business concern, which is approved within 120 days of the date on which a nonguaranteed loan is obtained by the same small business concern, shall be subject to the provisions of section 502 of the Credit Reform Act of 1990.)

(2) by adding at the end the following:

"(D) the chairman and ranking member of the Committee on Small Business and Entrepreneurship of the Senate and

(B) the chairman and ranking member of the Committee on Small Business of the House of Representatives.

(c) MINIMUM LOAN AMOUNT.—The Small Business Administration shall not make any new political or administrative changes affecting the operation of the loan program which was authorized under section 7(a) of the Small Business Act.

(d) NOTIFICATION REQUIREMENT.—The Small Business Administration shall not make any political or administrative changes affecting the operation of the loan program which was authorized under section 7(a) of the Small Business Act.

(2) INABILITY TO OPERATE.—An application shall not be denied consideration or approval because of an inability to operate or to provide financial assistance to a business concern, which is approved within 120 days of the date on which a nonguaranteed loan is obtained by the same small business concern, shall be subject to the provisions of section 502 of the Credit Reform Act of 1990.

(3) INABILITY TO OPERATE.—An application shall not be denied consideration or approval because of an inability to operate or to provide financial assistance to a business concern, which is approved within 120 days of the date on which a nonguaranteed loan is obtained by the same small business concern, shall be subject to the provisions of section 502 of the Credit Reform Act of 1990.

(a) RESUBMISSION OF APPLICATIONS.—During the 30-day period beginning on the date of enactment of this Act, a small business concern may submit an application for a loan that was not approved under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) if the following conditions are met:

(1) An application for a loan that was not approved under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)) if the following conditions are met:

(a) The applicant

(b) The applicant

(c) The applicant

(d) The applicant

(e) The applicant

(f) The applicant

(g) The applicant

(h) The applicant

(i) The applicant

(j) The applicant

(k) The applicant

(l) The applicant

(m) The applicant

(n) The applicant

(o) The applicant

(p) The applicant

(q) The applicant

(r) The applicant

(s) The applicant

(t) The applicant

(u) The applicant

(v) The applicant

(w) The applicant

(x) The applicant

(y) The applicant

(z) The applicant

(b) No loan made under this section shall be denied consideration or approval because of an inability to operate or to provide financial assistance to a business concern, which is approved within 120 days of the date on which a nonguaranteed loan is obtained by the same small business concern, shall be subject to the provisions of section 502 of the Credit Reform Act of 1990.

(2) Location.—On the date of the origi.
Mike DeWine for taking the lead in co-sponsoring this bill and for his continued support and commitment to fairness in our immigration policy.

First, this legislation corrects an oversight that disqualified Haitian refugees from the United States or taking them back to a strife-torn Haiti where their parents risk deportation, and other communities and schools in the United States or taking them back to a strife-torn Haiti where their parents risk deportation.

There have been media reports, heart-wrenching stories, of parents facing the immediate risk of deportation of a child or children and dependents unprotected in the United States with fraudulent documents.

Many Haitian refugees who came here with falsified documents were an oversight in the 1998 U.S. General Accounting Office report in October to expand the Haitian law to include those who arrived by air and to prevent the government from deporting anyone with a pending application. Of course, it faces uncertain future.

If Rene is deported, he will be forced to take his U.S. citizen son with him or leave him here without any means of support. It is a solomonic choice that Mr. Rene should not have to make, especially because his dilemma is the result of a simple oversight in the law.

The difference between the way we treat Haitians and the way we treat refugees from other nations is inconsistent and unfair. The elimination of this kind of inconsistency and unfairness was the primary motivation for the passage of HRIFA in 1998. Clearly, the exclusion of Haitians who entered with falsified documents was an oversight that must now be corrected.

The second purpose of the Improvement Act is to respond to another oversight that left Haitian children and dependents unprotected from "aging out" of HRIFA eligibility. HRIFA allows children and unaccompanied dependents of approved applicants to adjust to legal permanent residency. However, the Bureau of Citizenship and Immigration Services has taken much longer than was expected to approve the many applicants who had eligible children and dependents when they applied. As a result, many of those who would have been eligible had their parents or guardians been approved earlier have now "aged out" of eligibility or gotten married.

Currently, those "aged out" individuals face the immediate risk of deportation. Their eligibility is a result solely of administrative delays and is neither their fault nor the intent of HRIFA. The Improvement Act addresses this unfortunate injustice by permitting these individuals to apply for adjustment of status or move to have their cause reopened.

Finally, the HRIFA Improvement Act extends the protection from deportation to applicants under this Act. This is consistent with the protection extended to applicants under the 1998 HRIFA legislation.

All those who come to the United States fleeing political persecution and violence deserve to be treated fairly and equally. This country is built on the many applicants who had eligible children and dependents unprotected in the United States with falsified documents. It is consistent with the protection extending the protection from deportation to applicants under this Act.

The Improvement Act addresses the issue of fairness by providing a legal avenue for these individuals to adjust to legal permanent residence, even if they entered the country with fraudulent documents.

I ask unanimous consent to include the following, as follows:

[From the Associated Press, Dec. 29, 2003]

**FLAW IN LAW THREATENS DEPORTATION FOR HAITIAN REFUGEES**

(By Ken Thomas)

Nearly a decade after leaving Haiti, Regaud Rene, a Haitian political activist now living in Miami, faces deportation because he fled Haiti in 1994 using doctored documents and is therefore not covered by HRIFA. Rene, a former political activist on the island, faces deportation following a lengthy legal battle with immigration authorities.

He says deportation would devastate his family, which includes his 19-year-old American-born son to Haiti and leave behind his wife. He also will lose a job that helps their children and dependents.

Rene, a former political activist on the island, faces deportation following a lengthy legal battle with immigration authorities.

He says deportation would devastate his family, which includes his 19-year-old American-born son to Haiti and leave behind his wife. He also will lose a job that helps send about $300 a month to support family members in Haiti.

"Some people pray to Jesus for miracles," Rene said during a recent interview. "They are not more special than me. So I hope that God can help me, too."

Rene, 41, is one of about 3,000 Haitian migrants enrolled in what activists call a "flaw in law." The government resided—called green cards—to illegal aliens from Haiti who lived in the United States before 1996.

The bill didn't include waivers for Haitian migrants known as "airplane refugees" who used forged documents to flee repressive governments, established settlements in the United States or took them back to a strife-torn Haiti where their parents risk deportation.

He passed out leaflets and photos supporting Aristide.

A month after the coup, Rene said he was visited at his home by five members of the military. The men, who were carrying revolvers, threatened him and pushed him around, according to court documents. Rene then went into hiding for two years, staying with a friend in the northern city of Cap-Haitien.

"I was scared to go back to Le Borgne. If I go back to Le Borgne, anything could happen," he recalled.

He fled Haiti for the Bahamas by boat in early 1994 and then used forged documents to fly to Miami International Airport in May 1994, months before Aristide was returned to power.
Reforming the Army Corps of Engineers will be a difficult task for Congress. It involves restoring credibility and accountability to a Federal agency rocked by scandals and constrained by endlessly growing authorizations and a declining Federal budget. Though the Corps is not the greatest moral or environmental problem, it has been a way of life for millions of Americans. The Corps often makes decisions that are not in the best interest of the American people. The Corps is responsible for managing water resources, including flood control, navigation, and environmental remediation. Congress needs to take a closer look at the issue of a sliding cost scale. We should explore the possibility of creating incentives for communities with cutting-edge floodplain management projects to reduce their local share for projects.

The bill requires independent review of Corps projects. The National Academy of Sciences, the General Accounting Office, and even the Inspector General of the Army agree that independent review is an essential step to ensuring that each Corps project is economically justified. Independent review will apply to projects in the following circumstances: 1. the project has costs greater than $25 million, including mitigation costs; 2. the Governor of a state that is affected by the project requests a panel; 3. the head of a Federal agency charged with reviewing the project determines that the project is likely to have a significant adverse environmental or cultural impact; or 4. the Secretary of the Army determines that the project is controversial. Any party can request that the Secretary make a determination of whether the project is controversial.

