STATEMENTS ON INTRODUCED
BILLS AND JOINT RESOLUTIONS

By Mr. GREGG (for himself, Mr. FRIST, Mr. SESSIONS, Mr. DEWINE, Mr. ALLEN, Mr. SANTORUM, Mr. MCCONNELL, and Mr. DEMINT):

S. 9. A bill to improve American competitiveness in the global economy by improving and strengthening Federal education and training programs, and for other purposes; to the Committee on Finance.

Mr. ENZI. Mr. President, last week we had an opportunity to be a part of a truly historic event. As we gathered together on the west front of the Capitol, a huge crowd joined us along the Mall and down Pennsylvania Avenue to witness the inauguration of President Bush. It was a great moment for America as the President took his oath of office. Later, in what was one of the best inaugural speeches I have ever heard, he outlined his vision for the future and the theme for his second term.

It filled my heart with pride to hear him speak about freedom and the role America would continue to play in helping to brighten the darkest regions of the world. As he spoke, I was pleased to hear him also renew, his commitment to our Nation’s education system and to bringing the highest standards to our schools. The President made it clear that such an important part of making sure that every American has a stake in our future as a nation. Without it, the American dream that we have shared for over a hundred years may be reduced to a nightmare for future generations.

Clearly, we can’t allow that to happen. That is why I am pleased to join, with the distinguished majority leader, Dr. FRIST, and my friend and colleague, from Tennessee, Senator ALEXANDER, in introducing legislation we have written to address that need and ensure a brighter future for our children. Among the goals our legislation seeks to address is the importance of strengthening our public education system, ensuring parents are involved in the process and, above all, giving our teachers the support they need to obtain the results we must have if our children are to have the best chance to succeed in life.

The legislation I am introducing today continues the work we began with the passage of the No Child Left Behind Act. That bipartisan legislation made it clear that we had high expectations for all public school children. It made clear that we expected our nation’s schools to meet the center of our Federal education policy. That policy has had good results. Children all over the country, including minority children, are improving their reading skills. Their math scores are getting better. In another year, when students are included in the State assessments, I believe we will see that students are doing better in that subject, too. Thanks to the passage of the No Child Left Behind Act that we all had a hand in, we are continuing to see more and more positive results in our schools.

Although our record of success is impressive, there is still room for more improvement. According to the most recent National Assessment of Education Progress, over 25 percent of twelfth grade students could not read at grade level. Only two-thirds of students entering the ninth grade are expected to complete high school within 4 years. That is a clear threat to our future, but it need not be so if we stick to the goals we have set and work to achieve them.

We want to make sure we continue to set high expectations of what all students can achieve, regardless of their background. This needs to be a common theme in all our Federal education programs. All students can learn and every child can be a star pupil. It is not just a slogan. It is a philosophy that our teachers need to put into practice every day in the classroom. It must then be echoed by every student’s parents each evening at home at the dinner table.

We need to make sure Federal programs emphasize accountability, but we also need to make sure we do it in a way that makes sense. Mr. President, we have a huge number of students who live in rural States like Wyoming that make sense. Mr. President, we have a huge number of students who live in rural States like Wyoming. They can’t be administered like the large schools of the big cities in the East. One-size-fits-all policies that may work in large population centers are all too often doomed to fail in the smaller towns and cities of the West.

Although funding will be a key in the effort to address these issues, the Federal Government provides only a fraction of education spending in this country. For K-12 education, the Federal investment is still around 8 percent. The rest of the money comes from States and local districts. We need to trust these educators and administrators to work on behalf of the children in their charge. We must ensure they have the tools they need to serve their students and help all children in their area succeed.

We also want to support lifelong learning opportunities for students at every stage in their life. Education is
changing; the way we approach learning has to change as well. Federal pro-
grams should reflect these changes and help our students adapt to them. Las-
gar, more than 70 percent of college students were considered “non-tradi-
tional.” Our education system needs to address the needs of adult learners, as well as children who take the more “traditional” track in education.

We want to create a strong link be-
 tween education and the workforce. Businesses are creating and filling good jobs with good candidates, and we want to make sure we are filling those jobs with American workers.

In our technology-driven economy, school can never be out. It is estimated that 60 percent of tomorrow’s jobs will require skills that only 20 percent of today’s workers possess. It is also esti-

dated that the average worker leaving college today will switch careers 14 times in their life, and 10 of those ca-

careers haven’t been invented yet.

To meet those needs, we need a system in place that can support a life-
time of education, training, and re-
training. As tomorrow’s workers change careers, they will need to learn new skills, or to apply their current skills in new ways. Our postsecondary institutions will play a critical role in suppor-
ting these students, as they do now through a number of Federal edu-
cation programs.

High school dropouts are the most at-risk school population in the work-
force. We must look at Federal efforts to reform high schools to make sure we are keeping students in school. We need to make sure that students are leaving high school with a diploma, a quality education, and the strong foun-
dation of reading, writing, math and science skills that will help them suc-
ceed in the workforce. We must also reach out to those who do not have high school diplomas to give them an opportunity to increase the level of their skills so that they, too, have a chance to succeed in life. We can do that by increasing their awareness of and involvement in lifetime of learning programs.

In this bill, we have also included language to reauthorize the Workforce Investment Act. That will help an esti-

mated 900,000 unemployed workers each year get back to work and provide American workers with the skills they will need to compete for and win the jobs of tomorrow and keep them.

By Mr. LEVIN (for himself, Mr. REID, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. DORGAN, Mr. LAUTenberg, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mrs. MURRAY, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. DURBIN, Mr. KENNEDY, Mr. CORZINE, Mr. PYOR, Mr. NEL-

son of Nebraska, Mr. REED, Mr. SCHUMER, and Mr. DAYTON):

S. 11. A bill to amend title 10, United States Code, to ensure that the strength of our forces and the protec-
tions and benefits for members of the Armed Forces and their families are adequate for keeping the commit-
tement of the people of the United States to support their service members, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, I am hon-
ored to introduce the Standing with Our Troops Act of 2005. This bill ad-
resses the needs of the Soldiers, Sail-
ors, Airmen, and Marines who have re-

sponded so bravely to the call of our Nation. We owe it to them and their families to ensure that they are prop-
erly trained and equipped for the haz-

ardous duties they are performing, that they are fairly compensated for their service, and that they receive their pay in the correct amount, on time.

We start with the recognition that we have cut our troop strength too far and for the wrong reasons. We have cut our troop strength too far and on the use of stop-loss to keep military personnel in the service be-


ond their service commitments.

We know that current military opera-
tions are wearing out military equip-
ment faster than we are replacing it. To address this, this bill would require the Secretary of Defense to report to Congress on the needs of our military forces for reconstituting stocks of equipment and material damaged, de-

structed and worn out in Operation Iraqi Freedom and Operation Enduring Freedom. The report will include the needs of each military service, includ-
ing the reserve components, for repair and replacement of equipment, and au-

thorize appropriation of $8.5 billion for the Army and $2.1 billion for the Ma-

rines for repair, refurbishment, and replacement of equipment used in OIF and OEF.

The Government Accountability Of-

fice (GAO) found, and I agree, that the Department of Defense’s mobilization and deployment policies were imple-
mented in a piecemeal fashion not linked to a strategic framework. We owe it to our service men and women to have clear policies regarding lengths of deployments. The Department of De-

fense must clearly communicate these policies and other deployment related information to service members and their families. This bill would require the Secretary of Defense to report to Congress on DoD policies on lengths of deployments and on the use of stop-loss to keep military personnel in the service be-

yond their service commitments.

As we work on this and other edu-
cation legislation, we must ensure that we are focused on the best results that will help our children succeed in life. We can do that by incorporating high expectations, accountability, flexi-

bility for our States in administering Federal assistance, and a lifetime of learning opportunities, into our edu-
cation policies. If we do that, every child’s life will be a success story and everyone will have the freedom to live their own version of the American dream.

As we continue to work on improving our Nation’s education system, an edu-
cated citizenry will continue to be our goal. It will never be enough to provide our children with a diploma. We must provide them with the skills they will need to compete for and win the jobs of tomorrow and keep them.
In two separate reports, the GAO has found that more than 90 percent mobilized reserve component personnel experienced pay problems. The GAO found that “These pay problems often had a profound adverse impact on individual and their families.” This bill would require the designation of a senior official to ensure implementation of GAO recommendations to correct these pay problems.

Representation of our reserve components at the highest levels in the Department of Defense would keep pace with the increased role of our Guard and Reserve personnel. According, this bill creates a new position, a Deputy Under Secretary of Defense for Reserve Affairs, to speak for the Reserve Components.

This bill would give tax relief to mobilized service members and employers who make up for pay lost to service members who are ordered to active duty. It would amend the Internal Revenue Code to authorize active National Guard and Reserve personnel to make penalty free withdrawals from qualified retirement plans; allow employers a tax deduction for making up the difference between military pay and civilian income of mobilized reservists; and authorize a tax credit to small business employers who continue to compensate members of the Ready Reserve ordered to active duty and for costs of hiring a replacement employee.

We know that the military pay of about a third of our mobilized National Guard and Reserve personnel is less than the pay they received from their civilian jobs. Many private employers already pay a wage differential to those who lose money, and we will encourage more to do so with the tax incentives I have just described. The biggest employer of our Guard and Reserve personnel is the Federal Government. The Federal Government should do as much as the private employers do for those who lose money while serving our Nation. This bill would require Federal Agencies to make up the pay differences for Federal employees who are ordered to active duty.

Studies have shown that 40 percent of our junior enlisted members in the reserve components have no health insurance except when they are on active duty and provide coverage to the military’s TRICARE health care program for all members of the Selected Reserve and their families. They would pay a subsidized premium similar to the premium charged Federal Employees for health care. This will help to ensure that members of the National Guard and Reserves are medically ready when called to serve in the military.

When a Soldier, Sailor, Airmen or Marine dies on active duty, his survivors currently receive a death gratuity of just over $12,000. This is simply not enough. This bill would raise the death gratuity to $100,000, and would allow survivors to receive Dependency and Indemnity Compensation from the VA as well as a Survivor Benefit Plan annuity from the Department of Defense.

United States taxpayers have borne a disproportionate share of the cost for the reconstruction of Iraq. The support of the international community for this reconstruction is critical. This bill would require the President to report to Congress on U.S., Iraqi, and foreign contributions to Iraq’s reconstruction before any new U.S. funds are appropriated. The bill would also require any U.S. funds for reconstruction in Iraq be in the form of a collateralized loan which the U.S. would guarantee unless the President reports to Congress that it is in the U.S. national security interest to provide the funds other than in the form of a loan.

I again want to compliment the service of the young men and women serving our armed forces for their magnificent and unselfish service to our Nation. I trust that the measures included in this bill will serve as a token of the Nation’s sincere appreciation for their great sacrifices and service.

S. 11
Be 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 “Standing With Our Troops Act of 2005”.

DIVISION A—FULFILLMENT OF OBLIGATIONS TO THE MEMBERS OF THE ARMED FORCES

TITLE I—STRENGTHS OF THE ARMY AND MARINE CORPS ACTIVE FORCES

SEC. 101. FINDINGS.
Congress makes the following findings:
(1) While the United States Armed Forces remain the preeminent force in the world, the Defense Science Board, in a study carried out in the summer of 2004, found that “When we match the existing and projected force structure with the current and projected need for stabilization forces we see an enduring shortfall in both total numbers of people and their ability to sustain the continuity of stabilization efforts.”
(2) Between 1989 and 2004, the military personnel end strength of the Army has been reduced by more than 34 percent, and the Department of the Army’s civilian workforce has been reduced by more than 45 percent, while the mission rate of the Army has increased by 300 percent.
(3) Because of the personnel reductions, the Army National Guard and Army Reserve are increasingly being called to active duty to meet Army mission requirements that the active-duty force is no longer large enough to meet alone. Army National Guard and Army Reserve units have provided up to 40 percent of the military personnel engaged in Operation Iraqi Freedom while they have also been performing a dramatically increased role in homeland defense and continuing to respond to natural disasters, international peacekeeping, and military contingencies. As a result, the reserve components of the Army have been pushed to the breaking point.

SEC. 102. ARMY
(a) STRENGTH FOR FISCAL YEAR 2006.—Effective on October 1, 2005, section 691(b)(1) of title 10, United States Code, is amended by striking “$522,400” and inserting “$522,400”.
(b) STRENGTH FOR FISCAL YEARS AFTER FISCAL YEAR 2006.—Effective on October 1, 2006, section 691(b)(1) of such title is amended by striking “$522,400” and inserting “$522,400”.

SEC. 103. MARINE CORPS.
(a) STRENGTH FOR FISCAL YEAR 2006.—Effective on October 1, 2006, section 691(b)(1) of such title is amended by striking “$178,000” and inserting “$183,000”.
(b) STRENGTH FOR FISCAL YEARS AFTER FISCAL YEAR 2006.—Effective on October 1, 2006, section 691(b)(1) of such title is amended by striking “$183,000” and inserting “$188,000”.

TITLE II—FULL RECOGNITION OF SACRIFICE AND VALOR OF UNITED STATES SERVICEMEMBERS

Subtitle A—Findings
SEC. 201. FINDINGS.
Congress makes the following findings:
(1) On November 21, 2004, the Columbia Broadcasting System television program 60 Minutes reported that the staff of that program had received from the Department of Defense a letter containing the assertion that more than 15,000 troops with so-called ‘non-battle’ injuries and diseases have been evacuated from Iraq.
(2) This report was a rare disclosure by the Department of Defense, as it is the policy of the Department of Defense not to disclose publicly the number of Armed Forces personnel that sustain non-combat injuries.

Subtitle B—Accounting for Casualties Incurred in the Prosecution of the Global War on Terrorism
SEC. 211. MONTHLY ACCOUNTING.
Not later than five days after the end of each month, the Secretary of Defense shall publish, for such month for each operation described in section 212, a full accounting of the casualties among the members of the Armed Forces that were incurred in such operation during that month.

SEC. 212. OPERATIONS COVERED.
The operations referred to in section 211 are as follows:
(1) Operation Iraqi Freedom.
(2) Operation Enduring Freedom.
(3) Each other operation undertaken by the Armed Forces in the prosecution of the Global War on Terrorism.

SEC. 213. COMPREHENSIVE CONTENT OF ACCOUNTING.
For the purpose of providing a full and complete accounting of casualties suffered by a report under section 211, the Secretary of Defense shall include in the report the number of casualties in each casualty status in accordance with section 214.

SEC. 214. CASUALTY STATUS.
(a) STATUS TYPES.—In a report under this title, each casualty among members of the Armed Forces shall be characterized by the specific casualty status applicable to the member as follows:
(1) Killed in action.
(2) Killed in non-hostile duty.
(3) Killed, self-inflicted.
(4) Wounded in action, not returned to duty.
(5) Wounded in action, returned to duty (to the extent that data is available to support this characterization of casualty status).
(6) Evacuated for medical reasons.
(b) DEFINITIONS.—In this section:
(1) KILLED IN ACTION.—The term “killed in action”, with respect to a member of the Armed Forces, means that the member incurred one or more mortal wounds while in an active duty status, whether or not the wounds are inflicted by the hostile force.

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(2) KILLED IN NON-HOSTILE DUTY.—The term ‘‘killed in non-hostile duty’’, with respect to a member of the Armed Forces, means that the member incurred one or more mortal wounds that are not self-inflicted and not inflicted during an action against a hostile force.

(3) KILLED, SELF-INFLECTED.—The term ‘‘killed, self-inflected’’, with respect to a member of the Armed Forces, means a suicide of the member or the death of the member as a result of one or more self-inflicted injuries.

(4) WOUNDED IN ACTION, NOT RETURNED TO DUTY.—The term ‘‘wounded in action, not returned to duty’’, with respect to a member of the Armed Forces, means that the member, while involved in an action against a hostile force, incurred one or more non-mortal injuries that required medical attention and that prevented the member from returning to duty within 72 hours after incurring the injury or injuries.

(5) WOUNDED IN ACTION, RETURNED TO DUTY.—The term ‘‘wounded in action, returned to duty’’, with respect to a member of the Armed Forces, means that the member, while involved in an action against a hostile force, incurred one or more non-mortal injuries that required medical attention but did not prevent the member from returning to duty within 72 hours after incurring the injury or injuries.

(6) EVACUATED FOR MEDICAL REASONS.—The term ‘‘evacuated for medical reasons’’, with respect to a member of the Armed Forces, means that the member, while involved in an action against a hostile force, incurred one or more non-mortal injuries that required medical attention but did not prevent the member from returning to duty within 72 hours after incurring the injury or injuries.

SEC. 215. PUBLICATION AND RELEASE OF REPORT.
The Secretary of Defense shall—

(1) post the report under this title on the official website of the Department of Defense; and

(2) transmit a copy of the report to the chairman and ranking members of the Committees on Armed Services of the Senate and the House of Representatives.

SEC. 216. SENSE OF CONGRESS.
It is the sense of Congress that the Secretary of Defense has an obligation to ensure full and accurate reporting of casualties among the members of the Armed Forces to Congress and the people of the United States.

Subtitle C—Advisory Panel on Military Awards and Decorations

SEC. 221. ESTABLISHMENT.
The Secretary of Defense shall establish within the Department of Defense an Advisory Panel on Military Awards and Decorations.

SEC. 222. DUTIES.
(a) COMPREHENSIVE REVIEW OF MILITARY DECORATIONS SYSTEM.—The Advisory Panel shall conduct a comprehensive review of the standards and processes used in the Armed Forces to award medals and decorations to members of the Armed Forces. The review shall include the following matters:

(1) An examination and evaluation of the standards of each of the Armed Forces for awarding each medal and decoration.

(2) A comparison of the standards of each of the Armed Forces with the standards of each of the other Armed Forces for awarding comparable medals and decorations.

(3) An examination and evaluation of the speed with which—

(A) The Armed Forces identifies and considers members for the awarding of medals and decorations; and

(B) The medals and decorations are ultimately awarded.

(4) A review of the medals and decorations awarded by the Armed Forces during 2002, 2003, and 2004, together with a review of the ranks of the recipients and the mission-related and other circumstances that are associated with the awarding of the medals and decorations to those recipients.

(b) REPORT.—

(1) REQUIREMENT FOR REPORT.—Not later than 18 months after the date of the enactment of this Act, the Advisory Panel shall submit a report on the results of the review under this section to the Secretary of Defense and to Congress.

(2) CONTENTS.—The report under this sub-section shall contain the findings and conclusions of the Advisory Panel together with any recommendations for action that the panel considers appropriate, and shall include the following matters:

(A) A discussion of the merits of maintaining for each of the Armed Forces separate policies for the awarding of comparable medals and decorations of the Armed Forces, together with a discussion of the merits of adopting uniform standards for awarding such medals and decorations.

(B) Measures that can be taken by each of the Armed Forces to expedite the process for timely identifying a member who deserves a medal or decoration and the appropriateness of awarding the medal or decoration to the member, and, in each appropriate case, awarding the medal or decoration to the member.

(C) Measures that can be taken to ensure that—

(i) members serving in combat are at least equally as likely to be considered for the awarding of medals and decorations as are personnel not exposed to combat; and

(ii) enlisted personnel are at least as likely to be considered for the awarding of medals and decorations as are officers.

(D) A recommendation regarding whether the Valor device awarded by each of the Armed Forces to members of a separate rate class of medals honoring special bravery in combat.

(E) A determination of the desirability of adding a new class of medals, similar to the Purple Heart, to be awarded to military personnel who incur non-combat injuries in connection with performance of an official mission or duty in combat operation in order to honor their sacrifice in service to the people of the United States.

(c) SCOPE LIMITED TO DEPARTMENT OF DEFENSE.—The scope of the review and report under this section does not include the Coast Guard.

SEC. 223. COMPOSITION AND ADMINISTRATION.
(a) COMPOSITION.—The Advisory Panel shall be composed of not more than seven members appointed by the Secretary of Defense.

(b) GENERAL AND FLAG OFFICERS.—The Secretary shall ensure that the membership of the task force includes a retired general or flag officer of the Army, the Marine Corps, the Air Force, and the Navy who is familiar with the policies of the Armed Forces regarding military awards and decorations.

(c) VETERANS.—The Secretary shall appoint at least one representative of a leading veterans’ advocacy organization as a member of the Advisory Panel.

(d) TIME FOR APPOINTMENT.—All members of the Advisory Panel shall be appointed within 60 days after the date of the enactment of this Act.

SEC. 224. COOPERATION OF FEDERAL AGENCIES.
(a) INFORMATION.—The Advisory Panel may obtain directly from the Department of Defense, the Department of Veterans Affairs, or any other department of the United States any information of such department or agency that the panel considers necessary for the panel to carry out its duties.

(b) OTHER COOPERATION.—The Secretary of Defense, the Secretary of Veterans Affairs, and any other official of the United States shall provide the Advisory Panel with full and timely cooperation requested by the panel in carrying out its duties under this section.

SEC. 225. TERMINATION.
The Advisory Panel on Military Awards and Decorations shall terminate 30 days after the submission of the report to Congress under section 224.

TITLE III—MILITARY EQUIPMENT AND MATERIEL

SEC. 301. FINDINGS.
Congress makes the following findings:

(1) United States military personnel serving in Operations Iraqi Freedom have experienced significant shortages of critical equipment, such as body armor, aircraft survivability equipment, and other equipment, including up- armored High Mobility Multipurpose Wheeled Vehicles. In many cases the shortages have lasted several months. For example, the individual body armor needed for protecting every member of the Armed Forces and Department of Defense civilians in Iraq was not produced and fielded until February 2004, 11 months after Operation Iraqi Freedom was launched. Shortages of armor for Army trucks still existed as of the beginning of 2005.

(2) Operation Iraqi Freedom and Operation Enduring Freedom have taken a substantial toll on military equipment of the Armed Forces. The commanding general of the Army Materiel Command in 2004 said that the Army is wearing out its equipment in Iraq and Afghanistan at a rate that could be up to 10 times faster than the rate at which it wears out its equipment elsewhere during peacetime, and there are no significant reserve stocks of that equipment remaining.

(3) It is a solemn obligation of the United States Government to ensure that, whenever the Armed Forces are called into battle, the military personnel fighting or supporting the battle are provided with the safest, most effective technology and equipment.

SEC. 302. MOBILIZATION PLANNING AND PREPAREDNESS.
(a) DIRECTOR OF MOBILIZATION PLANNING AND PREPAREDNESS.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by striking section 107 and inserting the following new sections:

‘‘SEC. 107. DEFINITIONS.—In this section:

‘‘(1) The term ‘Director’ means the Director of Mobilization Planning and Preparedness referred to in subsection (b)(1), except where the context clearly indicates otherwise.

‘‘(2) The term ‘national security emergency’ means any occurrence, including a
natural disaster, a military or terrorist attack against the territory of the United States, a military operation carried out by the Armed Forces abroad, a technological emergency, and financial emergency, that either seriously degrades or threatens the security of the United States or the Armed Forces.

(3) The term ‘mobilization’ means the act of assembling and organizing national resources, including military personnel and equipment, labor, transportation systems, industrial and financial resources, to support national objectives of the United States in time of a national security emergency.

(4) The term ‘mobilization planning and preparedness’ means planning and preparing for a mobilization for a national security emergency, including the identification of functions that would have to be performed during a national security emergency, development of plans for performing such functions, development of the capability to execute such plans, and development of policies that maximize the speed and efficiency with which such plans can be executed during a national security emergency.

(b) Position of Director.—

(1) Establishment.—There is a Director of Mobilization Planning and Preparedness on the staff of the National Security Council.

(2) Appointment.—The Director is appointed by the President to the President for National Security Affairs.

(c) Relationship to National Security Advisor.—The Director reports directly to the Assistant to the President for National Security Affairs.

(d) Duties.—The duties of the Director include the following:

(A) Identify which governmental and private sector functions must be performed on a sustained basis during a national security emergency.

(B) Develop plans for the sustained performance of the identified functions.

(C) Provide guidance on the development of the capability to execute the plans.

(D) Recommend policies for the maximization of the speed and efficiency with which the plans can be executed during a national security emergency.

(E) Develop planning and policy guidance regarding involvement of the National Guard in 2 or more national security emergency operations concurrently.

(F) Administer quarterly exercises simulating mobilization for various types of national security emergencies, including the following:

(i) A major military operation carried out in and around 1 or more foreign countries.

(ii) An occupation and reconstruction mission.

(iii) A terrorist attack within the United States.

(iv) A natural disaster within the United States.

(v) A major humanitarian crisis in 1 or more foreign countries.

(vi) A minor military intervention in a foreign country.

(2) Specific Duties.—

(A) Mobilization Planning and Preparedness Policy Coordinating Committee.—The Director serves on the Mobilization Planning and Preparedness Policy Coordinating Committee as provided in section 107A.

(B) Department of Defense primary allocation of industrial resources task force.—The Director serves as a member of the Primary Allocation of Industrial Resources Task Force of the Department of Defense.

(C) Office of Mobilization Planning and Preparedness.—

(i) Establishment.—There is an Office of Mobilization Planning and Preparedness within the National Security Council. The Director is the head of the office.

(ii) Composition.—The Office of Mobilization Planning and Preparedness is composed of the following personnel:

(A) Thirty employees appointed by the Assistant to the President for National Security Affairs.

(B) An employee of the Department of Defense, who shall be detailed to the Office by the Under Secretary of Defense for Acquisition, Technology, and Logistics to serve as liaison between the Department of Defense and the Director to ensure that comprehensive and accurate information on the needs of the Armed Forces for equipment and materiel in a national security emergency are timely communicated to the Director.

(D) Certification with National Counterterrorism Center.—

(i) Liasion Officer.—The Director shall detail an employee of the Office to the National Counterterrorism Center to serve as liaison officer between the Director of Mobilization Planning and Preparedness and the Director of the National Counterterrorism Center for the exchange of counterterrorism-related information and issues necessary for effective mobilization planning and preparedness.

(E) Responsibility of the Director of the National Counterterrorism Center.—The Director of the National Counterterrorism Center shall ensure that the liaison officer is accorded the access to the Center as are necessary to ensure that the collaboration between the Director of the National Counterterrorism Center and the Director of Mobilization Planning and Preparedness on counterterrorism-related information and issues is effective.

(3) Annual Report.—

(A) Requirement for report.—The President, acting through the Director, shall submit to Congress each year a report on mobilization planning and preparedness.

(B) Contents.—The annual report under this subsection shall include the following information:

(i) Funding needs for mobilization planning and preparedness.

(ii) An assessment of the state of mobilization planning and preparedness in the United States.

(iii) Any recommended policies on mobilization planning and preparedness that the President, in consultation with the Assistant to the President for National Security Affairs, considers appropriate.

(iv) Mobilization Planning and Preparedness Policy Coordinating Committee.—

‘‘Sec. 107A. (a) Mobilization Planning and Preparedness Defined.—In this section, the term ‘mobilization planning and preparedness’ has the meaning given that term in section 107A.

(b) Establishment.—There is in the executive branch an interagency committee known as the ‘Mobilization Planning and Preparedness Policy Coordinating Committee’.

(c) Composition.—The Committee shall be composed of the following members:

(i) The Director of Mobilization Planning and Preparedness of the National Security Council, who shall chair the committee.


(3) The Under Secretary of State for Economic, Business, and Agricultural Affairs.

(4) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

(5) The Associate Attorney General.

(6) The Assistant Secretary of the Interior for Land and Minerals Management.

(7) The Under Secretary of Commerce for Industry and Security.

(iii) The Deputy Secretary of Labor.

(iv) The Assistant Secretary of Health and Human Services for Public Health Emergency Preparedness.

(v) The Under Secretary of Transportation for Policy.

(iv) The Under Secretary of Energy for Science, and Environment.

(v) The Director of the National Counterterrorism Center.

(c) Consulting Committee.—The consulting Committee referred to in clause (ii) shall consist of not more than 8 members, including—

(iii) A representative from the military services.

(iv) A representative from the Department of Commerce.

(v) A representative from the Department of Transportation.

(vi) A representative from the Department of the Interior.

(vii) A representative from the National Counterterrorism Center.

(iii) The Under Secretary of the Treasury for International Affairs.

(4) Appointment of Members.—The Committee shall be composed by the President in conformance with subsection (b).
(c) FORM OF REPORT.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 304. AUTHORIZATIONS OF APPROPRIATIONS.

(a) ARMY.—Funds are hereby authorized to be appropriated for fiscal year 2005 for (1) the repair, refurbishment, and replacement of equipment used by the Army in Operation Iraqi Freedom or Operation Enduring Freedom, as follows:

(1) PROCUREMENT.—For procurement, $2,500,000,000.

(b) MARINE CORPS.—Fund are hereby authorized to be appropriated for fiscal year 2005 for the repair, refurbishment, and replacement of equipment used by the Marine Corps in Operation Iraqi Freedom or Operation Enduring Freedom, as follows:

(1) PROCUREMENT.—For procurement, $1,500,000,000.

(c) AVAILABILITY THROUGH FISCAL YEAR 2006.—Amounts authorized to be appropriated under this section shall remain available until September 30, 2006.

(d) LIMITATION.—None of the funds appropriated pursuant to an authorization of appropriations in this section may be obligated or expended until the date that is 15 days after the date on which the Secretary of Defense determines its policy regarding the use of the Army for the repair, refurbishment, and replacement of equipment used by the Marine Corps in Operation Iraqi Freedom or Operation Enduring Freedom, as follows:

(1) OPERATION AND MAINTENANCE.—For expenses, not otherwise provided for, for operation and maintenance, $500,000,000.

(2) PROCUREMENT.—For procurement, $2,500,000,000.

(e) LIMITATION ON MOBILIZATION.

Not later than March 1, 2005, the Secretary of Defense shall place particular emphasis in the report under this section, the Secretary of Defense and report to the Committees on Armed Services of the Senate and the House of Representatives a report on—

(1) Department of Defense policies governing the length of mobilization and deployment periods applicable to members of reserve components of the Armed Forces in connection with Operation Iraqi Freedom, and (2) the recommendations for executive action that are set forth in the report of the Comptroller General of the United States entitled “Military Pay, Army Reserve National Guard Personnel Mobilized to Active Duty Experienced Significant Pay Problems”, dated November 2003; and the recommendations for executive action that are set forth in the report of the Comptroller General of the United States entitled “Military Pay, Army Reserve Soldiers Mobilized to Active Duty Experienced Significant Pay Problems”, dated August 2004.

(f) TERMINATION OF REQUIREMENT.

The designation under section 502 shall terminate upon the submission of a certification by the Secretary of Defense that the military pay problems identified in the reports referred to in such section have been eliminated.

TITLE VI—IMPROVED REPRESENTATION OF RESERVE PERSONNEL INTERESTS IN DEPARTMENT OF DEFENSE S201

SEC. 501. FINDINGS.

Congress makes the following findings:

(1) In November 2003, the General Accounting Office reported in connection with a study conducted by that office, that among Army National Guard soldiers “332 of 348 soldiers (95 percent) we audited at 8 case study units that were mobilized, deployed, and demobilized at some time during the period from August 2002 through January 2004 had at least 1 pay problem.”

(2) In August 2004, a study by that office (by then renamed the Government Accountability Office) reported that among Army Reserve soldiers “332 of 348 soldiers (95 percent) were notified of the anticipated demobilization schedule. For example, soldiers were required to spend some time while deployed in remote, hostile environments overseas, seeking help on pay inquiries or in correcting errors in their active duty pays, allowances, and related tax benefits.”

SEC. 502. CORRECTION OF MILITARY PAY PROBLEMS FOR ACTIVATED RESERVE COMPONENT PERSONNEL.

The Secretary of the Army shall designate a senior level official of the Department of the Army to implement the recommendation referred to in such section.

SEC. 503. SUPERVISION BY COMPTROLLER OF DEPARTMENT OF DEFENSE.

The official designated under section 502 shall report directly to, and be subject to the direction of, the Under Secretary of Defense for the Comptroller regarding the performance of the duties that the official is designated to carry out under such section.

SEC. 504. TERMINATION OF REQUIREMENT.

The designation under section 502 shall terminate upon the submission of a certification by the Under Secretary of Defense (Comptroller) to Congress that all recommendations referred to in such section have been implemented.
On September 11, 2001, terrorist attacks and the global war on terrorism have triggered the largest activation of National Guard forces since World War II. As of June 2004, over one-half of the National Guard’s 457,000 personnel had been activated for overseas warfighting or domestic homeland security missions in Federal and State active duty roles. In all, over 400,000 reservists have been mobilized between September 11, 2001, and the beginning of 2005.

SEC. 2102. PENALTY-FREE WITHDRAWALS FROM RETIREMENT PLANS FOR INDIVIDUALS CALLED TO ACTIVE DUTY FOR AT LEAST 179 DAYS.

(a) In General.— (1) Section 402A of the Internal Revenue Code of 1986 (relating to employer payments on behalf of individuals serving in the uniformed services while on active duty for a period of more than 30 days, and (b) EFFECTIVE DATE. —The amendment made by subsection (a) shall apply to remuneration paid after September 11, 2001.

SEC. 2104. TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.

SEC. 2104. TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.

(a) PENSION PLANS.--

(1) In General.--Section 414(u) of the Internal Revenue Code of 1986 (relating to special rules relating to veterans’ reemployment rights under USERRA) is amended by adding at the end the following new paragraph:

(II) such individual was (by reason of being a member of a reserve component) called or ordered to active duty for a period in excess of 179 days or for an indefinite period, and

(b) EFFECTIVE DATE. —The amendment made by subsection (a) shall apply to remuneration paid after September 11, 2001.

DIVISION B—MILITARY FAMILY PROTECTIONS

TITLE XXI—GUARDSMEN AND RESERVISTS FINANCIAL RELIEF

SEC. 2101. FINDINGS.

Congress makes the following findings: 

(1) According to a Government Accountability Office report in November 2004, "The

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shall be treated as a payment of wages by the employer to the employee.

(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term ‘differential wage payment’ means any payment which—

(A) is made by an employer to an individual with respect to any period during which the individual is called or ordered to active duty for a period of more than 30 days, and (B) represents all or a portion of the wages that the individual would have received from the employer if the individual were performing service for the employer.

(b) EFFECTIVE DATE. —The amendment made by subsection (a) shall apply to remuneration paid after September 11, 2001.

(3) Not only has operation tempo dramatically increased for members of the reserve components, meaning that reservists are being called away from their civilian jobs more often, but also the durations of deployments have increased dramatically as well, meaning reservists are being called away from their civilian jobs for longer periods. The Government Accountability Office reported in September 2004 that the average annual days of duty performed by members of the reserve components has risen from approximately 40 days in 1989 to approximately 120 days in 2003. As a consequence of both increased operational tempo and increased duration of deployment has been a far greater loss of income for reservists answering their country’s call to duty.

(4) Reservists are experiencing a large financial loss of income for reservists answering their country’s call to duty.

(5) All told, reservists have reported average losses of $5,000 in income upon activation.

(6) In all, over 400,000 reservists have been mobilized since World War II. As of June 2004, over one-half of the National Guard’s 457,000 personnel had been activated for overseas warfighting or domestic homeland security missions in Federal and State active duty roles. In all, over 400,000 reservists have been mobilized between September 11, 2001, and the beginning of 2005.

(7) While the extent of the role of the reserve components has remained much the same. No new senior leadership positions have been established to manage the reserve components more effectively in the expanded role.

(8) In the affirmative, the Department of Defense approach to managing the reserve components has remained much the same. No new senior leadership positions have been established to manage the reserve components more effectively in the expanded role.

(9) The amendments—

SEC. 2103. INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.

(a) In General.--Section 3401 of the Internal Revenue Code of 1986 (relating to differential wage payments on reasonably equivalent terms to active duty for a period of more than 30 days, and (b) EFFECTIVE DATE. —The amendment made by subsection (a) shall apply to distributions after September 11, 2001.

(1) Differential Wage Payments to Active Duty Members of the Uniformed Services.--

(1) In General.—For purposes of subsection (a), any differential wage payment
following new sentence: “The term ‘compen-
sation’ includes any differential wage
payment (as defined in section 3401(i)(2)).”.

(c) Effective Date.—The amendments
made by this subsection shall apply to plan

(d) Provisions Relating to Plan Amend-
ments.—

(1) In General.—If this subsection applies
to any plan or annuity contract amend-
ment—

(A) such plan or contract shall be treated
as being operated in accordance with the
terms of the plan or contract during the pe-
riod described in paragraph (2)(B)(i), and

(B) if such plan or contract amendment is
adopted as provided by the Secretary of
the Treasury, such plan shall not fail to
meet the requirements of the Internal Rev-

(1) such plan or contract amendment as
being operated in accordance with the
terms of the plan or contract during the pe-
riod described in subparagraph (A)(i), and

(B) if such plan or contract amendment is
adopted as provided by the Secretary of
the Treasury, such plan shall not fail to
meet the requirements of the Internal Rev-

(1) such plan or contract amendment as
being operated in accordance with the
terms of the plan or contract during the pe-
riod described in subparagraph (A)(i), and

(B) if such plan or contract amendment is
adopted as provided by the Secretary of
the Treasury, such plan shall not fail to
meet the requirements of the Internal Rev-

e) For purposes of this paragraph—

(1) the term ‘small business employer’
means a small business employer.

(f) Small Business Employer.—

(1) In General.—The term ‘small business
employer’ means, with respect to any tax-
able year, any employer who employed an
average of 50 or fewer employees on any day
that a Ready Reserve-National Guard
employee of such taxpayer, but only with re-
spect to the period during which such Ready
Reserve-National Guard employee partici-
pated in qualified active duty, including time
spent in travel status.

(2) Small Business Employer.—

(1) In General.—The term ‘small business
employer’ means, with respect to any tax-
able year, any employer who employed an
average of 50 or fewer employees on any day
that a Ready Reserve-National Guard
employee of such taxpayer, but only with re-
spect to the period during which such Ready
Reserve-National Guard employee partici-
pated in qualified active duty, including time
spent in travel status.

(2) Small Business Employer.—

(1) In General.—The term ‘small business
employer’ means, with respect to any tax-
able year, any employer who employed an
average of 50 or fewer employees on any day
that a Ready Reserve-National Guard
employee of such taxpayer, but only with re-
spect to the period during which such Ready
Reserve-National Guard employee partici-
pated in qualified active duty, including time
spent in travel status.
SEC. 2106. NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS PERFORMING ACTIVE SERVICE IN THE UNIFORMED SERVICES OR NATIONAL GUARD.

(a) PRESERVATION OF PAY LEVEL.—

(1) In subsection (b) of chapter 55 of title 5, United States Code, is amended by adding at the end the following:

"§ 5538. Nonreduction in pay while serving in the uniformed services or National Guard—

"(1) is absent from a position of employment with the Federal Government in order to perform active duty in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to, for each pay period described in subsection (b), an amount equal to the amount by which—

"(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by such service, exceeds (if at all) the amount of basic pay which would otherwise have been payable to such employee for that pay period (as determined under subsection (d))—

"(A) is payable to such employee for that service; and

"(B) is allocable to such pay period.--

(2) the term ‘basic pay’ includes any pay and allowances which (as determined under subsection (d))—

"(A) is payable to such employee for that service; and

"(B) is allocable to such pay period.--

(3) C LERICAL AMENDMENT .—

"§ 5538a. Nonreduction in pay while performing active service in the uniformed services pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10 shall be entitled, while serving on active duty, to, for each pay period described in subsection (b), an amount equal to the amount by which—

"(1) the amount of basic pay which would otherwise have been payable to such employee for such pay period if such employee's civilian employment with the Government had not been interrupted by such service, exceeds (if at all) the amount of basic pay which would otherwise have been payable to such employee for that pay period (as determined under subsection (d))—

"(A) is payable to such employee for that service; and

"(B) is allocable to such pay period.--

(2) the term ‘basic pay’ includes any pay and allowances which (as determined under subsection (d))—

"(A) is payable to such employee for that service; and

"(B) is allocable to such pay period.--

(3) the term ‘pay and allowances’ includes any pay and allowances which (as determined under subsection (d))—

"(A) is payable to such employee for that service; and

"(B) is allocable to such pay period.--

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Section 5538 of title 5, United States Code (as added by subsection (a)), shall apply with respect to pay periods (as described in subsection (b) of such section) beginning on or after the date of enactment of this Act.

(2) CONDITIONAL RETROACTIVE APPLICATION.—

(A) Section 5538 of title 5, United States Code (as added by subsection (a)), shall apply with respect to pay periods (as described in subsection (b) of such section) beginning on or after October 11, 2002 through the date of enactment of this Act, subject to the availability of appropriations.

(B) There are authorized to be appropriated $100,000,000 for purposes of subparagraph (A).

SEC. 2201. SHORT TITLE.

This title may be cited as the ‘‘National Guard and Reserve Comprehensive Health Benefits Act of 2005.’’

SEC. 2202. FINDINGS.

Congress makes the following findings:

(1) According to the results of a Department of Defense survey conducted in 2000, 20 percent of members of the reserve components of the Armed Forces, including 49 percent of junior enlisted personnel, had no health care coverage while not on active duty.

(2) In 2004, Congress passed legislation authorizing reservists to obtain access to the military TRICARE program for one year for each 90-day period of active duty service. While the enactment of this law was an important step forward, the law only provides health care after active duty has been completed and fails to provide the complete health care coverage necessary to ensure that reservists are medically ready to answer a future call to active duty.

(3) In September 2004, the Government Accountability Office, after reviewing pre-deployment health assessments of over 240,000 reservists, reported finding that nearly 7 percent of activated reservists were categorized as nondeployable for health reasons, including taking prescription drugs.

SEC. 2203. TRICARE COVERAGE FOR MEMBERS OF THE READY RESERVE.

(a) ELIGIBILITY.—Section 1060b of title 10, United States Code, is amended to read as follows:

"§ 1076b. TRICARE program: coverage for members of the Ready Reserve—

"(a) Eligibility.—Eligible members of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces and members of the Individual Ready Reserve described in subsection (b) of this title may enroll in the TRICARE program, as subject to subsection (b)(1), to enroll in the following TRICARE program options:

"(1) TRICARE Prime.

"(2) TRICARE Standard.

"(b) TYPES OF COVERAGE.—(1) A member eligible under subsection (a) may enroll for either of the following types of coverage:

"(A) Self alone coverage.

"(B) Self and family coverage.

"(C) OPEN Enrollment Periods.—The Secretary of Defense shall provide for at least one open enrollment period each year. During each open enrollment period, a member eligible under subsection (a) may enroll in the TRICARE program or change or terminate enrollment in the TRICARE program.

"(d) SCOPE OF CARE.—(1) A member and the dependents of a member enrolled in the TRICARE program under this section shall be entitled to the same benefits under this chapter as a member of the uniformed services on active duty or a dependent of such a member, respectively.

"(2) The Office of Personnel Management shall, in consultation with the Department of Defense, ensure that the rights under this section have the same respective meanings as given them in section 4303 of title 38; and

"(3) the term ‘enrolling agency’ means the agency or other entity of the Government (including an agency referred to in section 2302(a)(2)(C)(ii)) with respect to which such employee has employment rights under chapter 43 of title 38; and

"(4) the term ‘basic pay’ includes any amount payable under section 5306.

"(f) ENROLLMENT.—(1) An enrollment of a member for self and family coverage under this section shall terminate on the first day of the month in which the member ceases to be eligible under subsection (a).

"(2) The enrollment of a member under this section may be terminated on the basis of failure to pay the premium charged the member under this section.
“(b) RELATIONSHIP TO TRANSITION TRICARE COVERAGE UPON SEPARATION FROM ACTIVE DUTY.—(1) A member may not enroll in the TRICARE program under this section while enrolled to transitional health care under subsection (a) of section 1145 of this title or while authorized to receive health care under subsection (c) of such section.

“(2) To the extent that the TRICARE program under this section within 90 days after the date of the termination of the member’s entitlement or eligibility to receive premium for enrollment in subsection (a) or (c) of section 1145 of this title may terminate the enrollment at any time within one year after the date of the enrollment.

“(I) The term ‘TRICARE Prime’ means the managed care option of the TRICARE program.

“(II) The term ‘TRICARE Standard’ means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.

“(A) Section 1076d(f) of title 10, United States Code is amended by striking paragraph (2) and inserting—

“(B) Section 1097a(f) of such title is amended by striking ‘DEFINITIONS.—In this section, the’; and

“(II) by striking paragraph (2).

“(B) Section 1097a(f) of such title is amended by striking ‘DEFINITIONS.—In this section,’; and all that follows through ‘(1) THE IMMEDIATE FAMILY DEFINED.—In this section, the’; and

“(II) by striking paragraph (2).

“(C) PERIOD FOR IMPLEMENTATION.—Section 1078b of title 10, United States Code (as added by subsection (a)), is amended by inserting—

“(2) C LERICAL AMENDMENT .—The table of sections at the beginning of chapter 55 of such title is amended by striking for the administration of this section, the item relating to section 1078d.

“(h) RELATIONSHIP TO TRANSITION TRICARE COVERAGE UPON SEPARATION FROM ACTIVE DUTY.—(1) A member may not enroll in the TRICARE program under this section while enrolled to transitional health care under subsection (a) of section 1145 of this title or while authorized to receive health care under subsection (c) of such section.

“(2) The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.

“(b) DEFINITIONS.—

“(1) TRICARE options.—Section 1072 of title 10, United States Code, is amended by adding at the end the following new paragraphs:

“(II) The term ‘TRICARE Prime’ means the managed care option of the TRICARE program.

“(II) The term ‘TRICARE Standard’ means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.

“(A) Section 1076d(f) of such title is amended by striking paragraph (2) and inserting—

“(B) Section 1097a(f) of such title is amended by striking ‘DEFINITIONS.—In this section, the’; and

“(II) by striking paragraph (2).

“(B) Section 1097a(f) of such title is amended by striking ‘DEFINITIONS.—In this section,’; and all that follows through ‘(1) THE IMMEDIATE FAMILY DEFINED.—In this section, the’; and

“(II) by striking paragraph (2).

“(C) PERIOD FOR IMPLEMENTATION.—Section 1078b of title 10, United States Code (as added by subsection (a)), shall apply with respect to calls or orders of members of reserve components of the Armed Forces to active duty as described in subsection (b) of such section, that are issued by the Secretary of a military department on or after the date of the enactment of this Act.

“TITLE XXIII—IMPROVED DEATH GRATUITY AND OTHER SURVIVOR BENEFITS SEC. 2301. FINDINGS.

“Congress makes the following findings:

“(1) No amount of money can make up for the loss of a loved one. But the United States can, and is obliged to, honor the service of lost servicemembers by ensuring that their families are financially supported at the time of great need occasioned by those losses.

“(2) The Federal Government owes families of servicemembers dying on duty a death gratuity that is sufficient to help each family pay for costs associated with the death of their loved one. The Federal government has a moral obligation to ensure that the families of the fallen adjust to the financial instability that results from termination of the servicemember’s income.

“(3) Survivors of fallen military personnel who are eligible for both a Survivor Benefit Plan annuity and Dependency and Indemnity Compensation suffer a loss of income as a result of the law that requires a reduction in the Survivor Benefit Plan annuity by the amount of the Dependency and Indemnity Compensation. This unjust prohibition against concurrent receipt of two independent benefits prevents the United States from fulfilling its obligation to the survivors during the time of financial need that is occasioned by the deaths of the fallen servicemembers.

“SEC. 2302. INCREASED AMOUNT OF DEATH GRATUITY.

“(a) AMOUNT OF DEATH GRATUITY.—Section 1478(a) of title 10, United States Code, is amended by striking ‘$12,000’ in the first sentence and inserting ‘$100,000’.

“(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of September 11, 2001, and shall apply with respect to deaths occurring on or after that date.

“EC. 2303. DEATH GRATUITY EXCLUDABLE FROM FEDERAL INCOME TAXATION.

“(a) IN GENERAL.—Paragraph (1) of section 1360(a) of the Internal Revenue Code of 1986 (relating to certain military benefits) is amended by adding at the end the following new flush sentence:

“Notwithstanding any other provision of law, this section shall include any death gratuity to which the limitation in section 1478(a) of title 10, United States Code, applies.”.

“(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to amounts paid with respect to deaths occurring on or after September 11, 2001.
Iraq has resulted in a commitment of United States resources to reconstruction that otherwise would have been available for supporting the efforts of United States military personnel to rid Iraq and Afghanistan of hostile insurgents.

(4) Iraq possesses the world’s second largest reserve of crude oil, with 112,000,000,000 barrels, and administration officials have stated on several occasions that revenue from Iraq’s oil industry could fund a significant portion of the costs of the reconstruction of Iraq.

SEC. 3102. REPORT ON ADDITIONAL NEEDS FOR FUNDING MILITARY AND RECONSTRUCTION EFFORTS

(a) REQUIREMENT FOR REPORT.—Whenever the President submits to Congress a request for a supplemental appropriation of funds for use in connection with United States military or reconstruction efforts in Iraq, the President shall submit to the chairman and ranking members of the appropriate committees of Congress in accordance with this section a report on the status of United States financial commitments to the reconstruction of Iraq.

(b) CONTENT.—The report under subsection (a) shall include—

(1) An estimate of the amount of the United States Government funds spent for the reconstruction of Iraq between March 19, 2003, and the date of the report that is attributable to tax revenue collected from United States taxpayers.

(2) An assessment of the activities funded by that amount, together with a discussion of the results that such activities have achieved.

(3) An estimate of the amount of the funds that have been contributed by all other foreign governments for the reconstruction of Iraq and in relief of Iraq’s national debt.

(4) The amount of the crude oil that has been extracted after March 19, 2003, and the total value of that oil in United States dollars.

(c) TIME FOR REPORT.—The President shall submit the report under this section not later than 24 hours after any proposed legislation to provide a supplemental appropriation of funds requested by the President for use in connection with United States military or reconstruction activities in Iraq is introduced in either the Senate or the House of Representatives.

(d) FORM.—The report under this section shall be submitted in unclassified form.

SEC. 3103. LIMITATION ON USE OF FUNDS.

(a) LIMITATION.—Funds appropriated or otherwise available for providing financial assistance for reconstruction activities in Iraq may not be obligated or expended for providing financial assistance for such activities other than in the form of a collateralized loan until the President submits to the chairman and ranking members of the appropriate committees of Congress a report that includes the following:

(1) The President’s plan for seeking increased financial support for reconstruction activities in Iraq from the international community.

(2) The President’s statement that he has determined that—

(A) Iraq is incapable of producing sufficient revenues from its oil industry to pay for future reconstruction activities; and

(B) it is not in the national security interests of the United States to provide financial assistance for reconstruction activities in Iraq solely in the form of loans.

(b) WAIVER AUTHORITY.—The President may waive the limitation in subsection (a) to an obligation or expenditure of funds if the President determines that the applicability of the limitation to such obligation or expenditure would adversely affect the physical safety of United States Armed Forces personnel operating in Iraq, except that any such waiver shall not take effect before the President submits a written notification of the waiver and determination to the chairman and ranking members of the appropriate committees of Congress.

SEC. 3104. APPROPRIATE COMMITTEES OF CONGRESS

In this title, the term ‘appropriate committees of Congress’ mean the following:

(1) The Committee on Foreign Relations Committee, the Committee on Armed Services, and the Committee on Appropriations of the Senate.

(2) The Committee on International Relations, the Committee on Armed Services, and the Committee on Appropriations of the House of Representatives.

By Mr. BIDEN (for himself, Mr. REID, Mr. BINGAMAN, Ms. MIKULSKI, Mr. DURBIN, Ms. STABENOW, Mr. ROCKEFELLER, Mr. LUTENBERG, and Mr. SCHUMER).

S. 12. A bill to combat international terrorism, and for other purposes; to the Committee on Foreign Relations.

Mr. BIDEN. Mr. President, I am pleased to join the Democratic Leader in introducing S. 12, a bill to combat international terrorism.

We all know that the primary security threat facing America is from terrorists motivated by a radical Islamic fundamentalism that for centuries has attacked and defeated them. But hundreds of millions of hearts and minds around the world are open to American ideas and ideals. We must reach them.

This bill contains a range of proposals that are designed to strengthen our anti-terrorism efforts in a broad range of areas. It will strengthen our military by expanding our special forces. It will strengthen our intelligence operations by increasing the number of trained linguists in the government. It will strengthen our public diplomacy by increasing funds for State Department programs, international exchanges, and international broadcasting. It will strengthen our efforts to expand basic educational opportunities in the Muslim world and combat radical madrassas. It will strengthen our assistance to non-governmental organizations working to build democratic institutions. It will strengthen our programs to help Russia account for and secure nuclear materials. And it will strengthen our law enforcement by increasing support for cops on the beat—the people
who labor on the front lines of homeland security.

I cannot take credit for every proposal in this bill. Many of them are ideas contributed by my Democratic colleagues. The Democratic Leader has graciously allowed me to be the lead sponsor of this bill, for which I am grateful. I look forward to working with all my colleagues to strengthen America’s defenses against the threat of terrorism—through this and other legislation—in the coming Congress.

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

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

S. 12

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 referred to as the “Targeting Terrorists Act of 2008”.

TITLE I—EFFECTIVELY TARGETING TERRORISTS

SEC. 101. INCREASED STRENGTH OF ARMY SPECIAL OPERATIONS FORCES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the number of the active-duty Army personnel comprising the Army Special Forces Command as of the last day of a fiscal year should be increased as follows:

(1) To 4,644, as of September 30, 2006.
(2) To 5,144, as of September 30, 2007.
(3) To 5,644, as of September 30, 2008.
(4) To 6,144, as of September 30, 2009.

(b) INCREASED ACTIVE FORCES END STRENGTHS TO EFFECTUATE POLICY ON INCREASE IN STRENGTH OF ARMY SPECIAL FORCES—

(1) FISCAL YEAR 2006.—Effective on October 1, 2005, section 691(b)(1) of title 10, United States Code, is amended by striking “502,400” and inserting “502,900”.

(2) FISCAL YEAR 2007.—Effective on October 1, 2006, section 691(b)(1) of such title is amended by striking “502,900” and inserting “503,400”.

(3) FISCAL YEAR 2008.—Effective on October 1, 2007, section 691(b)(1) of such title is amended by striking “503,400” and inserting “503,900”.

(4) FISCAL YEAR 2009.—Effective on October 1, 2008, section 691(b)(1) of such title is amended by striking “503,900” and inserting “504,400”.

SEC. 102. FOREIGN LANGUAGE EXPERTISE.

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

(1) Success in the global war on terrorism will require a dramatic increase in institutional and personal expertise in the languages of the societies whose terrorism has taken root, including a substantial increase in the number of national security personnel who obtain expert lingual training.

(2) The National Commission on Terrorist Attacks Upon the United States identified the countries in the Middle East, South Asia, Southeast Asia, and West Africa as countries that serve or could serve as terrorist havens.

(3) Although 22 countries have Arabic as their official language, the National Commission on Terrorist Attacks Upon the United States found that a total of only 6 undergraduate degrees for the study of Arabic were granted by United States colleges and universities.

(4) The report of the National Commission on Terrorist Attacks Upon the United States contained several criticisms of the lack of linguistic expertise in the Central Intelligence Agency and the Federal Bureau of Investigation prior to the September 11, 2001 terrorist attacks, and called for the Central Intelligence Agency to “develop a stronger language program, with high standards and sufficient financial incentives”.

(b) (A) In an opinion piece, the Department of Justice in July 2004, revealed that the Federal Bureau of Investigation has a backlog of hundreds of thousands of untranslated audio recordings from terror and espionage investigations.

(5) The National Security Education Program Trust Fund, which funds critical grants and scholarships for lingual training in regions critical to national security, will have exhausted all its funding by fiscal year 2006, unless additional appropriations are made to the Trust Fund.

(6) The National Security Education Program Trust Fund, which funds critical grants and scholarships for lingual training in regions critical to national security, will have exhausted all its funding by fiscal year 2006, unless additional appropriations are made to the Trust Fund.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the overwhelming majority of Muslims reject terrorism and a small, radical minority has grossly distorted the teachings of one of the world’s great faiths to seek justification for the shocks to the world’s political and intellectual systems; such Islamic fundamentalism constitutes a primary threat to the national security interests of the United States, and an effective strategy for combating terrorism will include increasing the number of personnel throughout the Federal Government with expertise in languages spoken in predominately Muslim countries and in the culture of such countries;

(2) Muslim-Americans constitute an integral and cherished part of the fabric of American society and possess many talents, including linguistic, historic, and cultural expertise that should be harnessed in the war against radical, fundamentalist terror; and

(3) amounts appropriated for the National Flagship Language Initiative pursuant to the amendments made by subsection (e)(2) should be used to support the establishment, operation, and improvement of programs for the study of Arabic, Persian, and other Middle Eastern, South Asian, Southeast Asian, and West African languages in institutes of higher education in the United States.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) NATIONAL SECURITY EDUCATION TRUST FUND.—Section 810 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1910) is amended by adding at the end the following:

“(4) to work with other countries to develop training programs in the fields of business and law enforcement; and

(b) AUTHORIZATION OF APPROPRIATIONS FOR THE FUND FOR FISCAL YEAR 2006.—

(1) IN GENERAL.—There are authorized to be appropriated to the Fund $150,000,000 for fiscal year 2006.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended and not more than $15,000,000 of such amounts may be obligated and expended during any fiscal year.

(c) NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—

(1) IN GENERAL.—Section 811(a) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1911(a)) is amended by striking “there is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2003, $10,000,000” and inserting “there is authorized to be appropriated to the Secretary for each fiscal year 2003 through 2005, $10,000,000, and for each fiscal year after 2005, $20,000,000”.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated by subsection (a) of such Act (50 U.S.C. 1911(b)) are amended by inserting “for fiscal years 2003 through 2005” after “this section”.

(d) DEMONSTRATION PROGRAM.—There are authorized to be appropriated to the Director of National Intelligence such sums as may be necessary for each of fiscal years 2006, 2007, and 2008 in order to carry out the demonstration program established under subsection (c).

SEC. 103. CURTAILING TERRORIST FINANCING.

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

(1) The report of the National Commission on Terrorist Attacks Upon the United States stated that “[v]igorous international action to curtail terrorist financing must remain front and center in United States counterterrorism efforts.”

(2) The report of the Independent Task Force sponsored by the Council on Foreign Relations stated that “there is a need for better and more concerted efforts in the financial system to prevent the financing of terrorist activities.”

(3) The report of the Independent Task Force contained the conclusion that “[l]ong-term success will depend critically upon the structure, integration, and focus of the U.S. Government—and any intergovernmental efforts undertaken to address this problem”.

(b) POLICY.—It is the policy of the United States to—

(1) to work with the Government of Saudi Arabia to curtail terrorist financing originating from that country using a range of methods, including diplomacy, intelligence, and law enforcement;

(2) to ensure effective coordination and sufficient resources for efforts of the agencies and departments of the United States to disrupt terrorist financing by carrying out, through the Office of Terrorism and Financial Intelligence in the Department of the Treasury, a comprehensive analysis of the budgets and activities of all such agencies and departments that are related to disrupting the financing of terrorist organizations;

(3) to provide each agency or department of the United States with the appropriate number of personnel to carry out the activities of such agency or department related to disrupting the financing of terrorist organizations;

(4) to centralize the coordination of the efforts of the United States to disrupt terrorist financing and utilize existing authorities to identify foreign jurisdictions and foreign financial institutions suspected of abetting terrorist financing and take actions to prevent the provision of assistance to terrorists; and

(5) to work with other countries to develop and enforce strong domestic terrorist financing laws, and increase funding for bilateral and multilateral programs to enhance training and capacity-building in countries that request assistance.

(c) AUTHORIZATION OF APPROPRIATIONS TO PROVIDE TECHNICAL ASSISTANCE TO PREVENT FINANCING OF TERRORISTS.—

(1) IN GENERAL.—The amount authorized to be appropriated to the President for the “Economic Support Fund” to provide technical assistance under the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.) to foreign countries to assist such countries in preventing the financing of terrorist activities—

(A) for fiscal year 2008, $115,000,000; and

(B) for fiscal years 2007 and 2008, such sums as may be necessary.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in this subsection are available until expended.

(3) ADDITIONAL FUNDS.—Amounts authorized to be appropriated pursuant to this section are in addition to amounts otherwise available for such purposes.

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SEC. 104. PROHIBITION ON TRANSACTIONS WITH COUNTRIES THAT SUPPORT TERRORISM.

(a) CLARIFICATION OF CERTAIN ACTIONS UNDER IEEPA.—In any case in which the President takes action under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) with respect to a foreign country, or persons dealing with or associated with the government of that foreign country, as a result of a determination by the Secretary of the Treasury that the government of that foreign country has repeatedly provided support for acts of international terrorism, such action shall apply to a United States person or other person.

(b) DEFINITIONS.—In this section:

(1) CONTROLLED IN FACT.—"The term "controlled in fact" means—

(A) in the case of a corporation, holds at least 50 percent (by vote or value) of the capital structure of the corporation; and

(B) in the case of any other kind of legal entity, holds interests representing at least 50 percent of the capital structure of the entity.

(2) STATE.—"The term "State" means—

(a) each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and other territories or possessions of the United States.

(b) UNITED STATES PERSON.—"The term "United States person" includes a United States citizen, permanent resident alien, entity organized under the law of the United States or of any State (including foreign branches) wherever located, or any other person in the United States.

(c) APPLICABILITY.—

(1) IN GENERAL.—In any case in which the President has taken action under the International Emergency Economic Powers Act and such action is in effect on the date of enactment of this Act, the provisions of subsection (a) shall apply to a United States person (or other person) if such person deals or terminates its business with the government or person identified by such action within 90 days after the date of enactment of this Act.

(2) ACTIONS AFTER DATE OF ENACTMENT.—In any case in which the President takes action under the International Emergency Economic Powers Act or after the date of enactment of this Act, the provisions of subsection (a) shall apply to a United States person (or other person) if such person deals or terminates its business with the government or person identified by such action within 90 days after the date of such action.

(d) NOTIFICATION OF CONGRESS OF TERMINATION OF INVESTIGATION BY OFFICE OF FOREIGN ASSETS CONTROL.—The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by adding at the end the following new section:

"SEC. 42. NOTIFICATION OF CONGRESS OF TERMINATION OF INVESTIGATION BY OFFICE OF FOREIGN ASSETS CONTROL.* - The Director of the Office of Foreign Assets Control shall notify Congress upon the termination of any investigation by the Office of Foreign Assets Control of the Department of the Treasury if any sanction is imposed by the Director of such office as a result of the investigation."

TITLE II—PREVENTING THE GROWTH OF RADICAL ISLAMIC FUNDAMENTALISM

Subtitle A—Quality Educational Opportunities

SEC. 201. FINDINGS, POLICY, AND DEFINITION.

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

(1) The report of the National Commission on Terrorist Attacks Upon the United States stated that "[e]ducation that teaches tolerance, the dignity and value of each individual, and respect for different beliefs is a key element in any global strategy to eliminate Islamic terrorism."

(2) According to the United Nations Development Program Arab Human Development Report for 2002, 10,000,000 children between the ages of 5 and 17 would not attend school, and ½ of the 65,000,000 illiterate adults in the Arab world are women.

(3) The report of the National Commission on Terrorist Attacks Upon the United States is concluded that ensuring educational opportunity is essential to the efforts of the United States to defeat global terrorism and to promote a pro-American United States Government "should offer to join with other nations in generously supporting (spending funds) ... directly on building and operating primary and secondary schools in those Muslim states that commit to sensibly investing financial resources in public education'."

(b) POLICY.—It is the policy of the United States—

(1) to work toward the goal of dramatically increasing the availability of basic education in the developing world, which will reduce the influence of personal and other institutions that promote religious extremism;

(2) to join with other countries in generously supporting the International Youth Opportunity Fund authorized under section 7114 of the 911 Commission Implementation Act of 2004 (Public Law 108–446) for international education programs.

(c) ADDITIONAL FUNDS.—Amounts authorized to be appropriated in this section are in addition to amounts otherwise available for such purposes.

Subtitle B—Democracy and Development in the Muslim World

SEC. 202. ANNUAL REPORT TO CONGRESS.

Not later than June 1 of each year, the Secretary of State shall submit to the appropriate congressional committees a report on the efforts of countries in the developing world to increase the availability of basic education and to close educational institutions that promote religious extremism and terrorism. Each report shall include—

(1) a list of countries that are making serious and sustained efforts to increase the availability of basic education and to close educational institutions that promote religious extremism and terrorism;

(2) a list of countries that are making efforts to increase the availability of basic education and to close educational institutions that promote religious extremism and terrorism, but such efforts are not serious and sustained; and

(3) a list of countries that are not making efforts to increase the availability of basic education and to close educational institutions that promote religious extremism and terrorism.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

(a) INTERNATIONAL EDUCATION PROGRAMS.—There are authorized to be appropriated to the President for "Development Assistance" for international education programs carried out under sections 105 and 496 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151c and 2311a) for the following purposes:

(1) for fiscal year 2006, $1,000,000,000; and

(2) for fiscal years 2007 and 2008, such sums as may be necessary.

(b) INTERNATIONAL YOUTH OPPORTUNITY FUND.—There are authorized to be appropriated to the President for fiscal years 2006, 2007, and 2008 such sums as may be necessary to carry out the United States contribution to the International Youth Opportunity Fund authorized under section 7114 of the 911 Commission Implementation Act of 2004 (Public Law 108–446) for international education programs.

(c) ADDITIONAL FUNDS.—Amounts authorized to be appropriated in this section are in addition to amounts otherwise available for such purposes.

Subtitle C—Promoting Democracy and Development in the Middle East, Central Asia, South Asia, and Southeast Asia

SEC. 211. PROMOTING DEMOCRACY AND DEVELOPMENT IN THE MIDDLE EAST, CENTRAL ASIA, SOUTH ASIA, AND SOUTHEAST ASIA.

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

(1) Al-Qaeda and affiliated groups have established a terrorist network with linkages throughout the Middle East, Central Asia, South Asia, and Southeast Asia.

(2) While political repression and lack of economic development do not justify terrorism, increased political freedoms and economic growth can contribute to an environment that undermines tendencies and conditions that facilitate the rise of terrorist organizations.

(3) It is in the national security interests of the United States to promote democracy, good governance, political freedom, independent media, women's rights, private sector development, and open economic systems in the countries of the Middle East, Central Asia, South Asia, and Southeast Asia.

(b) POLICY.—It is the policy of the United States—

(1) to promote the objectives described in subsection (a)(3) in the countries of the Middle East, Central Asia, South Asia, and Southeast Asia;

(2) to provide assistance and resources to organizations that are committed to promoting such objectives;

(3) to work with other countries and international organizations to increase the resources devoted to promoting such objectives;

(4) STRATEGY.—Not later than 180 days after the date of enactment of this Act, the Secretary of State shall submit to Congress a strategy to promote the policy of the United States set out in subsection (b). Such strategy shall describe how funds appropriated pursuant to the authorization of appropriations in subsection (c) will be used.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated pursuant to the authorization of appropriations in subsection (c) for the Economic Support Fund for activities carried out under chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2316 et seq.) to promote the policy of the United States set out in subsection (b).

(A) for fiscal year 2006, $500,000,000; and

(B) for fiscal years 2007 and 2008, such sums as may be necessary.

(2) SENSE OF CONGRESS ON USE OF FUNDS.—It is the sense of Congress that a substantial portion of the funds appropriated pursuant to the authorization of appropriations in subsection (c) should be made available to non-governmental organizations that have a record of success working in the countries of the United States.
the Middle East, Central Asia, South Asia, and Southeast Asia to support democratic parties, human rights organizations, independent media, and the efforts to promote the rule of law.

(3) ADDITIONAL FUNDS.—Amounts authorized to be appropriated in paragraph (1) are in addition to amounts otherwise available for such purposes.

SEC. 212. MIDDLE EAST FOUNDATION.

(a) PURPOSES.—The purposes of this section are to support, through the provision of grants, technical assistance, training, and other support for institutions in the Middle East, to facilitate an audit referred to subparagraph (A), including making funds provided under this section available for the purposes specified in such audit.

