

S. 2437

At the request of Mr. ENSIGN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2437, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 2468

At the request of Ms. COLLINS, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 2468, a bill to reform the postal laws of the United States.

S. 2564

At the request of Mrs. HUTCHISON, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 2564, a bill to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects and activities under that Act, and for other purposes.

S. 2568

At the request of Mr. BIDEN, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 2568, a bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

S. 2654

At the request of Mr. DODD, the names of the Senator from Massachusetts (Mr. KENNEDY), the Senator from New Mexico (Mr. BINGAMAN) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 2654, a bill to provide for Kindergarten Plus programs.

S. 2659

At the request of Ms. COLLINS, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2659, a bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area.

S. 2686

At the request of Mr. ENZI, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 2686, a bill to amend the Carl D. Perkins Vocational and Technical Education Act of 1998 to improve the Act.

S.J. RES. 11

At the request of Mr. KENNEDY, the name of the Senator from Hawaii (Mr. INOUE) was added as a cosponsor of S.J. Res. 11, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

S. CON. RES. 112

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. Con. Res. 112, a concurrent resolution supporting the goals and ideals of National Purple Heart Recognition Day.

S. CON. RES. 113

At the request of Mr. SMITH, the name of the Senator from New York

(Mrs. CLINTON) was added as a cosponsor of S. Con. Res. 113, a concurrent resolution recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month.

S. CON. RES. 124

At the request of Mr. CORZINE, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. Con. Res. 124, a concurrent resolution declaring genocide in Darfur, Sudan.

S. CON. RES. 126

At the request of Mr. COLEMAN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. Con. Res. 126, a concurrent resolution condemning the attack on the AMIA Jewish Community Center in Buenos Aires, Argentina, in July 1994, and expressing the concern of the United States regarding the continuing, decade-long delay in the resolution of this case.

S. RES. 271

At the request of Mr. CORZINE, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. Res. 271, a resolution urging the President of the United States diplomatic corps to dissuade member states of the United Nations from supporting resolutions that unfairly castigate Israel and to promote within the United Nations General Assembly more balanced and constructive approaches to resolving conflict in the Middle East.

S. RES. 389

At the request of Mr. CAMPBELL, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. Res. 389, a resolution expressing the sense of the Senate with respect to prostate cancer information.

S. RES. 401

At the request of Mr. BIDEN, the names of the Senator from Nevada (Mr. REID) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S. Res. 401, a resolution designating the week of November 7 through November 13, 2004, as "National Veterans Awareness Week" to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

At the request of Mr. CRAIG, his name was added as a cosponsor of S. Res. 401, supra.

S. RES. 404

At the request of Mr. CRAIG, his name was added as a cosponsor of S. Res. 404, a resolution designating August 9, 2004, as "Smokey Bear's 60th Anniversary".

S. RES. 407

At the request of Mr. BIDEN, the names of the Senator from Kansas (Mr. BROWNBACK), the Senator from Vermont (Mr. LEAHY) and the Senator from Nebraska (Mr. HAGEL) were added as cosponsors of S. Res. 407, a resolu-

tion designating October 15, 2004, as "National Mammography Day".

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. LINCOLN:

S. 2689. A bill to amend the Internal Revenue Code of 1986 to replace the recapture bond provisions of the low income housing tax credit program; to the Committee on Finance.

Mrs. LINCOLN. Mr. President, I am introducing legislation today to correct a problem that is impairing the efficiency of the Low-Income Housing Tax Credit program. As my colleagues know, the low-income housing credit has been a remarkably successful incentive for encouraging investment in residential rental housing for low-income families. Under Section 42 of the Internal Revenue Code, a tax credit is available for investment in affordable housing. The credit is claimed annually over a period of ten years. Qualified residential rental projects must be rented to lower-income households at controlled rents and satisfy a number of other requirements throughout a prescribed compliance period which is generally 15 years from the first taxable year the credit is claimed.

Today, virtually all of the equity for housing credit investments comes from publicly-traded corporations investing through housing credit funds. An investor wishing to dispose of an interest in housing credit property during its 15-year compliance period is subject to a recapture of housing credits previously claimed unless a bond or U.S. Treasury securities are posted to the Internal Revenue Service. The amount of the bond to be posted is based on the amount of housing credits claimed and the duration remaining in the compliance period. The purpose of the bond is to guarantee to the IRS that it can collect the appropriate recapture tax amount in the event that the property is no longer in compliance with the requirements of the housing credit program.

At the time the housing credit program was enacted in 1986, the drafters of the statute were concerned that owners would claim the benefits of the tax credits and then avoid the continuing compliance requirements by transferring the credits to a straw party with minimal assets that the IRS could go after to collect recapture tax liability. This was a potential concern because housing credits are provided on an accelerated basis in the sense that they are claimed over a ten-year period, while the property must remain in compliance with the targeting rules over a minimum 15-year period.

However, the experience with the housing credit over the past 15 years demonstrates that this concern no longer has any validity. When the housing credit program was enacted, policymakers were thinking in terms of previous affordable housing tax incentives that supported an aggressive

tax shelter market dominated by individual investors. As it turns out, over 99 percent of the investment capital in the housing credit program comes from publicly-traded corporations that pose none of the risks of noncompliance that motivated enactment of the recapture bond rules in the first place. Ironically, sales of individual partnership interests in low-income housing fund public partnerships with more than 35 investors are exempt from the recapture bond rules.

There are also a number of other provisions in Code section 42 that adequately address potential noncompliance. In 1989, Congress added the requirement that all state allocating agencies adopt "extended use agreements" to be recorded as restrictive covenants on housing credit properties, which require the property to remain in compliance. In addition, the State allocating agencies were given oversight responsibilities to ensure continued compliance through site inspections and property audits.

The requirement to purchase recapture bonds forces investors to incur unnecessary costs and has produced a complex administrative burden on the IRS. Because bond filings are done building-by-building, and single sales transactions frequently involve hundreds of properties, each with dozens of buildings, bond filings may involve thousands of separate filings. Worse yet, the few remaining surety companies writing this type of business operate in a very inefficient market. Recapture surety bonds are priced in a fashion that does not measure the true risk of non-compliance, but rather relies solely on the credit rating of the company requesting the bond. This is a function of the fact that surety underwriters do not understand the housing credit program in general or the risk of non-compliance in particular. At the same time, the incidence of non-compliance with housing credit program rules is exceedingly rare.

Meanwhile in the aftermath of the September 11th terrorist acts and the spate of corporate accounting scandals that occurred in 2002, the surety market has been in turmoil. Recapture bond premiums, even for highly rated public companies, have more than tripled over the past two years. This has imposed dead weight costs on the housing credit program. By making it more difficult to transfer credit investments, the recapture bond rule impairs the liquidity of housing credit investments, reducing credit prices generally, and undermining the overall efficiency of the program. In the absence of the recapture bond requirement, more dollars would flow into affordable housing itself and less into the higher rate of return that must be paid to investors to compensate for the dead weight costs that the bonds impose on the program.

The IRS recently responded to a series of questions posed about the recapture bond requirement. According to

the IRS, between 1997 and 2003, recapture bonds covering approximately \$1.8 billion of tax credits have been posted with the Treasury but in the 17 years since the requirement was enacted, the Service has never made a single claim on a recapture bond. That works out to bond premium payments in excess of \$150 million to ensure against an event that has never occurred. These costs are unnecessary and are imposing a real drag on the market for investments in housing credit properties.

My bill will solve this problem by repealing the recapture bond requirement effective for disposition of interests in LIHTC properties after the date of enactment. An owner of a building, or interest therein, that has been the subject of a disposition and is still within the remaining 15-year compliance period with respect to such building would be required to submit a report to its former investors when a recapture event with respect to such building occurs. A copy of recapture event forms sent to investors would be required to be filed with the IRS in order to provide the Service with the information necessary to ensure that all recapture liabilities are timely paid.

The general statute of limitations applicable to taxpayers would also be modified so that investors who dispose of a building after the effective date of the legislation would remain liable for any potential recapture liability for a period extending through the compliance period for such building to provide the IRS with additional time to audit the partnership's return to ensure the building's continuing compliance with the credit's requirements. Taxpayers who disposed of a building (or interest therein) prior to the date of enactment would not be required to maintain existing recapture bonds (or other alternative security), but cancellation of existing bonds would trigger an extension of the statute of limitations provided for in the legislation.