This bill also creates a Director of Independent Review within the Office.
of the Inspector General of the Department of the Army. The Director is responsible for ensuring that Corps experts review projects. The Secretary is required to respond to the panel’s report and explain the extent to which a final report agrees with the panel’s conclusions. The panel report and the underlying data that the Corps uses to justify the project will be made available to the public.

The bill also requires strong environmental protection measures. The Corps is required to mitigate the environmental impacts of its projects in a variety of ways, including by avoiding damaging wetlands in the first place and either holding other lands or constructing wetlands elsewhere when it cannot avoid destroying them. The Corps requires private developers to meet this standard when they construct projects as a condition of receiving a federal permit, and I think the Federal Government should live up to the same standards. Too often, the Corps does not complete required mitigation and enhances environmental risks.

I feel very strongly that mitigation must be on the table to ensure that the true costs of mitigation should be accounted for in Corps projects, and that the public should be able to track the progress of mitigation projects. The bill requires the Corps to develop a detailed mitigation plan for each water resources project, and conduct monitoring and demonstrate that the mitigation is working. In addition, the concurrent mitigation requirements of this bill would actually reduce the total mitigation costs by ensuring the purchase of mitigation lands as soon as possible.

This bill streamlines the existing automatic deauthorization process. Estimates of the project backlog runs from $58 billion to $41 billion. Under the bill a project authorized for construction but never started is deauthorized if it is denied appropriations funds towards completion of construction for five straight years. In addition, a project that has begun construction but been denied appropriations funds towards completion for three straight years is deauthorized. The bill also preserves congressional prerogatives over setting the Corps’ construction priorities by allowing Congress a chance to reauthorize any of these projects before they are automatically deauthorized. This process will be transparent to all interests, because the bill requires the Corps to make a list of projects in the construction backlog available to Congress and the public at large.

In the past decade, the Corps has routinely strayed from its mission of flood control, navigation, and environmental protection. This legislation also requires the Corps stick with its primary mission and that any new project that does not have the Corps’ primary mission of flood control, navigation, or environmental protection as its main objective will be deauthorized.

This legislation will bring out comprehensive revision of the project review and authorization procedures at the Army Corps of Engineers. My goals for the Corps are to increase transparency and accountability, to ensure fiscal responsibility, and to allow greater stakeholder involvement in their projects. I remain committed to these goals, and to seeing Corps Reform enacted as part of this Congress’ Water Resources bill.

I feel that this bill is an important step down the road to a reformed Corps of Engineers. This bill establishes a framework to catch mistakes by Corps planners, deter any potential bad behavior by Corps officials to justify questionable projects, and end unjustified projects, and provide planners desperately needed support against the never ending pressure of project boosters. Those boosters, include congressional interests, which is why I believe that this body needs to champion reform—properly reformed Corps projects are all pork and no substance. I wish it were the case that the changes we are proposing today were not needed, but unfortunately, I see that there is need for this bill. I want to make sure that future Corps projects go through a process to produce predicted benefits, stop costing the taxpayers more than the Corps estimated, do not have unanticipated environmental impacts, and are built in an environmentally compatible way. This bill will help the Corps do a better job, which is what the taxpayers and the environment deserve.

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:

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Corps of Engineers Modernization and Improvement Act of 2004.”

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

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(1) ACADEMY.—The term “Academy” means the National Academy of Sciences.

(2) CORPS.—The term “Corps” means the Corps of Engineers.

(3) PRINCIPLES AND GUIDELINES.—The term “Principles and Guidelines” means the principles and guidelines of the Corps for water resources projects (consisting of Engineer Regulations 1105–2–100 and Engineer Pamphlet 1105–2–1).

(4) SECRETARY.—The term “Secretary” means the Secretary of the Army.
TITLE I—MODERNIZING PROJECT PLANNING

SEC. 101. MODERN PLANNING PRINCIPLES.
(a) PLANNING PRINCIPLES.—Section 209 of the Flood Control Act of 1970 (42 U.S.C. 2022) is amended as follows:
(2) Federal agencies manage and, if clearly justified, construct water resource projects; 
(3) to meet national economic needs; and 
(b) REVISION OF PLANNING GUIDELINES, REGULATIONS, AND CIRCULARS.—Not later than 18 months after the date of enactment of the Corps of Engineers Modernization and Improvement Act of 2004, the Secretary, in collaboration with the National Academy of Sciences, shall develop proposed revisions of, and revise, the planning guidelines, regulations, and circulars of the Corps, including requirements under this section:
(2) to protect and restore the environment. 
(c) PLANNING GUIDELINES, REGULATIONS, AND CIRCULARS.—Corps planning regulations revised under subsection (b) shall:
(1) incorporate new and existing analytical techniques that reflect the probability of project benefits and costs; 
(2) apply discount rates provided by the Office of Management and Budget; 
(3) eliminate biases and disincentives that discourage the use of nonstructural approaches to water resources development and management; 
(4) encourage, to the maximum extent practicable, the restoration of ecosystems; 
(5) consider the costs and benefits of protecting or degrading natural systems; 
(6) ensure that projects are justified by benefits that accrue to the public at large; 
(7) ensure that benefit-cost calculations reflect a credible schedule for project construction; 
(8) ensure that each project increment complies with section 104; 
(9) ensure that any increase in direct Federal payments or subsidies and exclude as a benefit any increase in direct Federal payments or subsidies; and 
(10) by the Mechanism by which, at least once every 5 years, the Secretary shall collaborate with the National Academy of Sciences to review, and if necessary, revise all planning regulations, guidelines, and circulars. 
(d) NATIONAL NAVIGATION AND PORT PLAN.
(1) IN GENERAL.—Not later than 18 months after the date of enactment of the Corps of Engineers Modernization and Improvement Act of 2004, the Corps shall develop and annually update a national plan to manage, rehabilitate and, if justified, modernize inland waterway and port infrastructure to meet current national economic and environmental needs.
(2) TOOLS.—To develop the plan, the Corps shall employ economic tools that— 
(A) recognize the importance of alternative transportation destinations and modes; and 
(B) employ practicable, cost-effective congestion management alternatives before constructing and expanding infrastructure to increase waterway and port capacity.
(3) BENEFITS AND PROXIMITY.—The Corps shall give particular consideration to the benefits and proximity of proposed and existing port, harbor, waterway, rail and other transportation infrastructure in determining whether to construct new water resources projects.
(4) NOTICE AND COMMENT.—The Secretary shall comply with the notice and comment provisions of section 5 of the United States Code, in issuing revised planning regulations, guidelines and circulars. 
(f) APPLICABILITY.—On completion of the revisions required under this section, the Secretary shall apply the revised regulations to projects for which a draft feasibility study or draft reevaluation report has not yet been issued. 
(g) PROJECT REFORMULATION.—Projects of the Corps, and separable elements of projects of the Corps, that have been authorized for 10 years, but for which less than 15 percent of appropriations specifically identified for construction has been expended shall not be constructed unless a general reevaluation study demonstrates that the project or separable element meets— 
(1) all project criteria and requirements applicable at the time the study is initiated, including requirements under this section; and 
(2) cost share and mitigation requirements of this Act.
(b) CONFORMING AMENDMENTS.—
(1) Section 80 of the Water Resources Development Act of 1974 (42 U.S.C. 2022d) is repealed. 
(2) Section 7(a) of the Department of Transportation Act (Public Law 89–670; 80 Stat. 841) is repealed.
SEC. 102. INDEPENDENT REVIEW.
(a) DEFINITIONS.—In this section:
(A) AFFECTED STATE.—The term ‘‘affected State’’ means a State or portion of a State that— 
(1) is a drainage basin in which the project is carried out; 
(2) is affected as a result of the project; 
(3) is a State or portion of a State that is subject to review by an independent panel of experts established by the Director for a project; or 
(4) is likely to have a significant adverse impact on the project.
(B) GOVERNOR.—The Governor of an affected State referred to in paragraph (a) or (b) may be required to serve on panels of experts established by the Director for a project.
(C) INSPECTOR GENERAL.—The Inspector General of the Army shall not appoint an individual to serve on panels of experts established by the Director for a project if the individual has a financial interest in a water resource project that is subject to review under subsection (b).
(D) INDEPENDENT PANEL.—An independent panel of experts established by the Director may be comprised of a chairman and not less than 5 nor more than 10 independent experts, including 1 or more biologists, hydrologists, engineers, and economists who represent a range of areas of expertise.
(2) PROJECTS SUBJECT TO INDEPENDENT REVIEW.—
(1) IN GENERAL.—The Secretary shall ensure that each feasibility report, general reevaluation report, or environmental impact statement for every water resources project that is subject to review under subsection (b) contains an independent assessment of effects. 
(B) WrittEn REQUESTS.—The Secretary shall apply the revised regulations, guidelines and circulars.
(3) PROJECTS SUBJECT TO INDEPENDENT REVIEW.—
(1) IN GENERAL.—The Secretary shall ensure that each feasibility report, general reevaluation report, or environmental impact statement for every water resources project that is subject to review under subsection (b) contains an independent assessment of effects.
(2) IiN GENERAL.—The term ‘‘Director’’ means the Director of Independent Review appointed under subsection (c)(1).
(b) PROJECTS SUBJECT TO INDEPENDENT REVIEW.—
(1) IN GENERAL.—The Secretary shall ensure that each feasibility report, general reevaluation report, or environmental impact statement for every water resources project that is subject to review under subsection (b) contains an independent assessment of effects. 
(B) WrittEn REQUESTS.—The Secretary shall apply the revised regulations, guidelines and circulars.
(3) PROJECTS SUBJECT TO INDEPENDENT REVIEW.—
(1) IN GENERAL.—The Secretary shall ensure that each feasibility report, general reevaluation report, or environmental impact statement for every water resources project that is subject to review under subsection (b) contains an independent assessment of effects. 
(B) WrittEn REQUESTS.—The Secretary shall apply the revised regulations, guidelines and circulars.
(3) PROJECTS SUBJECT TO INDEPENDENT REVIEW.—
(1) IN GENERAL.—The Secretary shall ensure that each feasibility report, general reevaluation report, or environmental impact statement for every water resources project that is subject to review under subsection (b) contains an independent assessment of effects. 
(B) WrittEn REQUESTS.—The Secretary shall apply the revised regulations, guidelines and circulars.
in subsection (e)(1)(E)).

