orders.

Increase Penalty for Bad Checks. Proposal would increase penalty for bad checks to $20 or 2% of amount owed. Allow the Financial Management Service to Retain Transaction Fees from Levied Amounts. Proposal would allow FMS to retain all or any portion of levied funds as payment of FMS fees. A delinquent taxpayer, however, would receive full credit for the amount levied upon (i.e., the amount credited to the taxpayer’s account would not be reduced by FMS’s fee). The IRS pays FMS fees out of its own appropriations. The proposal would alter internal government accounting controls while allowing FMS to use appropriated funds to administer the tax system.

Elimination or Restriction on Offsetting Refunds from former residents. The proposal would allow States to offset Federal tax refunds owed by former residents. In 1998, Congress authorized the State refund offset program. However, the provision did not authorize States to offset Federal tax refunds for State tax debts owed by former residents who had subsequently moved to another State. Federal officials have confirmed that the same safeguards as residents in these situations and there is strong precedence that clearly gives States authority to impose and collect taxes on former residents.

Explaination of Statute of Limitations and Consequences of Failure to Timely File. The proposal would require IRS to provide taxpayers with an explanation of the consequences of failing to timely file refund claims.

Disclosure of tax information to facilitate combined employment tax reporting. The proposal would expand and make permanent the disclosure authority of the IRS to permit disclosures of names, address, taxpayer identification number, and signature to any State entity for purposes of carrying out a combined federal and state employment tax reporting program. Under current law, any tax information may be furnished by the Internal Revenue Service to another agency except as permitted under sections 6103 and 7345. The proposal would require the IRS to establish procedures satisfactory to the IRS. A pilot program was established in 1997 in the State of Montana to assess the feasibility and desirability of expanding combined reporting. Reports from Montana were very positive about the program.

Expansion of declaratory judgment remedy to tax-exempt organizations. The proposal would extend declaratory judgment procedures similar to those currently available only to charities under section 7428 to other section 501(c) determinations. The proposal would limit jurisdiction over controversies involving such determinations to the United States Tax Court. The proposal would also modify the present-law declaratory judgment procedures to provide that an organization is deemed to have exhausted its administrative remedies when any declaratory judgment procedures at the expiration of (1) 270 days after the date on which on the request for a determination was made, or (2) in the case of a change in circumstances by the IRS to make a determination (other than the office responsible for initial determinations with respect to the issue), 450 days after the date on which the determination was made. The proposal would also require the organization to take, in a timely manner, all reasonable steps to secure such determination.

Amendment to Treasury auction reforms. The proposal would permit earlier disclosure upon the release by the Secretary of the minutes of the meeting. Under current law, members of the Treasury Borrowing Advisory Committee are prohibited from disclosing anything related to auctions to be auctioned in a midquarter refunding by the Secretary until the Secretary makes a public announcement of the refunding. The proposal would also modify section 3209 by removing the late filing of refund returns from the list of violations and removing employee versus employee acts (i.e., for violation of an employee’s rather than a taxpayer’s Constitutional or civil rights) from the list of violations related to employment of IRS employee misconduct. The proposal would modify section 1209 by removing the late filing of refund returns from the list of violations and removing employee versus employee acts (i.e., for violation of an employee’s rather than a taxpayer’s Constitutional or civil rights) from the list of violations related to employment of IRS employee misconduct. The proposal would modify section 1209 by removing the late filing of refund returns from the list of violations and removing employee versus employee acts (i.e., for violation of an employee’s rather than a taxpayer’s Constitutional or civil rights) from the list of violations related to employment of IRS employee misconduct.

IRS Oversight Board approval of use of critical pay authority. The proposal would require the IRS Oversight Board to approve the use of critical pay authority. Critical pay allows the IRS to hire employees critical to the mission of the IRS as well as allow the IRS to hire up to 40 individuals for four year terms under streamlined procedures.

Low-income taxpayer clinics. The proposal would require the IRS to provide low-income taxpayer clinics to $10 million and authorize a similar grant program for low-income taxpayer preparation clinics. The proposal would specify that grants may not be used for any purpose other than those specified in the Code (this restriction would be inapplicable to funds from other programs). The proposal would also authorize the IRS to promote the benefits and encourage the use of low-income taxpayer clinics.

Enrolled agents. The proposal would add a new section to the Code permitting the Secretary to prescribe regulations to regulate the conduct of enrolled agents. The proposal would require the Secretary of Treasury to study the need for and the desirability of expanding combined retirement and report to the tax writing committees on options to accelerate tax refunds for taxpayers who maintain the same filing characteristics and elect the direct option for any refund.

Study on clarifying record-keeping responsibilities. The proposal would require the Secretary of the Treasury to study the scope of record-keeping responsibility for tax practitioners, the utility of requiring taxpayers to maintain records indefinitely, the taxpayer burden incurred by such requirement given the necessity to upgrade technological storage for outdated records, the number of negotiated records retention agreements requested by taxpayers and the number entered into by the IRS, and proposals regarding taxpayer record-keeping. Under current law, every person liable for any tax imposed by the Code, or for any collection thereof, may keep such records as the Secretary of the Treasury may from time to time prescribe.

Streamlining National Taxpayer Advocate Annual Reports. The proposal would require the National Taxpayer Advocate to issue two reports to Congress: (1) an annual report on
III. U.S. TAX COURT MODERNIZATION

Jurisdiction of Tax Court over collection due process cases. Currently, if a taxpayer's elderly parent or other relative is unable to file tax returns, the parent or relative can file a petition in the Tax Court to obtain review. The proposal consolidates judicial review of collection due process activity in the Tax Court. The authority for judges to hear and decide certain employment status cases. This provision clarifies that the Tax Court may authorize its special trial judges to enter decisions for cases that are subject to small case proceedings under section 7433(c).

Confirmation of authority of Tax Court to apply doctrine of equitable recoupment. The common-law principle of equitable recoupment permits a party to assert an otherwise time-barred claim to reduce or defeat an opponent's claim if both claims arise from the same transaction. This provision confirms statutorily that the Tax Court may apply equitable recoupment principles to the same extent as the District Court and the Court of Federal Claims.

Tax Court filing fee in all cases commenced by filing petition. This provision clarifies Tax Court procedure, that the Tax Court is authorized to impose a $60 filing fee for all cases commenced by petition. The proposal would eliminate the need to amend section 7451 each time the Tax Court is granted new jurisdiction.

Amendments to appoint employees. Currently, the Tax Court has the authority to hire personnel, but this authority does not include the power to fire personnel. The proposal would clarify this authority and provide for the appointment of personnel.

Freeze provision regarding suspension of interest where Secretary fails to contact taxpayer. The Secretary is required to notify taxpayers when interest has been assessed by increasing the exception for small amount of tax shown on the return from less than $500 to less than $1,000. The proposal expands the amount that may be frozen from $50,000 to $1 million for a period of 18 months for taxable years before January 1, 2004.

Expansion of interest abatement. The proposal would: (1) expand the circumstances in which interest may be abated to include periods attributable to any unreasonable IRS error or delay and (2) allow the abatement of interest to the extent that an interest is attributable to the taxpayer's reliance on written statements by the IRS.

Deposits made to stop the running of interest. A proposal would permit deposits to be made to an interest bearing account within Treasury to cover tax underpayments related to issues potentially subject to dispute with the IRS.

Freeze provision regarding suspension of interest where Secretary fails to contact taxpayer. The Secretary is required to notify taxpayers when interest has been assessed by increasing the exception for small amount of tax shown on the return from less than $500 to less than $1,000. The proposal expands the amount that may be frozen from $50,000 to $1 million for a period of 18 months for taxable years before January 1, 2004.

Expansion of interest abatement. The proposal would: (1) expand the circumstances in which interest may be abated to include periods attributable to any unreasonable IRS error or delay and (2) allow the abatement of interest to the extent that an interest is attributable to the taxpayer's reliance on written statements by the IRS.

Expansions of interest netting. An interest netting provision would apply in cases where it is triggered if the IRS fails to contact the taxpayer within 1 year for taxable years after January 1, 2004 or 18 months for taxable years before January 1, 2004. The proposal is unnecessary with expanded interest abatement.

Expansion of interest netting. Applies in cases where it is triggered if the IRS fails to contact the taxpayer within 1 year for taxable years after January 1, 2004 or 18 months for taxable years before January 1, 2004. The proposal is unnecessary.

Individual estimated tax. The proposal simplifies the individual estimated tax penalty including, increase the penalty threshold for individuals to $2,000 from $1,000, apply one interest rate per estimated tax underpayment; and adopt a 365 day year.

Corporate estimated tax. The proposal simplifies the corporate estimated tax penalty by increasing the exception for small corporations by increasing the threshold from $1 million to $1.5 million of taxable income.

Corporate estimated tax. The proposal simplifies the corporate estimated tax penalty by increasing the exception for small corporations by increasing the threshold from $1 million to $1.5 million of taxable income.

Increase in large corporation threshold for deposit penalty. The proposal would clarify that the 10 percent penalty rate only applies to collections due process hearings, installment agreements, offers-in-compromise, and taxpayer assistance orders if they are based on frivolous arguments or are intended to delay or impede tax administration. Individual submitting such requests are subject to a $5,000 penalty for repeat behavior or failure to withdraw the request after being given the opportunity to do so.
an IRS employee conducting an examination of a taxpayer is not authorized to inspect a taxpayer representative's return or return information solely on the basis of the representative's relationship to the taxpayer. Under the proposal, the supervisor of the IRS employee would be required to approve such inspection after making a determination that it is necessary to safeguard confidential tax information. The proposal would not affect the ability of employees of the IRS Director of Professional Responsibility, or other employees whose presence is required in the normal course of practice before the IRS, to access returns and return information of a representative.

Proposed measure of taxpayer identifying number with respect to disclosure of accepted offers-in-compromise. The proposal would prohibit the disclosure of the taxpayer identification number as part of the publicly available summaries of accepted offers in compromise. Compliance by contractors with confidentiality safeguards. The proposal would require that a State or Federal agency conduct on-site reviews of all of its contractors receiving Federal returns and return information pursuant to an agreement. This review is intended to cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by the Secretary. Under the proposal, the State or Federal agency would be required to submit a report of its findings to the IRS and certify annually that all contractors are in compliance with respect to safeguarding confidentiality of Federal returns and return information.

Higher standards for requests for and contents of disclosure. The proposal would render invalid a consent that does not designate a recipient or is not dated at the time of execution. A person submitting the consent to the IRS would be required to sign under penalties of perjury that the form was complete and dated at the time it was signed by the taxpayer. Inspection or disclosure of a return or return information pursuant to an invalid consent would be unauthorized under section 6103. Thus, a person making such unauthorized disclosure or inspection could be liable for civil damages under section 7223, and criminal penalties under section 7213 or section 6103. Thus, a person making such unauthorized disclosure or inspection could be liable for civil damages under section 7223, and criminal penalties under section 7213 or section 6103.

Civil damages for unauthorized inspection or disclosure. The proposal would require the IRS to notify a taxpayer at the point of proposed inspection or disclosure that it is intended to cover secure storage, restricting access, computer security, and other safeguards deemed appropriate by the Secretary. Under the proposal, a person requesting or approving inspection or disclosure of a return or return information pursuant to an invalid consent would be unauthorized under section 6103. Thus, a person making such unauthorized disclosure or inspection could be liable for civil damages under section 7223, and criminal penalties under section 7213 or section 6103.