These changes will improve the overall efficiency of the housing program and ensure that more dollars actually flow into affordable housing. This is a very important improvement in an otherwise excellent program, and I encourage my colleagues to join with me in cosponsoring this legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD. The legislation is identical to a bill that Congressmen HOUGHTON, JOHNSON, NEAL, and RANGEL have introduced in the House. I also ask unanimous consent to include a copy of a letter from 12 national housing organizations to Chairman BILL THOMAS endorsing the House bill, H.R. 3610.

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

S. 2689

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

**SECTION 1. REPEAL OF RECAPTURE BOND RULE.**

(a) IN GENERAL.—Paragraph (6) of section 42(j) of the Internal Revenue Code of 1986 (re-

lating to recapture of credit) is amended to read as follows:

“(6) NO RECAPTURE ON DISPOSITION OF BUILDING (OR INTEREST THEREIN) REASONABLY EXPECTED TO CONTINUE AS A QUALIFIED LOW-INCOME BUILDING.—

“(A) IN GENERAL.—In the case of a disposition of a building or an interest therein, the taxpayer shall be discharged from liability for any additional tax under this subsection by reason of such disposition if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building.

“(B) STATUTE OF LIMITATIONS.—

“(i) EXTENSION OF PERIOD.—The period for assessing a deficiency attributable to the application of subparagraph (A) with respect to a building (or interest therein) during the compliance period with respect to such building shall not expire before the expiration of 3 years after the end of such compliance period.

“(ii) ASSESSMENT.—Such deficiency may be assessed before the expiration of the 3-year period referred to in clause (i) notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.”.

(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of such Code (relating to information concerning transactions with other persons) is amended by inserting after section 6050T the following new section:

**“SEC. 6050U. RETURNS RELATING TO PAYMENT OF LOW-INCOME HOUSING CREDIT REPAYMENT AMOUNT.**

“(a) REQUIREMENT OF REPORTING.—Every person who, at any time during the taxable year, is an owner of a building (or an interest therein)—

“(1) which is in the compliance period at any time during such year, and

“(2) with respect to which recapture is required by section 42(j)

shall, at such time as the Secretary may prescribe, make the return described in subsection (b).

“(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

“(1) is in such form as the Secretary may prescribe, and

“(2) contains—

“(A) the name, address, and TIN of each person who, with respect to such building or interest, was formerly an investor in such owner at any time during the compliance period,

“(B) the amount (if any) of any credit recapture amount required under section 42(j), and

“(C) such other information as the Secretary may prescribe.

“(c) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

“(1) the name and address of the person required to make such return and the phone number of the information contact for such person, and

“(2) the information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished on or before March 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

“(d) COMPLIANCE PERIOD.—For purposes of this section, the term ‘compliance period’

has the meaning given such term by section 42(i).”.

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by redesignating clauses (xii) through (xviii) as clauses (xiii) through (xix), respectively, and by inserting after clause (xi) the following new clause:

“(xii) section 6050U (relating to returns relating to payment of low-income housing credit repayment amount).”.

(B) Paragraph (2) of section 6724(d) of such Code is amended by striking “or” at the end of subparagraph (AA), by striking the period at the end of subparagraph (BB) and inserting “, or”, and by adding after subparagraph (BB) the following new subparagraph:

“(CC) section 6050U (relating to returns relating to payment of low-income housing credit repayment amount).”.

(C) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by inserting after the item relating to section 6050S the following new item:

“Sec. 6050U. Returns relating to payment of low-income housing credit repayment amount.”.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to any liability for the credit recapture amount under section 42(j) of the Internal Revenue Code of 1986 that arises after the date of the enactment of this Act.

(2) SPECIAL RULE FOR LOW-INCOME HOUSING BUILDINGS SOLD BEFORE DATE OF ENACTMENT OF THIS ACT.—In the case of a building disposed of before the date of the enactment of this Act with respect to which the taxpayer posted a bond (or alternative form of security) under section 42(j) of the Internal Revenue Code of 1986 (as in effect before the enactment of this Act), the taxpayer may elect (by notifying the Secretary of the Treasury in writing)—

(A) to cease to be subject to the bond requirements under section 42(j)(6) of such Code (as in effect before the enactment of this Act), and

(B) to be subject to the requirements of section 42(j) of such Code (as amended by this Act).

FEBRUARY 17, 2004.

Hon. WILLIAM M. THOMAS,  
*Chairman, House Committee on Ways and Means, Washington, DC.*

DEAR CHAIRMAN THOMAS: We are writing in support of H.R. 3610, legislation introduced by Representatives Amo Houghton, Nancy Johnson, Charles Rangel, and Richard Neal, to repeal the recapture bond rules under section 42(j) of the Low-Income Housing Tax Credit program. We believe that repeal of the recapture bond rules will remove an unnecessary impediment to the transferability of housing credit investments, thereby increasing the overall efficiency of the LIHTC program and ensuring that more private resources wind up in the production of affordable housing in return for federal housing credits.

Our organizations play an active role in support of affordable housing policies. We represent builders, owners, investors, credit agencies, nonprofit housing groups, and capital aggregators, all with extensive experience with the housing credit program. The housing credit program has been a remarkably successful federal initiative that has delivered affordable housing to over a million low and moderate-income households. The program has operated very successfully and has been an efficient means of delivering federal support. But one notable exception that

has been of concern to the industry for many years has been the requirement that when an investor disposes of an interest in housing credit property, a recapture bond must be purchased to guarantee payment to the Treasury of any potential recapture tax liability.

We believe this requirement impedes the transferability of credits, reduces investor demand for housing credits, and causes yields to be higher than necessary, which means that fewer federal resources wind up in housing credit properties. More importantly, this requirement imposes a significant and unnecessary cost on the program. While tens of millions of dollars have been expended on recapture bond premiums, the IRS has never collected on a recapture bond in the 17-year history of the LIHTC. Furthermore, we believe there is no public policy rationale for such bonds. The housing credit market is made up almost exclusively of large corporate investors who pose no risk to the Treasury that they will ignore their responsibility to pay a potential recapture tax liability. Indeed, there is no other provision in the Internal Revenue Code that requires taxpayers to post a bond to ensure payment of a potential tax liability. Moreover, non-compliance in the housing credit program is very small. In a recent letter to Reps. Houghton and Johnson, the Internal Revenue Service points out that the typical means of ownership through investment partnerships “minimizes the risk of recapture from any one project.” In that letter, the Service goes on to say that “supporting the bond/security process is administratively difficult.”

H.R. 3610 will correct this situation by removing the requirement that a recapture bond be purchased when there is a disposition of interests in LIHTC properties. The legislation replaces this unnecessary and expensive requirement with two new provisions that will improve the ability of the Treasury to collect potential recapture tax liability. First, investors who dispose of an interest in housing credit property would automatically be subject to a longer statute of limitations for any potential recapture tax liability that is identified in the future in connection with their ownership of housing credits. Second, improved information reporting would be required whereby the owner of housing credit property would be required to notify former investors and the IRS of any recapture liability that arises in connection with the period that the former investor owned an interest in the property.

We believe these changes will improve the administration of the housing credit program, better protect the interests of the Treasury, and result in more private dollars going into the development of affordable housing.

National Housing Conference; National Association of Home Builders; Affordable Housing Investors Council; National Multi Housing Council; National Leased Housing Association; National Association of Affordable Housing Lenders; National Association of State and Local Equity Funds; Affordable Housing Tax Credit Coalition; Local Initiatives Support Corporation/National Equity Fund; The Enterprise Foundation/Enterprise Social Investment Corporation; Council for Affordable and Rural Housing; National Association of Local Housing Finance Agencies.

By Mr. JEFFORDS (for himself,  
Mr. SARBANES, and Mrs. FEINSTEIN):

S. 2692. A bill to authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing

for low-income persons, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. JEFFORDS. Mr. President, I am pleased today to introduce the Affordable Housing Preservation Act of 2004, along with my colleagues, Senators SARBANES and FEINSTEIN. This bill provides matching Federal funds to States and localities seeking help to acquire and rehabilitate affordable housing that would otherwise be lost from the affordable housing inventory.

Affordable housing is facing a funding crisis. Across the country, the administration's proposed \$1.6 billion budget cuts for Section 8, which serves nearly 3.5 million low-income households nationwide, would seriously undermine the availability of quality affordable housing. In Vermont, there are 6,080 authorized vouchers available this year. But with the proposed budget cut, Vermont could lose more than 700 vouchers next year alone. That's a loss of \$4 million for housing assistance just in my small State. Over the next five years, it is estimated that Vermont could lose as many as 1,770 housing vouchers.