(A) review each draft feasibility report, draft general reevaluation report, and draft environmental impact statement prepared for the project;

(B) assess the adequacy of the economic, scientific, and environmental models used by the Secretary in reviewing the project to ensure that—

(i) the best available economic and scientific methods of analysis have been used;

(ii) the best available economic, scientific, and environmental data have been used; and

(iii) any regional effects on navigation systems have been evaluated;

(C) receive from the public written and oral comments concerning the project;

(D) not later than the deadline established under paragraph (1)(E), submit to the Secretary a report concerning the economic, engineering, and environmental analyses of the project, including the conclusions of the panel, with particular emphasis on areas of public controversy, with respect to the feasibility report, general reevaluation report, or environmental impact statement; and

(E) not later than 30 days after the date of issuance of a final feasibility report, final general reevaluation report, or final environmental impact statement, submit to the Secretary a brief report stating the views of the panel on the extent to which the final analysis adequately addresses issues or concerns raised by each earlier evaluation by the panel.

(2) EXTENSIONS.—

(A) IN GENERAL.—The panel may request from the Secretary an extension of up to 30 days that is not later than 180 days after the deadline established under paragraph (1)(E).

(B) RECORD OF DECISION.—The Secretary shall not issue a record of decision until after—

(i) the final day of the 30-day period described in paragraph (1)(E); or

(ii) if the Director grants an extension under subparagraph (A), the final day of the 60-day period beginning on the date of issuance of a final feasibility report described in paragraph (1)(E) and ending on the final day of the extension granted under subparagraph (A).

(3) DURATION OF PROJECT REVIEWS.—

(A) IN GENERAL.—Not later than 180 days after the date of establishment of a panel of experts for a water resources project under this section, the panel shall complete—

(i) each required review of the project; and

(ii) all other duties of the panel relating to the project (other than the duties described in subsection (e)(2)(E)).

(B) DEADLINE FOR REPORT ON PROJECT REVIEWS.—Not later than 240 days after the date of issuance of a draft feasibility report, draft general reevaluation report, or draft environmental impact statement for a project, if a panel of experts submits to the Director before the end of the 180-day period described in paragraph (1), and the Director requests a report for a 60-day extension of the deadline established under that paragraph, the panel of experts shall submit to the Secretary a report required under subsection (e)(1)(D).

(g) RECOMMENDATIONS OF PANEL.—

(1) CONSIDERATION BY SECRETARY.—In general, the Secretary receives a report on a water resources project from a panel of experts under this subsection by the applicable deadline under subsection (e)(1)(E) or (f), the Secretary shall not be entitled to deference in a judicial proceeding.

(2) INCONSISTENT RECOMMENDATIONS AND FINDINGS REPORT.—(A) The Secretary shall immediately make a copy of the report (and, in a case in which any written explanation of the Secretary on recommendations contained in the report is completed, shall immediately make a copy of the response) available for public review; and

(B) include a copy of the report (and any written explanation of the Secretary) in any report submitted to Congress concerning the project.

(h) PUBLIC ACCESS TO INFORMATION.—In general—

(1) EXCEPT AS PROVIDED IN PARAGRAPH (3), THE SECRETARY SHALL NOT MAKE INFORMATION AVAILABLE UNDER PARAGRAPH (1) IF—

(i) the person that provided the information to the Corps;

(ii) a person that is bound by a confidentiality agreement; and

(iii) disclosure of the information is likely to cause substantial harm to the competitive position of the person that provided the information to the Corps.

(2) LIMITATION OF COST.—The cost of conducting a review of a water resources project under this section shall not exceed—

(A) $250,000 for a project, if the total cost of the project in current year dollars is less than $50,000,000; and

(B) 0.5 percent of the total cost of the project in current year dollars, if the total cost is $50,000,000 or more.

(3) TREATMENT.—The cost of conducting a review of a project under this section shall be considered to be part of the total cost of the project.

(3) COST SHARING.—A review of a project under this section shall be subject to section 105(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2219(a)).

(4) WAIVER OF LIMITATION.—The Secretary may waive a limitation under paragraph (1) if the Secretary determines that the waiver is appropriate.

(j) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to each panel of experts established under this section.

SEC. 103. BENEFIT-COST ANALYSIS.

Section 308(a) of the Water Resources Development Act of 1990 (33 U.S.C. 2239(a)) is amended—

(1) in paragraph (1)(B), by striking "and" at the end; and

(2) in paragraph (2), by striking the period at the end and inserting "; and"; and

(3) by adding at the end following: "any projected benefit attributable to an increase in, or intensification of, land use arising from the draining, reduction, or elimination of wetlands.

SEC. 104. BENEFIT-COST RATIO.

(a) RECOMMENDATION TO PROJECTS.—Beginning in fiscal year 2004, in the case of a water resources project that subject to a benefit-cost analysis, the Secretary may recommend the project for authorization by Congress, and may choose the project as a recommended alternative in any record of decision or environmental impact statement, if the project, if any other criteria required by law, has projected national benefits that are at least 1.5 times as great as the estimated total costs of the project, based on current discount rates provided by the Office of Management and Budget.

(b) REVIEW AND DEAUTHORIZATION OF PROJECTS.—

(1) REVIEW.—Not later than 180 days after the date of enactment of this Act, the Secretary shall review each water resources project described in paragraph (2) to determine whether the projected benefits of the project are less than 1.5 times as great as the estimated total costs of the project.