Expanded disclosure in emergency circumstances. The proposal would permit disclosure to local law enforcement authorities emergency situations including suicide threats. Disclosure of taxpayer identity for tax refund purposes. On April 15, 2002, about 1.7 million people who did not file their 1998 income tax return who lose more than $2.3 billion in tax refunds. When the IRS is unable to find a tax refund claim, providing that it may use the "press or other media" to notify the taxpayer of the refund. The IRS believes the current statutory framework in section 6103(m) does not permit disclosure via the Internet. The proposal would allow the IRS to use any means of "mass communicating," including the Internet, to notify a taxpayer of an undelivered refund.

Disclosure to State officials of proposed actions related to section 501(c) organizations. The proposal would provide that under certain circumstances, the Secretary may disclose: (1) a notice of proposed refusal to recognize an organization as a section 501(c)(3) organization; (2) a notice of proposed revocation of tax-exemption of a section 501(c)(3) organization; (3) the termination of deficiency tax in the case of any tax-exempt entity issued under section 501(c)(3) organizations; and (5) returns and return information of organizations with respect to which information has been disclosed. Disclosure or inspection is permitted for the purpose of, and only to the extent necessary in, the administration of State laws regulating section 501(c)(3) organizations.

Civil damages for unauthorized inspection or disclosure of information. The proposal would allow the IRS to notify a taxpayer at the point of request for and contents of disclosure. The proposal would render invalid a consent that does not designate a recipient or is not dated at the time of execution. A person submitting the consent to the IRS would be required to sign under penalties of perjury that the form was complete and dated at the time it was signed by the taxpayer. Inspection or disclosure of a return or return information pursuant to an invalid consent would be unauthorized under section 6103. Thus, a person making such unauthorized disclosure or inspection could be liable for civil damages under section 7223, and criminal penalties under section 7213 or section 6103.
consent.—A taxpayer may, without the consent of the Secretary, adopt the method provided in this subsection for his first taxable year for which expenditures described in paragraph (1) are paid or incurred.


27. Soil and water conservation expenditures. Paragraph (1) of section 172(d) is amended—

(i) by striking "(1) Without consent.

(ii) by striking the last sentence.

29. Dividends received on certain preferred stock; and Dividends paid on certain preferred stock of public utilities. Sections 244 and 247 are repealed. Paragraph (5) of section 172(d) is amended to read as follows:

"(5) Computation of deduction for dividends received. The deductions allowed by section 243 and 245 shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions)."

Paragraph (1) of section 243(c) is amended to read as follows:

"(1) IN GENERAL.—In the case of any dividend received from a 20-percent owned corporation to which subparagraph (B) is applicable, the amount of the dividend shall be substituted "80 percent" for "70 percent.""


31. Bond repurchase premium. Section 240(b)(1) is amended by striking "in the case of bonds or other evidences of indebtedness issued after February 28, 1913."

32. Amount of gain where loss previously disallowed. Section 267(d) is amended by striking "(or by reason of section 24(b) of the Internal Revenue Code of 1939)" in paragraph (1), by striking "after December 31, 1933." in paragraph (2), by striking the second sentence, and by striking "or by reason of section 267(d) of the Internal Revenue Code of 1939" in the last sentence.

33. Acquisitions made to evade or avoid income tax. Paragraphs (1) and (2) of section 1036 are amended—

(1) by striking paragraph (1) and designating paragraph (2) as paragraph (1). (2) by striking "or acquired on or after October 8, 1940," and inserting "or acquired on or after December 31, 1940," in subsection (a)(2), (B) by striking "after October 9, 1969," in subsections (b), (C) by striking "after June 24, 1960," and inserting "after June 24, 1967," in subsection (b), and (D) by striking subsection (i) and redesignating subsection (j) as subsection (i). (3) by striking paragraph (4) and inserting in lieu thereof:

"(4) Special rules relating to corporate preference interests. Paragraph (4) of section 291(a) is amended by striking "In the case of taxable years beginning after December 31, 1940," and inserting "In the case of taxable years beginning after December 31, 1946.""
71. Domestic service employment taxes. Section 3510(b) is amended by striking paragraph (4).  
72. Tax on fuel used in commercial transportation on inland waterways. Section 4042(b)(2)(A) is amended to read as follows: "(A) The Inland Waterways Trust Fund financing rate is 20 cents per gallon."  
73. Transportation by air. Section 2426(e) is amended by striking paragraphs (1)(C) and (5).  
74. Taxes on failure to distribute income. Section 4902 is amended—  
(1) by striking subsection (f)(2)(D),  
(2) by striking "For all taxable years beginning on or after January 1, 1975, subject and inserting "Subject to", inserting "any nonwh� drawback", and inserting "at 3 percent per annum", and  
(3) by striking "after December 31, 1969," and in subsection (i)(2).  
75. Taxex on taxable expenditures. Section 4904(f) is amended by striking "(excluding expenditures of such Act (42 U.S.C. 1396r–6(g)), as added by the Omnibus Budget Reconciliation Act of 1981)" and inserting "(excluding expenditures of such Act (42 U.S.C. 1396r–6(g)), as added by the Omnibus Budget Reconciliation Act of 1981)"

80. Retirement. Section 7447(i)(3)(B)(ii) is amended by striking paragraphs (1)(C) and (ii).  
81. Annuities to surviving spouses and dependents. Paragraph (2) of section 4945(f) is amended by striking "(1) I N GENERAL.—Notwithstanding any" and all that follows and inserting "(1) I N GENERAL.—Notwithstanding any" and all that follows and inserting "(1) I N GENERAL.—Notwithstanding any"  
82. Merchant marine capital construction funds. Section 4945(f) is amended by striking "(1) I N GENERAL.—Notwithstanding any" and all that follows and inserting "(1) I N GENERAL.—Notwithstanding any".  
83. Valuation tables. Paragraph (3) of section 4945(f) is amended by striking "(1) I N GENERAL.—Notwithstanding any" and all that follows and inserting "(1) I N GENERAL.—Notwithstanding any".  
84. Administration and collection of taxes in possessions. Section 7561 is amended by striking paragraph (4).  
85. Definition of employee. Section 7701(a)(20) is amended by striking "chapter 21" and all that follows and inserting "chapter 21".
"(2) COORDINATION WITH ADMINISTRATION FOR CHILDREN AND FAMILIES.—The Administrator of the Centers for Medicare & Medicaid Services, in carrying out this section, shall consult with the Assistant Secretary for the Administration for Children and Families to develop guidance or other technical assistance for States regarding best practices as to how to access to transitional medical assistance under this section.".

(f) ELIMINATION OF TMA REQUIREMENT FOR STATES THAT EXTEND COVERAGE TO CHILDREN AND PARENTS THROUGH 185 PERCENT OF POVERTY.—

(1) IN GENERAL.—Section 1925 of such Act (42 U.S.C. 1396r–6) is further amended by adding at the end the following:

"(h) PROVISIONS OPTIONAL FOR STATES THAT EXTEND COVERAGE TO CHILDREN AND PARENTS THROUGH 185 PERCENT OF POVERTY.—A State may meet (but is not required to meet) the requirements of subsections (a) and (b) if it provides for medical assistance under section 1931 to families (including both children and caretaker relatives) the average gross monthly earning of which (less such costs for such child care as is necessary for the employment of a caretaker relative) is at least 90 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(2) CONFORMING AMENDMENTS.—Section 1925 of such Act (42 U.S.C. 1396r–6) is further amended, in subsections (a)(1) and (b)(1), by inserting "and explaining that individuals and families may qualify for such medical assistance under part A or E of title IV in order to qualify for such medical assistance under this title,". After "(h), but subject to subsection (i)," after "Notwithstanding any other provision of this title," appear the words "and stating that the notice of their ongoing eligibility for such medical assistance under this title continues, written notice of their ongoing eligibility for such medical assistance, and explaining that individuals and families may qualify for such medical assistance under part A or E of title IV in order to qualify for such medical assistance under this title,". After "(i)," in subsection (g) of such section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

By Ms. LANDRIEU (for herself, Mr. Neilson of Nebraska, Mr. Shelby, Mrs. Lincoln, Mrs. Hutchison, Mr. Johnson, Mr. Bunning, and Mr. Reid): S. 884. A bill to amend the Consumer Credit Protection Act to assure meaningful disclosure of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes; to be ordered to be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 884

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

SECTION 1. SHORT TITLE. This Act may be cited as the "Consumer Rental-Purchase Agreement Act of 2003".

SEC. 2. FINDINGS AND DECLARATION OF PURPOSES. (a) FINDINGS.—Congress finds that—

(1) the rental-purchase industry provides a service that meets and satisfies the demands of many consumers;

(2) each year, approximately 2,300,000 United States households enter into rental-purchase transactions, and over a 5-year period, approximately 12,000,000 United States households will do so;

(3) competition among the various firms engaged in the extension of rental-purchase transactions would be strengthened by informed use of rental-purchase transactions; and

(4) the informed use of rental-purchase transactions results from an awareness of the cost thereof by consumers.

(b) PURPOSES.—The purposes of this Act are to assure the availability of rental-purchase transactions and to assure simply, clearly, and meaningfully, and consistent disclosure of rental-purchase terms so that consumers will be able to more readily compare the available rental-purchase terms and avoid unforeseen use of rental-purchase transactions, and to protect consumers against unfair rental-purchase practices.

SEC. 3. CONSUMER RENTAL-PURCHASE PROTECTION ACT. The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new title:

"TITLE II. CONSUMER RENTAL- PURCHASE TRANSACTIONS

"Sec. 1001. Short title, definitions.

"Sec. 1002. Exempted transactions."
April 10, 2003

"(10) PERIODIC PAYMENT.—The term 'periodic payment' means the total payment that a consumer will make for a specific rental period after the initial payment, including the rental 'cost', mandatory fees or charges, and any optional fees or charges agreed to by the consumer.

"(11) PROPERTY.—The term 'property' means any item of tangible personal property that is not real property under the laws of the State in which the property is located when it is made available under a rental-purchase agreement, but does not include taxes or any fees or charges.

"(12) RENTAL PAYMENT.—The term 'rental payment' means rent required to be paid by a consumer for the possession and use of property for a specific rental period, but does not include taxes or any fees or charges.

"(13) RENTAL PERIOD.—The term 'rental period' means a week, month, or other specific period of time during which the consumer has a right to possess and use property that is the subject of a rental-purchase agreement after paying the rental payment and any applicable taxes for such period.

"(14) RENTAL-PURCHASE AGREEMENT.—

"(A) IN GENERAL.—The term 'rental-purchase agreement' means a contract in the form of a rental lease or lease for the use of property by a consumer for an initial period of 4 months or less, that is renewable by each payment by the consumer, and that permits the consumer to become the owner of the property.

"(B) EXCLUSIONS.—The term 'rental-purchase agreement' does not include—

"(i) a credit sale (as defined in section 103g) of the Truth in Lending Act; (ii) a consumer lease (as defined in section 103d of the Truth in Lending Act); or

"(iii) a transaction giving rise to a debt incurred in connection with the business of lending money or a thing of value.