Affordable housing is a basic and critical need in every town and city, and these cuts are as indefensible as they are damaging. Cutting affordable housing is not about apartments and houses. It is about individuals and families, including our seniors, not having a safe and affordable place to call home. I have joined with many of my colleagues to protest these cuts.

The bill I am introducing today, the Affordable Housing Preservation Act of 2004, represents an effort to complement the good work being done throughout the country on Section 8 initiatives, and it strives to preserve existing affordable housing. Specifically, this bill would conserve federally subsidized housing units by providing matching grants to States and localities, seeking to preserve privately owned, affordable housing.

The Secretary of Housing and Urban Development (HUD) would make determinations for the grants based on a number of factors, including the number of affordable housing units at risk at being lost and the local market conditions in which displaced residents would have to find comparable new housing options. These funds would make a great deal of difference in keeping affordable housing affordable. States and localities could use the funds to acquire or rehabilitate affordable housing. They could use the funds, in part, for administrative and operating expenses. Properties with mortgages insured by HUD, Section 8 project-based assisted housing, and properties that are being purchased by residents would all be eligible for the matching grant funds. I believe that flexibility with the funding would make this program more efficient and cost effective, and, most importantly, more helpful to the recipients themselves.

Over the past several months, I have heard from many of my constituents who are genuinely concerned about Vermonters who are threatened with the loss of housing. This bill would give State and local housing authorities another tool to keep people in their homes. I believe we must act now to preserve our existing stock of affordable housing.

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. 2692

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

# SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Affordable Housing Preservation Act of 2004".

## SEC. 2. MATCHING GRANT PROGRAM FOR AFFORDABLE HOUSING PRESERVATION.

### (a) FINDINGS AND PURPOSES.—

#### (1) FINDINGS.—Congress finds that—

(A) the availability of low-income housing rental units has declined nationwide in the last several years;

(B) as rents for low-income housing increase and the development of new units of affordable housing decreases, there are fewer privately owned, federally assisted affordable housing units available to low-income individuals in need;

(C) the demand for affordable housing far exceeds the supply of affordable housing, as evidenced by recent studies;

(D) the efforts of nonprofit organizations have significantly preserved and expanded access to low-income housing;

(E) a substantial number of existing federally assisted or federally insured multifamily properties are at risk of being lost from the affordable housing inventory of the Nation through market rate conversion, deterioration, or demolition;

(F) it is in the interest of the Nation to encourage transfer of control of such properties to competent national, regional, and local nonprofit entities and intermediaries, the missions of which involve maintaining the affordability of such properties;

(G) such transfers may be inhibited by a shortage of such entities that are appropriately capitalized; and

(H) the Nation would be well served by providing assistance to such entities to aid in accomplishing this purpose.

### (2) PURPOSES.—The purposes of this section are—

(A) to continue the partnerships among the Federal Government, State and local governments, nonprofit organizations, and the private sector in operating and assisting housing that is affordable to low-income persons and families;

(B) to promote the preservation of affordable housing units by providing matching grants to States and localities that have developed and funded programs for the preservation of privately owned housing that is affordable to low-income families and persons; and

(C) to minimize the involuntary displacement of tenants who are currently residing in such housing, many of whom are elderly or disabled persons and families with children.

### (b) DEFINITIONS.—In this section:

(1) CAPITAL EXPENDITURES.—The term "capital expenditures" includes expenditures for acquisition and rehabilitation.

(2) CONSORTIUM.—The term "consortium" means a group of geographically contiguous localities that jointly submit an application under subsection (d).

(3) ELIGIBLE AFFORDABLE HOUSING.—The term "eligible affordable housing" means housing that—

(A) consists of more than 4 dwelling units;

(B) is insured or assisted under a program of the Department of Housing and Urban Development or the Department of Agriculture under which the property is subject to limitations on tenant rents, rent contributions, or incomes; and

(C) is at risk, as determined by the Secretary, of termination of any of the limitations referred to in subparagraph (B).

(4) ELIGIBLE ENTITIES.—The term "eligible entities" means any entity that meets the requirements of subsection (e)(6) and the rules issued under that subsection.

(5) LOCALITY.—The term "locality" means a city, town, township, county, parish, village, or other general purpose political subdivision of a State, or a consortium thereof.

(6) LOW-INCOME AFFORDABILITY RESTRICTION.—The term "low-income affordability restriction" means, with respect to a housing project, any limitation imposed by law, regulation, or regulatory agreement on rents for tenants of the project, rent contributions for tenants of the project, or income-eligibility for occupancy in the project.

(7) LOW-INCOME FAMILIES; VERY LOW-INCOME FAMILIES.—The terms "low-income families" and "very low-income families" have the meanings given such terms in section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)).

(8) PROJECT-BASED ASSISTANCE.—The term "project-based assistance" has the same meaning as in section 16(c) of the United States Housing Act of 1937 (42 U.S.C. 1437n(c)), except that the term includes assistance under any successor programs to the programs referred to in that section.

(9) QUALIFIED LIMITED LIABILITY COMPANY.—The term "qualified limited liability company" means a limited liability company with respect to which a credit is allowed under section 42 of the Internal Revenue Code of 1986 with respect to the company's qualified basis (as defined in section 42(c)(1) of such Code), in a qualified low-income building (as defined in section 42(c)(2) of such Code) for which grant funds received under this section shall be used.

(10) QUALIFIED PARTNERSHIP.—The term "qualified partnership" means a limited partnership with respect to which a credit is allowed under section 42 of the Internal Revenue Code of 1986 with respect to the partnership's qualified basis (as defined in section 42(c)(1) of such Code) in a qualified low-income building (as defined in section 42(c)(2) of such Code) for which grant funds received under this section shall be used.

(11) SECRETARY.—The term "Secretary" means the Secretary of the Department of Housing and Urban Development.

(12) STATE.—The term "State" means each of the several States of the United States and the District of Columbia.

(c) AUTHORITY TO MAKE GRANTS.—The Secretary shall, to the extent that amounts are made available in advance under subsection (k), award grants under this section to States and localities for low-income housing preservation and promotion.

### (d) APPLICATIONS.—

(1) IN GENERAL.—Any State or locality that seeks a grant under this section shall submit an application (through appropriate State and local agencies) to the Secretary.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall contain any information and certifications necessary for

the Secretary to determine who is eligible to receive a grant under this section.

### (e) USE OF GRANTS.—

#### (1) ELIGIBLE USES.—

(A) IN GENERAL.—Grants awarded under this section may be used by States and localities only for the purposes of providing assistance—

(i) for acquisition, rehabilitation, capital expenditures, and related development costs for a housing project that meets the requirements of paragraph (2), (3), (4), or (5); or

(ii) to eligible entities under paragraph (6) for—

(I) operational, working capital, and organizational expenses; and

(II) predevelopment activities to acquire eligible affordable housing for the purpose of ensuring that the housing will remain affordable, as the Secretary considers appropriate, for low-income or very low-income families.

(B) USE AGREEMENT.—A project receiving assistance under this paragraph shall be subject to an agreement (binding on any subsequent owner of such project) that ensures that the project will continue to operate, for a period of not less than 50 years after the date on which any assistance is made available under this paragraph, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by any program under which the project, if offered, was eligible for assistance, subject to available appropriations.

(C) SERVICE OF UNDER-SERVED AND RURAL AREAS.—States receiving funds under this section shall ensure that, to the maximum extent practicable, that projects in underserved and rural areas in that State receive assistance.

(2) PROJECTS WITH HUD-INSURED MORTGAGES.—A project meets the requirements of this paragraph if the project is financed by a loan or mortgage that is—

(A) insured or held by the Secretary under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l(d)(3)) and receiving loan management assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) due to a conversion from section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

(B) insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l(d)(5)); or

(C) insured, assisted, or held by the Secretary or a State or State agency under section 236 of the National Housing Act (12 U.S.C. 1715z-1).

(3) PROJECTS WITH SECTION 8 PROJECT-BASED ASSISTANCE.—A project meets the requirements of this paragraph if the project is subject to a contract for project-based assistance.

(4) PROJECTS PURCHASED BY RESIDENTS.—A project meets the requirements of this paragraph if—

(A) the project is or was eligible low-income housing (as defined in section 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4119)) or is or was a project assisted under section 613(b) of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4125);

(B) the project has been purchased by a resident council or resident-approved nonprofit organization for the housing, or is approved by the Secretary for such purchase, for conversion to homeownership housing under a resident homeownership program meeting the requirements of section 226 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4116); and

(C) the owner of the project has entered into binding commitments (applicable to any subsequent owner) to extend—

(i) project-based assistance for not less than 15 years (beginning on the date on which assistance is made available for the project by the State or locality under this section); and

(ii) any low-income affordability restrictions applicable to the project in connection with that assistance.