(2) PROJECTS SUBJECT TO REVIEW.—Each water resources project shall be subject to review under paragraph (1) if—

(A) the project was authorized before the date on which the review is commenced;

(B) the project is subject to a benefit-cost analysis; and

(C) an amount that is less than 33 percent of the estimated total costs of the project (excluding costs of preconstruction engineering and design) has been obligated for the project.

(B) IN GENERAL.—On completion of the review under paragraph (1), the Secretary shall submit to Congress a list that describes each water resources project and the projected benefits of which are less than 1.5 times as great as the estimated total costs of the project.

(C) AUTHORIZATIONS.—

(A) IN GENERAL.—The Secretary shall review each water resources project described in paragraph (2) to determine whether the projected benefits of the project are less than 1.5 times as great as the estimated total costs of the project.
(B) PROJECTS.—A project included on the list under subparagraph (A) shall be deauthorized effective beginning 3 years after the date of submission of the list to Congress unless the mitigation plan and the Secretary, after consultation with the United States Fish and Wildlife Service, determines that the mitigation plan is acceptable as described in the mitigation contingency plan and the monitoring demonstrates that the mitigation plan is effective.

(2) MINIMUM SUCCESS CRITERIA.—The mitigation contingency plan and the monitoring of mitigation shall define success criteria, which shall include the following:

(B) OPERATION AND MAINTENANCE.—(1) GENERAL FUND.—The Federal share of the cost of operation and maintenance shall be paid only from amounts appropriated from the Inland Waterways Trust Fund.

(B) GENERAL FUND AND INLAND WATERWAYS TRUST FUND.—In the case of a project described in paragraph (1) or (2) of subsection (a) with respect to which the cost of operation and maintenance is greater than 2 but less than or equal to 10 cents per ton mile, the portion of the project authorized by section 844 that is allocated to inland navigation shall be 100 percent of the Federal share under paragraph (1) or 25 percent of the Federal share under paragraph (1) shall be paid only from amounts appropriated from the general fund of the Treasury.

(B) INLAND WATERWAYS TRUST FUND.—In the case of a project described in paragraph (1) or (2) of subsection (a) with respect to which the cost of operation and maintenance is greater than 2 but less than or equal to 10 cents per ton mile—

(ii) 75 percent of the Federal share under paragraph (1) shall be paid only from amounts appropriated from the general fund of the Treasury; and

(iii) 25 percent of the Federal share under paragraph (1) shall be paid only from amounts appropriated from the Inland Waterways Trust Fund.

(C) INLAND WATERWAYS TRUST FUND.—In the case of a project described in paragraph (1) or (2) of subsection (a) with respect to which the cost of operation and maintenance is greater than 10 cents per ton mile but less than or equal to 30 cents per ton mile, 100 percent of the Federal share under paragraph (1) shall be paid only from amounts appropriated from the Inland Waterways Trust Fund.

(D) NON-FEDERAL RESPONSIBILITY.—(1) General.—The project described in paragraph (1) or (2) of subsection (a) with respect to which the cost of operation and maintenance is greater than 30 cents per ton mile shall be non-Federal responsibility.

(ii) DETAILED MITIGATION PLAN.—The specific mitigation plan for a water resources project under paragraph (1) shall include, at a minimum—

(i) a detailed and specific plan to monitor mitigation implementation and ecological success, including the designation of the entity that will be responsible for monitoring;

(ii) specific ecological success criteria by which the mitigation will be evaluated and determined to be successful, prepared in consultation with the United States Fish and Wildlife Service;

(iii) a detailed description of the land and interests in land to be acquired for mitigation and the basis for a determination that land and interests are available for acquisition;

(iv) sufficient detail regarding the chosen mitigation sites and type and amount of restoration activities to permit a thorough evaluation of the plan’s likelihood of ecological success and resulting aquatic and terrestrial resource functions and habitat values,

(v) a contingency plan for taking corrective actions if monitoring demonstrates that mitigation efforts are not achieving ecological success as described in the ecological success criteria.

(C) APPLICABLE LAW.—A time period for monitoring or for the implementation and monitoring of contingency plan actions shall not be subject to the deadlines described in section 202.

(D) TERMINATION OF MITIGATION SUCCESSES.—(A) IN GENERAL.—The Secretary shall be considered to be successful at the time at which monitoring demonstrates that the mitigation plan has met the ecological success criteria established in the mitigation plan.

(B) REQUIREMENTS FOR SUCCESS.—To ensure the success of any attempted mitigation, the Secretary shall—

(i) consult yearly with the United States Fish and Wildlife Service on each water resources project related to or chosen to determine whether mitigation monitoring for that project demonstrates that the project is achieving, or has achieved, ecological success;

(ii) ensure that implementation of the mitigation contingency plan for taking corrective action begins not later than 30 days after a finding by the Secretary or the United States Fish and Wildlife Service that the original mitigation efforts likely will not result in, or have not resulted in, ecological success;

(iii) complete implementation of the contingency plan as expeditiously as practicable; and

(iv) ensure that monitoring of mitigation efforts, including those implemented through a mitigation contingency plan, continues until the monitoring demonstrates that the mitigation has met the ecological success criteria.

(5) RECOMMENDATION OF PROJECTS.—The Secretary shall not recommend a water resource project alternative or choose a project alternative in any final record of decision, environmental impact statement, or environmental assessment completed after the date of enactment of this paragraph unless the Secretary determines that the mitigation plan for the alternative will successfully mitigate the adverse impacts of the project on aquatic and terrestrial resources, hydrologic functions, and fish and wildlife.

(6) COMPLETION OF MITIGATION BEFORE CONSTRUCTION OF NEW PROJECTS.—The Secretary shall complete all promised mitigation for water resources projects in a particular watershed before constructing any new water resources projects in that watershed.

SEC. 202. CONCURRENT MITIGATION.

Section 906(a) of the Water Resources Development Act of 1986 (33 U.S.C. 2283(a)) is amended—

(1) by striking "(a)(1) in the case" and inserting the following:—
(a) MITIGATION.—

(1) In general.—In the case:

(i) Project operation or permitted activity;

(ii) the extent to which the project is based on existing levels of commercial traffic rather than projected growth of commercial traffic; and

(iii) the remaining additional benefits and remaining additional costs to complete construction of the project (including the ratio that remaining benefits bear to remaining additional costs to complete construction of the project)

(b) EXCEPTION FOR PHYSICAL IMPRACTICABILITY.—In a case in which the Secretary determines that it is physically impracticable to complete mitigation by the last day of construction of a project or separable element of the project, the Secretary shall reserve or reprogram sufficient funds to ensure that mitigation is implemented as expeditiously as practicable, but in no case later than the end of the next fiscal year immediately following the last day of construction.

(2) USE OF FUNDS.— Funds made available for preliminary engineering and design, construction, or operations and maintenance shall be available for use in carrying out this section.

SEC. 203. MITIGATION TRACKING SYSTEM.

(a) In general.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish a recordkeeping system to track each water resources project constructed, operated, or maintained by the Secretary, and for each permit issued under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344)—

(1) the quantity and type of wetland and other habitat types affected by the project, project operation, or permitted activity;

(2) the quantity and type of mitigation that has been completed for the project, project operation or permitted activity;

(3) the status of monitoring for the mitigation carried out for the project, project operation or permitted activity.

(b) INFORMATION AND ORGANIZATION.—The recordkeeping system shall—

(1) include information on impacts and mitigation described in subsection (a) that occur after 1969 and

(2) be organized by watershed, project, or permit application, and zip code.

(c) AVAILABILITY OF INFORMATION.—The Secretary shall make information contained in the recordkeeping system available to the public on the Internet.

TITLE III—ADRESSING THE PROJECT BACKLOG

SEC. 301. PROJECT BACKLOG.

(a) REVIEW AND REPORT ON WATER RESOURCES CONSTRUCTION BACKLOG.—

(1) DEFINITIONS.—In this subsection:

(A) ACTIVE.— The term "active," with respect to a project, means that—

(i) the project is economically justified;

(ii) the project has been funded for design or (iii) preconstruction engineering and design; or

(B) INACTIVE.—The term "inactive," with respect to a project, means that—

(i) the project is not economically justified;

(ii) the project has not been funded for design or (iii) preconstruction engineering and design; and

(iii) the non-Federal interests with respect to the project have demonstrated willingness and the ability to provide required non-Federal shares.