"(A) IN GENERAL.—For purposes of sections 1010 and 1011, the term 'rental-purchase cost' means the sum of all rental payments and mandatory fees or charges imposed by the merchant as a condition of entering into a rental-purchase agreement or acquiring ownership of property under a rental-purchase agreement, including—

"(i) any service, processing, or administrative charge;

"(ii) any fee for an investigation or credit report;

"(iii) any charge for delivery required by the merchant.

"(B) INCLUDED ITEMS.—The following fees or charges shall not be taken into account in determining the rental-purchase cost with respect to a rental-purchase transaction:

"(i) Fees prescribed by law, which actually are or will be paid to public officials or government entities, as sales tax;

"(ii) Fees and charges for optional products and services offered in connection with a rental-purchase agreement.

"(A) STATE.—The term 'State' means any State or Territory of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

"(17) TOTAL COST.—The term 'total cost' means the sum of the initial payment and all periodic payments in the payment schedule to be paid by the consumer to acquire ownership of the property that is the subject of the rental-purchase agreement.

"SEC. 3004. RENTAL-PURCHASE TRANSACTIONS.

"This title does not apply to rental-purchase agreements primarily for business, commercial, or agricultural purposes, or those products or services with identical or substantially similar sales of the Federal Government or a State or political subdivision thereof.

"SEC. 3003. GENERAL DISCLOSURE REQUIREMENTS.

"(a) RECIPIENT OF DISCLOSURE.—A merchant shall clearly and conspicuously disclose to any person who will receive the disclosures required under paragraph (1) and subparagraph (A) of this paragraph—

"(1) the date of the consummation of the rental-purchase transaction and the identities of the merchant and the consumer;

"(2) a brief description, such as 'This is the amount of the cash price of the property that is the subject of the rental-purchase agreement, other than through judicial process, during the applicable reinstatement period set forth in subparagraph (A), permits
the consumer to reinstate the agreement during a period of at least 60 days after the date of the return or surrender of the property by the payment of all amounts previously paid or delinquent, any late fees, security deposit, if any, and a payment for the next rental period.

(C) If the consumer has paid 50 percent or more of the rent, or the necessary part of the rental payments to acquire ownership and returns or voluntarily surrenders the property, other than through judicial process, during the applicable reinstatement period in subsection (a) or (b), then the consumer may reinstate the agreement, as defined in section 1006, to acquire ownership of the property that is the subject of the rental-purchase agreement as a condition for acquiring ownership of the property, and such a reinstatement shall—

(1) require ownership of the property that is the subject of the rental-purchase agreement, as defined in section 1006, or by any other means which the Board determines are necessary to acquire ownership of the property, except where such transfer is prohibited by the terms of the warrant.

(2) prohibit a requirement that the consumer pay an additional fee or charge for purposes of this subsection.

(3) permit the consumer to reinstate the agreement during a period of at least 120 days after the date of the return of the property by the consumer in the rental-purchase agreement pursuant to subsection (a) or (b).

(D) permits the consumer, upon reinstatement of the agreement, to receive the same property, if available, that was the subject of the rental-purchase agreement, or the same property of comparable quality and condition, except that the Board may, by regulation or order, exempt any independent small business (as defined by regulation of the Board) from the requirement of providing the same or comparable product during the extended reinstatement period provided in subparagraph (C) to the extent that such small business demonstrates that it cannot provide the same or comparable product due to the size of the merchandise.

(E) provide a statement specifying the terms under which the consumer shall acquire ownership of the property that is the subject of the rental-purchase agreement according to the requirements of subsection (b) or any early purchase option amount provided in the rental-purchase agreement, as applicable, the consumer shall—

(1) deliver, or mail to the last known address of the consumer, such documents or other instruments which the Board determines, by regulation, are necessary to acknowledge full ownership by the consumer of the property acquired pursuant to the rental-purchase agreement.

(2) transfer to the consumer the unexpired portion of any warranties provided by the manufacturer, distributor, or seller of the property, which shall apply as if the consumer were the original purchaser of the property, except where such transfer is prohibited by the terms of the warranty.

(3) provide a statement disclosing that if any part of a manufacturer's express warranty covers the property at the time the consumer acquires ownership of the property, the warranty will be transferred to the consumer if allowed by the terms of the warranty.

(F) provide, to the extent applicable, a description of any grace period for making any periodic payment, the amount of any security deposit, if any, to be paid by the consumer upon initiation of the rental-purchase agreement, and the terms of refund for such security deposit to the consumer upon termination of the rental-purchase agreement.

(G) Repossession during Reinstatement Period.—Subsection (a) shall not be construed so as to prevent a merchant from attempting to repossess property during the reinstatement period pursuant to subsection (a)(4)(A), but such a repossession does not affect the right of the consumer to reinstate the agreement under subsection (a)(4).

SEC. 1009. RENEGOTIATIONS AND EXTENSIONS.

(a) RENEGOTIATIONS.—For purposes of this section, a 'renegotiation' occurs when a rental-purchase agreement is satisfied and replaced by a new agreement undertaken by the same consumer. A 'renegotiation' occurs when new disclosures under this title, except as provided in subsection (c).

(b) EXTENSIONS.—For purposes of this section, 'extension' is an agreement by the consumer and the merchant to continue an existing rental-purchase agreement beyond the original end of the payment schedule, but does not include a continuation that is the result of a renegotiation.

(c) EXCEPTIONS.—New disclosures under this title are not required for the following, even if they meet the definition of a renegotiation or an extension under this section:

(1) A reduction in payments.

(2) A deferment of 1 or more payments.

(3) The extension of a rental-purchase agreement.

(4) The substitution of property with property that has a substantially equivalent or greater economic value, provided that the rental-purchase cost does not increase.

(5) The deletion of property in a multiple-item agreement.

(6) A change in the rental period, provided that the rental-purchase cost does not increase.

(b) An agreement resulting from a court proceeding.

(8) Any other event described in regulations prescribed by the Board.

SEC. 1010. POINT-OF-RENTAL DISCLOSURES.

(a) IN GENERAL.—For any item of property or set of items displayed or offered for rental-purchase, the merchant shall display on or next to the item or set of items a card, tag, or label that clearly and conspicuously discloses—

(1) a brief description of the property;

(2) whether the property is new or used;

(3) the cash price of the property;

(4) the amount of each rental payment;

(5) the total number of rental payments necessary to acquire ownership of the property; and

(6) the rental-purchase cost.

(b) IN CASE OF DAILY OR EXTENDED USE.

(1) IN GENERAL.—A merchant may make the disclosures required by subsection (a) in the form of a list or catalog which is readily available to the consumer at the point of rental if the merchandise is not displayed in the showroom of the merchant, or if displaying a card, tag, or label would be impractical due to the size of the merchandise.

(2) CLEARLY AND CONSPICUOUSLY.—As used in this section, the term 'clearly and conspicuously' means that information required to be disclosed to the consumer to make an informed decision shall appear in a type size, prominence, and location as to be noticeable, readable, and comprehensible to an ordinary consumer.

SEC. 1011. RENTAL-PURCHASE ADVERTISING.

(a) IN GENERAL.—If an advertisement for a rental-purchase transaction refers to or states the amount of any payment for any specific rental-purchase transaction, the merchant making the advertisement shall clearly and conspicuously state in the advertisement for the item or set of items advertisement—

(1) that the transaction advertised is a rental-purchase agreement;

(2) the amount, timing, and total number of payments required by the rental-purchase agreement; and

(3) the amount, timing, and total number of payments required to acquire ownership under the rental-purchase agreement;
“(a) IN GENERAL.—Except as otherwise provided in section 1013, any merchant who fails to comply with any requirement of this title or who causes a violation of any requirement imposed by this title shall be subject to the penalty provided for in section 112.

(b) RELATION TO STATE LAW.—Nothing in this title shall be construed as limiting or altering the authority of any State attorney general, or affecting in any manner the meaning, scope, or application of the laws of any State relating to rental-purchase agreements, except as provided in section 112.

(c) EFFECTIVE DATE OF REGULATIONS.—Nothing in this title shall be enforced before the date prescribed in paragraph (1) to the extent of the inconsistency.

(2) DETERMINATION OF INCONSISTENCY.—(A) In general.—The State attorney general shall provide prior written notice of any civil action described in paragraph (1) to the Federal Trade Commission providing the Commission with a copy of the complaint.

(B) State enforcement.—If prior notice required by this paragraph is not feasible, the State attorney general shall provide notice to the Commission immediately upon instituting the action.

(3) FTC INTERVENTION.—The Commission may—

(A) intervene in an action described in paragraph (1).

(B) remove the action to the appropriate United States district court, if it was not originally brought there; and

(C) file a petition for appeal.

(4) DETERMINATION OF COMPLIANCE.—(A) In general.—The Board shall consider the use by merchants of data processing or similar automated equipment.

(B) CONTENT.—In devising forms described in paragraph (1), the Board shall consider the use by merchants of data processing or similar automated equipment.

(C) REGULATORY GUIDANCE.—The Board shall prescribe regulations on principles and factors to meet the clear and conspicuous standard, as appropriate to print, video, audio, and electronic advertising, reflecting the principles and factors typically applied in each medium by the Federal Trade Commission.

(3) USE NOT MANDATORY.—Nothing in this section shall be construed as limiting or altering the authority of any State attorney general, or affecting in any manner the meaning, scope, or application of the laws of any State relating to rental-purchase agreements, except as provided in section 112.

(4) DETERMINATION OF COMPLIANCE.—(A) In general.—The Board shall be deemed to be in compliance with the requirement to provide disclosure under section 1003(a) if the merchant—

(i) removes the action to the appropriate United States district court, if it was not originally brought there; and

(ii) is not be heard on matters arising in the action; and

(B) used a model form or clause published by the Board under this section.

(5) DETERMINATION OF COMPLIANCE.—(A) A merchant shall be deemed to be in compliance with the requirement to provide disclosure under section 1003(a) if the merchant—

(i) removes the action to the appropriate United States district court, if it was not originally brought there; and

(ii) is not be heard on matters arising in the action; and

(C) file a petition for appeal.

(6) CRIMINAL LIABILITY FOR WILLFUL AND KNOWING VIOLATION.—Whoever willfully and knowingly gives false or inaccurate information, or fails to provide information which that person is required to disclose under the provisions of this title or any regulation issued under this title shall be subject to the penalty provisions as provided in section 112.

(7) RELATION TO STATE LAWS.—

(a) RELATION TO STATE LAW.—

(1) NO EFFECT ON CONSISTENT STATE LAWS.—Except as otherwise provided in subsection (b), this title does not annul, alter, or affect in any manner the meaning, scope, or applicability of the laws of any State relating to rental-purchase agreements, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency.

(B) DETERMINATION OF INCONSISTENCY.—Upon such request of an interested party, which is submitted in accordance with procedures prescribed by regulation of the Board, the Board shall determine whether any inconsistency exists. If the Board determines that a term or provision of a State law is inconsistent with
a provision of this title, merchants located in that State shall not be required to comply with that term or provision, and shall incur no liability under the law of that State for failure to comply with that term or provision notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(3) GREATER PROTECTION UNDER STATE LAW.—Except as provided in subsection (b), for purposes of this section, a term or provision of a State law is not inconsistent with the provisions of this title if the term or provision affords greater protection and benefit to the consumer than the protection and benefit afforded by this title, as determined by the Board, on its own motion or upon the petition of any interested party.