(b) FUNDING.—The Secretary of State is authorized to provide funding to the Foundation through the Middle East Partnership Initiative of the Department of State. The Foundation shall use amounts provided under this paragraph to carry out the provisions of section 212(a), including through making grants and providing other assistance to entities to carry out programs for such purposes.

(c) GRANTS TO FOUNDATION.—The Secretary of State shall make grants to the Foundation under this section.

(d) AUDITS OF GRANT RECIPIENTS.—(A) IN GENERAL.—A recipient of a grant from the Foundation shall agree to permit an independent audit of the books and records of such recipient related to the use of the grant funds.

(b) REQUIREMENTS.—Such recipient shall maintain appropriate books and records to facilitate an audit referred to subparagraph (A), including—

(i) separate accounts with respect to the grant funds;
(ii) records that fully disclose the use of the grant funds;
(iii) records describing the total cost of any project carried out using grant funds; and
(iv) the amount and nature of any funds received from other sources that were combined with the grant funds to carry out a project.

(h) ANNUAL REPORTS.—Not later than January 31, 2006, and annually thereafter, the Foundation shall submit to Congress an annual report required by subsection (g).

(i) AUTHORIZATION OF APPROPRIATIONS.—(A) IN GENERAL.—Amounts appropriated pursuant to the authorization of appropriations in this subsection are to be appropriated to the President such sums as may be necessary for the President to carry out this section, except that no such amount may be appropriated which, when added to amounts previously appropriated for such purpose, would cause such amounts to exceed $25,000,000.

(B) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations in this subsection are to be available to the President such sums as may be necessary for the President to carry out this section, except that no such amount may be appropriated which, when added to amounts previously appropriated for such purpose, would cause such amounts to exceed $25,000,000.

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SEC. 221. ADVANCING UNITED STATES INTERESTS THROUGH REAL TALENT ACQUISITION.

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

(1) The United States needs to improve its communication of information and ideas to people in foreign countries, particularly in countries with significant Muslim populations.

(2) Public diplomacy should reaffirm the paramount commitment of the United States to the protection of human rights and the promotion of democracy, preserving the civil liberties of all the people of the United States, including Muslim-Americans.

(3) The report of the National Commission on Terrorist Attacks Upon the United States stated that, “Recognizing that Arab and Muslim audiences rely on newspapers and radio, the government has begun some promising initiatives in television and radio broadcasting to the Arab world, Iran, and Afghanistan. These efforts are necessary to reach large audiences. The Broadcasting Board of Governors has asked for much larger resources. It should get them.”

(4) A significant expansion of United States international broadcasting would provide a cost-effective means of improving public policy objectives during a crisis abroad.

(5) The United States needs to improve its communication of information and ideas to people in foreign countries, particularly in countries with significant Muslim populations.
(1) IN GENERAL.—In addition to amounts otherwise available for such purposes, the following amounts are authorized to be appropriated to carry out United States Government activities in the preceding fiscal year:

(a) UNITED STATES INFORMATION AND EDUCATIONAL EXCHANGE.

The term ‘‘TREATMENT OF DETAINEES.’’—The term ‘‘TREATMENT OF DETAINEES.’’—

(b) ADMINISTRATION OF FOREIGN AFFAIRS.

SEC. 222. DEPARTMENT OF STATE PUBLIC DIPLOMACY PROGRAMS.

(a) UNITED STATES EDUCATIONAL, CULTURAL, AND PUBLIC DIPLOMACY PROGRAMS.—There is authorized to be appropriated for the Department of State to carry out public diplomacy programs of the Department under the United States Information and Educational Exchange Act of 1948, the Mutual Educational and Cultural Exchange Act of 1961, Reorganization Plan Number 2 of 1977, the Foreign Affairs Reform and Reorganization Act of 1998, the Center for Cultural Interchange Between East and West Act of 1960, the Dante B. Fascell North-South Center Act of 1991, and the East and West Act of 1960, the Dante B. Fascell North-South Center Act of 1991, and the

(b) ADMINISTRATION OF FOREIGN AFFAIRS.—The is authorized to be appropriated for the Department of State under ‘‘administration of foreign affairs’’ to carry out the authorities and responsibilities, and requirements, in the conduct of foreign affairs of the United States, and for other purposes authorized by law for Diplomatic and Consular Personnel, not to exceed $500,000,000 for fiscal year 2006, which shall only be available for public diplomacy international programs.

SEC. 223. TREATMENT OF DETAINEES.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Carrying out the global war on terrorism requires the development of policies with respect to the detention and treatment of captured terrorists that are adhered to by all coalition forces.

(2) Article 3 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316) was generally accepted through-out the world as customary international law.

(b) POLICY.—The policy of the United States is as follows:

(1) It is the policy of the United States to treat all foreign persons captured, detained, interned, or otherwise held in the custody of the United States (‘‘detainees’’) humanely and in accordance with the legal obligations under United States law and international law, including the obligations in the Convention Against Torture and in the minimum standards set forth in the Geneva Conventions.

(2) The policy of the United States that all officials of the United States are bound both in wartime and in peacetime by the legal prohibitions against torture, cruel, inhuman, or degrading treatment set out in the Constitution, laws, and treaties of the United States.

(3) If there is any doubt as to whether a detaine is entitled to the protections afforded by the Geneva Conventions, it is the policy of the United States that such detainee shall be treated in accordance with the United Nations Resolution Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316) until such time as the detainee’s status can be determined pursuant to the procedures authorized by Army Regulation 190–8, Section 1–6.

(d) ANNUAL TRAINING REQUIREMENT.

The Secretary shall submit to the appropriate congressional committees an annual report—

(A) not later than 30 days after the effective date of such rules, regulations, guidelines, or policies; and

(b) in a manner and form that will protect the national security interests of the United States.

(e) REPORTS ON POSSIBLE VIOLATIONS.

The Secretary and the Director shall submit, on a timely basis and not less than twice each year, a report to Congress on the circumstances surrounding, and a status report on, any investigation of a possible violation of the prohibition in subsection (e)(1) by United States Government personnel or by a person providing services to the United States Government on a contract basis.

(f) DEFINITIONS.

SEC. 224. TREATMENT OF CIVILIAN PERSONS.

(a) CONVENTION AGAINST TORTURE.

The term ‘‘Convention Against Torture’’ means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

(b) DIRECTOR.—The term ‘‘Director’’ means the Director of National Intelligence.
SEC. 224. NATIONAL COMMISSION TO REVIEW POLICY REGARDING THE TREATMENT OF DETAINERS.

(a) Establishment of Commission.—There is established the National Commission To Review Policy Regarding the Treatment of Detainees.

(b) Purposes.—The purposes of the Commission are as follows:

(1) To examine and report upon the role of policymakers in the development of intelligence, law enforcement, or foreign affairs policies and procedures.

(2) To determine and report on the impact of the abuse of prisoners by the United States personnel on the United States;

(3) To determine and report on the impact of the abuse of prisoners by the United States personnel on the security of the United States;

(4) To determine whether and to what extent the United States Armed Forces were given the opportunity to influence policy relating to the treatment of detained individuals; and

(5) To determine whether and to what extent policy relating to the treatment of individuals detained during Operation Iraqi Freedom or Operation Enduring Freedom differed from the policies and practices regarding detainees established by the Armed Forces prior to such operations; and

(6) To submit to the President and Congress such report as is required by this section, containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

(c) Powers of the Commission.—

(1) In General.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for purposes of this section:

(i) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(ii) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, electronic messages, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) Subpoenas.—

(i) Issuance.—Subpoenas issued under subparagraph (A) shall be signed under the signature of the Chairperson of the Commission, the Vice Chairperson of the Commission, the chairperson of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission, and may be served by any person designated by the Chairperson, subcommittee chairperson, or member.

(ii) Enforcement.—

(A) In General.—In the case of contumacy or failure to obey a subpoena issued under subparagraph (A), the United States district court in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(B) Additional Enforcement.—If a person who is in contempt of this Act refuses to obey the order of the United States district court or the United States Court of Appeals which issued a subpoena or fails to obey an order rendered by that court shall be punished by the court as a contempt of that court.

(3) Meetings of the Commission.—The Chairperson and Vice Chairperson or other designated member of the Commission shall be entitled to the services and facilities of the Commission or, on the authority of the Commission, upon request made by the Chairperson, the Commission may accept, use, and dispose of gifts or donations of services or property.

(4) Gifts.—The Commission may use the services of the United States in the same manner and under the same conditions as departments and agencies of the United States.

(5)Staff of the Commission.—

(1) Appointment and Compensation.—The executive director and any personnel of the Commission who are employees shall be employees under section 5312 of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 41 of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 55 of title 5 relating to classification and General Schedule pay rates, except that no rate of pay fixed under this section may exceed the equivelant of that payable to a position at level V of the Executive Schedule under schedule 3136 of title 5, United States Code.

(2) Personnel of Federal Employers.—

(A) In General.—The executive director and any personnel of the Commission who are employees shall be employees under the Commission or any portion of a Commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. If the President makes such determination, the President shall notify the Commission and any other persons participating in that portion or portions of a Commission meeting under section 10(d) of that Act shall apply.

(4) Information from Federal Agencies.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, or other entity the advice, assistance, or information that is necessary or useful in the performance of its duties.

(5) Proceedings.—The Commission shall keep records of its proceedings and may publish such of the proceedings as the Commission determines to be in the public interest.

(6) Gifts.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(7) Staff.—The Commission may accept, use, and dispose of gifts or donations of services or property.
experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(g) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual base pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5702(b) of title 5, United States Code.

(h) SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.—The appropriate department or agency of the Government shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances, for consistency with existing procedures and requirements, except that no person shall be provided with access to classified information under this section who would not otherwise qualify for such security clearance.

(1) REPORT OF THE COMMISSION.—Not later than 9 months after the date of the first meeting of the Commission, the Commission shall submit to the President and Congress a report containing such findings, conclusions, and recommendations as have been agreed to by a majority of Commission members.

(2) TERMINATION.—

(a) TERMINATION.—The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the report is submitted under subsection (1).

(b) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including any activity to carry out all provisions of Congress concerning its reports and disseminating the second report.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission to carry out this section $5,000,000, to remain available until expended.

Subsection D—Strategy for the United States Relationship With Afghanistan, Pakistan, and Saudi Arabia

SEC. 231. AFGHANISTAN.

(a) AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.—Section 108(a) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 2291; and

1.000,000,000 to carry out the provisions of section 31 of the Arms Export Control Act (22 U.S.C. 2761); and

(c) for “Peacekeeping Operations”, $30,000,000 to carry out the provisions of section 23 of the Arms Export Control Act (22 U.S.C. 2763); and

(2) Fiscal years 2007 and 2008.—

(A) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated for each of the fiscal years described in subparagraphs (A) through (C) of paragraph (1) such sums as may be necessary for each of the fiscal years 2007 and 2008.

(B) SENSE OF CONGRESS.—It is the sense of Congress that the amount appropriated for each purpose described in subparagraphs (A) through (C) of paragraph (1) for fiscal years 2007 and 2008 should be an amount that is equal to 125 percent of the amount appropriated for such purpose during the preceding fiscal year.

(3) OTHER FUNDS.—Amounts authorized to be appropriated under this section are in addition to amounts otherwise available for such purposes.

SEC. 232. PAKISTAN.

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

(1) Since September 11, 2001, the Government of Pakistan has been an important partner in helping the United States remove the Taliban regime in Afghanistan and combating international terrorism in the frontier provinces of Pakistan.

(2) There remain a number of critical issues that threaten to disrupt the relationship between the United States and Pakistan, undermine international security, and destabilize Pakistan, including—

(A) curbing the proliferation of nuclear weapon technologies;

(B) combating poverty and corruption;

(C) building effective government institutions, especially secular public schools;

(D) promoting and rule of law, particularly at the national level; and

(E) effectively dealing with Islamic extremism.

(b) POLICY.—It is the policy of the United States—

(1) to work with the Government of Pakistan to combat international terrorism, especially in the frontier provinces of Pakistan;

(2) to establish a long-term strategic partnership with the Government of Pakistan to address the issues described in subparagraphs (A) through (E) of subsection (a)(2); and

(3) to dramatically increase funding for United States Agency for International Development Assistance programs and other assistance programs that assist Pakistan in addressing such issues, if the Government of Pakistan demonstrates a commitment to building a moderate, democratic state; and

(4) to work with the international community to secure additional financial and political support to effectively implement the policies described in the preceding and help to resolve the dispute between the Government of Pakistan and the Government of India over the disputed territory of Kashmir.

(c) STRATEGY FOR PAKISTAN.—

(1) REQUIREMENT FOR REPORT ON STRATEGY.—Not later than 90 days after the date of enactment of this Act, the President shall submit to the appropriate congressional committees a report, in classified form if necessary, that describes the long-term strategy of the United States to engage with the Government of Pakistan to address the issues described in subparagraphs (A) through (E) of subsection (a)(2) in order accomplished the goal of building a moderate, democratic state.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section the term “appropriate congressional committees” means the Committee on Appropriations and the Committee on Foreign Relations in the Senate, and the Committee on Appropriations and the Committee on International Relations of the House of Representatives.

(d) NUCLEAR PROLIFERATION.—

(1) FINDING.—Congress finds that Pakistan’s maintenance of nuclear weapons and nuclear proliferation network would be inconsistent with Pakistan being considered an ally of the United States.

(2) LIMITATION ON ASSISTANCE TO PAKISTAN.—None of the funds appropriated for a fiscal year to provide military or economic assistance to the Government of Pakistan may be made available for such purpose unless the President submits to Congress for such fiscal year a certification that no military or economic assistance provided by the United States to the Government of Pakistan will be provided, either directly or indirectly, to a person that is opposing or undermining the efforts of the United States Government to halt the proliferation of nuclear weapons.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for providing assistance to Pakistan for fiscal year 2006—

(A) for “Development Assistance”, $50,000,000 to carry out the provisions of section 206(a), (b), and (c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151a, 2151c, and 2151d); and

(B) for the “Child Survival and Health Programs Fund”, $35,000,000 to carry out the provisions of sections 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b); and

(C) for the “Economic Support Fund”, $250,000,000 to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2156 et seq.); and

(D) for “International Narcotics and Law Enforcement”, $50,000,000 to carry out the provisions of section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291); and

(E) for “Nonproliferation, Anti-Terrorism, Demining and Related Programs”, $10,000,000.

(F) for “International Military Education and Training”, $2,000,000 to carry out the purposes of section 541 of the Foreign Assistance Act of 1961 (22 U.S.C. 2347); and

(G) for “Foreign Military Financing Program”, $300,000,000 grants to carry out the provisions of section 23 of the Arms Export Control Act (22 U.S.C. 2763).

(2) OTHER FUNDS.—Amounts authorized to be appropriated under this section are in addition to amounts otherwise available for such purposes.

SEC. 233. SAUDI ARABIA.

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

(1) The Kingdom of Saudi Arabia has an uneven record in the fight against terrorism, especially with respect to terrorist financiers, including: (1) and a lack of political outlets for its citizens, that poses a threat to the security of the United States, the international community, and the Kingdom of Saudi Arabia itself.

(2) The United States has a national security interest in working with the Government of Saudi Arabia to combat international terrorism, both within the Kingdom of Saudi Arabia and that nation or that operate outside Saudi Arabia with the support of citizens of Saudi Arabia.
(3) In order to more effectively combat terrorism, the Government of Saudi Arabia must undertake a number of political and economic reforms, including increasing anti-terrorism efforts conducted by law enforcement agencies, providing more political rights to its citizens, increasing the rights of women, engaging in comprehensive education and financing mechanisms and increasing the funding of charitable organizations, promulgating and enforcing domestic laws and regulations on terrorism financing to the United States.

(b) Policy.—It is the policy of the United States—

(1) to engage with the Government of Saudi Arabia to combat terrorism, as well as other problematic issues such as the lack of political freedoms, with the goal of restructuring the relationship between the leaders of both nations that can publicly support;

(2) to enhance counterterrorism cooperation with the Government of Saudi Arabia, if the government leaders of such government are committed to making a serious, sustained effort to combat terrorism; and

(3) to support the efforts of the Government of Saudi Arabia to make political, economic, and social reforms throughout the country.

(c) STRATEGY ON SAUDI ARABIA.—

(1) REQUIREMENT FOR REPORT ON STRATEGY.—Not later than 90 days after the date of enactment of this Act, the President shall submit to the appropriate congressional committees a report, in classified form if necessary, that describes the long-term strategy of the United States—

(A) to engage with the Government of Saudi Arabia to facilitate political, economic, and social reforms that will enhance the ability of the Government of Saudi Arabia to combat terrorism; and

(B) to effectively prevent the financing of terrorists in Saudi Arabia.

(2) APPROPRIATE CONGRESSIONAL COMMITTEE DEFINED.—In this subsection the term ‘appropriate congressional committees’ means the Committee on Appropriations and the Committee on Foreign Relations in the Senate, and the Committee on Appropriations and the Committee on International Relations of the House of Representatives.

TITLE III—PROTECTION FROM TERRORISM THAT UTILIZE NUCLEAR, CHEMICAL, BIOLOGICAL, AND RADIOLOGICAL WEAPONS

Subtitle A—Non-Proliferation Programs

SEC. 301. REPEAL OF LIMITATIONS TO THREAT REDUCTION ASSISTANCE.

Section 5 of S. 2980 of the 108th Congress (the ‘‘Nunn-Lugar Cooperative Threat Reduction Act of 2004’’), as introduced on November 16, 2004, is hereby enacted into law.

SEC. 302. REUSE OF RUSSIAN NUCLEAR FACILITIES

(a) IN GENERAL.—The Secretary of Energy shall work with the Minister of Atomic Energy of Russia to carry out a program to close or convert to non-defense work one or more nuclear weapons assembly and disassembly facilities in Russia.

(b) DESIGNATION OF FACILITIES.—The Secretary of Energy and the Minister of Atomic Energy of Russia shall jointly designate each facility to be covered by the program under subsection (a).

(c) COMMISSIONS TO PROVIDE ADVICE AND RECOMMENDATIONS.—

(1) IN GENERAL.—Not later than two months after the designation of a facility under subsection (b), the Secretary of Energy shall establish a commission to provide advice and recommendations on the closure or conversion of the facility to non-defense work.

(2) COMMISSION MEMBERSHIP.—Each commission established under paragraph (1) shall consist of such personnel, including Russian nationals, as the Secretary considers appropriate for its work. The names of each member of each commission shall be made public upon designation of the commission.

(3) PERSONNEL MATTERS.—

(A) COMPENSATION.—Each member of a commission established under paragraph (1) who is not a member of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of such member.

(B) TRAVEL EXPENSES.—The members of a commission established under paragraph (1) may be reimbursed for travel, subsistence, and other necessary expenses of a member incurred in the performance of official duties while away from the member’s home or regular places of business in the performance of services for such commission.

(4) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to any activities of a commission established under paragraph (1).

(5) OPEN MEETINGS.—The meetings of any commission under paragraph (1) shall, to the maximum extent practicable, be open to the public.

(d) PROPOSED FACILITY REUSE PLAN.—

(1) REQUIREMENT FOR PROPOSED PLAN.—Not later than six months after the designation of a facility under subsection (b), the commission for the facility under subsection (c) shall submit to the Secretary of Energy and the Minister of Atomic Energy of Russia a proposed plan on the closure or conversion of the facility to non-defense work.

(2) ELEMENTS OF PROPOSED PLAN.—A proposed plan submitted under paragraph (1) may include one or more of the elements specified in subsection (f).

(3) AVAILABILITY OF PROPOSED PLAN.—Any proposed plan submitted under paragraph (1) shall be made public upon its submission.

(e) FINAL FACILITY REUSE PLAN.—

(1) REQUIREMENT FOR FINAL PLAN.—Not later than nine months after receiving a proposed plan under subsection (d), the Secretary of Energy and the Minister of Atomic Energy of Russia shall jointly develop a final plan on the closure or conversion of the facility to non-defense work.

(2) ELEMENTS OF FINAL PLAN.—A final plan for a facility under paragraph (1) shall include the following:

(A) Any of the elements specified in subsection (f).

(B) Assurances of access to the facility necessary to carry out the final plan.

(C) Resolutions of any matters relating to liability and taxation.

(D) An estimate of the costs of the United States, and of Russia, under the final plan.

(E) The commitment of Russia to pay at least 15 percent of the costs of the final plan.

(F) Milestones for the final plan, including a deadline for the closure or conversion of the facility to non-defense work.

(G) Appropriate auditing and accounting mechanisms.

(f) PLAN ELEMENTS.—The plan for a facility under subsection (d) or (e) may include one or more of the following elements:

(1) A retraining program for facility employees.

(2) Economic incentives to attract and facilitate commercial ventures in connection with the facility.

(3) A site preparation plan.

(4) Technical exchange and training programs.

(5) The participation of a redevelopment manager and of business, legal, financial, or other appropriate expert.

(6) Promotional or marketing plans.

(7) Provision for startup funds, loans, or grants, or other venture capital or financing.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Department of Energy, $60,000,000 to carry out this section, of which section(s), to $40,000,000, shall be available to each commission established under subsection (c).

(b) AVAILABILITY OF FUNDS.—The amount authorized to be appropriated by paragraph (1) shall remain available until expended.

SEC. 303. RUSSIAN TACTICAL NUCLEAR WEAPONS

(a) REPORT REQUIRED.—Not later than six months after the date of the enactment of this Act, the President shall submit to Congress a report setting forth the following:

(1) An assessment of the number, location, condition, and security of Russian tactical nuclear weapons.

(2) An assessment of the threat that would be posed by the theft of Russian tactical nuclear weapons.

(3) A plan for developing with Russia a cooperative program to accelerate the modernization of tactical nuclear weapons, and, as appropriate, dismantle Russian tactical nuclear weapons.

(b) PROGRAM.—The Secretary of Defense and the Secretary of Energy shall jointly work with Russia to establish a cooperative program, based on the report under subsection (a), to secure, modernize, and, as appropriate, dismantle Russian tactical nuclear weapons in order to achieve reductions in the total number of Russian tactical nuclear weapons.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) DEPARTMENT OF DEFENSE.—There is authorized to be appropriated to the Department of Defense, $25,000,000 to carry out this section.

(2) DEPARTMENT OF ENERGY.—There is authorized to be appropriated to the Department of Energy, $25,000,000 to carry out this section.

SEC. 304. ADDITIONAL ASSISTANCE TO ACCELERATE NON-PROLIFERATION PROGRAMS

(a) AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF DEFENSE.—There is authorized to be appropriated to the Department of Defense $40,000,000 for fiscal year 2006 for Cooperative Threat Reduction Activities as follows:

(1) To accelerate security upgrades at warhead storage sites located in Russia or another country of the former Soviet Union, $20,000,000.

(2) To accelerate security upgrades at warhead storage sites located in countries other than the countries of the former Soviet Union, $10,000,000.

(3) To accelerate biological weapons proliferation prevention programs in Kazakhstan, Georgia, and Uzbekistan, $10,000,000.

(b) AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF ENERGY.—There is
authorized to be appropriated to the Department of Energy $95,000,000 for fiscal year 2006 for nonproliferation activities of the National Nuclear Security Administration as follows:

(1) To accelerate the Global Threat Reduction Initiative, $20,000,000.

(2) To accelerate security upgrades at wartime storage sites located in Russia or another country of the former Soviet Union, $15,000,000.

(3) To accelerate the closure of the plutonium producing reactor at Zheleznozorok, Russia as part of the program to eliminate weapons grade plutonium production, $25,000,000.

(4) To accelerate completion of comprehensive security upgrades at Russian storage sites for weapons-usable nuclear materials, $15,000,000.

(c) AUTHORIZATION OF APPROPRIATIONS FOR THE DEPARTMENT OF STATE.—

(1) IN GENERAL.—There is authorized to be appropriated to the Department of State $25,000,000 for fiscal year 2006 for nonproliferation activities as follows:

(A) To accelerate engagement of former chemical and biological weapons scientists in Russia as part of the former Soviet Union through the Bio-Chem Redirect Program, $15,000,000.

(B) To enhance efforts to combat bioterrorism by transforming the Soviet biological weapons research and production facilities to commercial enterprises through the BioIndustry Initiative, $10,000,000.

(2) AVAILABILITY OF FUNDS.—The amount authorized to be appropriated by paragraph (1) shall remain available until expended.

SEC. 305. ADDITIONAL ASSISTANCE TO THE INTERNATIONAL ATOMIC ENERGY AGENCY.

There is authorized to be appropriated to the Department of Energy $20,000,000 to be used to provide technical and other assistance to the International Atomic Energy Agency to support nonproliferation programs. Such amount is in addition to amounts otherwise available for such purpose.

Subtitle B—Border Protection

SEC. 311. FINDINGS.

Congress makes the following findings:

(1) More than 500,000,000 people cross the borders of the United States at legal points of entry each year, including approximately 330,000,000 people who are not citizens of the United States.

(2) The National Commission on Terrorist Attacks Upon the United States found that 15 of the 19 hijackers involved in the September 11, 2001 terrorist attacks “were potentially vulnerable to interception by border authorities”.

(3) Officials with the Bureau of Customs and Border Protection and with the Bureau of Immigration and Customs Enforcement have stated that there is a shortage of agents and associated support staff in the Bureau of Immigration and Customs Enforcement of the Department of Homeland Security by the equivalent of at least 200 more than the number of such employees in the Bureau as of the end of the preceding fiscal year; and

(4) the number of full-time inspectors and associated support staff in the Bureau of Customs and Border Protection by the equivalent of at least 200 more than the number of employees in the Bureau as of the end of the preceding fiscal year.

(a) DEPLOYMENT.

(1) The United States port system is a vital artery of the economy of the United States. Almost 95 percent of all foreign trade passes through one or more of the 361 ports in the United States. Such seaports handle more than 2,000,000,000 tons of domestic and international freight each year, which has a value of more than $740,000,000. The shipment of cargo in vessels creates employment for 15,000 people in the United States.

(2) The United States Coast Guard has estimated that, given this tremendous commerce, a terrorist attack shutting down a major port in the United States would result in a $60,000,000 impact on the United States economy during the first 30 days after such an attack.

(3) Although 6,000,000 cargo containers, each a possible hiding place for a bomb or other weapon, are off-loaded at ports in the United States each year, less than 3% of these containers are inspected. A loaded container ship can carry as many as 3,000 containers, each one weighing up to 45,000 pounds, hundreds of which may be off-loaded at a port.

The United States Coast Guard has estimated that the maritime security requirements for ports by the Maritime Transportation Security Act of 2002 (Public Law 107-295; 116 Stat. 2064), which are critical to protecting United States ports from a nuclear terrorist attack, will cost $3,400,000,000 to implement over a 10-year period.

SEC. 322. PORT SECURITY GRANT FUNDING.

Section 70107(h) of title 46, United States Code, is amended to read as follows:

"Sec. 70107(h).—(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out subsections (a) through (g) $5,500,000 for fiscal year 2006; $275,000,000 for fiscal year 2007; $1,000,000,000 for fiscal year 2008; $1,250,000,000 for fiscal year 2009; and such sums as may be needed for each fiscal year after fiscal year 2009.

(b) REPORT.—Not later than 180 days after the date of the enactment of the Terrorist Bombing Prevention Act of 2006, the Undersecretary for Border and Transportation Security shall develop a plan to integrate radiation detection portal equipment with gamma-ray inspection technology equipment at United States seaports and develop an implementation plan to equip all United States seaports with such equipment.

(c) INTEGRATED CARGO INSPECTION SYSTEM.—The Undersecretary for Border and Transportation Security shall develop a plan to integrate radiation detection portal equipment with gamma-ray inspection technology equipment at United States seaports and develop an implementation plan to equip all United States seaports with such equipment.

Not later than September 30, 2007, the Administrator of the National Nuclear Security Administration shall—

(1) develop physical standards intended to prevent terrorists from placing a weapon of mass destruction in or on a tanker vessel without detection;

(2) develop detection equipment, and prescribe the use of such equipment, to be employed on a tanker vessel that is bound for a United States port of entry; and

(3) submit the use of such equipment, to be employed on a tanker vessel that is bound for a United States port of entry, to the appropriate congressional committees under an agreement described in subsection (a).
the high seas, or in United States waters

SEC. 332. RESTORATION OF JUSTICE ASSISTANCE FUNDING.

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

(1) State and local police officers, firefighters, and emergency responders play an essential role in the efforts of the United States to prevent terrorist attacks and, if an attack occurred, to address the effects of the attack.

(2) An independent task force has concluded that hundreds of local police offices and firefighting and emergency response units throughout the United States are unprepared for responding to a terrorist attack involving nuclear, chemical, biological, or radiological weapons.

(3) The Edward Byrne Memorial Justice Assistance Grant Program provides critical Federal, state, local, and tribal governments with funds to promote the effectiveness of law enforcement agencies in their efforts to combat terrorism, drug abuse, violent crime, and other highly complex criminal activity.

(b) RESTORATION FUNDING.—(1) In general.—The Edward Byrne Memorial Justice Assistance Grant Program is amended by inserting “$1,600,000,000” for each of fiscal years 2008 through 2010.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall submit to Congress a report that includes—

(1) an assessment of the effectiveness of the Edward Byrne Memorial Justice Assistance Grant Program; and

(2) a description of the measures that the Federal Government, in cooperation with the States, has taken to combat nuclear, chemical, biological, and radiological terrorism.

SEC. 333. PROVIDING RELIABLE OFFICERS, TECHNOLOGY, EDUCATION, COMMUNITY PROTECTORS, AND TRAINING IN OUR NEIGHBORHOOD INITIATIVE.

(a) COPS PROGRAM.—Section 1701(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796d(a)) is amended by—

(1) striking “and” and inserting “or” after “increase”; and

(2) inserting “to enhance law enforcement access to new technologies, and” after “presence,”.

(b) HIRING AND REDEPLOYMENT GRANT PROJECTS.—Section 1701(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796d(b)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B),—

(i) by inserting “and” at the end of “alia” the following: “; or pay overtime to existing career law enforcement officers to the extent that such overtime is devoted to community policing efforts;”;

(ii) by striking “at the end;” and

(B) in subparagraph (C), by—

(i) striking “or pay overtime”; and

(ii) striking the period at the end of “a day”;

(2) in paragraph (2) by striking all that follows “Police Grants” and inserting “Grants pursuant to—”;

(3) in paragraph (3)—

(A) by striking “The Attorney General may” and inserting “the Attorney General shall”; and

(B) by striking “$1,300,000,000” and inserting “$1,600,000,000”.

(c) ADDITIONAL GRANT PROJECTS.—Section 1701(d) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796d(d)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A),—

(i) by inserting “by utilizing new techniques and technological advances, including non-criminal justice sources officer who operate in and around ele-

mentary and secondary schools to serve as a law enforcement liaison with other Fed-

eral, State, and local law enforcement and regulatory agencies, to combat nuclear-related crime and disorder problems, gang membership and criminal activity, firearms and explosives-related incidents, illegal use and possession of alcohol, and the illegal posses-

sun, use, and distribution of drugs”; and

(2) in paragraph (2) by inserting “and” at the end of “administration and training funds, and”;

(3) in paragraph (3)(A), by striking the period at the end and inserting “; and”;

(4) in paragraph (4) by striking “and” at the end of “a day”;

(5) by striking “the Attorney General may” and inserting “the Attorney General shall”;

(6) by striking “$1,300,000,000” and inserting “$1,600,000,000”.

(d) TECHNICAL ASSISTANCE.—Section 1701(f) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796d(f)) is amended—

(1) in paragraph (1)—

(A) by inserting “up to 5 percent of the funds appropriated under subsection (a) to” after “The Attorney General may”;

(B) by inserting “The Attorney General may” and inserting “the Attorney General shall”; and

(C) by inserting “$1,600,000,000” and inserting “$1,600,000,000”.

(e) TECHNOLOGY AND PROSECUTION PROGRAMS.—Section 1701(h) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796d(h)) is amended by—

(1) striking subsection (k); and

(2) redesignating subsections (f) through (i) as subsections (g) through (k); and

(3) by striking subsection (e) and inserting the following:

“(e) LAW ENFORCEMENT TECHNOLOGY PROGRAM.—Grants made under subsection (a) may be used to assist police departments, in employing professional, scientific, and technological advancements that will help them—

(1) improve police communications through the use of wireless communications, and other hardware and software that allow law enforcement agencies to communicate more effectively across jurisdictional bound-

aries and interagency jurisdictions;

(2) develop and improve access to crime solving technologies, including DNA analysis, photo enhancement, voice recognition, and other forensic capabilities; and

(3) improve crime analysis by utilizing new techniques and technol-

ologies, such as crime mapping, that allow law enforcement agencies to use real-time crime and arrest data and other related in-

formation—including non-criminal justice data—to improve their ability to analyze, track, and respond to local crime and disorder problems, as well as to engage in regional crime analysis

by utilizing new techniques and technologies, such as crime mapping, that allow law enforcement agencies to use real-time crime and arrest data and other related in-
formation—including non-criminal justice data—to improve their ability to analyze, track, and respond to local crime and disorder problems, as well as to engage in regional crime analysis.
“(f) Community-Based Prosecution Programs.—Grants made under subsection (a) may be used to assist State, local or tribal prosecutors’ offices in the implementation of community-based prosecution programs and build on local community policing efforts. Funds made available under this subsection may be used to—

(1) hire additional prosecutors who will be assigned to community prosecution programs, including programs that assign prosecutors to handle cases from specific geographic areas, to address specific violent crime and other local crime problems (including intensive illegal gang, gun and drug enforcement projects and quality of life initiatives), and those involving localized violent and other crime problems based on needs identified by local law enforcement agencies, community organizations, and others;

(2) redevelop existing community prosecution programs as described in paragraph (1) of this section by hiring victim and witness coordinators, paralegals, community outreach, and other such personnel; and

(3) establish programs to assist local prosecutors’ offices in the implementation of programs and projects identified to respond to priority crime problems in a community with specifically tailored solutions.

At least 75 percent of the funds made available under paragraph (2) shall be reserved for grants under paragraphs (1) and (2) and of those amounts no more than 10 percent may be used for grants under paragraph (2) and at least 25 percent of the funds shall be reserved for grants under paragraphs (1) and (2) to units of local government with a population of less than 50,000.”.

(f) Retention Grants.—Section 1703 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd–2) is amended by inserting at the end the following:

“(d) Retention Grants.—The Attorney General may use no more than 50 percent of the funds under subsection (a) to award grants targeted specifically for retention of police officers to grantees in good standing, with preference to those that demonstrate fidelity to community policing efforts. Funds made available under this subsection may be used to—

(A) to serve as a law enforcement liaison with other Federal, State, and local law enforcement and regulatory agencies, to address and document crime and disorder problems including gangs and drug activities, firearms and explosives-related incidents, and the illegal use and possession of alcohol affecting or occurring in or around an elementary or secondary school; and

(B) to train students in conflict resolution, crime prevention, and crime awareness, and to provide assistance to and coordinate with other officers, mental health professionals, and youth counselors who are responsible for the implementation of prevention/intervention programs within the schools;”.

(g) DEFINITIONS.—The term “Indian tribe.”—In this section:

(1) INDIAN TRIBE.—The term “Indian tribe” has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 453 note).

(2) LAW ENFORCEMENT OFFICER.—The term “law enforcement officer” means any officer, agent, or employee of a State, unit of local government, public or private college or university, or Indian tribe authorized by law or by a government agency to engage in or support criminal investigations, to seize or recover the proceeds of, or other property used, in committing any crime, or to investigate any violation of criminal law, or authorized by law to supervise sentenced criminal offenders.

(3) PUBLIC SAFETY OFFICER.—The term “public safety officer” means any person serving a public or private agency with or without compensation as a law enforcement officer, as a firefighter, or as a member of a rescue squad or ambulance crew.

(4) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(5) STATE.—The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(6) UNIT OF LOCAL GOVERNMENT.—The term “unit of local government” means a county, municipality, town, township, village, parish, city, or other such political subdivision of any general government below the State level.

(b) First Responders Partnership Grant Program for Public Safety Officers.—

(1) IN GENERAL.—The Secretary shall allocate the funds made available under this section to States, units of local government, and Indian tribes to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.

(2) USE OF FUNDS.—Grants awarded under this section shall be—

(A) distributed directly to the State, unit of local government, or Indian tribe; and

(B) used to fund overtime expenses, equipment, training, and facilities to support public safety officers in their efforts to protect homeland security and prevent and respond to acts of terrorism.

(c) Allocation and Distribution of Funds.—

(A) Set-aside for Indian tribes.—

(1) IN GENERAL.—The Secretary shall reserve 1 percent of the amount appropriated for grants pursuant to this section to be used for grants to Indian tribes.

(2) Selection of Indian Tribes.—In general, the Secretary shall award grants under this paragraph to Indian tribes on the basis of a competition conducted pursuant to specific criteria.

(B) Rulemaking.—The criteria under subclause (I) shall be contained in a regulation promulgated by the Secretary after notice and public comment.

(B) Set-aside for rural states.—

(1) IN GENERAL.—The Secretary shall reseve 5 percent of the amount appropriated for grants pursuant to this section to be used for grants to rural States.

(2) Selection of rural States.—The Secretary shall award grants under this paragraph to rural States (as defined in section 1701(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796d(b))) on the basis of a competition conducted pursuant to specific criteria.

(C) Minimum amount.—The Secretary shall allocate, from the total amount appropriated for grants to States under this subsection—

(I) not less than 0.75 percent for each State; and

(ii) not less than 0.25 percent for American Samoa, Guam, the Northern Mariana Islands, and the United States Virgin Islands, respectively.

(D) Allocation to metropolitan cities and urban counties.—The balance of the total amount appropriated for grants to States under this subsection shall be—

(A) to metropolitan cities; and

(B) to urban counties.
calculating the allocation and the remaining operating nuclear power plant.

100, which are located within 50 miles of an number of metropolitan cities, not to exceed clause (i)(III) shall be 1 divided by the total power plant (as identified by the Nuclear

domestic cities.

(II) the potential chemical security risk of the metropolitan city divided by the potential chemical security risk of all metropolitan cities.

(iii) the proximity of the metropolitan city to the nearest operating nuclear power plant to each such city;

(iv) the proximity of the metropolitan cities to the nearest United States land or water port compared with the proximity of all metropolitan cities to the nearest international border compared with the proximity of all metropolitan cities to the nearest international border to each such city; and

(VI) the proximity of the metropolitan city to the nearest Disaster Medical Assistance Team compared with the proximity of all metropolitan cities to the nearest DMAT to each such city.

(ii) CLARIFICATION OF COMPUTATION RATIOS.

(1) RELATIVE WEIGHT OF FACTOR. — In determining the average of the ratios under clause (I), the ratio involving population shall constitute 50 percent of the formula in calculating the allocation and the remaining factors shall be equally weighted.

(II) POTENTIAL CHEMICAL SECURITY RISK. — If a metropolitan city is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency, or another instrument developed by the Environmental Protection Agency or the Homeland Security Department, under the same formula for the same facilities), the ratio under clause (i)(II) shall be 1 divided by the total number of metropolitan cities that are within such a zone.

(iii) PROXIMITY AS IT PERTAINS TO NUCLEAR SECURITY. — If a metropolitan city is located within 50 miles of an operating nuclear power plant (as identified by the Nuclear Regulatory Commission), the ratio under clause (i)(III) shall be 1 divided by the total number of metropolitan cities, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(iv) PROXIMITY AS IT PERTAINS TO PORT SECURITY. — If a metropolitan city is located within 50 miles of 1 of the 100 largest United States ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of these ports, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(v) PROXIMITY TO INTERNATIONAL BORDER. — If a metropolitan city is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of an international border.

(vi) PROXIMITY TO DISASTER MEDICAL AS- SISTANCE TEAM. — If an urban county is located within 50 miles of a DMAT, as orga- nized by the National Disaster Medical Sys- tem, the ratio under clause (i)(VI) shall be 1 divided by the total number of urban counties that are located within 50 miles of a DMAT.

(f) COMPUTATION OF AMOUNT ALLOCATED TO URBAN COUNTIES.

(1) COMPUTATION RATIOS. — The Secretary shall determine the amount to be allocated to each urban county, which shall be the product of the ratios under clause (i)(I) through (i)(VI) (as applicable) and the number of metropolitan cities within such county; and

(II) the potential chemical security risk of the county divorced by the potential chemical security risk of all urban counties; (III) the proximity of the urban county to the nearest operating nuclear power plant compared to the proximity of all urban counties to the nearest operating nuclear power plant to each such county; (IV) the proximity of the urban county to the nearest United States land or water port compared with the proximity of all urban counties to the nearest United States land or water port to each such county; (V) the proximity of the urban county to the nearest international border compared with the proximity of all urban counties to the nearest international border to each such county; and

(VI) the proximity of the urban county to the nearest Disaster Medical Assistance Team compared with the proximity of all urban counties to the nearest DMAT to each such county.

(ii) CLARIFICATION OF COMPUTATION RATIOS.

(1) RELATIVE WEIGHT OF FACTOR. — In determining the average of the ratios under clause (I), the ratio involving population shall constitute 50 percent of the formula in calculating the allocation and the remaining factors shall be equally weighted.

(II) POTENTIAL CHEMICAL SECURITY RISK. — If an urban county is within the vulnerable zone of a worst-case chemical release (as specified in the most recent risk management plans filed with the Environmental Protection Agency, or another instrument developed by the Environmental Protection Agency or the Homeland Security Department, under the same formula for the same facilities), the ratio under clause (i)(II) shall be 1 divided by the total number of urban counties that are within such a zone.

(iii) PROXIMITY AS IT PERTAINS TO NUCLEAR SECURITY. — If an urban county is located within 50 miles of an operating nuclear power plant (as identified by the Nuclear Regulatory Commission), the ratio under clause (i)(III) shall be 1 divided by the total number of urban counties, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(iv) PROXIMITY AS IT PERTAINS TO PORT SECURITY. — If an urban county is located within 50 miles of 1 of the 100 largest United States ports (as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Port Report by All Land Modes), or within 50 miles of 1 of the 30 largest United States water ports by metric tons and value (as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics), the ratio under clause (i)(IV) shall be 1 divided by the total number of urban counties that are located within 50 miles of a United States land or water port.

(v) PROXIMITY TO INTERNATIONAL BORDER. — If an urban county is located within 50 miles of an international border, the ratio under clause (i)(V) shall be 1 divided by the total number of urban counties that are located within 50 miles of a United States land or water port.

(vi) PROXIMITY TO DISASTER MEDICAL AS- SISTANCE TEAM. — If an urban county is located within 50 miles of a DMAT, as orga- nized by the National Disaster Medical Sys- tem, the ratio under clause (i)(VI) shall be 1 divided by the total number of urban counties that are located within 50 miles of a DMAT.

(g) EXCLUSIONS.

(1) IN GENERAL. — In computing amounts or excluding amounts under subparagraph (f) with respect to any urban county, units of general local government located in the county shall be excluded if the populations of such units are not counted to determine the eligibility of the urban county to receive a grant under this paragraph.

(ii) INDEPENDENT CITIES. — (I) IN GENERAL. — In computing amounts under clause (i), there shall be included any independent city (as defined by the Bureau of the Census) which—

(aa) is not part of any county; (bb) is not eligible for a grant; and

(cc) is contiguous to the urban county; (dd) has entered into cooperation agree- ments with the urban county which provide for the urban county to take such action or to assist in the undertaking of essential com- munity development and housing assistance activities with respect to such independent city, and

(ee) is not included as a part of any other unit of general local government for pur- poses of this section.

(I) LIMITATION. — Any independent city that is included in the computation under subclause (I) shall not be eligible to receive assistance under this paragraph for the fiscal year for which such computation is used to allocate such assistance.

(h) INCLUSION. —

(I) LOCAL GOVERNMENT STRADDLING COUNTY LINE. — In computing amounts or excluding amounts under this paragraph (f) with respect to any urban county, all of the area of any unit of local government shall be included, which is part of, but is not located entirely within the boundaries of, such urban county.

(II) LIMITATION. — Any part of such unit of local government that is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this subsection; and

(III) LIMITATION. — Any part of such unit of local government that is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this subsection.

(i) USE OF GRANT FUNDS OUTSIDE URBAN COUNTY. — Any amount received under this section by an urban county described under clause (i) may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(j) POPULATION. —

(I) EFFECT OF CONSOLIDATION. — Where data are available, the amount to be allocated to a metropolitan city that has been formed by the consolidation of 1 metropolitan cities may be allocated to the metropolitan cities within an urban county shall be equal to the sum of the amounts that would have been allocated to the urban county or cities and the balance of the consolidated govern- ment if such consolidation had not occurred.

(II) LIMITATION. — Clause (i) shall apply only to a consolidation that—

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(I) Included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(ID) Increased urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(III) took place on or after January 1, 2005.

(iii) The population growth rate of all metropolitan cities defined in this section shall be based on the population of metropolitan cities other than consolidated governments for which determinations under this paragraph and cities that were metropolitan cities before their incorporation into consolidated governments.

(b) Matching amount per grantee—

(A) In general.—A qualified State, unit of local government, or Indian tribe may not receive more than 5 percent of the total amount appropriated for grants under this section.

(B) Aggregate amount per state.—A State, together with the grantees within the State, may not receive more than 20 percent of the total amount appropriated for grants under this section.

(c) Matching funds—

(A) In general.—The portion of the costs of a project or activity may be by a grant under paragraph (1) may not exceed 90 percent.

(B) Waiver.—If the Secretary determines that a grantee is experiencing fiscal hardship, Good faith may waive, in whole or in part, the matching requirement under subparagraph (A).

(d) Exception.—Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the share of a matching requirement under subparagraph (A).

(e) Applications.—

(1) In general.—To request a grant under this section, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Secretary in such form and containing such information as the Secretary may reasonably require.

(2) Regulations.—Not later than 90 days after the date of enactment of this Act, the Secretary may promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States, units of local government, and Indian tribes must meet) in submitting the applications required under this subsection.

(f) Authorization of appropriations.—There are appropriated $5,000,000,000 for fiscal year 2006 to carry out this section.

TITLE IV—PROTECTING TAXPAYERS

SEC. 401. REPORTS ON METRICS FOR MEASURING SUCCESS IN GLOBAL WAR ON TERRORISM.

(a) Requirement for reports.—The Comptroller General of the United States shall submit to Congress reports on the metrics for use in tracking and measuring acts of global terrorism, international counterterrorism efforts, and the success of United States counterterrorism policies and practices, including specific, replicable definitions, criteria, and standards of measurement to be used for the following:

(1) Counting and categorizing acts of international terrorism;

(2) Monitoring counterterrorism efforts of foreign governments;

(3) Monitoring financial support provided to terrorism;

(4) Assessing the success of United States counterterrorism policies and practices.

(b) Schedule of reports.—The Comptroller General shall submit to Congress an initial report under subsection (a) not later than 1 year after the date of enactment of this Act; a second report not later than 1 year after the date on which the initial report is submitted.

SEC. 402. PROHIBITION ON WAR PROFITTEERING.

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

(1) War profiteering, the overcharging of taxpayers for any good or service with the specific intent to excessively profit from a conflict or reconstruction, is not only defrauds taxpayers in the United States, but also threatens the safety of United States troops in harms way by hindering reconstruction progress, damaging the credibility of the United States, and wasting resources that could be used for troop protection.

(2) Laws prohibiting fraud protect against waste of tax dollars within the United States, but no current fraud statute expressly prohibits waste of tax dollars resulting from war profiteering during conflicts in foreign countries.

(3) War profiteers have hindered United States efforts to secure and reconstruct Iraq. In its third quarterly report, the Coalition Provisional Authority Inspector General reported that, as of October 12, 2004, it had received a total of 113 potential criminal cases.

(4) In nine separate reports, the Defense Contract Audit Agency, the Coalition Provisional Authority Inspector General, and the Government Accountability Office have found widespread, systematic abuses by the Halliburton Company and its subsidiaries, including instances where as much as tens of millions of dollars, fraudulent accounting practices, and kickbacks. Contracts awarded to Custer Battles, LLC, were suspended by the Department of Defense after it uncovered fraudulent billing practices including the establishment of phantom off-shore corporations. Government investigators have found contract irregularities, including lack of transparency and poor accounting, in contracts awarded to other firms.

(b) Prohibition on profiteering.—

(1) Prohibited acts.—

(A) In general.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1038. War profiteering and fraud relating to military action, relief, and reconstruction efforts

(1) Prohibition.—

(1) "(A) In general.—Whoever, in any manner involving a contract or the provision of goods or services, directly or indirectly, in connection with the war, military action, or relief or reconstruction activities, knowingly and willfully:

(A) causes any material false, fictitious, or fraudulent statement or representations, or makes or uses any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; or

(B) materially overvalues any good or service with the specific intent to excessively profit from the war, military action, or relief or reconstruction activities; shall be fined under paragraph (2), imprisoned not more than 20 years, or both.

(2) FINES.—Whoever convicted of an offense under paragraph (1) may be fined the greater of—

(1) $1,000,000; or

(2) If such person derives profits or other proceeds from the offense, not more than twice the gross profits or other proceeds.

(2) Extra-territorial jurisdiction.—There is extra-territorial jurisdiction over an offense under this section.

(c) Venue.—A prosecution for an offense under this section may be brought—

(1) as authorized by chapter 211 of this title;

(2) in any district where any act in furtherance of the offense took place; or

(3) in any district where any party to the contract or provider of goods or services is located.".

(2) Table of sections.—The table of sections for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

"1038. War profiteering and fraud relating to military action, relief, and reconstruction efforts."

(c) Civil forfeiture.—Section 981(a)(1)(C) of title 18, United States Code, is amended by inserting "1038", after "1932".

(d) Criminal forfeiture.—Section 982(a)(2)(B) of title 18, United States Code, is amended by striking "or 1030" and inserting "or 1038", or 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "1038 (relating to war profiteering and fraud relating to military action, relief, and reconstruction efforts)" after "liquidating agent of financial institution)"

(e) Money laundering.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "1038 (relating to war profiteering and fraud relating to military action, relief, and reconstruction efforts)" after "liquidating agent of financial institution)."

(f) Relationship to existing law.—This section shall not limit or repeal any additional authorities provided by law.

(g) Effective date of amendments.—The amendments made by this section shall be effective during the 7-year period beginning on the date of enactment of this Act.

By Mr. AKAKA (for himself, Mr. Reid, Ms. Mikulski, Ms. Stabenow, Mr. Inouye, Mr. Dorgan, Mr. Lautenberg, Mr. Leahy, Mr. Salazar, Mr. Rockefeller, Mr. Bingaman, Mrs. Feinstein, Mr. Durbin, Mr. Kennedy, Mr. Corzine, Mr. Pryor, Mr. Schumer, Mr. S박anes, and Mr. Dayton):

S. 13. A bill to amend titles 10 and 38, United States Code, to expand and enhance health care, mental health, transition, and disability benefits for veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce a bill that would make sweeping changes to the way the Department of Veterans Affairs (VA) delivers health care and benefits to our nation's veterans. S. 13 would, among other things, guarantee full funding for VA health care, provide for full concurrent receipt, enhance mental health care services, and ease the transition from military service to civilian life.

This bill would mean that the 115,000 veterans who choose to make Hawaii their home would be assured the services they have earned. The nearly 18,000 veterans who avail themselves of VA health care in Honolulu, Hawaii,
Kauai, and Maui would not have to worry if resources for doctors and nurses will materialize next year.

And because so many of our reservists and Guardsmen are being deployed for the current wars in Iraq and Afghanistan, this bill will help ensure they get the care they need upon their return.

Every year the President sends forward his budget proposal to Congress, and every year we go through the same battles to get VA health care the money adequately serves its veteran patients. The time has come to approach this process more rationally. This legislation would ensure full funding for VA health care by simply changing the way funds are allocated. To be perfectly clear, this bill merely shifts money already being allocated over to a more reliable mechanism.

The American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars support this approach to fully fund the veterans health care system.

These three organizations—representing more than 7 million military veterans—rightly believe that veterans have earned the right to VA medical care through their “extraordinary sacrifices and service to this Nation.” We have seen huge numbers of veterans seeking VA care for the first time. I, for one, believe this is a good thing. Others rationalize that as we are at war, we must cut back on VA care. I simply do not understand this logic. We are at war, and therefore we must do everything we can to show our military that VA health care will be there for all veterans who served. To accomplish this goal, we must change the way VA health care is funded.

Although we have continued to make progress on eliminating the long-standing injustice that has affected our disabled retired veterans’ retirement pay, we still have work to do.

S. 13 will correct this unfairness by allowing all disabled military retirees to collect both their full military retired and VA disability pay concurrently.

Most military retirees who have a service-connected disability are not permitted to collect both their retirement and disability benefits concurrently. Military retired pay is the promised reward for 20 or more years of uniformed service and is based on length of service. VA disability compensation is unrelated to length of service and is intended to compensate a veteran for a service-connected loss of function.

In order to continue to recruit and retain quality soldiers, sailors, airmen and marines, we must pay attention not only to the present, but also to the future. George Washington said:

“The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive the Veterans of earlier wars were treated and appreciated by their nation.

Our disabled military retirees deserve to receive the retirement pay that they earned and be compensated for their service-connected disabilities. Our young people will wear the uniforms of our Armed Forces only if they believe their service is appreciated and compensated accordingly.

Along those lines, S. 13 also seeks to ensure that veterans and returning service members can receive the mental health care they might need as a result of their service. The legislation requires each VA medical center to appoint one psychiatrist and treatment team at each medical center that does not currently have one. This legislation would also mandate that VA carry out a community outreach program to let Operation Iraqi Freedom and Operation Enduring Freedom veterans know about the services available to them at VA.

Why is good VA mental health care so important?

Because as often battle wounds do not manifest in physical illness, but in quiet and equally debilitating mental illness. These wounds are revealed as post-traumatic stress disorder with effects that linger and symptoms that can be brought on years after combat. While heart disease and cancer are usually programs filled by VA at prices that are far lower than those obtained in the private sector, veterans have expressed interest in bringing their outside prescriptions from their Medicare doctors to VA pharmacies to get them filled. Current VA policy requires that nearly all veterans see a VA doctor before such prescriptions are issued. This does not make sense.

The Department’s inspector general testified that VA could see savings of $1 billion a year if veterans were allowed to bring their outside prescriptions, because it would obviate the need for VA to re-diagnose patients and then re-issue prescriptions that have already been written. S. 13 would allow these veterans to get their prescriptions filled by VA at prices that are far better than in the private sector. This legislation also seeks to improve access to needed prescription drugs. Many veterans have expressed their desire to bring prescriptions from their Medicare doctors to VA pharmacies to get them filled. Current VA policy requires that nearly all veterans see a VA doctor before such prescriptions are issued. This does not make sense.

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enactment of this section, funding for the programs, functions, and activities of the Veterans Health Administration specified in subsection (d) to accomplish this objective shall be made available as a combination of discretionary and mandatory funds. The discretionary amount should be equal to the fiscal year 2005 discretionary allocation for such programs, functions, and activities, and should remain unchanged each fiscal year thereafter. The annual level of mandatory amount shall be adjusted according to the formula specified in subsection (c). While this section does not purport to control the outcome of the annual appropriations process, it is intended as a general indication of the amount available pursuant to subsection (b) shall be all programs, functions, and activities of the Veterans Health Administration.

The amount appropriated for the purposes specified in subsection (d) shall be adjusted according to the Consumer Price Index (all Urban Consumers, as of September 30, 2004).

The amount equal to the sum of the amounts appropriated by annual appropriations Acts for each of fiscal years 2006 and 2007 for such programs, functions, and activities under chapter 17 of this title that are attributable to changes in population and in inflation.

(f) Nothing in this section shall be construed to prevent or limit the authority of Congress to reauthorize provisions relating to veterans health care.

(c) CLERICAL AMENDMENT. — The table of sections of this title includes a reference to this section that may need to be corrected as a result of the amendment made by section 101 of this Act.

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or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) VOTE ON FINAL PASSAGE.—Immediately following the conclusion of the debate on a joint resolution described in subsection (b) and a single quorum call at the conclusion of the debate, if required by the rules of the House in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(A) APPEALS FROM DECISIONS OF THE CHAIR.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, including the decision on a point of order relating to a joint resolution described in subsection (b) shall be decided without debate.

(2) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a joint resolution of that House described in subsection (b), that House receives from the other House a joint resolution described in subsection (b), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered by the House receiving the resolution, except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a joint resolution described in subsection (b) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) DISPOSITION.—Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(g) RULES OF SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (b), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

Subtitle B—Mental Health Matters

SEC. 111. FINDINGS.

Congress makes the following findings:

(1) A study published in the New England Journal of Medicine reported that about one in six soldiers of the Iraq war displays symptoms of post-traumatic stress disorder.

(2) Clinical evidence indicates an increase in the number of post-traumatic stress disorder cases in light of the increasing duration of military deployment.

(3) In December 2004, Inspector General of the Department of Veterans Affairs reported that post-traumatic stress disorder treatment programs:

(a) ENHANCED CAPACITY FOR DEPARTMENT OF VETERANS AFFAIRS.—Using funds available to the Secretary of Veterans Affairs for fiscal year 2006 for “Medical Care”, the Secretary shall employ at least one psychiatrist and a complementary clinical team at each medical center of the Department of Veterans Affairs in order to conduct a specialized program for the diagnosis and treatment of post-traumatic stress disorder and to employ additional mental health services specialists at the medical center.

(b) OUTREACH AT THE COMMUNITY LEVEL.—(1) The Secretary of Veterans Affairs shall, within the authorities of the Secretary under title 38, United States Code, carry out a program to provide outreach at the community level to veterans who participate in Operation Iraqi Freedom or Operation Enduring Freedom who are or may be suffering from post-traumatic stress disorder.

(2) PROGRAM SITES.—The program shall be carried out on a nationwide basis through facilities of the Department of Veterans Affairs.

(3) PROGRAM CONTENT.—The program shall provide for individualized case management to be conducted on a one-on-one basis, counseling, education, and other services to help participants cope with post-traumatic stress disorder. The program—

(A) shall emphasize early identification of veterans who are experiencing symptoms of post-traumatic stress disorder; and

(B) shall include group-oriented, peer-to-peer settings for treatment.

(4) ANALYSIS AND REVIEW OF MENTAL HEALTH PROGRAMS.

(a) REVIEW OF MENTAL HEALTH PROGRAMS.—The Secretary of Defense shall conduct a comprehensive review of the mental health care programs of the Armed Forces under the jurisdiction of that Secretary in order to determine ways to improve the efficacy of such care, including a review of joint Department of Defense and Department of Veterans Affairs clinical guidelines to ensure a seamless delivery of care during transitions from active duty or reserve status to civilian life.

(b) REPORT.—The Secretary of Defense shall submit to Congress a report setting forth the results of such review not later than 90 days after the date of enactment of this Act.

Subtitle C—Other Matters

SEC. 121. AUTHORITY OF DEPARTMENT OF VETERANS AFFAIRS PHARMACIES TO DISPENSE MEDICATIONS TO VETERANS ON PRESCRIPTIONS WRITTEN BY PRIVATE PRACTITIONERS.

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

(1) Under longstanding regulations of the Department of Veterans Affairs, most veterans who are enrolled in the Supplementary Medical Insurance Program (SMIP), under part B of title XIX of the Social Security Act (42 U.S.C. 1395 et seq.), and veterans who are beneficiaries of Medicare under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) are authorized to fill their prescriptions filled by a pharmacy. This bureaucratic red tape can prevent veterans from quickly receiving the medical treatment they need.

(2) In December 2004, Inspector General of the Department of Veterans Affairs reported that eliminating this unnecessary red tape would save the underfunded Department of Veterans Affairs over $1,000,000,000 per year. The report concluded that “a decision to continue the current policies results in inefficiency and waste that we estimate annually to consume $1,000,000,000 in resources that could be better used in the delivery of healthcare services to veterans.”

(3) In 2004, the Department of Justice, in a reversal of an earlier legal opinion, stating that the Secretary of Veterans Affairs has the authority to eliminate this rule without further legislative action, the Secretary has failed to take such a step, thus necessitating action by Congress.

(b) AUTHORITY.—Section 712(e) of title 38, United States Code, is amended.—

(1) by redesigning subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

‘‘(e) The Secretary shall furnish to any Medicare-eligible veteran on an out-patient basis one prescription of the medications that are or may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran.''

(2) In this subsection, the term ‘Medicare-eligible veteran’ means any veteran who—

(A) is entitled to or enrolled in hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

(B) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395 et seq.).

(3) The furnishing of drugs and medicines under this subsection shall be subject to the provisions of section 1722(a) of this title.

(c) COPAYMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 1722A of such title is amended—

(A) in subsection (a)(1), by inserting “other than a veteran covered by subsection (b)” after “require a veteran”;

(B) by redesigning subsections (b) and (c) as subsections (b) and (c), respectively;

(C) by inserting after subsection (a) the following new subsection (b):

‘‘(b) In the case of a veteran who is furnished medications on an out-patient basis under section 1721(e) of this title, the Secretary shall require the veteran to pay, at the election of the Secretary, one or more of the following:

(A) An annual enrollment fee in an amount determined appropriate by the Secretary.

(B) A copayment for each 30-day supply of such medications in an amount determined appropriate by the Secretary.

(C) An amount equal to the cost to the Secretary of such medications, as determined by the Secretary.

(2)(A) In determining the amounts to be paid by a veteran under paragraph (1) and the basis of payment under one or more subparagraphs of that paragraph, the Secretary shall ensure that the total amount paid by veterans for medications under that paragraph in a year is not less than the costs of the Department in furnishing medications to veterans under section 1721(e) of this title during that year, including the cost of purchasing and furnishing medications, and other costs of administering that section.

(B) The Secretary may take appropriate actions to ensure, to the maximum extent practicable, that amounts paid by veterans under paragraph (1) in a year are equal to the costs of the Department referred to in subparagraph (A) in that year.

(3) In determining amounts under paragraph (1), the Secretary may take into account the following:

(A) Whether or not the medications furnished are generic medications or brand name medications.

(B) Whether or not the medications are furnished by mail.

(C) Whether or not the medications furnished are listed on the National Formulary of the Department.

(D) Any other matters the Secretary considers appropriate.
“(4) The Secretary may from time to time adjust any amount determined by the Secretary under paragraph (1), as previously adjusted, under this paragraph, in order to meet the purposes specified in paragraph (2), and (D) in subsection (d), as so redesignated—

(i) by striking ‘‘section (a)’’ and inserting ‘‘sections (a) and (b)’’; and

(ii) striking ‘‘section (b)’’ and inserting ‘‘section (c)’’.

(2) DEPOSIT OF COLLECTIONS IN MEDICAL CARE COLLECTION FUND.—Paragraph (4) of section 1728A(a) of title 38 is amended to read as follows:

“(4) Subsection (a) or (b) of section 1722A of this title.

(3) Clinical Amendments.-(1) The heading for section 1712 of such title is amended by striking ‘‘for certain disabled veterans’’.

(2) The table of sections at the beginning of chapter 17 of such title is amended by inserting the item relating to section 1712 by striking ‘‘for certain disabled veterans’’.

TITLE II—CONCURRENT RECEIPT OF RETIRED PAY AND SERVICE-CONNECTED DISABILITY COMPENSATION

SEC. 201. SHORT TITLE.

This title may be cited as the ‘‘Retired Pay Restoration Act of 2005’’.

SEC. 202. FINDINGS.

Congress makes the following findings:

(1) The United States Government has an essential obligation to provide support and care for men and women who have completed honorable military service in defense of the Nation. In no instance is this obligation more critical than for veterans who were injured or disabled during their military service.

(2) Disability compensation and military retired pay are benefits earned for two distinct reasons. Disability compensation is provided for disabilities resulting from their military service to the Nation as an expression of the Nation’s gratitude and as recompense for their sacrifice. Military retired pay is earned by members of the Armed Forces for the devotion of 20 or more years of their lives to the military service of the Nation.

(3) Until 2002, Federal law prohibited disabled veterans from concurrently receiving both disability compensation and retirement pay. The prohibition against concurrent receipt of title 38, section 5302 of title 38, and section 1712 of title 38 was a gross violation of the Government’s commitment to veterans.

(4) Despite recent legislative advances, over 1,500,000 disabled veterans continue to be prevented from receiving both military retirement and disability payments concurrently.

SEC. 203. FULL PAYMENT OF BOTH RETIRED PAY AND COMPENSATION TO DISABLED MILITARY RETIREE.

(a) Restoration of Full Retired Pay Benefits.—Section 1414 of title 10, United States Code, is amended by striking paragraphs (1) through (10) and inserting—

“(1) Members eligible for retired pay who are also eligible for veterans’ disability compensation: payment of retired pay and veterinary compensation.

“(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—Except as provided in subsection (b), a member or former member of the uniformed services who is entitled to retired pay as specified in subsection (c) and who is also entitled to veterans’ disability compensation is entitled to be paid both without regard to sections 5304 and 5305 of title 38.

“(b) Special Rule for Chapter 61 Career Retirees.—The retired pay of a member retired under chapter 61 of this title with 20 years or more of otherwise creditable service under section 1405 of this title at the time of the member’s retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member’s retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member’s service in the uniformed services if the member had not been retired under chapter 61 of this title.

“(c) Exception.—Subsection (a) does not apply to a member retired under chapter 61 of this title who less than 20 years of service otherwise creditable under section 1405 of this title at the time of the member’s retirement.

“(d) Definitions.—In this section:

“(1) The term ‘‘retired pay’’ includes re- tainer pay, emergency officers’ retirement pay, and national emergency compensation.

“(2) The term ‘‘veterans’ disability compensa- tion’’ has the meaning given the term ‘‘compensation’’ in section 101(13) of title 38.

“(3) The purpose of a physical examination conducted under this subsection shall be given to the member under this subsection.

“(4) The results of the physical examination conducted under this subsection shall be included on the Form DD214 of the mem- ber.

“(5) The results of the physical examination conducted under this subsection shall be included on the Form DD214 of the member.

“(6) The Secretary of Defense shall pres- cribe in regulations the requirements for physical examinations conducted under this subsection.

“(a) by redesignating paragraphs (3) through (7) as paragraphs (4) through (11), respectively; and

“(b) by striking ‘‘section (a)’’ and inserting ‘‘sections (a) and (b)’’.

(4) The results of the physical examination conducted under this subsection shall be included on the Form DD214 of the member or any successor form.

“(5) The Secretary concerned shall trans- mit in electronic form to the Secretary of Veterans Affairs the results of each physical examination conducted by such Secretary under this subsection.

SEC. 302. REPORT ON DEVELOPMENT OF INTEROPERABLE ELECTRONIC MEDICAL RECORDS.

Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to Congress a report on the development of the interoperable electronic medical records for members of the Armed Forces and veterans that are usable by both the Department of Defense and the Department of Veterans Affairs.

SEC. 303. EXCHANGE OF MEDICAL RECORDS FOR SEAMLESS TRANSITION IN THE PROVISION OF HEALTH CARE SERVICES.

The Secretary of Health and Human Services shall modify section 164.512(k)(1) of title 45, provide regulations, and issue such guidance as may be necessary to ensure that the Department of Defense and the Department of Veterans Affairs may exchange protected health information of members of the Armed Forces and veterans in a manner that, as determined jointly by the Secretary of Health and Human Services, the Secretary of Defense, and the Secretary of Veterans Affairs, facilitates a seamless transition between the provision of health care services by the Department of Defense to members of the Armed Forces and the provision of health care services by the Department of Veterans Affairs to veterans who require such services after their separation or retirement from the Armed Forces.

SEC. 304. ENHANCEMENT OF PRESEPARATION PHYSICAL EXAMINATION REQUIREMENTS.

(a) The Secretary of Defense, in consultation with the Department of Veterans Affairs, shall prescribe in regulations the requirements for physical examinations conducted under this section.

SEC. 305. ENHANCEMENT OF PRESEPARATION COUNSELING REQUIREMENTS.

Section 1412 of title 10, United States Code, is amended—

“(1) by redesignating paragraphs (3) through (10) as paragraphs (4) through (11), respectively; and

“(2) by redesigning subsections (d) and (e) as subsections (e) and (f), respectively; and

“(3) by inserting after subsection (c) the following new subsection:

“(d) Preseparation Physical.—(1) The Secretary concerned shall require a member of the armed forces to be separated from active duty to undergo a physical examination before that separation.