(5) **RURAL RENTAL ASSISTANCE PROJECTS.**—A project meets the requirements of this paragraph if—

(A) the project is a rural rental housing project financed under section 515 of the Housing Act of 1949 (42 U.S.C. 1485), or a farm labor housing development financed under section 514 of the United States Housing Act of 1949 (42 U.S.C. 1484); and

(B) the restriction on the use of the project (as required under section 502 of the Housing Act of 1949 (42 U.S.C. 1472)) will expire not later than 12 months after the date on which assistance is made available for the project by the State or locality under this subsection.

(6) **ELIGIBLE ENTITIES.**—

(A) **IN GENERAL.**—The Secretary shall establish, by regulation, standards for eligible entities under this subsection.

(B) **REQUIREMENTS.**—An eligible entity shall—

(i) be a nonprofit organization (as defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704)), or a qualified limited liability company or a qualified partnership whose managing member or general partner, respectively, is—

(I) a nonprofit organization; or

(II) a for-profit entity that is wholly owned by an eligible non-profit organization;

(ii) have among its purposes, maintaining the affordability to low-income or very low-income families of multifamily properties that are at risk of loss from the inventory of housing that is affordable to low-income or very low-income families; and

(iii) demonstrate to the Secretary—

(I) the need for the types of assistance described under paragraph (1)(A)(ii);

(II) experience in providing assistance described under that paragraph; and

(III) its ability to provide the assistance described under that paragraph.

(7) **FUNDING REQUIREMENTS.**—

(A) **OPERATING SUPPORT.**—Each State and locality awarded a grant under this section shall transfer at least 5 percent, but no more than 10 percent, of such grant to eligible entities for the purposes described under paragraph (1)(A)(ii)(I).

(B) **NONPROFIT PURCHASES.**—Each State and locality awarded a grant under this section shall transfer at least 15 percent of such grant to eligible entities for the purposes described under paragraph (1)(A)(ii)(II).

(8) **RETURN OF UNUSED FUNDS.**—If any amount of a grant awarded to a State or locality under this section has not been obligated 3 years after the grant is awarded, such amount shall be returned to the Secretary to be redistributed in accordance with this section the following fiscal year.

(9) **ADMINISTRATIVE COSTS.**—A State or locality that is awarded a grant under this section may use no more than 10 percent of such grant for costs associated with the administration of the grant.

(f) **AMOUNT OF STATE AND LOCAL GRANTS.**—

(1) **IN GENERAL.**—Subject to paragraph (3) and subsection (g), in each fiscal year, the Secretary shall award to each State and locality approved for a grant under this section a grant in an amount based upon the proportion of the need for assistance of that State or locality under this section (as deter-

mined by the Secretary in accordance with paragraph (2)) to the aggregate need among all States and localities approved for assistance under this section for that fiscal year.

(2) **DETERMINATION OF NEED.**—In determining the proportion of the need of a State or locality under paragraph (1), the Secretary shall consider—

(A) the number of units in projects in the State or locality that are eligible for assistance under subsection (e)(1)(A)(i) that are, due to market conditions or other factors, at risk for prepayment, opt-out, or otherwise at risk of being lost to the inventory of affordable housing; and

(B) the difficulty that residents of projects in the State or locality that are eligible for assistance under subsection (e)(1)(A)(i) would face in finding adequate, available, decent, comparable, and affordable housing in neighborhoods of comparable quality in the local market, if those projects were not assisted by the State or locality under subsection (e)(1)(A)(i).

(3) **LIMITATIONS.**—

(A) **MANDATORY ALLOCATION.**—In any fiscal year, of the total amount appropriated under subsection (k)—

(i) 40 percent shall be allocated for grants to States; and

(ii) 60 percent shall be allocated for grants to localities.

(B) **MINIMUM GRANT AMOUNT.**—Notwithstanding subsection (g), a State receiving a grant under this section shall receive no less than .4 percent of the total amount appropriated under subsection (k) in any fiscal year.

(g) **MATCHING REQUIREMENT.**—

(1) **IN GENERAL.**—Except as provided under paragraph (2), a grant under this section to a State or locality for any fiscal year may not exceed an amount that is twice the amount that the State or locality certifies, as the Secretary shall require, that the State or locality will contribute for such fiscal year, or has contributed since January 1, 2003, from non-Federal sources for the purposes described in subsection (e)(1).

(2) **LIMITATIONS.**—Paragraph (1) shall not apply to any amounts to be used by a State or locality for—

(A) administrative costs under subsection (e)(9); and

(B) operating support and working capital of nonprofit organizations under subsection (e)(7)(A).

(3) **TREATMENT OF PREVIOUS CONTRIBUTIONS.**—Any portion of amounts contributed after January 1, 2003, that are counted for the purpose of meeting the requirement under paragraph (1) for a fiscal year may not be counted for that purpose for any subsequent fiscal year.

(4) **TAX CREDITS AND PRIVATE ACTIVITY BONDS.**—Fifty percent of the annual amount of tax credits allocated to the project under section 42 of the Internal Revenue Code of 1986, or proceeds from private activity bonds issued for qualified residential rental projects under section 142 of that Code, shall be considered funds from non-Federal sources for purposes of paragraph (1).

(h) **TREATMENT OF SUBSIDY LAYERING REQUIREMENTS.**—Neither subsection (g) nor any other provision of this section may be construed to prevent the use of tax credits allocated under section 42 of the Internal Revenue Code of 1986, in connection with housing assisted with amounts from a grant awarded under this section, to the extent that such use is in accordance with section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)) and section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note).

(i) **REPORTS.**—

(1) **REPORTS TO SECRETARY.**—Not later than 90 days after the last day of each fiscal year, each State and locality that receives a grant under this section during that fiscal year shall submit to the Secretary a report on the housing projects and eligible entities assisted with amounts made available under the grant.

(2) **REPORTS TO CONGRESS.**—Based on the reports submitted under paragraph (1), the Secretary shall annually submit to Congress a report on the grants awarded under this section during the preceding fiscal year and the housing projects assisted and eligible entities with amounts made available under those grants.

(j) **REGULATIONS.**—Not later than 6 months after the date of enactment of this Act, the Secretary shall issue regulations to carry out this section.

(k) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for grants under this section such sums as may be necessary for each of fiscal years 2005, 2006, 2007, 2008, and 2009.

### SEC. 3. PRESERVATION PROJECTS.

Section 524(e)(1) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking “amounts are specifically” and inserting “sufficient amounts are”.

By Mr. BINGAMAN:

S. 2694. A bill to amend title XVIII of the Social Security Act to provide for the automatic enrollment of medicaid beneficiaries for prescription drug benefits under part D of such title, and for other purposes; read the first time.

Mr. BINGAMAN. Mr. President, today I am reintroducing the Medicare Assurance of Prescription Transition Assistance Act of 2004. It is my hope that this will be put on the Senate Calendar so it can be considered under rule XIV.

Let me give a little background about what this legislation is intended to correct.

As all of us know, this last year we passed a major revision, a major amendment to the Medicare Act. The Medicare Act was passed in 1965. In this last year, the prescription drug bill has been added to it. That was a controversial piece of legislation which I wound up opposing in its final form. I supported the version we passed through the Senate initially. I opposed the version that finally came from the conference and was sent to the President for signature.

But there was one part of that prescription drug legislation that contained a very real benefit for a lot of low-income Americans. That is the \$600 subsidy that was made available this year and again next year for Medicare recipients with incomes in this category that allowed them to take advantage of the benefit.

The legislation I am introducing today will provide simply that CMS automatically enroll many of these low-income Medicare seniors and people with disabilities into this prescription drug card in order that they get the benefit of the discount card. Of course, that benefit is hard to quantify. They would get that benefit, but more importantly, they would get access to

this \$600 subsidy this year and another \$600 subsidy next year, which would go against the cost of prescription drugs they incur during those 2 years.

Underscoring the need for this legislation, yesterday Dr. Mark McClellan, the Administrator of the Centers for Medicare and Medicaid Services, or CMS, testified before the Senate Special Committee on Aging that only 1 million of the more than 7 million low-income Medicare beneficiaries who are eligible for the \$600 subsidy under the Medicare prescription drug card are currently enrolled.