"(b) APPLICABILITY TO CHARACTERIZATION OF TRANSACTION.—Notwithstanding subsection (a), this title shall supersede any State law, to the extent that such law—

(1) regulates a rental-purchase agreement as a security interest, credit sale, retail installment sale, conditional sale, or any other form of consumer credit, or that imposes to a renter an agreement the creation of a debt or extension of credit; or

(2) requires the disclosure of a percentage rate calculation, including a time-price differential or effective annual percentage rate.

"(c) RELATION TO FEDERAL TRADE COMMISSION ACT.—No provision of this title shall be construed as limiting, superseding, or otherwise affecting the applicability of the Federal Trade Commission Act to any merchant or rental-purchase transaction.

"SEC. 1019. EFFECT ON GOVERNMENT AGENCIES.

"(1) requires the disclosure of a percentage rate calculation, including a time-price differential or effective annual percentage rate, or an effective annual percentage rate.

"(c) RELATION TO FEDERAL TRADE COMMISSION ACT.—No provision of this title shall be construed as limiting, superseding, or otherwise affecting the applicability of the Federal Trade Commission Act to any merchant or rental-purchase transaction.

SEC. 1020. COMPLIANCE DATE.

"Compliance with this title shall not be required until 6 months after the date of enactment of this title. In any case, a merchant may comply with this title at any time after such date of enactment."
It also bears mention that because of its $100 million threshold, ISCRA applies to a fairly limited universe of cases. As courts have remarked, "there are few so-called 'megafund' cases with settlements over $100 million." In 2001, the Third Circuit attempted to catalogue all common-fund cases in federal court that resulted in recoveries greater than $100 million. Though such litigations have been more frequent in recent years, the Third Circuit identified only 22 such cases since 1985. See in re Cendant Corp. PRIDES Litig., 243 F.3d 722, 737 (3d Cir. 2001).

ISCRA is somewhat broader than the criteria that Cendant Corp. employed to collect cases. ISCRA is not limited to common-fund cases—it also applies to judgments won on behalf of tax-exempt entities or even single individuals. ISCRA also applies to cases brought in State court, and it aggregates identical claims that are brought against common defendants in separate actions, in order to prevent evasion of its limits through the subdivision of actions. Nevertheless, ISCRA's scope remains fairly narrow. An academic specialist familiar with developments in this field has reviewed the bill and concluded that because of its "relatively high threshold," ISCRA probably would apply only to about 15-20 litigations per year. I will include a copy of this professor's letter to me in the CONGRESSIONAL RECORD.

Finally, a $100 million threshold also is appropriate because it limits ISCRA's reach to litigations that are a natural subject of congress's authority to regulate interstate commerce. It is well-established that "Congress' commerce authority includes the power to regulate...those [economic] activities that substantially affect interstate commerce." United States v. Morrison, 529 U.S. 598, 609 (2000), also United States v. Lopez, 514 U.S. 549 (1995). Both the executive and the legislative branches previously have identified $100 million as guideline for determining whether a matter has a significant impact on interstate commerce. See, e.g., Executive Order 12866, Congressional Review Act, 5 U.S.C. §804(2); Unfunded Mandates Act, 2 U.S.C. §1532(a). Because it is limited to litigations of this size, ISCRA is consistent with congress's power and obligation to protect the flow of commerce between states.

Another point that I would like to emphasize today is that ISCRA is not an anti-plaintiff's lawyer bill. It is not stingy toward trial attorneys. ISCRA is carefully designed to protect fiduciary interests while providing plaintiffs' lawyers with ample incentives to provide high-quality legal representation in large litigations. ISCRA's fee formula is as generous as the limits set by the Cendant Corp. case for the third judge in meaningful review of attorneys' fees, and is considerably more generous than the Federal courts' practices in $100 million cases. Moreover, the multiplier criteria that ISCRA employs universally are recognized as legitimate prerequisites for a contingency fee—even by trial lawyers' professional associations.

Federal courts primarily rely on two systems to determine attorneys' fees in cases, such as class actions, in which they are required to set "reasonable fees:" the percentage method and the lodestar-multiplier method. The percentage method simply multiplies the total recovery by a "percentage multiplier." The court then multiplies this lodestar fee again in order to reward the attorney for the risk of non-payment of fees that he assumed and for any exceptional services that he provided.

Over the last thirty years, courts have moved back and forth between these two systems. Only a few courts make lodestar-multipliers the exclusive means of awarding attorneys' fees. But as one commentator has noted, "theodar, or hours-based methods, have been adopted in every [federal judicial] circuit."

And more importantly, in large-recovery cases, there has been very little difference between lodestar and percentage systems. This is because even when courts apply a percentage to calculate fees, and as judgements become very large, courts typically also calculate their lodestar in order to determine what constitutes a reasonable percentage. Thus, again, as the Third Circuit notes, "courts have generally decreased the percentage awarded as the amount recovered increases...$100 million seems to be the informal marker of a 'very large' settlement."

Courts have been wary of awarding fees based on percentages alone. As one state supreme court explains: "too often a percentage multiplier is a result of an arbitrary picking a percentage amount without any reliance on a cogizable structure invites decisions that are nonobjective and inconsistent. What constitutes a reasonable percentage may differ from judge to judge depending on each judge's preconceptions, background, and geographical location in the state."

Thus "courts that employ the percentage approach appear to be motivated to pay high fees to the contingency fee. Because courts are reluctant to give fee awards totally incommensurate with the efforts of the attorneys, percentage awards generally decrease as the amount of the recovery increases."

One result of the cross-use of the lodestar and percentage systems is that even when courts use the percentage system, those awards overwhelmingly tend to reflect a reasonable lodestar. Therefore...even percentage-based cases tend to provide evidence of the range of multipliers that the courts consider to be reasonable.

In 2001, the Third Circuit "set forth a chart of fee awards given in Federal courts since 1985 in class actions in which the settlement fund exceeded $100 million and in which the percentage of recovery method was used." Cendant Corp. The court identified 17 such cases. In all but one, the Third Circuit could calculate the multiplier that was used, and "the lodestar multiplier in those cases never exceeded 2.9." And in the direct lodestar-multiplier cases that court identified, the multiplier ranged from 1.2 to 3.25.

Other courts, surveying smaller cases than the $100 million recoveries examined in the Cendant Corp. case, have identified larger multipliers. One Federal district court has "observed that in virtually every case where the court notes a lodestar but awards fees based upon a percentage, the lodestar multiplier converted from this percentage is in the range of 1 to 4." Another Federal district court has found that "the range of lodestar multipliers in large and complicated class actions runs from a low of 2.26 to a high of 4.5."

By contrast, some courts have declared that they would allow only lower multipliers. One Federal court has ruled that "only in the most exceptional circumstances would this court award a multiplier of 3 or greater. . . . this court believes that lodestars enhanced by multipliers less than 3 should adequately compensate even the most talented counsel." And the Third Circuit notes that "it may be that a doubling of the lodestar would provide a sensible ceiling."

On the other hand, the Florida Supreme Court—which is generally regarded as one of the more plaintiff-friendly courts in the United States—has announced that "the maximum multiplier available in this common-fund category of cases at 5...[A] multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee that remains within the bounds of reasonableness. We emphasize that 5 is a maximum multiplier."

ISCRA adopts this more liberal standard. It allows fees as high as 500 percent of reasonable hourly rates. ISCRA awards multipliers based on two criteria: it allows up to 300 percent on the lodestar method and 500 percent of reasonable hourly rates. The lodestar multiplier that was used, and "the lodestar multiplier in those cases never exceeded 2.9." And in the direct lodestar-multiplier cases that court identified, the multiplier ranged from 1.2 to 3.25.

The criteria that ISCRA employs universally are recognized as necessary prerequisites to the legitimacy of a contingency fee. "Courts in general have insisted that a contingent fee be
the lawyer advance the client’s interests as the client would define them if the client were well-informed.”

The lawyer’s status as fiduciary places limits on his dealings with his client—including with regard to his attorney’s fees. “[A] contract with a client is subject to the constraints of ethical considerations.” New Jersey Supreme Court.

“In setting fees, lawyers are fiduciaries who owe their clients greater duties than are owed under the law of contracts.” Massachusetts Appeals Court.

“As a result of lawyers’ special role in the legal system, contracts between lawyer and client receive special scrutiny. . . . While freedom of contract is the guiding principle underlying contract law, contractual freedom is muted in the lawyer-client and lawyer-lay contexts.” Joseph M. Perillo, law professor.

The unique status of attorney fee contracts has courts to reject analogies between such agreements and other business or service contracts. Perhaps the fullest exposition is provided by the Arizona Supreme Court:

“We realize that business contracts may be enforced between those in equal bargaining capacities, even though they turn out to be unfair, inequitable or harsh. However, a fee agreement between lawyer and client is not an ordinary business contract. The profession has both the obligation of public service and duties to clients which transcend ordinary business relationships and prohibit the lawyer from taking advantage of the client. Thus, in fixing and collecting fees the profession must re- member that it is a branch of the administration of justice and not a mere money getting trade.” ABA Canons of Professional Ethics, Canon 12.

The same principle has been identified by the Florida Supreme Court:

“Because attorneys are fiduciaries, they simply do not have complete freedom of contract in negotiating their fees. An attorney’s dealings with his client must reflect their clients’ greater duties than are owed under the law of contracts.”

ISCRAA applies to attorney fee payments received after June 1, 2002. This effective date is appropriate under the circumstances of the State tobacco settlement for several reasons: first, Congress routinely enacts major tax legislation with little advanced notice that look back much further than does ISCRAA. The Supreme Court has “repeatedly upheld [such moderately] retroactive tax legislation against a due process challenge.” United States v. Carlton, 512 U.S. 26, 30-31, 1994; see id. at 33, upholding tax whose “actual retroactive effect . . . extended for a period only slightly greater than one year”.

Second, ISCRAA is not even truly retroactive. ISCRAA does not change the substantive law governing attorneys’ fees. Rather, it simply enforces established, pre-existing fiduciary standards that already bind every attorney in every state. The Model Rules of Professional Conduct, at Rule 1.5(a), contain a direct command that “a lawyer’s fee shall be reasonable.” Similarly, the Model Code of Professional Responsibility, at DR 2-106, directs that an attorney “shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.” The Model Code further explains that an attorney’s fee “is clearly excessive when, after a review of the facts, a
lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee." Finally, as academic commentators point out, in addition to the model rules, "all State rules of professional conduct bar attorneys from charging excessive fees."

As I described earlier, to enforce fiduciary standards, ISCRAA codifies and applies a very generous version of the fee multiplier system, allowing attorneys fees as high as 500 percent of reasonable hourly rates. This is considerably more generous than what Federal courts typically allow in large-judgment cases. No attorney can be heard to complain that he is subjected to a law that is more generous than his existing fiduciary obligations.

Further, none of the tobacco-settlement attorneys can reasonably maintain that they have a vested right to see their fiduciary duties to the states go unenforced. Nevertheless, in order to be fair to all parties, ISCRAA’s excise taxes are applied only to fees that were paid after June 1, 2002. By this date, all of the tobacco lawyers twice had received notice from George W. Bush that he intended to enact legislation to enforce their fiduciary obligations. In February 2000, then-candidate Bush promised that he would "extend[] the 'excess benefits' provision of the tax code to private lawyers who contra-


t with states and municipalities," with the fees to be determined by the standard judicial 'lodestar' method." And as early as February 2001, the current Administration announced that it anticipated providing "additional public health resources for the States from the President’s proposal to extend fiduciary responsibilities to the representatives of States in tobacco lawsuits."