“(2) The physical examination of a member under this subsection shall be conducted before the member receives preseparation counseling under section 1142 of this title.

“(3) (A) The physical examinations conducted under this subsection shall be comprehensible and, to the maximum extent practicable, uniform throughout the armed forces.

“(B) The purpose of a physical examination conducted for a member under this subsection shall be—

“(i) to determine the immediate health care needs, if any, of the member as of separation and the ongoing health care needs, if any, of the member after separation; and

“(ii) to identify any illness, injury, or other medical conditions that may make the member eligible for benefits as a veteran under the laws administered by the Secretary of Veterans Affairs.

“(C) The Secretary of Defense shall prescribe in regulations the requirements for physical examinations conducted under this subsection.

“(D) The results of the physical examination of a member under this subsection shall be included on the Form DD214 of the member or any successor form.

“(E) The Secretary concerned shall transmit in electronic form to the Secretary of Veterans Affairs the results of each physical examination conducted by such Secretary under this subsection.

SEC. 306. CONGRESSIONAL RECORD—SATE. January 24, 2005
(2) by striking paragraph (2) and inserting the following new paragraphs:

‘‘(2) A description (to be developed with the assistance of the Secretary of Veterans Affairs) of the number and other benefits to which the member may be entitled under the laws administered by the Secretary of Veterans Affairs, including compensation and vocational rehabilitation benefits in the case of a member being medically separated or being retired under chapter 61 of this title, which shall be taken into account the presumptive physical examination of the member conducted under section 1154(d) of this title.

‘‘(3) In the case of a member who, as determined pursuant to the presumptive physical examination conducted under section 1154(d) of this title, may be entitled to compensation or pensions benefits under the laws administered by the Secretary of Veterans Affairs, a referral (to be provided with the assistance of the Secretary of Veterans Affairs) for a compensation and presumptive physical examination by the Secretary of Veterans Affairs.’’

SEC. 306. EPIDEMIOLOGICAL STUDIES.

(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall, during the five-year period beginning on October 1, 2005, jointly carry out such epidemiological studies relating to veterans health conditions that develop as a result of occupational exposure during military service as such Secretaries consider appropriate.

(b) FUNDING.—(1) DEPARTMENT OF DEFENSE.—Of the amount authorized to be appropriated for fiscal year 2006 for the Department of Defense for the Department of Defense Occupational Health Program, $2,500,000 shall be available for the epidemiological studies authorized by subsection (a).

(2) DEPARTMENT OF VETERANS AFFAIRS.—Of the amount authorized for fiscal year 2006 for the Department of Veterans Affairs for Medical Care, $2,500,000 shall be available for the epidemiological studies authorized by subsection (a).

(c) AVAILABILITY.—Amounts available under this subsection shall be available without fiscal year limitation.

SEC. 307. INFORMATION SHARING.

(a) IN GENERAL.—The Secretary of Defense and the Secretary of Veterans Affairs shall jointly develop protocols to facilitate the sharing of information between the Department of Defense and the Department of Veterans Affairs on the matters referred to in subsection (c) with respect to each member of the Armed Forces.

(b) PURPOSE.—The purpose of the protocols is to facilitate determinations by the Department of Veterans Affairs of the existence and extent of a connection any illness or injury experienced by a former member of the Armed Forces after separation from the Armed Forces and the exposure of the member to toxic or hazardous substances in the course of the member’s duties or assignments as a member of the Armed Forces.

(c) MATTERS RECORDED.—The matters referred to in this subsection with respect to a member of the Armed Forces are as follows:

(1) Names and assignments of the member, including the location of such duties and assignments.

(2) Any exposures of the member in the course of such duties and assignments to toxic or hazardous substances.

(3) Any illness or injury of the member incurred or aggravated in the course of such duties and assignments.

(d) ELEMENTS OF PROTOCOLS.—The protocols on the sharing of information developed under subsection (a) shall include the following:

(1) Mechanisms to ensure that the Department of Veterans Affairs receives information to facilitate the timely and accurate assessment of the illnesses or injuries of a member of the Armed Forces that have been incurred or aggravated by the member’s exposure to toxic or hazardous substances during service in the Armed Forces.

(2) Mechanisms that provide to the maximum extent consistent with the national security interests of the United States, for the declassification of information necessary to achieve the purpose of the protocols.

(3) Procedures to ensure that information is shared under the protocols as a matter of routine operations of the Department of Defense and the Department of Veterans Affairs.

(e) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to Congress a report on the protocols developed under subsection (a).

(f) FUNDING.—(1) DEPARTMENT OF DEFENSE.—Amounts authorized to be appropriated for fiscal year 2006 for the Department of Veterans Affairs for the development of protocols under subsection (a).

(2) DEPARTMENT OF VETERANS AFFAIRS.—Amounts authorized to be appropriated for fiscal year 2006 for the Department of Veterans Affairs for the development of protocols under subsection (a).

SEC. 308. COORDINATION OF LONG-TERM RESEARCH ON HEALTH CARE.

(a) DEPARTMENT OF VETERANS AFFAIRS REPRESENTATIVE ON ARMED FORCE EPIDEMIOLOGICAL BOARD.—

(1) IN GENERAL.—The Secretary of Defense shall appoint to the Armed Forces Epidemiological Board, as an ex officio member, an officer of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs for the purpose.

(2) PURPOSE.—The purpose of the appointment under this subsection is to ensure that the Armed Forces Epidemiological Board considers and takes into account the views of the Secretary of Veterans Affairs.

(b) DEPARTMENT OF VETERANS AFFAIRS REPRESENTATIVE FOR DEPARTMENT OF DEFENSE SAFETY AND OCCUPATIONAL HEALTH COMMITTEE.—

(1) IN GENERAL.—The Secretary of Defense shall appoint to the Department of Defense Safety and Occupational Health Committee, as an ex officio member, an officer of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs for the purpose of this subsection.

(2) PURPOSE.—The purpose of the appointment under this subsection is to ensure that the Department of Defense and the Department of Veterans Affairs establish and maintain effective collaboration on matters relating to occupational safety and health of current and former members of the Armed Forces.

(c) ANNUAL REPORT ON FORCE HEALTH PROTECTION.—Not later than March 1 each year, the Secretary of Defense and the Secretary of Veterans Affairs shall jointly submit to Congress each year a report on the efforts of the Department of Defense and Department of Veterans Affairs, respectively, during the preceding calendar year, to accomplish the following:

(1) The identification of illnesses and injuries incurred or aggravated by members of the Armed Forces during service in the Armed Forces through exposure to occupational hazards and other toxic and hazardous substances.

(2) The conduct of medical treatment of members of the Armed Forces and veterans for illnesses and injuries described in paragraph (1).

(3) The conduct of epidemiological studies on the health consequences of exposure of members of the Armed Forces to occupational hazards and other toxic and hazardous substances during service in the Armed Forces.

(4) The development of guidance and other information on policies and practices intended to prevent, reduce, or mitigate the effect of members of the Armed Forces to occupational hazards and other toxic and hazardous substances during service in the Armed Forces.

TITLE IV.—INCREASED GOVERNMENT COMMITMENT TO VETERANS’ EDUCATION

SEC. 401. SHORT TITLE.

This title may be cited as the ‘‘Montgomery GI Bill for the 21st Century Act’’.

SEC. 402. FINDINGS.

Congress makes the following findings:

(1) 2004 marked the 60th anniversary of the Servicemembers’ Group Life Insurance Act, better known as the G.I. Bill. Out of a eligible population of 15,500,000 veterans, nearly 2,000,000 veterans have received education or training as a result of this legislation, one of the most successful Federal Government programs in United States history.

(2) Since Congress first enacted the G.I. Bill, veterans’ benefits have been updated to keep pace with changing times. Over 21,000,000 veterans have now received education assistance through the G.I. Bill and its successors.

(3) Congress has a duty to ensure that the VA can continue to offer an education assistance program that probably supports veterans’ efforts to obtain higher education and make a successful transition from military to civilian life.

SEC. 403. EXCLUSION OF BASIC PAY CONTRIBUTIONS IN CERTAIN COMPUTATIONS ON STUDENT FINANCIAL AID.

(a) EXCLUSION.—Subchapter II of chapter 30 of title 38, United States Code, is amended by adding at the end the following new section:

‘‘§ 3020A. Exclusion of basic pay contributions in certain computations on student financial aid

‘‘(a) IN GENERAL.—The expected family contribution computed under section 475, 476, or 477 of the Higher Education Act of 1965 (20 U.S.C. 1087f, 1087g, 1087h) for a covered student shall be decreased by $1,200 for the applicable year.

(b) DEFINITIONS.—In this section:

‘‘(1) The term ‘‘academic year’’ has the meaning given in the term in section 481(a)(2) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(2)).

‘‘(2) The term ‘applicable year’ means the first academic year for which a student uses entitlement to basic educational assistance under this chapter.

‘‘(3) The term ‘covered student’ means any individual entitled to basic educational assistance under this chapter whose basic pay or voluntary separation incentives was or would be subject to section 3011(b), 3012(c), 3018(c), 3018A(b), or 3018B(b) of this title.’’.

(b) CERCLICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3020 the following new item:

‘‘3020A. Exclusion of basic pay contributions in certain computations on student financial aid’’. 
(a) OPPORTUNITY FOR ENROLLMENT.—Section 3018C(e) of title 38, United States Code, is amended by adding at the end the following new paragraph:

“(3) Notwithstanding the provisions of paragraph (1) of this subsection, any eligible person (as defined in section 3501(a)(1)(B) or (D)(i) of this title) who, during the 10-year period described in paragraph (1) of this subsection, enrolls in a program of special restorative training under subchapter V of this chapter during the 10-year period beginning on the first day of the individual’s pursuit of such program of special restorative training.”.

By Mr. BINGAMAN (for himself, Mr. REID, Mr. KENNEDY, Mr. CORZINE, Mr. DURBIN, Mr. REED, Mr. SCHUMER, Mr. DODD, Mr. HARKIN, Mrs. MURKOWSKI, Mr. STabenow, Mr. Lautenberg, Mrs. Feinstein, Mrs. Clinton, Mr. Inouye, Mr. Rockefeller, Mr. Sarbanes, and Mr. Day- ton).

S. 15. A bill to improve education for all students, and for other purposes; to the Committee on Finance

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

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

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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 ‘‘Quality Education for All Act’’.

SEC. 2. TABLE OF CONTENTS.
The table of contents for this Act is as follows:

TITLES

TITLE I—STRENGTHENING HEAD START AND CHILD CARE PROGRAMS
Subtitle A—Increasing Access to Head Start Programs

Sec. 101. Authorization of appropriations.
Sec. 102. Strengthening Indian and migrant and seasonal Head Start programs.
Sec. 103. Expand Early Head Start programs.
Sec. 104. Participation in Head Start programs.

Subtitle B—Enhancing the School Readiness of Head Start Children

Sec. 111. School readiness standards.
Sec. 112. Staffing.

Subtitle C—Expanding Access to Quality, Affordable Child Care

Sec. 121. Authorization of appropriations.

Subtitle D—Strengthening the Quality of Child Care

Sec. 131. State plan requirements relating to training.
Sec. 132. Strengthening the quality of child care.

TITLES

TITLE II—MAKING COLLEGE AFFORDABLE FOR ALL STUDENTS

Sec. 201. Findings and purpose.
TITLE I—STRENGTHENING HEAD START AND CHILD CARE PROGRAMS

Subtitle A—Increasing Access to Head Start Programs

SECTION 101. AUTHORIZATION OF APPROPRIATIONS.

Section 638(a)(2) of the Head Start Act (42 U.S.C. 9834(a)(2)) is amended by striking “such sums” and all that follows and inserting the following: “$8,570,000,000 for fiscal year 2006; $10,448,000,000 for fiscal year 2007; $12,384,000,000 for fiscal year 2008; $14,334,000,000 for fiscal year 2009, and $15,332,000,000 for fiscal year 2010.”

SEC. 102. STRENGTHENING INDIAN AND MIGRANT AND SEASONAL HEAD START PROGRAMS.

Section 619(a)(2) of the Head Start Act (42 U.S.C. 9835(a)(2)) is amended by striking paragraph (A) and inserting the following:

“(A) Indian Head Start programs, services for children with disabilities, and migrant and seasonal Head Start programs, except that the Secretary shall reserve for each fiscal year for use by Indian Head Start and migrant and seasonal Head Start programs (referred to in this subparagraph as ‘covered programs’), on a nationwide basis, a sum that is the total of not less than 4 percent of the amount appropriated under section 619(a)(1)(B) for that fiscal year (for Indian Head Start programs), and not less than 5 percent of that appropriated amount (for migrant and seasonal Head Start programs), relative to the number of children served on the date of enactment of the Quality Education for All Act, taking into consideration an appropriate adjustment for inflation and reserve percentages that approach, as closely as practicable, the specified percentages and that do not cause such a reduction; and

“(B) by striking any other provision of this subparagraph, the Secretary shall reserve for each fiscal year for use by Indian Head Start programs and by migrant and seasonal Head Start programs, on a nationwide basis, not less than the amount that was obligated for use by Indian Head Start programs and by migrant and seasonal Head Start programs, respectively, for the previous fiscal year.”

SEC. 103. EXPANDING EARLY HEAD START PROGRAMS.

Section 641A(a) of the Head Start Act (42 U.S.C. 9843(a)) is amended—

(1) in subparagraph (A), by striking “7.5 percent for fiscal year 2009” and all that follows and inserting “14 percent for fiscal year 2006, 14 percent for fiscal year 2007, 16 percent for fiscal year 2008, 18 percent for fiscal year 2009, and 20 percent for fiscal year 2010, of the amount appropriated pursuant to section 639(a)(1);”;

(2) by striking paragraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

SEC. 104. PARTICIPATION IN HEAD START PROGRAMS.

Section 645 of the Head Start Act (42 U.S.C. 9840) is amended—

(1) in subsection (a)(1)(A), by inserting “130 percent of” after “below”; and

(2) in subsection (e), after “part-day sessions, into full-day ses-

sions.”.

Subtitle B—Enhancing the School Readiness of Head Start Children

SEC. 111. SCHOOL READINESS STANDARDS.

Section 641A(a)(1)(B)(i) of the Head Start Act (42 U.S.C. 9843(a)(1)(B)(i)) is amended by striking “at a minimum” and all that follows and inserting the following: “at a minimum, develop and demonstrate—

(i) language skills, including an expanded use of vocabulary;

(ii) interest in and appreciation of books, reading, and writing (either alone or with others), phonological and phonemic awareness, and various modes of expression and communication;

(iii) premathematics knowledge and skills, including knowledge and skills relating to aspects of classification, seriation, numbers, spatial relations, and time;

(iv) cognitive abilities related to academic achievement;

(V) abilities related to social and emotional development;

(VI) gross and fine motor skills; and

(VII) in the case of children with limited English proficiency, abilities related to progress toward acquisition of the English language.”

SEC. 112. STAFF QUALIFICATIONS AND DEVELOPMENT.

Section 648A of the Head Start Act (42 U.S.C. 9848a) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i), by striking “not later than September 30, 2005” and all that follows through “program has
determined under subparagraph (D) for a Head Start region, each Head Start agency in the region must ensure that a classroom in the program have at least one teacher who has”;

(ii) in clause (i), strike “an associate, baccalaureate,” and insert “a baccalaureate”; and

(iii) in clause (ii), strike “an associate, baccalaureate,” and insert “a baccalaureate”; and

(B) by striking paragraph (B) and inserting the following:

“(B) TEMPORARY REQUIREMENT.—Until the date determined under subparagraph (D) for a Head Start region, the Secretary shall ensure that at least 50 percent of all Head Start teachers in the region in center-based programs have—

(i) a baccalaureate, baccalaureate, or advanced degree in early childhood education; or

(ii) an associate, baccalaureate, or advanced degree related to early childhood education, with experience in teaching preschool children.

(C) REQUIREMENT FOR NEW HEAD START TEACHERS.—After the date of enactment of the Quality Education for All Act, the Secretary shall require that all teachers hired nationwide in center-based programs following the date of the requirement—

(i) have an associate, baccalaureate, or advanced degree in early childhood education;

(ii) have an associate, baccalaureate, or advanced degree in a field related to early childhood education, with experience in teaching preschool children; or

(iii) be enrolled, or enroll not later than 1 year after the date of hire, in a program of study leading to an associate degree in early childhood education.

(D) APPROPRIATE DATE.—The Secretary shall determine an appropriate date for Head Start agencies in each Head Start region to reach the requirement specified in subparagraph (A), but in no case shall such a date be later than 8 years after the date of enactment of Quality Education for All Act.

(E) PROFESSIONAL DEVELOPMENT.

(i) REQUIREMENT.—The Secretary shall require Head Start agencies with center-based programs to demonstrate continuing and consistent progress each year to reach the results described in subparagraphs (A) and (C).

(ii) PLAN.—Each State shall establish a plan for the Head Start agencies with center-based programs in the State to reach the results described in subparagraphs (A) and (C). The plan shall prepare and submit to the Secretary and the Governor of the State a report indicating the number and percentage of its teachers in center-based programs with child development associate credentials or associate, baccalaureate, or advanced degrees in early childhood education or a field related to early childhood education. The Secretary shall compile all such reports and submit a summary of the compiled reports to the Committee on Health, Education, Labor, and Pension of the House of Representatives.”;

(2) in subsection (a)(3), by striking “(2)(A)” and inserting “(2)(B)”; and

(3) by adding at the end the following:

“(D) PRE-LITERACY AND LANGUAGE TRAINING.—To support local efforts to enhance early literacy and pre-literacy development of children in Head Start programs, and to provide the children with high-quality oral language skills and skills that are rich in literature, in which to acquire early language and pre-literacy skills, each Head Start agency shall ensure that all of the agency’s Head Start staff are undergoing training in language and emergent literacy. Such training shall also include information regarding appropriate curricula and assessments to improve instruction and learning. Such training shall include training in methods to promote phonological and phonemic awareness and vocabulary development in an age-appropriate, culturally and linguistically appropriate manner.

“(E) PROFESSIONAL DEVELOPMENT PLANS.—Each Head Start agency and center shall create, in consultation with employees of the agency or center (including family service workers), a professional development plan for employees who provide direct services to children, including a plan for teachers, to meet the requirements set forth in subsection (a).”;

(b) ATTRACTING AND RETAINING HIGH-QUALITY HEAD START TEACHERS; TRIBAL COLLEGE OR UNIVERSITY-HEAD START PARTNERSHIP PROGRAM—

(1) PROGRAM.—The Head Start Act is amended by inserting after section 648A (42 U.S.C. 9848a) the following:

“SEC. 648B. ATTRACTING AND RETAINING HIGH-QUALITY HEAD START TEACHERS.

“(a) IN GENERAL.—The Secretary shall make grants to eligible Head Start agencies to enable the agencies to reach the results described in subparagraphs (A) and (C) of section 648A(a)(2). The Secretary shall make the grants from allotments determined under subsection (b).

“(b) ALLOTMENTS.—From the funds made available under section 648(c) for a fiscal year and not reserved under subsection (d), the Secretary shall allot to each Head Start agency an amount that bears the same relationship to such funds as the amount received by the agency under section 640 for the fiscal year before the amount received by all Head Start agencies under section 640 for that fiscal year.

“(c) SALARY PLAN.—A Head Start agency that receives a salary plan shall develop and carry out a plan to raise the average salaries of teachers in the agency’s Head Start programs. In developing the plan, the agency shall take into consideration the training, level of education, and experience of the teachers, and the average salaries of

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prokindergarten and kindergarten teachers employed by the local educational agency for the school district in which the Head Start agency is located, with similar training, level and experience, as regular teachers.

"(d) SALARIES IN HIGH-COST AREAS.—The Secretary may, in any fiscal year, pay higher salaries to individuals or groups of individuals (other than section 648B(c)) to assist the Head Start agency in the area to provide superior quality of child care or child care services. The Secretary may pay higher salaries to individuals, to ensure an adequate and competitive level of compensation to attract and retain qualified staff, and to fulfill the requirements of the Head Start Program.

SEC. 460C. TRIBAL COLLEGE OR UNIVERSITY-HEAD START PARTNERSHIP PROGRAM.—

(a) Tribal College or University-Head Start Partnership Program.—

(1) GRANTS.—The Secretary is authorized to award grants to an institution of higher education, or an organization under the control of such institution of higher education, that enters into a partnership with 1 or more Indian Head Start agencies to provide services for which assistance is made available under this subchapter in the State.

(b) APPLICATION.—Each Tribal College or University desiring a grant under this section shall submit an application to the Secretary, at such time, in such manner, and containing such information as may be required by the Secretary, including the information specified in clauses (1) and (2) of subsection (a).

(c) DISCRETION.—In this section—

(1) INSTITUTION OF HIGHER EDUCATION.—The term ‘‘institution of higher education’’ means any institution of higher education that—

(A) defined by section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a));

(B) is determined to be a candidate for accreditation by a nationally recognized accrediting agency or association.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $10,000,000 for fiscal year 2006 and such sums as may be necessary for each of fiscal years 2007 through 2009.

SEC. 461A. AUTHORIZATION OF APPROPRIATIONS.—

Section 658E of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858e) is amended—

(a) IN GENERAL.—

(1) RESERVATION.—Each State that receives funds under section 639(a) for a fiscal year shall reserve not less than 6 percent of the funds for activities designed to improve the quality of child care services.

(b) ACTIVITIES.—The funds reserved under paragraph (1) may only be used to—

(A) develop and implement voluntary guidelines on pre-reading and language skills and activities designed to improve the quality of child care services provided in the State, that are aligned with State standards for kindergarten through grade 12 or the State’s general goals for school preparedness;

(B) support activities and provide technical assistance in early child care settings to enhance early learning for young children, to promote literacy, and to foster school preparedness; and

(C) engage in programs designed to increase the retention and improve the competitiveness of child care providers, including wage incentive programs and initiatives that establish tiered payment rates for providers that accept children from low-income families, as defined by the State.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—

(2) APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $841,000,000 for fiscal year 2010, $723,000,000 for fiscal year 2009, and $608,000,000 for fiscal year 2008, $591,000,000 for fiscal year 2017, and such sums as may be necessary for each of fiscal years 2009 through 2017.

SEC. 132. STRENGTHENING THE QUALITY OF CHILD CARE.

SEC. 131. STATE PLAN REQUIREMENTS RELATING TO TRAINING.

(c) DEFINITIONS.—In this section—

(1) HEAD START.—The term ‘‘Head Start’’ means the Head Start Program assisted under section 6001 and the Child and Parent Grant Program assisted under section 6002 of the Head Start Act (42 U.S.C. 9801 and 9811), as amended

(2) INDIVIDUALS.—The term ‘‘individuals’’ means—

(A) children;

(B) teachers;

(C) other individuals who are providing early child care services.

(D) engage in programs designed to improve the quality of child care services provided in the State, for which measurement of outcomes relating to improved child safety, child well-being, or school preparedness is possible.

(c) CERTIFICATION.—For each fiscal year beginning after September 30, 2005, the State shall annually submit to the Secretary a certification that—

(1) the State is in compliance with subsection (a) or subsection (b) during the preceding fiscal year, and such sums as may be necessary for each of fiscal years 2009 through 2017.

SEC. 131. STATE PLAN REQUIREMENTS RELATING TO TRAINING.

Section 658E(c) of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c) is amended by adding at the end the following:

"'(b) TRAINING IN EARLY LEARNING AND CHILD DEVELOPMENT.—The State plan shall describe any training requirements that are in effect within the State that are designed to enable child care providers to improve the quality of child care and the cognitive development of children and that are applicable to child care providers that provide services for which assistance is made available under this subchapter in the State.''.

SEC. 131. STATE PLAN REQUIREMENTS RELATING TO TRAINING.

(6) TRAINING IN EARLY LEARNING AND CHILD DEVELOPMENT.—The State plan shall describe any training requirements that are in effect within the State that are designed to improve the quality of child care services provided in the State, and for which measurement of outcomes relating to improved child safety, child well-being, or school preparedness is possible.

(7) ENGAGEMENT.—For each fiscal year beginning after September 30, 2005, the State shall annually submit to the Secretary a certification that the State is in compliance with subsection (a) or subsection (b) of this section.

(c) CERTIFICATION.—For each fiscal year beginning after September 30, 2005, the State shall annually submit to the Secretary a certification that the State is in compliance with subsection (a) or subsection (b) of this section.

SEC. 131. STATE PLAN REQUIREMENTS RELATING TO TRAINING.

(c) CERTIFICATION.—For each fiscal year beginning after September 30, 2005, the State shall annually submit to the Secretary a certification that the State is in compliance with subsection (a) or subsection (b) of this section.

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SEC. 202. DEFINITIONS.
In this title:

(1) RURAL LOCAL EDUCATIONAL AGENCY.—The term ‘rural local educational agency’ means a local educational agency, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801), with respect to which—
(A) in each case in which a school served by the local educational agency is located has a total population density of fewer than 10 persons per square mile;
(B) schools served by the local educational agency are designated with a school code of 7 or 8, as determined by the Secretary; or
(C) all schools served by the local educational agency have been designated, by official action taken by the legislature of the State in which the local educational agency is located, as rural schools for purposes relating to the provision of educational services to students in the State.

(2) SECRETARY.—The term ‘Secretary’ means the Secretary of Education.

(3) SCHOOL BUS.—The term ‘school bus’ means a vehicle the primary purpose of which is to transport students to and from school or school activities.

SEC. 203. GRANT PROGRAM.
(a) IN GENERAL.—From amounts appropriated under subsection (e) for a fiscal year, the Secretary shall provide grants, on a competitive basis, to rural local educational agencies to pay the Federal share of the cost of purchasing new school buses.

(b) APPLICATION.—
(1) IN GENERAL.—Each rural local educational agency that seeks to receive a grant under this title shall submit to the Secretary for approval an application at such time, place, and the manner as determined by the Secretary.

(2) CONTENTS.—Each application submitted under paragraph (1) shall include—
(A) documentation that, of the total number of school buses operated by the rural local educational agency, not less than 50 percent of the school buses are in need of repair or replacement;
(B) documentation of the number of miles that each school bus operated by the rural local educational agency traveled in the most recent 9-month academic year;
(C) documentation of the cost of the fuel for the approved fleet of school buses;
(D) a certification from the rural local educational agency that seeks to receive a grant under this title; and
(E) an assurance that the rural local educational agency will pay the non-Federal share of the cost of purchasing such number of new school buses as is specified in the approved application.

(2) SECRETARY.—The Federal share of the cost of purchasing a new school bus under this title shall be 75 percent.

SEC. 204. USE OF FUNDS.
The term ‘fund’ means—
(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 93–380; 20 U.S.C. 1400 et seq.), the educational needs of millions of children with disabilities were not being fully met because—
(A) the children did not receive appropriate educational services;
(B) the children were excluded entirely from the public school system and from being educated with their peers;
(C) undiagnosed disabilities prevented the children from having a successful educational experience; or
(D) a lack of adequate resources within the public school system forced such families to find services outside the public school system.

(3) The Individuals with Disabilities Education Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public educational program and an improving educational results for children with disabilities.

(4) The implementation of the Individuals with Disabilities Education Act has been impeded by the Federal Government’s failure to honor the commitment it made 30 years ago to provide States with 40 percent of the excess costs of special education.

(5) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting States and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

(6) Congress passed authorizing language to fund the Individuals with Disabilities Education Act and should appropriate such sums as authorized.

(7) More equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals with disabilities.

SEC. 205. SENSE OF THE SENATE REGARDING AUTHORIZATION OF APPROPRIATIONS.
It is the sense of the Senate that for the purpose of carrying out the Federal Government’s commitment to children, parents, and the States, there should be authorized to be appropriated

(1) $14,648,647,143 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2006, and there should be appropriated $4,058,901,319 for fiscal year 2006, which should become available for obligation on July 1, 2006, and should remain available through September 30, 2007, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $14,648,647,143, then the amount should be reduced by the difference between $14,648,647,143 and the maximum amount available for awarding grants under section 611(a)(2) of such Act.

(2) $16,938,917,714 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2007, and there should be appropriated $6,389,171,890 for fiscal year 2007, which should become available on July 1, 2007, and should remain available through September 30, 2008, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $16,938,917,714, then the amount should be reduced by the difference between $16,938,917,714 and the maximum amount available for awarding grants under section 611(a)(2) of such Act.

(3) $19,229,188,286 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2008, and there should be appropriated $8,639,442,462 for fiscal year 2008, which should become available for obligation on July 1, 2008, and should remain available through September 30, 2010, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $19,229,188,286, then the amount should be reduced by the difference between $19,229,188,286 and the maximum amount available for awarding grants under section 611(a)(2) of such Act.

(4) $21,519,458,857 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2009, and there should be appropriated $10,259,731,035 for fiscal year 2009, which should become available for obligation on July 1, 2009, and should remain available through September 30, 2010, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $21,519,458,857, then the amount should be reduced by the difference between $21,519,458,857 and the maximum amount available for awarding grants under section 611(a)(2) of such Act.

(5) $23,809,729,429 or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2010, and there should be appropriated $11,077,407,057 for fiscal year 2010, which should become available for obligation on July 1, 2010, and should remain available through September 30, 2011, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $23,809,729,429, then the amount

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should be reduced by the difference between $23,809,729,429 and the maximum amount available for awarding grants under section 611(a)(2) of such Act; (6) the allocation or the maximum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act, whichever is lower, for fiscal year 2012 and the amount should be appropriated $15,510,294,176 for fiscal year 2011, which should become available for obligation on July 1, 2011, and should remain available through September 30, 2012, except that if the maximum amount available for awarding grants under section 611(a)(2) of such Act is less than $23,809,729,429, then the amount should be the difference between $23,809,729,429 and the maximum amount available for awarding grants under section 611(a)(2) of such Act; and (7) the term ‘‘sum amount available for awarding grants under section 611(a)(2) of the Individuals with Disabilities Education Act for fiscal year 2012 and each succeeding fiscal year, and there should be appropriated for each such year an amount equal to the maximum amount available for awarding grants under section 611(a)(2) of such Act for the fiscal year for which the determination is made and made available through September 30 of the succeeding fiscal year.’’

TITLE IV—IMPROVEMENT OF ELEMENTARY AND SECONDARY EDUCATION

Subtitle A—Public School Choice, Supplemental Educational Services, and Teacher Quality

SEC. 401. PUBLIC SCHOOL CHOICE CAPACITY.

(a) SCHOOL CAPACITY.—Section 1116(b)(1)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)(1)(E)) is amended—

(1) in clause (i), by striking ‘‘In the case’’ and inserting ‘‘Subject to clauses (ii) and (iii), the case’’; (2) by redesignating clause (i) as clause (iii); and (3) by inserting after clause (i) the following:

‘‘(ii) SCHOOL CAPACITY.—The obligation of a local educational agency to provide the opportunity to each of its students under clause (i) is subject to all applicable State and local health and safety code requirements regarding facility capacity,’’; and

(4) in subparagraph (B), by striking ‘‘in subparagraph (2)’’, by inserting ‘‘and subject to clause (ii),’’ after ‘‘public school’’.

(b) GRANTS FOR SCHOOL CONSTRUCTION AND RENOVATION.—

(1) IN GENERAL.—Subpart 1 part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6111 et seq.) is amended by adding at the end the following:

‘‘SEC. 1120C. GRANTS FOR SCHOOL CONSTRUCTION AND RENOVATION.—

(a) PROGRAM AUTHORIZED.—From funds appropriated under subsection (g), the Secretary is authorized to award grants to local educational agencies experiencing overcrowding in the schools served by the local educational agencies, for the construction and renovation of safe, healthy, high-performance school buildings.

(b) APPLICABILITY.—Each local educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such additional information as the Secretary may require.

(c) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to local educational agencies—

(1) who have documented difficulties in meeting the public school choice requirement of paragraphs (1)(E), (5)(A), (7)(C)(i), or (8)(A)(i) of section 1116(b), or section 1116(c)(10)(C)(vii); and

(2) with the highest number of schools at or above capacity.

(d) AWARD BASIS.—From funds remaining after awarding grants under subsection (c), the Secretary shall award grants to local educational agencies experiencing overcrowding in the schools served by the local educational agencies.

(e) PREVAILING WAGES.—Any laborer or mechanic employed by any contractor or subcontractor in the performance of work on any construction funded by a grant awarded under this section will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor under subchapter IV of chapter 31 of title 40, United States Code (commonly referred to as the Davis-Bacon Act).

(f) DEFINITIONS.—In this section:

(1) AT OR ABOVE CAPACITY.—The term ‘‘at or above capacity’’, in reference to a school, means a school in which 1 additional student would increase the average class size of the school above the average class size of all schools in the State in which the school is located.

(2) HEALTHY, HIGH-PERFORMANCE SCHOOL BUILDING.—The term ‘‘healthy, high-performance school building’’, in reference to the meaning given such term in section 5586.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $250,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.”

(b) TABLE OF CONTENTS.—The table of contents of the Elementary and Secondary Education Act of 1965 (20 U.S.C.6301 note) is amended by inserting after the item relating to title II the following:

‘‘Sec. 1120C. Grants for school construction and renovation.’’

SEC. 402. SUPPLEMENTAL EDUCATIONAL SERVICES.

Section 1116(b)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C.6316(b)(1)(E)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (B), by striking the semicolon and inserting ‘‘, including criteria that—

(i) ensure that personnel delivering supplemental educational services to students have adequate qualifications; and

(ii) may, at the State’s discretion, ensure that personnel delivering supplemental educational services to students are teachers that are highly qualified, as such term is defined in section 9101;’’,

(B) in subparagraph (D), by striking ‘‘and’’ after the semicolon;

(C) in paragraph (5), by striking the period and inserting ‘‘;’’; and

(D) by adding at the end the following:

‘‘(F) ensure that the list of approved providers of supplemental educational services described in subparagraph (C) includes a choice of providers that have sufficient capacity to provide effective services for children who are limited English proficient and children with disabilities.’’;

(2) in paragraph (5)(C)—

(A) by striking ‘‘applicable’’; and

(B) by inserting before the period ‘‘, and acknowledges in writing that, as an approved provider in the relevant State educational agency, it is an approved provider of supplemental educational services, the provider is deemed to be a recipient of Federal financial assistance’’;

(3) by redesignating paragraphs (6), (7), (8), (9), (10), (11), and (12) as paragraphs (7), (8), (9), (10), (11), and (12), respectively;

(4) by inserting after paragraph (5) the following:

‘‘(6) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prohibit a recipient of Federal financial assistance from being considered by a State educational agency as a potential provider of supplemental educational services under this subsection, if such local educational agency meets the criteria adopted by the State educational agency in accordance with paragraph (5).’’;

(5) in paragraph (13) (as redesignated by paragraph (3))—

(A) in subparagraph (B) (i), by striking ‘‘and’’ after the semicolon;

(ii) by adding before the period ‘‘in addition’’;

(B) in subparagraph (C), after the matter preceding clause (i), by striking ‘‘are’’;

(ii) in clause (i)—

(1) by inserting ‘‘are’’ before ‘‘in addition’’; and

(2) by striking ‘‘and’’ after the semicolon;

(C) in clause (ii), by striking the period and inserting ‘‘;’’; and

(D) by adding at the end the following:

‘‘(iii) if provided by providers that are included on the relevant State educational agency’s list described in paragraph (4)(C), shall be deemed to be the activities of the relevant State educational agency;’’;

(6) by adding at the end the following:

‘‘(14) CIVIL RIGHTS.—In providing supplemental educational services under this subsection, no State educational agency or local educational agency may, directly or through contractual, licensing, or other arrangements with a provider of supplemental educational services, engage in any form of discrimination prohibited by—

(A) ’’title VI’’ of the Civil Rights Act of 1964;’’

(B) ’’title IX’’ of the Education Amendments of 1972;’’

(C) ’’section 504’’ of the Rehabilitation Act of 1973;’’

(D) titles II and III of the Americans with Disabilities Act;’’

(E) the Age Discrimination Act of 1975;’’

(F) regulations promulgated under the authority of the laws listed in subparagraphs (A) through (E); or

(G) other Federal civil rights laws.’’

SEC. 403. QUALIFICATIONS FOR TEACHERS AND PARAPROFESSIONALS.

(a) HIGH OBJECTIVE UNIFORM STATE STANDARD OF EVALUATION.—Section 1119 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6319) is amended—

(1) in subsection (a)(1)—

(A) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and indenting as appropriate;

(B) by striking ‘‘(2) PLAN.—As part’’ and inserting the following:

‘‘(2) PLAN.—As part of’’;

(C) by adding at the end the following:

‘‘(3) BAVILABILITY OF STATE STANDARDS.—Each State educational agency that makes available to teachers in the State the high objective uniform State standard of evaluation, as described in section 9101(5)(C)(i), for the purpose of meeting the teacher qualification requirements established under this section.’’
schools or secondary schools, respectively, in biology, chemistry, and physics in middle schools, respectively, in the State; or

(4) by striking "and" after the semicolon; and

(2) in subsection (I), by striking "and" after the semicolon;

(3) by striking "middle" and inserting "secondary";

(b) DEFINITION OF HIGHLY QUALIFIED TEACHERS.—Section 9101(23)(B)(ii) is amended—

(1) in subclause (I), by striking "or" after the semicolon;

(2) in subclause (II), by striking "and" after the semicolon; and

(3) by adding at the end the following:

"(III) in the case of a middle school teacher, passing a State-approved middle school teacher license to teach middle school in the State; or

(c) Ensuring Highly Qualified Teachers.—


(2) EFFECTIVE DATE.—Not later than 6 months after the date of enactment of this Act, the Secretary of Education shall submit a report to the relevant committees of Congress, that shall be made available on the website of the Department of Education, on efforts to coordinate programs pursuant to paragraph (1).

Subtitle B— Adequate Yearly Progress Determinations

SECTION 421. REVIEW OF ADEQUATE YEARLY PROGRESS DETERMINATIONS FOR SCHOOLS FOR THE 2002–2003 SCHOOL YEAR.

(a) IN GENERAL.—The Secretary shall require each local educational agency to provide each school served by the agency with an opportunity to request a review of a determination by the agency that the school did not make adequate yearly progress for the 2002–2003 school year.

(b) FINAL DETERMINATION.—Not later than 30 days after receiving a request by a school for a review under this section, a local educational agency shall issue and make publicly available a final determination on whether the school made adequate yearly progress for the 2002–2003 school year.

(c) EVIDENCE.—In conducting a review under this section, a local educational agency shall—

(1) allow the principal of the school involved to submit evidence on whether the school made adequate yearly progress for the 2002–2003 school year; and

(2) consider that evidence before making a final determination under subsection (b).

(d) REPEAL.—In conducting a review under this section, a local educational agency shall—

(1) allow the principal of the school involved to submit evidence on whether the school made adequate yearly progress for the 2002–2003 school year; and

(2) consider that evidence before making a final determination under subsection (b).

Subtitle C—Technical Assistance

SECTION 451. TECHNICAL ASSISTANCE.

(a) IN GENERAL.—Part F of title IX of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7901 et seq.) and other provisions of part A of title I of such Act (20 U.S.C. 6311 et seq.) shall be carried out by the Institute of Education Sciences and other offices or agencies of the Department of Education, in consultation with the Institute of Education Sciences, and other clearinghouses supported under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7901 et seq.) and other federalally supported clearinghouses.

(b) APPLICATION OF CERTAIN PROVISIONS.—Except as inconsistent with, or inapplicable to, this section, the provisions of section 421 shall apply to review by a State educational agency of a determination described in subsection (a) in the same manner and to the same extent as such provisions apply to review by a local educational agency of a determination described in section 421(a).

SECTION 422. REVIEW OF ADEQUATE YEARLY PROGRESS DETERMINATIONS FOR LOCAL EDUCATIONAL AGENCIES FOR THE 2002–2003 SCHOOL YEAR.

(a) IN GENERAL.—The Secretary shall require each State educational agency to provide each local educational agency in the State with an opportunity to request a review of a determination by the agency that the local educational agency that the local educational agency did not make adequate yearly progress for the 2002–2003 school year.

(b) APPLICATION OF CERTAIN PROVISIONS.—Except as inconsistent with, or inapplicable to, this section, the provisions of section 421 shall apply to review by a State educational agency of a determination described in subsection (a) in the same manner and to the same extent as such provisions apply to review by a local educational agency of a determination described in section 421(a).

SECTION 423. DEFINITIONS.

In this subtitle:

(1) the term ‘‘adequate yearly progress’’ has the meaning given to that term in section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)),

(2) the term ‘‘local educational agency’’ means a local educational agency (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)),

(3) the term ‘‘Secretary’’ means the Secretary of Education;

(4) the term ‘‘school’’ means an elementary school or a secondary school (as those terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)),

(5) the term ‘‘State educational agency’’ means a State educational agency (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311) receiving funds under part A of title I of such Act (20 U.S.C. 6311 et seq.).

(6) the term ‘‘technical assistance’’ means an element of the evaluation, assessment, or improvement of State and local educational agencies and school districts, and includes the support services described in section 402(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(e)(9)) (requiring a local educational agency to notify each school served by the agency of the school’s ability to request a review of a determination by the agency under this section and the school received a final determination of having made adequate yearly progress for the 2002–2003 school year.

(1) NOTIFICATION.—(A) The Secretary shall require each State educational agency to notify each school served by the agency of the school’s ability to request a review of a determination by the agency under this section and the school received a final determination of having made adequate yearly progress for the 2002–2003 school year.

(2) F INAL DETERMINATION.—If such determination was revised under this section and the school received a final determination of having made adequate yearly progress for the 2002–2003 school year.

(3) EFFECT OF REVISED DETERMINATION.—(A) If a local educational agency determines that a school made adequate yearly progress for the 2002–2003 school year upon such determination, the local educational agency shall cease to be required.

(4) EXCEPTIONS.—Notwithstanding paragraph (1), the Secretary may provide a local educational agency with technical assistance under this section if the Secretary determines that a school made adequate yearly progress for the 2002–2003 school year.

(b) TABLE OF CONTENTS.—The table of contents of this subtitle shall include the following:

"Sec. 9601. Technical assistance."
TITLE V—IMPROVING ASSESSMENT AND ACCOUNTABILITY

SEC. 501. GRANTS FOR INCREASING DATA CAPACITY FOR PURPOSES OF ASSESSMENT AND ACCOUNTABILITY

(a) PROGRAM AUTHORIZED.—From funds appropriated for a fiscal year, the Secretary may award grants, on a competitive basis, to State educational agencies—

(1) to enable the State educational agencies to develop or increase the capacity of data systems for assessment and accountability purposes, including the collection of graduation rates; and

(2) to award subgrants to increase the capacity of local educational agencies to upgrade or manage longitudinal data systems for the purpose of measuring student academic progress and achievement.

(b) LOCAL APPLICATION.—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) STATE USE OF FUNDS.—Each State educational agency that receives a grant under this section shall—

(1) not more than 20 percent of the grant funds for the purpose of—

(A) increasing the capacity of, or creating, State educational agencies to disaggregate, describe, and report information related to student achievement, enrollment, and graduation rates for assessment and accountability purposes; and

(B) reporting, on an annual basis, for the elementary schools and secondary schools within the State, on—

(i) the enrollment data from the beginning of the academic year;

(ii) the enrollment data from the end of the academic year; and

(iii) the twelfth grade graduation rates; and

(2) not less than 80 percent of the grant funds to award subgrants to local educational agencies within the State to enable the local educational agencies to carry out the authorized activities described in subsection (e).

(d) LOCAL AUTHORIZED ACTIVITIES.—Each local educational agency that receives a subgrant under this section shall use the subgrant funds to increase the capacity of the local educational agency to upgrade or manage longitudinal data systems consistent with the use of subgrants in subsection (c)(1), by—

(1) purchasing database software or hardware;

(2) hiring additional staff for the purpose of managing such data;

(3) providing professional development or additional training for such staff; and

(4) providing professional development or training for principals and teachers on how to effectively use such data to implement instructional strategies to improve student achievement and graduation rates.

(e) DEFINITIONS.—In this section—

(1) GRADUATION RATE.—The term "graduation rate" means the percentage that—

(A) the total number of students who—

(i) graduated from a secondary school with a regular diploma (which shall not include the requirements equivalent of a secondary school diploma or an alternative degree) in an academic year; and

(ii) graduated on time by progressing 1 grade per academic year; represents of

(B) the total number of students who entered the secondary school in the entry level academic year applicable to the graduating students.

(2) SECRETARY.—The term "Secretary" means the Secretary of Education.

(3) STATE ACCOUNTABILITY AND LOCAL EDUCATIONAL AGENCY.—The terms "State educational agency" and "local educational agency" have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $100,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.

SEC. 502. GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT

(a) GRANTS FOR ASSESSMENT OF CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.—Part E of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6141 et seq.) is amended by adding at the end the following:

"SEC. 1565. GRANT OF SUBSTITUTE ASSESSMENTS FOR CHILDREN WITH DISABILITIES AND CHILDREN WHO ARE LIMITED ENGLISH PROFICIENT.

"(a) GRANTS AUTHORIZED.—From amounts authorized to be appropriated under subsection (e) for a fiscal year, the Secretary shall award a competitive basis, to State educational agencies, or to consortia of State educational agencies, to enable the State educational agencies or consortia to collect data from the institutions of higher education, research institutions, or other organizations—

(1) to design and improve State academic assessments for students who are limited English proficient and students with disabilities; and

(2) to ensure the most accurate, valid, and reliable means to assess academic content standards and student academic achievement standards for students who are limited English proficient and students with disabilities.

(b) AUTHORIZED ACTIVITIES.—A State educational agency or consortium that receives a grant under this section may use the grant funds to carry out one or more of the following activities:

(1) Developing alternate assessments for students with disabilities, consistent with section 1111 and the amendments made on December 9, 2003, to part 200 of title 34, Code of Federal Regulations (68 Fed. Reg. 66996) (relating to accountability for the academic achievement of students with the most significant cognitive disabilities), including—

(A) the alignment of alternate assessments, as appropriate and consistent with such amendments, with—

(i) State student academic achievement standards and academic content standards for all students; or

(ii) alternate State student academic achievement standards that reflect the intended instructional construct for students with disabilities; and

(B) activities to ensure that such assessments do not reflect the disabilities, or associated particular problems for students with disabilities or students who are limited English proficient;

(2) Developing alternate assessments that meet the requirements of section 1111 for students who are limited English proficient, including—

(A) the alignment of such assessments with State student academic achievement standards and State academic content standards for all students;

(B) the development of parallel native language assessments or linguistically modified assessments for limited English proficient students that meet the requirements of section 1111(b)(4)(Y)(III); and

(C) the development of an implementation plan for pilot tests for such assessments, in order to determine the level of appropriateness and feasibility of full-scale administration; and

(D) activities that provide for the retesting of all feasible standardized features in the alternate assessments;

(3) Developing, modifying, or revising State policies and criteria for appropriate accommodations to ensure the full participation of students who are limited English proficient and students with disabilities in State academic assessments, including—

(A) a development of a plan to ensure that assessments provided with accommodations are included and are counted in the accountability system, for the purpose of making the determinations of adequate yearly progress required under section 1116;

(B) ensuring the validity, reliability, and appropriateness of such accommodations, such as—

(i) a modification to the presentation or format of the assessment;

(ii) the use of assistive devices;

(iii) an extension of the time allowed for testing;

(iv) an alteration of the test setting or procedures;

(v) the administration of portions of the test in a method appropriate for the level of language proficiency of the test taker;

(vi) the use of a glossary or dictionary; and

(vii) the use of a linguistically modified assessment;

(C) ensuring that State policies and criteria for appropriate accommodations take into account the form and content instruction provided to students, including the level of difficulty, reliability, cultural difference, and content equivalence of such form or program;

(D) ensuring that such policies are consistent with the standards prepared by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and

(E) developing a plan for providing training on the use of accommodations to school instructional staff, families, students, and other appropriate parties.

(4) Developing universally designed assessments that can be accessible to all students, including—

(i) determining test item or test performance for students with disabilities and students who are limited English proficient, to determine the extent to which the test item or the development of the test item; and

(ii) the development of a plan for the retesting of test items that are designed to be used by students with disabilities or students who are limited English proficient;

(D) developing and implementing a plan to ensure that all test items and test-retest scores for all test items are devised in the principles of universal design; and
SEC. 1506. REPORTS ON STUDENT ENROLLMENT AND GRADUATION RATES.

(a) In General.—The Secretary shall collect from each State educational agency, local educational agency, and school, on an annual basis, the following data:

(1) The number of students enrolled in each of grades 7 through 12 at the beginning of the most recent school year.

(2) The number of students enrolled in each of grades 7 through 12 at the end of the most recent school year.

(b) Annual Report.—The Secretary shall report the information collected under subsection (a) on an annual basis. .

(b) Table of Contents.—The table of contents of the Elementary and Secondary Education Act of 1965 (as amended by section 502(b)) (20 U.S.C. 6301 note) is amended by inserting after the item relating to section 111(b)(2)(C)(v)(II).

(b) Authorization of Appropriations.—

There are authorized to be appropriated to carry out this chapter $400,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 4 succeeding fiscal years.

TITLe VII.—PROVIDING A ROADMAP FOR FIRST GENERATION COLLEGE FOR STUDENTS

SEC. 701. EXPANSION OF TRIO AND GEARUP.

(a) Definitions.—(1) The term ‘Tr (2) SEC. 601. SENSE OF THE SENATE.

— Congress enacted, with bipartisan support, and the President signed into law the No Child Left Behind Act of 2001 (Public Law 107–110; 115 Stat. 1425). That reauthorized the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.). The new law required States to set high standards for learning and required schools to implement reforms to hold students accountable. In return, Congress and the President pledged to make sure schools would have resources to carry out the reforms as called for in the new law. The $22,750,000,000 is needed to fund part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) in fiscal year 2007, as promised pursuant to the No Child Left Behind Act of 2001 (Public Law 107–110; 115 Stat. 1425).

(b) Sense of the Senate.—It is the sense of the Senate that:

(1) It is in the best interest of the Nation that all students have access to a high-quality elementary and secondary education;

(2) Part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) is amended by inserting after the item relating to section 1504 the following:

“SEC. 1504. REPORTS ON STUDENT ENROLLMENT AND GRADUATION RATES. “(a) In General.—The Secretary shall collect from each State educational agency, local educational agency, and school, on an annual basis, the following data:

(1) The number of students enrolled in each of grades 7 through 12 at the beginning of the most recent school year.

(2) The number of students enrolled in each of grades 7 through 12 at the end of the most recent school year.

(b) Annual Report.—The Secretary shall report the information collected under subsection (a) on an annual basis. .

(b) Table of Contents.—The table of contents of the Elementary and Secondary Education Act of 1965 (as amended by section 502(b)) (20 U.S.C. 6301 note) is amended by inserting after the item relating to section 111(b)(2)(C)(v)(II).

(b) Authorization of Appropriations.—

There are authorized to be appropriated to carry out this chapter $400,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 4 succeeding fiscal years.

TITLe VIII.—COLLEGE TUITION RELIEF FOR STUDENTS AND THEIR FAMILIES THROUGH PELL GRANTS

SEC. 801. PELL GRANTS TAX TABLES HOLD HARMLESS.

Notwithstanding any other provision of law, the annual updates to the allowance for State and other taxes in the tables used in the Federal Need Analysis Methodology to determine a student’s expected family contribution for the academic year 2005–2006 under part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.), published in the Federal Register on Thursday, December 23, 2004 (69 Fed. Reg. 76926), shall not apply to a student to the extent the updates will reduce the amount of Federal student assistance for which the student is eligible.

SEC. 802. SENSE OF THE SENATE REGARDING INCREASING THE MAXIMUM PELL GRANT.

(a) Findings.—The Senate finds the following:

(1) Increasing the percentage of individuals who obtain a postsecondary education has become increasingly important, not just to the individual beneficiary, but to the Nation as a whole. The growth and continued expansion of the Nation’s economy is heavily dependent on an educated and highly skilled workforce.

(2) The opportunity to gain a postsecondary education also is important to the Nation as a means to help advance the American ideals of progress and equality. The Federal Government plays an invaluable role in making student financial aid available to ensure that qualified students are able to attend college and pursue their American ideals of progress and equality. Since the inception of the Pell Grant program in 1973, nearly 80,000,000 grants have helped low- and middle-income students graduate from college, enrich their lives, and become productive members of society.

(4) Nationwide, almost 63 percent of secondary school graduates continue on to higher education immediately after completing secondary school. This degree of college participation would not exist without the Federal investment in student aid, especially through the Pell Grant program. More than 4,000,000 low- and middle-income students receive Pell Grants; 95 percent of whom have a family income of not more than $40,000.

(5) In the next 10 years, the number of undergraduate students enrolled in the Nation’s colleges and universities will increase by 15 percent to more than 15,000,000 students. Many of these students will be the first in their families to attend college. The continued investment in the Pell Grant program is essential if college is to remain an achievable part of the American dream.

(6) Increasing the maximum Pell Grant to $5,100 would allow more than 430,000 additional students to benefit from the program. The maximum Pell Grant to $5,100 would result in 200,000 new Pell Grant recipients.
TITLE IX—TUITION FREE COLLEGE FOR MATHEMATICS, SCIENCE, AND SPECIAL EDUCATION TEACHERS

SEC. 901. PURPOSE.

It is the purpose of this title to make pub-
lic colleges and universities to offer
free tuition for mathematics, science, and special education teach-
ers to provide additional assistance to
students eligible to receive a Federal Pell Grant
within 150 percent of the time expected to
complete such degree.

(1) AUTHORIZATION.—The Secretary of Edu-
cation shall establish a demonstration pro-
gram to facilitate the ability of low-income
students to enroll in courses in the sum-
mer at institutions to expedite the stu-
dent loan provider.

(b) AVAILABLE FUNDS FROM REDUCED EXPENDITURES.—

(1) IN GENERAL.—Any funds available to the
Secretary of Education as a result of reduced

(2) REMAINING FUNDS.

(i) The nonprofit lender does not offer

(III) which the special allowance was de-
termed under subparagraphs (a) and (b), as the case may be,

(D) sold or transferred to any other holder
on or after the date the enactment of the Taxpayer-Teacher Protection Act of 2004.

(V) The nonprofit lender is subject to pub-
lic oversight through either a State charter,
or through not less than 50 percent of the
licensing of the relative value of pro-
grams under part D of title IV of the Higher Education Act of 1965 and the
related benefits offered by such nonprofit
lenders.

TITLE X—MAKING COLLEGE AFFORDABLE FOR ALL STUDENTS

SEC. 1001. EXPANSION OF DEDUCTION FOR HIGH-
ER EDUCATION EXPENSES.

(a) Amount of Deduction.—Section (b) of section 222 of the Internal Revenue Code of 1986 (relating to deduction for qualified tuition and related expenses) is amended to read as follows:

(b) LIMITATIONS.

(1) DOLLAR LIMITATIONS.

In general, as provided in paragraph (2), the amount allowed as a ded-
uctible section (a) with respect to
the taxpayer for any taxable year shall not
exceed the applicable dollar limit.

(b) APPLICABLE DOLLAR LIMIT.—The applic-
able dollar limit for any taxable year shall be determined as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Deduction Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
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<td>2019</td>
<td>$12,000</td>
</tr>
<tr>
<td>2020</td>
<td>$12,000</td>
</tr>
</tbody>
</table>

(b) AMOUNT OF REDUCTION.—The amount
determined under subparagraph (A) to
the Secretary for the fiscal year 2005 under
for such section.

(B) DEFINITION OF NONPROFIT LENDER.—In
this paragraph the term “nonprofit lender” means an eligible (as defined in sec-
section 438 of the Higher Education Act of 1965 (20 U.S.C. 1087j), as amended by sec-
section 1006 of this Act.

(2) REMAINING FUNDS.

(A) IN GENERAL.—Any funds remaining
after carrying out paragraph (1) shall be
used by the Secretary of Education to make
taxpayer, for any taxable year shall not
be less than zero.

(B) AMOUNT OF REDUCTION.—The amount
determined under subparagraph (B) (i)
determined without regard to the deduction al-
lowed under this section.
(D) INFLATION ADJUSTMENTS.—

(1) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2005, both of the dollar amounts in subparagraph (A)(iii) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘2004’ for ‘1992’. 

(2) ROUNDING.—If any amount as adjusted under subparagraph (C) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

(D) DEPENDENTS NOT ELIGIBLE FOR CREDIT.—No credit shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual’s taxable year begins.

(D) LIMIT ON PERIOD CREDIT ALLOWED.—A credit shall be allowed under this section only in respect of an interest payment paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

(E) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED EDUCATION LOAN.—The term ‘qualified education loan’ has the meaning given such term by section 36(g)(2).

(2) DEPENDENT.—The term ‘dependent’ has the meaning given such term by section 152.

(F) SPECIAL RULES.—

(1) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section only in respect of an interest payment for any amount taken into account for any deduction under any other provision of this chapter.

(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under this section (a) only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year.

(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.

(G) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made in taxable years beginning after December 31, 2004.

SEC. 1002. CREDIT FOR INTEREST ON HIGHER EDUCATION LOANS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 relating to nondeductible personal credits is amended by inserting “of eligible students” after “expenses”.

(b) DEFINITION OF ELIGIBLE STUDENT.—Section 222(d) of such Code (relating to definitions and special rules) is amended by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively, and by inserting after paragraph (1) the following new paragraph:

(2) ELIGIBLE STUDENT.—The term ‘eligible student’ has the meaning given such term by section 222(b)(3).

(c) DEDUCTION MADE PERMANENT.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of provisions) shall not apply to the amendments made by section 431 of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made in taxable years beginning after December 31, 2004.

SEC. 25C. INTEREST ON HIGHER EDUCATION LOANS.

(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

(b) MAXIMUM CREDIT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the credit allowed by subsection (a) for the taxable year shall not exceed $1,500.

(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

(A) IN GENERAL.—The modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000 ($100,000 in the case of a joint return), the amount which would (but for the allowance as a credit under this section) be deductible under section 222(d)(3) shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so deductible as such excess bears to $20,000 ($40,000 in the case of a joint return).

(B) MODIFIED ADJUSTED GROSS INCOME.—The term ‘modified adjusted gross income’ means adjusted gross income determined without regard to sections 199, 222, 911, 931, and 933.

(C) INFLATION ADJUSTMENT.—In the case of any taxable year beginning after 2005, the $50,000 and $100,000 amounts referred to in subparagraph (A) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting ‘2004’ for ‘1992’.

(D) ROUNDING.—If any amount as adjusted under subparagraph (C) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

(E) DEPENDENTS NOT ELIGIBLE FOR CREDIT.—No credit shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual’s taxable year begins.

(F) LIMIT ON PERIOD CREDIT ALLOWED.—A credit shall be allowed under this section only in respect of an interest payment paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

(G) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED EDUCATION LOAN.—The term ‘qualified education loan’ has the meaning given such term by section 36(g)(2).

(2) DEPENDENT.—The term ‘dependent’ has the meaning given such term by section 152.

(H) SPECIAL RULES.—

(1) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section only in respect of an interest payment for any amount taken into account for any deduction under any other provision of this chapter.

(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under this section (a) only if the taxpayer and the taxpayer’s spouse file a joint return for the taxable year.

(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.

(I) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made in taxable years beginning after December 31, 2004.

SEC. 1003. HOPE AND LIFETIME LEARNING CREDITS TO BE REFUNDABLE.

(a) CREDIT TO BE REFUNDABLE.—Section 25A of the Internal Revenue Code of 1986 (relating to Hope and Lifetime Learning credits) is hereby moved to subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

“Sec. 25C. Interest on higher education loans.”

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

“Sec. 25C. Interest on higher education loans.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made in taxable years beginning after December 31, 2004.

...
will not rest until that goal is achieved.

The worsening crisis in health care is caused by skyrocketing costs, declining insurance coverage, and less security for every family. Businesses—especially small businesses—find it increasingly difficult to provide decent coverage for their employees. Companies struggling with foreign competition are at an every-larger competitive disadvantage because of their constantly rising costs.

Last year, the percentage of the Nation’s gross domestic product devoted to health was 15.5%, the highest in our history. Since 2000, annual spending on health care has risen from $1.3 trillion to $1.7 trillion, an increase of almost half a trillion dollars in just four years.

Even worse, insurance premiums have soared by 59 percent during those four years. The cost of insurance for a family has doubled by almost $400 by last year, the cost of the premiums for family coverage averaged $10,000, and was much higher for many families.

Drug costs are also out of control. According to current data, they rose 47 percent in three years under the Bush Administration. Too many patients are cutting the pills their doctors prescribe in half or going without them altogether, because they can’t afford the drugs they need to treat or prevent disease.

Even Medicare premiums are out of control. The largest premium increase in Medicare’s history went into effect just three weeks ago. Since President Bush took office, Medicare premiums have climbed by 72 percent. Senior citizens, with an average income of $15,000, now have to pay almost $1,000 a year for their Part B premiums under Medicare. The recent report of the Medicare trustees included the stunning revelation that Medicare cost sharing and premiums will soon eat up more than 40 percent of the total Social Security benefit of the typical 85 year old.

As a proportion of Gross Domestic Product spent on health care, America is first in the world by a large margin. We spend 30 percent more than the Swiss who are number two, a third more than the Germans, fifty percent more than the French and the Canadians, and seventy-eight percent more than the Japanese.

These extraordinarily high levels of health spending might be justified if they produced dramatically better health care for American people. But they don’t. Among the world’s leading industrialized countries, the United States ranks 22nd in average life expectancy and 25th in infant mortality.

We also face a worsening crisis of the uninsured. Since President Bush took office, the number of uninsured Americans has increased by a shameful million a year. Today, 45 million Americans have no coverage. Between 2001 and 2004, five million jobs offering health insurance were lost.

Even these figures underestimate the problem. Over a two-year period, 82 million Americans—one out of every three non-elderly Americans—will be uninsured for a significant period of time.

Tragically, eight and a half million children are uninsured and may well be denied the opportunity for a healthy start in life that should be the birthright of every child. Even people who have health insurance today cannot count on it being there for them tomorrow. No American family is more than one employer decision away from being uninsured.

The uninsured are vulnerable not only to unaffordable costs, but to substandard or health care or no care at all. In any given year, one-third of the uninsured go without needed medical care. Two hundred seventy thousand children suffering from asthma never see a doctor. Three hundred fifty thousand children with recurrent earaches never see a doctor. Three hundred fifty thousand children with severe sore throats never see a doctor.

Twenty-seven thousand uninsured women are diagnosed with breast cancer each year. They are twice as likely as insured women to delay medical treatment until their cancer has spread too far, and they are 50 percent more likely to die of the disease.

Thirty-two thousand Americans with heart disease go without life-saving and life-enhancing bypass surgery or angioplasty—because they are uninsured.

The bottom line is that whether the disease is AIDS or mental illness or cancer, the uninsured are left out and left behind. In hospital and out, young or old, black or brown or white, they receive less care, suffer more, and are 25 percent more likely to die prematurely than those who have insurance.

Even for those with insurance, the quality of health care is often needlessly compromised. Recent events cast serious doubt on the FDA’s ability to respond promptly when drugs it has approved turn out to have dangerous side effects. By some estimates, tens of thousands of unnecessary deaths have resulted.

The lack of coordination in our system results in duplicative, costly, and often counterproductive tests and procedures. The Midwest Business Group on Health estimates that the cost of poor quality care to employers providing health insurance coverage is $2,000 per worker, and it’s paid in the form of higher insurance premiums. A recent study found that for many serious illnesses, patients are as likely to receive substandard care as they are to receive care meeting accepted professional standards.

In the face of this massive crisis in health care, the Administration and Congress have been missing in action for too long. The Bush Administration and the Republican leadership in Congress defend the special interests that profit from the status quo and ignore the suffering of the millions of families victimized by their neglect.

Reports suggest in fact that the Administration’s new budget will propose to cut Medicaid, which provides health care for more than 50 million of the poorest of the poor. The deficit must be addressed—but it was created by the Administration’s tax breaks for the wealthy; and the sick should not have to bear the burden of reducing it. That’s the wrong priority and the wrong values.

The legislation we are offering today will not solve all these problems, but it is a good start and we are committed to finishing the job.

The Affordable Health Care Act guarantees that every child in America will have quality health care coverage.

It reduces health costs substantially, by making FDA-approved drugs available at the same fair prices available to Canadians and Europeans, rather than the inflated prices charged to U.S. patients.

It takes a giant step toward adoption of modern information technology in health care, which has the potential to dramatically improve the quality of care and dramatically reduce its cost—by as much as $140 billion a year. It also improves quality by giving the FDA additional authority to monitor the safety of approved drugs.

It addresses the special burden faced by small businesses by offering tax credits to reduce the premiums they pay to cover their employees. It also establishes a demonstration program in 25 cities to see if a successful program in Michigan to expand insurance coverage for small businesses can be replicated elsewhere. Finally, our bill includes a sense of the Senate resolution to put Congress firmly on record against destructive cuts in Medicaid.

Affordable health care is a high priority for every family, and it should be an equally high priority for this Congress. We face a crisis, and it is time to act. Senate Democrats are committed to guaranteeing the basic right to health care for all Americans, and when we say “all”, we mean “all”.

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. 16

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) SHORT TITLE.—This Act may be cited as the “Affordable Health Care Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—MAKING PRESCRIPTION DRUGS MORE SAFE AND AFFORDABLE

Subtitle A—Access to Prescription Drugs
Sec. 101. Findings.
Sec. 102. Repeal of certain section regarding importation of prescription drugs.
Sec. 103. Importation of prescription drugs; waiver of certain import restrictions.
Sec. 101. FINDINGS.

(1) Americans unjustly pay up to 5 times more to fill their prescriptions than consumers in other countries.

(2) The United States is the largest market for pharmaceuticals in the world, yet American consumers pay the highest prices for brand pharmaceuticals in the world.

(3) A prescription drug is neither safe nor effective to an individual who cannot afford it.

(4) Allowing and structuring the importation of prescription drugs to ensure access to safe and affordable drugs approved by the Food and Drug Administration will provide a level of safety to American consumers that they do not currently enjoy.

(5) American seniors alone will spend $1,000,000,000,000 on pharmaceuticals over the next 10 years; and

(6) Opening pharmaceutical markets could save American consumers at least $20,000,000,000,000.

Sec. 102. REPEAL OF CERTAIN SECTION REGARDING IMPORTATION OF PRESCRIPTION DRUGS.


Sec. 103. IMPORTATION OF PRESCRIPTION DRUGS; REQUIREMENTS.

(a) In general—(Section 801(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is further amended by inserting after section 803 the following:

SEC. 804. COMMERCIAL AND PERSONAL IMPORTATION OF PRESCRIPTION DRUGS.

(1) In general.—The Secretary shall in accordance with this section provide by regulation that, in the case of qualifying drugs imported or offered for import into the United States—

(A) a registered importer; or

(B) a registered exporter to an individual.

(2) Definitions.—

(A) REGISTERED EXPORTER; REGISTERED IMPORTER.—For purposes of this section:

(i) The term 'registered exporter' means an exporter for which a registration under subsection (b) has been approved and is in effect.

(ii) The term 'registered importer' means a pharmacy, group of pharmacies, or a wholesaler for which a registration under subsection (b) has been approved and is in effect.

(iii) The term 'registration condition' means a condition that must exist for a registration under subsection (b) to be approved.

(B) QUALIFYING DRUG.—For purposes of this section, the term 'qualifying drug' means a prescription drug, other than any of the following—

(i) A controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

(ii) A biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262).

(iii) An infused drug, including a peritoneal dialysis solution.

(iv) An intravenously injected drug.

(v) A drug that is inhaled during surgery.

(C) OTHER DEFINITIONS.—For purposes of this section:

(i) The term 'exporter' means a person that is in the business of exporting a drug from Canada to individuals in the United States or that, pursuant to submitting a registration under subsection (b)(2), seeks to be in such business.