This chart makes that point very clearly. The title of this chart is "Low Enrollment Plagues Prescription Drug Plan." This first bullet states that 7 million low-income Medicare beneficiaries are eligible for this \$600 subsidy. The number of low-income beneficiaries that CMS projected would actually enroll would be 5 million. So 5 million of the 7 million were supposed to enroll. In fact, the number of low-income beneficiaries who have enrolled turns out to be 1 million.

So there are 6 million Americans eligible for the \$600 transition assistance under the Medicare prescription drug bill who are not receiving any help. In other words, 14 percent of those who are eligible for this \$600 subsidy are actually getting assistance at the present time. Unfortunately, many of those seniors who are eligible live in my home State of New Mexico, and I am very anxious that we provide this benefit to them since it is a part of the law.

The President and the leadership in the Senate have vowed to bottle up any legislation that would reopen the Medicare prescription drug bill at this time, or before the end of this Congress. Unfortunately, that would include bills such as the one I am reintroducing today, which is really intended to ensure that the people who are eligible for the limited benefit provided under this bill actually receive that benefit.

If we are serious about trying to provide assistance to our Nation's most vulnerable low-income seniors and people with disabilities, then we should undertake the rather straightforward but significant step that is called for in this legislation, and that is automatically enrolling those who are eligible for the \$600 subsidy into the discount drug card program.

Considering that it is unclear whether the savings offered by the drug discount card itself will amount to much, and that is just hard to quantify, frankly, the main benefit is not the discount card itself; it is the \$600 credit which is available to low-income individuals.

Specifically, the \$600 is available to any individual whose income is less than \$12,569 per year or any married couple whose income is less than \$16,862 per year. For those Medicare savings program beneficiaries who get cost-sharing assistance through Medicaid because they have incomes below

135 percent of poverty but are not receiving prescription drug coverage, they clearly meet the income criteria under the act and their automatic enrollment is the only way to ensure they will receive the \$600 subsidy that those of us in Congress intended they receive.

In fact, when the prescription drug bill was passed, the administration claimed that 65 percent of those eligible for the \$600 transitional assistance would actually be enrolled.

According to the Centers for Medicare and Medicaid Services, or CMS, the agency expected 5 million people of the 7 million—again, as is stated on this chart—including 29,000 of the estimated 45,000 in my home State of New Mexico, would actually enroll. Under the CMS assumptions, those beneficiaries combined would save \$5 billion nationally, or \$35 million in my home State of New Mexico, over this 2-year period.

Much of that savings is not going to be realized by those seniors unless we pass the legislation I am introducing today.

Part of the explanation for the low enrollment is the poor advertising campaign that the General Accounting Office has criticized and with which we are generally familiar. This poor advertising campaign included running ads in Capitol Hill newspapers such as Roll Call and the Hill. Unfortunately, most of the low-income seniors in my State do not subscribe to either Roll Call or the Hill. In fact, they do not know those publications exist.

According to a national survey by the Kaiser Family Foundation, only 18 percent of senior citizens are even aware that the low-income transitional assistance program was included in the prescription drug bill. So it is hard to believe that 65 percent of those who are eligible will enroll when less than one-fifth of them even know the program exists.

Fortunately, CMS has already laid the groundwork for this automatic enrollment. Two months ago, the agency issued guidance for how State pharmacy assistance programs can automatically enroll their members who have incomes below 135 percent of poverty in the low-income assistance benefit. Those enrollees continue to represent the bulk of those who have enrolled and they remain the model for how to ensure that low-income beneficiaries get the prescription drug assistance they need.

CMS can take this additional step, which I am calling for in this legislation, to automatically enroll MSP members who do not have prescription drug coverage. I believe CMS has the authority to take the step on its own right now, but the legislation I have reintroduced today would clarify the law in this regard and would ensure that low-income seniors and people with disabilities actually receive this transitional assistance as promised by the administration and the Congress.

As the Medicare Rights Center has asked: Given their definite eligibility and clear need for help to pay for their prescription drugs, why not save these people and the Government the hassle of application and automatically enroll them?

That is exactly the right question to be asked. There are a number of low-income seniors and people with disabilities who are very sick, who have cognitive and mental illnesses and do not have access to or feel comfortable with the use of the Internet. Many will wrongly slip through the cracks and fail to get the \$600 subsidy that could benefit them substantially this year and next year. In such cases, if an individual has not enrolled for whatever reason, it begs the question as to what choice automatic enrollment would take away at that point.

It is not enough to say, look, we believe these seniors have a choice of a great many discount cards and we do not want to prejudge that for them. The truth is, most of the people I am talking about are completely unaware that there is such a thing as a drug discount card or that there is such a thing as a \$600 subsidy for which they could qualify. This lack of knowledge on their part is through no fault of their own and we should do all we can, and CMS should do all it can, to get them enrolled so they can benefit from this \$600 subsidy. Either CMS or the States should take the affirmative step of automatically enrolling these individuals in the program. If we fail to assist them in this manner, what is really lost is not the choice that they might have between one card or another but the \$1,200 in real prescription drug assistance that they do today qualify for and that they should be receiving.

As a Kaiser Family Foundation study last year indicated, Medicare beneficiaries with no drug coverage were nearly three times more likely than people with drug coverage to forgo needed prescription drugs. While CMS has estimated that 65 percent of the low-income beneficiaries would sign up for the \$600 subsidy, by any measure signing up just 14 percent of these beneficiaries can only be viewed as a major failure. It has not been viewed as that so far either by the administration or by the Congress.

Once again, I call on the administration to take this important step on its own and enroll these individuals for this benefit. In light of the fact they have failed to do so, despite several calls from me and other Members of Congress for them to do so, I am reintroducing this bill, and I hope the Senate leadership will bring it to the floor for immediate action.

There is over \$1 billion of prescription drug assistance for over 1 million of our Nation's most vulnerable citizens at stake. It is time for the Senate to pass this bill.

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



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

S. 2694

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

#### SECTION 1. SHORT TITLE.

This Act, may be cited as the "Medicare Assurance of Rx Transitional Assistance Act of 2004".

#### SEC. 2. AUTOMATIC ENROLLMENT OF MEDICAID BENEFICIARIES ELIGIBLE FOR MEDICARE PRESCRIPTION DRUG BENEFITS.

(a) AUTOMATIC ENROLLMENT OF BENEFICIARIES RECEIVING MEDICAL ASSISTANCE FOR MEDICARE COST-SHARING UNDER MEDICAID.—Section 1860D-14(a)(3)(B)(v) (42 U.S.C. 1395w-114(a)(3)(B)(v)) is amended to read as follows:

"(v) TREATMENT OF MEDICAID BENEFICIARIES.—Subject to subparagraph (F), the Secretary shall provide that part D eligible individuals who are—

"(I) full-benefit dual eligible individuals (as defined in section 1935(c)(6)) or who are recipients of supplemental security income benefits under title XVI shall be treated as subsidy eligible individuals described in paragraph (1); and

"(II) not described in subclause (I), but who are determined for purposes of the State plan under title XIX to be eligible for medical assistance under clause (i), (iii), or (iv) of section 1902(a)(10)(E), shall be treated as being determined to be subsidy eligible individuals described in paragraph (1)."

(b) ASSURANCE OF TRANSITIONAL ASSISTANCE UNDER DRUG DISCOUNT CARD PROGRAM.—

(1) IN GENERAL.—Section 1860D-31(b)(2)(A) of the Social Security Act (42 U.S.C. 1395w-141(b)(2)(A)) is amended by adding at the end the following new sentence: "Subject to subparagraph (B), each discount card eligible individual who is described in section 1860D-14(a)(3)(P)(v) shall be considered to be a transitional assistance eligible individual."

(2) AUTOMATIC ENROLLMENT OF MEDICAID BENEFICIARIES.—Section 1860D-31(c)(1) of the Social Security Act (42 U.S.C. 1395w-141(c)(1)) is amended by adding at the end the following new subparagraph:

"(F) AUTOMATIC ENROLLMENT OF CERTAIN BENEFICIARIES.—

"(1) IN GENERAL.—Subject to clause (ii), the Secretary shall—

"(I) enroll each discount card eligible individual who is described in section 1860D-14(a)(3)(13)(v), but who has not enrolled in an endorsed discount card program as of August 15, 2004, in an endorsed discount, card program selected by the Secretary that serves residents of the State in which the individual resides; and

"(II) notwithstanding paragraphs (2) and (3) of subsection (f), automatically determine that such individual is a transitional assistance eligible individual (including whether such individual is a special transitional assistance eligible individual) without requiring any self-certification or subjecting such individual to any verification under such paragraphs.