See A Blueprint for New Beginnings: A Responsible Budget for America’s Priorities (Office of Management and Budget, February 28, 2001).

Under ISCRAA, all of the attorneys who participated in the State tobacco settlement still will be very liberally compensated. Because ISCRAA does not apply to the first three-and-a-half years of fee payments under the settlement, it exempts the first two-and-a-half billion dollars that these lawyers received. Every one of the tobacco lawyers will have more than enough money to buy the expensive luxury cars and vacation homes that were purchased with the tobacco proceeds. ISCRAA might simply be described as the one-ounce-per-bar lawyer rule.

But most importantly, because ISCRAA applies to the last year's worth of tobacco fee payments, and to all future payments, it will return a substantial amount of funds to the States—money that already should belong to the States under any reasonable interpretation of the fiduciary standards. It is critical that these funds be restored in this time of widespread fiscal crisis. Today a large number of the States face massive budget deficits that threaten their ability to provide health care to the indigent, to fully fund public education, and to guarantee adequate and effective law enforcement. When such needs risk going unmet, fee abuses that cost the States billions of dollars simply cannot be tolerated. The States must receive their fair share of the tobacco settlement proceeds—funds that are badly needed to support basic public services.

Under the terms of the November 1998 Master Settlement Agreement, MSA, between the States and tobacco companies, $500 million in cigarette taxes is set aside every year to pay the attorneys who chose to have their fees awarded in arbitration. Because extraordinarily high fees were awarded by the arbitrators—estimated to total $15 billion—the $500-million-a-year income stream, which is not adjusted for inflation, may have to be paid in perpetuity. In addition to this anniversary, the settlement agreements added an additional $1.25 billion in cigarette taxes to compensate those lawyers who chose to forgo arbitration and negotiate their fees directly with the tobacco companies.

The present value of the $500-million-a-year fee stream—discounting all future payments for the time value of money—has been conservatively estimated at just over $8 billion. Current and future payments from the $1.25 billion fee fund are less certain, since the grants for the tobacco settlement and their disbursement schedule have been kept obscure from the public. Because ISCRAA’s effective date is June 1, 2002, ISCRAA will probably recoup for the States an additional $1 billion above the present value of future $500 million-a-year payments. ISCRAA does not affect the first three-and-a-half years of fees paid under the MSA. Because these payments almost certainly are adequate to pay all reasonable fees specified in the litigation, ISCRAA would restore to the States virtually all fees paid after its effective date. Thus the net present value of the sums that ISCRAA would provide to the States can conservatively be estimated at $9 billion.

By restoring these excess fee payments to the states’ MSA escrow account and returning them to the States on a per capita basis, ISCRAA guarantees every State a substantial re-

FOR THE WEEK ENDED MAY 10, 2003

Alabama ......................... $142,220,272
Alaska ............................ 20,046,569
Arizona ........................... 164,079,935
Arkansas ......................... 85,496,543
California ......................... 1,083,230,642
Colorado ......................... 137,556,275
Connecticut ...................... 108,911,511
Delaware ......................... 25,059,883
District of Columbia ......... 18,294,706
Florida .......................... 517,123,685
Georgia .......................... 261,806,474
Hawaii ........................... 38,745,502
Idaho ............................. 397,174,634
Illinois ........................... 194,456,664
Indiana ........................... 93,585,167
Iowa ............................... 85,976,625
Kansas ............................ 129,257,603
Kentucky ......................... 142,919,876
Louisiana ......................... 40,772,615
Maine .............................. 169,284,021
Maryland ......................... 203,046,991
Massachusetts ................... 318,375,940
Michigan ........................ 157,327,166
Minnesota ......................... 90,973,453
Missouri .......................... 178,937,382
Montana ........................... 28,862,505
Nebraska ......................... 94,726,966
Nevada ............................ 53,905,164
New Hampshire .................. 39,520,996
New Jersey ....................... 269,049,724
New Mexico ...................... 56,173,915
New York .......................... 606,475,689
New York ......................... 573,420,675
North Carolina .................. 20,537,847
North Carolina .................. 368,770,599
Ohio ................................. 110,353,478
Oklahoma ......................... 110,353,478
Oregon ............................ 109,417,889
Pennsylvania ..................... 392,753,669
Rhode Island ..................... 72,525,716
South Carolina .................. 128,305,961
South Dakota ..................... 24,140,253
South Dakota ..................... 181,945,847
South Dakota ..................... 68,350,647
Utah ............................... 71,417,756
Vermont .......................... 19,470,563
Virginia ........................... 226,374,115
Washington ........................ 158,496,659
West Virginia .................... 57,831,660
Wisconsin ........................ 171,532,756
Wyoming ........................... 15,791,372

ask unanimous consent that the text of the bill and the following four articles be printed in the RECORD.

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

S. 887

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress as-
sembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Inter-
mediate Sanctions, Compensatory Revenue Adjust-
ment Act of 2003." (ISCRAA)

SEC. 2. EXCISE TAXES ON EXCESS FEE TRANS-
ATIONS OF CERTAIN ATTORNEYS.

(a) IN GENERAL.—Subchapter D of chapter 42 of the Internal Revenue Code of 1986 (re-

lying to failure by certain charitable or-

ganizations to meet certain qualification re-

quirements) is amended by adding at the end the following new section:

"SEC. 4959. TAXES ON EXCESS FEE TRANS-

ACTIONS.

"(a) INITIAL TAXES.—There is hereby im-
posed on the collecting attorney an excise fee transaction a tax equal to 5 percent of the excess fee. The tax imposed by this paragraph shall be paid by any collecting attorney referred to in subsection (f)(1) with respect to such transaction.

"(b) ADDITIONAL TAX ON THE COLLECTING ATTORNEY.—In any case in which a tax is im-
posed under subsection (f), on an excess fee transaction and the excess fee involved in such transaction is not corrected within the
taxable period, there is hereby imposed a tax equal to 200 percent of the excess fee incurred. The excess fee imposed by this section shall be paid by an applicable plaintiff (including payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, whether or not paid from the applicable plaintiff’s recovery, pursuant to a separately negotiated agreement, or in any other manner, directly or indirectly, to or for the use of any collecting attorney with respect to such applicable plaintiff if the amount of the fee provided exceeds the value of the services received in exchange therefor or subsection (g)(1) applies.

(B) DETERMINATION OF VALUE.—For purposes of subparagraph (A), in determining whether the amount of the fee provided exceeds the value of the services received in exchange therefor, the value of the services shall be the sum of—

(i) collecting attorney expenses incurred by the collecting attorney in the course of the representation of the applicable plaintiff, and

(ii) a reasonable fee based on—

(I) the number of hours of non-duplicative, professional quality legal work provided by the collecting attorney of material value in the outcome of the representation of the applicable plaintiff, taking into account the factors described in subparagraphs (B) and (D) of subsection (h), and

(II) reasonable hourly rates for the individuals performing such work based on hourly rates charged by other attorneys for similar work, or rates charged by adversary defense counsel in the representation, taking into account the factors described in subparagraphs (A), (C), (E), and (G) of subsection (h), and

(iii) to the extent such items are not taken into account in establishing the reasonable hourly rates under subclause (I), an appropriate rate determined in accordance with subparagraph (C) to compensate the collecting attorney for periods of substantial risk of non-payment of fees and for skillful or innovative services which increase the amount of the applicable plaintiff’s recovery.

(C) ADJUSTMENT RATE.—(I) IN GENERAL.—For purposes of this paragraph, an appropriate adjustment rate is a percentage of the reasonable hourly rate under subparagraph (B)(iii)(I) which is added to the reasonable hourly rate and which is not more than the sum of one risk percentage and one skill percentage described in clauses (ii) and (iii), respectively.

(ii) RISK PERCENTAGE.—For purposes of this subparagraph, the term ‘risk percentage’ means a percentage that is proportional to the increase in the likelihood of non-payment of fees, or of the applicable plaintiff substantially greater than the expected recovery in similar cases, a percentage that is proportional to the increase in the applicability to the recovery and that is not more than 100 percent.

(iii) LIMITATION.—An appropriate adjustment rate shall not increase the collecting attorney’s fee to a percentage that is proportion to the applicable plaintiff’s recovery.

(D) COURT APPROVAL OF FEES.—Fee payments approved by any court shall be presumed to not be in excess of the value of the services received in exchange therefor if the court approving the fee—

(i) did not approve an adjustment rate greater than that determined to be appropriate under subparagraph (C) in a case where such fee included an adjustment rate, and

(ii) obtained and relied upon a report of a legal auditing firm with respect to such fee in accordance with the procedures in subsection (h).

(E) APPLICABLE PLAINTIFF.—For purposes of this section, an applicable plaintiff is any individual who represents —

(i) a party who was or is a natural person by reason, directly or indirectly, of a breach of duty that causes damage to such natural person,

(ii) any organization described in paragraph (3) or (4) of section 501(c) and exempt from income tax under section 501(a), in a claim for damages based on a breach of duty, whether civil or criminal, causing damage to such organization,

(iii) any natural person seeking to recover damages in a claim based on a breach of duty, whether civil or criminal, causing damage to such natural person, or

(iv) any organization described in subparagraph (A), (B), or (C), when 1 or more of such claims, whether or not joined in 1 action, involve the same or a coordinated group of plaintiff's attorneys or similarly situated defendants, arise out of the same transaction or set of facts or involve substantially similar liability issues, and result in judgments aggregating at least $100,000,000.

(F) TAXABLE PERIOD.—The term ‘taxable period’ means, with respect to any excess fee transaction, the period ending 90 days after the date on which the transaction occurs and ending 90 days after the earliest of—

(A) the date of the mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (a), or

(B) the date on which the tax imposed by subsection (a) is assessed.

(G) CORRECTION.—

(A) GENERAL RULE.—Any excess fee transaction is corrected by undoing the excess fee transaction, providing any additional measures necessary to place the applicable plaintiff in a financial position not worse than that in which such plaintiff would have been if the collecting attorney were dealing under the same fiduciary standards.

(B) PAYMENT OF EXCESS FEES.—Any fee transaction is provided in clause (ii), a collecting attorney corrects an excess fee transaction by paying any excess fees plus interest to the applicable plaintiff.

(C) CERTAIN SETTLEMENTS.—In the case of any settlement in which a collecting attorney receives any fees from the applicable plaintiff, the collecting attorney must pay any excess fees plus interest to the applicable plaintiff.

(D) NO WAIVER OF FEE.—No collecting attorney may avoid imposition of any tax imposed by this section by transferring any portion of any fee or refusing to accept any portion of the excess fee.

(H) DISCLOSURE REQUIREMENTS.—(1) IN GENERAL.—Any fee provided after the date of the enactment of this section by a collecting attorney includes any payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, including payments resulting from litigation on behalf of an applicable plaintiff received in exchange for services in the course of the representation of the applicable plaintiff prior to the deadline for filing the returns described in subsection (f)(1), if such collecting attorney—

(i) makes a disclosing the information described in subsection (c)(1) with respect to such claim, and

(ii) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff to the deadline (including extensions) for filing such return.