(ii) The term 'importer' means a pharmacist, a group of pharmacies, or a wholesaler that is in the business of importing a drug into the United States or that, pursuant to submitting a registration under subsection (b)(2), seeks to be in such business.

(iii) The term 'pharmacist' means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

(iv) The term 'pharmacy' means a person that—

(I) is licensed by a State to engage in the business of selling prescription drugs at retail; and

(II) employs 1 or more pharmacists.

(v) The term 'prescription drug' means a drug that is described in section 801(d)(1).

(vi) The term 'wholesaler'—

(I) means a person licensed as a wholesaler or distributor of prescription drugs in the United States under section 503(g)(2)(A); and

(II) does not include a person authorized to import drugs under section 801(d)(1).

(D) PERMITTED COUNTRY.—The term 'permitted country' means—

(i) Australia;

(ii) Canada;

(iii) a member country of the European Union as of January 1, 2003;

(iv) Japan;

(v) New Zealand; and

(vi) Switzerland.

(b) REGISTRATION OF IMPORTERS AND EXPORTERS.—

(1) REGISTRATION OF IMPORTERS AND EXPORTERS.—A registration condition is that the importer or exporter involved (referred to in this subsection as a 'registrant') submits to the Secretary a registration containing the following:

(A) The name of the registrant and an identification of all places of business of the
registrant that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the registrant.

(c) Such information as the Secretary determines to be necessary to demonstrate that the registrant is in compliance with registration conditions under this section; or

(d) Any other provision as the Secretary may require to protect the public health while permitting—

(1) the importation by pharmacies, groups of pharmacies, wholesalers as registered importers of qualifying drugs under subsection (a); and

(2) the importation by individuals of qualifying drugs under subsection (a).

(2) Approval or Disapproval of Registration.

(A) In General.—Not later than 90 days after the date on which a registrant submits to the Secretary a registration under paragraph (1), the Secretary shall notify the registrant whether the registration is approved or is disapproved. The Secretary shall disapprove a registration if there is reason to believe that the period of compliance with one or more registration conditions, and shall notify the registrant of such reason. In the case of a disapproved registration, the Secretary shall subsequently notify the registrant that the registration is approved if the Secretary determines that the registrant is in compliance with such conditions.

(B) Changes in Registration Information.—Not later than 30 days after receiving a notice under paragraph (1)(G) from a registrant, the Secretary shall determine whether the change involved affects the approval of the registration of the registrant under paragraph (1), and shall inform the registrant if the Secretary determines that the change involved affects the approval of the registration of the registrant under paragraph (1).

(3) Publication of Contact Information for Registered Exporters.—Through the Internet website of the Food and Drug Administration, the Secretary shall make readily available to the public a list of registered exporters, including contact information for the exporters. Promptly after the approval of a registration submitted under paragraph (1), the Secretary shall update the Internet website accordingly.

(4) Suspension and Termination.

(A) Suspension.—With respect to the effectiveness of a registration submitted under paragraph (1):

(i) Subject to clause (ii), if the Secretary determines, after notice and opportunity for a hearing, that the registrant has failed to maintain substantial compliance with all registration conditions, the Secretary may suspend the registration.

(ii) If the Secretary determines that, under color of the registration, the exporter has imported a drug that is not a qualifying drug, or a drug that does not meet the criteria established in this Act for importation, or has exported a qualifying drug to an individual in violation of subsection (i)(1)(F), the Secretary shall immediately suspend the registration. A suspension under this paragraph is subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registrant an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

(B) Termination.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under paragraph (1) of a registrant if the Secretary determines that the registrant has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A) suspended the registration of the registrant. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration is suspended, any registration submitted under paragraph (1) by the registrant, or a person that is a part-

ner in the export or import enterprise, or a principal officer in such enterprise, and any registration prepared with the assistance of the registrant or such a person, has no legal effect under this section.

(c) Sources of Qualifying Drugs.—A registration condition is that the exporter or importer involved agrees that a qualifying drug will under subsection (a) be exported or imported to the United States only if there is compliance with the following:

(1) The drug was manufactured in an establishment—

(A) required to register under subsection (b) of section 510; or

(B) inspected by the Secretary as provided by this section.

(2) The establishment is located in the United States or in any foreign country, and the establishment manufactured the drug for distribution in the United States or for distribution in 1 or more of the permitted countries (without regard to whether in addition the drug was manufactured for distribution in a foreign country that is not a permitted country).

(3) The exporter or importer obtained the drug—

(A) directly from the establishment; or

(B) directly from an entity that, by contract with the exporter—

(i) provides to the exporter or importer a statement (in such form and containing such information as the Secretary may require) that the chain of custody from the establishment, identifies each prior sale, purchase, or trade of the drug (including the date of the transaction and the names and addresses of all parties); and

(ii) agrees to permit the Secretary to inspect warehouses and other facilities of the entity for purposes of determining whether the facilities are in compliance with any standards under this Act that are applicable to facilities of that type in the United States; and

(C) has ensured, through such contractual relationships as may be necessary, that the Secretary has the same authority regarding other parties in the chain of custody from the establishment that the Secretary has under clauses (ii) and (iii) regarding such entity.

(4) The foreign country from which the importer will import the drug is a permitted country.

(5) The foreign country from which the exporter will export the drug is Canada.

(6) During any period in which the drug was not in the control of the manufacturer of the drug, the drug did not enter any country that is not a permitted country.

(7) The exporter or importer retains a sample of each lot of the drug sufficient for testing by the Secretary.

(d) Inspection of Facilities; Marking of Shipments.—

(1) Inspection of Facilities.—A registration condition is that, for the purpose of assisting the Secretary in determining whether the exporter involved is in compliance with all other registration conditions under this section:

(A) the exporter agrees to permit the Secretary—

(i) to conduct onsite inspections, including inspections on an unannounced basis, of the places of business of the exporter that relate to qualifying drugs, including each warehouse or other facility owned or controlled by the exporter, and

(ii) to have access, including on a day-to-day basis, to—

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(2) Any other provisions as the Secretary may require to protect the public health while permitting—

(1) the importation by pharmacies, groups of pharmacies, wholesalers as registered importers of qualifying drugs under subsection (a); and

(2) the importation by individuals of qualifying drugs under subsection (a).
‘(1) Registration Fee.—A registration condition is that the importer involved pays to the Secretary a fee of $10,000 due on the date on which the importer first submits the registration to the Secretary under subsection (b).

‘(2) Inspection Fee.—A registration condition is that the importer involved pays to the Secretary a fee of $10,000 due on the first semiannual basis, with the first fee due on the date that is 6 months after the date on which the registration of the importer under subsection (b) is first approved by the Secretary.

‘(3) Amount of Inspection Fee.—

(A) Aggregate total of fees.—The Secretary shall annually establish the aggregate total of fees collected under paragraph (2) for a fiscal year from all importers is sufficient, and no more than necessary, to pay the costs of administering this section with respect to registered importers for a fiscal year, including—

(i) inspection of the facilities of importers under subsection (d)(6); and
(ii) reviewing qualifying drugs offered for import to importers; and
(iii) determining the compliance of importers with regulations.

(B) Limitation.—The aggregate total of fees collected under paragraph (2) shall not exceed 1 percent of the total price of drugs imported annually to the United States by registered importers under this section.

‘(4) Use of fees.—Subject to appropriations Acts, fees collected by the Secretary under paragraphs (1) and (2) are available to the Secretary and are for the sole purpose of paying the costs referred to in paragraph (2) (A) and do not exceed, in the aggregate, 1 percent of the total price of drugs imported annually to the United States under this section.

‘(5) Compliance with section 801(a).—

(A) In general.—A registration condition is that the drugs are being imported by the individual in accordance with the conditions under subsection (c). Such reviews shall be conducted in a manner that will result in a statistically significant determination of compliance with all such conditions.

(B) Monitoring the affixing of markings under paragraph (2).

(C) Inspect as the Secretary determines is necessary by warehouses and other facilities of other parties in the chain of custody of qualifying drugs.

(D) Determine which the exporter is in compliance with all other registration conditions.

‘(4) Certain Duties Relating to Importers.—Duties of the Secretary with respect to an importer include the following:

(A) As authorized under section 704, in subsection (c), inspect the establishment in which the drug was manufactured to the importer, which may be accomplished by the use of anticounterfeiting or track-and-trace technologies, if available.

(B) Conducting inspections of foreign facilities under subsection (a) and all foreign facilities to which the drug is shipped.

(C) Inspect as the Secretary determines is necessary by warehouses and other facilities of other parties in the chain of custody of qualifying drugs.

(D) Determine whether the importer is in compliance with all other registration conditions.

‘(5) Use of fees.—Subject to appropriations Acts, fees collected by the Secretary under paragraphs (1) and (2) are available to the Secretary and are for the sole purpose of paying the costs referred to in paragraph (2) (A) and do not exceed, in the aggregate, 1 percent of the total price of drugs imported annually to the United States by registered importers under this section.

‘(6) Importation.—

(A) Aggregate total of fees.—The Secretary shall annually adjust the fees under paragraph (2) to ensure that the fees accurately reflect the actual costs referred to in subparagraph (A) and do not exceed, in the aggregate, 1 percent of the total price of drugs imported annually to the United States.

(B) Adjustment of fees.—The Secretary shall annually adjust the fees under paragraph (2) to ensure that the fees accurately reflect the actual costs referred to in subparagraph (A) and do not exceed, in the aggregate, 1 percent of the total price of drugs imported annually to the United States.

‘(7) Notice by manufacturer, general provisions.—

(A) In general.—The person that manufactures a drug that may be imported under subsection (a) shall in accordance with this paragraph submit to the Secretary a notice that—

(i) The drug proposed for export or import is in compliance with all the applicable requirements of this section.

(ii) The drug proposed for export or import has the same active ingredient or ingredients from a condition established in the approved application, any difference in labeling, the date on which the drug was manufactured to the importer, which may be accomplished by the use of anticounterfeiting or track-and-trace technologies, if available.

(C) Inspect as the Secretary determines is necessary by warehouses and other facilities of other parties in the chain of custody of qualifying drugs.

(D) Determine whether the importer is in compliance with all other registration conditions.

‘(2) notices of the application for the U.S. label drug beyond the variations provided for in the application, any difference in labeling, the date on which the drug with such difference was, or will be, introduced for commercial distribution in a permitted country, and such additional information as the Secretary may require; or

(ii) states that there is no drug from a condition established in the approved application for the U.S. label drug beyond the variations provided for in the application, any difference in labeling, the date on which the drug with such difference was, or will be, introduced for commercial distribution in a permitted country, and such additional information as the Secretary may require; or

(iii) conducting under such subsection inspections within the United States to deter-
approved the drug for commercial distribution, or with respect to which such approval is sought, include the following:

(I) Information demonstrating that the person submitting the notice has been provided with a copy of the certification of the government of the permitted country in writing that the person is submitting a notice under clause (ii), which certifies the differences in the drug from a condition established in the approved application for the U.S. label drug.

(II) The information that the person submitted to the government of the permitted country for purposes of obtaining approval for commercial distribution of the drug in that country, which, if in language other than English, shall be accompanied by an English translation verified to be complete and accurate, with the name, address, and telephone number of the certifying officials of the person that made the translation.

(iii) CERTIFICATIONS.—The chief executive officer and the chief medical officer of the manufacturer involved shall each certify in the notice under clause (i) that—

(I) the information provided in the notice is complete and true.

(II) A copy of the notice has been provided to the Federal Trade Commission and to the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (referred to in this subsection as the “Assistant Attorney General”).

(iv) NOTICE SUBMITTED UNDER CLAUSE (I) INCLUDES A DIFFERENCE THAT WOULD, UNDER SECTION 506A, REQUIRE THE SUBMISSION OF A SUPPLEMENTAL APPLICATION. A notice submitted under clause (i) includes a difference that would, under section 506A, require the submission of a supplemental application if made as a change to the U.S. label drug, the person that submits the notice shall pay to the Secretary a fee in the same amount as would apply if the person were paying a fee pursuant to the fee schedules under section 506A(b)(1)(A), subject to appropriations Acts. Fees collected by the Secretary under the preceding sentence are available only to the Secretary and are for the sole purpose of paying the costs of reviewing notices submitted under clause (i).

(v) TIMING OF SUBMISSION OF NOTICES.—

(I) PRIOR APPROVAL NOTICES.—A notice under clause (i) to which subparagraph (D) applies shall be submitted to the Secretary not later than 120 days after the drug involved remains in effect; and

(ii) NOTICE NOT REQUIRED.—A notice under subsection (a), and promptly notify registered importers, the Federal Trade Commission, and the Assistant Attorney General of the order.

(iii) The Secretary determines that such a supplemental application regarding the U.S. label drug would not be approved, the Secretary shall—

(I) order that the importation of the drug involved cease; and

(II) promptly notify registered exporters, registered importers, the Federal Trade Commission, and the Assistant Attorney General of the order.

(iv) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (C)(i) that includes a difference that would, under section 506A(c)(i), require the approval of a supplemental application before the difference could be made to the U.S. label drug the following shall occur:

(I) order the Secretary to promptly notify the permitted country for purposes of obtaining approval for the difference to be made to the U.S. label drug.

(II) If the Secretary has not made a determination whether a supplemental application regarding the U.S. label drug would be approved or disapproved by the date on which the drug involved is to be introduced for commercial distribution in a permitted country, the Secretary shall—

(A) request approval of the drug for the indication or indications for which the U.S. label drug is approved by the date on which the notice is submitted as the Secretary may require.

(B) The information that the person submitting the notice has also notified the Secretary of the submission of the notice.

(C) The Secretary has not made a determination whether a supplemental application regarding the U.S. label drug would be approved, the Secretary shall notify registered exporters, registered importers, the Federal Trade Commission, and the Assistant Attorney General of the determination.

(E) NOTICE; DRUG DIFFERENCE NOT REQUIRING PRIOR APPROVAL.—In the case of a notice under subparagraph (C)(i) that includes a difference that would, under section 506A(c)(ii), require the approval of a supplemental application before the difference could be made to the U.S. label drug, the following shall occur:

(I) During the period in which the notice is being considered by the Secretary, the authority under this subsection to import the drug involved continues in effect.
shall be considered to be in compliance with section 502 if the drug bears—

"(I) a copy of the labeling approved for the drug under section 505, without regard to whether the copy bears the trademark involved;

"(II) the name of the manufacturer and location of the manufacturer;

"(III) a number assigned by the manufacturer; and

"(IV) the name, location, and registration number of the importer.

(2) REQUEST FOR COPY OF THE LABELING.—The Secretary shall provide such copy to the registered importer, upon request of the importer.

(3) IMPORTATION BY INDIVIDUAL.—In the case of a qualifying drug that is imported or offered for import by a registered exporter to an individual, such drug shall be considered to be in compliance with section 502 if the drug bears a label providing the directions for use by the consumer, and bears a copy of any special labeling that would be required by the Secretary had the drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears the trademark involved. The Secretary shall provide to the registered exporter involved a copy of the special labeling, upon request of the exporter.

(4) SECTION 505; STANDARDS FOR REFUSING ADMISSION.—

"(A) IN GENERAL.—For purposes of administrative and judicial procedure, there is a presumption that a drug is not conforming to good manufacturing practice, packing, or holding of the drug, if the drug bears a label providing the directions for use by the consumer, and bears a copy of any special labeling that would be required by the Secretary had the drug been dispensed by a pharmacist in the United States, without regard to whether the special labeling bears the trademark involved. The Secretary shall provide to the registered exporter involved a copy of the special labeling, upon request of the exporter.

"(B) STANDARDS FOR REFUSING ADMISSION.—The Secretary shall provide such copy to the registered importer, upon request of the importer.

(5) A qualified drug exported under subsection (a) from a registered exporter or imported by a registered importer may be refused admission to the extent that such provisions are not incorporated by reference provisions of the interim rule, to the extent that such provisions are not modified.

(6) IMPLEMENTATION.—(A) IN GENERAL.—The Secretary of Health and Human Services shall promulgate an interim rule for implementing section 804 of the Federal Food, Drug, and Cosmetic Act, as added by subsection (a) of this section.

"(B) CERTAIN EXPORTERS.—With respect to each qualified exporter of prescription drugs to individuals, and the exporter assigns to those persons responsibility for dispensing such qualifying drugs to individuals—

"(I) INDIVIDUALS; CONDITIONS FOR IMPORTATION FOR INDIVIDUALS.—

"(a) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

"(i) the drug is accompanied by a copy of a prescription for the drug, which prescription—

"(II) was issued by a practitioner who, under the State law of which the individual is a resident, or in which the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs;

"(II) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

"(I) the drug is accompanied by a copy of a prescription for the drug, which prescription—

"(a) The drug is accompanied by a copy of a prescription for the drug, which prescription—

"(b) The drug is accompanied by a copy of the labeling that was required under the law or regulations of Canada as a condition of dispensing the drug to the individual.

"(III) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

"(a) to indicate that the prescription, and the equivalent document in Canada, have been filled; and

"(b) to prevent a duplicative filling by another pharmacist.

"(b) In any case in which the drug is not an illegible subpart H drug, for a prescription drug which is an ‘ineligible subpart H drug’ if the drug was approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations, and has been refused admission by the Secretary

"(IV) the name, location, and registration number of the importer.

"(b) The drug is accompanied by a copy of the documentation that was required under the law or regulations of Canada as a condition of dispensing the drug to the individual.

"(c) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

"(b) to prevent a duplicative filling by another pharmacist.

"(II) the name of the manufacturer and location of the manufacturer;

"(III) the methods used in, or the facilities, used by the manufacturer, processing, packing, or holding of the drug do not conform to good manufacturing practices;

"(IV) the drugs being imported are labeled in a way that may affect the strength, quality, or purity of the drug.

Section 505(e) withdrawn approval of the drug.

"(v) the date on which the drug was approved, or (ii) is valid under applicable Federal and State laws; and

"(b) The drug is accompanied by a copy of the labeling that was required under the law or regulations of Canada as a condition of dispensing the drug to the individual.

"(c) The copies referred to in subparagraphs (A)(i) and (B) are marked in a manner sufficient—

"(c) To indicate that the prescription, and the equivalent document in Canada, have been filled; and

"(b) To prevent a duplicative filling by another pharmacist.

"(2) maintain samples of each lot of a drug required under this section for not less than 2 years.

"(I) MANUFACTURERS.—A person that manufactures a prescription drug imported from a permitted country under this section shall promptly inform the Secretary—

"(i) if the drug is recalled or withdrawn from the market in a permitted country;

"(II) DRUG RECALLS.—

"(i) MANUFACTURERS.—A person that manufactures a prescription drug imported from a permitted country under this section shall promptly inform the Secretary—

"(II) maintain records required under this section for not less than 2 years.

"(2) Drug Recalls.—

"(I) MANUFACTURERS.—A person that manufactures a prescription drug imported from a permitted country under this section shall promptly inform the Secretary—

"(I) maintain records required under this section for not less than 2 years.

"(1) MANUFACTURERS.—A person that manufactures a prescription drug imported from a permitted country under this section shall promptly inform the Secretary—

"(II) DRUG RECALLS.—

"(I) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

"(I) Meanings of terms used in this Act:

"(II) the name, location, and registration number of the importer.

"(2) DRUG RECALLS.—

"(I) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

"(I) Maintain records of each lot of a drug required under this section for not less than 2 years.

"(I) Meanings of terms used in this Act:

"(II) DRUG RECALLS.—

"(I) IN GENERAL.—For purposes of subsection (a)(2)(B), the importation of a qualifying drug by an individual is in accordance with this subsection if the following conditions are met:

"(I) Maintain records of each lot of a drug required under this section for not less than 2 years.
under subparagraph (A) is in effect. During such period, the reference in subsection (b)(2)(A) of such section 804 to 90 days (relating to approval or disapproval of registrations) is applied to such entities, deemed to be 30 days.

(C) DRUGS FOR IMPORT FROM CANADA.—The notices with respect to drugs to be imported from Canada that are required under subsection (g)(2)(C)(i) of such section 804 and that require approval under subsection (g)(2)(D) or (E) of such section 804 shall be submitted to the Secretary not later than 90 days after the date of enactment of this Act. The notices with respect to drugs to be imported from Canada that are required under subpart H of part 314 of title 21, Code of Federal Regulations, that do not require approval under subsection (g)(2)(D) (or (E) of such section 804 shall be submitted to the Secretary not later than 90 days after the date of enactment of this Act.

(D) DRUGS FOR IMPORT FROM OTHER COUNTRIES.—The notices with respect to drugs to be imported from Australia, a member country of the European Union as of January 1, 2003, Japan, New Zealand, or Switzerland that are required under subsection (g)(2)(C)(i) of such section 804 and that require approval under subsection (g)(2)(D) or (E) of such section 804 shall be submitted to the Secretary not later than 180 days after the date of enactment of this Act. The notices with respect to drugs to be imported from such countries that are required under subsection (g)(2)(C)(i)(II) of such section 804 and that do not require approval under subsection (g)(2)(D) (or (E) of such section 804 shall be submitted to the Secretary not later than 270 days after the date of enactment of this Act.

(2) PERSONAL IMPORTATION FROM CANADA.—Until the expiration of the 60-day period beginning on the date on which the interim rule under paragraph (1)(A) is promulgated, an individual may import a prescription drug from Canada for personal use or for the use of a family member of the individual (rather than for resale), subject to compliance with the following conditions:

(A) The drug is not—
(i) a controlled substance, as defined in section 812 of the Controlled Substances Act (21 U.S.C. 812);

(ii) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262);

(iii) an infused drug, including a peritoneal dialysis solution;

(iv) an intravenously injected drug;

(v) a drug that is inhaled during surgery; or

(vi) a drug approved by the Secretary under subpart H of part 314 of title 21, Code of Federal Regulations (relating to accelerated approval) with restrictions under section 520 of such part that assure safe use.

(B) The drug is dispensed by a person licensed to dispense such drug;

(C) The drug is accompanied by a copy of the prescription for the drug, which prescription—

(i) is valid under applicable Federal and State laws; and

(ii) was issued by a practitioner who, under the law of the State of which the individual is a resident, the individual receives care from the practitioner who issues the prescription, is authorized to administer prescription drugs.

The drug is accompanied by a copy of the document that was required in Canada as a condition of dispensing the drug to the individual.

(E) The copies referred to in subparagraphs (C) and (D) are marked in a manner sufficient—

(i) to indicate that the prescription, and the equivalent document in Canada, have been filled; and

(ii) to prevent a duplicative filling by another pharmacist.

(2) The quantity of the drug does not exceed a 90-day supply.

(3) FACILITATION OF CANADIAN IMPORTS.—The Secretary shall, until the expiration of the 60-day period that begins on the date on which the interim rule under paragraph (1)(A) is promulgated by the Secretary, through the Internet website of the Food and Drug Administration, make readily available to the public a list of persons licensed in Canada to dispense such drugs.

(4) EFFECT OF PROVISIONS.—The amendments made in subsection (d), section 6, and section 7 of this Act shall have no effect with respect to imports made under paragraph (2).

(4) AMENDMENT OF CERTAIN PROVISION.—Section 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381) is amended by striking subsection (g) and inserting the following:

"(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that drug may not be imported under section 804 of such Act, and that is refused admission under subsection (a), the Secretary shall notify the individual—

(1) if the drug has been refused admission because the drug was not a lawful import under section 804;

(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

(3) the individual may under section 804 lawfully import certain prescription drugs from Canadian exporters registered with the Secretary; and

(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration.

(e) ANTICOMPETITIVE PRACTICES RELATING TO IMPORTING AND EXPORTING DRUGS TO THE UNITED STATES.—

(1) The Clayton Act.—The Clayton Act (15 U.S.C. 12 et seq.) is amended by adding at the end the following:

"SEC. 27. RESTRAINT OF TRADE REGARDING PRESCRIPTION DRUGS IMPORTED TO THE UNITED STATES.

(a) In General.—It shall be unlawful for any person engaged in commerce, directly or indirectly—

(1) to charge a higher price for prescription drugs sold to a registered exporter or other person that exports prescription drugs to the United States under section 804 of the Federal Food, Drug, and Cosmetic Act than the price that is charged to another person that is in the same country and that does not export prescription drugs to the United States under section 804 of such Act;

(2) to charge a higher price for prescription drugs sold to a registered importer or other person that distributes, sells, or uses prescription drugs imported to the United States under section 804 of such Act than the price that is charged to another person in the United States that does not import prescription drugs under section 804 of such Act or that does not distribute, sell, or use such drugs;

(3) to deny supplies of prescription drugs to a registered importer or other person that exports prescription drugs to the United States under section 804 of such Act or to a registered importer or other person that distributes, sells, or uses prescription drugs imported to the United States under section 804 of such Act;

(4) to fail to accept a prescription drug offered for import under section 804 of such Act;

(5) to fail to provide any information requested by the Secretary in a timely manner; or

(6) to distribute, sell, or use prescription drugs imported to the United States under section 804 of such Act.

(b) PRESUMPTION.—A difference in the price that is charged to another person in the United States that does not import prescription drugs under section 804 of such Act or does not distribute, sell, or use such drugs shall be presumed to be for the purpose of restricting competition under section 804 of such Act.

(c) Calculation.—The Federal Trade Commission determines to be the fair price the price that is charged to another person under section 804 of such Act, in each case if the price that is charged to another person in the United States that does not import prescription drugs under section 804 of such Act or does not distribute, sell, or use such drugs.

(d) ANTITRUST ACTIONS.—If the Federal Trade Commission determines that a person that manufactures, distributes, sells, or uses prescription drugs imported to the United States under section 804 of such Act has engaged in an anticompetitive practice that is in violation of subsection (a) of this section, such person shall be liable to the United States for a civil penalty under section 4 of the Clayton Act.

(e) SUBPOENA.—The Federal Trade Commission may issue a subpoena to obtain information or records, or both, that are relevant to the determination of whether a defendant has engaged in an anticompetitive practice that is in violation of subsection (a) of this section.

(f) INJUNCTION.—The United States may bring an action against any person that engages in an anticompetitive practice that is in violation of subsection (a) of this section in the United States District Court for the District of Columbia.

(g) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that drug may not be imported under section 804 of such Act, and that is refused admission under subsection (a), the Secretary shall notify the individual—

(1) if the drug has been refused admission because the drug was not a lawful import under section 804;

(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

(3) the individual may under section 804 lawfully import certain prescription drugs from Canadian exporters registered with the Secretary; and

(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration.

(h) ANTI-TRUST ACTIONS.—If the Federal Trade Commission determines to be the fair price the price that is charged to another person under section 804 of such Act, in each case if the price that is charged to another person in the United States that does not import prescription drugs under section 804 of such Act or does not distribute, sell, or use such drugs.

(i) CALCULATION.—The Federal Trade Commission determines to be the fair price the price that is charged to another person under section 804 of such Act, in each case if the price that is charged to another person in the United States that does not import prescription drugs under section 804 of such Act or does not distribute, sell, or use such drugs.

(j) ANTITRUST ACTIONS.—If the Federal Trade Commission determines that a person that manufactures, distributes, sells, or uses prescription drugs imported to the United States under section 804 of such Act has engaged in an anticompetitive practice that is in violation of subsection (a) of this section, such person shall be liable to the United States for a civil penalty under section 4 of the Clayton Act.

(k) SUBPOENA.—The Federal Trade Commission may issue a subpoena to obtain information or records, or both, that are relevant to the determination of whether a defendant has engaged in an anticompetitive practice that is in violation of subsection (a) of this section.

(l) INJUNCTION.—The United States may bring an action against any person that engages in an anticompetitive practice that is in violation of subsection (a) of this section in the United States District Court for the District of Columbia.

(m) With respect to a prescription drug that is imported or offered for import into the United States by an individual who is not in the business of such importation, that drug may not be imported under section 804 of such Act, and that is refused admission under subsection (a), the Secretary shall notify the individual—

(1) if the drug has been refused admission because the drug was not a lawful import under section 804;

(2) the drug is not otherwise subject to a waiver of the requirements of subsection (a);

(3) the individual may under section 804 lawfully import certain prescription drugs from Canadian exporters registered with the Secretary; and

(4) the individual can find information about such importation, including a list of registered exporters, on the Internet website of the Food and Drug Administration.

(n) ANTI-TRUST ACTIONS.—If the Federal Trade Commission determines to be the fair price the price that is charged to another person under section 804 of such Act, in each case if the price that is charged to another person in the United States that does not import prescription drugs under section 804 of such Act or does not distribute, sell, or use such drugs.

(o) CALCULATION.—The Federal Trade Commission determines to be the fair price the price that is charged to another person under section 804 of such Act, in each case if the price that is charged to another person in the United States that does not import prescription drugs under section 804 of such Act or does not distribute, sell, or use such drugs.
of Food and Drug, determines that the difference was necessary to improve the safety or efficacy of the drug; or

(3) the person manufacturing the drug for distribution in the United States has given notice to the Secretary of Health and Human Services under subsection (g)(2)(C)(i) of section 804 of such Act that the drug for distribution in the United States is not different from a drug for distribution in not fewer than half of those countries.

(1) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge that a person has violated paragraph (1), (2), (3), (4), or (5) of subsection (a) that the higher prices charged for prescription drugs sold to a person, the denial of supplies of prescription drugs to a person, the refusal to do business with a person, or the specific restriction or delay of supplies to a person is not based, in whole or in part, on—

(1) the person exporting or importing prescription drugs to the United States under section 804 of the Federal Food, Drug, and Cosmetic Act; or

(2) the person distributing, selling, or using prescription drugs imported to the United States under section 804 of such Act.

(2) Definitions.—In this section:

(1) PRESCRIPTION DRUG.—The term ‘prescription drug’ means a drug that is—

(a) a drug that is dispensed in accordance with a prescription by a practitioner licensed by law to practice or order such prescription, or by a pharmacist or by a practitioner licensed by law to administer the drug, and the individual traveled from the United States with the drug;

(2) REGISTERED IMPORTER.—The term ‘registered importer’ has the meaning given such term in section 804 of the Federal Food, Drug, and Cosmetic Act; and

(3) REGISTERED EXPORTER.—The term ‘registered exporter’ has the same meaning as in section 804 of the Federal Food, Drug, and Cosmetic Act.

(3) Applicability of amendments to importation under the pharmaceutical market access and fair trade Act of 2001.—

(A) In general.—Section 271 of title 35, United States Code, is amended—

(1) by redesignating subsections (b) and (i) as (i) and (j), respectively; and

(ii) a 14-day supply otherwise.

(B) The drug is accompanied by a statement that the individual seeking to import the drug into the United States under a personal importation waiver.

(2) Object of procedures.—Procedures promulgated under paragraph (1) shall be designed toward the objective of ensuring that with respect to efficiently utilizing Federal resources available for carrying out this section, a substantial majority of shipments of drugs subject to subsection (a) or (b) are identified and refused admission and destroyed.

(iv) Waivers under this subsection are in addition to, and independent of, the waiver pursuant to section 804(a)(2)(B).

(2) With respect to the standards referred to in subsection (a), the Secretary shall establish by regulation a waiver of such standards in the case of the importation by—

(a) The drug was dispensed by a pharmacist or by a practitioner licensed by law to administer the drug, and the individual traveled from the United States with the drug.

(b) The individual is entering the United States and the drug accompanies the individual at the time of entry.

(c) The drug does not appear to the Secretary to be adulterated.

(d) The quantity of the drug does not exceed a 90-day supply.

(e) The drug is accompanied by a statement that the individual seeks to import the drug into the United States under a personal importation waiver.

(f) Such additional standards as the Secretary determines to be appropriate to protect the public health.

(g) The Secretary shall establish by regulation a waiver of such standards in the case of the importation into the United States of an individual of a drug into the United States in the following circumstances:

(h) The drug was dispensed to the individual while the individual was in a foreign country, and the drug was dispensed in accordance with the laws and regulations of such country.

(i) The individual is entering the United States and the drug accompanies the individual at the time of entry.

(j) The drug is approved for commercial distribution in a foreign country in which the drug was obtained.

(k) The drug does not appear to the Secretary to be adulterated.

(l) The quantity of the drug does not exceed—

(i) a 90-day supply if the drug is dispensed in Australia, Canada, a member country of the European Community, Japan, New Zealand, or Switzerland; or

(ii) a 14-day supply otherwise.

(m) The drug is accompanied by a statement that the individual seeking to import the drug into the United States under a personal importation waiver.

(n) Such additional standards as the Secretary determines to be appropriate to protect the public health.

(o) The Secretary may not administer any enforcement policy that has the effect of permitting the importation of a prescription drug into the United States in violation of this Act or section 351 of the Public Health Service Act.

(p) ADDITIONAL WAIVERS.—This Act and the amendments made by this Act shall not be construed as authorizing the Secretary of Health and Human Services to establish a waiver of the standards referred to in section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) with respect to the importation by an individual of a drug into the United States that does not meet such standards, provided that to the maximum extent possible, such standards are developed in consultation with the Secretary of State or the Department of Commerce.

(q) The Secretary may not administer any enforcement policy that has the effect of permitting the importation of a prescription drug into the United States in violation of this Act or section 351 of the Public Health Service Act.

(r) ADDITIONAL WAIVERS.—This Act and the amendments made by this Act shall not be construed as authorizing the Secretary of Health and Human Services to establish a waiver of the standards referred to in section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) with respect to the importation by an individual of a drug into the United States that does not meet such standards, provided that to the maximum extent possible, such standards are developed in consultation with the Secretary of State or the Department of Commerce.

(s) The Secretary may not administer any enforcement policy that has the effect of permitting the importation of a prescription drug into the United States in violation of this Act or section 351 of the Public Health Service Act.

(t) ADDITIONAL WAIVERS.—This Act and the amendments made by this Act shall not be construed as authorizing the Secretary of Health and Human Services to establish a waiver of the standards referred to in section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) with respect to the importation by an individual of a drug into the United States that does not meet such standards, provided that to the maximum extent possible, such standards are developed in consultation with the Secretary of State or the Department of Commerce.

(u) The Secretary may not administer any enforcement policy that has the effect of permitting the importation of a prescription drug into the United States in violation of this Act or section 351 of the Public Health Service Act.

(v) ADDITIONAL WAIVERS.—This Act and the amendments made by this Act shall not be construed as authorizing the Secretary of Health and Human Services to establish a waiver of the standards referred to in section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) with respect to the importation by an individual of a drug into the United States that does not meet such standards, provided that to the maximum extent possible, such standards are developed in consultation with the Secretary of State or the Department of Commerce.

(w) The Secretary may not administer any enforcement policy that has the effect of permitting the importation of a prescription drug into the United States in violation of this Act or section 351 of the Public Health Service Act.

(x) ADDITIONAL WAIVERS.—This Act and the amendments made by this Act shall not be construed as authorizing the Secretary of Health and Human Services to establish a waiver of the standards referred to in section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)) with respect to the importation by an individual of a drug into the United States that does not meet such standards, provided that to the maximum extent possible, such standards are developed in consultation with the Secretary of State or the Department of Commerce.
“(4) Procedure.—The provisions of paragraphs (3) (other than subparagraph (A)), (4), and (5) of section 303(f) shall apply to a violation under subsection (a) in the same manner as such provisions apply to a violation of a requirement of this Act that relates to devices.”.

(b) Resources.—In addition to fees that may be available to the Office of Drug Safety under sections 735 and 736 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379g and 379h), there is authorized to be appropriated for the Office of Drug Safety within the Center for Drug Evaluation and Research of the Food and Drug Administration—

(1) $30,000,000 for fiscal year 2006;

(2) $40,000,000 for fiscal year 2007;

(3) $50,000,000 for fiscal year 2008;

(4) $60,000,000 for fiscal year 2009; and

(5) $70,000,000 for fiscal year 2010.

SEC. 122. REPORT BY GAO ON DRUG SAFETY.

(a) In General.—The Government Accountability Office shall provide for the conduct of a study concerning measures to increase the safety of prescription drugs, including—

(1) whether Federal funding levels are adequate to ensure drug safety and whether the uncertainty associated with those levels affects the Federal budgetary process; and

(2) whether the lack of permanent leadership at the Food and Drug Administration has contributed to problems in decision-making and in transmitting information to the public concerning the safety of drugs;

(3) whether prolonged and rampant vacancies within the Food and Drug Administration have contributed to the ability of the Food and Drug Administration to properly examine drug safety; and

(4) whether conflicts of interest exist that unduly bias approvals or later reviews of drug safety;

(5) whether employees of the Food and Drug Administration who improperly threaten or face any barriers to raising concerns about drug safety;

(6) whether the procedure of the Food and Drug Administration for notifying the public of possible drug safety issues is appropriate and complied with;

(7) whether further measures or authorities are necessary to ensure the safety of drugs; and

(8) other matters determined appropriate.

(b) Scope.—Not later than 90 days after the date of enactment of this Act, the Government Accountability Office shall prepare and submit to the appropriate committees of Congress a report concerning the results of the study conducted pursuant to subsection (a).

Such report shall include a proposal (including legislative language) for improving the safety of prescription drugs.

TITLE II—MODERNIZING THE HEALTH CARE SYSTEM

SEC. 201. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

The Public Health Service Act (42 U.S.C. 205 et seq.) is amended by adding at the end thereof the following:

“TITLE XXIX—HEALTH CARE INFORMATION TECHNOLOGY

SEC. 2901. DEFINITIONS.

In this title:

“(1) COVERAGE AREA.—The term ‘coverage area’ means the boundaries of a local health information infrastructure.

“(2) DIRECTOR.—The term ‘Director’ means the Director of the Office of Health Information Technology.

“(3) HEALTH CARE PROVIDER.—The term ‘health care provider’ means a hospital, an ambulatory care provider, a health clinic, community health center, group practice (as defined in section S192 CONGRESSIONAL RECORD — SENATE January 24, 2005 712
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1877(b)(4) of the Social Security Act, including practices with only 1 physician), and any other facility or clinician determined appropriate by the Director.

(4) HEALTH INFORMATION TECHNOLOGY.—The term ‘health information technology’ means a computerized system that—

(A) is consistent with the standards developed in 2003;

(B) permits the secure electronic transmission of information to other health care providers and public health entities; and

(C) utilizes information technology.

(i) an electronic health record (EHR) that provides access in real-time to the patient’s complete medical record;

(ii) a personal health record (PHR) through which an individual (and anyone authorized by such individual) can maintain and manage their health information;

(iii) computerized provider order entry (CPOE) technology that permits the electronic ordering of diagnostic and treatment services, including prescription drugs;

(iv) decision support to assist physicians in making clinical decisions by providing electronic alerts and reminders to improve compliance with clinical practices, promote regular screenings and other preventive practices, and facilitate diagnoses and treatments;

(v) error notification procedures so that a warning is generated if an order is entered that is likely to lead to a significant adverse outcome for the patient; and

(vi) systems for the collection, analysis, and reporting of data on adverse events, near misses, and the quality of care provided to the patient.

(5) LOCAL HEALTH INFORMATION INFRASTRUCTURES.—The term ‘local health information infrastructure’ means an independent organization of health care entities established to perform functions of linking health information systems to electronically shared information. A local health information infrastructure may not be a single business entity.

(6) OFFICE.—The term ‘Office’ means the Office of Health Information Technology established under section 2002.

SEC. 2002. OFFICE OF HEALTH INFORMATION TECHNOLOGY.

(a) ESTABLISHMENT.—There is established within the Office of the Director of the President an Office of Health Information Technology. The Office shall be headed by a Director to be appointed by the President. The Director shall be subject to the control and direction of the President.

(b) PURPOSE.—It shall be the purpose of the Office to—

(1) improve the quality and increase the efficiency of health care delivery through the use of health information technology;

(2) provide national leadership relating to, and encourage the adoption of, health information technology;

(3) direct all health information technology activities within the Federal Government, including designating the Privacy Act; and

(4) facilitate the interaction between the Federal Government and the private sector relating to health information technology development and use.

(c) DUTIES AND RESPONSIBILITIES.—The Office shall be responsible for the following:

(1) NATIONAL STRATEGY.—The Office shall develop a national strategy for improving the quality and enhancing the efficiency of health care through the improved use of health information technology and the creation of national Health Information Infrastructure.

(2) FEDERAL LEADERSHIP.—The Office shall—

(A) serve as the principle advisor to the President concerning health information technology; and

(B) direct all health information technology activity within the Federal Government, including approving or disapproving agency policies submitted under paragraph (3).

(3) WORK WITH PRIVATE AND GOVERNMENT INFORMATION TECHNOLOGY STAKESHOLDERS.—The Office shall implement the national strategy described in paragraph (2).

(4) ENSURE THAT HEALTH INFORMATION TECHNOLOGY IS USED AS FULLY AS PRACTICABLE.—The Office shall ensure that health information technology is utilized as fully as practicable in carrying out health surveillance efforts.

(5) PROMOTE THE DEVELOPMENT OF STANDARDS.—The Office shall—

(A) evaluate and disseminate information to the health professions about promising practices, including the results of studies that compare the costs and benefits of existing technologies and new technologies; and

(B) provide technical assistance concerning the implementation of health information technology to healthcare providers.

(6) FEDERAL REIMBURSEMENT.—The Office shall—

(A) in general.—The Office shall provide technical assistance to the Federal Government to ensure that reimbursement of services, including prescription drugs; (B) review Federal reimbursement systems; and

(C) review Federal payment structures.

(7) TECHNICAL ASSISTANCE.—The Office shall—

(A) in general.—The Office shall provide technical assistance to the Federal Government to ensure that reimbursement of services, including prescription drugs;

(B) plan for the private sector development of standards that promote the efficient exchange of data between entities of different health information technology systems.

(C) DUTIES AND RESPONSIBILITIES.—The Office shall provide technical assistance concerning the implementation of health information technology to healthcare providers.

(D) FEDERAL REIMBURSEMENT.—The Office shall—

(A) in general.—At least 6 months after the date of enactment of this title, the Office shall submit to Congress a report that provides, with respect to each recommendation, a plan for the implementation, or an explanation as to why implementation is inadvisable, of the recommendation.

(B) PLAN.—Not later than 90 days after receiving recommendations under subparagraph (A), the Secretary shall provide to the relevant Committees of Congress a report that provides, with respect to each recommendation, a plan for the implementation, or an explanation as to why implementation is inadvisable, of the recommendation.

(C) DUTIES AND RESPONSIBILITIES.—The Office shall—

(A) improve the quality and increase the efficiency of health care delivery through the use of health information technology;

(B) promote the adoption of health information technology among healthcare providers; and

(C) provide technical assistance concerning the implementation of health information technology to healthcare providers.

(D) FEDERAL REIMBURSEMENT.—The Office shall—

(A) improve the quality and increase the efficiency of health care delivery through the use of health information technology;
“(2) REQUIREMENTS.—The standards developed and adopted under paragraph (1) shall be
(a) enable health information technology to be utilized in medical record collection and use of clinically specific data;
(b) promote the interoperability of health care information across health care settings;
(c) be adopted through a local decision-making process through the use of health information technology; and
(d) ensure the privacy and confidentiality of medical records.

“(3) PUBLIC PRIVATE PARTNERSHIP.—Consistent with activities being carried out on the date of enactment of this title, including the Consoliated Health Information Initiative (or a successor organization to such Initiative), health information technology standards shall be adopted by the Director under paragraph (1) at the conclusion of a collaborative process that includes consultation between the Federal Government and private sector health care and information technology stakeholders.

“(4) PRIVACY AND SECURITY.—The regulations promulgated by the Secretary under part C of title XI of the Social Security Act (42 U.S.C. 1320d and subsections 262, 263, and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d-2) with respect to the privacy, confidentiality, and security of health information shall apply to the implementation of programs and activities under this title.

“(5) PILOT TESTS.—To the extent practical, the Director shall pilot test the health information technology data standards developed under paragraph (1) prior to their implementation.

“(6) DISSEMINATION.—

“(A) IN GENERAL.—The Director shall ensure that the standards adopted under paragraph (1) are broadly disseminated to interested stakeholders.

“(B) LICENSING.—To facilitate the dissemination and implementation of the standards developed and adopted under paragraph (1), the Director may license such standards, or utilize other means, to ensure the widespread use of such standards.

“(7) FEDERAL ASSURANCE.

“(1) PURCHASE OF SYSTEMS BY THE SECRETARY.—Effective beginning on the date that is 1 year after the adoption of the health information technology standards, in collaboration with standard or developed and adopted under subsection (a), the Secretary may license such standards, or utilize other means, to ensure the widespread use of such standards.

“(2) RECIPIENTS OF FEDERAL FUNDS.—(A) To the extent practicable, adopt the health information technology standards adopted under section 2903;

“(B) provide service to low-income and underserved populations; and

“(C) to recover any other activities determined appropriate by the Director.

“(4) SPECIAL CONSIDERATIONS FOR LOCAL HEALTH INFORMATION INFRASTRUCTURES.—In awarding loan guarantees under this section to local health information infrastructures, the Director shall give special consideration to eligible entities that—

“(i) include at least 50 percent of the patients living in the designated coverage area;

“(ii) incorporate public health surveillance and reporting into the overall architecture of the proposed infrastructure; and

“(iii) link local health information infrastructures.

“(f) AREAS OF SPECIFIC INTEREST.—In awarding loan guarantees under this section, the Director shall include—

“(1) entities with a coverage area that includes an entire State; and

“(2) entities with a multi-state coverage area.

“(g) ADMINISTRATIVE PROVISIONS.—

“(1) AGGREGATE AMOUNT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the aggregate amount of principal of loans guaranteed under subsection (a) with respect to an eligible entity may not exceed $5,000,000. In any 12-month period, the amount disbursed to any eligible entity under this section (by a lender under a guaranteed loan) may not exceed $5,000,000.

“(B) EXCEPTION.—The cumulative total of the principal of the loans outstanding at any time to which guarantees have been issued under subsection (a) may not exceed such limitations as may be specified in appropriate Acts.

“(h) PROTECTION OF FEDERAL GOVERNMENT.—

“(1) IN GENERAL.—The Director may not apply an application for a guarantee under this section unless the Director determines that—

“(i) the terms, conditions, security (if any), and procedures specified on the application, and the terms, condition, and security and the risks associated with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such percent per annum on the principal obligation outstanding as the Director determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States; and

“(ii) the loan would not be available on reasonable terms and conditions without the enactment of this section.

“(2) RECOVERY.—

“(i) IN GENERAL.—The United States shall be entitled to recover from the applicant for a loan guarantee under this section any payment made pursuant to such loan guarantee, unless the Director for good cause waives such right of recovery, and, upon making any such payment, the United States shall be entitled to the same right of recovery as the applicant for a loan guarantee under this section, and the Director shall give special consideration to eligible entities that—

“(A) provide service to low-income and underserved populations; and

“(B) agree to electronically submit the information described in paragraphs (3) and (4) of section 2903 on a daily basis.

“(e) SPECIAL CONSIDERATIONS FOR LOCAL HEALTH INFORMATION INFRASTRUCTURES.—In awarding loan guarantees under this section to local health information infrastructures, the Director shall give special consideration to eligible entities that—

“(1) include at least 50 percent of the patients living in the designated coverage area;

“(2) incorporate public health surveillance and reporting into the overall architecture of the proposed infrastructure; and

“(3) link local health information infrastructures.

“(f) AREAS OF SPECIFIC INTEREST.—In awarding loan guarantees under this section, the Director shall include—

“(1) entities with a coverage area that includes an entire State; and

“(2) entities with a multi-state coverage area.

“(g) ADMINISTRATIVE PROVISIONS.—

“(1) AGGREGATE AMOUNT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the aggregate amount of principal of loans guaranteed under subsection (a) with respect to an eligible entity may not exceed $5,000,000. In any 12-month period, the amount disbursed to any eligible entity under this section (by a lender under a guaranteed loan) may not exceed $5,000,000.

“(B) EXCEPTION.—The cumulative total of the principal of the loans outstanding at any time to which guarantees have been issued under subsection (a) may not exceed such limitations as may be specified in appropriate Acts.

“(h) PROTECTION OF FEDERAL GOVERNMENT.—

“(1) IN GENERAL.—The Director may not apply an application for a guarantee under this section unless the Director determines that—

“(i) the terms, conditions, security (if any), and procedures specified on the application, and the terms, condition, and security and the risks associated with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such percent per annum on the principal obligation outstanding as the Director determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States; and

“(ii) the loan would not be available on reasonable terms and conditions without the enactment of this section.

“(2) RECOVERY.—

“(i) IN GENERAL.—The United States shall be entitled to recover from the applicant for a loan guarantee under this section any payment made pursuant to such loan guarantee, unless the Director for good cause waives such right of recovery, and, upon making any such payment, the United States shall be entitled to the same right of recovery as the applicant for a loan guarantee under this section, and the Director shall give special consideration to eligible entities that—

“(A) provide service to low-income and underserved populations; and

“(B) agree to electronically submit the information described in paragraphs (3) and (4) of section 2903 on a daily basis.

“(e) SPECIAL CONSIDERATIONS FOR LOCAL HEALTH INFORMATION INFRASTRUCTURES.—In awarding loan guarantees under this section to local health information infrastructures, the Director shall give special consideration to eligible entities that—

“(1) include at least 50 percent of the patients living in the designated coverage area;

“(2) incorporate public health surveillance and reporting into the overall architecture of the proposed infrastructure; and

“(3) link local health information infrastructures.
“(i) MODIFICATION OF TERMS.—Any terms and conditions applicable to a loan guarantee under this section may be modified by the Director to the extent the Director determines are consistent with the financial interest of the United States.

“(3) DEFAULTS.—The Director may take such action as the Director deems appropriate to protect the interest of the United States in the event of a default on a loan guarantee under this section, including taking possession of, holding, and using real property pledged as security for such a loan guarantee.

“(b) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2011.

“(2) AVAILABILITY.—Amounts appropriated under subparagraph (A) shall remain available for obligation until expended.

“SEC. 2005. GRANTS FOR THE PURCHASE OF HEALTH INFORMATION TECHNOLOGY.

“(a) IN GENERAL.—The Secretary may award competitive grants for eligible associations to:

“(1) implement local health information infrastructures to facilitate the development of interoperability across health care settings;

“(2) to facilitate the purchase and adoption of health information technology.

“(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a) an entity shall—

“(1) demonstrate financial need to the Director;

“(2) with respect to an entity desiring a grant:

“(A) under subsection (a)(1), represent an independent consortium of health care stakeholders within a community that—

“(i) includes—

“(I) physicians (as defined in section 1881(r)(1) of the Social Security Act);

“(II) hospitals;

“(III) group health plans or other health insurance issuers (as such terms are defined in section 2791); and

“(ii) may include any other health care providers or

“(B) under subsection (a)(2), be a health care provider that provides health care services to low-income and underserved populations;

“(C) adopt the national health information technology standards developed under section 2003;

“(4) provide assurances that the entity shall submit to the Director regular reports on the activities carried out under the loan guarantee, including—

“(A) a description of the financial costs and benefits of the project involved and of the entities to which such costs and benefits accrue;

“(B) a description of the impact of the project on health care quality and safety; and

“(C) a description of any reduction in duplicative or unnecessary care as a result of the project.

“(5) provide assurances that not later than 30 days after the development of the standard quality measures pursuant to section 2006, the entity shall submit to the Director regular reports on such measures, including provider level data and analysis of the impact of information technology on such measures.

“(6) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

“(7) agree to provide matching funds in accordance with subsection (g).

“(c) USE OF FUNDS.—Amounts received under a grant under subsection (a) shall be used to—

“(1) with respect to a grant described in subsection (a)(1),

“(A) to develop a plan for the implementation of a local health information infrastructure under this section;

“(B) to establish and modify mechanisms for sharing of data in accordance with the national health information technology standards developed under section 2003;

“(C) to test, implement, enhance, or upgrade a comprehensive, electronic health information technology system; and

“(D) to maintain adequate security and privacy protection.

“(2) with respect to a grant described in subsection (a)(2),

“(A) to develop a plan for the purchase and implementation of health information technology;

“(B) to purchase directly related integrated hardware and software to establish an interoperable and information technology system that is capable of linking to a national or local health care information infrastructure but is not developed under paragraph (2) that shall include a pilot test of the quality measures developed under paragraph (2) for the year involved; and

“(C) to establish public reporting requirements for clinicians, institutional providers, and quality improvement organizations for each of fiscal years 2006 through 2011.

“(D) to provide service to low-income and underserved populations and

“(E) to provide for public reporting requirements for each of the 20 priority areas for improvement in health care quality as identified by the Institute of Medicine in its report entitled ‘Priority Areas for National Action’ in 2003, or other such areas as identified by the Secretary in order to assist beneficiaries in making informed choices about health plans or care delivery systems. The selection of appropriate quality indicators under this subsection shall include the evaluation criteria formulated by professional associations, consumer advocates, and data collection experts.

“(2) DEVELOPMENT OF MEASURES.—Not later than 18 months after the date of enactment of this title, the Secretary shall develop standardized sets of quality measures for each of the 20 priority areas for improvement in health care quality as identified by the Institute of Medicine in its report entitled ‘Priority Areas for National Action’ in 2003, or other such areas as identified by the Secretary in order to assist beneficiaries in making informed choices about health plans or care delivery systems. The selection of appropriate quality indicators under this subsection shall include the evaluation criteria formulated by professional associations, consumer advocates, and data collection experts.

“(3) PILOT TESTING.—Each federally supported health delivery program may conduct a test of the measures described in paragraph (2) that shall include a collection of patient-level data and a public release of comparative performance reports.

“(b) PUBLIC REPORTING REQUIREMENTS.—The Secretaries, working collaboratively, shall establish public reporting requirements for institutions, institutional providers, and health plans in each of the federally supported health delivery program described in subsection (a). Such requirements shall provide that the entities described in the preceding sentence shall report to the appropriate Secretary on the measures developed under subsection (a).

“(c) FULL IMPLEMENTATION.—The Secretaries, working collaboratively, shall implement all sets of quality measures and reporting requirements developed under paragraph (2) that shall include a collection of patient-level data and a public release of comparative performance reports.

“(d) USE OF FUNDS.—Non-Federal contributions required under paragraph (1) may be in cash or in kind, fairly evaluated, including equipment, technology, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

“(e) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2011.

“(2) AVAILABILITY.—Amounts appropriated under paragraph (1) shall remain available for obligation until expended.”

“SEC. 2006. STANDARDIZED MEASURES OF QUALITY HEALTH CARE AND DATA COLLEC-
TION.

“Title XXIX of the Public Health Service Act is added by section 201, as amended by adding at the end the following:

“SEC. 2906. STANDARDIZED MEASURES OF QUAL-
ITY HEALTH CARE.

“(a) IN GENERAL.—

“(1) COLLABORATION.—The Secretary of Health and Human Services, the Secretary of Defense, and the Secretary of Veterans Af-

“fairs (referred to in this section as the ‘Sec-

“retaries’), in consultation with the Quality Interagency Coordination Taskforce (as established by Executive Order on March 13, 1998), the Institute of Medicine, the Joint Commission on Accreditation of Healthcare Organizations, the National Committee for Quality Assurance, the American Health Information Management Association, the National Quality Forum, the Medicare Payment Advisory Committee, and other individuals and orga-

“nizations determined appropriate by the Sec-

“retaries, shall establish and maintain quality measures to assess the effectiveness, timeliness, patient-centeredness, efficiency, equity, and safety of care delivered across all federally supported health delivery pro-

“grams.

“(2) DEVELOPMENT OF MEASURES.—Not later than 18 months after the date of enactment of this title, the Secretaries shall develop standardized sets of quality measures for each of the 20 priority areas for improvement in health care quality as identified by the Insti-

“tute of Medicine in its report entitled ‘Priority Areas for National Action’ in 2003, or other such areas as identified by the Sec-

“retaries in order to assist beneficiaries in making informed choices about health plans or care delivery systems. The selection of appropriate quality indicators under this subsection shall include the evaluation criteria formulated by professional associations, consumer advocates, and data collection experts.

“(3) PILOT TESTING.—Each federally supported health delivery program may conduct a test of the measures described in paragraph (2) that shall include a collection of patient-level data and a public release of comparative performance reports.

“(b) PUBLIC REPORTING Requirements.—The Secretaries, working collaboratively, shall establish public reporting requirements for institutions, institutional providers, and health plans in each of the federally supported health delivery program described in subsection (a). Such requirements shall provide that the entities described in the preceding sentence shall report to the appropriate Secretary on the measures developed under subsection (a).

“(c) FULL IMPLEMENTATION.—The Secretaries, working collaboratively, shall implement all sets of quality measures and reporting requirements developed under paragraph (2) that shall include a collection of patient-level data and a public release of comparative performance reports.

“(d) USE OF FUNDS.—Non-Federal contributions required under paragraph (1) may be in cash or in kind, fairly evaluated, including equipment, technology, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

“(e) AUTHORIZATION OF APPROPRIATIONS.—
(2) submit to Congress a report that de-

tails areas of clinical care requiring further research necessary to establish effective clinical treatments that will serve as a basis for additional public indicators.

"(e) COMPARATIVE QUALITY REPORTS.—Be-
ginning not later than 3 years after the date of enactment of this title, in order to make comparative quality information available to health care consumers, including members of health disparity populations, health professionals, public health officials, re-
searchers, and other appropriate individuals and entities, the Secretaries shall provide for the pooling, analysis, and dissemination of quality measures collected under this sec-
tion. The Secretaries shall also promulgate regulations as necessary to ensure that quality measures established under this section.

(1) IN GENERAL.—The Secretary shall, di-
rectly or indirectly through a contract with another entity, conduct an evaluation of the collaboration among health care providers and establish uniform health care quality measures and reporting requirements for federally sup-
ported health care delivery programs as re-
quired in subsection (d).

(2) REPORT.—Not later than 1 year after the date of enactment of this title, the Secre-
tary of Health and Human Services shall submit a report to the appropriate commit-
tees of Congress concerning the results of the evaluation under subparagraph (A).

"(g) EVALUATION AND REGULATIONS.—

(1) IN GENERAL.—(A) In general.—The Secretaries shall, di-
rectly or indirectly through a contract with another entity, conduct an evaluation of the collaboration among health care providers and establish uniform health care quality measures and reporting requirements for federally sup-
ported health care delivery programs as re-
quired in subsection (d).

(B) Report.—Not later than 1 year after the date of enactment of this title, the Secre-
tary shall publish final regulations regarding the application of the uniform health care quality measures and reporting requirements described in this section to federally sup-
ported health delivery programs.

"(h) REGULATIONS.—Not later than 6 months after the date on which the report is sub-
mitted under paragraph (1)(B), the Secretary shall publish proposed regulations regarding the application of the uniform health care quality measures and reporting requirements described in this section to federally sup-
ported health delivery programs.

"(i) FEDERAL MEDICAID ASSISTANCE PER-

cent FMAP for MEDICAL ASSIST-
ANCE for children in poverty in EX-
PANDED COVERAGE of children in Low Income families under Title XXI.

(a) STATE OPTIONS.—The Social Security Act (42 U.S.C. 1396 et seq.) is amended by redesignating section 1936 as section 1937, and by inserting after section 1932 the following:

"STATE OPTION FOR INCREASED FMAP for MED-
ICAL ASSISTANCE for children in poverty in EX-
PANDED COVERAGE of children in working poor families under Title XXI

(1) GENERAL.—Notwithstanding any other provision of this title, in the case of a State that, through an amendment to each of its State plans under this title and the accompanying SCHIP, agrees to satisfy the conditions described in subsection (b) (1) and (2), the Federal medical assistance percentage shall be 100 percent with respect to the total amount expended by the State for providing medical assistance under this title for a fiscal year quarter beginning on or after the date described in subsection (e) for children whose family income does not exceed 100 percent of the poverty line.

"(2) LIMITATION ON SCOPE OF APPLICATION.

The increase in the Federal medical assistance percentage for a State under this section shall apply only with respect to the total amount expended for providing medical assistance under this title for a fiscal year quarter for children described in paragraph (1) and shall not apply with respect to—

(A) any other payments made under this title, including disproportionate share hospital payments described in section 1922.

(B) payments under title IV or XXI; or

(C) any payments made under this title or other provisions of this title that are not part of the enhanced FMAP described in section 1905.

"(b) ELIGIBILITY ExpANSIONS.—The condi-
tions described in this subsection is that the State agrees to do the following:

"(1) COVERAGE UNDER MEDICAID OR SCHIP FOR CHILDREN IN FAMILIES IN WHICH INCOME DOES NOT EXCEED 300 PERCENT OF THE POVERTY LEVEL.

(A) IN GENERAL.—The State agrees to pro-
vide medical assistance under this title or

many States have stopped doing aggressive outreach and have raised premiums and cost-
sharing requirements on families under these programs. In addition, 8 States stopped en-
rolling SCHIP for a period of time between April 2003 and July 2004. As a result, SCHIP enrollment fell by 200,000 children for the first time in the program’s history.

It is estimated that 57 percent of children covered through SCHIP do not re-
maintain in the program due to reenrollment barriers. A recent study found that between 16 and 40 percent of those that "lost" in the system. Difficult renewal policies and reenrollment barriers make seamless cov-
erage and continuity a distant reality for SCHIP recipients. SCHIP enrollees are likely to need to reapply for their plans for SCHIP in the next year due to the medicaid program and SCHIP expansions to date have done much to offset what otherwise would have been a sig-
nificant loss of coverage among children be-
cause of declining access to employer cov-
erage, the shortcomings of previous expan-
sions, such as the failure to enroll all eligible children and caps on enrollment in SCHIP

Became of under-funding, also are clear.

CHAPTER I—EXPANDED COVERAGE OF

CHILDREN UNDER MEDICAID AND SCHIP

SEC. 301. STATE OPTION FOR INCREASED MEDICAID AND SCHIP FMAP FOR MEDICAL ASSISTANCE FOR CHILDREN IN LOW INCOME FAMILIES UNDER TITLE XXI.

(a) STATE OPTIONS.—The Social Security Act (42 U.S.C. 1396 et seq.) is amended by redesignating section 1936 as section 1937, and by inserting after section 1932 the following:

"STATE OPTION FOR INCREASED FMAP for MED-
ICAL ASSISTANCE for children in poverty in EX-
PANDED COVERAGE of children in working poor families under Title XXI

SEC. 1937. (a) 100 PERCENT FMAP.—

(1) GENERAL.—Notwithstanding any other provision of this title, in the case of a State that, through an amendment to each of its State plans under this title and the accompanying SCHIP, agrees to satisfy the conditions described in subsection (b) (1) and (2), the Federal medical assistance percentage shall be 100 percent with respect to the total amount expended by the State for providing medical assistance under this title for a fiscal year quarter beginning on or after the date described in subsection (e) for children whose family income does not exceed 100 percent of the poverty line.

(2) LIMITATION ON SCOPE OF APPLICATION.

The increase in the Federal medical assistance percentage for a State under this section shall apply only with respect to the total amount expended for providing medical assistance under this title for a fiscal year quarter for children described in paragraph (1) and shall not apply with respect to—

(A) any other payments made under this title, including disproportionate share hospital payments described in section 1922.

(B) payments under title IV or XXI; or

(C) any payments made under this title or other provisions of this title that are not part of the enhanced FMAP described in section 1905.

(b) ELIGIBILITY ExpANSIONS.—The condi-
tions described in this subsection is that the State agrees to do the following:

(1) COVERAGE UNDER MEDICAID OR SCHIP FOR CHILDREN IN FAMILIES IN WHICH INCOME DOES NOT EXCEED 300 PERCENT OF THE POVERTY LEVEL.

(A) IN GENERAL.—The State agrees to pro-
vide medical assistance under this title or

(2)限量在应用范围上。

(3) Other payments included under this title are not considered in the application of this section. The State also agrees to do the following:

(4) LIMITATION ON SCOPE OF APPLICATION.

The increase in the Federal medical assistance percentage for a State under this section shall apply only with respect to the total amount expended for providing medical assistance under this title for a fiscal year quarter for children described in paragraph (1) and shall not apply with respect to—

(A) any other payments made under this title, including disproportionate share hospital payments described in section 1922.

(B) payments under title IV or XXI; or

(C) any payments made under this title or other provisions of this title that are not part of the enhanced FMAP described in section 1905.

(b) ELIGIBILITY ExpANSIONS.—The condi-
tions described in this subsection is that the State agrees to do the following:

"(1) COVERAGE UNDER MEDICAID OR SCHIP FOR CHILDREN IN FAMILIES IN WHICH INCOME DOES NOT EXCEED 300 PERCENT OF THE POVERTY LEVEL.

(A) IN GENERAL.—The State agrees to pro-
vide medical assistance under this title or...
child health assistance under title XXI to children whose family income exceeds the medicaid applicable income level (as defined in section 2110(b)(4)) but does not exceed 300 percent of the poverty line.

(‘‘B’’ STATE OPTION TO EXPAND COVERAGE THROUGH SUBSIDIZED PURCHASE OF FAMILY COVERAGE.—The State may elect to provide, under subparagraph (A) through the provision of assistance for the purchase of dependent coverage under a group health plan or health insurance coverage, the following:

(i) the dependent coverage is consistent with the benefit standards under this title or title XXI as determined by the Secretary;

(ii) the State provides ‘‘wrap-around’’ coverage under this title or title XXI.

(‘‘C’’ DEEMED SATISFACTION FOR CERTAIN STATES.—As of January 1, 2003, provides medical assistance under this title or child health assistance under title XXI to children whose family income is 300 percent of the poverty line shall be deemed to satisfy this paragraph.

(‘‘D’’ COVERAGE FOR CHILDREN UNDER AGE 21.—The State agrees to define a child for purposes of this title and title XXI as an individual who has not attained 21 years of age.

(‘‘E’’ OPPORTUNITY FOR HIGHER INCOME CHILDREN TO PURCHASE SCHIP COVERAGE.—The State agrees to permit any child whose family income exceeds 300 percent of the poverty line to purchase ‘‘wrap-around’’ coverage under title XXI at the full cost of providing such coverage, as determined by the State.

(‘‘F’’ COVERAGE FOR LEGAL IMMIGRANT CHILDREN.—The State agrees to—

(A) provide medical assistance under this title and child health assistance under title XXI to all aliens who are lawfully residing in the United States (including battered aliens described in section 413(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and who are otherwise eligible for such assistance in accordance with section 1903(v)(4) and 2107(e)(1)(E); and

(B) not establish or enforce barriers that deter applications by such aliens, including through the application of the removal of the barriers described in subsection (c).

(‘‘G’’ REMOVAL AND ACCESS BARRIERS.—The condition described in this subsection is that the State agrees to do the following:

(1) PRESUMPTIVE ELIGIBILITY FOR CHILDREN.—The State agrees to—

(A) provide presumptive eligibility for children under title XXI and title XXI in accordance with section 1920A;

(B) treat any items or services that are provided to an uncovered child (as defined in section 2110(b)(8)) who is determined ineligible for medical assistance under this title as child health assistance for purposes of paying a provider of such items or services, so long as such items or services would be considered child health assistance for a targeted low-income child under title XXI.

(2) ADOPTION OF 12-MONTH CONTINUOUS ENROLLMENT.—The State agrees to provide that eligibility for assistance under this title and title XXI shall not be regularly Redetermined more often than once every year for children.

(3) ACCEPTANCE OF SELF-DECLARATION OF INCOME.—The State agrees to permit the family of a child applying for medical assistance for child health assistance under title XXI to declare and certify by signature under penalty of perjury family income for purposes of collecting financial eligibility determinations.

(4) ADOPTION OF ACCEPTANCE OF ELIGIBILITY DETERMINATIONS FOR OTHER ASSISTANCE PROGRAMS.—The State agrees to accept determinations (made within a reasonable period, as found by the State, before its use for this purpose) of an individual’s family or income or any public or private entity making such determination on behalf of such individual, including the agencies administering the public or private entity that satisfies the requirements of subsections (b), (c), and (d) is approved by the Secretary.

DEFINITION OF POVERTY LINE.—In this section, the term ‘‘poverty line’’ has the meaning given that term in section 2110(c).

(1) CONFORMING AMENDMENTS.—

(a) The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396b) is amended by inserting after the period the following:

(b) GUARANTEED FUNDING FOR CHILD HEALTH ASSISTANCE FOR COVERAGE EXPANSIONS.—

(1) IN GENERAL.—The State agrees for purposes of initial eligibility determinations and redetermination of eligibility for children under this title and title XXI not to require a face-to-face interview and to permit applications and renewals by mail, telephone, and the Internet.