"(ii) OPT-OUT.—The Secretary shall not enroll an individual under clause (i) if the individual notifies the Secretary that such individual does not wish to be enrolled and be determined to be a transitional assistance eligible individual under such clause before the individual is so enrolled."

(3) NOTICE OF ELIGIBILITY FOR TRANSITIONAL ASSISTANCE.—Section 1860D-31(d) of the Social Security Act (42 U.S.C. 1395w-141(4)) is amended by adding at the end the following new paragraph:

"(4) NOTICE OF ELIGIBILITY TO MEDICAID BENEFICIARIES.—Not later than July 15, 2004, each State or the Secretary (at the option of each State) shall mail to each discount card eligible individual who is described in section 1860D14(a)(3)(B)(v), but who has not enrolled in an endorsed discount card program as of July 1, 2004, a notice stating that—

"(A) such individual is eligible to enroll in an endorsed discount card program and to receive transitional assistance under subsection (g);

"(B) if such individual does not enroll before August 15, 2004, such individual will be automatically enrolled in an endorsed discount card program selected by the Secretary unless the individual notifies the Secretary that such individual does not wish to be so enrolled,

"(C) if the individual is enrolled in an endorsed discount card program during 2004, the individual will be permitted to change enrollment under subsection (c)(1)(C)(ii) for 2005; and

"(D) there is no obligation to use the endorsed discount card program or transitional assistance when purchasing prescription drugs."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2071).

By Mr. SPECTER:

S. 2695. A bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to expand the definition of firefighter to include apprentices and trainees, regardless of age or duty limitations; read the first time.

Mr. SPECTER. Mr. President, I seek recognition today to introduce the Christopher Kangas Fallen Firefighter Apprentice Act, a bill designed to correct a flaw in the current definition of "firefighter" under the Public Safety Officer Benefits Act.

On May 4, 2002, 14-year-old Christopher Kangas was struck by a car and killed while he was riding his bicycle in Brookhaven, PA. The local authorities later confirmed that Christopher was out on his bike that day for an important reason: Chris Kangas was a junior firefighter, and he was responding to a fire emergency.

Under Pennsylvania law, 14- and 15-year-olds such as Christopher are permitted to serve as volunteer junior firefighters. While they are not allowed to operate heavy machinery or enter burning buildings, the law permits them to fill a number of important support roles, such as providing first aid. In addition, the junior firefighter program is an important recruitment tool for fire stations throughout the Commonwealth. In fact, prior to his death Christopher had received 58 hours of training that would have served him well when he graduated from the junior program.

It is clear to me that Christopher Kangas was a firefighter killed in the line of duty. Were it not for his status as a junior firefighter and his prompt response to a fire alarm, Christopher would still be alive today. Indeed, the Brookhaven Fire Department, Brookhaven Borough, and the Com-

monwealth of Pennsylvania have all recognized Christopher as a fallen public safety officer and provided the appropriate death benefits to his family.

Yet while those closest to the tragedy have recognized Christopher as a fallen firefighter, the Federal Government has not. The Department of Justice announced that Christopher Kangas was not a "firefighter," and therefore not a "public safety officer" for purposes of the Public Safety Officer Benefits Act. The DOJ based its determination on an arbitrarily narrow definition of "firefighter," deciding that the only people who qualify as firefighters are those who play the starring role of spraying water on a fire or entering a burning building. According to this definition, those who play the essential supporting roles of directing traffic, performing first aid, or dispatching fire vehicles apparently don't count.

Any firefighter will tell you that there are many important roles to play in fighting a fire beyond operating the hoses and ladders. Firefighting is a team effort, and everyone in the Brookhaven Fire Department viewed young Christopher as a full member of their team.

As a result of this DOJ determination, Christopher's family will not receive a \$267,000 Federal line-of-duty benefit. In addition, Christopher will be barred from taking his rightful place on the National Fallen Firefighters Memorial in Emmitsburg, MD. For a young man who dreamed of being a firefighter and gave his life rushing to a fire, keeping him off of the memorial is a particularly cruel blow.

The bill I introduce today will ensure that the Federal Government will recognize Christopher Kangas and others like him as firefighters. The bill clarifies that all firefighters will be recognized as such "regardless of age, status as an apprentice or trainee, or duty restrictions imposed because of age or status as an apprentice or trainee." The bill applies retroactively back to May 4, 2002 so that Christopher can benefit from it.

My bill is a companion to H.R. 4472, introduced by Congressman CURT WELDON, Congressman WELDON, who is himself a former fireman and fire chief, is chairman of the Congressional Fire Services Caucus. There is no one in Congress better suited to understand this situation than Congressman WELDON, and I am honored to join him in the effort to right this wrong.

I am submitting together with this bill a request under Senate rule XIV that the bill be placed directly on the Senate calendar and not be referred to committee. This is a noncontroversial, technical bill. I hope that my colleagues will join me in ensuring its speedy passage into law.

By Mrs. HUTCHISON:

S. 2697. A bill to authorize the President to posthumously award a gold medal on behalf of the Congress to the

seven members of the crew of the space shuttle *Columbia* in recognition of their outstanding and enduring contributions to the Nation; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. HUTCHISON. Mr. President, I rise today to introduce a bill to honor seven individuals who last year made the ultimate sacrifice. The crew of flight STS-107 was tragically lost aboard the space shuttle *Columbia* on February 1, 2003. Debris from the vehicle was found in several cities and towns in my home State of Texas, where memorials will be raised to the mission's memory.

Commander Rick Husband, Pilot William McCool, Payload Specialist Michael Anderson, Mission Specialists Kalpana Chawla, David Brown and Laurel Clark, and Payload Specialist Ilan Ramon, Israel's first astronaut, admirably exemplified our commitment to human space exploration. These men and women labored for years to join the select group of NASA astronauts. Their 16-day mission was dedicated to research in physical, life, and space sciences. They conducted approximately 80 separate experiments comprised of hundreds of samples and tests, for 24 hours a day in alternating shifts. This selfless toil has repeatedly formed the basis of NASA's significant discoveries about our universe.

The *Columbia* crew, by participating in this effort, fully endorsed manned space exploration, which has been among NASA's missions since its inception in 1958. Beginning with NASA's earliest Mercury, Gemini, and Apollo missions which first put men on the moon, to this year's Mars rovers, the benefits of space technology are far-reaching and affect the lives of every American. The work of people like those lost last year has led to myriad tangible benefits here on Earth, such as the life-saving CAT Scan. This very American desire to cross frontiers and explore our surroundings drives critical innovation and development, and it does not exist without people like those we commemorate today.

I believe these cherished husbands and wives, sons, daughters, parents, and friends deserve to be counted among another exclusive number. For their bravery, dedication, audacity, and perseverance, these astronauts should be posthumous recipients of the Congressional Gold Medal, which is awarded as the highest expression of national appreciation for distinguished achievements and contributions. According to convention, this measure must be cosponsored by 67 Senators before it can be considered, and I am certain my colleagues hold the *Columbia* crew in the same high regard as I do. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2697

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

#### SECTION 1. FINDINGS.

The Congress makes the following findings: (1) On Saturday, February 1, 2003, the space shuttle *Columbia* exploded upon re-entering the atmosphere following a 16-day mission.

(2) Before the *Columbia* started its tragic descent, the shuttle crew completed some 80 scientific experiments and much of their research data had already been relayed to Houston where it has added to the pool of scientific knowledge.

(3) The Nation pays tribute to the memory of Colonel Rick Husband, Lieutenant Colonel Michael Anderson, Commander Laurel Clark, Captain David Brown, Commander William McCool, Dr. Kapana Chawla, and Ilan Ramon, a colonel in the Israeli air force. The diversity of crew represented the ideals of our Nation.

(4) These seven courageous explorers paid the ultimate price to improve our understanding of the universe, to advance our medical and engineering sciences, to make the Nation safer and more secure, and to keep the United States economy on the cutting edge of technology.

#### SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President is authorized, on behalf of the Congress, to award a gold medal of appropriate design to each of the seven crew members of the space shuttle *Columbia*—

- (1) Rick D. Husband;
- (2) Michael P. Anderson;
- (3) Laurel Clark;
- (4) David M. Brown;
- (5) William C. McCool;
- (6) Kapana Chawla; and
- (7) Ilan Ramon.