(2) CONTENTS OF STATEMENT.—The disclosure requirements of this paragraph are met for any taxable year in which a collecting attorney provides any fee transaction described in subsection (f)(1), if such collecting attorney—

(A) includes in the tax for such taxable year a statement including the information described in subsection (c)(1) with respect to such claim, and

(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff to the deadline (including extensions) for filing such return.

(II) LEGAL AUDITING FIRM.—(1) IN GENERAL.—In any case before a Federal or State court in which the court approves fees paid to a collecting attorney, the court shall seek bids from legal auditing firms with a specialty in reviewing the billing records of collecting attorneys and providing such firms an opportunity to review the billing records of the collecting attorney.

(2) PAYMENT TO CLIENT.—Any collecting attorney who fails to provide the court with a report of the fees, or who fails to provide the court with any fees, to the extent that such fees are not paid by the client, the court may order the collecting attorney to pay any fees that are not paid by the client to the client within 30 days of the date of the order.

(3) REMEDIES.—Any collecting attorney who fails to provide the court with a report of the fees, or who fails to provide the court with any fees, to the extent that such fees are not paid by the client, the court may order the collecting attorney to pay any fees that are not paid by the client to the client within 30 days of the date of the order.

(IV) ADJUDICATED CLAIM.—The term ‘adjudicated claim’ means an adjudicated claim described in subsection (f)(1), if such collecting attorney—

(A) makes a disclosing the information described in subsection (c)(1) with respect to such claim, and

(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff to the deadline (including extensions) for filing such return.

(III) ADJUDICATED CLAIM.—The term ‘adjudicated claim’ means an adjudicated claim described in subsection (f)(1), if such collecting attorney—

(A) makes a disclosing the information described in subsection (c)(1) with respect to such claim, and

(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff to the deadline (including extensions) for filing such return.

(5) REMEDIES.—Any collecting attorney who fails to provide the court with a report of the fees, or who fails to provide the court with any fees, to the extent that such fees are not paid by the client, the court may order the collecting attorney to pay any fees that are not paid by the client to the client within 30 days of the date of the order.

(6) DISCLOSURE REQUIREMENTS.—(1) IN GENERAL.—Any fee provided after the date of the enactment of this section by a collecting attorney includes any payments resulting from litigation on behalf of an applicable plaintiff determined on an hourly or percentage basis, including payments resulting from litigation on behalf of an applicable plaintiff received in exchange for services in the course of the representation of the applicable plaintiff prior to the deadline for filing the returns described in subsection (f)(1), if such collecting attorney—

(A) makes a disclosing the information described in subsection (c)(1) with respect to such claim, and

(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff to the deadline (including extensions) for filing such return.

(2) CONTENTS OF STATEMENT.—The disclosure requirements of this paragraph are met for any taxable year in which a collecting attorney provides any fee transaction described in subsection (f)(1), if such collecting attorney—

(A) includes in the tax for such taxable year a statement including the information described in subsection (c)(1) with respect to such claim, and

(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff to the deadline (including extensions) for filing such return.

(II) LEGAL AUDITING FIRM.—(1) IN GENERAL.—In any case before a Federal or State court in which the court approves fees paid to a collecting attorney, the court shall seek bids from legal auditing firms with a specialty in reviewing the billing records of collecting attorneys and providing such firms an opportunity to review the billing records of the collecting attorney.

(2) PAYMENT TO CLIENT.—Any collecting attorney who fails to provide the court with a report of the fees, or who fails to provide the court with any fees, to the extent that such fees are not paid by the client, the court may order the collecting attorney to pay any fees that are not paid by the client to the client within 30 days of the date of the order.

(3) REMEDIES.—Any collecting attorney who fails to provide the court with a report of the fees, or who fails to provide the court with any fees, to the extent that such fees are not paid by the client, the court may order the collecting attorney to pay any fees that are not paid by the client to the client within 30 days of the date of the order.

(IV) ADJUDICATED CLAIM.—The term ‘adjudicated claim’ means an adjudicated claim described in subsection (f)(1), if such collecting attorney—

(A) makes a disclosing the information described in subsection (c)(1) with respect to such claim, and

(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff to the deadline (including extensions) for filing such return.

(III) ADJUDICATED CLAIM.—The term ‘adjudicated claim’ means an adjudicated claim described in subsection (f)(1), if such collecting attorney—

(A) makes a disclosing the information described in subsection (c)(1) with respect to such claim, and

(B) provides a statement including the information described in subsection (c)(1) to the applicable plaintiff to the deadline (including extensions) for filing such return.
"(2) Review by Legal Auditing Firm.—In reviewing the billing records and work performed by the collecting attorney, the legal auditing firm shall address all relevant matters, including—

(A) the hourly rates of the collecting attorney compared with the prevailing market rates for the services rendered by the collecting attorney;

(B) the number of hours worked by the collecting attorney on the case compared with other cases that the collecting attorney worked on during the same period;

(C) whether the collecting attorney performed tasks that could have been performed by attorneys with lower billing rates;

(D) whether the collecting attorney used appropriate billing methodology, including keeping contemporaneous time records and using appropriate billing time increments;

(E) whether particular tasks were staffed appropriately;

(F) whether the costs and expenses submitted by the collecting attorney were reasonable;

(G) whether the collecting attorney exercised billing judgment, and

(H) any other matters normally addressed by the firm when reviewing attorney billings for private clients.

(3) Filing of Report; Response; Burden of Proof.—The court shall set a date for the filing of a report by the legal auditing firm, and allow the collecting attorney or any applicable plaintiff to respond to the report within a reasonable time period. The report shall be deemed correct unless rebutted by the collecting attorney or any applicable plaintiff by clear and convincing evidence.

(4) Fee for Legal Auditing Firm.—The fee for the report of the legal auditing firm shall be paid from the collecting attorney’s fee award, the applicable plaintiff’s recovery, or both in a manner determined by the court.

(i) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations to prevent avoidance of the purposes of this section and regulations requiring recordkeeping and information reporting.

(4) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Subsections (a), (b), and (c) of section 4963 of the Internal Revenue Code of 1986 are each amended by inserting “4959,” after “4958”.

(2) Subsection (e) of section 6213 of such Code is amended by inserting “4959 (relating to excess fee transactions),” before “4971.”

(3) Paragraphs (2) and (3) of section 7422(g) of such Code are each amended by inserting “4959,” after “4958.”

(4) The heading for subchapter D of chapter 42 of such Code is amended to read as follows:

“Subchapter D—Failure by Certain Charitable Organizations and Persons to Meet Certain Qualification Requirements and Fiduciary Standards.”

(5) The table of subchapters for chapter 42 of such Code is amended by striking the item relating to subchapter D and inserting the following in its place:

“Subchapter D. Failure by certain charitable organizations and persons to meet certain qualification requirements and fiduciary standards.”

(6) The table of sections for subchapter D of chapter 42 of such Code is amended by adding at the end the following new item:

“Sec. 4959. Taxes on excess fee transactions.”
standing fees are inflation-adjusted, as the agencies for the states. The firms have all received in the first 25 years. The settlement misreported as giving the states $206 billion. Their money. So the companies' exposure is limited, no matter what the lawyers get.

In effect, the lawyers are becoming joint task of having to pay the lawyers huge amounts of money out of their share of the settlement. The lawyers agreed to arbitration because they knew that state attorneys general, thought they had much chance of winning. The lawyers worked without pay, and as part of the settlement have now agreed to submit to arbitration rather than insist on a share of the money the states will receive, which is what the contracts they signed with many state governments would have given them. "The fees are huge," adds Philip Anderson, the president of the American Bar Association. "But these lawyers are able to do something that governments have been unable to achieve on their own—assemble enough evidence to bring the tobacco industry to account. And the fees were agreed by sophisticated parties on both sides."

Too much sophistication, in fact, may be the problem. Unusually, neither plaintiffs nor defendants in these cases seem to have had much interest in limiting the lawyers' fees. Officially, these fees are being paid by the tobacco firms, which spares the state attorneys-general the politically embarrassing task of having to pay the lawyers huge amounts of money out of their own pockets. The money going to the lawyers was given to them as a result of the contracts they signed with many state governments would have given them. "The fees are huge," adds Philip Anderson, the president of the American Bar Association. "But these lawyers are able to do something that governments have been unable to achieve on their own—assemble enough evidence to bring the tobacco industry to account. And the fees were agreed by sophisticated parties on both sides."

In any case, the arbitration is a mere fig-leaf. The money going to the lawyers was given to them as a result of the contracts they signed with many state governments. The states will receive. But this is far more than the $260 million—an award he contended was much higher. He and Marc Murr of Houston, who also was indicted, are expected to surrender to the FBI on Friday. They previously have de- clined to talk to the Dallas Morning News about the case. The Dallas Morning News said that the Morales-Murr contract shows evidence of "se- vere conflict of interest."

The 12-count indictment issued by a federal grand jury stemmed from a long-run- ning investigation into payment of legal fees from the state's $37.3 billion settlement with tobacco companies when Mr. Morales was attorney general in 1998. It's a case that has been at the center of a political wrangling for several years between Mr. Morales and Republicans. And it comes just weeks after his brother, San Antonio City Attorney Mike Morales, pleaded guilty to attempting to extort $280,000 from Democrat Tony Sanchez during the campaign against Gov. Rick Perry.

Dan Morales, now a private lawyer in Aus- tin, is accused of fraudulently trying to se- cure millions of dollars in fees for Mr. Murr for work on the tobacco case that he did not do by backdating contracts and forging gov- ernment documents.

The indictment of Dan Morales and Marc Murr are another chapter in Texas' hand- ful of high-level government deals with tobacco companies that has included twists, turns and reversals. Initial report: Gov. George W. Bush and state Attorney General John Cornyn, both Republicans, complained about $3.3 billion paid to five attorneys for their work on the 1998 settlement. Added intrigue: Mr. Morales said his friend Marc Murr of Houston was also among the state's tobacco lawyers and was due about $500 million. Mr. Morales had told the contracts that the deals with Mr. Murr was initiated by Mr. Murr and Mr. Morales was just along for the ride. The initial inquiries: Mr. Cornyn, who suc- ceeded Mr. Morales as attorney general in 1999, began investigating the Murr contract. From there, his investigators branched out into the deals and the documents.

The Murr money: In December 1998, Mr. Murr went before a five-judge arbitration panel and was awarded $1 million over 30 years from tobacco companies. Unbeknownst to the other tobacco lawyers, Mr. Morales and Mr. Murr also formed a state arbitration panel in September 1998 that gave Mr. Murr $260 million—an award he contended was much higher. He and Marc Murr of Houston, who also was indicted, are expected to surrender to the FBI on Friday. They previously have de- clined to talk to the Dallas Morning News about the case. The Dallas Morning News said that the Morales-Murr contract shows evidence of "se- vere conflict of interest."

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Mr. CORNYN. Mr. President, I am pleased to join my colleague, Senator Kyl, to introduce today this landmark legislation to clean up our civil justice system. This legislation would enact a bad law in the way in which attorneys are paid in some of the Nation’s largest cases. It is designed to address some of the worst abuses of our civil justice system that I have witnessed in my nearly thirty years in the legal profession as a lawyer in private practice, as a state trial and appellate judge, and as state attorney general.