(3) NONDISPOSITION OF INFORMATION.—(1) IN GENERAL.—For purposes of redeterminations of eligibility for currently or previously enrolled children under this title and title XXI, the State agrees to use all information in its possession (including information from Federal or State programs) to determine eligibility or redetermine continued eligibility before seeking similar information from parents.

(2) RULE OF CONSTRUCTION.—Nothing in clause (1) shall be construed as limiting any obligation of a State to provide notice and a fair hearing before denying, terminating, or reducing a child’s coverage based on such information in the possession of the State.

(4) WAITING LIST FOR CHILDREN UNDER SCHIP.—The State agrees not to impose any numerical limitation, waiting list, waiting period, or similar limitation on the eligibility of children for child health assistance under title XXI if such or enforce any other barriers to the enrollment of eligible children based on the date of their application for coverage.

(5) ADEQUATE PROVIDER PAYMENT RATES.—The State agrees to—

(A) establish payment rates for children’s health care providers under this title that are sufficient to ensure that rates for similar services for such providers provided under the benchmark benefit package described in section 1115 are adequate to cover the cost of services for children that are substantial enough to ensure the enrollment of children under this title and title XXI to have adequate access to comprehensive care, in accordance with the requirements of section 1902(a)(30)(A); and

(B) include provisions in its contracts with providers under this title guarantee compliance with these requirements.

(6) MAINTENANCE OF MEDICAID ELIGIBILITY LEVELS FOR CHILDREN.—The condition described in this subsection is that the State agrees to maintain eligibility income, resources, and methodologies applied under this title (including any changes to the date or title or under section 1115) with respect to children that are no more restrictive than the eligibility income, resources, and methodologies applied with respect to children under this title (including under such a waiver) as of January 1, 2005.

CHAPTER 2—STATE OPTIONS FOR INCREASING CHILD COVERAGE EXPANSIONS

SEC. 302. OPTION TO ENROLL LOW-INCOME CHILDREN OF STATE EMPLOYEES.

(a) IN GENERAL.—Section 2105 of the Social Security Act (42 U.S.C. 1397d) is amended by adding at the end the following:

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396b) is amended by inserting after the period the following:

(2) Section 1905(b)(3) of the Social Security Act (42 U.S.C. 1396b) is amended—

[a]
SEC. 321. STATE OPTION FOR PASSIVE RENEWAL OF POLICY FOR CHILDREN UNDER MEDICAID AND SCHIP.

(a) In General.—Section 1902(l) of the Social Security Act (42 U.S.C. 1396a(l)) is amended by adding after the heading such section the following new paragraph:

"(A) In General.—Such term; and

(b) by inserting after subparagraph (A) the following:

"(B) by adding at the end the following:

"(i) a description of the period for which the tax credit is allowed; and

"(ii) a description of the amount of the tax credit allowed; and

"(iii) a description of the amount of the tax credit allowed with respect to such taxable year; and

"(iv) the method of determining the tax credit allowed; and

"(B) Section 1902(l)(5) (relating to passive renewal of policy for children under Medicaid and SCHIP)."

SEC. 322. REFUNDABLE CREDIT FOR HEALTH INSURANCE COVERAGE OF CHILDREN.

(a) In General.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 36a and inserting after section 35 the following new section:

"SEC. 36. HEALTH INSURANCE COVERAGE OF CHILDREN.

(a) In General.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle an amount equal to the greater of—

(1) $1,000, or

(2) the amount of any qualified health insurance premiums paid by the taxpayer during such taxable year for qualified health insurance for each dependent child of such individual during such taxable year.

(b) Dependent Child.—For purposes of this section, the term ‘dependent child’ means any child (as defined in section 36(b)) of such individual from whom payments described by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a)."

(b) Form and Manner of Returns.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by adding before the period the following new clause:

"(xii) the following new clause:"

(b) Information Reporting.—

(1) In General.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning transactions with other persons) is amended by inserting after section 650T the following new section:

"SEC. 650U. RETURNS RELATING TO PAYMENTS FOR QUALIFIED HEALTH INSURANCE.

(a) In General.—Any governmental unit or any person who, in connection with a trade or business conducted by such person, receives payments during any calendar year from any individual for coverage of a dependent child (as defined in section 36(h)) of such individual under creditable health insurance, shall make the return described in subsection (b) at such time as the Secretary may by regulations prescribe with respect to such individual from whom such payments were received.

(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 the individual from whom payments described in subsection (a) were received;

"(B) the name, address, and TIN of each dependent child (as so defined) who was provided by such person with coverage under creditable health insurance by reason of such payments and the period of such coverage, and

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

"(c) CREDITABLE HEALTH INSURANCE.—For purposes of this section, the term ‘creditable health insurance’ means health insurance (as defined in section 36(c))."

(d) Statements To Be Furnished to Individuals With Respect to Whom Information Required.—Every employer who is required to make a return under subsection (a) shall furnish to each individual whose name is required under subsection (b)(2)(A) to be set forth in such return a written statement showing—

"(1) the name and address of the person responsible for making such return and the phone number of the information contact for such person;

"(2) the aggregate amount of payments described in subsection (a) received by the person described in clause (1) during the calendar year for which the return under subsection (a) is required to be made;

"(3) the information required under subsection (b)(2)(B) with respect to such payments.

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

"(e) Returns Which Would Be Required To Be Made By 2 OR MORE PERSONS.—Except to the extent provided by regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a)."

(2) Assessable Penalties.—

(A) Subparagraph (B) of section 6724(d)(1) of such Code (relating to definitions) is amended by adding before the period the following new clause:

"(xii) the following new clause:

"(B) Paragraph (2) of section 6724(d) of such Code is amended by striking ‘or’ at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting ‘and’, and by adding at the end the following new subparagraph:

"(CC) section 650U(d) (relating to returns relating to payments for qualified health insurance)."

(3) Clerical Amendment.—The table of sections for subpart B of part III of subchapter A of chapter 61 of such Code is amended by striking (a) from the heading and inserting ‘‘(a)’’ before the period “;”.

(4) Conforming Amendments.—

(A) Paragraph (2) of section 3124(b) of title 31, United States Code, is amended by inserting before the period “;” or from section 36 of such Code.

(B) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code is amended by striking the last item and inserting the following new items:
“Sec. 36. Health insurance coverage of children.

“Sec. 37. Overpayments of tax.”

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 322. PROVISION OF PERSONAL EXEMPTION FOR ANY CHILD NOT COVERED BY HEALTH INSURANCE.

(a) In General.—Section 151(d) of the Internal Revenue Code of 1986 (relating to exemption amount) is amended by adding at the end the following new paragraph:

“(b) Reduction of exemption amount for any child not covered by health insurance.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the exemption amount otherwise determined under this subsection for any dependent child (as defined in section 15(b)) for any taxable year shall be reduced by the same percentage as the percentage of such taxable year during which such dependent child was not covered by qualified health insurance (as defined in section 15(c)).

“(B) FULL REDUCTION IF NO PROOF OF COVERAGE IS PROVIDED.—For purposes of subparagraph (A), in the case of any taxpayer who fails to furnish a return of income for any taxable year a copy of the statement furnished to such taxpayer under section 6000U, the percentage reduction under such subparagraph shall be deemed to be 100 percent.

“(C) NONAPPLICATION OF PARAGRAPH TO TAXPAYERS IN LOWEST TAX BRACKET.—This paragraph shall not apply to taxpayers whose income does not exceed the lowest income bracket determined under section 1(1)(1)(B).

(b) Effect of amendment.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

CHAPTER 4—MISCELLANEOUS

SEC. 331. REQUIREMENT FOR GROUP MARKET HEALTH INSURERS TO OFFER DEPENDENT COVERAGE OPTION FOR WORKERS WITH CHILDREN.

(a) ERISA.—

(1) IN GENERAL.—Subpart B of part 7 of subchapter C of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following:

“SEC. 714. REQUIREMENT TO OFFER OPTION TO PURCHASE DEPENDENT COVERAGE FOR CHILDREN.

“(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall offer an individual who is enrolled in such coverage the option to purchase dependent coverage for a child of the individual.

“(b) EMPLOYER CONTRIBUTION REQUIRED.—An employer shall not be required to contribute to the cost of purchasing dependent coverage for a child by an individual who is an employee of such employer.

“(c) DEFINITION OF CHILD.—In this section, the term ‘child’ means an individual who has not attained 21 years of age.”

(b) Clerical Amendment.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001) is amended by inserting after the item relating to section 713 the following:

“Sec. 714. Not to offer option to purchase dependent coverage for children.”

(b) Public Health Service Act.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg et seq.) is amended by adding at the end the following:

“SEC. 2707. REQUIREMENT TO OFFER OPTION TO PURCHASE DEPENDENT COVERAGE FOR CHILDREN.

“(a) REQUIREMENTS FOR COVERAGE.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, shall offer an individual or, in the case of insurance in whole or in part underwritten by a wholly owned subsidiary of such issuer, a wholly owned subsidiary of such issuer, the option to purchase dependent coverage for a child of the individual.

“(b) No Employer Contribution Required.—An employer shall not be required to contribute to the cost of purchasing dependent coverage for a child by an individual who is an employee.

“(c) Definition of Child.—In this section, the term ‘child’ means an individual who has not attained 21 years of age.

“(d) Effective Date.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2005.

SEC. 351. STATE OPTION TO EXPAND OR ADD COVERAGE FOR TARGETED LOW-INCOME CHILDREN UNDER THE MEDICAID PROGRAM AND STATE CHILDREN’S HEALTH INSURANCE PROGRAM.

(a) Medicaid.—

(1) AUTHORITY TO EXPAND COVERAGE.—Section 1902(a)(2)(A)(i) of the Social Security Act (42 U.S.C. 1396a(a)(2)(A)(i)) is amended by inserting “or such higher percentage as the State may elect for purposes of expenditures for medical assistance for pregnant women described in section 1905(u)(4)(A)‘‘ after ‘‘15 percent’’.

(2) ENHANCED MATCHING FUNDS AVAILABLE IF CERTAIN CONDITIONS MET.—Section 1902 that is at least 185 percent of the income official poverty line.

(b) SCHIP.—

(1) COVERAGE.—Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following new section:

“SEC. 2111. OPTIONAL COVERAGE OF TARGETED LOW-INCOME PREGNANT WOMEN.

“(a) Optional Coverage.—Notwithstanding any other provision of this title, a State may provide for coverage, through an amendment to its State child health plan under section 2102, of Federal medical assistance for targeted low-income pregnant women in accordance with this section, but only if—

“(1) the State has established an income eligibility level for pregnant women under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902 that is at least 185 percent of the income official poverty line;

“(2) the State meets the conditions described in section 1905(u)(5)(B).

“(b) Definitions.—For purposes of this title:

“(1) PREGNANCY-RELATED ASSISTANCE.—The term ‘pregnancy-related assistance’ has the meaning given the term ‘child health assistance’ under section 1905(b) as if any reference to targeted low-income children were a reference to targeted low-income pregnant women, except that the assistance shall be for services related to pregnancy (which include prenatal, delivery, and postpartum services and services described in section 1906(a)(1)(C)) and to other conditions that may complicate pregnancy.

“(2) TARGETED LOW-INCOME PREGNANT WOMAN.—The term ‘targeted low-income pregnant woman’ means a woman—

“(A) during pregnancy through the end of the month in which the 60-day period beginning on the last day of her pregnancy ends;

“(B) whose family income exceeds the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) that has been specified under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902, as of January 1, 2005, to be eligible for medical assistance as a pregnant woman under title XIX but does not exceed the income eligibility level established under the State child health plan under this title for a targeted low-income child; and

“(C) who satisfies the requirements of paragraphs (1)(A), (1)(C), (2), and (3) of section 1902(b).

“(c) References to Terms and Special Rules.—In the case of a pregnant woman who is a State providing for coverage of pregnancy-related assistance to targeted low-income pregnant women under subsection (a), the following special rules shall apply:

“(1) Any reference in this title (other than in subsection (b)) to a targeted low-income

“(2) ‘‘Definition of poverty line.’’—In this subsection, the term ‘poverty line’ has the meaning given such term in section 211(b)(3).”

(3) PAYMENT FROM TITLE XXI ALLOTMENT FOR MEDICAID EXPANSION COSTS; ELIMINATION OF COUNTING MEDICAID CHILD PRESCRIPTIVE ELIGIBILITY COSTS AGAINST TITLE XXI ALLOTMENT—Section 1905(b) of the Social Security Act (42 U.S.C. 1396aa(a)(1)) is amended—

“(A) in the matter preceding subparagraph (A), by striking ‘‘or, in the case of expenditures described in subparagraph (B), the Federal medical assistance percentage (as defined in the first sentence of section 1905(b))’’;

and

by striking subparagraph (B) and inserting the following new subparagraph:

“(B) for the provision of medical assistance that is attributable to expenditures described in section 1905(b)(5)(A).”

(b) SCHIP.—

(1) COVERAGE.—Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following new section:

“SEC. 2111. OPTIONAL COVERAGE OF TARGETED LOW-INCOME PREGNANT WOMEN.

“(a) Optional Coverage.—Notwithstanding any other provision of this title, a State may provide for coverage, through an amendment to its State child health plan under section 2102, of Federal medical assistance for targeted low-income pregnant women in accordance with this section, but only if—

“(1) the State has established an income eligibility level for pregnant women under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902 that is at least 185 percent of the income official poverty line;

“(2) the State meets the conditions described in section 1905(u)(5)(B).

“(b) Definitions.—For purposes of this title:

“(1) PREGNANCY-RELATED ASSISTANCE.—The term ‘pregnancy-related assistance’ has the meaning given the term ‘child health assistance’ under section 1905(b) as if any reference to targeted low-income children were a reference to targeted low-income pregnant women, except that the assistance shall be for services related to pregnancy (which include prenatal, delivery, and postpartum services and services described in section 1906(a)(1)(C)) and to other conditions that may complicate pregnancy.

“(2) TARGETED LOW-INCOME PREGNANT WOMAN.—The term ‘targeted low-income pregnant woman’ means a woman—

“(A) during pregnancy through the end of the month in which the 60-day period beginning on the last day of her pregnancy ends;

“(B) whose family income exceeds the effective income level (expressed as a percent of the poverty line and considering applicable income disregards) that has been specified under subsection (a)(10)(A)(i)(III) or (l)(2)(A) of section 1902, as of January 1, 2005, to be eligible for medical assistance as a pregnant woman under title XIX but does not exceed the income eligibility level established under the State child health plan under this title for a targeted low-income child; and

“(C) who satisfies the requirements of paragraphs (1)(A), (1)(C), (2), and (3) of section 1902(b).

“(c) References to Terms and Special Rules.—In the case of a pregnant woman who is a State providing for coverage of pregnancy-related assistance to targeted low-income pregnant women under subsection (a), the following special rules shall apply:

“(1) Any reference in this title (other than in subsection (b)) to a targeted low-income

“(2) ‘‘Definition of poverty line.’’—In this subsection, the term ‘poverty line’ has the meaning given such term in section 211(b)(3).”
child is deemed to include a reference to a targeted low-income pregnant woman.

(2) Any such reference to child health assistance with respect to such women is deemed a reference to pregnancy-related assistance.

(3) Any such reference to a child is deemed a reference to a woman during pregnancy and the period described in subsection (b)(2)(A).

(4) In applying section 2102(b)(3)(B), any reference to children found through screening to be eligible for medical assistance under the State medical plan under title XIX is deemed a reference to pregnant women.

(5) There shall be no exclusion of benefits for services described in subsection (b)(1) based on any preexisting condition and no waiting period (including any waiting period imposed to carry out section 2102(b)(3)(C)) shall apply.

(6) Subsection (a) of section 2103 (relating to required scope of health insurance coverage) shall not apply in respect of State limited coverage to services described in subsection (b)(1) and the reference to such section in section 2105(a)(1)(C) is deemed not to require the State to comply with the requirements of section 2103(a).

(7) In applying section 2106(e)(3)(B) in the case of a pregnant woman provided coverage under this subsection, the limitation on total annual aggregate cost-sharing shall be applied to such pregnant woman.

(8) The reference in section 2107(e)(1)(D) to section 1903 (relating to presumptive eligibility for children) is deemed a reference to section 1920 (relating to presumptive eligibility for pregnant women).

(9) The paragraph entitled "Children Born to Women Receiving Pregnancy-Related Assistance."—If a child is born to a targeted low-income pregnant woman who was receiving pregnancy-related assistance under this section on the date of the child's birth, the child shall be deemed to have applied for child health assistance under the State child health plan and to have been found eligible for such assistance under such plan for medical assistance under title XIX and to have been found eligible for such assistance under such title, as appropriate, on the date of such birth and to be eligible for such assistance until the child attains 1 year of age. During the period in which a child is deemed under the preceding sentence to be eligible for child health assistance, the child's health or medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).

(2) ADDITIONAL ALLOWANCES FOR PROVIDING COVERAGE OF PREGNANT WOMEN.—

(A) IN GENERAL.—Section 2104 of the Social Security Act (42 U.S.C. 1397dd) is amended by inserting after subsection (c) the following new subsection:

(d) ADDITIONAL ALLOWANCES FOR PROVIDING COVERAGE OF PREGNANT WOMEN.—

(1) APPROPRIATION; TOTAL ALLOWMENT.—For the purpose of providing additional allotments to States under this title, there is appropriated, out of any money in the Treasury not otherwise appropriated, for each of fiscal years 2006 through 2009, $200,000,000.

(2) STATE AND TERRITORIAL ALLOWMENTS.—In addition to the allotments provided under subsections (b) and (c), subject to paragraphs (3) and (4), of the amount available for the additional allotments under paragraph (1) for a fiscal year, the Secretary shall allot to each State with a State child health plan approved under this title—

(3) and (4), of the amount available for the additional allotments under paragraph (1) for a fiscal year, the Secretary shall allot to each State with a State child health plan approved under this title—

(’’A’’ in the case of such a State other than a commonwealth or territory described in subparagraph (B), the same proportion as the proportion of the State's allotment under paragraph (b) determined without regard to subparagraph (F) to the total amount of the allotments under subparagraph (b) for such States eligible for an allotment under this paragraph that is more than 15 percent of the poverty line with respect to pregnant women, the State may elect to use not more than 20 percent of the amount available for such fiscal year for such purposes under section 2104 for any fiscal year (insofar as it is available under subsection (e) and (g) of such section) for payments for allotments under title XIX in accordance with this paragraph, instead of for expenditures under this title.

(’’B’’ in the case of a commonwealth or territory described in subparagraph (C), the same proportion as the proportion of the State's allotment under section 2104 under subsection (c) (determined without regard to subparagraph (F) to the total amount of the allotments under such paragraph for fiscal year.

(’’C’’ USE OF ADDITIONAL ALLOWANCE.—Additional allotments provided under this subsection are not available for amounts expended before October 1, 2005. Such amounts are available for amounts expended on or after such date for child health assistance for targeted low-income children, as well as for pregnancy-related assistance for targeted low-income pregnant women.

(’’D’’ NO PAYMENTS UNLESS EXPANSION OF PREGNANCY COVERAGE EXPANSION STATES.—

(A) IN GENERAL.—In the case of a State that is the State that, as of the date of enactment of the Affordable Care Act of 2005, has an income eligibility standard under title XIX or this title that is at least 185 percent of the poverty line with respect to pregnant women, the State may elect to use not more than 20 percent of the amount available for such fiscal year for such purposes under section 2104 for any fiscal year (insofar as it is available under subsection (e) and (g) of such section) for payments for allotments under title XIX in accordance with this paragraph, instead of for expenditures under this title.

(’’E’’ PAYMENTS TO STATES.—

(1) IN GENERAL.—In the case of a State described in subparagraph (A) that has elected the option described in that subparagraph, subject to the availability of funds under such subparagraph and, if applicable, paragraph (1)(A), with respect to the State, the Secretary shall pay the State an amount each quarter equal to the additional amount that would have been paid to the State under subsection (b) without regard to subparagraph (F) of such section, as determined without regard to such amounts paid; and

(2) in paragraphs (3), by striking “and” and inserting “(D), and” and

(3) in paragraph (4), by inserting “(D)” after such paragraph.

(4) OTHER AMENDMENTS TO MEDICAID. —

(A) ELIGIBILITY OF A NEWBORN.—Section 1902(a)(4) of the Social Security Act (42 U.S.C. 1396a(a)(4)) is amended by inserting after subsection (b) the following new clause:—

(5) EFFECTIVE DATE.—The amendments made by this section apply to items and services furnished on or after October 1, 2005, without regard to whether regulations implementing such amendments have been promulgated.
SEC. 533. PROMOTING CESSATION OF TOBACCO USE UNDER THE MEDICAID PROGRAM.

(a) DROPPING EXCEPTION FROM MEDICAID PRESCRIPTION DRUG COVERAGE FOR TOBACCO CESSATION MEDICATIONS.—Section 1927(d)(2) of the Social Security Act (42 U.S.C. 1396d(d)(2)) is amended—

(1) by striking subparagraph (E);

(2) by redesignating subparagraphs (F) through (J) as subparagraphs (E) through (I), respectively; and

(3) in subparagraph (F) (as redesignated by paragraph (2)), by inserting before the period at the end the following: ‘‘except agents approved by the Food and Drug Administration for purposes of promoting, and when used to promote, tobacco cessation’’;

(b) INCLUSION OF TOBACCO CESSATION COUNSELING SERVICES FOR PREGNANT WOMEN.—Section 1905 of the Social Security Act (42 U.S.C. 1396s-7) is amended—

(1) by striking ‘‘pregnancy pregnancy and during the 60-day period beginning on the last day of the pregnancy’’;

(2) by redesignating subparagraphs (F) through (I) as subparagraphs (E) through (I), respectively; and

(3) in subparagraph (F) (as redesignated by paragraph (2)), by inserting before the period at the end the following: ‘‘the percentage of infants born to pregnant women who becomes ineligible because of hours of, or income from, employment, may remain eligible for such medical assistance through the end of the 6-month period that begins on the first day the individual becomes so ineligible.’’

(2) ADDITIONAL EXTENSION.—A State plan amendment made under subsection (a) may provide that any individual who has received medical assistance described in section 1905(a)(4)(C) during the entire 6-month period described in paragraph (1) may be extended coverage for such assistance for a succeeding 6-month period.’’.

S E C. 535. STATE OPTION TO EXTEND THE POSTPARTUM PERIOD FOR PROVIDING FAMILY PLANNING SERVICES AND SUPPLIES.

(a) IN GENERAL.—Section 1927(d)(5) of the Social Security Act (42 U.S.C. 1396a(e)(5)) is amended—

(1) by striking ‘‘eligible under the plan, as though’’ and inserting ‘‘eligible under the plan’’;

(2) as though

(3) by adding at the end the following:

‘‘(C) as though

SEC. 536. STATE OPTION TO PROVIDE FAMILY PLANNING SERVICES AND SUPPLIES.

(a) IN GENERAL.—Subject to subsections (b) and (c), a State may elect (through a State plan amendment) to make medical assistance described in section 1905(a)(4)(C) available to any individual whose family income does not exceed the greater of—

(1) 185 percent of the income official poverty line (as defined by the Office of Management and Budget); or

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2005.
SEC. 357. STATE OPTION TO PROVIDE WRAP-AROUND SCHIP COVERAGE TO CHILDREN WHO HAVE OTHER HEALTH COVERAGE.

(a) IN GENERAL.—

(1) SCHIP.—

(A) FIRST OPTION TO PROVIDE WRAP-AROUND COVERAGE.—Section 2110(b) of the Social Security Act (42 U.S.C. 1397(b)) is amended—

(i) in paragraph (1)(C), by inserting ‘‘, subject to paragraph (5),’’ after ‘‘under title XIX’’; and

(ii) by adding at the end the following:

(5) STATE OPTION TO PROVIDE WRAP-AROUND COVERAGE.—A State may waive the requirement of paragraph (1)(C) that a targeted low-income child may not be covered under a group health plan or under health insurance coverage otherwise established for other children under the State child health plan:—

(A) services for a child with special health care needs; or

(B) all services.

In waiving such requirement, a State may limit the application of the waiver to children whose family income does not exceed a level specified by the State, so long as the level so specified does not exceed the maximum income level otherwise established for children described in section 2110(b)(3), but only in the case of the requirements of section 2110(c)(8).’’.

(2) APPLICATION OF SECONDARY PAYOR PROVISIONS.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397ee(e)(1)), as amended by section 3(b), is amended by adding at the end the following:

‘‘(F) Provisions relating to coordination of benefits or payor provisions with respect to children covered under a waiver described in section 2110(b)(5).’’

(3) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2005, and shall apply to child health and medical assistance provided on or after that date.

SEC. 358. INNOVATIVE OUTREACH PROGRAMS.

Title XXI of the Social Security Act (42 U.S.C. 1396 et seq.), as amended by section 332 of the Social Security Act (42 U.S.C. 1397aa et seq.), is amended by adding at the end the following:

‘‘SEC. 2112. EXPANDED OUTREACH ACTIVITIES.

(a) IN GENERAL.—Funds made available under subsection (b) for expenditure under this section for a fiscal year shall be used by the Secretary to award grants to entitlement entities that propose to target geographic areas with high rates of—

(1) eligible but unenrolled children, including such children who reside in rural areas;

(2) families for whom English is not their primary language; or

(3) racial and ethnic minorities and health disparity populations.

(b) APPLICATION.—An eligible entity that desires to receive a grant under this section shall submit an application to the Secretary in such form and manner, and containing such information, as the Secretary may determine. Such application shall include—

(1) a budget for performance measures to evaluate the effectiveness of activities funded by a grant under this paragraph to ensure that the activities are meeting their goals; and

(2) a assurance that the entity will—

(A) collect and report enrollment data; and

(B) disseminate findings from evaluations of the activities funded under the grant.

(d) REPORT.—The Secretary shall report to Congress on an annual basis the results of the outreach efforts under grants awarded under this section.

(e) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term ‘‘eligible entity’’ means any of the following:

(1) A State.

(2) A national, local, or community-based public or nonprofit entity.

(f) APPROPRIATION.—For the purpose of awarding grants to eligible entities under this section, there is appropriated, out of any money in the Treasury otherwise appropriated, $50,000,000 for each of fiscal years 2006 and 2007.’’

Subtitle C—Affirming the Importance of Medicaid

SEC. 361. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate makes the following findings:

(1) The Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) provides essential health care and long-term care coverage to more than 50,000,000 low-income children, families, and individuals with disabilities, and seniors. It is a Federal guarantee that even the most vulnerable will have access to needed medical care.

(2) Medicaid provides health insurance for more than 4 of America’s children and is the largest purchaser of maternity care, paying for 50 percent of the births in the United States each year.

(3) Medicaid provides critical help for the elderly and individuals with disabilities. Medicaid is America’s single largest purchaser of nursing home services and other long-term care, covering the majority of nursing home residents.

(4) Medicaid pays for personal care and other supportive services, which are typically not provided by private health insurance, even if individuals could obtain it. These services are necessary to enable individuals with spinal cord injuries, developmental disabilities, neurological degenerative diseases, serious mental illnesses, HIV/AIDS, and other chronic conditions to remain in the community, to work, and to maintain independence.

(5) Medicaid is an essential supplement to the Medicare program under title XVIII of the Social Security Act (42 U.S.C. 1396 et seq.) for more than 50 of America’s elderly or disabled, assisting them with their Medicare premiums and co-insurance, wrap-around benefits, and in costs of nursing home care that Medicare does not cover.

(6) About 42 percent of all Medicaid spending is for those who are living with disabilities and are dually eligible for Medicare and Medicaid.

(7) Medicaid faces an ever growing burden as a result of Medicare’s gaps. The Medicaid program spent nearly $90,000,000,000 on uncovered Medicare services 2002. Medicaid payments for low-income Medicare beneficiaries cost-sharing are the largest and fastest growing share of Medicaid spending.

(8) The Medicare drug benefit imposes additional costs on States, which will add to the already significant net cost burden. Medicaid spending on Medicare beneficiaries’ long-term care costs is expected to top $55,000,000,000 in 2002.

(9) Medicaid helps ensure access to care for all Americans. Medicaid is the single largest source of revenue for 44,000,000 Americans during this period, preventing even greater numbers of uninsured.

(10) Medicaid matters to women in America. More than 16,000,000 women depend on Medicaid for their health care. Women costs comprised the majority of seniors (71 percent) on Medicaid. Half of nonelderly women with permanent mental or physical disabilities have Medicaid coverage.

(11) Medicaid provides treatment for low-income women diagnosed with breast or cervical cancer in every State.

(12) Medicaid is critical for children with disabilities. Medicaid covers 78 percent of poor children with disabilities who are under
5 years of age and 70 percent of poor children with disabilities who are between the ages of 5 and 17. Similarly, Medicaid covers a substantial portion of children with disabilities who are under 18 years of age and 65 percent of children with disabilities who are under 21 years of age.

(13) Medicaid is the Nation’s largest source of payment for mental health services, HIV/AIDS care, and care for children with special needs. Medicaid also covers either not covered by private insurance or limited in scope or duration. Medicaid is also a critical source of funding for health care for children in foster care and in schools.

(14) The need for Medicaid is greater than ever today, because the number of Americans living in poverty has increased by 8,000,000 over the last 4 years and the number of the uninsured has increased by 5,000,000.

(15) The system of Federal matching for State Medicaid expenditures ensures that Federal funds will grow as State spending increases in response to unmet needs.

(16) Despite the varied population served by the Medicaid program, including those with significant health care needs, Medicaid per capita growth has been consistently about half the rate of growth in private insurance premiums and Medicaid has far lower costs. Medicaid costs per person than private coverage for people who have similar health status.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is a critical component of the health care safety net of the United States;

(2) Federal support for the Medicaid program must be adequate to support State spending meeting the essential health needs of the income elderly, low-income individuals with disabilities, and low-income children and families, and should not be cut or capped; and

(3) any retreat from the Federal commitment to Medicaid would threaten not only the health care safety net of the United States but the entire health care system.

TITLES XI AND XII—HEALTH CARE COSTS FOR SMALL EMPLOYERS

Subtitle A—Tax Relief

SEC. 401. REFUNDABLE CREDIT FOR SMALL BUSINESS EMPLOYEE HEALTH INSURANCE EXPENSES.

(a) In general.—Part C of title IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 36 as section 37 and inserting after section 35 the following new section:

"SEC. 36. SMALL BUSINESS EMPLOYEE HEALTH INSURANCE EXPENSES.

"(a) Determination of amount.—In the case of a qualified small employer, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the expense amount described in subsection (b) paid by the taxpayer during the taxable year.

"(b) Expense amount.—For purposes of this section—

"(1) In general.—The expense amount described in this subsection is the applicable percentage of the amount of qualified employee health insurance expenses of each qualified employee for the taxable year of the employer.

"(2) Applicable percentage.—For purposes of paragraph (1), the applicable percentage is equal to—

"(A) for any qualified small employer described in subparagraph (A) of paragraph (4), 50 percent,

"(B) for any qualified small employer described in subparagraph (B) of paragraph (4), 35 percent, and

"(C) for any qualified small employer described in subparagraph (C) of paragraph (4), 25 percent.

"(3) PER EMPLOYER DOLLAR LIMITATION.—The amount of qualified employee health insurance expenses taken into account pursuant to paragraph (1) with respect to any qualified employer for any taxable year shall not exceed—

"(A) $1,500 in the case of self-only coverage; and

"(B) $3,500 in the case of family coverage.

"(4) QUALIFIED SMALL EMPLOYERS.—A qualified small employer is described in—

"(A) this subparagraph if such employer employed an average of 9 or fewer employees (as determined under subsection (c)(1)(A)(i)),

"(B) this subparagraph if such employer employed an average of more than 9 but less than 25 employees (as so determined), and

"(C) this subparagraph if such employer employed an average of more than 24 but not more than 50 employees (as so determined).

"(5) Definitions.—For purposes of this section—

"(1) QUALIFIED SMALL EMPLOYER.—

"(A) IN GENERAL.—The term ‘qualified small employer’ means, with respect to any calendar year, any employer if—

"(i) such employer pays or incurs at least 75 percent of total employee health insurance expenses of each qualified employee (determined without regard to subsection (b)(3)), and

"(ii) such employer employed an average of 50 or fewer employees on business days during either of the 2 preceding calendar years. For purposes of clause (i), a preceding calendar year may be taken into account only if the employer was in existence throughout such year.

"(B) EMPLOYEES NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the 1st preceding calendar year, the determination under subparagraph (A)(ii) shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

"(2) QUALIFIED EMPLOYEE HEALTH INSURANCE EXPENSES.—

"(A) IN GENERAL.—The term ‘qualified employee health insurance expenses’ means the amount paid by an employer for health insurance coverage (as defined in section 982(b)(1)) to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee.

"(B) Exception for amounts paid under salary reduction arrangements.—No amount paid or incurred for health insurance coverage pursuant to a salary reduction arrangement shall be taken into account under subparagraph (A).

"(3) QUALIFIED EMPLOYER.—

"(A) IN GENERAL.—The term ‘qualified employer’ means, with respect to any period, an employee of an employer if—

"(i) the annual amount of hours in the employment of such employee by such employee is at least 400 hours,

"(ii) the total amount of wages paid or incurred by such employer to such employee at an annualized hourly rate of the taxable year is at least $5,000, and

"(iii) such employee is not eligible for—

"(I) any benefits under title XVIII, XIX, or XXI of the Social Security Act, or

"(II) any other publicly-sponsored health insurance program.

"(B) Treatment of certain employees.—For purposes of subparagraph (A), the term ‘employee’—

"(i) shall not include an employee within the meaning of section 412(b), and

"(ii) shall include a leased employee within the meaning of section 414(n).

"(C) WAGES.—The term ‘wages’ has the meaning given such term by section 3121(a) (determined without regard to any dollar limitation contained in such section).

"(d) Certain rules made applicable.—For purposes of this section, rules similar to the rules of section 52 shall apply.

\(^{(e)}\) Coordination with deduction for health insurance costs of self-employed individuals.—In the case of a taxpayer who is eligible to deduct any amount under section 162(l) for the taxable year, this section shall apply only if the taxpayer elects not to claim any amount as a deduction under such section for such year.

\(^{(f)}\) Conforming amendments.—

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ‘, or from section 36 of such Code.’

(2) The table of sections for subpart C of part 3 of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the last item and inserting the following new items:

New "Sec. 36. Small business employee health insurance expenses.

New "Sec. 37. Overpayments of tax.

\(^{(g)}\) Effective date.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2005.

SEC. 402. THREE-SHARE PROGRAM.

The Social Security Act (42 U.S.C. 301 et seq.) is amended by adding at the end the following:

"TITLE XXII—PROVIDING FOR THE UNINSURED

"SEC. 2201. THREE-SHARE PROGRAMS.

"(a) Pilot programs.—The Secretary, acting through the Administrator, shall award grants under this section for the startup and operation of 25 eligible three-share pilot programs for a 5-year period.

"(b) Grants for Three-Share Programs.—

"(1) Establishment.—The Administrator may award grants to eligible entities—

"(A) to establish three-share programs;

"(B) to provide for contributions to the premiums assessed for coverage under a three-share program as provided for in subsection (c)(2)(B)(i) and (ii) to establish risk pools;

"(C) to establish risk pools.

"(2) Three-share program plan.—Each entity desiring a grant under this subsection shall develop a plan for the establishment and operation of a three-share program that meets the requirements of paragraphs (2) and (3) of subsection (c).

"(3) Application.—Each entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner and containing such information as the Administrator may require, including—

"(A) the three-share program plan described in paragraph (2); and

"(B) an assurance that the eligible entity will—

"(i) determine a benefit package;

"(ii) recruit businesses and employees for the three-share program;

"(iii) build and manage a network of health care providers and contracts with an existing network or licensed insurance provider;

"(iv) manage all administrative needs; and
‘(v) establishes relationships among community, business, and provider interests.

‘(4) PRIORITY.—In awarding grants under this section the Secretary shall give priority to an eligible three-share program—

‘(A) that is an existing three-share program;

‘(B) that is an eligible three-share program that has demonstrated community support; or

‘(C) that is located in a State with insurance laws and regulations that permit three-share program expansion.

‘(c) Grant Eligibility.—

‘(1) In general.—The Secretary, acting through the Administrator, shall promulgate regulations for the eligibility of three-share programs for participation in the pilot program under this section.

‘(2) Three-share program requirements.—

‘(A) In general.—To be determined to be an eligible three-share program for purposes of participation in the pilot program under this section a three-share program shall—

‘(i) be either a non-profit or local governmental entity;

‘(ii) define the region in which such program will provide services;

‘(iii) have the capacity to carry out administrative functions of managing health plans, including monthly billings, verification of eligibility of eligible employers and employees, maintenance of membership rosters, development of member materials (such as handbooks and identification cards), customer service, and claims processing; and

‘(iv) have demonstrated community involvement.

‘(B) Payment.—To be eligible under paragraph (a), a three-share program shall pay the costs of services provided under subparagraph (A)(i) by charging a monthly premium for each covered individual to be divided as follows:

‘(i) Not more than 30 percent of such premium shall be paid by a qualified employee desiring coverage under the three-share program.

‘(ii) Not more than 30 percent of such premium shall be paid by the qualified employer of such a qualified employee.

‘(iii) At least 15 percent of such premium shall be paid from amounts provided under a grant to such entity under this section.

‘(iv) Any remaining amount shall be paid by the qualified employer from other public, private, or charitable sources.

‘(C) Program Flexibility.—A three-share program may set an income eligibility guideline for different purposes.

‘(D) Coverage.—

‘(A) In general.—To be an eligible three-share program under this section, the three-share program shall provide at least the following benefits:

‘(i) Physicians services.

‘(ii) In-patient hospital services.

‘(iii) Out-patient services.

‘(iv) Emergency room visits.

‘(v) Emergency ambulance services.

‘(vi) Diagnostic lab fees and x-rays.

‘(vii) Prescription drug benefits.

‘(B) Limitation.—Nothing in subparagraph (A) shall be construed to require that a three-share program provide coverage for services performed outside the region described in paragraph (2)(A)(i).

‘(C) Preexisting conditions.—A program described in subparagraph (A) shall not be an eligible three-share program under paragraph (1) if any individual can be excluded from coverage under such program because of a preexisting health condition.

‘(D) Grants for Existing Three-Share Programs To Meet Certification Requirements.—

‘(1) In general.—The Administrator may award grants to three-share programs that are operating on the date of enactment of this section.

‘(2) Application.—Each eligible entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

‘(3) Application of State Laws.—Nothing in this section shall be construed to preempt State law.

‘(4) Distressed Business Formula.—

‘(1) In general.—Not later than 60 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Commerce, shall adopt a formula to determine which businesses qualify as distressed businesses for purposes of this section.

‘(5) Effect on Insurance Market.—Granting eligibility to a distressed business using the formula under paragraph (1) shall not interfere with the insurance market. Any business found to have reduced benefits to qualify as a distressed business under the formula under paragraph (1) shall not be eligible to be a three-share program for purposes of this section.

‘(6) CAPPED COVERAGE.—The term ‘covered individual’ means an individual who is a qualified employee or a child under the age of 23 who is a full-time student.

‘(B) Capped coverage for purposes of this section means coverage under the three-share program under title XVIII or the medicare program under title XIX.

‘(C) does not qualify for benefits under the State Children’s Health Insurance Program under title XXI.

‘(D) DISTRESSED BUSINESS.—The term ‘distressed business’ means a business that—

‘(i) lacks access to health care coverage through their employment or employer;

‘(ii) lacks access to health care coverage through a family member;

‘(iii) is not eligible for coverage under the medicare program under title XVIII or the medicare program under title XIX; and

‘(iv) does not qualify for benefits under the State Children’s Health Insurance Program under title XXI.

‘(E) PREEXISTING CONDITIONS.—The term ‘preexisting condition’ means a condition that—

‘(i) existed prior to the effective date of the program to which it relates;

‘(ii) is not subject to the exclusion for preexisting conditions under any applicable law of the State in which the business is located.

‘(F) ELIGIBLE EMPLOYEE.—The term ‘eligible employee’ means any individual employed by a qualified employer who meets certain criteria, including—

‘(i) regular employment for an employer found to have reduced benefits to qualify as a distressed business; and

‘(ii) being employed by a qualified employer who meets the criteria under subparagraph (A).

‘(G) QUALIFIED EMPLOYEE.—The term ‘qualified employee’ means an individual who—

‘(i) lacks access to health care coverage through a family member or common law partner;

‘(ii) is not eligible for coverage under the medicare program under title XVIII or the medicare program under title XIX; and

‘(iii) agreeing that the share of fees described in section (a)(2)(B)(i) shall be paid in the form of payroll deductions from the wages of such individual.

‘(H) QUALIFIED EMPLOYER.—The term ‘qualified employer’ means an employer as defined in section 3(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(d)) who—

‘(i) is a small business concern as defined in section (a)(2)(D) of the Small Business Act (15 U.S.C. 632);

‘(ii) is located in the region described in subsection (a)(2)(A)(i); and

‘(iii) has demonstrated to the health care benefits of its employees for at least 12 months consecutively or currently provides insurance but is classified as a distressed business.

‘(I) EVALUATION.—Not later than 90 days after the end of the 5-year period during which grants are awarded under this section, the Government Accountability Office shall submit to the Secretary and the appropriate committees of Congress a report containing—

‘(i) the effectiveness of the programs established under this section;

‘(ii) the number of individuals covered under such programs;

‘(iii) any resulting best practices; and

‘(iv) the level of community involvement.

‘(J) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of fiscal years 2006 through 2011.”

By Mr. DODD (for himself, Mr. REID, Ms. MIKULSKI, Ms. STABENOW, Mr. ROCKEFELLER, and Mr. SCHUMER):

S. 17. A bill to amend the Help America Vote Act of 2002 to protect voting rights and to improve the administration of Federal elections, and for other purposes;

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Voting Opportunity and Technology Enhancement Rights Act of 2005”.

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


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

(1) The right of all eligible citizens to vote and have their vote counted is the cornerstone of a democratic form of government and the core precondition of government of the people, by the people, and for the people.

(2) The right of citizens of the United States to vote is a fundamental civil right guaranteed under the United States Constitution.

(3) Congress has an obligation to reaffirm the right of each American to have an equal
opportunity to vote and have that vote counted in Federal elections, regardless of color, ethnicity, disability, language, or the resources of the community in which they live.

(4) Congress has an obligation to ensure the uniform and nondiscriminatory exercise of that right by removing barriers in the form of existing administration procedures and technology and insufficient and unequal resources of State and local governments.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To secure the opportunity to participate in democracy for all eligible American citizens by establishing a national Federal write-in absentee ballot for Federal elections.

(2) To expand and establish uniform and nondiscriminatory requirements and standards to remove administrative procedural barriers and technological obstacles to casting a vote and having that vote counted in Federal elections.

(3) To expand and establish uniform and nondiscriminatory requirements and standards to provide for the accessibility, accuracy, verifiability, privacy, and security of all voting systems and technology used in Federal elections.

(4) To provide a Federal funding mechanism for the States to implement the requirements described in paragraphs (2) and (3) and protect voting rights and the integrity of Federal elections in the United States.

SEC. 3. NATIONAL FEDERAL WRITE-IN ABSENTEE BALLOT.

(a) IN GENERAL.—

(1) In General.—Title III of the Help America Vote Act of 2002 (42 U.S.C. 1551 et seq.) is amended by adding at the end the following new subtitle:

"Subtitle C—Additional Requirements

SEC. 321. USE OF NATIONAL FEDERAL WRITE-IN ABSENTEE BALLOT.

'(a) IN GENERAL.—Any person who is otherwise qualified to vote in a Federal election in a State shall be permitted to use the national Federal write-in absentee ballot prescribed by the Election Assistance Commission under section 228 to cast a vote in an election for Federal office.

(b) PREMISSION AND PROCESSING.—

'(1) IN GENERAL.—Except as otherwise provided in this section, a national Federal write-in absentee ballot shall be submitted and processed under standards to protect voting rights and the integrity of Federal elections in the United States.

'(2) DEADLINE.—An otherwise eligible national Federal write-in absentee ballot shall be counted if postmarked or signed before the close of the polls on election day and received by the appropriate State election official on or before the date which is 10 days after the date of the election or the date prescribed for receipt of absentee ballots under State law, whichever is later.

'(c) SPECIAL RULES.—The following rules shall apply with respect to national Federal write-in absentee ballots:

'(1) In completing the ballot, the voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).

'(2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the candidates supporting the candidate involved.

'(3) Any abbreviation, misspelling, or other minor variation in the form of the name of a political party shall be disregarded in determining the validity of the ballot.

'(d) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.

(2) CONFORMING AMENDMENT.—Section 401(c) of the Help America Vote Act of 2002 (42 U.S.C. 15511) is amended by striking 'and 303' and inserting '303, and subtitle C'.

(b) NATIONAL FEDERAL WRITE-IN ABSENTEE BALLOT.

'(1) IN GENERAL.—Title II of the Help America Vote Act of 2002 (42 U.S.C. 15521 et seq.) is amended by adding at the end the following new section:

"Subtitle E—Guidance and Standards

SEC. 297. NATIONAL FEDERAL WRITE-IN ABSENTEE BALLOT.

'(a) FORM OF BALLOT.—The Commission shall prescribe a national Federal write-in absentee ballot (including a secrecy envelope and mailing envelope for such ballot) for use in elections for Federal office.

'(b) STANDARDS.—The Commission shall prescribe standards for—

'(1) distributing the national Federal write-in absentee ballot, including standards for distributing such ballot through the Internet; and

'(2) processing and submission of the national Federal write-in absentee ballot.

'(c) SPECIAL RULES.

'(1) IN GENERAL.—The Presidential designee under the Uniformed and Overseas Citizens Absentee Voting Act, in consultation with the Election Assistance Commission, shall facilitate the use and return of the national Federal write-in absentee ballot for absent uniformed services voters and overseas voters.

'(2) DEFINITIONS.—The terms ‘absent uniform service voter’ and ‘overseas voter’ shall have the meanings given such terms by section 107 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973g-6).

(2) CONFORMING AMENDMENT.—Section 202 of the Help America Vote Act of 2002 (42 U.S.C. 15522) is amended by redesignating paragraphs (6) and (7), respectively, and by inserting after paragraph (4) the following new paragraph:

'(5) carrying out the duties described in subtitle E.

(c) COORDINATION WITH UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING.

'(1) IN GENERAL.—The President shall carry out the duties described in section 202 of the Help America Vote Act of 2002, as newly redesignated under (a), in consultation with the Election Assistance Commission, shall facilitate the use and return of the national Federal write-in absentee ballot for absent uniformed services voters and overseas voters.

'(2) DEFINITIONS.—The terms ‘absent uniform service voter’ and ‘overseas voter’ shall have the meanings given such terms by section 107 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973g-6).

(3) VOTER VERIFIED BALLOTS.

'(a) VERIFICATION.—

'(1) IN GENERAL.—Section 301(a) of the Help America Vote Act of 2002 (42 U.S.C. 15511(a)) is amended by adding at the end the following new paragraph:

'(7) VOTER VERIFIED BALLOTS.—In order to meet the requirements of paragraph (1)(A)(i), on and after January 1, 2008:

'(A) The voting system shall provide an independent means of voter verification which meets the requirements of subparagraph (B) and the voter shall verify the ballot before it is cast and counted.

'(B) A means of voter verification meets the requirements of this paragraph if the voting system allows the voter to choose from one of the following options to verify the voter's vote selection:

'1. A written acknowledgment;

'2. An audio record;

'3. A pictorial record;

'4. An electronic record or other means that provides for voter verification that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that promotes privacy and independence equal to that provided for other voters.

'5. Any means of verification described in clause (ii), (iii), or (iv) of subparagraph (B)

'(c) REPORTS.—The Commission shall issue uniform and nondiscriminatory standards—

'(1) for voter verified ballots required under section 301(a)(7); and

'(2) for meeting the audit requirements of section 301(a)(2).

(4) GUIDANCE.—

'(1) IN GENERAL.—The Commission shall issue uniform and nondiscriminatory standards—

'(i) for voter verified ballots required under section 301(a)(7); and

'(ii) for meeting the audit requirements of section 301(a)(2).

(5) EFFECTIVE DATE FOR STATEWIDE COUNTING OF PROVISIONAL BALLOTS.—

'(1) IN GENERAL.—Section 302 of the Help America Vote Act of 2002 (42 U.S.C. 15523) is amended by inserting ‘and’ at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting ‘; and’ and by adding at the end the following new paragraph:

'(4) an analysis and description in the form and manner prescribed by the Commission of the progress on implementing the voter verified ballot requirements of section 301(a)(7).

SEC. 5. REQUIREMENTS FOR COUNTING PROVISIONAL BALLOTS.

(a) IN GENERAL.—Section 302 of the Help America Vote Act of 2002 (42 U.S.C. 15523) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(4) for meeting the audit requirements of section 301(a)(7) and the impact of the use of such requirements on the accessibility, privacy, security, usability, and auditability of voting systems.

(b) GUIDANCE.—

'(1) IN GENERAL.—The Commission shall issue the following requirements:

"(a) For purposes of subsection (a)(4), notwithstanding at which polling place a provisional ballot is cast, the State shall count such ballot if the individual who cast such ballot is otherwise eligible to vote.

'(b) EFFECTIVE DATE.—

'(1) IN GENERAL.—Subsection (e) of section 302 of the Help America Vote Act of 2002 (42 U.S.C. 15523(e)), as redesignated under subsection (a), is amended by adding at the end the following:

'(2) EFFECTIVE DATE FOR STATEWIDE COUNTING OF PROVISIONAL BALLOTS.—Each State shall be required to comply with the requirements of subsection (d) on and after January 1, 2007.

(c) CONFORMING AMENDMENT.—Subsection (e) of section 302 of the Help America Vote Act of 2002 (42 U.S.C. 15523(e)), as redesignated under subsection (a), is amended by striking ‘each’ and inserting ‘and’.

'(1) IN GENERAL.—Except as provided in paragraph (2), each:

"(a) MINIMUM REQUIRED VOTING SYSTEMS AND POLL WORKERS.

'(a) IN GENERAL.—Subtitle C of title III of the Help America Vote Act of 2002, as added by this Act, is amended by adding at the end the following new section:

"SEC. 322. MINIMUM REQUIRED VOTING SYSTEMS AND POLL WORKERS.

'(a) IN GENERAL.—Each State shall provide for the minimum required number of voting
systems and poll workers for each polling place on the day of any Federal election and on any days during which early voting is allowed for a Federal election.

(b) Distribution.—The standards described in subsection (a) shall provide for a uniform and nondiscriminatory geographic distribution of such systems and workers.

(c) Deviation.—The standards described in subsection (a) shall permit States, upon providing adequate public notice, to deviate from the requirements in cases of unforeseen circumstances such as a natural disaster, terrorist attack, or a change in voter turnout.

SEC. 7. ELECTION DAY REGISTRATION.

(a) Requirement.—Subtitle C of title III of the Help America Vote Act of 2002 is amended by adding at the end the following new section:

SEC. 329. STANDARDS FOR ELECTION DAY REGISTRATION.

(a) In General.—The Commission shall issue standards regarding the minimum number of voting systems and poll workers required in each polling place on the day of any Federal election and on any days during which early voting is allowed for a Federal election.

(b) Distribution.—The standards described in subsection (a) shall provide for a uniform and nondiscriminatory geographic distribution of such systems and workers.

(c) Deviation.—The standards described in subsection (a) shall permit States, upon providing adequate public notice, to deviate from the requirements in cases of unforeseen circumstances such as a natural disaster, terrorist attack, or a change in voter turnout.

SEC. 8. INTEGRITY OF VOTER REGISTRATION LIST.

Subtitle C of title III of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

SEC. 324. REQUIREMENTS FROM VOTER REGISTRATION LIST.

(a) Public Notice.—Not later than 45 days before any Federal election, each State shall provide public notice of all names which have been removed from the voter registration list of such State under section 303 since the later of the most recent election for Federal office for which the list was required to comply with the requirements of section 303, and for each of the 10 previous elections for Federal office which have been held since the later of the most recent previous election held under section 303.

(b) Notice to Individual Voters.—

(1) In General.—No individual shall be removed from the voter registration list under section 303 unless such individual is first provided with a copy of the notice which meets the requirements of paragraph (2).

(2) Requirements of Notice.—The notice required under paragraph (1) shall be—

(A) provided in a uniform and nondiscriminatory manner;

(B) consistent with the requirements of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.); and

(C) in the form and manner prescribed by the Election Assistance Commission.

(c) Effective Date.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.

SEC. 9. EARLY VOTING.

(a) In General.—Subtitle C of title III of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

SEC. 325. EARLY VOTING.

(a) In General.—Each State shall allow individuals to vote in an election for Federal office not less than 15 days prior to the day scheduled for such election in the same manner as voting on a primary day.

(b) Minimum Early Voting Requirements.—Each polling place which allows voting prior to a Federal election pursuant to subsection (a) shall—

(1) allow such voting for no less than 4 hours on each day (other than Sunday); and

(2) have uniform hours each day for which such voting occurs.

(c) Effective Date.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.

SEC. 326. INTERNET REGISTRATION.

(a) In General.—The Commission shall develop standards regarding the design and operation of programs which allow electronic voter registration through the Internet.

(b) Effective Date.—Each State shall be required to comply with the requirements of this section on and after January 1, 2009.

SEC. 327. STANDARDS FOR ELECTION DAY REGISTRATION.

(a) In General.—The Commission shall issue standards for the administration of voting prior to the day scheduled for a Federal election. Such standards shall include the nondiscriminatory geographic placement of polling places at which such voting occurs.

(b) Deviation.—The standards described in subsection (a) may be modified by the Commission, upon providing adequate public notice, to deviate from any requirement in the case of unforeseen circumstances such as a natural disaster, terrorist attack, or a change in voter turnout.

SEC. 10. ACCELERATION OF STUDY ON ELECTION DAY AS A PUBLIC HOLIDAY.

(a) In General.—Section 241 of the Help America Vote Act of 2002 (42 U.S.C. 15381) is amended by adding at the end the following new subsection:

(c) Report on Election Day.—

(1) In General.—The report required under subsection (a) with respect to election administration issues described in subsection (b)(10) shall be submitted not later than 6 months after the date of the enactment of the Voting Enhancement and Technology Accuracy Rights Act of 2005.

(2) Authorization of Appropriations.—Of the amount authorized to be appropriated under section 210 for fiscal year 2006, $100,000 shall be authorized solely to carry out the purposes of this subsection.

(b) Effective Date.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 11. IMPROVEMENTS TO VOTING SYSTEMS.

(a) In General.—Subparagraph (B) of section 301(a)(1) of the Help America Vote Act of 2002 (42 U.S.C. 15483(b)(1)(A)(i)) is amended by striking “a punch card voting system,” or a central count voting system”.

(b) Clarification of Requirements for Punch Card Systems.—Subparagraph (A) of section 301(a)(1) of the Help America Vote Act of 2002 (42 U.S.C. 15483(a)(1)(A)) is amended by inserting “punch card voting system,” after “any”.

SEC. 12. VOTER REGISTRATION.

(a) In General.—Paragraph (4) of section 303(b) of the Help America Vote Act of 2002 (42 U.S.C. 15485(b)(4)) is amended by adding at the end the following new subparagraph:

(c) Exception.—On and after January 1, 2007.

(ii) subparagraph (B) shall not apply.

(b) Internet Registration.—Subtitle C of title III of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

SEC. 328. INTERNET REGISTRATION.

(a) In General.—Each State shall develop a program under which the individual may access and submit voter registration forms electronically through the Internet.

(b) Effective Date.—Each State shall be required to comply with the requirements of this section on and after January 1, 2009.

SEC. 329. STANDARDS FOR VOTER IDENTIFICATION.

(a) In General.—

(1) In Person Voting.—Clause (i) of section 303(b)(2)(A) of the Help America Vote Act of 2002 (42 U.S.C. 15483(b)(2)(A)(i)) is amended by striking “or” at the end of subclause (i) and by adding at the end the following new sub-clause:

(II) executes a written affidavit attesting to such individual’s identity; or

(b) Voting by Mail.—Clause (i) of section 303(b)(2)(A) of the Help America Vote Act of 2002 (42 U.S.C. 15483(b)(2)(A)(i)) is amended by striking “or” at the end of subclause (i), by striking the period at the end of subclause (II) and inserting “; or,” and by adding at the end the following new sub-clause:

(III) a written affidavit, executed by such individual, attesting to such individual’s identity.;

(b) Standards for Verifying Voter Information.—Subtitle E of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

SEC. 329D. VOTER IDENTIFICATION.

(a) In General.—The Commission shall develop standards for verifying the identification information required under section 303(a)(5) in connection with the registration of an individual to vote in a Federal election.

(b) Standards for Impartial Administration of Elections.

Subtitle C of title III of the Help America Vote Act of 2002, as added and amended by this Act, is amended by adding at the end the following new section:

SEC. 327. ELECTION ADMINISTRATION REQUIREMENTS.

(a) Notice of Changes in State Election Laws.—Not later than 15 days prior to any Federal election, each State shall issue a
public notice describing all changes in State law affecting the administration of Federal elections since the most recent prior election.

(c) OBSERVERS.—

(1) IN GENERAL.—Each State shall allow uniform and nondiscriminatory access to any polling place for purposes of observing a Federal election to—

(A) party challengers;

(B) voting rights and civil rights organizations; and

(C) nonpartisan domestic observers and international observers.

(2) NOTICE OF DENIAL OF OBSERVATION REQUEST.—Each State shall issue a public notice with respect to any denial of a request by any observer described in paragraph (1) for access to any polling place for purposes of observing a Federal election. Such notice shall be issued not later than 24 hours after such denial.

(c) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of this section on and after January 1, 2007.

SEC. 15. STRENGTHENING THE ELECTION ASSISTANCE COMMISSION.

(a) BUDGET REQUESTS.—Part I of subtitle A of title II of the Help America Vote Act of 2002 (42 U.S.C. 15321 et seq.) is amended by inserting after section 209 the following new section:

SEC. 209A. SUBMISSION OF BUDGET REQUESTS.

Whenever the Commission submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit a copy of such estimate or request to the Congress and to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate.

(b) EXEMPTION FROM PAPERWORK REDUCTION ACT.—Paragraph (1) of section 3502 of title 44, United States Code, concerning the bulk purchasing authority for such enrollees, is amended by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively, and by inserting after subparagraph (A) the following new subparagraph:

(2) Notice of Denial of Observation Request.—On and after January 1, 2007, subsection (a) shall not apply to any State if, in the opinion of the national director or designee of the National Institute of Standards and Technology, there is a heightened risk of a significant security threat and, for such period as the national director or designee of the National Institute of Standards and Technology determines necessary, the national director or designee may exclude from the requirements of this section any State if the national director or designee determines that the negotiated prices available under such plans for such drugs are not fair and affordable prices compared to the prices obtained under other Federal government programs for such drugs.

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

SEC. 16. AUTHORIZATION OF APPROPRIATIONS.

Subsection (a) of section 257 of the Help America Vote Act of 2002 (42 U.S.C. 15408(a)) is amended by adding at the end the following new paragraph:

(1) '5 For fiscal year 2006, $2,000,000,000.' (b) For each fiscal year after 2006, such sums as may be necessary.'
(b) CONFORMING AMENDMENT.—Section 1860D-22(a)(3)(B)(ii) of the Social Security Act (42 U.S.C. 1395w-102(b)(3)(B)(ii)) is amended by striking “and the annual out-of-pocket threshold, respectively, are annually adjusted under paragraphs (1) and (4)(B) of section 1860D-2(b)" and inserting “is annually adjusted under paragraph (1) of section 1860D-2(b) (using the percentage increase specified in paragraph (6) of such section)”. 

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 1860D-2(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

SEC. 202. REQUIREMENTS TO PRESCRIPTION DRUG PLANS TO AVOID FEDERAL FALL-BACK.

(a) IN GENERAL.—Section 1860D-3(a) of the Social Security Act (42 U.S.C. 1395w-103(a)) is amended—

(1) in paragraph (1)—

(A) by striking “qualifying plans (as defined in paragraph (3))” and inserting “prescription drug plans”; and

(B) by striking “, at least one of which is a prospective drug plan”;

(2) in paragraph (2), by striking “qualifying plans” and inserting “prescription drug plans”;

and

(3) by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 1860D-3 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

SEC. 203. WAIVER OF PART D EARLY ENROLLMENT PERIOD FOR ELIGIBLE INDIVIDUALS.

(a) IN GENERAL.—Section 1860D–13(b) of the Social Security Act (42 U.S.C. 1395w–113(b)) is amended by adding at the end the following new paragraph:

“(8) WAIVER OF PENALTY FOR MONTHS PRIOR TO 2006.—A part D eligible individual who enrolls for the first time in a prescription drug plan or an MA–PD plan under this part prior to January 1, 2006, shall not be subject to an increase in the monthly beneficiary premium established under subsection (a) with respect to months occurring prior to such date.”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the enactment of section 1860D–13 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (117 Stat. 2071).

SEC. 204. IMPROVING THE TRANSITION OF FULL-BENEFIT ELIGIBLE INDIVIDUALS TO COVERAGE UNDER THE MEDICARE PART D BENEFIT.

(a) IN GENERAL.—Notwithstanding subsection (d)(1) of section 1935 of the Social Security Act (42 U.S.C. 1395u–5), beginning on January 1, 2006, the Secretary of Health and Human Services shall administer a 12-month period during which full-benefit eligible dual individuals (as defined in section 1935(c)(6) of the Social Security Act) shall be entitled to receive any transition from receiving medical assistance for prescribed drugs under the medicare program under title XIX of such Act to obtaining coverage of covered part D drugs as defined in section 1860D–2(e) (42 U.S.C. 1395w–102(e)) under title XVIII of such Act in order to assure that such individuals continue to receive their outpatient prescription drugs as they need.

(b) ADJUSTMENTS TO PHASED-DOWN STATE CONTRIBUTION.—The Secretary of Health and Human Services shall make appropriate adjustments to the amount of payments required to be made by a State or the District of Columbia under section 1935(c) of the Social Security Act (42 U.S.C. 1395u–5) for months occurring during the period described in subsection (a) in order to account for increased costs for the provision of medical assistance incurred by the State or the District of Columbia by reason of the application of the transition period required under this section.

SEC. 205. PART B PREMIUM REDUCTION.

Section 1833(a) of the Social Security Act (42 U.S.C. 1395r(a)) is amended—

(1) in the first sentence, by striking “The Secretary” and inserting “Subject to paragraph (5), the Secretary”;

and

(2) by adding at the end the following new paragraph:

“(5) For each year (beginning with 2006), the Secretary shall reduce the premium rate determined under paragraph (3) for each month in the year for each individual enrolled under this part (including such an individual subject to an increased premium under subsection (b) or (i)) so that the aggregate amount of such reductions in the year is equal to the aggregate amount of reduced expenditures from the Federal Supplemental Medicare Insurance Trust Fund in the year that the Secretary estimates will result from the provisions of section 103 of the Medicare Modernization Act of 2003.”.

SEC. 206. STUDY AND REPORT ON PROVIDING INSURANCE TO PRESERVE RETIREE COVERAGE.

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study to determine what incentives should be provided to employers in order for such employers to continue to provide retirees with prescription drug coverage. Such study shall include an assessment of permitting costs incurred by an employer for covered part D drugs on behalf of a retiree to be treated as incurred costs for purposes of reaching the annual out-of-pocket threshold under section 1860D–2(b)(4) of the Social Security Act (42 U.S.C. 1395w–102(b)(4)).

(b) REPORT.—Not later than January 1, 2006, the Secretary of Health and Human Services shall submit to Congress a report on the study under subsection (a) together with such recommendations for legislation as the Secretary deems appropriate.

SEC. 207. PROMOTING TRANSPARENCY IN EMPLOYER SUBSIDY PAYMENTS.

(a) IN GENERAL.—Section 1860D–22(a) of the Social Security Act (42 U.S.C. 1395w–102(a)) is amended by adding at the end the following new paragraph:

“(7) DISCLOSURE OF CERTAIN INFORMATION.—The Secretary shall make the following information regarding the sponsor of a qualified prescription drug plan receiving a subsidy under this section available to the public through the Internet website of the Centers for Medicare & Medicaid Services and other appropriate means:

(A) any information used by the Secretary to ensure that the prescription drug coverage offered under the plan meets the requirements for subsidy payments under this section;

(B) the total amount of the subsidy payments made to the sponsor under this section.

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

Mr. KENNEDY. Mr. President, the Bush Administration and the Republican Congress are no friend of America’s seniors. In 2003, they enacted legislation that made it illegal for Medicare to help seniors retain their employer-based health care coverage. The Republican-controlled Congress, even though Medicare has helped a generation of seniors live their golden years with health and dignity.

Now their target is Social Security.

They want to privatize this trusted program for the benefit of Wall Street bankers. They even want to cut benefits for women because—in the Republican view—they live too long. It’s time to end these shameful attacks on our seniors’ retirement, so that Medicare and Social Security can work together to ensure a quality retirement for every American.

I commend the leadership of my colleagues from Minnesota, Senator DAYTON, and our Democratic Leader, Senator REID, in introducing this urgently needed legislation to stop vulnerable Medicare beneficiaries from losing eligibility to Medicare.

Fifty years ago, Congress enacted the landmark legislation that established Medicare. We would do well today to remember President Lyndon Johnson’s words on signing that historic bill in 1965: “No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings they have so carefully put away over a lifetime so that they might enjoy dignity in their later years.”

The ruinous Medicare legislation that the Republican Congress enacted in 2003 breaks that solemn promise.

Medicare changed all that, and 40 years later, President Bush and the Republican Congress are wrong to try to turn back the clock. My colleagues and I want to be clear that Medicare works. They don’t want to return to the days when they had to gamble their health, their savings and their lives on risky private insurance.

The 2003 Republican bill was sold to the American people as a way to help seniors with the high cost of prescription drugs, so they might think it does something about the high cost of drugs. But it doesn’t.

It not only fails to help Medicare lower the cost of drugs—it actually makes it illegal for Medicare to try. Republicans were so worried about protecting drug company profits that they made it illegal for Medicare to do what
the Veterans Administration does the work, and the VA negotiate prices. The Bush Administration and the GOP Congress wouldn’t dare to prohibit the VA from doing that for the veterans, and they shouldn’t do it for senior citizens either.

The discounts on drug prices for veterans are substantial. On average, the price paid by the VA is 45 percent of the retail price, but often, the savings are even more dramatic. The retail price for a pill might cost $100, but the VA pays $10.

The VA price of Zantac is $1.83, but the VA pays two cents.

Senator Dayton’s legislation abolishes the unconsolable provision that bars Medicare from negotiating discounts on drug prices for America’s seniors. That’s not price control—it’s common sense.

Republicans also claim that their new drug benefit is “voluntary.” Not exactly. If seniors don’t sign up the first year, they never fill a prescription. As people age, they are far more likely to join in subsequent years. When they need the coverage, they may not be able to afford it.

Senator Dayton’s legislation reverses this flagrant system of fines and makes Medicare truly voluntary. When Congress enacts it, seniors will be able to sign up for the drug program without facing ruinous fines.

Good prescription drug coverage for senior citizens is a priority for Democrats. For the Administration and the Republicans in Congress, however, tax cuts for billionaires are more important than health care for senior citizens. In addition, the 2003 Medicare law leaves too many elderly citizens with unaffordable costs. Seniors with moderate incomes and high drug expenses still face high drug costs. The benefits under the GOP act—with its $250 deductible, 25 percent cost-sharing, and an out-of-pocket limit of $3,600—do not save seniors from paying more and more to join in subsequent years. When they need the coverage, they may not be able to afford it.

The Republican Medicare law is a raw deal for seniors, but it’s a bonanza for the drug industry and the insurance industry.

It gives massive subsidies to HMOs. Most Americans probably think it’s the job of insurance companies to guarantee the health of their beneficiaries, but according to the Republican view, that’s wrong. They make America’s seniors guarantee the health and wealth of HMOs.