(2) DEFERRED.—The term "deferred," with respect to a project, means that the project—

(i) is in a pending decision process;

(ii) requires reevaluation to determine the economic feasibility of the project; or

(iii) is a project for which the non-Federal interests are unable to provide required co-operation.

(3) INACTIVE.—The term "inactive", with respect to a project, means that—

(i) the project is not economically justified;

(ii) the project no longer meets current and prospective needs as described in a feasibility report or general reevaluation report;

(iii) the non-Federal interests with respect to the project have not demonstrated willingness or the ability to provide the required non-Federal share; or

(iv) the project most recently received, under an Act of Congress, authorization or reauthorization of construction more than 25 years before the date of enactment of this Act;

(4) IMPLEMENTATION.—

(A) IN GENERAL.—The Secretary shall implement

(i) the project is economically justified;

(ii) the estimated annual benefits and associated costs of the project (excluding costs of preconstruction engineering and design) have been determined; and

(iii) the level of flood protection provided;

(ii) the project no longer meets current and prospective needs as described in a feasibility report or general reevaluation report;

(iii) the remaining additional benefits and remaining additional costs to complete construction of the project (including the ratio that remaining benefits bear to remaining additional costs to complete construction of the project)

(b) ALTERNATIVE METHOD OF REPORTING.—In any case in which the information required to be submitted under paragraph (3)(B)(i) or (C) of paragraph (3) cannot be quantified, the information shall be reported through an objective description of the benefits and impacts of the applicable project.

5. MEASUREMENT AND REPORTING.—

SEC. 1001. PROJECT DEAUTHORIZATIONS.

(a) IN GENERAL.—The Secretary shall use objective and quantifiable standards for measuring and reporting the information required to be submitted under paragraph (3).

(b) ALTERNATIVE METHOD OF REPORTING.—In any case in which the information required to be submitted under paragraph (3)(B)(i) or (C) of paragraph (3) cannot be quantified, the information shall be reported through an objective description of the benefits and impacts of the applicable project.

(c) AVAILABLE TO THE PUBLIC.—The study submitted to Congress under paragraph (2) shall be made available to—

(A) any person on request; and

(B) the public on the Internet.

SEC. 1001. PROJECT DEAUTHORIZATIONS.

(a) DEFINITIONS.—In this section:

"(1) Construction of a Project.—The term 'construction of a project' means—
“(A) with respect to a flood control project—

(i) the acquisition of land, an easement, or a right-of-way; or

(ii) the performance of physical work under a construction contract;

(B) with respect to an environmental protection and restoration project—

(i) the acquisition of land, an easement, or a right-of-way primarily to facilitate the restoration of wetland or similar habitat; or

(ii) the performance of physical work under a construction contract—

(I) to modify an existing project facility; or

(II) to construct a new environmental protection or restoration measure; or

(C) with respect to a shore protection project—

(i) the acquisition of land, an easement, or a right-of-way; or

(ii) the performance of physical work under a construction contract for a structural or a nonstructural measure; and

(D) with respect to any project that is not described in subparagraph (A), (B), or (C), the performance of physical work under a construction contract—

(2) INACTIVE.—The term ‘inactive’, with respect to a project, means that—

(A) the project is not economically justified;

(B) the project no longer meets current and prospective needs as described in a feasibility report or general reevaluation report; or

(C) the results of a special study with respect to the project have not demonstrated willingness or the ability to provide the required non-Federal share.

(3) PHYSICAL WORK UNDER A CONSTRUCTION CONTRACT.—The term ‘physical work under a construction contract’ does not include any activity relating to—

(A) project planning;

(B) engineering and design;

(C) relocation; or

(D) the acquisition of land, an easement, or a right-of-way.

(4) PROJECT.—The term ‘project’ means a water resources project, or a separable element of a water resources project, that is authorized by law for funding from—

(A) the Construction, General, appropriations account; or

(B) the construction portion of the Flood Control, Missouri River and Tributaries, appropriations account.

(b) INACTIVE PROJECTS.—

(1) LIST.—The Secretary shall annually submit to Congress a list of projects—

(A) that have been authorized for construction; and

(B) for which no Federal funds have been obligated for construction during the 2 consecutive fiscal years preceding the date of submission of the list.

(2) DEAUTHORIZATION.—A project that is not subject to subsection (b) but for which Federal funds have been obligated for construction of the project shall be deauthorized if Federal funds are not obligated for construction of the project during the 2 consecutive fiscal years following the last fiscal year in which Federal funds were obligated for construction of the project.

(3) CONTENTS OF REPORT.—The report shall—

(I) review the Inland Waterways System; and

(ii) provide data on the extent to which prior projections of the commercial traffic carried by each waterway in the Inland Waterways System were accurate; and

(iii) provide an analysis of the extent to which prior projections of the commercial traffic carried by each waterway in the Inland Waterways System were accurate; and

(iv) based on the information provided under clauses (ii) and (iii)—

(I) identify underused waterways in the System;

(II) propose new economic and environmental uses for underused waterways;

(III) describe statutory and administrative reforms that are needed to ease the transition from the current uses of the System to new economic and environmental uses of the System; and

(IV) recommend which waterways in the System should be decommissioned.

(2) DECOMMISSIONING MECHANISM FOR UNDERUSED WATERWAYS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall by regulation establish a mechanism for the decommissioning of waterways that—

(A) are no longer economically justified, based on commercial traffic and current discount rates; or

(B) are no longer in the national interest.

(3) CONGRESSIONAL NOTIFICATIONS.—On submission of a list under subsection (b), (c), or (d), the Secretary shall notify each Senator in the State, and each Member of the House of Representatives in whose district, a project on the list is or would be located.

(f) FINAL DEAUTHORIZATION.—The Secretary shall annually publish in the Federal Register a list of all projects deauthorized under subsections (b), (c), and (d).

(2) REPORT BY ACADEMY.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall enter into a contract with the Academy to conduct an analysis of flood control; and

(B) CONTENTS OF REPORT.—The report shall—

(I) review the Flood Control System and the current authorized uses of the project;

(II) recommend which waterways in the Flood Control System should be decommissioned;

(III) analyze the environmental uses for underused waterways; and

(IV) recommend which waterways in the System should be decommissioned.

(3) COSTS OF THE ANALYSIS.—The analysis required under this section shall be funded from the Civil Works appropriation account.

(D) FLOOD CONTROL AND RESTORATION PROJECTS.—

(1) REPORT BY ACADEMY.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall enter into a contract with the Academy to conduct an analysis of flood control.

(B) CONTENTS OF REPORT.—The report shall—

(I) review the Inland Waterways System and the current authorized uses of the project;

(II) recommend which waterways in the Inland Waterways System should be decommissioned; and

(III) analyze the environmental uses for underused waterways; and

(IV) recommend which waterways in the System should be decommissioned.

(2) COSTS OF THE ANALYSIS.—The analysis required under this section shall be funded from the Civil Works appropriation account.
SEC. 4. RESEARCH GRANT TO STUDY NATIONAL DOMESTIC VIOLENCE HOTLINE.

(a) GRANT AUTHORIZED.—Not later than 6 months after the date of enactment of this Act, the Attorney General, in consultation with the Secretary of Health and Human Services and the National Domestic Violence Hotline, shall award a grant to a university or other research institution with demonstrated experience and expertise with domestic violence issues to conduct a study of the National Domestic Violence Hotline for the purpose of conducting the research described in subsection (c), and for the input, interpretation, and dissemination of research data.

(b) APPLICATION.—Each university or research institution desiring to receive a grant under this section shall submit an application to the Attorney General, at such time, in such manner, and accompanied by such additional information as the Attorney General, in consultation with the Secretary of Health and Human Services and the National Domestic Violence Hotline, may reasonably require.