This legislation, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003, IS CRAA, will combat the gross abuse of attorney contingent fee agreements, a practice in which the dollar amounts at stake are extraordinary, and result in a contingent fee award that does not produce the best possible result—not for the attorney, but for the client.

Thus, as my colleague has noted, contingent fee agreements are no ordinary agreements between consumers and businesses. It is a fundamental principle and well-established tenet of our Anglo-American system of justice that attorneys are not ordinary businessmen who can engage in hard bargaining with their customers, as courts have permitted attorneys to do. Rather, attorneys are officers of the court who bear a fiduciary duty to their clients. As fiduciaries, attorneys occupy a position of trust in their dealings with their clients, a trust which attorneys may not freely abandon.

One obligation that flows from this status as a fiduciary is the attorney’s obligation to charge an unreasonable or excessive fee. This obligation is a fundamental part of an attorney’s ethical duties, universally recognized in the ethics rules of all 50 States. Courts have made clear, time and time again, that every attorney fee contract automatically and necessarily includes the requirement that the fee be a reasonable one, a fundamental and basic duty of all attorneys, and one that no provision of such agreements may abrogate.

IS CRAA affirms and reinforces the longstanding substantive law of attorneys’ fiduciary duties, by providing a special mechanism to enforce those duties in a particularly high risk category of cases—a category that the courts themselves have singled out as presenting special risks of unethical windfall fees. Courts have noted that allowing standard contingency fee agreements in cases involving judgments of
$100 million or more have a distinct tendency of grossly overcompensating attorneys for their actual services rendered. ISCRRAA prevents attorneys from evading their obligation to charge a reasonable fee based on the work involved in recovery cases, by effectively limiting awards to a generous multiple of reasonable hourly fees. State courts, Federal courts, and even trial lawyers’ themselves have all recognized that a reasonable fee must be proportional to the attorney’s actual efforts. ISCRRAA codifies and enforces this principle, while continuing to guarantee lawyers ample and generous compensation for their efforts—using fee multipliers that are as generous as the most liberal limits adopted by state courts, and which are considerably more generous than the limits set by federal courts in $100 million cases. This legislation thus promises to clean out our civil justice system and to repudiate the grossest abuses of our legal system. Make no mistake: Although all attorneys are supposed to uphold a strict ethical code, under which they are strictly forbidden from charging for services that they did not render and from receiving unreasonable and excessive attorney fees, the temptation to abuse contingent fee agreements is a strong one, and even more so when the dollar amounts are truly extraordinary—such as in the $100 million cases decided by this legislation. And make no mistake: the victim of such attorney fee abuse, and the beneficiary of this legislation, is not the defendant who pays the judgment—after all, the defendant pays the same total amount whether the money goes to the attorney or to the client. Rather, the real victim of this abuse, and the real beneficiary of this legislation, is the injured client, whose money is being taken away from the attorney through an abusive contingent fee arrangement. As my colleague has also noted, ISCRRAA unambiguously establishes a presumptively reasonable exercise of Congress’s power to regulate and protect interstate commerce, considering the large size of the litigation to which it applies. $100 million is a standard threshold used by the federal government to determine whether an economic transaction significantly affects interstate commerce. But the most important reason for federal intervention in this area is that we have yet not mentioned, and I would like to take a moment to discuss it here: the gross abuses that we have already witnessed in large litigation fee awards. Recent experience amply demonstrates that, if the Federal Government does not act to prevent unethical and grossly abusive fee awards in massive, nationwide lawsuits, no one will. Moreover, recent experience further demonstrates that unreasonable fee payments are not simply the exception; just the attorneys’ fiduciary obligations; they also place at risk the integrity of our governmental institutions. The unwholesome incentives created by windfall, unethical fee awards in large-scale litigations have induced some public officials to abandon their civic obligations. The textbook example of the types of abuses that make ISCRRAA necessary is the $100 million fees awarded in the States lawsuits to recover tobacco-related Medicaid expenses. Individual law firms that represented the States in that litigation have been given hundreds of millions of dollars in fees. To date, approximately $15 billion in fees has been awarded to the tobacco settlement lawyers, to be paid out in $500-million-a-year increments. Attorneys representing just three of the States—Mississippi, Texas, and Florida—were awarded $8.2 billion in fees. In many cases, such fees were paid to attorneys who filed duplicate, copycat lawsuits at a time when settlement negotiations had already begun and the risk that the states would not recover any money was negligible. Yet these lawyers nevertheless received massive contingency fees, for suits that involved no real contingency. And for most of the tobacco settlement lawyers, any in reasonable relation to the actual effort expended or risk involved. There is widespread agreement that the fees awarded in the tobacco settlement are excessive and unreasonable. Settlements have come from those who took the plaintiffs’ side in this litigation—including from plaintiff lawyers themselves. For example, Michael Ciresi, a pioneer in the tobacco litigation who represented the state of Minnesota in its lawsuit, and who is no doubt familiar with what these lawsuits actually require, has said that the Texas, Florida, and Mississippi lawyers’ fee awards “are far in excess of these lawyers’ contribution to the actual cost of these cases.” Similarly, another leader in the fight against tobacco, the former Food and Drug Administration Commissioner David Kessler, another another leader in the fight against tobacco, has said that the states’ private lawyers “did a real service, but I think the fee is outrageous. All the legal fees are out of control.” Washington, D.C., lawyer and tobacco-industry opponent John Coale has denounced the fee awards as “beyond human comprehension” and stated that “the work does not justify them.” Even the Association of American Trial Lawyers, the nation’s premier representative of the plaintiffs bar, has condemned attorney fees requested in the state tobacco settlement. The President of ATLA has noted: “Common sense suggests that a fee of one billion dollars is excessive and unreasonable and certainly should invite the scrutiny, of the courts. ATLA generally refrains from expressing an institutional opinion regarding a particular fee in a particular case, but we have a strong negative opinion to express on the fee arrangement that the attorney on behalf of the plaintiffs in the Florida case is seeking a fee in excess of one billion dollars.” This letter, written in 1997, only concerned one of the Florida lawyers’ request for attorney fees. Ultimately, Florida’s private counsel was awarded a total of $3.4 billion in fees. These statements demonstrate beyond all doubt that there is real abuse going on here, and that the victim of this abuse is the client, the plaintiff—and not the defendant. Perhaps the best gloss on the tobacco fee awards is that provided by Professor Brickman, former Director of the Cardozo Law School and noted authority on legal ethics and attorney fees. Professor Brickman has stated: “Under the rules of ethical, promulgated partly as a justification for the professional self-governance, fees cannot be ‘clearly excessive.’ Indeed, that standard has now been superseded in most States by an even more rigorous standard: fees have to be ‘reasonable.’ Are these fees, which in many cases amount to effective hourly rates of return of hundreds—and even hundreds of thousands—of dollars an hour, reasonable? I think to ask the question is to answer it.” The attorney fee awards in the state tobacco settlement are, beyond any reasonable doubt, indefensible. And the process by which the fees were awarded partly explains how they came to be so. Outside counsel fees were determined by a private arbitration panel established by the Master Settlement Agreement, MSA, that resolved 46 of the states’ litigations. Four other states had settled their suits earlier. Their lawyers, however, also were paid out of the accounts created by the MSA. Amazingly, the settlement agreement explicitly immunized all fee awards from judicial review. Even more amazingly, one of the three arbitrators who made the awards had a clear conflict of interests: he was the father of a South Carolina lawyer whose law firm has received the largest portion of all defense fees to date, over $2 billion. Another one of the arbitrators had no background in fee arbitrations or any related matter, and simply ignored the law in order to make outrageous awards, using the salaries of sports stars and entertainers as a basis of measure. Revealingly, the third arbitrator, a retired Federal judge appointed by President Carter, dissented from the key fee decisions. As incredible as the MSA fee awards and the arbitration procedures may seem, even more dubious is the process by which many of the law firms that participated in this lucrative litigation were selected in the first place to represent the states. As reported by a former State of Texas, trial lawyers have accused the then-state attorney general of demanding $1 million in campaign contributions in exchange for their being hired to represent the state in the tobacco litigation. One prominent law firm, Barron & Brace, an independent of the Texas Trial Lawyers Association—has since said that the attorney general’s solicitation was so blatant that “I knew [at] instant . . . that I
could not be involved in the matter." He even later wondered if the meeting had been a "sting operation." Another lawyer simply characterized his encounter with the attorney general as a bribery solicitation.

Former Texas attorney general was recently indicted on Federal charges of attempting to fraudulently divert $260 million in tobacco-settlement legal fees to one of his personal friends. He had given a sworn affidavit that this lawyer had served as "the lawyer's primary adviser" in its tobacco law-suit—despite the apparent fact that the lawyer had attended no court hearings, depositions, or strategy meetings, wrote no memos or legal briefs about the case, and apparently never even spoke to any of the other attorneys. The attorney general even went so far as to forge and fraudulently backdate documents in order to win his friend a share of the tobacco settlement fee.

As law firms that actually did represent Texas in the tobacco litigation, they filed relatively late lawsuits that were based on other lawyers' work—and yet, despite the minimal energy expended on these suits, were awarded millions in lawyer fees. This award amounts to compensation that, even assuming that the attorneys worked all day every day during the entire period of the litigation, remains well in excess of $100,000 an hour. One Texas newspaper has noted, for the amount of money that these lawyers were awarded, Texas could hire 10,000 additional teachers or policemen for ten years. Instead, four of these firms gave the attorney general $150,000 in campaign contributions in recent years.

Texas' experience is not an isolated example. In other states as well, lawyers' participation in the tobacco litigation appears to have been the product of political favoritism—and to have resulted in laughable fees that bear no reasonable relation to the services provided. For example: New Jersey:
The private in-state lawyers who represented this state in the tobacco litigation have admitted that they had no mass-tort litigation experience and played no role in the state settlement talks. They have also admitted that all the key work in the state's lawsuit was done by out-of-state firms—the in-state firms' principal work was drafting pro hac vice requests for the outside firms that admitted to New Jersey courts. Any work that the New Jersey lawyers did was submitted to the outside lawyers, who made all of the substantive arguments. Result: these in-state firms were awarded $350 million in MSA fees. Missouri: A State supreme court justice has noted that the "primary one I knew of." Massachusetts: According to other tobacco plaintiffs' lawyers, Massachusetts' MSA fees had grown so big by the time the suit ended that they could not be involved in the matter. The result: the state's outside counsel responded that this particular attorney general's aide "was the only one I knew of." New York:
When this State's then-attorney general hired a law firm to represent the State in its tobacco lawsuit, tobacco companies already had paid $15 billion to Florida and Mississippi for identical claims and a national settlement agreement already was under discussion. As one local anti-tobacco leader has noted, "these were copycat lawsuits, there wasn't all that much work to do." The firm's primary job was to collect New York-specific data in order to calculate damages. Ultimately, the New York firms received only the $10 million payment for this no-risk lawsuit.

Wisconsin: The Wisconsin lawyers' tobacco litigation work has been described as chiefly consisting of media and public relations efforts on their own behalf. Their billing records include fees for time spent on research, fees for trips to luxury hotels, and for doing a PowerPoint presentation. The lawyers also billed the State for $775 million in settlement fees. Result: the Wisconsin lawyers' tobacco settlement payment was $775 million.