The government already pays private insurance plans 94 percent of what it costs the VA to provide seniors with the same health care. Republicans claim to be in favor of competition, but the playing field is tilted toward HMOs. If the government provides seniors with the same health care as HMOs, the government will pay HMOs at the going rate for Medicare. If the only available provider is an HMO, HMOs will charge $15,000 and drug expenses of $4,000. HMO enrollees in private plans are actually losing to Medicare, resulting in a further bonus of 8.7 percent to the private plans.

Senator Dayton’s legislation requires realistic risk adjustment for private plans that provide services to seniors under Medicare. It removes the artificial calculations that inflate payment to HMOs and other private insurance carriers.

Another problem with the 2003 Act is that if the subsidies don’t provide enough profits, the Republican bill provides cash handouts for the insurance industry. If an HMO doesn’t think it can make a profit in a given area of the country, the Bush Administration can simply ladle out the cash up to $12 billion a year. Not true. Enrollees in private plans are actually healthier than those in Medicare, resulting in a further bonus of 8.7 percent to the private plans.

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Senator Dayton’s legislation reverses this outrageous giveaway and ensures that the dollars devoted to this slush fund are used instead to provide better health care for seniors.

The Republican law stacks the deck against Medicare and picks up Medicare’s tab for drugs that the VA is purchasing. It allows a region to be served by only one prescription drug plan, along with a PPO. That gives the drug plan a monoply in that region for seniors who want to remain in Medicare. If the only available plan is tailored to the wealthiest and youngest seniors, it might be acceptable for a senior whose prescription needs are limited. But it gives no help to seniors who take medications for multiple chronic conditions every day. Seniors have no recourse if they are locked into the monopoly drug plan. The only way they can get prescription drug coverage is to enroll in the PPO.

Senator Dayton’s proposal begins to fill in that doughnut hole by not allowing the cap on total out of pocket expenses to rise year after year, as it does under the GOP act. Under Senator Dayton’s proposal, seniors will have the certainty of knowing where that limit is from one year to the next. As drug expenses rise, more seniors will be forced to pay more from Medicare at high spending levels, and ultimately, the doughnut hole will close.

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It gives massive subsidies to HMOs. Most Americans probably think it’s the job of insurance companies to guarantee the health of their beneficiaries, but according to the Republican view, that’s wrong. They make America’s seniors guarantee the health and wealth of HMOs.

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Senator Dayton’s legislation provides an effective guarantee that seniors who wish to remain in traditional Medicare will have a genuine choice of prescription-only plans. If a choice between at least two private drug-only plans is not available in any region, then the Federal Government will provide a plan. This proposal ensures that any senior who wishes to remain in Medicare will have access to high-quality affordable prescription drug coverage.

The Republican Medicare law also does not provide a very large subsidy plans that millions of retirees depend on. The Congressional Budget Office estimates that almost three million retirees will lose their current drug coverage, because employers will drop the coverage when retirees become eligible for the new federal benefit, which is not as comprehensive.

Democrats fought to include provisions in that flawed legislation to help employers maintain the good coverage they provide to the employees and their dependents. It is time to put an end to this scandalous practice by requiring employers to use the funds they receive in subsidies to maintain retiree health coverage and still cut back the coverage. The Dayton bill also requires new research on ways to help employers maintain retiree coverage.

One of the most troubling aspects of the 2003 Act is that it victimizes six million senior citizens and disabled who have the fewest resources and the poorest of the poor. Their out-of-pocket payments for drugs will be raised, even though they do not even have coverage for the drugs they need the most.

Today, under Federal law, people with drug coverage under Medicaid may be charged only nominal amounts for the drugs they need. The vast majority of states charge nothing.

For every other Medicare benefit, Medicaid wraps around Medicare coverage. Medicare covers the drug costs that Medicaid does not pay. Not under this legislation. States are prohibited from wrapping around the Medicare benefits with their Medicaid program. Instead, a uniform Federal copayment is imposed. It is indexed, so that it increases every year. Low income seniors need a drug that is not in the insurance company formulary, they have to go through a burdensome appeals process. Most will simply go without the drug they need.

The people we are talking about are truly the poorest of the poor. In most cases, their incomes are well below poverty. And the impact of even small
co-payments is devastating. Study after study finds that when the poor have to pay more for drugs, they end up hospitalized, in nursing homes, or dead.

Senator DAYTON’s legislation reversed this cruel provision and allows States to delay implementing the requirement that the new Medicare provisions must immediately supplant State Medicaid programs for the poorest of the poor.

Congress should be helping seniors with the burden of high drug costs, not allowing a right wing agenda to destroy the guarantee of affordable health care that America’s seniors deserve and expect.

That’s why Senator DAYTON and Senator REID have introduced this needed legislation, and I urge my colleagues to support it.

By Mr. CONRAD (for himself, Mr. REID, Mr. FEINGOLD, Ms. MIKULSKI, Ms. STABENOW, Mr. INOUYE, Mr. LEAHY, Mr. SALAZAR, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. DAYTON, Mr. MURPHY, and Mrs. BLUMENTHAL):

S. 19. A bill to reduce budget deficits by restoring budget enforcement and strengthening fiscal responsibility; to the Committee on the Budget.

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

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

S. 19

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 “Fiscal Responsibility for a Sound Future Act”.

SEC. 2. EXTENSION OF THE DISCRETIONARY SPENDING CAPS.

(a) IN GENERAL.—Section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(c)) is amended to read as follows:

“(c) DISCRETIONARY SPENDING LIMIT.—As used in this part, the term ‘discretionary spending limit’ means, with respect to fiscal year 2005—

“(1) for the discretionary category: $386,268,000,000 in new budget authority and $385,966,000,000 in outlays;

“(2) for the highway category: $31,761,000,000 in outlays;

“(3) for the mass transit category: $956,966,000 in new budget authority and $5,748,000,000 in outlays; as adjusted in strict conformance with subsection (b).”;

(b) COMMITMENT OF THE SENATE.—Congress should enact a limit on total discretionary spending for fiscal year 2006.

SEC. 3. EXTENSION OF PAY-AS-YOU-GO REQUIREMENT.

Section 272 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subsection (a), by striking “enacted before October 1, 2002,” and

(2) in subsection (b), by striking “enacted before October 1, 2002.”

SEC. 4. EXTENSION OF BUDGET ENFORCEMENT THROUGH 2015.

Section 275 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 note) is amended by adding at the end the following:

“(d) REENACTMENT.—Part C of this title is reenacted into law effective for fiscal year 2006. Part D shall expire at the end of fiscal year 2015.”.

SEC. 5. RECONCILIATION FOR DEFICIT REDUCTION.

(a) IN GENERAL.—It shall not be in order in the Senate to consider under the expedited procedures applicable to reconciliation in title III and title XI of the Congressional Budget Act of 1974 any bill, resolution, amendment, amendment between Houses, motion, or conference report that increases the deficit in the first fiscal year covered by the most recently adopted concurrent resolution on the budget, the period of the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget, or the period of the 5 fiscal years following the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget.

(b) BUDGET RESOLUTION.—It shall not be in order in the Senate to consider pursuant to sections 301, 305, or 310 of the Congressional Budget Act of 1974 pertaining to concurrent resolutions on the budget any resolution, concurrent resolution, amendment, amendment between Houses, motion, or conference report that contains any reconciliation directive that would increase the deficit in the first fiscal year covered by the most recently adopted concurrent resolution on the budget, the period of the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget, or the period of the 5 fiscal years following the first 5 fiscal years covered by the most recently adopted concurrent resolution on the budget.

SEC. 6. SENATE PAYGO RULE.

(a) IN GENERAL.—Section 505(a)(5)(A) of H. Con. Res. 95 (108th Congress) is amended by striking “as adjusted for any changes in revenues or direct spending assumed by such resolution”.

(b) EXPIRATION DATE.—Section 505(e) of H. Con. Res. 95 (108th Congress) is amended by striking “2008” and inserting “2015”.

By Mr. REID (for himself, Mrs. MURRAY, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mrs. CLINTON, Mr. KERRY, Mrs. FEINSTEIN, Ms. CANTWELL, Mr. HARKIN, Ms. MUKULSKI, Mr. INOUYE, Mr. AKAKA, Mr. LEVIN, Mr. KENNY, Mr. LEAHY, Mr. WYDEN, and Ms. STABENOW):

S. 20. A bill to expand access to preventive health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women’s health care; to the Committee on Health, Education, Labor, and Pensions.

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

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

S. 20

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Prevention First Act”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
TITLE I—PUBLIC HEALTH SERVICE ACT
Sec. 101. Short title.
Sec. 102. Authorization of appropriations.
TITLE II—FAMILY PLANNING STATE EMPOWERMENT
Sec. 201. Short title.
Sec. 202. Authorization to provide family planning services and supplies to additional low-income individuals.
Sec. 203. State option to extend the period of eligibility for provision of family planning services and supplies.
TITLE III—PREVENTION FIRST ACT
Sec. 301. Short title.
Sec. 303. Amendments to Public Health Service Act relating to the group market.
Sec. 304. Amendment to Public Health Service Act relating to the individual market.
TITLE IV—EMERGENCY CONTRACEPTION EDUCATION AND INFORMATION
Sec. 401. Short title.
Sec. 402. Emergency contraception education and information programs.
TITLE V—COMPASSIONATE ASSISTANCE FOR RAPE EMERGENCIES
Sec. 501. Short title.
Sec. 502. Survivors of sexual assault; provision by hospitals of emergency contraceptives without charge.
TITLE VI—TEENAGE PREGNANCY PREVENTION
Sec. 601. Short title.
Sec. 602. Teenage pregnancy prevention.
TITLE VII—ACCURACY OF CONTRACEPTIVE INFORMATION
Sec. 701. Short title.
Sec. 702. Accuracy of contraceptive information.

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Sec. 1. Short title; table of contents.
Sec. 2. Findings.
TITLE I—PUBLIC HEALTH SERVICE ACT
Sec. 101. Short title.
Sec. 102. Authorization of appropriations.
TITLE II—FAMILY PLANNING STATE EMPOWERMENT
Sec. 201. Short title.
Sec. 202. Authorization to provide family planning services and supplies to additional low-income individuals.
Sec. 203. State option to extend the period of eligibility for provision of family planning services and supplies.
TITLE III—PREVENTION FIRST ACT
Sec. 301. Short title.
Sec. 303. Amendments to Public Health Service Act relating to the group market.
Sec. 304. Amendment to Public Health Service Act relating to the individual market.
TITLE IV—EMERGENCY CONTRACEPTION EDUCATION AND INFORMATION
Sec. 401. Short title.
Sec. 402. Emergency contraception education and information programs.
TITLE V—COMPASSIONATE ASSISTANCE FOR RAPE EMERGENCIES
Sec. 501. Short title.
Sec. 502. Survivors of sexual assault; provision by hospitals of emergency contraceptives without charge.
TITLE VI—TEENAGE PREGNANCY PREVENTION
Sec. 601. Short title.
Sec. 602. Teenage pregnancy prevention.
TITLE VII—ACCURACY OF CONTRACEPTIVE INFORMATION
Sec. 701. Short title.
Sec. 702. Accuracy of contraceptive information.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Although the Centers for Disease Control and Prevention (referred to in this section as the “CDC”) included family planning in its published list of the Ten Great Public Health Achievements in the 20th Century, the United States still has one of the highest rates of unintended pregnancies among industrialized nations.

(2) Each year, 3,900,000 pregnancies, nearly half of all pregnancies, in the United States are unintended, and nearly half of unintended pregnancies end in abortion.

(3) In 2002, 23,000,000 women-half of all women of reproductive age (ages 15-44)—were in need of contraceptive services and supplies to help prevent unintended pregnancy, and half of those were in need of public support for such care.

(4) The United States also has the highest rate of infection with sexually transmitted diseases of any industrialized country. In 2003 there were approximately 19,000,000 new cases of sexually transmitted diseases. According to the CDC (November 2004), these sexually transmitted diseases impose a tremendous economic burden with direct medical costs as high as $15,500,000,000 per year.
(5) Increasing access to family planning services will improve women’s health and reduce the rates of unintended pregnancy, abortion, and infection with sexually transmitted infections. Nearly one in 10 women between the ages of 15 and 44 rely on Medicaid for their basic health care needs.

(11) The average American woman desires contraceptive services in a safe and effective way to prevent unintended pregnancy. The ongoing lack of coverage in health plans, especially for underinsured and uninsured individuals, continues to place effective forms of contraception beyond the financial reach of many women.

(12) Medicaid and other public assistance programs resulted in significant savings to both the Federal and State governments. Evaluation of six waivers found that all such programs increased use of emergency contraception as a result of Medicaid family planning waivers. As of January of 2005, 21 States offered expanded family planning benefits as a result of Medicaid family planning waivers. The cost-effectiveness of these waivers was affirmed by a recent evaluation funded by the Centers for Disease Control and Prevention. This evaluation of six waivers found that all such programs resulted in significant savings to both the Federal and State governments. Moreover, the researchers found measurable reductions in unintended pregnancy.

(15) Each year, title X services enable 12,100,000 or 20 percent of all women ages 15 through 44 who were not using contraception increased from 5.4 percent to 7.4 percent in 2002, an increase of 37 percent, according to the CDC. This represents an apparent increase of 1,340,000 women and could raise the rate of unintended pregnancy.

(18) In addition, eligibility for Medicaid in many States is severely restricted leaving many women of reproductive age behind. Medicaid services are focused on pregnant women and they do not reach for many poor women. Many States have demonstrated tremendous success with Medicaid family planning waivers that allow the expansion of coverage under Medicaid family planning services. However, the administrative burden of applying for a waiver poses a significant barrier to States that would like to expand their coverage of family planning programs through Medicaid.

(19) As of January of 2005, 21 States offered expanded family planning benefits as a result of Medicaid family planning waivers. The cost-effectiveness of these waivers was affirmed by a recent evaluation funded by the Centers for Disease Control and Prevention. This evaluation of six waivers found that all such programs resulted in significant savings to both the Federal and State governments. Moreover, the researchers found measurable reductions in unintended pregnancy.

(20) Although employer-sponsored health plans have improved coverage of contraceptive services and supplies, largely in response to State contraceptive coverage laws, there is still significant room for improvement. The ongoing lack of coverage in health plans, especially for underinsured and uninsured individuals, continues to place effective forms of contraception beyond the financial reach of many women.

(21) Including contraceptive coverage in private health care plans saves employers money. Not covering contraceptives in employee health plans costs employers 15 to 17 percent more than providing such coverage.

(22) Approved for use by the Food and Drug Administration, emergency contraception is a safe and effective way to prevent unintended pregnancy after unprotected sex. It is estimated that the use of emergency contraception could cut the number of unintended pregnancies in half, thereby reducing the need for abortion. New research confirms that easier access to emergency contraceptives does not increase sexual risk-taking or sexually transmitted diseases.

(23) In 2000, 51,000 abortions were prevented by the use of emergency contraception. Increased use of emergency contraception accounts for most of the remarkable 42 percent decline in abortions between 1994 and 2000.

(24) A February 2004 CDC study of declining birth rates for adolescents concluded that the reduction in teen pregnancy between 1991 and 2001 suggests that increased abstinence and increased use of contraceptives were critical factors in the decline. As such, it is critically important that teens receive accurate, unbiased information about contraception.

(25) This report of all teens give birth before age 20. 88 percent of births to teens age 17 or younger were unintended. 24 percent of Hispanic females gave birth before the age of 15. 18 percent of black women gave birth before the age of 15.

(26) The American Medical Association, the American Nurses Association, the American Academy of Pediatrics, the American College of Obstetricians and Gynecologists, the American Public Health Association, and the Society for Adolescent Medicine, support responsible sexuality education that includes information about both abstinence and contraception.

(27) Teens who receive sex education that includes discussion of contraception are significantly more likely to receive abstinence-only messages to delay sex and to have fewer partners and use contraceptives when they do become sexually active.

(28) Government-funded abstinence-only programs are precluded from discussing contraception except to talk about failure rates. A December 2004 review of federally-funded abstinence-only programs by the United States House of Representatives Committee on Government Reform (Minority Staff) found that many federally funded abstinence-only program curricula distort public health data and misrepresent the effectiveness of contraception. Information on the effectiveness of preventing pregnancy and sexually transmitted diseases, including HIV, was often highly inaccurate.

TITLE I—PUBLIC HEALTH SERVICE ACT

SEC. 101. SHORT TITLE.

This Act may be cited as the ‘‘Family Planning State Empowerment Act’’.

SEC. 201. SHORT TITLE.

This Act may be cited as the ‘‘Family Planning State Empowerment Act’’.

SEC. 202. STATE OPTION TO PROVIDE FAMILY PLANNING SERVICES AND SUPPLIES TO ADDITIONAL LOW-INCOME INDIVIDUALS.

(a) In General.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(1) by redesignating section 1936 as section 1936a; and

(2) by inserting after section 1935 the following:

‘‘STATE OPTION TO PROVIDE FAMILY PLANNING SERVICES AND SUPPLIES TO ADDITIONAL LOW-INCOME INDIVIDUALS

‘‘SEC. 1936.

(a) In General.—A State may elect (through a State plan amendment) to make medical assistance described in section 1905(a)(4)(C) available to any individual not otherwise eligible for such assistance—

‘‘(1) whose family income does not exceed an income level (specified by the State) that does not exceed the greatest of—

‘‘(A) 200 percent of the income official poverty line (as defined by the Office of Management and Budget) in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of the size involved;

‘‘(B) a State option that has in effect (as of the date of the enactment of this section) a waiver under section 1115 to provide such medical assistance to individuals based on their income level (expressed as a percent of the poverty line), the eligibility income level as provided under such waiver; or

‘‘(C) the eligibility income level (expressed as a percent of the poverty line) that has been specified under the plan (including under section 1902(w)2), for eligibility of pregnant women for medical assistance; and

‘‘(2) at the option of the State, whose resources do not exceed a resource level specified by the State, which level is not more restrictive than the resource level applicable under the waiver as described in paragraph (b) of such section.’’;

(b) FLEXIBILITY.—A State may exercise the authority under subsection (a) with respect to one or more classes of individuals described in subsection (a); and

(b) CONFORMING AMENDMENT.—Section 1905(a) of such Act (42 U.S.C. 1396d(a)) is amended, in the matter before paragraph (1), by striking ‘‘and’’ at the end of clause (xii).
but only with respect to items and services described in paragraph (4)(C).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance provided on and after October 1, 2005.

SEC. 203. STATE OPTION TO EXTEND THE PERIOD OF ELIGIBILITY FOR MEDICAL ASSISTANCE TO INDIVIDUALS WITH INCREASED INCOME OR RESOURCES DUE TO MARRIAGE.

(a) In General.—The Secretary of Health and Human Services may make an adjustment to the period of eligibility for medical assistance provided to an individual under section 1902(a)(4) of the Social Security Act (42 U.S.C. 1396a(a)), if the period of eligibility is extended under such section because of an increase in income or resources or because of the expiration of a post-partum period, and the individual may vary the period of eligibility with respect to different classes of individuals.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to medical assistance provided on and after October 1, 2005.

SEC. 204. STUDY OF MEDICAL ASSISTANCE TO INDIVIDUALS WITH INCREASED INCOME OR RESOURCES DUE TO MARRIAGE.

(a) In General.—The Secretary of Health and Human Services shall conduct a study of the effects of the amendments made by this section on medical assistance to individuals with increased income or resources due to marriage.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance provided on and after October 1, 2005.

SEC. 205. AMENDMENTS TO CIVIL RIGHTS ACT OF 1964 RELATING TO MEDICAL ASSISTANCE.

(a) In General.—Subpart 2 of part B of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4 et seq.) is amended by adding at the end the following:

"(g) TRAVEL AND ROOM AND BOARD.—Where the costs of travel and room and board are not covered by the plan, the provider shall provide such services in-kind, if the services are otherwise covered by the plan.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance provided on and after October 1, 2005.

SEC. 206. AMENDMENTS TO PUBLIC HEALTH SERVICE ACT RELATING TO COVERAGE FOR CONTRACEPTIVES.

(a) REQUIREMENTS.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

(1) exclude or restrict benefits for prescription contraceptives or devices approved by the Food and Drug Administration, or generic equivalents approved as substitutes, except that such exclusion or restriction includes a requirement that a participant or beneficiary purchase contraceptives or devices from a specific provider or pharmacy.

(2) penalize or otherwise reduce or limit to prevent an unintended pregnancy.

(3) penalize or otherwise reduce or limit coverage or protections provided under this subsection because of an increase in income or resources or because of the expiration of a post-partum period.

(4) provide incentives (monetary or otherwise) to a health care professional to induce such professional to withhold from a covered individual contraceptive drugs or devices, or provided contraceptive services, described in subsection (a), in accordance with this section.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance provided on and after October 1, 2005.

SEC. 711. Standards relating to benefits for contraceptives.

"(a) REQUIREMENTS.—A group health plan, and a health insurance issuer providing health insurance coverage in connection with a group health plan, may not—

(1) exclude or restrict benefits for prescription contraceptives or devices approved by the Food and Drug Administration, or generic equivalents approved as substitutes, except that such exclusion or restriction includes a requirement that a participant or beneficiary purchase contraceptives or devices from a specific provider or pharmacy.

(2) penalize or otherwise reduce or limit coverage or protections provided under this subsection because of an increase in income or resources or because of the expiration of a post-partum period.

(3) penalize or otherwise reduce or limit coverage or protections provided under this subsection because such professional prescribed contraceptive drugs or devices, or provided contraceptive services, described in subsection (a), in accordance with this section.

(4) provide incentives (monetary or otherwise) to a health care professional to induce such professional to withhold from a covered individual contraceptive drugs or devices, or provided contraceptive services, described in subsection (a).

(c) RULES OF CONSTRUCTION.—

(1) IN GENERAL.—Nothing in this section shall be construed—

(2) to apply to group health plans, and health insurance issuers, that are subject to the Federal Employee Health Benefits Program.
"(A) as preventing a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan from imposing deductibles, coinsurance, or other cost-sharing or limitations in relation to—

(i) benefits for contraceptive drugs under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such drug shall be consistent with those imposed for other outpatient prescription drugs otherwise covered under the plan or coverage;

(ii) benefits for contraceptive devices under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such device shall be consistent with those imposed for other outpatient prescription devices otherwise covered under the plan or coverage; and

(iii) benefits for outpatient contraceptive services under the plan or coverage, except that such a deductible, coinsurance, or other cost-sharing or limitation for any such service shall be consistent with those imposed for other outpatient health care services otherwise covered under the plan or coverage;

(B) as requiring a group health plan and a health insurance issuer providing health insurance coverage in connection with a group health plan to cover experimental or investigational contraceptive drugs or devices, or experimental or investigational outpatient contraceptive services, described in subsection (a), except to the extent that the plan or issuer provides coverage for other experimental or investigational outpatient prescription drugs or devices, or experimental or investigational outpatient health care services; or

(C) as modifying, diminishing, or limiting the rate of payments of individuals under any other Federal law.

(2) LIMITATIONS.—As used in paragraph (1), the term ‘limitation’ includes—

(A) a benefit for a contraceptive drug or device, restricting the type of health care professionals that may prescribe such drugs or devices, utilization review provisions, and limits on the volume of prescription drugs or devices that may be obtained on the basis of a single consultation with a professional; or

(B) in the case of an outpatient contraception service, restricting the type of health care professionals that may provide such services, utilization review provisions, requirements to second opinions prior to the coverage of such services, and requirements relating to preauthorizations prior to the coverage of such services.

(d) NOTICE.—A group health plan under this part shall comply with the notice requirements under section 714(d) of the Employee Retirement Income Security Act of 1974 with respect to the requirements of this section as if such section applied to such plan.

(e) PREEMPTION.—Nothing in this section shall be construed to preempt any provision of State law to the extent that such State law establishes, implements, or continues in effect any standard or requirement that provides coverage or protections for enrollees that are greater than the coverage or protections provided under this section.

(f) DEFINITION.—In this section, the term ‘outpatient contraception services’ means contraceptive services, procedures, and medical services, provided on an outpatient basis and related to the use of contraceptive methods (including natural family planning) to prevent an unintended pregnancy.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning on or after January 1, 2006.

SEC. 204. AMENDMENT TO PUBLIC HEALTH SERVICE ACT RELATING TO THE INDIVIDUAL MARKET.

(a) In General.—Part I of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–41 et seq.) is amended—

(1) by redesignating the first subsection (relating to other requirements) as subsection 2; and

(2) by adding at the end of subsection 2 the following:

‘‘Sec. 2753. STANDARDS RELATING TO BENEFITS FOR CONTRACEPTIVES.

‘‘The provisions of section 2707 shall apply to health insurance coverage offered by a health insurance issuer on the individual market in the same manner as they apply to health insurance coverage offered by a health insurance issuer in connection with a group health plan in the small or large group market.’’.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market on or after January 1, 2006.

TITLE IV—EMERGENCY CONTRACEPTION EDUCATION AND INFORMATION

SEC. 401. SHORT TITLE.

This Act may be cited as the ‘‘Emergency Contraception Education Act’’.

SEC. 402. EMERGENCY CONTRACEPTION EDUCATION AND INFORMATION PROGRAMS.

(a) DEFINITIONS.—For purposes of this section—

(1) EMERGENCY CONTRACEPTION.—The term ‘emergency contraception’ means a drug, drug regimen, or device that—

(A) is approved by the Food and Drug Administration as required by section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or a drug regimen that is—

(i) used postcoitally;

(ii) prevents pregnancy; and

(iii) prevents pregnancy, by preventing ovulation, fertilization of an egg, or implantation of an egg in a uterus; and

(iv) approved by the Food and Drug Administration.

(2) HEALTH CARE PROVIDER.—The term ‘health care provider’ means an individual who is licensed or certified under State law to provide health care; is operating within the scope of such license; and

(3) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the same meaning given such term in section 120(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

(4) SECRETARY.—The term ‘Secretary’ means the Secretary of Health and Human Services.

(b) EMERGENCY CONTRACEPTION PUBLIC EDUCATION PROGRAM.

(1) IN GENERAL.—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop and disseminate to the public information on emergency contraception.

(2) DISSEMINATION.—The Secretary may disseminate information under paragraph (1) directly or through arrangements with nonprofit organizations, consumer groups, institutions of higher education, Federal, State, or local agencies, clinics and the media.

(3) INFORMATION.—The information disseminated under paragraph (1) shall include, at a minimum, a description of emergency contraception, and an explanation of the use, safety, efficacy, and availability of such contraception.

(c) EMERGENCY CONTRACEPTION INFORMATION PROGRAM FOR HEALTH CARE PROVIDERS.

(1) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration and in consultation with major medical and public health organizations, shall develop and disseminate to health care providers information on emergency contraception.

(2) INFORMATION.—The information disseminated under paragraph (1) shall include, at a minimum—

(A) information describing the use, safety, efficacy, and availability of emergency contraception;

(B) a recommendation regarding the use of such contraception in appropriate cases; and

(C) information explaining how to obtain copies of the information developed under subsection (b), for distribution to the patients of the providers.

There is authorized to be appropriated to carry out this section $10,000,000 for each of the fiscal years 2006 through 2010.

TITLE V—COMPASSIONATE ASSISTANCE FOR RAE EMERGENCIES

SEC. 501. SHORT TITLE.

This Act may be cited as the ‘‘Compas- sionate Assistance for Rape Emergencies Act’’.

SEC. 502. SURVIVORS OF SEXUAL ASSAULT: PROVISION BY HOSPITALS OF EMERGENCY CONTRACEPTIVES WITHOUT CHARGE.

(a) IN GENERAL.—Federal funds may not be provided to a hospital under any health-related program, unless the hospital meets the conditions specified in subsection (b) in the case of—

(1) any woman who presents at the hospital and states that she is a victim of sexual assault, or is accompanied by someone who states she is a victim of sexual assault; and

(2) any woman who presents at the hospital whom hospital personnel have reason to believe is a victim of sexual assault.

(b) ASSISTANCE FOR VICTIMS.—The conditions specified in this subsection regarding a hospital and a woman described in subsection (a) are as follows:

(1) The hospital promptly provides the woman with medically and factually accurate and unbiased written and oral information about emergency contraception, including information explaining that—

(A) emergency contraception does not cause an abortion; and

(B) emergency contraception is effective in most cases preventing pregnancy after unprotected sex.

(2) The hospital promptly offers emergency contraception to the woman, and promptly provides such contraception to her on her request.

(3) The information provided pursuant to paragraph (1) is in clear and concise language, is readily comprehensible, and meets such conditions regarding the provision of such information in languages other than English as the Secretary may establish.

(4) The services described in paragraphs (1) through (3) are not denied because of the inability of the woman or her family to pay for the services.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ‘emergency contraception’ means a drug, drug regimen, or device that—

(A) used postcoitally;

(B) prevents pregnancy by delaying ovulation, preventing fertilization of an egg, or preventing implantation of an egg in a uterus; and

(C) is approved by the Food and Drug Administration.

(2) The term ‘hospital’ has the meanings given such term in title XVIII of the Social Security Act, including applicable in such title for purposes of making payments for emergency services to hospitals.
that do not have agreements in effect under such title.

(3) The term ‘Secretary’ means the Secretary of Health and Human Services.

(4) The term ‘assault’ means cotitus in which the woman involved does not consent or lacks the legal capacity to consent.

(5) EFFECTIVE DATE: AGENCY CRITERIA.—This subsection shall take effect upon the expiration of the 180-day period beginning on the date of enactment of this Act. Not later than 30 days prior to the expiration of such period, the Secretary shall publish in the Federal Register criteria for carrying out this section.

TITLE VI—TEENAGE PREGNANCY PREVENTION

SEC. 601. SHORT TITLE.

This title may be cited as the ‘Preventing Teen Pregnancy Act’.

SEC. 602. TEENAGE PREGNANCY PREVENTION.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by inserting after section 399N the following section:

‘‘SEC. 399N-1. TEENAGE PREGNANCY PREVENTION GRANTS.

‘‘(a) Authority.—The Secretary may award on a competitive basis grants to public and private entities to establish or expand teenage pregnancy prevention programs.

‘‘(b) Grant Recipients.—Grant recipients under this section may include State and local units of government, school districts, school systems, coalitions working to prevent teenage pregnancy, State, local, and tribal agencies, schools, entities that provide afterschool programs, and community and faith-based groups.

‘‘(c) Priority.—In selecting grant recipients under this section, the Secretary shall give—

‘‘(1) highest priority to applicants seeking assistance for programs targeting communities or populations in which—

‘‘(A) teenage pregnancy or birth rates are higher than the corresponding State average; or

‘‘(B) teenage pregnancy or birth rates are increasing; and

‘‘(2) priority to applicants seeking assistance for programs that—

‘‘(A) will benefit underserved or at-risk populations such as young males and immigrants or refugees; or

‘‘(B) will take advantage of other available resources and be coordinated with other programs that serve youth, such as workforce development programs.

‘‘(d) Use of Funds.—Funds received by an entity as a grant under this section shall be used for programs that—

‘‘(1) replicate or substantially incorporate the elements of one or more teenage pregnancy prevention programs that have been proven (on the basis of rigorous scientific research) to delay sexual intercourse or sexual activity, increase condom or contraceptive use (without increasing sexual activity), or reduce teenage pregnancy; and

‘‘(2) incorporate one or more of the following strategies for preventing teenage pregnancy: encouraging teenagers to delay sexual activity and HIV risk; interventions for sexually active teenagers; preventive health services; youth development programs; service learning programs; and outreach programs.

‘‘(e) Complete Information.—Programs receiving funds under this section that choose to provide information on HIV/AIDS or contraceptive services shall provide information that is complete and medically accurate.

‘‘(f) Relation to Abstinence-Only Programs.—Funds under this section are not intended to support abstinence-only education programs. Abstinence-only education programs that receive Federal funds through the Maternal and Child Health Block Grant, the Administration for Children and Families, the Adolescent Family Life Program, and any other program that uses the definition of ‘contraceptive education’ found in section 510(b) of the Social Security Act are ineligible for funding.

‘‘(g) Applications.—Each entity seeking a grant under this section shall submit an application to the Secretary at such time and in such manner as the Secretary may require.

‘‘(h) Matching Funds.—

‘‘(1) IN GENERAL.—The Secretary may not award a grant to an applicant for a program under this section unless the applicant demonstrates that funds derived from non-Federal sources, at least 25 percent of the cost of the program.

‘‘(2) Applicant’s Share.—The applicant’s share of the cost of a program shall be provided in cash or in kind.

‘‘(i) Supplementation of Funds.—An entity that receives funds as a grant under this section shall use the funds to supplement and not supplant funds that would otherwise be available to the entity for teenage pregnancy prevention.

‘‘(j) Evaluations.—

‘‘(1) IN GENERAL.—The Secretary shall—

‘‘(A) conduct or provide for a rigorous evaluation of 10 programs for which a grant is awarded under this section;

‘‘(B) collect basic data on each program for which a grant is awarded under this section; and

‘‘(C) upon completion of the evaluations referred to in subparagraph (A), submit to the Congress a report that includes a detailed statement of the effectiveness of grants under this section.

‘‘(2) Cooperation by Grantees.—Each grant recipient under this section shall provide such information and cooperation as may be required for an evaluation under paragraph (1).

‘‘(k) Definition.—For purposes of this section, the term ‘rigorous scientific research’ means based on a program evaluation that:

‘‘(1) Measured impact on sexual or contraceptive behavior, pregnancy or childbearing.

‘‘(2) Employed an experimental or quasi-experimental design with well-constructed and appropriate comparison groups.

‘‘(3) Had a sample size large enough (at least 100 in the treatment and 100 in the control group) and a follow-up interval long enough (at least six months) to draw valid conclusions about impact.

‘‘(l) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 2006, and such sums as may be necessary for each subsequent fiscal year.

‘‘(m) Implementation.

This section shall include health benefits and failure to

TITLe VII—ACCURACY OF CONTRACEPTIVE INFORMATION

SEC. 701. SHORT TITLE.

This title may be cited as the ‘Truth in Contraceptive Information Act’.

SEC. 702. ACCURACY OF CONTRACEPTIVE INFORMATION.

Notwithstanding any other provision of law, no Federal program that is participating in a contraceptive program shall be considered to be in breach of its contractual obligation and shall be subject to any penalties if the contraceptive provided through any federally funded education, family life education, abstinence education, comprehensive health education, or character education program shall be medically accurate and shall include health benefits and failure rates related to the use of such contraceptive.

By Mrs. HUTCHISON:
emergencies will be, we can feel certain there will be something to which we will need to respond.

Beyond the clear fiscal conservatism we need, I believe this rainy day fund would reduce the time it takes to respond to emergencies by giving Congress a less inefficient, less political process. My bill would require the contingency fund to be expended before supplemental spending for domestic disasters can be pursued, with the exclusion of defense spending.

As we seek to be more fiscally responsible, our next step forward should be this account, from which the funds we draw upon are planned for and set aside through the normal appropriations process. Our current system regularly underfunds FEMA and other agencies for emergencies, and this should end.

As we prepare for the future, it is my goal that we save and prepare for the vital needs of our people should there be another emergency. Recent events worldwide demand we be fiscally responsible and procedurally capable of this, our most important duty, the protection and safe-keeping of the American people.

By Mr. CHAMBLISS:
S. 25. A bill to promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States; to the Committee on Finance.

Mr. CHAMBLISS. Mr. President, I rise today to introduce the Fair Tax Act of 2005. This bill will promote freedom, fairness, and economic opportunity by repealing the Federal income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax.

The Fair Tax, which offers a national sales tax as the primary source of Federal revenue, is a necessary piece of tax reform that, should it pass, upon its inception would eliminate our current archaic and inefficient Tax Code and enacting a national sales tax.

The Fair Tax Act of 2005 would repeal the individual income tax, the corporate income tax, capital gains taxes, all payroll taxes, the self-employment tax and the estate and gift taxes in lieu of a 23 percent tax on the final sale of all goods and services. Elimination of these and other taxes will not only bring about equality within our tax system, it will also bring about simplicity.

This bill will also provide for tax relief for business-to-business transactions. These transactions, including used-product transactions which have already been taxed, are not subject to the sales tax, thereby abrogating any double taxation.

Social Security and Medicare benefits would remain untouched under the Fair Tax bill. There would be no financial reductions to either one of these vital programs. Instead, the source of the trust-fund revenue for these two programs would be replaced by sales-tax revenue instead of payroll-tax revenue.

Lastly, under the Fair Tax Act, every American would receive a monthly rebate check equal to spending up to the Federal poverty level according to the Department of Health and Human Services guidelines. This rebate would ensure that no American pays taxes on the purchase of necessities.

The Fair Tax creates a fairer, simpler code that allows every American the freedom to determine his or her own priorities and opportunities. Ronald Reagan once said, "I believe we really can, however, say that God did give mankind virtually unlimited gifts to invent, produce, and for that reason alone, it would be wrong for governments to devise a tax structure or economic system that suppresses and denies those gifts." I couldn't agree more.

And as long as we continue to operate under our current skewed Tax Code, we will continue to suppress and deny these unlimited gifts to the American people, who would otherwise thrive boundlessly under the Fair Tax.

By Mrs. HUTCHISON (for herself, Mr. FRIST, Ms. CANTWELL, Mr. ENSEN, Mr. ALEXANDER, and Mr. CORNYN):
S. 27. A bill to amend the Internal Revenue Code of 1986 to make permanent the deduction of State and local general sales taxes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill to permanently correct an injustice in the tax code that has harmed citizens in many States of this great Nation.

State and local governments have various alternatives for raising revenue. Some levy income taxes, some use sales taxes, and others use a combination of the two. The citizens who pay State and local income taxes have been able to offset some of what they pay by receiving a deduction on their federal taxes. Before 1986, taxpayers also had the ability to deduct their sales taxes.

The philosophy behind these deductions is simple: people should not have to pay taxes on their taxes. The money that people must give to one level of government should not also be taxed by another level of government.

Unfortunately, citizens of some States were treated differently after 1986 when the deduction for State and local sales taxes was eliminated. This discriminated against those living in States, such as my home State of Texas, with no income taxes. It is important to remember the lack of an income tax does not mean citizens in these States do not pay State taxes; these taxes are simply collected differently.

It is unfair to give citizens from some States a deduction for the revenue they provide their State and local governments, while not doing the same for citizens from other States. Federal tax law should not treat people differently on the basis of State residence and differing tax collection methods, and it should not provide an incentive for States to establish income taxes over sales taxes.

This discrepancy had a significant impact on Texas. According to the Texas Comptroller, the ability of taxpayers to deduct their sales taxes will lead to an additional $740 million staying in the hands of Texans each year, the creation of more than 16,500 new jobs, and the addition of $920 million in State economic activity.

Last year, we took an important step by reinstating a sales tax deduction. As a result, everyone now has the opportunity to deduct either their State and local income taxes or sales taxes. For the 55 million of us in the 7 States with a sales tax but no income tax, this means the tax code no longer discriminates against us. Unfortunately, the new deduction is only in effect for 2004 and 2005. We must act to prevent the inequity from returning.

The legislation I am offering today will fix this problem for good by making the State and local sales tax deduction permanent. This will permanently end the discrimination suffered by my fellow Texans and citizens of other States who do not have the option of an income tax deduction.

The legislation is about reestablishing equity to the tax code and defending the important principle of eliminating taxes on taxes. I hope my fellow Senators will support this effort.

I ask unanimous consent that the test of the bill be printed in the RECORD.

Ms. CANTWELL. Mr. President, today I am joining my good friend the Senator from Texas, (Mrs. HUTCHISON), and the Senator from Tennessee, the Majority Leader, Mr. Frist, in legislation to permanently extend the State sales tax deduction. This bill aims to make permanent legislation that the Congress passed and the President signed into law last year on October 22, 2004 as a provision of the JOBS Act. It is a change to the tax code that I have worked to see enacted since coming to the U.S. Senate, and one I want to maintain.

The JOBS Act reconstituted, for a period of 2 years, the ability of taxpayers to deduct State and local sales taxes just as they would State and local income taxes. Residents of States such as Washington that do not have income taxes would otherwise have to pay taxes on their taxes. This tax deduction was eliminated against those living in States, such as my home State of Texas, with no income taxes. It is important to remember the lack of an income tax does not mean citizens in these States do not pay State taxes; these taxes are simply collected differently.

I believe we really can, however, say that God did give mankind virtually unlimited gifts to invent, produce, and for that reason alone, it would be wrong for governments to devise a tax structure or economic system that suppresses and denies those gifts." I couldn't agree more.
taxes, but have State sales taxes, had not been able to do this since the 1986.

Make no mistake about it: permanently extending the sales tax deduction is a tax cut for Washington State taxpayers. Such a cut will strengthen our economy and fundamentally restore basic tax fairness.

When the Federal income tax was first imposed in 1913, Congress allowed taxpayers to deduct State and local sales they so they would not be taxed on once at the State level and then, again, at the Federal level in the same calendar year.

In 1986, after 74 years of precedent, this tax equity abruptly ended. Taxpayers from States without income taxes were given a raw deal when Congress made a budgetary squeeze play and ended the tax deduction for State sales taxes.

For States like Washington, where sales tax revenues are nearly 60 percent of the State budget, the impact is immense. The loss to Washington State taxpayers in 2004 alone, is estimated to be $500 million.

Washington taxpayers waited 18 years to get the Federal government to correct the unique burden on them that amounts to requiring them to pay taxes twice on the same money. Now that the burden has been lifted for 2 years, with thanks to this body and the President, Washington taxpayers are now looking for—and must have—permanent relief in the tax code with regard to their ability to deduct State and local sales taxes from their Federal income tax.

As I mentioned, this issue has been a primary one for me on behalf of the people I serve. In fact, when I became a member of this body in the 107th Congress, one of my first legislative acts was to cosponsor sales tax deduction legislation that at the time was introduced by the former Senator from Tennessee, Mr. Thompson. In the 108th Congress, Senator HUTCHISON and I carried the banner as the lead sponsors of similar legislation, the core of which we saw enacted into law for a 2-year period.

I am here once again in the 109th Congress with the Senator from Texas, Mrs. HUTCHISON, on the heels of a victory for a two-year reprieve for our constituents, looking, now, for permanent equity in the tax code. I look forward to continuing to work with Senator HUTCHISON, as well as Senator FRUST and others, in moving this sales tax deduction legislation forward in the coming months.

Only by making the two-year law permanent will we be able to see to it that taxpayers from Washington State, or any other State, are not unfairly singled out to pay higher taxes. I urge prompt action on this measure.

By Mrs. FEINSTEIN (for herself and Mr. LEAHY):

S. 29. A bill to amend title 18, United States Code, to limit the misuse of social security numbers, to establish criminal penalties for such misuse, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise on behalf of myself and Senator LEAHY to add my designation to protect one of America's most valuable but vulnerable assets: Social Security numbers. This is the second Congress in a row that I have introduced this legislation, to restrict the sale and display of Social Security numbers.

We have just entered a New Year, and unfortunately we can say with certainty that it will be another year in which millions of Americans will be victimized by identity theft, a crime so often linked to unprotected Social Security numbers. It is my hope that Congress will finally approve this legislation this year. For the benefit of all Californians and of all Americans, the Senate needs to take this step, to stop those who would do us harm by taking our personal identities.

The goal of this bill is straightforward—to get Social Security numbers out of the public domain, so that identity thieves can't get them. Toward this goal, this bill will do the following.

The heart of this bill prohibits anyone from selling or displaying an individual's Social Security number to the general public without the individual's express consent.

But in recognition that sometimes there are legitimate needs for Social Security numbers, the bill also makes exceptions. Perhaps the most important exception allows the sale of Social Security numbers between businesses, or between the government and businesses. The bill also makes exceptions for law enforcement, national security, compliance with other laws, and a few other areas.

Additionally, this bill prohibits government entities from displaying Social Security numbers on public records that are posted on the Internet or in other electronic media after the legislation's effective date. It also prohibits governments from printing Social Security numbers on government checks.

This bill also punishes people who fraudulently use Social Security numbers to obtain benefits that they do not deserve.

Finally, this law has teeth to enforce its provisions. It gives the Attorney General the authority to issue civil penalties of up to $5,000 for people who misuse Social Security numbers. It also creates a criminal penalty, of up to five years in prison, for anyone who obtains another person's Social Security number for the purpose of locating or identifying that individual with the intent to physically harm that person. And it lets the victims of identity theft sue in court to recover their loss from the person who causes it.

Mr. President, the need for this bill should be clear. Theft of a Social Security number can be especially devasting, because that piece of information has become a de facto universal identifier in American society.

Despite the widespread use of Social Security numbers, the General Accounting Office reported recently that, as a single federal law regulates the overall use or restricts the disclosure of SSNs by governments.” (Source: Social Security numbers: SSNs are Widely Used by Government and Could Be Better Protected, GAO-02-691T (page 5). As a result, the use of Social Security numbers is regulated by an inconsistent and insufficient patchwork of state and federal laws, that often leaves the numbers in plain view of the whole world.

One recent book on privacy in the United States documents how far the use of Social Security numbers has spread beyond its original purpose, when they were created in 1936, of tracking American workers' earnings and benefits. According to the book: “The SSN began to be used for military personnel, legally admitted aliens, anyone receiving or applying for federal benefits, food stamp program eligibility, draft registration, and federal loans. State and local governments, as well as private sector entities such as schools and banks, began to use SSNs as well—for drivers' license, birth certificates, medical donations, juror selection, worker's compensation, occupational licenses, and marriage licenses.” (Source: Daniel Solove and Marc Rotenberg, Information Privacy Law, Aspen Publishers, 2004, at page 447–48.

It isn't surprising, then, that the sale of Social Security numbers is proceeding at a furious pace. According to the GAO in a report that it released earlier this year, Internet-based information resellers who we accessed also obtain SSNs from their customers and scour public records and other publicly available information to provide the information to persons willing to pay a fee.” (Source: Social Security numbers: The Entities Routinely Obtain and Use SSNs, and Laws Limit the Disclosure of This Information (2004, Report Number GAO-04-11, on Highlights Page).


The important role that this legislation will in protecting the identity of Americans, let me offer a few facts.
In the 107th Congress, I introduced S. 848 and S. 3100.
In the 108th Congress, I introduced S. 228, S. 745, and S. 2801.

None of these bills moved. Today, I stand before you yet again, to introduce for the 109th time a bill to take steps that will make it more difficult for thieves to steal this precious resource. This issue does not concern Republican government or Democratic government; this is an issue of good government.

Last year, the President signed into law a bill that I helped to author, to increase penalties for those who steal the identities of others. But punishment is not enough. We need to stop identity theft from occurring in the first place. This information should have been under lock and key long ago. It is time for us to act. Thank you Mr. President.

I ask for unanimous consent that the text of the legislation directly follow this statement in the RECORD.

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

S. 29
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Social Security Number Misuse Prevention Act”.

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

1. Short title; table of contents
2. Findings
3. Prohibition of the display, sale, or purchase of social security numbers
4. Application of prohibition of the display, sale, or purchase of social security numbers to public records
5. Rulemaking authority of the Attorney General
6. Treatment of social security numbers on government documents
7. Limits on personal disclosure of a social security number
8. Extension of civil monetary penalties for misuse of a social security number
9. Criminal penalties for the misuse of a social security number
10. Civil actions and civil penalties
11. Federal injunctive authority

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The inappropriate display, sale, or purchase of social security numbers creates a substantial risk of physical, emotional, or financial harm to the individuals to whom those numbers are assigned.

(2) Consequently, this Act provides each individual that has been assigned a social security number, some degree of protection from the display, sale, and purchase of that number in any circumstance that might facilitate unlawful conduct.

SEC. 3. PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS.

(a) PROHIBITION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1028 the following:

"§1028A. Prohibition of the display, sale, or purchase of social security numbers"

"(a) DEFINITIONS.—In this section:

(1) DISPLAY.—The term ‘display’ means intentionally communicate or otherwise make available (on the Internet or in any other manner) to the general public an individual’s social security number.

(2) PERSON.—The term ‘person’ means any individual, partnership, corporation, trust, estate, cooperative, association, or any other entity.

(3) PURCHASE.—The term ‘purchase’ means providing directly or indirectly, anything of value in exchange for a social security number.

(4) SALE.—The term ‘sale’ means obtaining, directly or indirectly, anything of value in exchange for a social security number.

(5) STATE.—The term ‘State’ means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

(6) LIMITATION ON SALE OR PURCHASE.—Except as provided in section 1028H, no person may display any individual’s social security number to the general public without the affirmatively expressed consent of the individual.

(7) LIMITATION ON SALE OR PURCHASE.—Except as otherwise provided in this section, no person may sell or purchase any individual’s social security number without the affirmatively expressed consent of the individual.

(d) PREREQUISITES FOR CONSENT.—In order for consent to exist under subsection (b) or (c), the person displaying or seeking to display, selling or attempting to sell, or purchasing or attempting to purchase, an individual’s social security number shall:

(1) inform the individual of the general purpose for which the number will be used, the types of persons to whom the number will be available, and be able to perform transactions permitted by the consent; and

(2) obtain the affirmatively expressed consent (electronically or in writing) of the individual.

(e) EXCEPTIONS.—Nothing in this section shall be construed to prohibit or limit the
display, sale, or purchase of a social security number—

(a) DEFINITION.—In this section, the term 'public record' means—

(1) any public record first posted onto the Internet or provided in an electronic medium by, or on behalf of, a governmental entity after the date of enactment of this section, if such number is required to be redacted from such public record;

(2) any public record in non-federal public records that contains social security numbers, including the utility for law enforcement purposes and the protection of the health or safety of an individual in an emergency situation;

(3) any public record that contains social security numbers extracted from public records, including the utility for law enforcement purposes and the protection of the health or safety of an individual in an emergency situation;

(4) any public record that contains social security numbers in a routine manner or as incidental to a business, commercial user to display or sell a social security number as permitted, required, authorized, or excepted under any Federal law; or

(5) any public record that contains social security numbers that are maintained in a routine manner or as incidental to a business, commercial enterprise, or private non-profit organization.

(b) LIMITATION.—Nothing in this section shall prohibit the display, sale, or purchase of social security numbers for purposes that—

(1) are incidental to, and in the course of, the investigation of fraud and the enforcement of a child support obligation;

(2) are permitted, required, authorized, or excepted under any Federal law; or

(3) are included in a detailed description of the uses allowed as of the date of enactment of this Act, except as limited by the Attorney General in accordance with paragraph (2).

(c) JUDICIAL REVIEW.—Nothing in this section shall preclude judicial review of actions taken under this section.

(d) LITIGATION.—Nothing in this section shall affect any litigation that is pending on the date of enactment of this Act.

(e) REPORT.—Not later than 60 days after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include a detailed description of the activities and results of the study and recommendations for such legislative action as the Comptroller General considers appropriate. The report, at a minimum, shall include—

(A) a review of the uses of social security numbers in non-federal public records;

(B) a review of the mechanisms in which public records are stored (with separate reviews for both paper records and electronic records);

(C) a review of the advantages or utility of public records that contain social security numbers, including the utility for law enforcement, and for the promotion of homeland security;

(D) a review of the disadvantages or drawbacks of public records that contain social security numbers, including criminal activity, compromised personal privacy, or threats to homeland security;

(E) the costs and benefits for State and local governments of removing social security numbers from public records, including the current and proposed procedures for removing social security numbers from public records; and

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and prepare a report on social security numbers in non-federal public records. In developing the report, the Comptroller General shall consult with the Administrative Office of the United States Courts, State and local governments that store, maintain, or disseminate public records, and other stakeholders, including members of the private sector who routinely use public records that contain social security numbers.

(g) IMPROVING AMERICAN CREDIT HISTORY.—The chapter analysis for chapter 47 of title 18, United States Code (as amended by section 1(a)(2)), is amended by inserting after the item relating to section 1028A, the following:

"(2) section 1028A shall apply to public records.
(F) an assessment of the benefits and costs to businesses, their customers, and the general public of prohibiting the display of social security numbers on public records (with separate consideration for both paper records and electronic records).

(c) EFFECTIVE DATE.—The prohibition with respect to electronic versions of names and social security numbers by the general public, while permitting employees within a business; and the procedures, and technologies to prevent or crime.

(b) PROHIBITION OF INMATE ACCESS TO SOCIAL SECURITY ACCOUNT NUMBERS.—(1) IN GENERAL.—Section 405(a)(2)(C) of the Social Security Act (42 U.S.C. 405(a)(2)(C)) (as amended by subsection (b)) is amended by adding at the end the following: (xii) No Federal, State, or local agency may enquir, or enter into contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the social security account numbers of any individual unless this section otherwise directs, and for the purposes of this clause, the term ‘prisoner’ means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual’s conviction of a criminal offense.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to employment of prisoners, or entry into contract with prisoners, after the date that is 1 year after the date of enactment of this Act.

SEC. 7. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS. (a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1395(q)) is amended by adding at the end the following: a) SOCIAL SECURITY ACCOUNT NUMBERS ON CHECKS ISSUED FOR CONSUMER TRANSACTIONS. (a) IN GENERAL.—The Social Security Act (42 U.S.C. 405(a)(2)(C)(x)), as added by paragraph (1), occurs on or after the date that is 6 years after the date of enactment of this Act. *(b) LIMITATION ON CLASS ACTIONS.—(1) IN GENERAL.—On receiving notice under paragraph (1), the Attorney General shall have the right to intervene in the action that is the subject of the notice. (2) SERVICE OF PROCESS.—Before filing an action under paragraph (1), the Attorney General shall provide notice and a copy of the complaint to the Attorney General at the same time as the State attorney general files the action. (3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to— (A) conduct investigations; (B) administer oaths or affirmations; or (C) compel the attendance of witnesses or the production of documentary and other evidence. (4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General for violation of a practice that is prohibited under this section, no State may, during the pendency of that action, institute an action under paragraph (1) against any defendant named in the complaint that action for violation of that practice. (5) VENUE; SERVICE OF PROCESS.—(a) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code. (b) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant— (i) is an inhabitant; or (ii) may be found. (c) SUNSET.—This section shall not apply on or after the date that is 6 years after the effective date of this section.

(b) EVALUATION AND REPORT.—Not later than the date that is 6 years and 6 months after the date of enactment of this Act, the Attorney General, in consultation with the chairman of the Federal Trade Commission, shall issue a report evaluating the effectiveness and efficiency of section 1150A of the Social Security Act (42 U.S.C. 1395(q)), as added by subsection (a) and shall make recommendations to Congress as to any legislative action determined to be necessary or advisable with respect to such section, including whether to reauthorize such section.
(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to requests to provide a social security number occurring after the date that is 1 year after the date of enactment of this Act.

SEC. 8. EXTENSION OF CIVIL MONETARY PENALTIES FOR MISUSE OF A SOCIAL SECURITY NUMBER.

(a) TREATMENT OF WITHHolding OF Material Fact.—

(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a-8(a)(1)) is amended—

(A) by striking “who” and inserting “who”—;

(B) by striking “makes” and all that follows through “shall be subject to” and inserting the following—

“(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;”

(B) makes such a statement or representation for such use with knowing disregard for the truth; or

(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure there is misleading, shall be subject to—

(C) by inserting “or each receipt of such benefits while withholding disclosure of such fact” after “each such statement or representation”; and

(D) by inserting “or because of such withholding of disclosure of a material fact” after “because of such statement or representation”;

(E) by inserting “or such a withholding of disclosure” after “such a statement or representation”;

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—The first sentence of section 1129(a)(a) of the Social Security Act (42 U.S.C. 1320a-8a(a)) is amended—

(A) by striking “who” and inserting “who”—; and

(B) by striking “makes” and all that follows through “shall be subject to” and inserting—

“(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;”

“(2) makes such a statement or representation for such use with knowing disregard for the truth; or

“(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure there is misleading, shall be subject to—

(d) DISCLOSURE OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of the Social Security Act (42 U.S.C. 1320a-8e(2)(B)) is amended—

(1) in paragraph (2), by striking “charged or false statement”;

(2) in the second sentence, by striking “the amount referred to in subsection (a) or (b) of section 205(c)(2)(C)” and inserting “the amount referred to in subsection (a) or (b) of section 205(c)(2)(C), or any amounts recovered after the date of enactment of this Act.”;

(e) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of the Social Security Act (42 U.S.C. 1320a-8b(3)(A)) is amended by striking “charging fraud or false statement”;

(2) Section 1129(b)(1) of the Social Security Act (42 U.S.C. 1320a-8b(1)) is amended by striking “and representations” and inserting “representations, or actions”.

(3) Section 1129(e)(1)(A) of the Social Security Act (42 U.S.C. 1320a-8e(1)(A)) is amended by striking “statement or representation referred to in subsection (a) was made” and inserting “violation occurred”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to violations of sections 1129 and 1129A of the Social Security Act (42 U.S.C. 1320a-8 and 1320a-8a), as amended by this section, committed after the date of enactment of this Act.

(2) VIOLATIONS BY GOVERNMENT AGENTS IN POSSESSION OF SOCIAL SECURITY NUMBERS.—Section 1129(e)(2)(B) of the Social Security Act (42 U.S.C. 1320a-8a(3)(I)), as added by subsection (b), shall apply with respect to violations of that section occurring on or after the effective date described in section 3(c).

SEC. 9. CRIMINAL PENALTIES FOR THE MISUSE OF A SOCIAL SECURITY NUMBER.

(a) PROHIBITION OF WRONGFUL USE AS PERSONAL IDENTIFICATION NUMBER.—No person may obtain any individual’s social security number for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for any illegal purpose.

(b) CRIMINAL SANCTIONS.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) in paragraph (8), by inserting “or” after the semicolon; and

(2) by inserting after paragraph (8) the following:

“(9) except as provided in subsections (e) and (f) of section 1026A of title 18, United States Code, knowingly and willfully displays, sells, or purchases (as those terms are defined in section 1026A(a) of title 18, United States Code) any individual’s social security account number without having met the prerequisites for consent under section 1026A(d) of title 18, United States Code; or

“(10) obtains any individual’s social security number for the purpose of locating or identifying the individual with the intent to injure or to harm that individual, or to use the identity of that individual for an illegal purpose.”

SEC. 10. CIVIL ACTIONS AND CIVIL PENALTIES.

(a) CIVIL ACTION IN STATE COURTS.—

(1) IN GENERAL.—Any individual aggrieved by an act of any person in violation of this Act or any amendments made by this Act, if otherwise permitted by the laws or rules of the court of a State, bring in an appropriate court of that State—

(A) an action to enjoin such violation;

(B) an action to recover for actual monetary loss from such a violation, or to receive up to $500 in damages for each such violation, whichever is greater; and

(C) both such actions.

It shall be an affirmative defense in any action brought under this paragraph that the defendant has established and implemented due care, reasonable procedures to effectively prevent violations of the regulations prescribed under this Act.

(b) STATUTE OF LIMITATIONS.—An action may be commenced under this subsection not later than the earlier of—

(A) 5 years after the date on which the alleged violation occurred; or

(B) 3 years after the date on which the alleged violation was or should reasonably have been discovered by the aggrieved individual.
The exchange rate conversion is often the mechanism for this abusive practice.

Second, remittances are currently not subject to the requirements set by Federal consumer protection law, including the disclosure of fees. There is no requirement that a remittance transfer provider disclose to the consumer the exchange rate fee that will be applied in the transaction. Without the exchange rate known in advance, the company charging, a consumer has little ability to gauge accurately the full cost of sending a remittance.

As Sergio Bendixen, a leader researcher of public opinion and behavior, with a specialty among Hispanic consumers, testified before the Banking Committee: “an overwhelming majority of Hispanic immigrants are unaware that their families in Latin America receive less money than what they send from the United States.” Further, a remittance sender cannot effectively shop between remittance transfer providers. The lack of basic information limits the amount of competition in this market.

The legislation I am introducing today extends basic consumer rights to those who send remittances. Further, by requiring clear and understandable disclosures to the remittance sender of the cost of the remittance, as presenting to the consumer the full cost of sending money, the legislation will enhance competition, which in turn should lead to an overall decrease in the cost of sending remittances. As Sergio Bendixen testified to the Banking Committee, “Full disclosure should unleash market forces that, hopefully, will result in a significant reduction in the cost of sending cash remittances.”

This legislation amends the Electronic Fund Transfer Act, EFTA, which is the primary vehicle for providing basic protections to most persons who engage in electronic transactions, to cover remittances, and to provide the basic rights associated with EFTA to remittance transactions. The two most important components of EFTA are the requirement of full disclosure of fees and the establishment of a process for the resolution of transactional errors. These rights have been an integral part of the regulations that govern our banking infrastructure since EFTA’s enactment in 1978. The new legislation will build upon the success of EFTA by extending these basic rights to remittance senders.

The cornerstone of this legislation is the requirement that remittance transfer providers make three key disclosures to their consumers: One, the total cost of the remittance, represented in a single amount; two, the total amount of currency that will be sent to the designated recipient; and three, the promised date of delivery for the remittance. These disclosures follow the core recommendations of the Inter-American Development Bank, which in its publication, Remittances to Latin America and the Caribbean: Goals and Recommendations,
The total cost disclosure will include the cost of the exchange rate conversion as well as all up-front fees. This single item will both give consumers a more accurate representation of the cost of each remittance transaction and allow consumers to more effectively compare costs between remittance transfer providers.

In order to calculate the cost of the exchange rate conversion, which is part of the total cost, the legislation requires that the Treasury Department post on its website, on a daily basis, the exchange rate for all currencies. At present the Treasury receives this information on a daily basis, but posts it only on a quarterly basis on the Treasury website. By posting the information daily, the Treasury could create a uniform and credible source for exchange rate information.

To calculate the cost to the consumer of the exchange rate differential, remittance transfer providers will use the difference between the previous business day’s exchange rate, as posted on the Treasury website, and the exchange rate that the remittance transfer provider offers. Using the exchange rate posted by the Treasury, the consumer can be assured that the exchange rate cost is calculated on a uniform base. When the exchange rate cost is disclosed to the consumer as part of the total cost of the remittance transfer, the consumer will be better able to understand the full cost of the transaction and to shop between different remittance transfer providers.

In addition to fee disclosure requirements, this legislation establishes an error resolution mechanism for consumers whose remittance transactions experience an error. Consumers are protected by EFTA, and now this right will be extended to cover consumers who send remittances as well. Further, the legislation establishes an error resolution mechanism for remittance transfer errors that is responsive to the different types of errors that can occur in a remittance transaction and is reflective of the unique characteristics of the remittance market and its participants.

Under this legislation, a consumer has one year from the date that the remittance transfer company promised to deliver the money to notify the company that an error has occurred. The company is then required to resolve the error within 30 days. To resolve the error, the company must either 1. refund the full amount of the remittance that was not properly transferred, 2. refund the full amount of the remittance that was not properly transferred, 3. demonstrate to the consumer that there was no error, or 3. demonstrate to the consumer that there was no error. The Federal Reserve Board is also granted the authority to establish additional remedies for specific situations that cannot be addressed by the three specific remedies that are described in the legislation.

It is urgent that we continue to encourage efforts to bring those who send remittances into the financial mainstream. In his testimony to the Banking Committee, Dr. Orozco pointed out that, “About two-thirds of immigrants cash their salary checks in check cashing stores that charge exorbitant fees. Many of these same immigrants then use what remains of their income to send remittances back home.” In this common scenario, immigrants are penalized in both receiving and sending their earnings. In order to further help those banks and other providers currently serving the unbanked, the legislation that I am introducing today requires that the Federal banking agencies and the National Credit Union Administration provide guidelines to financial institutions regarding the offering of lower remittance transaction fees and no-cost or low-cost basic consumer accounts. This legislation also amends the Federal Credit Union Act to allow credit unions to offer remittances and to cash checks for persons who are in their field of membership. The Act also requires credit unions to offer remittance transaction services. The guidelines set out in the legislation will help educate the financial services industry about the importance and potential profitability of providing these services.

The sending of remittances in a fair and scrupulous manner is likely to be profitable for the institution that provides the remittance service, and indeed we have begun to see aggressive moves into the remittance market by both the checking institutions and by traditional credit unions. Individuals who send remittances but are currently unbanked represent an expanded and profitable customer base for financial institutions. By its very nature, the issues involved in sending remittances affect both the United States and other nations. As Professor Susan Martin of Georgetown University, who also testified at our hearing, told the Banking Committee: “Until relatively recently, many credit unions and banks have tended to dismiss the importance of remittances or emphasize only their negative aspects. . . . but recent work on remittances show a far more complex and promising picture. . . . Experts now recognize that remittances have far greater positive impact on communities in developing countries than previously acknowledged.”

In fact, the size of the remittance market is such that for six Central American and Caribbean nations—Nicaragua, Haiti, El Salvador, Guatemala, Honduras, and Jamaica—remittances constitute more than 10 percent of GDP; Haiti and Jamaica receive more in remittances than in revenues from trade. The World Bank estimates that Mexico receives more in remittances than it does in foreign direct investment. Reducing the costs of remittances is in the interest of both the United States and the countries that receive them.

Given the growing importance of annual remittance flows, we must work to increase their efficiency. One mechanism for accomplishing this objective, and for increasing the ability of financial institutions to offer remittances, is linking our banking infrastructure with the banking infrastructures of other nations. The Federal Reserve operates an international automated clearing house system, ACHI, that is currently linked to seven countries, of which the vast majority are highly developed trading partners that receive relatively low levels of remittances. The ACHI was recently connected to Mexico, however, which will allow financial institutions throughout the United States, especially those institutions of smaller size, to provide remittance services more easily and cheaply to Mexico. This legislation directs the Fed to take into account the importance of remittances flows to other countries as it continues to expand the ACHI system. Linking the ACHI to countries that receive significant remittances has the potential to result in great benefits to consumers who send remittances from America as well as to countries that receive the remittances around the world.

Finally, I am acutely aware of the need for better and more broadly available financial literacy and education for all Americans. I am pleased to report that in the last Congress, as part of the reauthorization of the Fair Credit Reporting Act, we established a Presidential Financial Literacy and Education Commission, which is charged with developing a national effort to promote financial literacy and education. The Act addresses the issue of remittances by including in the Commission’s work a focus on increasing the “awareness of the particular financial needs and financial transactions, such as the sending of remittances, of consumers who are targeted in multilingual financial literacy and education programs.” The legislation that I am introducing today builds on that framework by instructing the banking and credit union regulators to work with the Commission to specifically increase the financial education efforts that target those persons who send remittances.

Millions of Americans send remittances to family members around the world, for a total far exceeding the $30 billion that goes to Latin America alone. Yet almost all of these transactions take place without the basic consumer rights and protections that apply to other electronic transfers. Consumers who send remittances are often immigrants and workers who earn modest wages, who are not aware of the full costs of each remittance,
and as a practical matter have no way of finding out, and, as a consequence, in the aggregate pay billions of dollars in costs and hidden fees. They do not have available to them an established procedure for resolving transactional errors. This legislation rectifies this situation by extending to remittances the basic consumer rights established in EFTA. The bill also contains provisions that, when implemented, will allow more insured financial institutions to provide remittance services and potentially at lower costs to consumers. The bill contains important provisions to help bring the unbanked—men and women without an account at a bank or credit union—into the financial mainstream. Taken together, these measures will increase transparency, competition and efficiency in the remittance market, while helping to bring more Americans into the financial mainstream.

A broad range of community, civil rights, and consumer groups have endorsed this legislation including the National Council of La Raza, the Mexican American Legal Defense and Educational Fund, the League of United Latin American Citizens, the Leadership Conference on Civil Rights, United Farm Workers of America, the Farmworker Justice Fund, the NAACP, Casa de Maryland, the National Federation of Filipino American Associations, the Asian Pacific American Labor Alliance, National Asian Pacific American Legal Consortium, Consumers Union, Consumer Federation of America, the National Association of Consumer Advocates, The Credit Union National Association and the World Council of Credit Unions, both of whom provide remittance services, have also endorsed this legislation.

I ask unanimous consent that the text of International Remittance Consumer Protection Act be printed in the RECORD.

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

S. 31

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "International Remittance Consumer Protection Act of 2005".