(c) ISSUES TO BE STUDIED.—The study described in subsection (a) shall—

(1) compile statistical and substantive information about calls received by the Hotline since its inception, or a representative sample of such data, and provide for the confidentiality of Hotline callers;

(2) interpret the data compiled under paragraph (1) to determine the trends, gaps in services, and geographical areas of need; and

(3) assess the trends and gaps in services to underserved communities and the military community; and

(4) gather other important information about domestic violence.

(d) REPORT.—Not later than 3 years after the date of enactment of this Act, the grantee conducting the study under this section shall submit a report on the results of such study to Congress and the Attorney General.

SEC. 5. GRANT TO RAISE PUBLIC AWARENESS OF DOMESTIC VIOLENCE ISSUES.

(a) GRANT AUTHORIZED.—Not later than 6 months after the submission of the report required under section 4(d), the Attorney General, in consultation with the Secretary of Health and Human Services and the National Domestic Violence Hotline, shall award a grant to an experienced organization to conduct a public awareness campaign to increase the public’s understanding of domestic violence issues and to raise public awareness of the National Domestic Violence Hotline.

(b) APPLICATION.—Each organization desiring to receive a grant under this section shall submit an application to the Attorney General, at such time, in such manner, and accompanied by such additional information as the Attorney General, in consultation with the Secretary of Health and Human Services and the National Domestic Violence Hotline, may reasonably require.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—The Attorney General is authorized to be appropriated, for each of the fiscal years 2005 and 2006—

(1) $500,000 to carry out section 4;

(2) $250,000 to carry out section 4; and

(3) $800,000 to carry out section 5.

(b) AVAILABILITY.—Any amounts appropriated pursuant to the authority of subsection (a) shall remain available until expended.

(c) NONEXCLUSIVITY.—Nothing in this section shall be construed to limit or restrict the National Domestic Violence Hotline to apply for and obtain Federal funding from any other agency or department or any other Federal program.

(d) NO CONDITION ON APPROPRIATIONS.—Amounts appropriated pursuant to subsection (a) shall not be considered amounts appropriated for purposes of the conditions imposed under section 318(g)(2) of the Family Violence Prevention and Services Act (42 U.S.C. 10416(g)(2)).
violence. It is no longer treated as a private, family matter, but as a public one. Public awareness has grown—as the Hotline’s telephone number is posted on bus billboards and websites, in school offices and doctor’s waiting rooms—there has been a dramatic increase in calls. Between 2000 and 2001, alone, call volume increased by 18.5 percent. In 2002, the Hotline answered almost 180,000 calls, an increase of 7.5 percent from the previous year. The Department of Defense recently requested that the Hotline accept calls from military personnel—a move that will certainly increase the call volume substantially.

While the majority of the Hotline’s day-to-day operating costs are paid with Federal dollars designated in annual spending bills, the funding has not kept pace with the growing call volume and the Hotline’s technology and telecommunications needs. This year, the spending bill appropriated only three million dollars to the Hotline. Older equipment, coupled with increased usage, has stretched the Hotline’s ability to keep pace with the growing call volume.

The Hotline tries to answer almost 500 calls a day with old computers and servers. Because the system is outdated and the staff is stretched thin, over 26,000 calls last year went unanswered due to long hold times or busy signals.

We need to answer each and every one of the calls to the Hotline. Today I am launching an innovative and far-reaching solution to the Hotline’s problems, the Connections Campaign. The Connections Campaign is a public-private partnership that teams up private telecommunication and technology companies with the Federal Government to solve the Hotline’s crisis. Under the Connections Campaign, the same companies—Microsoft, Sony, BellSouth, Verizon Wireless, IBM, Northrop Grumman and others—that supply Americans with home computers, cell phones and telephone service are donating hardware and software to the Hotline. Items like mapping software, networked computers, servers, flat-screen monitors and telephone airtime are being pledged to the Hotline. This is just the beginning of a multi-year, multi-million dollar initiative to place the Hotline squarely in the twenty-first century.

On behalf of the partnership, I am proud to introduce the Domestic Violence Connections Campaign Act of 2004 which will provide a million dollars to train and assist the Hotline’s advocates so that they may effectively use the improved equipment provided by the Connections Campaign. In addition, the Act creates a new research grant program to be administered by the Attorney General that will review and analyze data generated by the Hotline. The Hotline’s needs for caller confidentiality and security, researchers will study Hotline data to determine the trends, potential gaps in service and geographical areas of need. Within three years of enactment, researchers will conduct an comprehensive Hotline study to Congress and the Attorney General. Finally, my bill provides an $800,000 grant program for the Hotline to increase public awareness about domestic violence and the Hotline’s services.

One hand clapping simply does not make enough noise. Federal, State and local government cannot always supply all the answers and resources to resolve our communities’ pressing problems. The Connections Campaign recognizes that big problems warrant grand, collaborative solutions. Cooperation between the Federal Government and the private sector is critical to enhance the National Domestic Violence Hotline.

A cornerstone of the Violence Against Women Act was my conviction that ending domestic violence and sexual assault required a coordinated, community response. We worked hard to ensure that emergency—room personnel, police officers, victim advocates, shelter directors and court clerks worked together to implement the many mandates of the Violence Against Women Act. The Connections Campaign is Act Two. We are now asking that the corporate community get actively involved to strengthen a key safety net for women and their families, the National Domestic Violence Hotline.

Today’s legislation and the kick-off is just the beginning of what I envision to be a lasting connection between the Hotline and the technology and telecommunications community. I look forward to coming back to the Senate floor to inform my colleagues about the new computers, wireless headsets, upgraded software and other technology that could be provided to the Hotline through the Connections Campaign. In the meantime, let me close by commending and expressing my gratitude to Sheilah Cates, the director of the Hotline and her dedicated staff who are providing the first step to safe, new lives for millions of battered women. They are truly doing God’s work.

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

By Mr. HATCH (for himself, Mr. LEAHY, Mr. KOHL, and Mr. FEINGOLD):

S. 2180. A bill to amend title 25, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, I rise to introduce the Cooperative Research and Technology Enhancement Act of 2004 (the CREATE Act). This bill makes a narrow, but important change in our patent laws to ensure that America’s public will benefit from the results of collaborative research efforts that combine the erudition of great universities with the entrepreneurial savvy of private enterprises.
SECTION 1. SHORT TITLE.
This Act may be cited as the “Cooperative Research and Technology Enhancement (CREATE) Act of 2004”.

SEC. 2. COLLABORATIVE EFFORTS ON CLAIMED INVENTIONS.
Section 103(c) of title 35, United States Code, is amended to read as follows:

“(c)(1) In the case of an invention made—
(A) by or on behalf of a party to a joint research agreement, as defined in section 160 of the Patent Act, who is not subject to an obligation of assignment to the same person or subject to a claimed invention; or
(B) by or on behalf of a party to a joint research agreement, as defined in section 160 of the Patent Act, and the application for patent for the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and
(C) the application for patent for the claimed invention is amended to disclose the names of the parties to the joint research agreement.

“(2) For purposes of this subsection, subject matter developed by another person and subject matter developed by another person and claimed in an application for patent filed before the date of the invention was made or subject to an obligation of assignment to the same person or subject to a claimed invention shall be deemed to have been owned by the same person or subject to an obligation of assignment to the same person if—
(A) the claimed invention was made by or on behalf of parties to a joint research agreement that was in effect on or before the date the claimed invention was made;
(B) the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement; and
(C) the application for patent for the claimed invention was made as a result of activities undertaken within the scope of the joint research agreement.

“(3) For purposes of paragraph (2), the term ‘joint research agreement’ means a written contract, grant, or cooperative agreement entered into by two or more persons or entities for the purpose of experimental, developmental, or research work in the field of the claimed invention.”.

SEC. 3. EFFECTIVE DATE.
(a) IN GENERAL.—The amendments made by this Act shall apply to any patent granted on or after the date of the enactment of this Act.