Peter Angelos demanded a one billion dollar fee for his work on that State's case, even though, according to the State Senate President, the State legislature had retroactively "changed centuries of precedent to ensure [Angelos] a win in the case." Angelos ultimately received an accelerated $150 million payment for this no-risk law-suit.

Louisiana: The private law firms that represented the State in the tobacco litigation were awarded $575 million. The firms were awarded no-bid contracts. As one Louisiana commentator has noted, "obviously, it was a political kind of thing."

Maryland: Billionaire tort lawyer Peter Angelos demanded a one billion dollar fee for his work on that State's case, and was awarded a fee of $26,000 in campaign contributions to the State attorney general. This firm and the next largest fee recipient had donated more than $500,000 to state campaigns. One State leader has noted, "I wasn't that big on hourly or written reports." The dissenting member of the arbitration panel simply noted that the Louisiana fee award "shocks the conscience" and that the single biggest beneficiary of this largesse—receiving $15 million in attorney fees—was a law firm based in Lake Charles, Louisiana. The firm represented the State's attorney general. This firm and the next largest fee recipient had donated over $42,000 to the attorney general's political campaigns. As the dissenting member notes, "all of the legal issues were resolved long before these Ohio lawyers stepped up to the plate." The state's outside counsel had donated $26,000 in campaign contributions to the State attorney general prior to their appointment to the state's tobacco team. After the attorney general chose one private lawyer to serve as the state's "lead special counsel," that lawyer hired one of the attorney general's top aides from another law firm to create PowerPoint. When told that "there were many people in Ohio capable of doing a PowerPoint presentation," the state's outside counsel responded that this particular attorney general's aide "was the only one I knew of."
These examples are too numerous to dismiss. In State after State, the temptations created by the massive, windfall fees awarded in the Medicaid tobacco settlement corrupted not only the attorneys involved, but the government as well. This is not something that they touched. No one who examines these events closely—who surveys the obscene fee awards, and the political cronism that determined who benefited—can disagree that this must never happen again.

As a final point, I would like to address a question that has been raised with regard to remedy. Some have argued that nothing can be done to correct the excesses of the tobacco settlement, that the fees are for the client, not the attorney. Indeed, an award of attorney fees is for the client, not the attorney. In a recent case, the U.S. Court of Appeals for the Ninth Circuit noted that a plaintiff's obligation to compensate the law firm that represented him “was satisfied by [the defendant]. The payment was therefore to [the client]. The discharge by a third person of an obligation to him is equivalent to receipt by the person taxed.” The Ninth Circuit emphasized that the fact “[t]hat [the client] never laid hands on the money paid to the lawyers does not obliterate their constructive receipt.” In other words, the fee award belongs to the client, regardless of how the award is structured. The fee agreements are structured. The Ninth Circuit has also addressed the question that has been raised with regard to fees that are still being or have yet to be paid. On several occasions, State judges who were called upon to approve their State's tobacco settlement have also, on their own initiative, inquired into the apparent unreasonableness of the fees awarded. In each case, both the plaintiffs' lawyers—and in some cases, even State officials—have challenged the State courts' authority to act. They have argued that these courts lack jurisdiction to review a national settlement, and that excessive fees cannot be restored to the State. One state's attorney general implicated in these events has argued that it is a “misunderstanding” that the tobacco settlement “attorneys' fees are coming out of the public's pocket. That is not the case. They [sic] defendants have agreed to pay these fees.”

But they have agreed that the MSA fee payments are structured, no lawyer's award comes out of any one particular, identifiable State's recovery. Instead, all of the lawyers are being paid from one of two separate accounts, each of which is funded by the tobacco companies. It is a mistake, however, to contend that, because the MSA fee payments are made directly from defendants to plaintiffs' lawyers—without ever formally passing through the plaintiffs' hands—they are insulated against ethical scrutiny or correction. It is well and long established in our law that fee awards originate as the property of the client regardless of how the fee agreements are structured. The courts have been very clear on this point. As they have stated: “The allowance of attorney fees in a judgment gives the attorneys no interest and ownership in the judgment to the same extent of the amount of the fee allowed, but the judgment in its entirety is the property of the client. The award for fees is for the client, not the attorney.”

“[A]ttorneys' fee provisions exist for the benefit of parties and not the attorneys. They serve a useful and important purpose in encouraging and compensating the efforts of attorneys who successfully represent clients.”

These and other authorities and their reasoning must never be lost upon the public. The MSA fee payments are simply misleading the public and this distinguished body when they assert that a particular lawyer's award under the settlement does not come out of a particular state's recovery. That is not the case. The tobacco industry is willing to pay a certain sum to get rid of these cases. That sum is the total cost of the payment to the plaintiffs and their lawyers. It is a matter of indifference to the industry how that sum is divided—75 percent for the plaintiffs and 25 percent for their lawyers, or vice versa. That means that every penny paid to the plaintiffs' lawyers—whether it is technically “in” or “out” of the settlement or not—is money that the industry could have paid to the state or the private plaintiffs. Excessive attorneys' fees in this case will not be a vicinless case. These authorities and their reasoning should be more than sufficient to permanently dispel the notion that an attorney fee agreement can be structured so as to evade the ethical obligation to charge only a reasonable fee. The defendants of the MSA fee payments are simply misleading the public and this distinguished body when they assert that a particular lawyer's award under the settlement does not come out of a particular state's recovery. That is not the case. These authorities and their reasoning should be more than sufficient to permanently dispel the notion that an attorney fee agreement can be structured so as to evade the ethical obligation to charge only a reasonable fee. The defendants of the MSA fee payments are simply misleading the public and this distinguished body when they assert that a particular lawyer's award under the settlement does not come out of a particular state's recovery. That is not the case. The fee paid out of all of the States' recoveries. All excessive or unreasonable fees should be restored to all 50 of the States.

These authorities and their reasoning should be more than sufficient to permanently dispel the notion that an attorney fee agreement can be structured so as to evade the ethical obligation to charge only a reasonable fee. The defendants of the MSA fee payments are simply misleading the public and this distinguished body when they assert that a particular lawyer's award under the settlement does not come out of a particular state's recovery. That is not the case. The fee paid out of all of the States' recoveries. All excessive or unreasonable fees should be restored to all 50 of the States.

Senator KYL has already presented estimates of the monetary recovery each State can expect if ISCRAA is enacted. I would simply point out here that, according to those estimates, Texas has been charged excessive and unreasonable attorney fees in the amount of $667 million, and therefore would recover those funds if this legislation is adopted.
states is manifestly proper in light of the fact that all fee awards are the property of the client, and the attorney is entitled only to a reasonable fee. No attorney is above these ethical rules and obligations. They cannot be waived or ignored. And in light of our experience with the State tobacco settlement fee awards, and their effect on our public officials, these ethical duties must be carried out and enforced strictly and fully.

Our Federal and State courts generally do a good job of protecting consumers and enforcing the rights of all Americans. But there are problems in our courts that require attention and significant reform. Class action abuse not only threatens the integrity and the perception of rationality in our nation's courts, it also strongly hinders economic and job growth. Tort reform is badly needed to rescue many industries, especially our health care industry, from abuses of our legal system. The judicial confirmation process at the federal level has become bitter, severe and destructive, and that broken process poses a serious threat to judicial independence and the quality and efficiency of our courts. And abusive attorney fee arrangements make a mockery of our civil justice system, all while enriching a small band of unscrupulous litigators at the expense of the real victims, their clients.

To enforce the longstanding fiduciary duty of all attorneys to charge only a reasonable fee, in a class of cases that poses heightened risks of abuse and special significance to the national economy, I urge that this Senate consider expediently, and approve quickly, this important measure, the Intermediate Sanctions Compensatory Revenue Adjustment Act of 2003.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 119—SUPPORTING THE GOALS OF THE JAPANESE AMERICAN, GERMAN AMERICAN, AND ITALIAN AMERICAN COMMUNITIES IN RECOGNIZING A NATIONAL DAY OF REMEMBRANCE TO INCREASE PUBLIC AWARENESS OF THE EVENTS SURROUNDING THE RESTRICTION, EXCLUSION, AND INTERNMENT OF INDIVIDUALS AND FAMILIES DURING WORLD WAR II

Mrs. BOXER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 119

Whereas, on February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, which authorized the exclusion of 120,000 Japanese Americans and legal resident aliens during World War II; and the promulgation of Executive Order 9066 was not justified by military necessity and that the decision to issue the order was shaped by "race prejudice, war hysteria, and a failure of political leadership"; and Congress enacted the Civil Liberties Act of 1943, in which it apologized on behalf of the Nation for "fundamental violations of the constitutional rights of these individuals of Japanese ancestry"; and Whereas President Ronald Reagan signed the Civil Liberties Act of 1988 into law on August 10, 1988, proclaiming that day to be a "great day for America"; and Whereas the Civil Liberties Act of 1988 established the Civil Liberties Public Education Fund, the purpose of which is "to sponsor research and public educational activities and to publish and distribute the hearings, findings, and recommendations of the Commission on Wartime Relocation and Internment of Civilians so that the events surrounding the exclusion, forced removal, and internment of civilians and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood"; and Whereas Congress adopted the Wartime Violation of Italian Americans Civil Liberties Act, which was signed by President Bill Clinton on November 7, 2000, which resulted in a report containing detailed information on the creation of the Committee on the Internment of Civilians during World War II; and Whereas the Japanese American community recognizes a National Day of Remembrance on February 19th of each year to educate the public about the lessons learned from the internment of Japanese Americans that such an event never happens again; and Whereas the Day of Remembrance provides an opportunity for all people to reflect on the importance of our civil liberties during times of uncertainty and emergency: Now, therefore, be it Resolved, That the Senate—

(1) recognizes the historical significance of February 19, 1942, the date President Roosevelt signed Executive Order 9066, which restricted the freedom of Japanese Americans, German Americans, Italian Americans, and legal resident aliens through required identification cards, travel restrictions, seizure of personal property, and internment; and (2) supports the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of the importance of civil liberties during times of uncertainty and emergency: Now, therefore, be it Resolved, That the Senate—

(1) recognizes the historical significance of February 19, 1942, the date President Roosevelt signed Executive Order 9066, which restricted the freedom of Japanese Americans, German Americans, Italian Americans, and legal resident aliens through required identification cards, travel restrictions, seizure of personal property, and internment; and (2) supports the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of the importance of civil liberties during times of uncertainty and emergency: 

SENATE RESOLUTION 119—EXpressing the Sense of the Senate That There Should Be Parity Among the Countries That Are Parties to the North American Free Trade Agreement with Respect to the Personal Exemption Allowance for Merchandise Purchased Abroad by Returning Residents, and for Other Purposes

Ms. COLLINS (for herself, Mr. BAUCUS, Mr. BINGAMAN, Mr. DOMENICI, and Mrs. CLINTON) submitted the following resolution; which was referred to the Committee on Finance:

S. Res. 119

Whereas the personal exemption allowance is a vital component of trade; and Whereas many border communities and retailers depend on customers from both sides of the border; and Whereas United States citizens traveling to Canada or Mexico for less than 48 hours are exempt from paying duties on the equivalent of $200 worth of merchandise on return to the United States, and for trips over 48 hours, the personal exemption for United States citizens has an exception of up to $800 worth of merchandise;