SEC. 2. TREATMENT OF REMITTANCE TRANSFERS.

(a) In GENERAL.—The Electronic Fund Transfer Act (15 U.S.C. 1893 et seq.) is amended—

(1) in section 902(b), by inserting "and remittance" after "electronic fund";

(2) by redesignating sections 918, 919, 920, and 921 of title 18 as sections 919, 920, 921, and 922, respectively; and

(3) by inserting after section 917 the following:

"SEC. 918. REMITTANCE TRANSFERS. —

(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS. —

'(1) IN GENERAL.—Each remittance transfer provider shall make disclosures to consumers, as specified by this section and augmented by regulation of the Board.

'(2) SPECIFIC DISCLOSURES. In addition to any other disclosures applicable under this title, a remittance transfer provider shall clearly and conspicuously disclose, in writing and in the same language as used in the financial transaction receipt, which may be, to each consumer requesting a remittance transfer—

'(A) at the time at which the consumer makes the request, and prior to the consumer making any payment in connection with the transaction—

'(i) the total amount of currency that will be required to be tendered by the consumer in connection with the remittance transfer;

'(ii) the amount of currency that will be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds will be exchanged;

'(iii) the total remittance transfer cost, identified as the 'Total Cost'; and

'(iv) an itemization of the charges included in clause (iii), as determined necessary by the Board; and

'(B) at the time at which the consumer makes payment in connection with the remittance transfer, if any—

'(i) a receipt showing—

'(I) the information described in subparagraph (A);

'(II) the promised date of delivery;

'(III) the name and telephone number or address of the designated recipient; and

'(iv) a notice containing—

'(I) information about the rights of the consumer under this section to resolve errors; and

'(II) appropriate contact information for the remittance transfer provider and its State licensees or State or Federal or State regulator, as applicable.

'(3) EXEMPTION AUTHORITY.—The Board may, by rule, and subject to subsection (d)(3), permit a remittance transfer provider—

'(A) to satisfy the requirements of paragraph (2)(A) orally if the transaction is conducted entirely by telephone;

'(B) to satisfy the requirements of paragraph (2)(B) by mailing the documents required under subparagraph (A) with the request for a remittance transfer, if any, not later than 1 business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone;

'(C) to satisfy the requirements of subparagraphs (A) and (B) of paragraph (2) with a written disclosure, but only to the extent that the information provided in accordance with paragraph (2)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer.

'(b) FOREIGN LANGUAGE DISCLOSURES.—The disclosures required under this section shall be made in English and in the same language principally used by the remittance transfer provider, to advertise, solicit, or market, either orally or in writing, at that office, if other than English.

'(c) REMITTANCE TRANSFER ERRORS.—(1) ERROR RESOLUTION. —

'(A) IN GENERAL.—If a remittance transfer provider receives oral or written notice from the consumer within 90 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including that the full amount of the funds to be remitted was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection.

'(B) Notice to CONSUMER. —Within 90 days after the date of receipt of a notice from the consumer pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the consumer—

'(i) refund to the consumer the total amount of funds tendered by the consumer in connection with the remittance transfer which was not properly transmitted;

'(ii) make available to the designated recipient the amount of funds tendered by the consumer, without additional cost to the designated recipient or to the consumer, the amount appropriate to resolve the error;

'(iii) provide such other remedy, as determined appropriate by rule of the Board, for the protection of consumers; or

'(iv) demonstrate to the consumer that there was no error.

'(2) RULES.—The Board shall establish, by rule, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect consumers from such errors.

'(d) APPLICABILITY OF OTHER PROVISIONS OF LAW. —

'(1) APPLICABILITY OF TITLE III AND TITLES III PROVISIONS.—A remittance transfer provider may only provide remittance transfers if such provider is in compliance with the requirements of section 5300 of title 31, United States Code, and section 1900 of title 18, United States Code, as applicable.

'(2) APPLICABILITY OF OTHER PROVISIONS OF LAW. —A remittance transfer that is not an electronic fund transfer, as defined in section 903, shall not be subject to any of sections 905 through 917. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title that are otherwise applicable to electronic fund transfers under this title.

'(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

'(A) to affect the application to any transaction to any remittance transfer provider to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder; or

'(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (2) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any provisions to which such transfers are referred to in subparagraph (A) or any regulations promulgated thereunder.

'(e) PUBLICATION OF EXCHANGE RATES.—The Secretary of the Treasury shall make available to the public in electronic form, not later than noon on each business day, the dollar exchange rate for all foreign currencies, using any methodology that the Secretary determines appropriate, which may include the methodology used pursuant to section 613(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2363(b)).

'(f) AGENTS AND SUBSIDIARIES.—A remittance transfer provider shall be liable for any violation of this section by any agent or subsidiary of that remittance transfer provider.

'(g) DEFINITIONS.—As used in this section—

'(1) the term 'exchange rate fee' means the difference between the total dollar amount transferred, valued at the exchange rate offered by the remittance transfer provider, and the total dollar amount transferred, valued at the exchange rate posted by the Secretary of the Treasury in accordance with section 613(b) of the Trade Agreements Act of 1979 (19 U.S.C. 2141(c)).

'(3) the term 'electronic signature' means the electronic (as defined in section 112 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7002(d))))
transfer of funds at the request of a consumer located in any State to a person in another country that is initiated by a remittance transfer provider, whether or not the consumer is an account holder of the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 918.

(3) ‘‘Remittance transfer provider’’ means any person or financial institution that provides remittance transfers on behalf of consumers in the normal course of its business, whether or not the consumer is an account holder of that person or financial institution;

(4) ‘‘the term ‘State’ means any of the several States, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States; and

(5) the term ‘total remittance transfer cost’ means the total cost of a remittance transfer expressed in dollars, including all fees charged by the remittance transfer provider, including the exchange rate fee.

(b) EFFECT ON STATE LAWS.—Section 919 of the Electronic Fund Transfer Act (12 U.S.C. 1859) is amended to read as follows:

(1) in the first sentence, by inserting ‘‘or remittance transfers (as defined in section 918)’’ after ‘‘transfers’’; and

(2) in the fourth sentence, by inserting ‘‘, or remittance transfer providers (as defined in section 918), in the case of remittance transfers,’’ after ‘‘financial institutions’’.

SEC. 3. FEDERAL CREDIT UNION ACT AMENDMENT.

Paraphrase (12) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757(12)) is amended to read as follows:

‘‘(12) in accordance with regulations prescribed by the Board—

(A) to provide remittance transfers, as defined in section 918(b) of the Electronic Fund Transfer Act, to persons in the field of membership;

and

(B) to cash checks and money orders for persons in the field of membership for a fee.’’

SEC. 4. AUTOMATED CLEARINGHOUSE SYSTEM.

(a) EXPANSION OF SYSTEM.—The Board of Governors of the Federal Reserve System shall work with the Federal reserve banks to expand the use of the automated clearinghouse system for remittance transfers for foreign countries, with a focus on countries that provide remittance transfers from the United States, based on—

(1) the number, volume, and sizes of such transfers;

(2) the significance of the volume of such transfers, relative to the external financial flows of the receiving country; and

(3) the feasibility of such an expansion.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, and on April 30 biennially thereafter, the Board of Governors of the Federal Reserve System shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the status of the automated clearinghouse system and its progress in complying with the requirements of this section.

SEC. 5. EXPANSION OF FINANCIAL INSTITUTION PROVISION OF REMITTANCE TRANSFERS.

(a) PROVISION OF GUIDELINES TO INSTITUTIONS.—Each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and

no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(b) CONTENT OF GUIDELINES.—Guidelines provided to financial institutions under this section shall include—

(1) information as to the methods of providing remittance transfer services;

(2) the potential economic opportunities in providing low-cost remittance transfers; and

(3) the potential value to financial institutions of broadening the financial bases to include persons that use remittance transfers.

(c) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—The Treasury and each agency referred to in subsection (a) shall, as part of their duties as members of the Financial Literacy and Education Commission, assist that Commission in improving the financial literacy and education of consumers who send remittances.

SEC. 6. STUDY AND REPORT ON REMITTANCES.

(a) STUDY.—The Comptroller General of the United States shall conduct a study and analysis of the remittance transfer system, including an analysis of its impact on consumers.

(b) AREAS OF CONSIDERATION.—The study conducted under this section shall include, to the extent that information is available—

(1) an estimate of the total amount, in dollars, transmitted from individuals in the United States to other countries, including per country data, historical data, and any available projections concerning future remittance levels;

(2) a comparison of the amount of remittance funds, in total and per country, to the amount of foreign trade, bilateral assistance, and multi-development bank programs involving each of the subject countries;

(3) an analysis of methods used to remit the funds, with estimates of the amounts remitted through each method and descriptive statistics for each method, such as market share, median transaction size, and cost per transaction, including through—

(A) depository institutions;

(B) postal money orders and other money orders; (C) automatic teller machines;

(D) wire transfer services; and

(E) personal remittance transfer services;

(4) an analysis of the advantages and disadvantages of each remitting method listed in subparagraphs (A) through (E) of paragraph (3); and

(5) an analysis of the impact on consumers of the extent to which information is available concerning the financial literacy and education of financial institutions providing remittance transfer services.

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study conducted under this section.

By Ms. CANTWELL (for herself, Ms. BINGAMAN, Mrs. FEINSTEIN, Mrs. MURTY, and Mr. FEINGOLD):

S. 33. A bill to prohibit energy market manipulation; to the Committee on Energy and Natural Resources.

Mr. President, today I am introducing the Electricity Needs Rules and Oversight Now, or ENRON, Act.

This legislation does two simple—yet critical—things. The ENRON Act would amend the Federal Power Act to put in place a broad prohibition on all manipulative practices in electricity markets—rather than just round-trip trading—as included in last year’s comprehensive energy bill; and it would specify that electricity rates resulting from manipulative practices are not just and reasonable under the Federal Power Act.

Many of my colleagues are, by now, familiar with the provisions of this legislation, as I have often described the circumstances that led me to propose it. While the Senate has been considering comprehensive energy legislation over the past few years, various investigations have unearthed Enron’s ‘‘smoking gun’’ memos—detailing the company’s schemes to drive up electricity prices—and other evidence leading to the Federal Energy Regulatory Commission (FERC) to conclude that market manipulation was ‘‘epidemic’’ in western markets during 2000–2001. Recently, even more information—in the form of audio tapes—of Enron traders’ conversations has come to light. Meanwhile, the energy crisis continues to take a serious toll on American consumers and businesses: it’s been estimated that, as a result, the West has lost $35 billion in domestic economic product— in other words, a 1.5 percent decline in productivity and a total loss of 589,000 jobs. Adding insult to injury, Enron has now sued a number of utilities throughout the country— for almost $10 billion, in effect, trying to collect penalty charges on inflated contracts, cancelled when the company went bankrupt. In essence, Enron is asking the same consumers it gouged to pay yet again.

As I’ve discussed on the Senate floor many times, the Western market meltdown of 2000–2001 has had a profound impact on my state’s economy, the pocketbooks and economic well-being of my constituents—too many of whom have had to set aside savings and put in place a broad prohibition on all manipulative practices in electricity markets—rather than just round-trip trading—as included in last year’s comprehensive energy bill; and it would specify that electricity rates resulting from manipulative practices are not just and reasonable under the Federal Power Act.

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As my colleagues can imagine, what we have seen and heard since the height of the crisis—as we have learned more about the market manipulation and fraud that took place in the Western market, while Enron energy traders laughed about the plight of “Grandma Millie”—has added tremendous insult to substantial economic injury. More than the Western market meltdown, and to the forefront a number of very important policy questions about the kind of behavior that will be tolerated in our Nation’s electricity markets, as the Federal Energy Regulatory Commission has continued to pursue its “restructuring” agenda.

I believe we need strong leadership that will condemn the types of schemes
The Beauty of the Beast

By Mr. LIEBERMAN:

S. 34. A bill to provide for the development of a global tsunami detection and warning system, to improve existing communication of tsunami warnings to all potentially affected nations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. LIEBERMAN. Mr. President, I rise today to introduce legislation that would close the gaps in our present tsunami warning system and establish a global network that will give all the nations of the world a chance to evacuate—much like the hurricane and typhoon warning systems today across international boundaries.

Although the probability is slim, the United States, like all coastal nations, is vulnerable to tsunamis. The threat to the Pacific is greatest because of its relatively extensive seismic activity. But while the threat is less in the Atlantic, it also does exist. Tsunamis caused by the last century struck coastal Newfoundland and regions of the Caribbean including Puerto Rico, and the U.S. Virgin Islands.

As events last month in the Indian Ocean have shown, a large tsunami can be catastrophic when it catches a coastal population unawarned and unprepared. Existing technology, however, can detect tsunamis and with the right forecasting models, be used to predict potential landfall of a tsunami and provide the warning needed for those in the path of the destructive waves.

The United States has been a leader in developing instrumentation for detecting tsunamis and developing forecasting models used to predict tsunami landfall. Such technology is used in two existing tsunami warning centers, one in Alaska and one in Hawaii. The recent tsunami in South Asia has alerted the world to the dangers of destructive waves and caused many of us to seek ways that the United States can help the world avoid such tragic loss again.

The legislation I am introducing today builds on the existing United States model. It authorize funding that will enable us to expand our existing capabilities, completes our network of seismic and tsunami sensors, and directs us to work in partnership with other nations as needed to build additional centers and the necessary network for disseminating warnings to the appropriate local officials. Similar efforts are being put forth by Senators STEVENS and INOUYE as leaders of the Commerce Committee, and by the Administration. I look forward to working with them to expand these efforts, which, at relatively low cost, will allow us to partner with other nations and complete a global detection and warning system. This will help ensure that the kind of tragedy that befell the nations of the Indian Ocean region never happens again.

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. 34

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Global Tsunami Detection and Warning System Act of 2005”.

SEC. 2. DEVELOPMENT AND DEPLOYMENT OF TSUNAMI SENSORS.

(a) RESPONSIBILITIES OF SECRETARY OF COMMERCE.—The Secretary of Commerce shall—

(1) identify deficiencies in the existing system of worldwide seismic stations that can
identify in real or near real time potentially tsunamiogenic earthquakes in any location in the Pacific, Atlantic, or Indian Oceans and associated seas;

(2) work with the Secretary of State to enlist international cooperation in deploying seismic sensors to eliminate such deficiencies;

(3) work with the Secretary of the Interior, through the Director of the United States Geological Survey, to identify and implement any additions or improvements to the United States maintained network of seismic stations that are necessary to improve real time or near real time signal acquisition and processing capability for detection of potentially tsunamigenic events;

(4) identify tsunami sensors, such as those developed by the National Oceanic and Atmospheric Administration and deployed under its Deep Ocean Assessment and Reporting of Tsunamis Project, or other appropriate ocean-based sensors, that can be deployed to detect potential tsunami generated by any type of disturbance, including earthquake, underwater landslide, above water landslide, eruption of an explosive volcano, and meteor impact;

(5) identify the number and location of such sensors that must be deployed throughout the Atlantic, Indian, and Pacific Oceans, and associated seas, and any other bodies of water that provide a system for achieving complete global coverage for detection of a tsunami, taking into consideration and coordinating with any regional systems in place or under development through other nations in the affected regions;

(6) procure and deploy such sensors;

(7) establish the measurement system, forecast and communicating system and infrastructure needed to receive and process the signals generated by such tsunami sensors, by building on existing infrastructure at existing Centers of the National Oceanic and Atmospheric Administration, such as the Pacific Tsunami Warning Center and West Coast and Alaska Tsunami Center; and

(8) disseminate tsunami forecasts and warnings as necessary to all potentially affected nations.

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Commerce shall submit to Congress a report on the progress made in carrying out the requirements of subsection (a).

SEC. 3. INTERNATIONAL CONFERENCE ON GLOBAL TSUNAMI DETECTION AND WARNING.

(a) SENSE OF CONGRESS ON CONVENING CONFERENCE.—It is the sense of Congress that the President, in consultation with the leaders of nations described in section 4(a)(1), should undertake to convene, within 180 days after the date of the enactment of this Act, an international conference on global tsunami detection and warning for the purposes of—

(1) supporting the common objective of such nations of preventing or reducing the toll of human loss from future tsunami-related natural disasters in the Pacific, Indian, and Atlantic Oceans and associated seas; and

(2) seeking international agreement on the most effective means for deploying and funding a global tsunami detection and warning system.

(b) SENSE OF CONGRESS ON ALTERNATIVE ACTIONS.—It is the sense of Congress that a conference described in subsection (a) would not be necessary if, as determined by the President after consultation with the Secretary of State and the Secretary of Commerce, satisfactory international agreement as described in paragraph (2) of that subsection has been reached within 90 days after the date of the enactment of this Act.

SEC. 4. NETWORK OF NATIONS POTENTIALLY AFFECTED BY TSUNAMIS.

(a) REQUIREMENT FOR STRATEGY.—The Secretary of State, in consultation with the Secretary of Commerce, shall prepare and implement a comprehensive strategy to achieve the following objectives:

(1) Identify nations or regions that have the potential to be adversely affected by tsunamis, particularly the nations that border the Pacific, Indian, and Atlantic Oceans, and associated seas;

(2) Identify appropriate organizations, agencies, and contacts within the governments of the cooperating nations described in section 4(a)(1), and other appropriate organizations.

(b) SENSE OF CONGRESS ON ALTERNATIVE ACTIONS.—It is the sense of Congress that a conference described in subsection (a) would not be necessary if, as determined by the President after consultation with the Secretary of State and the Secretary of Commerce, satisfactory international agreement as described in paragraph (2) of that subsection has been reached within 90 days after the date of the enactment of this Act.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated to carry out this Act as follows:

(1) For fiscal year 2006, $30,000,000.

(2) For each of fiscal years 2007 through 2014, $7,500,000.

BY MR. CONRAD.—S. 35. A bill to amend the Internal Revenue Code of 1986 to extend the credit for production of electricity from wind; to the Committee on Finance.

BY MR. INOUYE.—S. 36. A bill to amend title 10, United States Code, to recognize the United States Military Cancer Institute as an establishment within the Uniformed Services University of the Health Sciences.
Mr. INOUYE. Mr. President, today I introduce the United States Military Cancer Institute Research Collaborative Act. This legislation would formally establish the United States Military Cancer Institute (USMCI), and support the collaborative augmentation of research efforts in cancer epidemiology, prevention and control. Although the USMCI already exists as an informal collaborative effort, this bill will formally establish the institution with a mission of providing for the maintenance of health in the military by enhancing cancer research and treatment, and studying the epidemiological causes of cancer among various ethnic groups. By formally establishing the USMCI, we will be in a better position to unite military research efforts with other cancer research centers.

Cancer prevention, early detection, and treatment are significant issues for the military population, thus the USMCI is organized to coordinate the existing military cancer assets. The USMCI has a comprehensive database of its beneficiary population of 9 million people. The military’s nationwide tumor registry, the Automated Central Tumor Registry, has acquired more than 180,000 cases in the last 14 years, and a serum repository of 30 million specimens from military personnel collected sequentially since 1987. This population is predominantly Caucasian, African-American, and Hispanic.

The Director of the USMCI, Dr. John Potter, is a Professor of Surgery at the Uniformed Services University of the Health Sciences (USUHS). A highly talented epidemiologist, Kangmin Zhu, has also been recruited to lead the USMCI Prevention and Control Programs.

The USMCI currently resides in the Washington, D.C., area, and its components are located at the National Naval Medical Center, the Malcolm Grow Medical Center, the Armed Forces Institute of Pathology, and the Armed Forces Radiobiology Research Institute. There are more than 70 research workers, 50 active duty and 20 civilian scientists, working in the USMCI.

The USMCI intends to expand its research activities to military medical centers and the Nation. Special emphasis will be placed on the study of genetic and environmental factors in carcinogenesis among the entire population, including Asian, Caucasian, African-American and Hispanic subpopulations.

Mr. President, 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. 36
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. THE UNITED STATES MILITARY CANCER INSTITUTE.

(a) Establishment.—Chapter 104 of title 10, United States Code, is amended by adding at the end the following new section:

§2117. United States Military Cancer Institute

(1) There is a United States Military Cancer Institute in the University. The Director of the United States Military Cancer Institute is the head of the Institute.

(2) The Institute is composed of clinical and basic scientists in the Department of Defense who have an expertise in research, patient care, and education relating to oncology and who meet applicable criteria for participation in the Institute.

(3) The components of the Institute include military treatment and research facilities that meet appropriate criteria and are designated as affiliates of the Institute.

(b) Research.—(1) The Director of the United States Military Cancer Institute shall carry out research studies on the following:

(A) The epidemiological features of cancer, including assessments of the carcinogenic effect of genetic and environmental factors, and of disparities in health, inherent or common among populations of various ethnic origins.

(B) The prevention and early detection of cancer.

(C) Basic, translational, and clinical investigation matters relating to the matters described in subparagraphs (A) and (B).

(2) The research studies under paragraph (1) shall include complementary research on oncologic nursing.

(3) Collaborative Research.—The Director of the United States Military Cancer Institute shall carry out the research studies under subsection (b) in collaboration with other cancer research organizations and entities selected by the Institute for purposes of the research studies.

(d) Annual Report.—(1) Promptly after the end of each fiscal year, the Director of the United States Military Cancer Institute shall submit to the President of the University a report of the research studies carried out under subsection (b).

(2) Not later than 60 days after receiving the annual report under paragraph (1), the President of the University shall transmit such report to the Secretary of Defense and to Congress.

(c) Amendments.—The table of sections at the beginning of this chapter is amended by adding at the end the following new item:

“2117. United States Military Cancer Institute.”

By Mrs. FEINSTEIN (for herself and Mrs. HUTCHISON):

S. 37.
A bill to extend the special postage fee authorized by the Breast Cancer Research Stamp for 2 years; to the Committee on Homeland Security and Governmental Affairs.

Mrs. FEINSTEIN. Mr. President, on behalf of Senator HUTCHISON and my colleagues, today I introduce legislation to reauthorize the tremendously successful Breast Cancer Research Stamp for 2 additional years.

Without Congressional action, the Breast Cancer Research Stamp will expire on December 31 of this year.

The life of this extraordinary stamp deserves to be extended as it has proven to be a highly effective and self-sustaining revenue source.

Since 1998, the American people have bought over 588 million breast cancer stamps—raising $42.66 million for breast cancer research.

The National Cancer Institute and the Department of Defense have put these research dollars to good use by funding novel and innovative research in the area of breast cancer.

Over a 7 year period, the Breast Cancer Stamp has demonstrated a very successful and committed customer base.

Millions of Americans have bought the stamps to honor loved ones with the disease, to highlight their own personal battle with breast cancer or to promote general public awareness—in hope of helping to find a cure.

One cannot calculate in dollars and cents how the stamp has focused public awareness on this devastating disease and the need for additional research funding.

There is still so much more to do because this disease has far reaching effects on our Nation:

Breast cancer is the most commonly diagnosed cancer among women in the United States, ranking second among cancer deaths in women after lung cancer.

In 2005, approximately 211,240 women in the U.S. will get breast cancer. About 49,110 women will die from the disease this year.

There are over two million women living today in the U.S. who have been treated for breast cancer.

Though much less common, about 1,300 men in America are diagnosed with breast cancer each year.

It is imperative that we extend the life of this stamp so that we can continue to reach out to American women and men who are living with their cancer and to those who are living with it.

This legislation would extend the authorization of the Breast Cancer Research stamp for two additional years until December 31, 2007.

The stamp would continue to have a surcharge of up to 25 percent above the value of a first-class stamp with the surplus revenues going to breast cancer research.

Extending the Breast Cancer Research stamp does not affect any other semi-postal proposals under consideration by the Postal Service.

We urge our colleagues to join us in passing this important legislation to extend the Breast Cancer Research Stamp for another 2 years.

Thanks to breakthroughs in cancer research, more and more people are becoming cancer survivors rather than cancer victims. Every dollar we continue to raise will help save lives.

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. 37

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

SECTION 1. 2-YEAR EXTENSION OF POSTAGE STAMP FOR BREAST CANCER RESEARCH.

Section 41(h) of title 39, United States Code, is amended by striking "2005" and inserting "2007".

By Mr. NELSON of Nebraska (for himself, Mr. DOMENICI, and Mr. CRAIG):

S. 41. A bill to amend the Safe Drinking Water Act to exempt small public water systems from certain drinking water standards relating to naturally occurring contaminants; to the Committee on Environment and Public Works.

Mr. NELSON of Nebraska. Mr. President, today I am offering legislation with Senator PETE DOMENICI and Senator LARRY CRAIG to allow small rural communities more time to meet an onerous and financially burdensome water quality regulation that is being imposed on local governments by the Environmental Protection Agency. The bipartisan Rural Community Arsenic Relief Act (RCARA) will amend the Safe Drinking Water Act to exempt small rural communities with population of up to ten thousand from the EPA's strict requirement to limit arsenic in drinking water to 10 parts per billion by January 1, 2006. Currently the allowable level of arsenic in drinking water is 50 ppb.

As a former governor who fought against unfunded Federal mandates from Washington, I understand the impact a policy such as this can have on local budgets. Small rural communities simply don't have the resources and tax base to meet the arsenic standard arbitrarily set by the EPA. This unfunded mandate is a strain on local government budgets and will drive up local taxes. It is not right to ask the elected officials of our small communities to spend their limited funds on risks that we are learning are not as dangerous as they have been portrayed. This legislation will allow local governments more time to plan for and absorb the costs of meeting the EPA's standards for arsenic. With each passing day it is increasingly evident that small communities will not be able to count on any immediate federal assistance in converting their water systems to meet the new arsenic standard. This bipartisan bill represents one means of giving more time to these communities, most of which have lived with arsenic—a widely distributed naturally occurring element—for ages.

Rural communities across America are grasping for solutions to comply with the new arsenic standard. Many reach the same conclusion—it is just too expensive. RCARA acknowledges that this is happening, recognizes that a one-size-fits-all solution doesn't work, and provides a framework to protect public health, while at the same time giving communities the flexibility they need to comply.

State officials estimate it could cost communities $120 million—$176 million to comply with the standard. Many communities, fearing that this regulation could bankrupt them, are considering dramatically raising rates for drinking water to cover the construction and equipment. Extending the deadline is crucial for taxpayers and ratepayers throughout the country.

This bill allows small communities to adopt a locally supported public health policy as an alternative to the one prescribed by EPA. In many communities, the rule can reasonably be expected to more than double water rates on low-income families without improving the quality of their water in any appreciable way. Our bill provides a reasonable amount of time for our small communities to understand and implement EPA's requirements, without bankrupting the system. It is the least we should do.

Mr. President, I rise to address an issue that has begun to emerge and gain our attention in rural America. This issue is an important one because it has the potential to devastate, economically, small cities and towns across the inter-mountain west—like in my State, of Idaho.

The new Environmental Protection Agency drinking water standard of 10 parts per billion for arsenic is something the current Administration inherited from the prior Administration and is now trying to implement. I would remind my colleagues, however, that the new lowered arsenic standard was not universally supported in Congress when it was proposed. There were not many, but I was certainly one of them—that knew that the cost of complying with the new arsenic standard was going to cripple economically—was going to break the back financially—of rural communities and small towns across the western United States.

I fought this new standard on the floor of the Senate. I knew the costs were crippling and the health benefit was bogus. I also knew that the science to support the lower standard is being exposed as being based on examples and sample populations that were very, very flawed. The science is now revealing that extrapolating from those sample communities to the whole of the United States was a very, very flawed basis for the drinking water standard.

I fought this new standard, but I did not succeed. There are communities now in Idaho that will not be able to come into compliance with this new standard by the time it takes effect. Some of these Idaho communities have estimated that it would take double or triple their entire city budget, just to try to come into compliance—and that would mean that no other city services could be paid for.

That kind of situation is clearly ridiculous, and I will fight as long and as hard as I can to find solutions to this problem.

Last year, I raised this issue with then-EPA Administrator Mike Leavitt. Mike Leavitt is a Westerner—his folks in Utah are having some of the same problems. I discussed the issue with him. I will raise it with any successor of his who is nominated to head the EPA. I will keep raising this issue and looking for solutions. The problem is that EPA bureaucrats—who are so good at being bureaucrats—think they know Idaho better than Idahoans do. Some of our Idaho communities have requested of EPA Region 10 that EPA exercise some flexibility with this standard. This is fine, and it does not repeal the new incorporated into its final agency rule on the arsenic standard.

Unfortunately, EPA bureaucrats are doing what they are good at. They are saying no to flexibility and hey, by the way, Castleford, Idaho, New Plymouth, Idaho—this won't disadvantage you economically as much as you say. That is what EPA says to the communities of Idaho. We know better than you.

Seeing that EPA cannot be reasonable, I have worked with my colleagues Senator NELSON of Nebraska and Senator DOMENICI of New Mexico. Both of their States have similar problems. The product of our collaboration is a bill that we introduced last year and are re-introducing today. The name of this bill is the Rural Community Arsenic Relief Act. While it may not provide all the relief that I would like to see, it does not repeal the new arsenic standard—as I believe is merited by the science—this bill is a good compromise and a good start.

With this bill, we are trying to force States and in Idaho EPA administrator—since Idaho is what they call a “non-primacy state”—to approve requests from communities to delay their compliance with the new arsenic standard. The bill is straightforward, it is vital, and it is needed. It will save some of these communities from bankruptcy or from discontinuing essential community services. Many other States—other than Idaho, Nebraska, and New Mexico—face this same crisis. I implore my colleagues to learn about what their small communities are facing, and to join with us in enacting this essential regulatory relief.

By Mr. ALLEN (for himself, Mr. NELSON of Florida, Mr. DeWINE, Mr. NELSON of Nebraska, Mrs. DOLE, Ms. MURKOWSKI, and Mr. VITTER):

S. 42. A bill to amend title 10, United States Code, to increase the death gratuity payable with respect to deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.
Mr. ALLEN. Mr. President, I rise to bring to my colleagues’ attention a bill I introduced today called the Honoring the Fallen Soldiers and Families Act of 2005, sharing the same views of Senator Sessions of Alabama, who has worked on this legislation, as well as many of us over the last 2 years. We have the support of Senator Warner, Senator WARNER. This measure is in defense of our country and our liberties, and the children of those who lost their lives, those who are killed in action and on duty. We need to care more about their surviving families.

Currently, a number of benefits that are provided to family members who lose a loved one while serving our great Nation. Some of these benefits include the Servicemen’s Group Life Insurance policies, the Depend- ence and Assistance Program, education benefits, and Government housing.

However, there is one benefit I have been concerned with during my tenure in the Senate. This is called the military death gratuity. It is a tax-exempt cash payment, currently at the amount of $12,000, which provides immediate financial compensation to families of those service men and women who have lost their lives serving our great Na- tion. During the past 108th Congress, I cosponsored legislation authored by Senator SUSAN COLLINS of Maine to double the death gratuity from $6,000 to $12,000, which at the time was appar- ently a big deal, since Congress had sparred with the death of the death since its inception in 1908. The last in- crease before then was at the end of the first gulf war in 1991. Even then, half of that benefit was subjected to taxation.

Some of us in Congress understood the need to provide this financial assis- tance and were able to get this provi- sion included in a larger bill, the Military Family Tax Relief Act of 2003. Not only did this legislation double the death gratuity from $6,000 to $12,000, but it also included payments of these moneys tax exempt.

However, that is not enough, $12,000. I still believe this current amount of $12,000 is a miserly and paltry amount. Indeed, I consider it insulting. I have $12,000 is a miserly and paltry amount. I still believe this current amount of the death gratuity to $12,000, which at the time was appar- ently a big deal, since Congress had sparred with the death of the death since its inception in 1908. The last in- crease before then was at the end of the first gulf war in 1991. Even then, half of that benefit was subjected to taxation.

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after the September 11, 2001, terrorist attacks, and for other purposes; to the Committee on Armed Services.

Mr. HAGEL. Mr. President, I rise today to re-introduce the “Military Death Benefit Improvement Act of 2005.” This legislation recognizes the service and sacrifice of the men and women of our armed forces who are proudly and bravely serving our country around the world. These bills also recognize the sacrifices borne by the loved ones of our men and women in uniform.

The “Military Death Benefit Improvement Act of 2005” would raise the military death gratuity paid to the families of military personnel killed while on active duty from $12,000 to $100,000. This increase would also be applied retroactively to all service members on active duty who have died since September 11, 2001.

The military death gratuity is money provided within 72 hours to families of service members who are killed while on active duty. These funds assist next-of-kin with their immediate financial needs. Though nothing can replace the hole left in a family by the loss of a son, daughter, mother or father, this bill will help alleviate some of the financial hardships faced by the families of our brave service men and women who give their lives in service to our country. It will send a message to our young men and women and their families that their Nation appreciates their service and sacrifice.

As we face the challenges of the 21st Century, service men and women sacrificing for their country in a time of war should not be assured that their families will be taken care of. The loss of a loved one is a tremendous emotional hardship for families. Congress must do what it can to ensure that it does not cause devastating financial hardship as well. I also rise today to re-introduce the "G.I. Bill Enhancement Act of 2005." This legislation would waive the Montgomery G.I. Bill program’s $1,200 enrollment fee for active duty members of our Nation’s military.

The G.I. Bill Enhancement Act covers any member of the United States military, including Reserve and National Guard members, serving on active duty during the period after President Bush’s November 2001 Executive Order that placed the military on a wartime footing. This legislation would: Waive the G.I. Bill enrollment fee until President Bush’s November 2001 Executive Order is rescinded; allow all service men and women to opt into the G.I. Bill with no penalty or enrollment fee; and reimburse those service men and women covered by this bill who have already paid the $1,200 enrollment fee prior to the enactment of this legislation.

The current Montgomery G.I. Bill is tailored to serve members of our military in a time of peace. Upon enlistment, recruits are given the option of enrolling in the G.I. Bill. If they choose to participate, they are charged a $1,200 enrollment fee which is deducted from their monthly pay over 12 months. However, we are now in a time of war and military men and women and their families have been transformed and increased. To that end, changes must be made to the G.I. Bill to ensure that it continues to provide realistic and relevant educational opportunities to those who are defending our country.

This is an issue of fundamental fairness. The men and women serving our country in wartime should not have to choose between the long-term benefits of the G.I. Bill and the short-term demands of their paycheck. The G.I. Bill is one of the great legacies of military service to our country. Men and women sacrificing for their country in a time of war need to be assured that access to higher education is in their future. Congress must do all it can to ensure that education options for our veterans are accessible and real.

The G.I. Bill has long been recognized as one of the most important Congressional acts of post World War II America. This legislation ensured that all who served their Nation would not be penalized as a result of their time away from their careers and communities in service to their country. The G.I. Bill helped members of our “greatest generation” upon their return home by providing them with the educational tools necessary for the opportunities enjoyed by all Americans.

Over the last 60 years, the Federal Government has invested billions of dollars in education benefits for our Nation’s veterans. Over 21 million men and women have benefitted from the G.I. Bill, resulting in a workforce that transformed American society. The bill’s far-reaching impact can be seen here today, as Members of this body, including me, have prospered as a result of the benefits of the G.I. Bill.

Every American should be proud of how we have responded to the challenges of September 11, 2001. We owe much to the men and women who have fought bravely in Afghanistan and Iraq. The “Military Death Benefit Improvement Act of 2005” and the "G.I. Bill Enhancement Act” recognize these sacrifices. I hope that my Senate colleagues will give serious consideration to these important pieces of legislation, and that we will pass these bills and they will be signed into law by President Bush. I ask unanimous consent that the text of these two bills be printed in the Record.

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

S. 43

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 “Montgomery GI Bill Enhancement Act of 2005”.

SEC. 2. EXEMPTION FROM PAYMENT OF INDIVIDUAL CONTRIBUTIONS UNDER MONTGOMERY GI BILL OF INDIVIDUALS WHO SERVE AS ACTIVE DUTY MEMBERS OF THE ARMED FORCES UNDER EXECUTIVE ORDER 13235.

(a) Active Duty Period.—(1) In the case of any covered member of the Armed Forces under section 3011(b) or 3012(c) of title 38, United States Code, no reduction in basic pay otherwise required by such section shall be made in the case of a covered member of the Armed Forces.

(b) SELECTED RESERVE PROGRAM.—Notwithstanding section 3011(b) or 3012(c), no reduction in basic pay otherwise required by such section shall be made in the case of a covered member of the Armed Forces.

(c) TERMINATION OF RECONSTRUCTION BONDS.—In the case of a covered member of the Armed Forces who first entered on active duty as a member of the Armed Forces before the date of the enactment of this Act and whose basic pay would, but for this Act, be reduced under section 3011(b) or 3012(c), as applicable, shall cease commencing with the first month beginning on or after that date.

(d) REFUND OF CONTRIBUTIONS.—(1) In the case of any covered member of the Armed Forces under section 3011(b) or 3012(c) of such title for any month beginning on or after that date, the reduction of basic pay otherwise required by such section shall be made in the case of any covered member of the Armed Forces an amount equal to the aggregate amount of reductions of basic pay of such member of the Armed Forces under section 3011(b) or 3012(c), as applicable, as of that date.

(2) Any amount paid to a covered member of the Armed Forces under paragraph (1) shall not be included in gross income under the Internal Revenue Code of 1986.

(e) COVERED MEMBERS OF THE ARMED FORCES DEFINED.—In this section, the term “covered members of the Armed Forces” means any individual who serves on active duty as a member of the Armed Forces during the period—

(1) beginning on November 16, 2001, the date of Executive Order 13235, relating to National Emergency Construction Authority; and

(2) ending on the termination date of the Executive order referred to in paragraph (1).
By Mr. LEVIN (for himself, Mr. HATCH, and Mr. BIDEN):

S. 45. A bill to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. HAGEL (for himself, Mr. DEWINE, Mrs. CLINTON, Mr. LAUTENBERG, and Mr. SALAZAR):

S. 44. A bill to amend title 10, United States Code, to increase the amount of the military death gratuity from $12,000 to $100,000; to the Committee on Armed Services.

SEC. 1. SHORT TITLE.

This Act may be cited as the “Military Death Benefit Improvement Act of 2005”.

SEC. 2. INCREASE IN DEATH GRATUITY PAYABLE.

(a) AMOUNT OF DEATH GRATUITY.—Section 178a(a) of title 10, United States Code, is amended by striking “$12,000” and inserting “$100,000”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to deaths occurring on or after November 16, 2001, the date of Executive Order 13235, relating to National Emergency Construction Authority.

(c) FUNDING.—

(1) SOURCE OF FUNDS.—Amounts for the payment during fiscal year 2005 of death gratuities by a Secretary concerned under sections 1475 through 1477 of title 10, United States Code, as amended by subsection (a), shall be derived from amounts made available for the corresponding fiscal year in an Act making emergency supplemental appropriations for defense and for the reconstruction of Iraq.

(Secretary Concerned Defined.—In this subsection, the term “Secretary Concerned” means the Secretary of the appropriate military department or agency.)

Mr. LEVIN. Mr. President, the legislation I am introducing today along with my colleagues Senator HATCH and Senator BIDEN, addresses an unintended effect of a provision in the original Drug Abuse and Treatment Act of 2000 (DATA) that hinders access to a revolutionary new treatment for thousands of individuals who seek it. When Congress passed DATA as Title XXXV of the Children’s Health Act of 2000, it allowed for the dispensing and prescribing of Schedule III drugs, like buprenorphine/naloxone, in an office-based setting, for the treatment of heroin addiction. As a result of DATA, access to this treatment is expanded; patients no longer are restricted to receiving treatment in a large public clinic, usually at a great distance, but now may receive such care in the private, nearby office of qualified physicians.

DATA limits individual physicians to treating no more than 30-patients at a time. Unfortunately, the law results in the same 30-patient limit on physician group practices. The difficulties that have arisen thus far, and hoped for treatment of many, have resulted in the underutilization of this proven therapy all across this country, including my home state of Michigan. One of the authors of DATA, Dr. Peter DeMarco, in an article in the May 30, 2004 Boston Globe, writes:

When buprenorphine became available as a treatment for OxyContin and heroin addiction months ago, addiction professionals and addicts hailed it as a miracle drug, bringing addicts back from the brink and helping them lead normal lives. But for many addicts, buprenorphine remains one of the hardest drugs to obtain. . . . (B)prenorphine doesn’t cloud the minds of patients, allowing them to work or study as if they were ordinary people. It’s a safer, effective, and discreet therapy. It allows people who are mistreated by the criminal justice system to live normal lives. It allows people who fear public stigmatization to achieve continuous and lasting recovery.

But a combination of federal limits on the distribution of buprenorphine . . . has kept thousands of opiate addicts from receiving this life-saving treatment. All across the country, at the heart of the issue is federal legislation passed in 2000 that limits the number of patients that qualified physicians can treat to 30. This situation is particularly heart breaking in places where there are a few or only one provider. This situation will only get worse as physicians and practice plans reach the 30-patient limit.

I have been involved in the development of Suboxone and Subutex for the treatment of opiate addiction for many years. It is a safer medication with less abuse potential than methadone. It allows people who fear public knowledge of their addictive disease to more discreetly seek help from a private physician.

It is a medication that can be used for a short period with adolescents who have become addicted to opiates because it is easier to deliver and has fewer side effects. But what was done. In short, office-based practice with Suboxone and Subutex is a major addition to our country’s treatment system for opiate addiction. It is essentially an act of Congress to remove the impediment of limiting Physician Practice Plans to 30 patients so that each of the physicians in such Practice Plans who are trained and certified to use this medication can bring their services to those in need.

By Mr. HAGEL (for himself, Mr. DEWINE, Mrs. CLINTON, Mr. LAUTENBERG, and Mr. SALAZAR):

S. 44. A bill to amend title 10, United States Code, to increase the amount of the military death gratuity from $12,000 to $100,000; to the Committee on Armed Services.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Military Death Benefit Improvement Act of 2005”.

SEC. 2. INCREASE IN DEATH GRATUITY PAYABLE.

(a) AMOUNT OF DEATH GRATUITY.—Section 178a(a) of title 10, United States Code, is amended by striking “$12,000” and inserting “$100,000”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to deaths occurring on or after November 16, 2001, the date of Executive Order 13235, relating to National Emergency Construction Authority.

(c) FUNDING.—

(1) SOURCE OF FUNDS.—Amounts for the payment during fiscal year 2005 of death gratuities by a Secretary concerned under sections 1475 through 1477 of title 10, United States Code, as amended by subsection (a), shall be derived from amounts made available for the corresponding fiscal year in an Act making emergency supplemental appropriations for defense and for the reconstruction of Iraq.

(2) SECRETARY CONCERNED DEFINED.—In this subsection, the term “Secretary Concerned” means the Secretary of the appropriate military department or agency.

Mr. LEVIN. Mr. President, the legislation I am introducing today along with my colleagues Senator HATCH and Senator BIDEN, addresses an unintended effect of a provision in the original Drug Abuse and Treatment Act of 2000 (DATA) that hinders access to a revolutionary new treatment for thousands of individuals who seek it. When Congress passed DATA as Title XXXV of the Children’s Health Act of 2000, it allowed for the dispensing and prescribing of Schedule III drugs, like buprenorphine/naloxone, in an office-based setting, for the treatment of heroin addiction. As a result of DATA, access to this treatment is expanded; patients no longer are restricted to receiving treatment in a large public clinic, usually at a great distance, but now may receive such care in the private, nearby office of qualified physicians.

DATA limits individual physicians to treating no more than 30-patients at a time. Unfortunately, the law results in the same 30-patient limit on physician group practices. The difficulties that have arisen thus far, and hoped for treatment of many, have resulted in the underutilization of this proven therapy all across this country, including my home state of Michigan.

One of the authors of DATA, Dr. Peter DeMarco, in an article in the May 30, 2004 Boston Globe, writes:

When buprenorphine became available as a treatment for OxyContin and heroin addiction months ago, addiction professionals and addicts hailed it as a miracle drug, bringing addicts back from the brink and helping them lead normal lives when all else had failed. But for many addicts, buprenorphine remains one of the hardest drugs to obtain. . . . (B)prenorphine doesn’t cloud the minds of patients, allowing them to work or study as if they were ordinary people. It’s a safer, effective, and discreet therapy. It allows people who are mistreated by the criminal justice system to live normal lives. It allows people who fear public stigmatization to achieve continuous and lasting recovery.

But a combination of federal limits on the distribution of buprenorphine . . . has kept thousands of opiate addicts from receiving this life-saving treatment. All across the country, at the heart of the issue is federal legislation passed in 2000 that limits the number of patients that qualified physicians can treat to 30. This situation is particularly heart breaking in places where there are a few or only one provider. This situation will only get worse as physicians and practice plans reach the 30-patient limit.

I have been involved in the development of Suboxone and Subutex for the treatment of opiate addiction for many years. It is a safer medication with less abuse potential than methadone. It allows people who fear public knowledge of their addictive disease to more discreetly seek help from a private physician.

It is a medication that can be used for a short period with adolescents who have become addicted to opiates because it is easier to deliver and has fewer side effects. But what was done. In short, office-based practice with Suboxone and Subutex is a major addition to our country’s treatment system for opiate addiction. It is essentially an act of Congress to remove the impediment of limiting Physician Practice Plans to 30 patients so that each of the physicians in such Practice Plans who are trained and certified to use this medication can bring their services to those in need.

Peter DeMarco, in an article in the May 30, 2004 Boston Globe, writes:

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But a combination of federal limits on the distribution of buprenorphine . . . has kept thousands of opiate addicts from receiving this life-saving treatment. All across the country, at the heart of the issue is federal legislation passed in 2000—two years before the drug was approved by the FDA—that restricts individual clinical practices from treating more than 30 patients with buprenorphine at a time.

While many substance-abuse experts say the 30-patient figure is too low for some practices, their main quarrel with the Drug Addiction Treatment Act of 2000 is its failure to differentiate single-physician practices, hospice, end-of-life care organizations. For example, all the doctors who work for Tufts Health Plan can treat a combined 30 patients—the same total as can be seen by a physician practicing alone.

Boston health officials, along with their counterparts in the State and Federal government, say the Federal Government has erred on the side of caution, and needs to be changed to allow wider access to buprenorphine.

Dr. Charles Schuster, a former director of the National Institute on Drug Abuse who currently heads the Addiction Research Institute at Wayne State University, writes:

We have three physicians in a group, all of whom have been trained and granted waivers by the U.S. Department of Health and Human Services to prescribe Suboxone and Subutex for the treatment of opiate addiction. All are specialists in the treatment of addictive disorders. They are able to bring this potentially life saving therapy to 90 members of our community, they are restricted to a total of thirty.

This situation is particularly heart break-
across the state. People are begging, desper-ate to get treated, who we can’t treat.”

The Federal Substance Abuse and Mental Health Services Administration has begun an initiative to increase the 30-patient cap. But because any proposed change would be subject to the public-review process, approval could take as long as two years, said Nick Lugar, senior public health analyst with the agency.

Timothy Tigges says his addiction began after he wrested his back and bumbled a few Percocet pills, a prescription analgesic, from a friend to dull the pain. Before he knew it, he was hooked on opiates, alternating between OxyContin and shooting heroin into his arm to get high.

In October, Tigges, a 27-year-old East Bos-ton carpet installer, began taking buprenorphine, placing an orange pill the size of a dime under his tongue until it dis-solves, four times daily. He hasn’t touched an illegal drug since the day he started the program, has put on 80 pounds from lifting weights at the gym, and has yet to miss a day of work. For the first time in three years, Tigges hopes to see his 5-year-old daughter, whose mother has refused to let him visit.

“‘I’ve had clean urines, 100 percent, for nine months now. There’s nothing I’m prouder of than that,’” he choked back emotion. “‘What I read on the front page of the paper every day is 18- and 20-year-old kids dying of garbage drugs. There’s just no need for it. I would take every ounce of heroin off the street and give them this stuff. You watch the crime rate go down.’

Mr. President, I ask unanimous con-sent that the text of the legislation be included at the end of my remarks.

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

S. 45
Be it enacted by the Senate and House of Rep-representatives of the United States of America in Congress assembled,

SECTION 1. MAINTENANCE OR DETOXIFICATION TREATMENT WITH CERTAIN NARCOTIC DRUGS: ELIMINATION OF 30-PATIENT LIMIT FOR GROUP PRACTICES.

(a) IN GENERAL.—Section 337(c)(2)(B) of the Controlled Substance Act (21 U.S.C. 837(c)(2)(B)) is amended by striking clause (iv).

(b) CONFORMING AMENDMENT.—Section 337(c)(2)(B) of the Controlled Substance Act (21 U.S.C. 837(c)(2)(B)) is amended in clause (iii) by striking “in any case” and all that follows through “the total” and inserting “The total”.

(c) EFFECTIVE DATE.—This section shall take effect on the date of enactment of this Act.

By Mr. LEVIN (for himself and Mr. LUGAR):

S. 46. A bill to authorize the exten-sion of unconditional and permanent nondiscriminatory treatment (permanent normal trade relations treatment) to the Ukraine, Armenia, Georgia, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, today I introduce with my colleague, Senator LUGAR, a bill to grant normal trade treatment to the products of Ukraine. My colleagues, ANDERSON, LEVIN and other members are introdu-cing a similar bill in the House. It is our hope that enactment of this legis-lation will help to build stronger eco-nomic ties between the United States and Ukraine.

The Cold War era Jackson-Vanik trade restrictions that deny most fa-vored nation trade status to imports from former Soviet countries are outdated and, when applied to Ukraine, inappropriate. Those restrictions were established as a tool to pressure Com-munist nations to allow their people to freely emigrate in exchange for fa-vorable trade treatment by the United States.

Ukraine does allow its citizens the right and opportunity to emigrate. It has met the Jackson-Vanik test. In fact, Ukraine has been found to be in full compliance with the freedom of emigration requirements under the Jackson-Vanik law. Ukraine has been certified as meeting the Jackson-Vanik requirements on an annual basis since 1992 when a bilateral trade agreement went into effect.

It is time the United States recognizes this reality by eliminating the Jackson-Vanik restrictions and granting Ukraine normal trading status on a permanent basis. Our bill does this as well as addressing traditional Jackson-Vanik issues such as religious freedom, restoration of property, and human rights. It also deals with the important trade issues that must be considered when granting a country permanent normal trade relations (PNTR) status, as making progress to-ward World Trade Organization (WTO), accession and tariff and excise tax re-ductions.

Since reestablishing independence in 1991, Ukraine has taken important steps toward the creation of demo-cratic institutions and a free-market economy. As a member state of the Or-ganization for Security and Coopera-tion in Europe (OSCE), Ukraine is com-mitted to developing a system of governance in accordance with the prin-ciples regarding human rights that are set forth in the Final Act of the Con-fference on Security and Cooperation in Europe, the Helsinki Final Act.

On December 26, 2004, Ukraine took another historic step in its pursuit of democracy with the legitimate election of its new President Viktor Yushchenko. This election showed the world that Ukraine has joined the family of demo-cracies. The United States can help advance this young democracy by re-pealing our Cold War-era laws that should no longer apply to them and welcoming them to the international economic community as a full partner.

This bill will accomplish these goals.

In addition to welcoming the Ukraini-an government to the family of demo-cracies, we must also take a mo-ment to honor the Ukrainian people for their commitment to democratic insti-tutions in civil society through peace-ful demonstrations. Free and fair elec-tions are crucial because of the courage and hard work of the Ukrainian people. Without their persist-ence Ukraine was in danger of moving forward with an illegitimately elected president.

By drawing Ukraine into normal trade relations, the international com-munity will be helping Ukraine to achieve greater market reform and con-tinue its commitment to safe-guarding religious liberty and enforc-ing human rights. PNTR status will hopefully do more than increase bilateral trade between the United States and Ukraine and en-courage increased international invest-ment in Ukraine. Hopefully it will also signal to the reformers of a nation the Ukrainian people deserve on their way to achieving a more mature and stable democracy.

It’s time we recognize Ukraine’s ac-complishments and status as an emerg-ing democracy and market economy by lifting the Jackson-Vanik restrictions. I hope my colleagues will support this important bill.

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. 46
Be it enacted by the Senate and House of Rep-representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) Ukraine allows its citizens the right and opportunity to emigrate, free of any-thing more than a nominal tax on emigra-tion or on the visas or other documents re-quired for emigration and free of any tax, levy, fine, fee, or other charge on any citi-zens as a consequence of the desire of such citizens to emigrate to the country of their choice;

(2) Ukraine has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974 since 1997;

(3) since reestablishing independence in 1991, Ukraine has made progress to-ward the creation of democratic institutions and a free-market economy and, as a partici-pating state of the Organization for Security and Cooperation in Europe (OSCE), Ukraine is com-mitted to developing a system of governance in accordance with the principles regarding human rights and humanitarian affairs that are set forth in the Final Act of the Con-fference on Security and Cooperation in Eu-rope (also known as the “Helsinki Final Act”) and successive documents;

(4) the people of Ukraine deserve praise for demonstrating a deep commitment to de-mocracy and through peaceful civil action demanding a process that achieved a fair election in Ukraine’s most recent Presi-dential runoff;

(5) Ukraine has made progress toward meeting international commitments and standards in the most recent Presidential runoff elections, including in the imple-mentation of Ukraine’s new elections laws;

(6) as a participating state of the Organiza-tion for Security and Cooperation in Europe (OSCE), Ukraine is committed to addressing issues relating to its national and religious minorities and to adopting measures to en-sure that persons belonging to national mi-norities have full equality both individually and communally;
(7) Ukraine has enacted legislation providing protection against incitement to violence against persons or groups based on national, racial, ethnic, or religious discrimination or persecution, and has committed itself, including through a letter to the President of the United States, to ensuring freedom of religion and combating racial and ethnic intolerance and hatred.

(8) Ukraine has engaged in efforts to combat ethnic and religious intolerance by cooperating with various United States non-governmental organizations.

(9) Ukraine is continuing the restitution of religious properties, including religious and communal properties confiscated during the Soviet era, is facilitating the revival of those minority groups, and remains committed to developing a legislative framework for completing this process, as promised in a letter to the President of the United States.

(10) Ukraine has received normal trade relations treatment with the United States that entered into force on June 23, 1992.

(11) Ukraine’s accession to the World Trade Organization is consistent with its commitment to the World Trade Organization Agreement between the United States and Ukraine and provides the United States with improved access to Ukraine’s markets for goods (including automobiles), trade in services, elimination of export incentives for industrial goods, and reform of customs procedures and other non-tariff barriers.

(12) Ukraine has enacted protections reflecting internationally recognized labor rights.

(13) As a participating state of the OSCE, Ukraine has committed itself to respecting freedom of the press, and the new administration has made progress in this commitment.

(14) Ukraine has stated its desire to pursue a course of Euro-Atlantic integration with a commitment to ensuring democracy and prosperity for its citizens.

(15) Ukraine has participated with the United States in its peacekeeping operations in Europe and has provided important cooperation in the global struggle against international terrorism.

SEC. 2. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO UKRAINE.

(a) PRESIDENTIAL DETERMINATIONS AND EXTENSION OF UNCONDITIONAL AND PERMANENT NONDISCRIMINATORY TREATMENT.—(1) Within 60 days after the date that the President determines that Ukraine is no longer subject to any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may:

(1) determine that such title should no longer apply to Ukraine; and

(2) after making a determination under paragraph (1) with respect to Ukraine, proclaim the extension of unconditional and permanent nondiscriminatory treatment (permanent normal trade relations treatment) to the products of that country.

(b) APPLICATION.—In the post-cold-war era, Ukraine has demonstrated a commitment to meeting these requirements, and in addition, has expressed a strong desire to abide by free market principles and good governance. Last November, I served as President Bush’s personal representative to the runoff election between Prime Minister Yanukovich and Viktor Yushchenko. During that visit, I promoted free and fair election procedures that would strengthen worldwide respect for the legitimacy of the winning candidate. Unfortunately, this has not been the case. The Government of Ukraine allowed, or aided and abetted, wholesale fraud and abuse that changed the results of the election. It is clear that Prime Minister Yanukovich did not win the election.

In response, the people of Ukraine rallied in the streets and demanded justice. After tremendous international
pressure and mediation, Ukraine repeated the runoff election on December 26. A newly named Central Election Commission and a new set of election laws led to a much-improved process. International monitors concluded that the process was generally free and fair. This victory for Viktor Yushchenko was inaugurated as President of Ukraine.

Extraordinary events have occurred in Ukraine over the last three months. A free press has revolted against government intimidation and reasserted itself. An emerging middle class has found its political footing. A new generation has embraced democracy and openness. A society has rebelled against the illegal activities of its government. It is in our interest to recognize and protect these advances in Ukraine.

The United States has a long record of cooperation with Ukraine through the Nunn-Lugar Cooperative Threat Reduction Program. Ukraine inherited the third largest nuclear arsenal in the world from the fall of the Soviet Union. Through the Nunn-Lugar program the United States has assisted Ukraine in eliminating this deadly arsenal and joined the Nonproliferation Treaty as a non-nuclear State.

One of the areas where we can deepen United States-Ukrainian relations is bilateral trade. Our trade relations between the United States and Ukraine are currently governed by a bilateral trade agreement signed in 1992. There are other economic agreements in place seeking to further facilitate economic cooperation between the United States and Ukraine, including a bilateral investment treaty which was signed in 1996, and a taxation treaty signed in 2000. In addition, Ukraine commenced negotiations to become a member of the World Trade Organization in 1993, further demonstrating its commitment to adhere to free market principles and fair trade. In light of its adherence to freedom of emigration requirements, democratic principles, compliance with threat reduction and several agreements on economic cooperation, the products of Ukraine should not be subject to the sanctions of Jackson-Vanik.

There are areas in which Ukraine needs to continue to improve. These include market access, protection of intellectual property and reduction of tariffs. The United States remain committed to assisting Ukraine in pursuing market economic reforms. The permanent waiver of Jackson-Vanik and establishment of permanent normal trade relations will be the foundation on which further progress in a geostrategic economic partnership can be made.

I am hopeful that my colleagues will review this legislation and join Senator Levin and I in supporting this important legislation.

By Mr. BINGAMAN (for himself and Mr. DOMENICI):

S. 47. A bill to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico; to the Committee on Energy and Natural Resources;

Mr. BINGAMAN. Mr. President, today, I am introducing along with Mr. DOMENICI the ‘‘Pecos National Historical Park Land Exchange Act of 2005’’. This bill will authorize a land exchange between the Federal government and a private landowner that will benefit the Pecos National Historical Park in my State of New Mexico.

Specifically, the bill will enable the Park Service to acquire a private inholding within the Park’s boundaries in exchange for the transfer of a nearby tract of National Forest System land. The National Forest parcel has been identified as available for exchange in the Santa Fe National Forest Land and Resource Management Plan and is surrounded by private lands on three sides.

The Pecos National Historical Park possesses exceptional historic and archaeological resources. The Park preserves the ruins of the great Pecos pueblo, which was a major trade center and the ruins of two Spanish colonial missions dating from the 17th and 18th centuries.

The Glorieta Unit of the Park protects key sites associated with the 1862 Civil War Battle of Glorieta Pass, a significant event that ended the Confederates’ attempt to expand the war into the West. This Unit will directly benefit from the land exchange.

Similar bills passed the Senate in both the 106th and the 108th Congresses, and I hope it will finally be enacted this Congress.

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. 47

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

SEC. 1. SHORT TITLE. This Act may be cited as the ‘‘Pecos National Historical Park Land Exchange Act of 2005’’.

SEC. 2. DEFINITIONS.

In this Act:

(1) FEDERAL LAND.—The term ‘‘Federal land’’ means the approximately 190 acres of Federal land within the Santa Fe National Forest in the State of New Mexico, as depicted on the map in subsection (b).

(2) LANDOWNER.—The term ‘‘landowner’’ means the 1 or more owners of the non-Federal land.


(4) NON-FEDERAL LAND.—The term ‘‘non-Federal land’’ means the approximately 154 acres of non-Federal land in the Park, as depicted on the map.

(5) PARK.—The term ‘‘Park’’ means the Pecos National Historical Park in the State.

(6) SECRETARIES.—The term ‘‘Secretaries’’ means the Secretary of the Interior and the Secretary of Agriculture, acting jointly.

(7) STATE.—The term ‘‘State’’ means the State of New Mexico.

SEC. 3. LAND EXCHANGE.

(a) IN GENERAL.—On conveyance by the landowner to the Secretary of the Interior of the non-Federal land, title to which is acceptable to the Secretary of the Interior—

(1) the Secretary of Agriculture shall, subject to the conditions of this Act, convey to the landowner the Federal land; and

(2) the Secretary of the Interior shall, subject to the conditions of this Act, grant to the landowner the easement described in subsection (b).

(b) EASEMENT.—

(1) IN GENERAL.—The easement referred to in subsection (a)(2) is an easement (including an easement for service access) for water pipelines to 2 well sites located in the Park, as generally depicted on the map.

(2) ROUTE.—The Secretary of the Interior, in consultation with the landowner, shall determine the appropriate route of the easement through the Park.

(3) TERMS AND CONDITIONS.—The easement shall include such terms and conditions relating to the use of, and access to, the well sites and pipeline, as the Secretary of the Interior, in consultation with the landowner, determines to be appropriate.

(4) APPLICABLE LAW.—The easement shall be established, operated, and maintained in compliance with applicable Federal law.

(c) VALUATION, APPRAISALS, AND EQUALIZATION.—

(1) IN GENERAL.—The value of the Federal land and non-Federal land—

(A) shall be equal, as determined by appraisals conducted in accordance with paragraph (2); or

(B) if the value is not equal, shall be equalized in accordance with paragraph (3).

(2) APPRAISALS.—

(A) IN GENERAL.—The Federal land and non-Federal land shall be appraised by an independent appraiser selected by the Secretaries.

(B) REQUIREMENTS.—An appraisal conducted under subparagraph (A) shall be conducted in accordance with—

(i) the Uniform Appraisal Standards for Federal Land Acquisition; and

(ii) the Uniform Standards of Professional Appraisal Practice.

(C) APPROVAL.—The appraisals conducted under this paragraph shall be submitted to the Secretaries for approval.

(3) EQUALIZATION OF VALUES.—

(A) IN GENERAL.—If the values of the non-Federal land and the Federal land are not equal, the values may be equalized by—

(i) the Secretary of the Interior making a cash equalization payment to the landowner;

(ii) the landowner making a cash equalization payment to the Secretary of Agriculture; or

(iii) reducing the acreage of the non-Federal land or the Federal land, as appropriate.

(B) CASH EQUALIZATION PAYMENTS.—Any amounts received by the Secretary of Agriculture as a cash equalization payment under section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) shall—

(i) be deposited in the fund established by Public Law 90–171 (commonly known as the ‘‘Sisk Act’’) (16 U.S.C. 484a); and

(ii) be available for expenditure, without further appropriation, for the acquisition of land and interests in land in the State.

(d) COSTS.—Before the completion of the exchange under this section, the Secretaries...
and the landowner shall enter into an agreement that allocates the costs of the exchange among the Secretaries and the landowner.

(g) APPLICATION.—Except as otherwise provided in this Act, the exchange of land and interests in land under this Act shall be in accordance with—

(1) section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716); and

(2) other applicable laws, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretaries may require, in addition to any requirements under this Act, such terms and conditions relating to the exchange of Federal land and non-Federal land and the grantee and lessee interests under this Act as the Secretaries determine to be appropriate to protect the interests of the United States.

(j) COMPLETION OF THE EXCHANGE.—(1) In general.—The exchange of Federal land and non-Federal land shall be completed not later than 180 days after the later of—

(A) the date on which the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) have been met; and

(B) the date on which the Secretary of the Interior approves the appraisals under subsection (c)(2)(C); or

(C) the date on which the Secretaries and the landowners in the costs of the exchange and any other terms and conditions of the exchange under this section.

(2) Notice.—The Secretaries shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives notice of the completion of the exchange of Federal land and non-Federal land under this Act.

SEC. 4. ADMINISTRATION.

(a) In general.—The Secretary of the Interior shall administer the non-Federal land acquired under this Act in accordance with the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the “National Park Service Organic Act”) (16 U.S.C. 1 et seq.).

(b) Maps.—(1) In general.—The map shall be on file and available for public inspection in the appropriate offices of the Secretaries.

(2) TRANSMITTAL OF REVISED MAP TO CONGRESS.—Not later than 180 days after completion of the exchange, the Secretaries shall transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a revised map that depicts—

(A) the Federal land and non-Federal land exchanged under this Act; and

(B) the easements described in section 3(b).

By Mr. LAUTENBERG (for himself and Mr. CORZINE):

S. 49. A bill to reauthorize appropriations for the New Jersey Coastal Heritage Trail Route, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. LAUTENBERG. Mr. President, I rise today to speak about a bill that Senator CORZINE and I are introducing, the New Jersey Coastal Heritage Trail Route bill. Our bill would reauthorize a law based on a bill that former Senator Bill Bradley and I first introduced in 1996. The law was extended once but its authorization has now expired, bringing work on the Trail to a complete standstill.

This bill would reauthorize federal appropriations for New Jersey’s Coastal Heritage Trail. This authority would sunset in 2009, allowing enough time for unfinished trail projects to be completed.

The 300-mile Trail is divided into five sections that extend south from Perth Amboy to Cape May and west to Deepwater. New Jersey’s Coastal Heritage Trail is unique. It is neither a National Heritage Area, nor a National Trail. Collaboration on this Trail marked the National Park Service’s first attempt at protecting a significant resource without actually acquiring it. This experiment has been a resounding success.

The State of New Jersey is heavily developed, and the National Park Service, the State, and many other public and private organizations have worked hard to preserve the natural and cultural heritage along the Trail.

This experiment has also been a bargain. Between 1988 and 2004, the Park Service spent 3.9 million dollars on Trail projects, while non-federal sources contributed 12 million dollars in matching funds. These funds represent an important investment in New Jersey’s economy. Last year, 65 million visitors came to New Jersey, and the majority of those visitors went to the shore where many spent time on sections of the Coastal Heritage Trail.

In the past, Federal funds have contributed to signs and exhibits along the Trail which entice tourists and local New Jerseyans to explore our maritime heritage along the Trail.

Most people think that New Jersey is a crowded, highly industrialized State. That is true. But New Jersey also contains incredible beauty, such as a Bald Eagle silhouetted against a Delaware Bay sunset; a lone fishing boat making its way through Barnegat Inlet at dawn; or the quiet, dark waters flowing slowly through the Pine Barrens.

Such sights can be enjoyed in New Jersey, and the Coastal Heritage Trail invites New Jerseyans and our many visitors to enjoy these splendors.

Mr. President, in the House, Congressman LOBONDO is sponsoring a companion bill to this legislation, so this is truly a bipartisan effort. The Congressman and I have worked with our respective jurisdictions and have come to agreement on identical language in our bills. So, it is my hope that the Senate will be able to pass this bill promptly. Getting it passed and signed into law will help to protect our environment and markedly improve the quality of life for millions of Americans—all at a very low cost to the Nation’s taxpayers.

Mr. President, I ask for 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. 49
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAUTHORIZATION OF APPROPRIATIONS FOR NEW JERSEY COASTAL HERITAGE TRAIL ROUTE.

(a) REAUTHORIZATION AUTHORITY.—(1) of Public Law 100-515 (16 U.S.C. 1244 note) is amended—

(1) in subsection (b)(1), by striking "$1,000,000" and all that follows and inserting "$3,949,000"; and

(2) in subsection (c), by striking "10" and inserting "12".

(b) STRATEGIC PLAN.—(1) In general.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior shall prepare a strategic plan for the New Jersey Coastal Heritage Trail Route.

(2) CONTENTS.—The strategic plan shall describe—

(A) opportunities to increase participation by national and local private and public interests in the planning, development, and administration of the New Jersey Coastal Heritage Trail Route; and

(B) various options for sustaining the New Jersey Coastal Heritage Trail Route.

By Mr. STEVENS (for himself and Ms. MURKOWSKI):

S. 49. A bill to establish a joint Federal-State Floodplain and Erosion Mitigation Commission for the State of Alaska; to the Committee on Energy and Natural Resources.

Mr. STEVENS. Mr. President, on behalf of myself and Senator MURKOWSKI, I introduce S. 49, the Alaska Floodplain and Erosion Mitigation Commission Act.