(b) SPECIAL RULE.—The amendments made by this Act shall not affect any final decision of a court or the United States Patent and Trademark Office rendered before the date of the enactment of this Act, and shall not affect the right of any party in any action pending before the United States Patent and Trademark Office or a court on the date of the enactment of this Act to have that patent determined on the basis of the provisions of title 35, United States Code, in effect on the day before the date of the enactment of this Act.

The amendments made by this Act shall apply to any patent granted on or after the date of the enactment of this Act.

Ms. SNOWE. Mr. President, I rise to introduce a bill to revitalize a loan program crucial to the growth of small businesses in this country, and therefore crucial to our country’s economy. This bill, the “Smart Business Loan Revitalization Act of 2004,” provides improvements to the Small Business Administration’s largest business loan program, the “Section 7(a)” program.

This program proves that a small amount of government backing can greatly enhance private-sector financing for small businesses, and that the economic benefits can reverberate throughout the economy at large. More than $46.6 billion in 7(a) loans have been made to small businesses over the last five Fiscal Years. This financing has helped small businesses to create or retain nearly 2 million more jobs over this five-year period.

Today, we are losing thousands of American jobs to outsourcing and off-shoring in this country. We must measure net job increases in the “few thousands.” Given these circumstances, it is clearly to our advantage, and to the advantage
of the American people, to support improvements to any program that has already demonstrated an ability to create or retain nearly 400,000 American jobs a year.

Last year this program provided $11.2 billion in loans to small business owners and employees in towns and communities across America. This year, however, the SBA only requested a program size of $9.3 billion. The fact that the SBA received a larger appropriation to the $9.3 billion it requested is powerful testament to the popularity of this program among small businesses. 

The SBA received sufficient appropriations, $79 million, coupled with $22 million in carried-over funds, to allow for a $995 billion program.

Like last year, however, the demand for program funds in the first few months of Fiscal Year 2004 suggested that requests for the entire year would most likely exceed $11 billion. As a result, in January 2004, the SBA shut the program down and opened it again with a diminished cap of $750,000—37.5 percent of the $2 million maximum previously available. Faced with these restrictions, small businesses have urged Congress and the Administration to make the program fully operational for the rest of 2004.

To this end, I have worked with a coalition of small businesses and lenders to construct a plan to improve the program for the remainder of this Fiscal Year. I believe this proposal would allow lenders to help alleviate the funding shortfall. It would benefit small businesses and lenders by allowing loans larger than $750,000, and by allowing loans with multiple participations.

The bill would achieve these goals in three ways. First, lenders would return to the SBA a fee of 0.25 percent (or one-quarter of one percent) of new loans under $150,000, a fee that lenders are currently permitted to retain. Lenders may elect to pay this fee for loans of $150,000 or less—for loans greater than that size, lenders must return the fee to the SBA, as they have been required to do since the inception of the program. This proposal was first made by the SBA, as part of a larger plan the SBA recently submitted to Congress. Second, a lender fee on new loans would be increased from 0.25 percent, one-quarter of one percent, to 0.35 percent. Finally, lenders would be permitted in paragraph (23) of the Small Business Act to offer small business owners the financing packages that include a 7(a) loan portion and a non-7(a), a strictly commercial portion, if the lenders paid the normal fees on the 7(a) loan portion and a 0.35 percent fee on the non-7(a) portion. Prior to January 2004, the SBA permitted this type of financing, but without receiving any fee income for the non-7(a) portion, and without an upper limit on the total financing, which I have set at $4 million. The bill would extend the definition of loans to receive fees larger than $750,000 is a prerequisite to reviving the American economy. These loans provide needed capital for significant purchases and development by small businesses. More 7(a) loans represent longer-term loans than similar products available in the private capital market, and this allows small businesses to repay their 7(a) loans more gradually. I applaud the SBA for its decision to hire more employees. After encouraging entrepreneurs to start new small businesses, we cannot afford to forget their small businesses, or profess an inability to assist them when they need additional financing to grow.

The benefits of this program are clear. It has the ability to help entrepreneurs to create jobs, to fulfill their dreams, and to support their families—all of this while building the kind of energetic businesses our economy so desperately needs. The demands for this program is also clear. Small businesses have submitted more applications than the program could handle so far this year. In order for lenders to pay increased fees to meet the demand from small businesses for 7(a) loans is clear evidence the program works and remains attractive to lenders.

The question we must answer now is whether we are willing to respond to small businesses and lenders and implement a solution which they have asked for, and which promises dividends for all involved, or whether we will ignore their requests, and miss an opportunity to transform a loan program that sustains almost 400,000 jobs a year into an initiative capable of creating two, three, four or even five times that amount. I don’t want to miss that opportunity, my constituents in Maine can’t afford to miss that opportunity, and I don’t believe that your constituents can either. Almost every company listed today on the American Stock Exchange began as a small business. In short term, this bill may save American jobs. But in the long term, it may save the American economy. 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. 2193

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 Finance Revitalization Act.”

SEC. 2. COMBINATION FINANCING.

(a) IN GENERAL. — Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding after the following:

“(33) COMBINATION FINANCING.—

“(A) DEFINITIONS.—In this paragraph—

“(i) the term ‘commercial loan’ means financing comprised of a loan guaranteed under this subsection and a commercial loan; and

“(ii) the term ‘commercial loan’ means a loan of which no portion is guaranteed by the Federal government.

(B) APPLICATION.—A loan guarantee under this section on behalf of a small business concern, which is approved within 120 days of the date on which a commercial loan is obtained by the same small business concern, shall be subject to the provisions of this paragraph.

“(C) COMMERCIAL LOAN AMOUNT.—A small business concern shall not be eligible to receive combination financing under this paragraph unless the commercial loan obtained by the small business concern does not exceed $2,000,000.

“(D) COMERCIAL LOAN PROVISIONS.—The commercial loan obtained by the small business concern—

“(i) may be made by the participating lender that is providing financing under this subsection or by a different lender;

“(ii) may be secured by a senior lien; and

“(iii) may be made by a lender in the Preferred Lenders Program, if applicable.

“(E) COMMERICAL LOAN FEE.—A one-time fee in an amount equal to 0.5 percent of the amount of the commercial loan shall be paid by the lender to the Administration if the commercial loan has a senior credit position to that of the loan guaranteed under this subsection. All proceeds from the loan guaranteed under this subsection are used to offset the cost (as defined in section 502 of the Credit Reform Act of 1990) to the Administration of guaranteeing loans under this subsection.

“(F) DEFERRED PARTICIPATION LOAN ELIGIBILITY.—

“(1) MAXIMUM AMOUNT.—A small business concern may not receive combination financing under this paragraph in an amount greater than $4,000,000.

“(2) NET AMOUNT.—The net amount of the deferred participation share shall not exceed the maximum amount of a net guarantee provided under paragraph (3)(A).

“(G) DEFERRED PARTICIPATION LOAN SECURITY.—A loan guaranteed under this subsection may be secured by a subordinated lien.

“(H) AVAILABILITY.—Combination financing shall be available under this paragraph notwithstanding any maximum limitation on loans imposed by the Administration."

SEC. 3. LOAN GUARANTEE FEES.

In general.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (18)(B), by adding at the end the following: “This paragraph shall apply to any loan guaranteed under this subsection during the period beginning on the first day after the date of enactment of this Act and is repealed on October 1, 2004.”; and

(2) in paragraph (23) by adding subparagraph (A) to read as follows:

“(A) PERCENTAGE.—

“(I) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administrator shall, in accordance with such terms and procedures as the Administrator shall establish by regulation, assess and collect a fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan.

“(II) FIRST TEMPORARY PERCENTAGE.—With respect to loans guaranteed under this subsection during the period beginning on October 1, 2002 and ending on the date of enactment of this Act, the annual fee assessed and collected under clause (i) shall be equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.”
"(iii) SECOND temporary percentage.—During the period beginning on the first day after the date of enactment of this clause and ending on September 30, 2004, the annual fee assessed and collected under clause (i) shall be equal to 0.35 percent of the outstanding balance of the deferred participation share of the loan.