(b) DESIGN AND STRIKING.—For the purpose of the presentation referred to in subsection (a), the Secretary of the Treasury shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

#### SEC. 3. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 2 under such regulations as the Secretary may prescribe, and at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

#### SEC. 4. NATIONAL MEDALS.

The medals struck under this Act, are national medals for purposes of chapter 51 of title 31, United States Code.

#### SEC. 5. FUNDING.

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprise Fund an amount not to exceed \$30,000 to pay for the cost of the medals authorized by this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 2698. A bill to amend title XVIII of the Social Security Act to revoke the unique ability of the Joint Commission for the Accreditation of Healthcare Organizations to deem hospitals to meet certain requirements under the Medicare program and to provide for greater accountability of the Joint Commission to the Secretary of Health and

Human Services; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise today to speak to an issue that is vitally important—hospital safety. For too long, the Federal Government has not had the appropriate oversight authority to assure safety in our Nation's hospitals.

I am proud to introduce the Medicare Hospital Accreditation Act, bipartisan legislation that will give the Centers for Medicare and Medicaid Services (CMS) the same oversight capacity over hospital accreditation that it has over all other health care accrediting bodies.

The Joint Commission for Accreditation of Health Organizations (JCAHO) is a private, not-for-profit organization. In 1965 Congress granted JCAHO "deeming authority" for Medicare certification under Section 1865 of the Social Security Act. This sweeping authority gave hospitals accredited by JCAHO the ability to participate in Medicare with minimal CMS oversight. Since then, JCAHO has accredited most of our Nation's hospitals—over 80 percent in 2002. No other health care accreditation program has had this same statutory exception.

Congress gave JCAHO an important role to detect and correct problems that directly affect the lives of patients in hospitals. Congress, CMS and in turn the American people, rely upon JCAHO's work to ensure the quality and safety in our Nation's hospitals.

JCAHO's own mission claims to continuously improve the safety and quality of care provided to the public through the provision of health care accreditation.

Unfortunately, JCAHO was entrusted with this responsibility without the necessary checks and balances so crucial to a government responsive to the needs of the people it serves.

This GAO report is only the most recent evidence showing problems with the Joint Commission. In June of 1990, the GAO found that CMS, which was then called the Health Care Financing Administration (HCFA), needed to re-evaluate the criteria used to evaluate the JCAHO's survey process and recommended that HCFA establish a means to detect significant differences between state agency and Joint Commission surveys.

In May of 1991, the GAO published a report titled "Hospitals with Quality-of-Care Problems Need Closer Monitoring" and recommended that HCFA closely monitor the Joint Commission's follow-up of hospital efforts to correct deficiencies it found related to Medicare conditions of participation.

Then in 1999, the Inspector General for the Department of Health & Human Services also raised serious concerns. The IG looked at how well the Joint Commission identified deficiencies in hospitals and found that the Joint Commission's surveys were not likely to identify patterns of deficient care.

Today's GAO findings are likewise significant. Over the course of 3 years—



between 2000 and 2002—500 hospitals were surveyed by both JCAHO and by a state survey agency on behalf of CMS. According to the GAO, a comparison of these surveys revealed that the state surveys often found serious deficiencies—serious deficiencies that went overlooked or unnoticed by JCAHO.

In fact, the GAO found that out of the 157 hospitals found with serious deficiencies, JCAHO identified only 34. In other words, compared to state surveyors, JCAHO missed hospitals with deficiencies 78 percent of the time.

A hospital that prepared and administered drugs in violation of federal and state laws is just one example of a serious deficiency found by a state agency, but missed by JCAHO in its 2000 survey.

Serious deficiencies found by state agencies but missed by JCAHO represent a pattern of deficient care—not merely isolated incidents. Unlike isolated incidents, a pattern of deficient care raises grave concerns because of the potential to place dozens of lives in danger, involving for example a floor or entire wing where many hospital patients are receiving their care.

Because JCAHO's hospital "deeming authority" is statutorily mandated, CMS cannot terminate this authority. Today, we are taking the first step to give CMS the same oversight capability over JCAHO that it has over all other health care accrediting organizations.

This legislation will give CMS the authority and responsibility to hold JCAHO accountable and, if necessary, restrict or remove its hospital accreditation authority. It will bring uniformity to the health care accreditation process and will provide a more effective chain-of-command. JCAHO will have to answer to CMS—as it does in other sectors of health care accreditation.

The GAO recommends that Congress grant CMS greater oversight over JCAHO's hospital accreditation process. CMS agrees. JCAHO agrees. My colleague from across the aisle and across the Capitol, Congressman STARK—who as we speak is introducing the companion bill in the House of Representatives—agrees with this finding.

I urge your support for this much-needed legislation.

Mr. BAUCUS. Mr. President, I rise to call my colleagues' attention to a very important matter—the safety of America's hospitals. This is an issue that affects every State and people of all political beliefs. In an effort to keep American hospitals safe and ensure they provide quality health care, Chairman GRASSLEY and I are introducing the Medicare Hospital Accreditation Act of 2004, which is simultaneously being introduced by our colleagues in the House of Representatives.

As I can attest through personal experience, America's hospitals provide outstanding health care. Every day, thousands of people receive the treat-

ment they need from dedicated and highly competent hospital staffs working in well-run hospitals across the country.

But confidence in our hospitals should not be confused with complacency. Every so often, someone from outside a hospital must come in to each facility and look under the hood, so to speak, to read through patient charts, check clinical practices and to make sure that sprinklers are working and stairways are sound. We have put our trust in accrediting organizations to identify problems in hospitals so that they may be corrected and quality and safety improved.

Most hospitals are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), which has been accrediting hospitals for over 50 years. When JCAHO accredits a hospital, that hospital is deemed to be in compliance with the conditions of participation for Medicare. As today's report by the Government Accountability Office (GAO) shows us, JCAHO's record of identifying problems in hospitals is far from perfect. Furthermore, the GAO points out that government has little oversight authority over JCAHO's hospital accreditation process. Less oversight authority, in fact, compared to accrediting organizations for other kinds of healthcare facilities.

While the GAO's findings are a reason for concern, the report does not mean that American hospitals are unsafe. But it does send a clear message—one that the Congress and the Administration should heed—that there is room for improvement in identifying problems at hospitals. Given my commitment to keep hospitals as safe as possible, I view the GAO's recommendations as a call to action.

Therefore, I am pleased to join Chairman GRASSLEY in introducing legislation to remove JCAHO's unique status as an accreditation body and to give the Centers for Medicare & Medicaid Services (CMS) the same authority over JCAHO's hospital accreditation that it already has with respect to the accreditation of other healthcare facilities. Putting all accrediting organizations on equal footing will result in better accreditation and better healthcare facilities for everyone. Expanding oversight by CMS of JCAHO's hospital accreditation will help improve the process, keep patients safe and ensure that hospitals continue to perform to our expectations.

The legislation we're introducing today is bipartisan and bicameral. I urge my colleagues to join us in co-sponsoring this bill and working together to get it passed.

By Ms. SNOWE:

S. 2699. A bill to deauthorize a certain portion of the project for navigation, Rockland Harbor, Maine; to the Committee on Environment and Public Works.

Ms. SNOWE. Mr. President, I rise today to introduce legislation that

could make the mooring of an historic windjammer fleet in Rockland Harbor a reality by deauthorizing a section of the Federal Navigational Channel that will allow a windjammer wharf to be built. Originally a strong fishing port, Rockland retains its rich marine heritage, and it is one of the fastest growing cities in the Midcoast. Like many of the port cities on the eastern seaboard, Rockland has been forced to confront an assortment of financial and environmental changes, but the city has been able to respond to these challenges in positive and productive ways.

The City of Rockland has hosted the Windjammer fleet since 1955, earning a well-deserved reputation as the Windjammer Capitol of the World. Rockland's Windjammers are now National Historic Landmarks, and as such, are vitally important to both the City and the State. The image of *The Victory Chimes*—a three-masted, gaff-rigged schooner whose National Historic Landmark designation I supported in 1997, and one of five vessels slated to be berthed at the new wharf—graces the 2003 Maine quarter! This beautiful fleet of windjammers symbolizes the great seagoing history of Maine as well as the sense of adventure that we have come to associate so closely with the American experience.

Lermond Cove is perfectly situated in the Rockland Harbor to be the new and permanent home for these cherished vessels. The proposed Windjammer Wharf will also provide a safe harbor from storms, as it is tucked nicely near the Maine State Ferry and Department of Marine Resources piers.