(b) Amendments made by subsection (a) shall take effect on the first day after the date of enactment of this Act and are repealed on October 1, 2004.

SEC. 4. RECONSIDERATION OF LOAN APPLICATION SUBMITTED BEFORE JANUARY 1, 2004.—(a) CONSIDERATION OF LOAN APPLICATION SUBMITTED BEFORE JANUARY 8, 2004.—Beginning on the first day after the date of enactment of this Act, the Small Business Administration shall reconsider any application submitted on or after December 23, 2003, and before January 8, 2004, under section 7(a)(14) of the Small Business Act (15 U.S.C. 636(a)(14)) if the applicant has requested an amendment to increase the amount of such loan, and if the applicant has a small business that received financing under section 7(a)(14) of the Small Business Act (15 U.S.C. 636(a)(14)) before January 1, 2004, and received such financing, and if the applicant has requested an amendment to such financing regardless of the size of such financing (subject to the limitations in section 7(a)(3) of such Act) if the small business is otherwise eligible for such financing under that section.

(b) MAXIMUM LOAN AMOUNT.—Ten days after the date of enactment of this Act, the Small Business Administration shall increase the maximum amount of loans under section 7 of the Small Business Act (15 U.S.C. 636) up to the maximum amount permitted under the Small Business Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 317—RECOGNIZING THE IMPORTANCE OF INCREASING AWARENESS OF AUTISM SPECTRUM DISORDERS, SUPPORTING PROGRAMS FOR INCREASED RESEARCH AND IMPROVED TREATMENT OF AUTISM, AND IMPROVING TRAINING AND PERSONNEL DEVELOPMENT FOR PERSONS WITH AUTISM AND THOSE WHO CARE FOR INDIVIDUALS WITH AUTISM

Mr. HAGEL submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions.

S. RES. 317

Whereas the Autism Society of America, Cure Autism Now, the National Alliance for Autism Research, Unlocking Autism, and numerous other organizations commemorate April as National Autism Awareness Month;

Whereas autism is a developmental disorder that is typically diagnosed during the first 3 years of life, robbing individuals of their ability to communicate and interact with others;

Whereas autism affects an estimated 1 in every 250 children in America;

Whereas the time is more likely in boys than in girls, and can affect anyone, regardless of race, ethnicity, or other factors;

Whereas the cost of specialized treatment in a residential treatment facility for people with autism is approximately $90,000 per individual per year;

Whereas the cost of special education programs for school-aged children with autism is often more than $30,000 per individual per year;

Whereas the nation's cost of caring for persons affected by autism is estimated at more than $90,000,000,000 per year; and

Whereas despite the fact that autism is one of the most treatable developmental disorders, many professionals in the medical and educational fields are still unaware of the best methods to diagnose and treat the disorder.

Resolved, That the Senate—

(1) supports the establishment of April as National Autism Awareness Month;

(2) recognizes and commends the parents and relatives of children with autism for their sacrifice and dedication in providing for the special needs of children with autism, and for absorbing significant financial costs for specialized education and support services;

(3) supports the goal of increasing Federal funding for aggressive research to learn the root causes of autism, identify the best methods of early intervention and treatment, expand programs for individuals with autism across their lifespan, and promote understanding of the special needs of people with autism;

(4) commends the Department of Health and Human Services for the swift implementation of the Children's Health Act of 2000, which established "Centers of Excellence" at the Centers for Disease Control and Prevention to study the epidemiology of autism and related disorders and the proposed "Centers of Excellence" at the National Institutes of Health for autism research;

(5) stresses the need to begin early intervention services soon after a child has been diagnosed with autism, noting that early intervention strategies are the primary therapeutic options for young people with autism, and early intervention significantly improves outcomes for people with autism and can reduce the level of funding and services needed later in life;

(6) supports the Federal Government's nearly 30-year-old commitment to provide States with 40% of the costs needed to educate children with disabilities; and

(7) recognizes the importance of worker training programs that are tailored to the needs of developmentally disabled persons, including those with autism, in our school systems; and

(8) recognizes the shortage of appropriately trained teachers and support necessary to teach, assist, and respond to special needs students, including those with autism, in our school systems; and

AMENDMENTS SUBMITTED AND PROPOSED

SA 2719. Mrs. MURRAY (for herself, Mr. KENNEDY, Mr. CONRAD, Mr. LEVIN, Mr. SENNIT, Mr. MCCUIRK, Mr. CORZINE, Mr. LEVIN, Mr. DODD, Ms. STABENOW, Mrs. CLINTON, Mr. KERRY, Mr. HARKIN, Mr. SCHUMER, Mr. PRIOR, Mr. REED, Ms. LANDRIO, Mr. KENNY, Ms. SARBAK, Mr. BINGAMAIN, and Mrs. LINCOLN) proposed an amendment to the concurrent resolution S. Con. Res. 95, setting forth the congressional budget for the United States Government for fiscal year 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009, which was ordered to lie on the table.

SA 2720. Mr. BIDEN (for himself, Mr. LEAHY, Mrs. FISTENSTEIN, Mr. SCHUMER, Mr. KENNEDY, Mr. SARBAK, Mr. ROCKFELLER, Mr. CONRAD, Mrs. STABENOW, Mr. HARKIN, Mrs. BOXER, Mr. DURBIN, Mr. KOLI, and Mr. REID) submitted an amendment intended to be proposed by him to the concurrent resolution S. Con. Res. 95, supra; which was ordered to lie on the table.

SA 2722. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the concurrent resolution S. Con. Res. 95, supra; which was ordered to lie on the table.

SA 2724. Mr. SCHUMER (for himself, Mr. KENNY, and Mr. CIRKO) submitted an amendment intended to be proposed by him to the concurrent resolution S. Con. Res. 95, supra; which was ordered to lie on the table.

SA 2726. Mr. BIDEN (for himself, Mr. LEAHY, Mrs. FISTENSTEIN, Mr. SCHUMER, Mr. KENNEDY, Mr. SARBAK, Mr. ROCKFELLER, Mr. CONRAD, Mrs. STABENOW, Mr. HARKIN, Mrs. BOXER, Mr. DURBIN, Mr. KOLI, and Mr. DODD) submitted an amendment intended to be proposed by him to the concurrent resolution S. Con. Res. 95, supra; which was ordered to lie on the table.

SA 2727. Mr. SANTORUM (for himself, Mr. CONRAD, and Mr. BUNNING) submitted an amendment intended to be proposed by him to the bill S. 1367, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation regime for United States, and for other purposes; which was ordered to lie on the table.

SA 2728. Mr. STEVEN (for himself, Mr. MCCURRY, Mr. GLEW, and Mr. LEVIN) submitted an amendment intended to be proposed by him to the concurrent resolution S. Con. Res. 95, setting forth the congressional budget for the United States Government for fiscal years 2005 and including the appropriate budgetary levels for fiscal years 2006 through 2009, which was ordered to lie on the table.

SA 2729. Mr. LEVIN (for himself and Mr. JEFFORDS) submitted an amendment intended to be proposed by him to the concurrent resolution S. Con. Res. 95, supra; which was ordered to lie on the table.

SA 2730. Mr. LEVIN submitted an amendment intended to be proposed by him to the concurrent resolution S. Con. Res. 95, supra; which was ordered to lie on the table.

SA 2731. Mr. GRAHAM of South Carolina (for himself, Mr. DASCHLE, Mr. BUNNING, Mr. LEAHY, Mrs. CLINTON, Mr. DEWING, Mr. CHAMBLISS, Mr. ALLEN, Mrs. MURRAY, Mr. KENNEDY, Mrs. LINCOLN, Mr. DAYTON, Ms. MURKOWSKI, Mr. MUKKULSI, Mr. FEINGOLD, Mr. SCHUMER, and Mr. NASTOR) submitted an amendment to the concurrent resolution S. Con. Res. 95, supra.

SA 2732. Mrs. HUTCHISON (for herself, Mr. LUTZ, Mr. BREATON, and Mr. LOTT) submitted an amendment intended to be proposed by her to the concurrent resolution S.