The State of Maine capitalizes on the visual impact of the Windjammers to promote tourism, working waterfronts and the natural beauty that distinguishes our landscape. Over \$300,000 is spent yearly by the Maine Windjammer Association to advertise and promote these businesses. Deauthorizing that part of the Federal navigational channel will clearly trigger significant and unrealized economic gains for the region, providing many beneficial dollars to the local area and the State of Maine. According to the Longwood study, which uses a multiplier of 1.5, the economic impact of this spending is 3.8 million dollars a year. Conservatively, the Windjammers spend over 2.5 million a year in the State.

My hope is that the legislation I am introducing today can be included in the Water Resources Development Act (WRDA), S. 2554, which has been marked up by the Senate Environment and Public Works Committee and awaits floor action. I want to thank the New England Corps of Engineers for their help in drafting the language and working with the Maine Department of Transportation, which runs the state ferry line, and the Rockland city officials, the Rockland Port District, and the Captains of the Windjammer vessels—Mainers and businesspeople with the vision and commitment we need to complete

Windjammer Wharf and create a permanent home for this historic fleet of windjammers in Rockland Harbor.

My legislation is important to the entire Rockland area, to the economy of my State of Maine, and important as a living history of a long held tradition in the Northeastern part of the country bordering the Atlantic Ocean where eyes have traditionally turned to the sea, fixed on hope and the horizon, and a way of life.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 408—SUPPORTING THE CONSTRUCTION BY ISRAEL OF A SECURITY FENCE TO PREVENT PALESTINIAN TERRORIST ATTACKS, CONDEMNING THE DECISION OF THE INTERNATIONAL COURT OF JUSTICE ON THE LEGALITY OF THE SECURITY FENCE, AND URGING NO FURTHER ACTION BY THE UNITED NATIONS TO DELAY OR PREVENT THE CONSTRUCTION OF THE SECURITY FENCE

Mr. SMITH (for himself, Mr. ALEXANDER, Mr. BOND, Mr. BUNNING, Mr. CHAMBLISS, Mrs. CLINTON, Mr. COLEMAN, Ms. COLLINS, Mr. CORZINE, Mr. CRAPO, Mrs. DOLE, Mr. FITZGERALD, Mr. LIEBERMAN, Mr. LUGAR, Mrs. MURRAY, Mr. SCHUMER, Mr. WYDEN, Mr. DEWINE, Ms. MIKULSKI, and Mr. ALLARD) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 408

Whereas the United Nations General Assembly requested the International Court of Justice to render an opinion on the legality of the security fence being constructed by Israel to prevent Palestinian terrorists from entering Israel;

Whereas, on February 23, 2004, the International Court of Justice commenced hearings on the legality of the security fence;

Whereas, on July 9, 2004, the International Court of Justice issued an advisory opinion that was critical of the legality of the security fence and that accused Israel of violating its international obligations;

Whereas the security fence is a necessary and proportional response to the campaign of terrorism by Palestinian militants;

Whereas, throughout Israel, the West Bank, and Gaza, terrorist groups have sent suicide bombers to murder Israeli civilians in buses, cafes, and places of worship, have used snipers to shoot at Israeli civilians in their homes and vehicles and even in baby carriages, and have invaded homes and seminaries in order to carry out acts of terrorism;

Whereas Palestinian terrorists routinely disguise themselves as civilians, including as pregnant women, hide bombs in ambulances, feign injuries, and sequence bombs to kill rescue workers responding to an initial attack;

Whereas a security fence has existed in Gaza since 1996 and that fence has proved effective at reducing the number of terrorist attacks and prevented many residents of Gaza from crossing into Israel to carry out terrorist attacks;

Whereas, from the onset of the Palestinian campaign of terror against Israel in Sep-

tember 2000, until the start of the construction of the fence in July 2003, Palestinian terrorists based out of the northern West Bank carried out 73 attacks in which 293 Israeli were killed and 1,950 were wounded, and during the period since construction began, from August 2003 through June 2004, only 3 attacks were successfully executed, 2 of which were executed by terrorists coming from areas where the fence was not yet completed;

Whereas this reduction in number of attacks represents a 90 percent decline since construction of the security fence commenced;

Whereas, on June 30, 2004, Israel's High Court of Justice issued a dramatic ruling that supported the need for the security fence to fight terror, but ruled that its route must take into account Palestinian humanitarian concerns, thus reinforcing the central role that the rule of law plays in Israeli society;

Whereas United Nations Security Council Resolution 242 (November 22, 1967) and United Nations Security Council Resolution 338 (October 22, 1973) require negotiated settlement of the Israeli-Palestinian conflict, including the demarcation of final borders and recognition of the right of Israel to "secure and recognized boundaries";

Whereas, according to international law and as expressly recognized in Article 51 of the Charter of the United Nations, all countries possess an inherent right to self-defense;

Whereas the security fence and associated checkpoints are crucial to detecting and deterring terrorists among the Palestinian civilian population;

Whereas there is concern that the International Court of Justice is politicized and critical of Israel;

Whereas construction of the security fence does not constitute annexation of disputed territory because the security fence is a temporary measure and does not extend the sovereignty of Israel;

Whereas the security fence is permitted under the Declaration of Principles on Interim Self-Government Arrangements, signed at Washington September 13, 1993, between Israel and the P.L.O. (hereinafter referred to as the "Oslo Accord") in which Israel retained the right to provide for security, including the security of Israeli settlers;

Whereas the case regarding the legality of the security fence in the International Court of Justice violates the principles of the Oslo Accord that require that all disputes between the parties be settled by direct negotiations or by agreed-upon methods; and

Whereas the United States, Korea, and India have constructed security fences to separate such countries from territories or other countries for the security of their citizens: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes Israel's right of self-defense against Palestinian terrorist attacks, and supports the construction of a security fence, the route of which, with the support of the Government of Israel, takes into account the need to minimize the confiscation of Palestinian land and the imposition of hardships on the Palestinian people;

(2) condemns the decision of the International Court of Justice on the legality of the security fence; and

(3) urges the United States to vote against any further United Nations action that could delay or prevent the construction of the security fence and to engage in a diplomatic campaign to persuade other countries to do the same.

#### SENATE RESOLUTION 409—ENCOURAGING INCREASED INVOLVEMENT IN SERVICE ACTIVITIES TO ASSIST SENIOR CITIZENS

Mr. BAYH submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 409

Whereas approximately 13,000,000 individuals in the United States have serious long-term health conditions that may force them to seek assistance with daily tasks;

Whereas 56 percent of the individuals in the United States with serious long-term health conditions are age 65 or older;

Whereas the percentage of the population over the age of 65 is expected to rise from 13 percent in 2004 to 20 percent in 2020;

Whereas the number of individuals entering the workforce and the number of health care professionals with geriatric training are not keeping pace with the changing demographics;

Whereas medicaid paid for 51 percent of total long-term care spending in 2002, as compared to the 15 percent of total long-term care spending paid by medicare;

Whereas the long-term care system of the United States, funded largely with Federal and State dollars, will have difficulty supporting the coming demographic shift;

Whereas 80 percent of seniors live at home or in community-based settings;

Whereas 3,900,000 people of the United States who are over age 65 receive long-term care assistance in home and community settings;

Whereas 65 percent of seniors who need long-term care rely exclusively on friends and family, and another 30 percent rely on a combination of paid caregivers and friends or family;

Whereas 15 percent of all seniors over the age of 65 suffer from depression;

Whereas studies have suggested that 25 to 50 percent of nursing home residents are affected by depression;

Whereas approximately 1,450,000 people live in nursing homes in the United States;

Whereas by 2018 there will be 3,600,000 seniors in need of a nursing home bed, which will be an increase of more than 2,000,000 from 2004;

Whereas as many as 60 percent of nursing home residents do not have regular visitors;

Whereas older patients with significant symptoms of depression have significantly higher health care costs than seniors who are not depressed;

Whereas people who are depressed tend to be withdrawn from their community, friends, and family;

Whereas the Corporation for National and Community Service (CNS) Senior Corps programs currently provide seniors with the opportunity to serve their communities through the Retired and Senior Volunteer Program, Foster Grandparent Program, and Senior Companion Program;

Whereas through the Senior Companion Program in particular, in the 2002 to 2003 program year, more than 17,000 low-income seniors volunteered their time assisting 61,000 frail elderly and homebound individuals who have difficulty completing daily tasks;

Whereas numerous volunteer organizations across the United States enable Americans of all ages to participate in similar activities;

Whereas Faith in Action, 1 volunteer organization, brings together 40,000 volunteers of many faiths to serve 60,000 homebound people with long-term health needs or disabilities across the country, 64 percent of whom are 65 years of age or older;