For the last several years, we have seen coastal river flooding and erosion destroy homes, public buildings, and runways, threatening the traditional lifestyle of our Alaska Native people and rural residents. Over 100 feet of land can be lost in a single storm, with homes and buildings literally being washed into the ocean.

Last year, the Federal Emergency Management Agency was called in after one storm and assessed millions of dollars in damages.

In Alaska, there are over 230 communities that have been identified as being affected by erosion, 4 of which are in imminent danger and will be forced to relocate.

Given the devastating impacts of erosion on Alaska Native villages, I held a full 2-day Appropriations field hearing in July of 2004. Senator CONRAD BURNS of Montana, Senator JOHN SUNUNU of New Hampshire, and Senator LISA MURKOWSKI were all in attendance.

Testifying at the hearing were witnesses from the Federal Government, State of Alaska, and representatives from the villages most affected by coastal erosion and flooding.

These hearings examined the findings and recommendations from the Government Accounting Office, GAO, report on the severe flooding and erosion problems faced in many Native Alaska villages. Congress had previously directed GAO to study flooding and erosion of Alaska Native villages and to determine the extent to which these villages are affected, identify Federal and State flooding and erosion programs, determine the current status of

Mr. President, the entire report was 300 pages, and included other testimony from the Department of Interior, the Corps of Engineers, and testimony from Alaska communities affected by flooding and erosion.

The Alaska Floodplain and Erosion Mitigation Commission Act recognizes the unique challenges faced by Alaska, from the very northern tip of Alaska to the southernmost tip of the state, and authorizes a joint Federal-State Commission which will help our Federal and State agencies coordinate efforts to help our Native and rural Alaska communities.
efforts to respond to flooding and erosion in nine villages, and identify alternatives that Congress may wish to consider when providing assistance for flooding and erosion.

This bill is a culmination of the GAO report and the field hearings I have mentioned. It builds on the efforts of the Federal agencies and the State of Alaska to better serve the impacted Native villages and rural residents. This bill is intended to provide relief for these communities. It is going to be a very difficult problem to solve.

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

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

S. 49

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Alaska Floodplain and Erosion Mitigation Act of 2005".

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Establishment of commission.
Sec. 4. Administration.
Sec. 5. Termination of commission.

SECTION 2. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term "Commission" means the Joint Federal-State Floodplain and Erosion Mitigation Commission for Alaska established by section 101(a).

(2) ALASKA NATIVE.—The term "Alaska Native" has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(3) ALASKA NATIVE VILLAGE.—The term "Alaska Native village" has the meaning given the term in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) STATE.—The term "State" means the State of Alaska.

TITLED I—JOINT FEDERAL-STATE FLOODPLAIN AND EROSION MITIGATION COMMISSION FOR ALASKA

SEC. 101. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the "Joint Federal-State Floodplain and Erosion Mitigation Commission for Alaska".

(b) MEMBERSHIP.—(1) COMPOSITION.—The Commission shall be comprised of 11 members, of whom—

(A) 1 member shall be the Governor of the State, which shall serve as Cochairperson;

(B) 3 members shall be appointed by the Governor of the State, of whom—

(i) 1 member shall be a nonvoting ex officio Alaska Native; and

(ii) at least 1 member shall represent city or borough governments;

(C) 1 shall be appointed by the Secretary, shall be an employee of the Department of the Interior, and shall serve as Cochairperson;

(D) 1 member appointed by the Secretary of Agriculture shall be an employee of the Natural Resources Conservation Service of the Department of Agriculture; and

(E) 1 member, appointed by the Secretary of Defense, shall be an employee of—

(i) the Department of Defense; or

(ii) the Corps of Engineers.

(b) MEETINGS.—The appointment of a member of the Commission shall constitute a quorum, and 2 members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(c) MEETINGS.—Subject to section 102(a), the Commission shall meet at the call of the Cochairpersons.

(d) VACANCIES.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(e) CONCURRENCE OF COCHAIRPERSONS.—A decision of the Commission shall require the concurrence of the Cochairpersons.

(f) PRINCIPAL OFFICE.—The principal office of the Commission shall be in the State of Alaska.

SEC. 102. DUTIES.

(a) MEETINGS.—For the first 2 years following the date of enactment of this Act, the Commission shall meet not less than 2 times per year.

(b) STUDY.—(1) IN GENERAL.—The Commission shall conduct a study of all matters relating to—

(A) the feasibility of alternatives for flood- or erosion assistance; and

(B) the development of a policy to guide infrastructure improvements in the Alaska Native villages, cities, and boroughs that are most affected by flooding or erosion.

(2) MATTERS TO BE STUDIED.—The matters to be studied by the Commission include—

(A) flood and erosion processes;

(B) the planning needs associated with flood and erosion processes, including identifying and making recommendations concerning—

(i) specific flood and erosion circumstances that affect life and property in the State;

(ii) land use regulations, including area standards for designation of flood- and erosion-prone land;

(iii) uses to be made of flood- and erosion-prone land, and how State and Federal grants, loans, and capital improvements shall be invested in designated areas; and

(iv) how to regulate and implement the uses described in paragraphs (i), (ii), and (iii) above in a manner that maximizes the number of Alaska Native people;

(II) the establishment of procedures to obtain the view of the public on land use planning needs, such as implementation and enforcement of flood and erosion control and mitigation solutions, including—

(i) increased hydrologic and other specialized data collection; and

(ii) public hearings.

(c) EVALUATION.—Not later than 120 days after the date of enactment of this Act and annually thereafter, the Commission shall evaluate specific flood and erosion circumstances that affect life and property in the State.

(d) RECOMMENDATIONS.—The Commission shall develop recommendations on—

(1) the development and implementation of flood and erosion control and mitigation solutions in villages and communities identified by the Commission as being most in need of those solutions;

(2) programs and budgets of Federal and State agencies responsible for administering Federal and State floodplain management authorities;

(3) the establishment of State erosion management responsibilities and authorities;

(4) changes in laws, policies, and programs that the Commission determines are necessary or desirable to improve the integrated Federal-State erosion and flood management authority;

(5) improving coordination and consultation between the Federal and State governments in making resource allocation and flood and erosion control and mitigation decisions; and

(6) ways to avoid conflict between the State and Alaska Native people in the allocation of resources;

(7) ensuring that higher priority is given to achieving long-term sustainability of communities from debilitating flood and erosion losses than to short-term project and infrastructure development needs, if the flood and erosion control and mitigation solution is publicly funded; and

(8) ensuring that the economic and social well-being of Alaska Native people and other residents of the State is not compromised by a risk of erosion or flood that could be avoided through long-term planning.

SEC. 103. ADMINISTRATION.

(a) ADVISERS.—To assist the Commission in carrying out this Act, the Commission shall establish a committee of technical advisers to the Commission with expertise in—

(1) coastal engineering;

(2) the adverse impact of flood and erosion management; and

(3) rural community planning in the State;

(4) how city and borough governments are affected by erosion;

(5) the relationship between State and local governments and Alaska Native villages; and

(6) any other interest that the Commission determines is appropriate.

(b) RECORDS.—(1) IN GENERAL.—The Commission shall maintain complete records of the activities of the Commission.

(2) PUBLIC INSPECTION.—Records maintained under paragraph (1) shall be available for public inspection.

(c) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this title.

(d) INFORMATION FROM FEDERAL AGENCIES.—
(1) IN GENERAL.—The Commission may secure directly from a Federal agency such information as the Commission considers necessary to carry out this title.

(2) REQUIREMENT OF INFORMATION.—On request of a Cochairperson of the Commission, the head of the agency shall provide the information to the Commission.

(e) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property to carry out the duties of the Commission.

SEC. 104. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) IN GENERAL.—A member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.

(2) FEDERAL OR STATE EMPLOYEES.—A member of the Commission who is an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for the executive or employee of the Federal or State Government.

(b) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under chapter 57 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Cochairpersons of the Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(2) CONFIRMATION OF EXECUTIVE DIRECTOR.—The appointment of an executive director shall be subject to confirmation by the Commission.

(3) COMPENSATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Cochairpersons of the Commission may fix the compensation of the executive director and any other personnel not otherwise covered by the provisions of section 51 of title 5, United States Code, relating to classification of positions and general schedule pay rates.

(B) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5315 of title 5, United States Code.

(d) DETAIL OF FEDERAL, GOVERNMENT EMPLOYEES.—

(1) IN GENERAL.—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(2) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Cochairpersons of the Commission may procure temporary or intermittent services in accordance with section 310(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of that title.

SEC. 105. REPORTS.

(a) INTERIM REPORTS.—Not later than September 30 of each year, the Commission shall submit to Congress, the Secretary, and the legislature of the State a report that describes the activities of the Commission in the preceding calendar year; and

(b) FINAL REPORT.—Not later than September 30, 2011, the Commission shall submit to Congress, the Secretary, and the legislature of the State a final report that describes—

(1) the activities and findings of the Commission; and

(2) the recommendations of the Commission for legislation and administrative actions the Commission considers appropriate.

SEC. 106. TERMINATION OF COMMISSION.

The Commission shall terminate on September 30, 2011.

TITLE II—FLOOD AND EROSION CONTROL AND MITIGATION

SEC. 201. EVALUATION AND PRIORITIZATION.

Not later than after the date of enactment of this Act and annually thereafter, the Secretary, in consultation with the Commission, shall evaluate and prioritize specific flood and erosion circumstances that affect life and property in the State.

SEC. 202. FLOOD AND EROSION CONTROL AND MITIGATION.

(a) IN GENERAL.—Not later than September 15, 2006, the Secretary, in consultation with the Commission, shall examine the most cost-effective ways of carrying out flood and erosion control and mitigation projects described in subsection (a) through the remainder of any funds appropriated to the State identified in the Government Accountability Office Report 99-142.

(b) COST-EFFECTIVE TECHNOLOGY.—The Secretary, in consultation with the Commission, shall implement a solution described in subsection (a) using the most cost-effective technology that assures the safety, security, and protection of life and property in the State, including—

(1) movement of structures;

(2) nonstructural land management of erosion-prone areas; and

(3) structural erosion control techniques.

(c) GRANTS TO STATE AND LOCAL GOVERNMENTS.—For any fiscal year after fiscal year 2006, the Secretary may implement a solution described in subsection (a) through the Government Accountability Office Report 99-142.

(d) FACTORS.—In implementing a solution under this section, the Secretary, in consultation with the Commission, shall consider—

(1) the design life of structural erosion control projects;

(2) the cost effectiveness of all erosion control projects; and

(3) the availability of a revolving loan fund administered by the State for relocation, elevation, and flood proofing of flood- or erosion-prone structures.

(e) FEDERAL SHARE.—The Federal share of the cost of carrying out a project or activity under this section shall be 75 percent.

SEC. 203. MITIGATION.

(a) IN GENERAL.—The Secretary, in consultation with the Commission, may take any action necessary to mitigate the loss of structures and infrastructure from flood and erosion using the most cost effective means practicable to provide the longest-term benefit, including—

(1) relocation;

(2) elevation;

(3) flood proofing; and

(4) land management alternatives.

SEC. 204. ADMINISTRATION.

(a) CONSULTATION.—The Secretary shall—

(1) consult with the Commission and appropriate Federal and State agencies; and

(2) provide oversight authority, responsibility, and direction to agencies funding relocation and flood and erosion control and mitigation plans.

(b) VALID EXISTING RIGHTS.—This subsection does not vest any right recognized under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that is in existence at the time of the enactment of this Act.

(c) AUTHORITY OF THE SECRETARY.—This title does not impair the authority of the Secretary to make contracts and grant leases, permits, rights-of-way, and easements.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated for each of fiscal years 2006 through 2011 such sums as are necessary to carry out this Act, to remain available until expended.

(b) COMMISSION.—The Secretary may use not to exceed $250,000 of the funds made available under subsection (a) for the expenses of the Commission, including hiring any necessary staff.

By Mr. INOUYE (for himself, Mr. STEVENS, Ms. CANTWELL, Mr. BURNS, Mr. LUTENBERG, Ms. SNOWE, Mr. AKAKA, Ms. MURkowski, Mrs. CLINTON, Mr. SMITH, and Mrs. MURRAY):

S. 50. A bill to authorize and strengthen the National Oceanic and Atmospheric Administration’s tsunami detection, forecast, warning, and mitigation program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. Mr. President, today I introduce the Tsunami Preparedness Act which may find its most distinguished colleague, Senator Ted Stevens, in our new capacities as Co-Chair and Chair of the Commerce Committee. Our bill today provides a scientific and technological response to minimize the threats posed by tsunami to our own shores, and the coastal communities of the world, as exemplified by the appalling scope of the Indian Ocean tragedy.

The bill builds on our work to establish a system in the Pacific that is a model for the world, and also provides for its expansion and improvement recently identified gaps that have been identified recently.

Protecting human life and property from natural disaster requires the ability to reliably detect and forecast, the capacity to broadcast warnings in a timely and informative manner, and the knowledge in communities of how to respond and evacuate to safety. Above all, however, it requires the willingness to invest resources to prepare for a threat that is largely unseen and unpredictable until the last moment, when a monstrous wave actually strikes.
The people of Alaska and Hawaii have long memories of the threat of tsunami. Perhaps it is because Hawaii sits in a position of terrible vulnerability in the Pacific Ocean, which is the site of 85 percent of the world’s tsunami activity, and because Alaska is perched on the northern edge of the Pacific’s Ring of Fire, suffers frequent tsunami-generating earthquakes.

In order to protect local communities, Hawaii established in 1949 a tsunami warning center, following a tragic Hilo tsunami. In response to the tsunami warning center, following a tragedy, Hawaii established in 1949 a tsunami warning center. In response to the tsunami warning center, following a tragedy, Hawaii established in 1949 a tsunami warning center, following a tragedy, Hawaii established in 1949 a tsunami warning center.

We are pleased to report that the program has laid the foundation for tsunami preparedness. Through its Pacific Marine Environmental Laboratory (PMEL), NOAA has developed Deep Ocean Assessment and Reporting of Tsunamis (NOTE) to develop a Tsunami Hazard Mitigation Program.

The detection and warning system established by the bill would cover the Pacific Ocean region, as well as the Atlantic-Caribbean-Gulf of Mexico region, and incorporate a variety of seismic and tsunami detection technologies, including deep ocean buoys, as well as encompassing warning centers charged with collecting and analyzing the data and distributing warnings—including the existing Pacific Tsunami Warning Center in Hawaii and the West Coast/Alaska Tsunami Warning Center in Alaska, as well as any others deemed necessary by the NOAA Administrator.

The bill also formally authorizes NOAA’s Tsunami Hazard Mitigation Program and its community-based tsunami hazard mitigation programs to improve tsunami preparedness at-risk areas. The bill directs a Federal-State coordinating committee for the program, consisting of FEMA, the United States Geological Survey (USGS), the National Science Foundation (NSF), and affected coastal states and territories, to work together to improve inundation mapping, community outreach and education, and promote and integrate tsunami warning and mitigation, on摸, tsunami warning and recovery guidelines. The program would provide grants to states to ensure the program elements are implemented in coastal communities.

The bill also requires NOAA to establish, along with other agencies and academic institutions, a tsunami research program to continuously improve detection, prediction, communication, and mitigation science and technology to support tsunami forecasts and warnings. This program would also focus on the development of communications systems for tsunami and other hazard warnings, including telephones, wireless and satellite technology, the Internet, television and radio, and any innovative combination of these technologies.

A critical component of the bill requires NOAA to upgrade and modernize the U.S. tsunami detection system by December 2007, as well as provide accountability for the long-term operation of the system. NOAA is required to repair and upgrade the system, ensuring deployment of existing deep ocean detection buoys and related detection equipment, as well as notify Congress upon any equipment or system failures that will impair regional detection, and of significant contractor failures or delays. In addition, the bill calls for the National Academy of Sciences to review the system for further modernization recommendations.

The bill recognizes the need for global coordination on tsunami preparedness, requiring NOAA, and the interagency coordinating committee of the U.S. Tsunami Hazard Mitigation Program, to provide technical assistance and advice to international entities as part of an international effort to develop a fully functional global tsunami warning system.

Finally, the bill authorizes $35 million annually for six years to support these activities. Through this legislation, the work Senator Stevens and I started over ten years ago will step up to the next level, and provide our nation with coverage and protection that it needs, while fulfilling our duties as citizens of the global community.

I ask unanimous consent that the full 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. 50

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Tsunami Preparedness Act”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) Tsunamis are a series of large waves of long wavelength created by the displacement of water by violent undersea disturbances such as earthquakes, volcanic eruptions, landslides, explosions, and the impact of cosmic bodies.

(2) Tsunamis have caused, and can cause in the future, enormous loss of human life, injury, destruction of property, and economic and social disruption in coastal and island communities.

(3) While 85 percent of tsunami occur in the Pacific Ocean, and coastal and island communities in this region are the most vulnerable to the destructive results, tsunami can occur at any point in any ocean or related body of water where there are earthquakes, volcanoes, or any other activity that displaces a large volume of water.

(4) A number of States and territories are subject to the threat of tsunamis, including Alaska, California, Hawaii, Oregon, Washington, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands.
(5) The National Oceanic and Atmospheric Administration is responsible for maintaining a tsunami detection and warning system for the Nation, issuing warnings to United States communities at risk from tsunamis, and preparing those communities to respond appropriately, through—

(a) the Pacific Tsunami Warning Center in Ewa, Hawaii, which serves as the operational center for Hawaii, all other United States assets in the Pacific, and Puerto Rico;
(b) the Alaska/West Coast Tsunami Warning Center in Alaska, which is responsible for issuing warnings for Alaska, British Columbia, California, Oregon, and Washington;
(c) the Federal-State national tsunami hazard mitigation program;
(d) a tsunami research and assessment program, conducted by the Pacific Marine Environmental Laboratory;
(e) the TsunamiReady Program, which educates and prepares communities for survival before and during a tsunami; and
(f) other related programs.

(6) The National Oceanic and Atmospheric Administration also represents the United States on the International Coordination Group for the Tsunami Warning System in the Pacific, administered by the Intergovernmental Oceanographic Commission of UNESCO, which the Pacific Tsunami Warning Center acts as the operational center and shares seismic and water level information with the regional states and maintains UNESCO’s International Tsunami Information Center, in Honolulu, Hawaii, which provides technical and educational assistance to member states.

(7) The Tsunami Warning Centers receive seismic information from the Global Seismic Network, an international system of earthquake-detection stations, from the United States Geological Survey National Earthquake Information Center, and from cooperative regional seismic networks, and use this data to issue tsunami warnings and integrate the information with data from their own tidal and deep ocean monitoring stations, to cancel or verify the existence of a damaging tsunami. Warnings are disseminated by the National Oceanic and Atmospheric Administration to State emergency operation centers.

(8) The Tsunami Warning Centers in the International Tsunami Warning System, such as the lack of regional warning systems in the Indian Ocean, the Pacific Ocean, the Caribbean Sea, South America, the Mediterranean Sea, and the Caribbean, pose risks for coastal and island communities.

(9) The tragic and extreme loss of life experienced by countries in the Indian Ocean following the magnitude 9.0 earthquake and resulting tsunami in that region on December 26, 2004, demonstrates the destructive consequences which can occur in the absence of an effective tsunami warning and notification system.

(b) an effective tsunami warning and notification system is part of a multi-hazard disaster warning and preparedness program and requires near-real-time seismic, sea level, and oceanographic data, high-speed data analysis capabilities, a high-speed tsunami warning communication system, a sustained program of education and risk assessment, and an established international infrastructure for timely and effective dissemination of warnings to activate evacuation of tsunami hazard zones.

(11) The Tsunami Warning System for the Pacific is a model for other regions of the world to adopt, and can be expanded and modernized to increase detection, forecast, and warning capabilities for all the states and territories, reduce the incidence of costly false alarms, improve reliability of measurement and assessment technology, and increase community preparedness.

(12) Tsunami warning and preparedness capability can be developed in other vulnerable regions of the world by identifying tsunami hazard zones, educating populations, developing alert and notification communications infrastructure, deploying tsunami detection sensors and gauges, establishing hazard communication and warning networks, expanding global monitoring of seismic activity, encouraging the increased exchange of seismic and tidal data between nations, and improving international coordination when a tsunami occurs.

(13) UNESCO has recognized the need to establish tsunami warning systems for regions beyond the Pacific Basin that are vulnerable to tsunamis, has developed the Indian Ocean Tsunami Information Coordinating Group, and has convened a working group to lead an effort to expand the International Tsunami Warning System in the Pacific to such vulnerable regions.

(14) The international community and all vulnerable nations should take coordinated efforts to establish and participate in regional tsunami warning systems and other hazard warning systems developed to meet the goals of the United Nations International Strategy for Disaster Reduction.

(15) The purposes of this Act are—

(1) to improve tsunami detection, forecast, warnings, notification, preparedness, and community mitigation in order to protect life and property both in the United States and elsewhere in the world;
(2) to improve and modernize the existing Pacific Tsunami Warning System to increase coverage, reduce false alarms and increase accuracy of forecasts and warnings, and expand the warning system to include other vulnerable States and United States territories, including the Caribbean/Atlantic/Gulf region;
(3) to increase and accelerate mapping, modeling, research, assessment, education, and outreach efforts in order to improve forecasting, preparedness, mitigation, response, and recovery of tsunami and related coastal hazards;
(4) to provide technical and other assistance to speed international efforts to establish tsunami warning systems in vulnerable areas worldwide, including the Indian Ocean, and
(5) to improve Federal, State, and international coordination and other coastal hazard warnings and preparedness.

SEC. 3. TSUNAMI DETECTION AND WARNING SYSTEM.

(a) In General.—The Administrator of the National Oceanic and Atmospheric Administration shall operate regional tsunami detection and warning systems for the Pacific Ocean, the South Pacific, and the East Pacific and Arctic regions.

(b) System Requirements.—

(1) Pacific System.—The Pacific tsunami warning system shall cover the entire Pacific Ocean region, including the Western Pacific, the Central Pacific, the North Pacific, the South Pacific, and the East Pacific and Arctic regions.

(2) Atlantic, Caribbean, and Gulf of Mexico System.—The Atlantic, Caribbean, and Gulf of Mexico System shall cover areas of the Atlantic Ocean, Caribbean Sea, and the Gulf of Mexico that the Administrator determines

(A) to be geologically active, or to have significant potential for geological activity; and

(B) to pose measurable risks of tsunamis for States along the coastal areas of the Atlantic Ocean or the Gulf of Mexico.

(c) Components.—The systems shall—

(1) utilize an array of deep ocean detection buoys, including redundant and spare buoys;
(2) include an associated tide gauge and water level monitoring system designed for long-term continuous operation tsunami transmission capability;
(3) provide for establishment of a cooperation between the National Oceanic and Atmospheric Administration and the United States Geological Survey under which the Geological Survey provides rapid and reliable information to the Administrator from international and domestic seismic networks;
(4) provide for information and data processing through the tsunami warning centers established under subsection (c); and
(5) be integrated into United States and global ocean and earth observing systems; and

(d) Transfer of Technology; Maintenance and Upgrades.—In carrying out this section, the Administrator shall—

(1) promulgate specifications and standards for forecast, detection, and warning systems, including detection equipment;
(2) develop and execute a plan for the transfer of technology from ongoing research to form operational systems designed for Tsunamis to government agencies and the public and alerting potentially impacted coastal areas for evacuation;
(3) ensure that detection equipment is maintained in operational condition to fulfill the forecasting, detection and warning requirements of the Regional tsunami detection and warning systems;
(4) obtain, to the greatest extent practicable, priority treatment in budgeting for, acquiring, transporting, and maintaining weather sensors, tide gauges, water level gauges, and tsunami buoys incorporated into the system including obtaining ship time; and

(5) ensure integration of the tsunami detection system with other United States and global ocean and earth observing systems, the global earth observing system of systems, global seismic networks, and the Advanced National Seismic System.
or expended for the acquisition of services for construction or deployment of tsunami detection equipment unless the Administrator certifies in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science within 60 calendar days after the date on which the President submits the Budget of the United States for that fiscal year to the Congress that—

(1) each contractor for such services has met the requirements of this Act for such construction or deployment;

(2) the equipment to be constructed or deployed is capable of becoming fully operational prior to obligation or expenditure of additional appropriated funds; and

(3) the Administrator does not reasonably foresee unanticipated delays in the deployment and operational schedule specified in the contract.

SEC. 4. TSUNAMI HAZARD MITIGATION PROGRAM.

(a) IN GENERAL.—The Administrator of the National Oceanic and Atmospheric Administration is authorized to conduct a community-based tsunami hazard mitigation program to improve tsunami preparedness of at-risk areas.

(b) COORDINATING COMMITTEE.—In conducting the program, the Administrator shall establish a coordinating committee comprised of—

(1) the National Oceanic and Atmospheric Administration;

(2) the United States Geological Survey;

(3) the Federal Emergency Management Agency;

(4) the National Science Foundation; and

(5) affected coastal States and territories.

(6) SYSTEM UPGRADES.—The program shall—

(1) improve the quality and extent of inundation mapping, including assessment of vulnerable coastal areas;

(2) promote and improve community outreach and education networks and programs to ensure community readiness, including the development of multi-hazard risk and vulnerability assessment training and decision support tools, implementation of technical training and public education programs, and guidelines for certification of prepared communities;

(3) integrate tsunami preparedness and mitigation programs into ongoing hazard warning and forecasting operations for affected areas including the National Response Plan;

(4) promote the adoption of tsunami warning and mitigation measures by Federal, State, tribal, and local governments and non-governmental entities through a grant program for training, development of guidelines, and other purposes;

(5) through the Federal Emergency Management Agency as the lead agency, develop tsunami specific rescue and recovery guidelines and the National Tsunami Response Plan, including long-term mitigation measures, educational programs to discourage development in high-risk areas, and use of remote sensing and other technology in rescue and recovery operations;

(6) require budget coordination, through the Administration, to carry out the purposes of this Act and to ensure that participating agencies provide necessary funds for matters within their respective areas of authority or expertise;

(7) provide for periodic external review of the program and for inclusion of the results of such reviews in the report required by section 9 of this Act.

SEC. 5. TSUNAMI RESEARCH PROGRAM.

(a) ESTABLISHMENT.—The Administrator of the National Oceanic and Atmospheric Administration shall, in coordination with other agencies and academic institutions, establish a tsunami research program to develop detection, prediction, communication, and mitigation science and technology that supports tsunami forecasts and warnings, including advanced sensing techniques, information and communication technology, data collection analysis and assessment for tsunami tracking and numerical forecast modeling that will—

(1) help determine—

(A) whether an earthquake or other seismic event will result in a tsunami; and

(B) the likely path, severity,duration, and travel time of a tsunami;

(2) develop techniques and technologies that may be used to communicate tsunami forecasts and warnings as quickly and effectively as possible to affected communities;

(3) develop techniques and technologies to support evacuation products, including real-time notice of the condition of critical infrastructure along tsunami evacuation routes for public officials and first responders; and

(4) develop techniques for utilizing remote sensing technologies in rescue and recovery operations.

(b) COMMUNICATIONS TECHNOLOGY.—The Administrator, in consultation with the Federal Communications Commission, National Oceanic and Atmospheric Administration, and the Federal Communications Commission, shall investigate the potential for improved communications systems for tsunami and other hazard warnings by incorporating into the existing network a full range of options for providing those warnings to the public, including, as appropriate—

(1) telephones, including special alert rings;

(2) wireless and satellite technology, including cellular telephones and pagers;

(3) the Internet, including e-mail;

(4) automatic alert televisions and radios; and

(5) innovative and low-cost combinations of such technologies that may provide access to remote areas; and

(6) other technologies that may be developed.

SEC. 6. TSUNAMI SYSTEM UPGRADE AND MODERNIZATION.

(a) SYSTEM UPGRADES.—The Administrator of the National Oceanic and Atmospheric Administration shall—

(1) authorize and direct the immediate repair of existing deep ocean detection buoys and related communication systems;

(2) ensure the deployment of an array of deep ocean detection buoys in the regions described in section 3(a) of this Act;

(3) ensure expansion or upgrade of the tide gauge network in the regions described in section 3(a); and

(4) complete the upgrades not later than December 31, 2007.

(b) CONGRESSIONAL NOTIFICATIONS.—The Administrator shall notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committees on Science of—

(1) impaired regional detection coverage due to equipment or system failures;

(2) significant contractor failures or delays in completing work associated with the tsunami detection and warning system;

(3) an annual report. The Administrator shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committees on Science of the status of the tsunami detection and warning system, including accuracy, false alarms, equipment failures, improvements over the previous year, and further improvement plans (or plans for curing failures) of the system, as well as progress and accomplishments of the national tsunami hazard mitigation program.

(d) EXTERNAL REVIEW.—The National Academy of Sciences shall review the tsunami detection, forecasting, and warning systems operated by the National Oceanic and Atmospheric Administration under this Act to assess further modernization needs, as well as long-term operational reliability issues, taking into account measures implemented under this Act, and transmit a report containing its findings, including an estimate of the costs of implementing those recommendations, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science within 24 months after the date of enactment of this Act.

SEC. 7. GLOBAL TSUNAMI WARNING AND MITIGATION NETWORK.

(a) INTERNATIONAL TSUNAMI WARNING SYSTEM.—The Administrator of the National Oceanic and Atmospheric Administration, in coordination with other members of the United States Interagency Committee of the National Tsunami Mitigation Program, shall provide technical assistance and advice to the Intergovernmental Oceanographic Commission of UNESCO, the World Meteorological Organization, and international entities, as part of international efforts to develop a fully functional global tsunami warning system comprised of regional tsunami tracking and numerical forecast networks and the International Tsunami Warning System of the Pacific.

(b) DETECTION EQUIPMENT, TECHNICAL ADVICE.—In carrying out this section, the Administrator—

(1) shall give priority to assisting nations in identifying vulnerable coastal areas, creating inundation mapping and real-time detection and reporting equipment, and establishing communication and warning networks and contact points in each vulnerable nation; and

(2) may establish a process for transfer of detection and communication technology to nations with purposes of establishing the international tsunami warning system.

(c) DATA-SHARING REQUIREMENT.—The Administrator may not provide technical assistance under this section for any region unless all affected nations in that region participating in the tsunami warning network agree to share data and participate in the development and operation of the network.

(d) RECEIPT OF INTERNATIONAL REIMBURSEMENT AUTHORIZED.—The Administrator may provide payment to, or reimbursement of, the National Oceanic and Atmospheric Administration in cash or in kind from international organizations and foreign authorities, or reimbursement made on behalf of such an authority, for expenses incurred by the Administrator in carrying out any activity under this Act. Any such payments or reimbursements shall be counted as reimbursement of the appropriated funds of the Administration.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Administrator of the National Oceanic and Atmospheric Administration $58,000,000 for each of fiscal years 2006 through 2012 to carry out this Act.

Mr. President, the Tsunami Preparedness Act, S. 50, will authorize much of the work that Senator INOUYE and I have done on the Appropriations Committees. It establishes a National Tsunami Hazard Mitigation Program in the National Oceanic and Atmospheric Administration. The recent
events in Indonesia reminds us all how critical it is to have a strong detection network and warning system for coastal communities. Currently there are 15 communities from Alaska, the west coast and Hawaii that are “Tsunami Ready”, a certification by NOAA that the communities have a plan and coordination plan in case of a Tsunami event.

The Tsunami Preparedness Act provides the essential component of any warning system—a program for outreach and education to inform potentially Tsunami-impacted communities and for these coastal areas to plan accordingly.

I have worked closely with Senator INOUYE on this legislation and it is an example of how we plan to coordinate on bills from the Commerce Committee. This legislation also represents the importance of tsunami detection and early warning for our States, both of which have experienced deadly tsunamis in the past and are ever vigilant to remain prepared for future possible events.

The administration released its plan for an improved tsunami monitoring system on January 14, 2005, committing itself to improving early detection and warning of tsunami events. The administration’s proposal is a good one and this bill will build on many of the commitments made in their plan. In addition, the bill improves the federal coordination and dissemination of tsunami information and research. It establishes a multi-agency task force consisting of representatives from NOAA, FEMA, USGS, NSF and potentially impacted coastal states and territories.

The tsunami preparedness act will expand tsunami research, and consistently upgrade and maintain the improved system, which would cover the Pacific and Atlantic-Caribbean-Gulf of Mexico regions. In an effort to lend help and education, the bill also directs NOAA to assist other countries that could be impacted by tsunamis and build on the United States efforts to establish an international earth observing system. It is a pleasure to work with my good friend from Hawaii on this important legislation.

By Mr. INOUYE:

S. 58. A bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing a bill which is of great importance to a group of patriotic Americans. This legislation is designed to provide those former prisoners of war who have been totally disabled in the service of our country.

Currently, retired members of the Armed Services are permitted to travel on a space-available basis on non-scheduled military flights within the continental United States, and on scheduled overseas flights operated by the Military Airlift Command. My bill would also permit former prisoners of war, veterans with 100 percent service-connected disabilities.

We owe these heroic men and women who have given so much to our country a debt of gratitude. Of course, we can never pay them for the sacrifices they have made on behalf of our Nation, but we can surely try to make their lives more pleasant and fulfilling. One way in which we can help is to extend military travel privileges to these distinguished American veterans. I have received numerous letters from all over the country attesting to the importance attached to this issue by veterans. Therefore, I ask that my colleagues show their concern and join me in saying “thank you” by supporting this legislation.

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

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

S. 59

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

SECTION 1. TRAVEL ON MILITARY AIRCRAFT OF CERTAIN DISABLED FORMER MEMBERS OF THE ARMED FORCES.

(a) In General.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1060b the following new section:

1060c. Travel on military aircraft: certain disabled former members of the armed forces.

“The Secretary of Defense shall permit any former member of the armed forces who is entitled to compensation under the laws administered by the Secretary of Veterans Affairs for a service-connected disability rated as total to travel, in the same manner and to the same extent as retired members of the armed forces, on unscheduled military flights within the continental United States and on scheduled overseas flights operated by the Air Mobility Command. The Secretary of Defense shall permit such travel on a space-available basis.”.

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1060b the following new item:

1060c. Travel on military aircraft: certain disabled former members of the armed forces.”.

By Mr. INOUYE:

S. 59. A bill to amend title 10, United States Code, to authorize certain disabled former prisoners of war to use Department of Defense commissary and exchange stores; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing legislation that would put an end to automatic cost-of-living adjustments for congressional pay. As I have noted when I raised this issue in past years, it is an unusual thing to have the power to raise our own pay. Most of our constituents do not have that power. And that this power is so unusual is good reason for the Congress to exercise that power openly, and to exercise it subject to regular procedures that include debate, amendment, and a vote on the record.

I regret to say, that current law permits Congress to avoid that public debate and vote. All that is necessary for Congress to get a pay raise is that...
nothing be done to stop it. The annual pay raise takes effect unless Congress acts.

This stealth pay raise mechanism began with a change Congress enacted in the Ethics Reform Act of 1989. In section 272, Congress voted to make themselves entitled to an annual raise equal to half a percentage point less than the employment cost index, one measure of inflation.

It is true, that on occasion Congress has voted to deny itself the raise, and the traditional vehicle for the pay raise vote is the Treasury appropriations bill. But that vehicle is not always made available to those who want a public debate and vote on the matter. Just last year, for example, the Treasury appropriations bill was slipped into the massive Omnibus Appropriations conference report, and thus it was completely shielded from amendment. Senators were effectively prevented from offering amendments to force up or down vote on the annual pay raise. And that situation was not unique.

Getting a vote on the annual congressional pay raise is a haphazard affair, at best, and it should not be that way. Congress should not be on those who seek a public debate and recorded vote on the Member pay raise. On the contrary, Congress should have to act if it decides to award itself a hike in pay. This process of pay raises without accountability must end.

This issue is not a new question. It began with a change Congress enacted in 1789. Mr. SPENCER, I was proud to vote on the Michigan Legislature approving the 27th amendment to the Constitution providing that Congress could not raise its pay. This process of pay raises without accountability must end. This practice must end. This bill will end it. Senators and Congressmen should have to vote up-or-down to raise congressional pay. My bill would simply require us to vote in the open. We owe our constituents nothing less.

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. 60

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

SECTION 1. ELIMINATION OF AUTOMATIC PAY ADJUSTMENTS FOR MEMBERS OF CONGRESS.

(a) IN GENERAL.—Paragraph (2) of section 60(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 31) is amended—

(1) by striking “(a)(1)” and inserting “(a)”;

(2) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(3) by striking “as adjusted by paragraph (2) of this subsection” and inserting “adjusted as provided by law”.

(c) EFFECTIVE DATE.—This section shall take effect on February 1, 2007.

By Mr. INOUYE:

S. 61. A bill to amend title XVIII of the Social Security Act to provide improved reimbursement for clinical social worker services under the medicare program; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I am introducing a title amendment to amend Title XVIII of the Social Security Act to correct discrepancies in the reimbursement of clinical social workers covered through Medicare, Part B. The three proposed changes contained in this legislation clarify the current payment process for clinical social workers and establish a reimbursement methodology for the profession that is similar to other health care professionals reimbursed through the Medicare program.

First, this legislation sets payment for clinical social worker services according to a fee schedule established by the Secretary. Second, it explicitly states that services and supplies furnished by a clinical social worker are a covered Medicare expense, just as these services are covered for other mental health professionals in Medicare.

Third, the bill allows clinical social workers to be reimbursed for services provided to a client who is hospitalized.

Clinical social workers are valued members of our health care provider network. They are legally regulated in every state of the nation and are recognized as independent providers of mental health care throughout the health care system. It is time to correct the disparate reimbursement treatment of this profession under Medicare.

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. 61

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 ‘‘Equity for Clinical Social Workers Act of 2005’’.

SEC. 2. IMPROVED REIMBURSEMENT FOR CLINICAL SOCIAL WORKER SERVICES UNDER MEDICARE.

(a) IN GENERAL.—Section 1833(a)(1)(F)(i) of the Social Security Act (42 U.S.C. 1395l(a)(1)(F)(i)) is amended to read as follows—

‘‘(i) the amount determined by a fee schedule established by the Secretary;’’.

(b) DEFINITION OF CLINICAL SOCIAL WORKER SERVICES EXPANDED.—Section 1861(hh)(2) of the Social Security Act (42 U.S.C. 1395x(hh)(2)) is amended by striking ‘‘services performed by a clinical social worker (as defined in paragraph (1))’’ and inserting ‘‘such services and such services and supplies furnished as an incident of such services performed by a clinical social worker (as defined in paragraph (1))’’.

(c) CLINICAL SOCIAL WORKER SERVICES NOT TO BE INCLUDED IN INPATIENT HOSPITAL SERVICES.—Section 1861(b)(4) of the Social Security Act (42 U.S.C. 1395x(b)(4)) is amended by striking ‘‘and services’’ and inserting ‘‘clinical social worker services and services’’.

(d) TREATMENT OF SERVICES FURNISHED IN INPATIENT SETTING.—Section 1832(a)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1395l(a)(2)(B)(iii)) is amended by striking ‘‘and services’’ and inserting ‘‘clinical social worker services, and services’’.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made for clinical social worker services furnished on or after January 1, 2006.

By Mr. INOUYE:

S. 62. A bill for the relief of Jim K. Yoshida; to the Committee on Veterans’ Affairs.

Mr. INOUYE. Mr. President, today I am introducing a private relief bill on behalf of Jim K. Yoshida, to obtain recognition of his service with the U.S. military in Korea so that he may obtain veteran’s status.

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

S. 62

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

SECTION 1. VETERAN STATUS.

(a) ENTITLEMENT TO STATUS.—Notwithstanding any other provision of law, Jim K. Yoshida of Honolulu, Hawaii, is deemed to be a veteran for the purposes of all laws administered by the Secretary of Veterans Affairs. (b) TREATMENT OF SERVICE.—Notwithstanding any other provision of law, the service of Jim K. Yoshida of Honolulu, Hawaii, as a volunteer member of the United States armed forces shall be considered as active military service for purposes of any program or benefit provided under any other provision of law.
States Army during the period beginning on July 2, 1950, and ending on January 17, 1951, shall be deemed to be active military service for the purposes of this Act.

(c) PROSPECTIVE APPLICABILITY.—No benefits may be paid or otherwise provided to Jim K. Yoshida of Honolulu, Hawaii, by reason of the enactment of this Act with respect to any period before the date of the enactment of this Act.

By Mr. BINGAMAN (for himself and Mr. DOMENICI).

S. 63, to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BINGAMAN. Mr. President, I rise today to reintroduce legislation to establish the Northern Rio Grande National Heritage Area in northern New Mexico. I am pleased that Senator DOMENICI is again joining me in sponsoring this bill. The Northern Rio Grande National Heritage Area will be established as part of a collaborative effort between local residents, Indian tribes, businesses and local governments, who are working together to preserve the area.

By establishing the Northern Rio Grande National Heritage Area, I hope to commemorate the significant but complex heritage of northern New Mexico communities and Indian tribes, from the pre-Spanish colonization period to present day. Establishing a National Heritage Area will benefit the northern New Mexico communities, local residents, students, and visitors, as well as help the local protection and interpretation of the unique cultural, historical, and natural resources of northern New Mexico.

Last Congress, identical legislation passed the Senate by unanimous consent and again as part of a comprehensive heritage area bill. The House of Representatives, however, did not extend this authority to other heritage areas but unfortunately the different versions were not able to be reconciled prior to the sine die adjournment of the Congress. However, I am encouraged that the Senate and House have each approved authorization for the Northern Rio Grande National Heritage Area, and it is my hope that since both Houses have now passed legislation that is essentially identical to the bill I am introducing today, it can be swiftly considered and enacted into law.

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. 63

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

SEC. 1. SHORT TITLE. This Act may be cited as the “Northern Rio Grande National Heritage Area Act”.

SEC. 2. CONGRESSIONAL FINDINGS. The Congress finds that—

(1) northern New Mexico encompasses a mosaic of cultures and history, including the presence of Spanish ancestors who settled in the area in 1598;

(2) the combination of cultures, languages, folk arts, customs, and architecture make northern New Mexico unique;

(3) the area includes spectacular natural, scenic, and recreational resources;

(4) there is broad support from local governments and interested individuals to establish a National Heritage Area to coordinate and assist in the preservation and interpretation of these resources;

(5) in 1991, a National Park Service study Alternate Concepts for Commemorating Spanish Colonization identified several alternatives consistent with the establishment of a National Heritage Area, including conducting a comprehensive archaeological and historical research program, coordinating a comprehensive interpretation program, and interpreting a cultural heritage scene; and

(6) establishment of a National Heritage Area in northern New Mexico would assist local communities and residents in preserving these same cultural, historical and natural resources.

SEC. 3. DEFINITIONS. As used in this Act—

(1) the term “heritage area” means the Northern Rio Grande Heritage Area; and

(2) the term “Secretary” means the Secretary of the Interior.

SEC. 4. NORTHERN RIO GRANDE NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is hereby established the Northern Rio Grande National Heritage Area in the State of New Mexico.

(b) BOUNDARIES.—The heritage area shall include the counties of Santa Fe, Rio Arriba, and Taos.

(c) MANAGEMENT ENTITY.—

(1) The Northern Rio Grande Heritage Area, Inc., a non-profit corporation chartered in the State of New Mexico, shall serve as the management entity for the heritage area.

(2) The Board of Directors for the management entity shall include representatives of the State of New Mexico, the counties of Santa Fe, Rio Arriba and Taos, tribes and pueblo within the heritage area, the cities of Santa Fe, Española and Taos, and members of the Northern Rio Grande National Heritage Area, Inc., as well as representatives of Board members and the number of Directors representing State, local and tribal governments and interested communities shall be determined by the Board. All parties shall have appropriate representation on the Board.

(d) AUTHORITY.—The management entity may make grants and provide technical assistance to local and tribal governments and non-profit organizations in—

(A) establishing and maintaining interpretive exhibits in the heritage area;

(B) developing recreational resources in the heritage area;

(C) increasing public awareness of, and appreciation for, the cultural, historical, archaeological and natural resources and sites in the heritage area;

(D) the restoration of historic structures related to the heritage area; and

(E) for other purposes that the management entity determines appropriate to fulfill the purposes of this Act, consistent with the management plan.

SEC. 5. AUTHORITY AND DUTIES OF THE MANAGEMENT ENTITY.

(a) MANAGEMENT PLAN.—

(1) Not later than 3 years after the date of enactment of this Act, the management entity shall develop and forward to the Secretary a management plan for the heritage area.

(2) The management entity shall develop and implement the management plan in cooperation with affected communities, tribal and local governments and shall provide for public involvement in the development and implementation of the management plan.

(3) The management plan shall, at a minimum—

(A) provide recommendations for the conservation, funding, management, and development of the heritage area;

(B) identify sources of funding;

(C) include an inventory of the cultural, historical, archaeological, natural, and recreational resources of the heritage area;

(D) provide recommendations for educational and interpretive programs to inform the public about the resources of the heritage area; and

(E) include an analysis of ways in which local, State, Federal, and tribal programs may best be coordinated to promote the purposes of this Act.

(4) If the management entity fails to submit a management plan to the Secretary as required by paragraph (3), the Secretary shall promulgate a management plan and submit it to the Congress. However, I am encouraged that the Senate and House have each approved authorization for the Northern Rio Grande National Heritage Area, and it is my hope that since both Houses have now passed legislation that is essentially identical to the bill I am introducing today, it can be swiftly considered and enacted into law.

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. 63

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
The Secretary shall establish a management plan for the heritage area; and
(2) grant the management entity any authority to regulate the use of privately owned lands; or
(2) authorize the management entity to assume any management authorities over such lands.

(2) to grant the management entity any cultural or religious sites on tribal lands.

(a) N O EFFECT ON PRIVATE PROPERTY.

(1) to modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

SEC. 7. SAVINGS PROVISIONS.

(2) authorize the management entity to assume any management authorities over such lands.

(a) N I N GENERAL.

(1) modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

(b) PRIORITY.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate the conservation of the significant natural, cultural, historical, archaeological, scenic, and recreational resources of the heritage area; and

(c) A UTHORITY OF GOVERNMENTS.

Nothing in this Act shall diminish the Federal Government’s trust responsibilities or government-to-government obligations to any federally recognized Indian tribe.

SEC. 8. SUNSET.

The authority of the Secretary to provide assistance under this Act terminates on the date that is 15 years after the date of enactment of this Act.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) I N GENERAL.—There are authorized to be appropriated to carry out this Act $10,000,000 of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) C O-STSHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this Act shall be not more than 50 percent.

By Mr. INOUYE (for himself, Mr. STEVENS, and Mr. BURNS):

S. 65. A bill to amend the age restrictions for pilots; to the Committee on Commerce, Science, and Transportation.

Mr. INHOFE. Mr. President, I rise today, as an experienced pilot over age 60, along with my colleagues, Senator STEVENS and Senator BURNS, to introduce a bill that will help end age discrimination among airline pilots. I also want to thank my colleague in the other chamber, Congressman Jim GILBONs, for his leadership on this issue and for introducing the companion version of this bill.

This bill will abolish the Federal Aviation Administration’s Age 60 Rule. The regulation that for more than 40 years has forced the retirement of airline pilots the day they turn 60 and replace it with a rational plan that ties the commercial pilot retirement age to the Social Security retirement age currently 65.

Most nations have abolished mandatory age 60 retirement rules. The United States is one of only two countries in the Joint Aviation Authority for Standards in Aviation (JAA) that prohibit pilots to retire at the age of 60. Some countries, including Canada, Australia, and New Zealand have no upper age limit at all.

The Age 60 Rule has no basis in science or safety and never did. FAA data shows that pilots over age 60 are as safe as, and in some cases safer than, their younger colleagues. There have been numerous studies and statements in support of abolishing the Age 60 Rule.

In 1981, the National Institute of Aging stated that “the Age 60 Rule appears indefensible on medical grounds” and “there is no convincing medical evidence to support age 60, or any other specific age, for mandatory pilot retirement.”

The FAA released the Hilton Study in 1993, which stated “the data for all groups of pilots were remarkably consistent in showing a modest decrease in accident rate with age no hint of an increase in accident rates as pilots near age 60.”

Furthermore, in May 1999, the Senate Appropriations Committee asked the FAA to report on why the US should not cautiously increase the age to 63, “like other countries, that have for commercial aviation.”

Airline Pilots magazine stated in a September 2003 article, “If a permanent replacement for the 30 year Treasury bond rate is also applied to the calculation of lump-sum payments, we recommend a long transition period, similar to that proposed in H.R. 1776, the pension legislation introduced by Rep. Bob PORTMAN. For pilots who must retire at age 60, this is particularly important. It would allow pilots to pull the rug out from under employees who have carefully planned their retirement finances, especially pilots who can’t fly longer to make up for the amounts lost because of a change in the basis used to calculate lump-sum payments.”

As recently as September 14, 2004, in a hearing before the Senate Special Committee on Aging, Captain Joseph Ike Eichelkraut, President of Southwest Airlines Pilots’ Association, testified:

“The 4400 plus pilots of the SouthWest Airlines Pilots’ Association, oppose the Age 60 Rule.

“Flying a commercial airliner is not the physically demanding environment I encountered 15 years ago in the 7 9 ‘G’ world of the F-16 I flew in the Air Force. Commercial piloting is, however, a job requiring key management skills and sound judgment. These are talents that I have found typically come with age and experience.

“The facts are that plain. The FAA has the ideal mechanisms for ensuring safe pilots at any age are already in place. To retain my license and fly as a pilot for Southwest Airlines, I must pass semi-annual flight physical administered by a qualified (FAA licensed) Aero-Medical Examiner (AME). When a pilot turns 40 years of age, he undergoes a ‘Refu’ (refueling) flight physical, which is electronically transmitted by the AME directly to FAA headquarters where a computer program alerts if parameters dictate.

“Pilots must also successfully pass semi-annual simulator training and flight checks designed to evaluate the crewmember’s ability to respond to various aircraft emergencies and/or competently handle advances in flight technology and the Air Traffic Control (ATC) environment. Captains must demonstrate, twice yearly, complete knowledge of systems and procedures, safe piloting skills and multi-tasking by managing emergency and normal flight situations, typically in instrument flight conditions conducted in advanced simulators. There is no greater test of cognitive ability and mental dexterity than these simulator rides. Flight crews are also administered random infight check rides by FAA inspectors and Southwest check airmen. Furthermore, we are subject to random alcohol and drug testing at any time while on duty. There is no other profession examined to this level. The 59 year old Captain arrives at this point in his career having demonstrated successful performance form this kind of scrutiny. FAA studies have verified the superior level of safety exhibited by this senior Captain.

“At Southwest, our pilots are trained to fly the aircraft on instruments down to 50’ above the ground in poor visibility conditions before acquiring the intended runway and landing visually. In simulators, both pilots must demonstrate the ability to immediately determine whether a safe landing can be made and then execute a ‘go-around’ or land. The First Officer is trained to assume control of the aircraft and execute a ‘go-around’ if the Captain fails to respond to procedures at this critical decision point. If either pilot should become incapacitated, even at touchdown, the other pilot is capable of assuming control in order to fly the airplane to a safe landing. The passengers would probably remain unaware that a pilot had become incapacitated, the aircraft met at the gate by Emergency Medical Technicians (EMTs).

“Simulator failure rates among SWA pilots are low. Last year there were only 31 out of 4,200 simulator checkrides. But as pilots approach age 60 the failure numbers are at their lowest. The graph attached shows this and I believe that experience is the key. As pilots get older, they know how to better handle the extreme situations they may be encountered in simulator checks. The mean failure rates at an even rate from a pilot’s thirties through his fifties. Of course, because of the Age 60 rule, I don’t have data to
show that this trend would continue throughout a pilot's sixties, but I suspect it would.

I urge the Commerce Committee to hold hearings along these lines.

Furthermore, on September 29, 2004, thousands of people watched as 63-year-old Michael Melvill made history by becoming the first civilian to pilot a craft into space. In doing so, he helped Paul Allen, the owner of Mojave Aerospace Ventures, which owns SpaceShipOne technology, along with the SpaceShipOne, Bert Rutan, win the coveted $10 million Ansari X-Prize.

Melvill took SpaceShipOne above the 62-mile altitude point, ultimately soaring to 337,500 feet. Despite rolling near the end 20 times, Melvill was able to gain control of the vehicle, re-enter the atmosphere, and glide to a landing. I attribute this recovery and subsequent landing to Melvill’s years of extensive experience as a test pilot.

The most important lessons we've learned about our most experienced pilots, those like Michael Melvill demonstrably healthy, and fit for duty to retain their jobs, a step that will benefit pilots, the financially burdened airlines, and most importantly, passengers more than ever before. We need to keep our best pilots flying.

Again, there is no scientific justification for requiring pilots to retire at age 60. Our pilots, our airlines, and our passengers deserve our consideration. I urge the rest of my colleagues to support this important legislation.

By Mr. INOUYE:

S. 66. A bill to amend title XIX of the Social Security Act to provide for coverage of services provided by nursing school clinics under medicaid programs; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I introduce the Nursing School Clinics Act of 2005, which builds on our concerted efforts to provide access to quality health care for Americans by offering grants and incentives for nursing schools to establish primary care clinics in underserved areas where additional medical services are most needed. In addition, this measure provides the opportunity for nursing schools to enhance the scope of student training and education by providing firsthand clinical experience in primary care facilities.

Primary care clinics administered by nursing schools are university or nonprofit primary care centers developed mainly in collaboration with university schools of nursing and the communities they serve. These centers are staffed by faculty and staff who are nurse practitioners and public health nurses. Students supplement patient care while receiving preceptorships provided by college of nursing faculty and primary care physicians, often associated with academic institutions, who serve as collaborators with nurse practitioners. To date, the comprehensive models of care provided by nursing clinics have yielded excellent results, including significantly fewer emergency room visits, fewer hospital inpatient days, and less use of specialists, as compared to conventional primary health care.

This bill reinforces the principle of combining health care delivery in underserved areas with the education of advanced practice nurses. To accomplish these objectives, Title XIX of the Social Security Act would be amended to designate that the services provided in these nursing school clinics are reimbursable under Medicaid. The combination of grants and the provision of Medicaid reimbursement furnishes the financial incentives for clinic operators to establish the clinics.

In order to meet the increasing challenges of bringing cost-effective and quality health care to all Americans, we must consider a wide range of proposals, both large and small. Most importantly, we must approach the issue of health care with creativity and determination that all reasonable avenues are pursued. Nurses have always been an integral part of health care delivery. The Nursing School Clinics Act recognizes the central role nurses can perform as caregivers to the elderly, the disabled, the low-income, and the uninsured.

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. 66

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 “Nursing School Clinics Act of 2005.”

SEC. 2. MEDICAID COVERAGE OF SERVICES PROVIDED BY NURSING SCHOOL CLINICS.

(a) IN GENERAL.—Section 1905(a)(1) of the Social Security Act (42 U.S.C. 1396a(a)(1)) is amended—

(1) in paragraph (27), by striking “and” at the end;

(2) by redesignating paragraph (28) as paragraph (29); and

(3) by inserting after paragraph (27), the following new paragraph:

“(28) nursing school clinic services (as defined in subsection (x)) furnished by or under the supervision of a nurse practitioner or a clinical nurse specialist (as defined in section 1861(aa)(5)), whether or not the nurse practitioner or clinical nurse specialist is under the supervision of, or associated with, a physician or other health care provider; and”.

(b) NURSING SCHOOL CLINIC SERVICES DEFINED.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended by adding at the end the following new subsection:

“(y) The term ‘nursing school clinic services’ means services provided by a health care facility operated by an accredited school of nursing which provides primary care, long-term care, mental health counseling, home health counseling, home health care, or other health care services which are within the scope of practice of a registered nurse.”.

(c) CONFIRMING AMENDMENT.—Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting “and (28)” after “(24)”.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to payments made under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) for calendar quarters commencing with the first calendar quarter beginning after the date of enactment of this Act.

By Mr. INOUYE:

S. 67. A bill to amend the Public Health Act to provide health care practitioners in rural areas with training in preventive health care, including both physical and mental health, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, I rise today to introduce the Rural Preventive Health Care Training Act, a bill that responds to the dire need of our rural communities for quality health care delivery and disease prevention programs. Almost one fourth of Americans live in rural areas and frequently lack access to adequate physical and mental health care. As many as 21 million of the 34 million people living in underserved rural areas are without access to a primary care provider. Even in areas where providers do exist, there are numerous limits to access, such as geographic distance, lack of follow-up, and lack of knowledge about available resources. Due to the diversity of rural populations, language and cultural obstacles are often a factor in the access to medical care.

To compound these problems with limited financial resources, and the result is that many Americans living in rural communities go without vital health care, especially preventive care. Children fail to receive immunizations and routine checkups. Preventable illnesses and injuries occur needlessly, and lead to expensive hospitalizations. Early symptoms of emotional problems and substance abuse go undetected, and often develop into full-blown disorders.

An Institute of Medicine report entitled, “Reducing Risks for Mental Disorders: Frontiers for Preventive Intervention Research,” highlights the benefits of preventive care for all health problems. The training of health care providers in prevention is crucial in order to meet the demand for care in underserved areas. Currently, rural health care providers lack preventive care training opportunities.

Interdisciplinary preventive training of rural health care practitioners must be encouraged. Through such training, rural health care providers can build a strong educational foundation from the behavioral, biological, and psychological sciences. Interdisciplinary team prevention training will also facilitate operations at sites with both health and mental health clinics by facilitating routine consultation between groups. Emphasizing the mental health disciplines and their services as part of the health care team will contribute to the overall health of rural communities.

The Rural Preventive Health Care Training Act would implement the
risk-reduction model described in the IOM study. This model is based on the identification of risk factors and targets specific interventions for those risk factors. The human suffering caused by these factors is immense and places a huge financial burden on communities, families, and individuals. By implementing preventive measures to reduce this suffering, the potential psychological and financial savings are enormous.

Mr. President, 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. 67

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 “Rural Preventive Health Care Training Act of 2005”.

SEC. 2. PREVENTIVE HEALTH CARE TRAINING.

Part D of title VII of the Public Health Service Act (42 U.S.C. 294 et seq.) is amended by inserting after section 753 the following:

“SEC. 754A. PREVENTIVE HEALTH CARE TRAINING.

“(a) IN GENERAL.—The Secretary may make grants to, and enter into contracts with, eligible applicants to enable such applicants to provide preventive health care training in accordance with subsection (c), to health care practitioners practicing in rural areas. Such training shall, to the extent practicable, include training in health care to prevent both physical and mental disorders before the initial occurrence of such disorders. In carrying out this sub- section, the Secretary shall encourage, but may not require, the use of interdiscipli- nary training project applications.

“(b) LIMITATION.—To be eligible to receive training using assistance provided under subsection (a), a health care practitioner shall be determined by the eligible applicant involved to be practicing, or desiring to prac- tice, in a rural area.

“(c) USE OF ASSISTANCE.—Amounts re- ceived under a grant made or contract en- tered into under this section shall be used—

“(1) to provide training for health care pro- fessionals and other institutions that serve predominately rural communities, for the purpose of enabling the individuals to receive preventive health care training;

“(2) to increase staff support at rural com- munity colleges or other institutions that service predominantly rural communities to facilitate the provision of preventive health care training;

“(3) to provide training in appropriate re- search and program evaluation skills in rural communities;

“(4) to create and implement innovative programs and curricula with a specific pre- vention emphasis, and

“(5) for other purposes as the Secretary de- termines to be appropriate.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $5,000,000 for each of fiscal years 2006 through 2009."

By Mr. INOUYE:

S. 68. A bill to amend title XIX of the Social Security Act to provide 100 percent of the costs for medical assistance provided to a Native Hawaiian through a federally-qualified health center or a Native Hawaiian health care system; to the Committee on Fi- nance.

Mr. INOUYE. Mr. President, today I introduce the Native Hawaiian Medicaid Coverage Act. This legislation would authorize a Federal Medicaid Assis- tance Percent (FMAP) of 100 percent for the payment of health care costs of Native Hawaiians who receive health care from Federally Qualified Health Centers or the Native Hawaiian Health Care System.

This bill was originally a provision in the Medicare Prescription Drug Bill, which the Senate passed by an overwhelming majority of 76 to 22, but was dropped from the final Medicare Prescription Drug Conference Report.

This bill is modeled on the Native Alaskan Health Care Act, which provides for a 100 percent Federal Medical Assistance Percent (FMAP) of 100 percent for payment of health care costs for Native Alaskans by the Indian Health Service, an Indian tribe, or a tribal organiza- tion.

Community health centers serve as the “safety net” for uninsured and medically underserved Native Hawaiians and other United States citizens, providing primary and preventive health services to the entire community. Outpatient services of- fered to the entire family include com- prehensive primary care, preventive health care, and education outreach in the local community. Com- munity health centers, with their multi- disciplinaries approach, offer cost ef- fective integration of health promotion and wellness with chronic disease man- agement and primary care focused on serving vulnerable populations.

Mr. President, I ask unanimous con- sent 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. 69

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Native Ha- waiian Medicaid Coverage Act of 2005”.

SEC. 2. 100 PERCENT FMAP FOR MEDICAL ASSIST- ANCE PROVIDED TO A NATIVE HA- WAIIAN THROUGH A FEDERALLY- QUALIFIED HEALTH CENTER OR A NA- TIVE HAWAIIAN HEALTH CARE SYSTEM UNDER THE MEDICAID PRO- gram.

(a) MEDICARE.—The third sentence of sec- tion 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended by inserting “, and with respect to medical assistance pro- vided to a Native Hawaiian (as defined in section 12 of the Native Hawaiian Health Care Improvement Act) through a federally- qualified health center or a Native Hawaiian health care system (as so defined) whether directly, by referral, or under contract or otherwise transferring to a federally- qualified health center or a Native Hawaiian health care system and another health care provider before the period.

(b) EFFECTIVE DATE.—The amendment made by this section applies to medical assis- tance provided on or after the date of en- actment of this Act.

By Mr. INOUYE:

S. 69. A bill to provide the relief of Donald C. Pence; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I am reintroducing a private relief bill to achieve retroactive payment to Mrs. Pence of Sanford, North Carolina, for compensation for the failure of the Department of Veterans Affairs to pay dependency and indemnity compensation to Kathryn E. Box, the now-deceased mother of Donald C. Pence. It is rare that a fed- eral agency admits a mistake. In this case, the Department of Veterans Af- fairs has admitted that a mistake was made and explored ways to permit pay- ment under the law, including equi- table relief, but has found no provision authorizing the Department to release the remaining benefits that were un- paid to Mrs. Box at the time of her death. My bill would correct this injusti- ce, and I urge my colleagues to sup- port this measure.

Mr. President, I ask unanimous con- sent that the text of my bill be printed in the RECORD.

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

S. 70. A bill to amend title XVIII of the Social Security Act to remove the restriction that a clinical psychologist or a clinical social worker provide services in a comprehensive outpatient rehabilitation facility to a patient only under the care of a physician; to the Committee on Armed Services.

Mr. INOUYE. Mr. President, today I introduce legislation to authorize the availability of clinical psychologists and clinical social workers within the Medicare comprehensive outpatient rehabilitation facility program.

In my judgment, it is unfortunate that Medicare requires clinical supervision of the services provided by certain health professionals and does not allow them to function to the full extent of their training and education. Those who need the services of out- patient rehabilitation facilities should have access to a wide range of social and behavioral science expertise. Clinical psychologists and clinical social workers are recognized as independent providers of mental health care services under the Federal Employee Health Benefits program, the TRICARE Military Health Program of the Uniformed Services, the Medicare (Part B) Program, and numerous pri- vate insurance plans. This legislation will ensure that these qualified profes- sionals are given full recognition under the Medicare comprehensive outpatient rehabilitation facility program.
Mr. President, 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. 70

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 called the “Autonomy for Psychologists and Social Workers Act of 2005”.

SEC. 2. REMOVAL OF RESTRICTION THAT A CLINICAL PSYCHOLOGIST OR CLINICAL SOCIAL WORKER PROVIDE SERVICES IN A COMPREHENSIVE OUTPATIENT REHABILITATION FACILITY TO A PATIENT ONLY UNDER THE CARE OF A PHYSICIAN. (a) In General.—Section 1861(cc)(2)(E) of the Social Security Act (42 U.S.C. 1395x(cc)(2)(E)) is amended by striking “physician” and inserting “physician, except that a patient receiving qualified psychologist services (as defined in subsection (i)) may be under the care of a clinical psychologist with respect to such services to the extent permitted under this subsection, and except that a patient receiving clinical social worker services (as defined in subsection (hh)(2)) may be under the care of a clinical social worker with respect to such services to the extent permitted under State law”.

(b) Effective Date.—The amendment made by subsection (a) shall apply to services provided on or after January 1, 2006.

By Mr. INOUYE.

S. 71

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 called the “Registered Nurse Safe Staffing Act of 2005”.

SEC. 2. FINDINGS. Congress makes the following findings: (1) There are hospitals throughout the United States that have inadequate staffing of registered nurses to protect the well-being and health of the patients.

(2) Studies show that the health of patients in hospitals is directly proportionate to the number of registered nurses working in the hospital.

(3) There is a critical shortage of registered nurses in the United States.

(4) The effect of that shortage is revealed in unsafe staffing levels in hospitals.

(5) Patient safety is adversely affected by these unsafe staffing levels, creating a public health crisis.

(6) Registered nurses are being required to perform professional services under conditions that do not support quality health care delivery in a health care environment for registered nurses.

(7) As a payer for inpatient and outpatient hospital services for individuals entitled to benefits under the Medicare program established under title XVIII of the Social Security Act, the Federal Government has a compelling interest in promoting the safety of such individuals by requiring any hospital participating in such program to establish minimum safe staffing levels for registered nurses.

SEC. 3. ESTABLISHMENT OF MINIMUM STAFFING RATIOS BY MEDICARE PARTICIPATING HOSPITALS. (a) Requirement of Medicare Provider Agreement.—Section 1886 of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (R), by striking “and” and inserting “or” after the comma at the end;

(2) in subparagraph (S), by striking the period at the end and inserting “and”, and by inserting after subparagraph (S) the following new subparagraph:

“(T) in the case of a hospital, to meet the requirements of section 1889.

(b) Medicare Conditions of Participation.—Section 1886 of title XVIII of the Social Security Act is amended by inserting after section 1888 the following new section:

“STAFFING REQUIREMENTS FOR MEDICARE PARTICIPATING HOSPITALS.

SEC. 1889. (a) Establishment of Staffing System for Medicare Participating Hospitals.—(1) In General.—Each participating hospital shall adopt and implement a staffing system that ensures a number of registered nurses on each shift and in each unit of the hospital to ensure appropriate staffing levels for patient care.

(2) Staffing System Requirements.—Subject to paragraph (3), a staffing system adopted and implemented under this section shall—

(A) be based upon input from the direct caregivers, registered nurse staff or their exclusive representatives, as well as the chief nurse executive;

(B) be based upon the number of patients and the level and variance of intensity of care to be provided, with appropriate consideration given to admissions, discharges, and transfers during each shift;

(C) account for contextual issues affecting staffing and the delivery of care, including architecture and geography of the environment and available technology;

(D) reflect the level of preparation and experience of those providing care;

(E) account for staffing level effectiveness or deficiencies in related health care classification, including but not limited to, certified nurse assistants, licensed vocational nurses, licensed psychiatric technicians, nursing assistants, aides, and orderlies;

(F) reflect staffing levels recommended by specialty nursing organizations;

(G) establish upwardly adjustable registered nurse-to-patient ratios based upon registered nurses’ assessment of patient acuity and existing conditions;

(H) provide that a registered nurse shall not be assigned to work in a particular unit with the first having the ability to provide professional care in such unit; and

(I) be based on methods that assure validity and reliability.

(b) Reporting and Release to Public, or Certain Staffing Information.—(1) Requirements for Hospitals.—Each participating hospital shall—

(A) post daily for each shift, in a clearly visible place, a document that specifies in a uniform manner (as prescribed by the Secretary) the current number of licensed and unlicensed nursing staff directly responsible for patient care in each unit of the hospital, identifying specifically the number of registered nurses;

(B) on request, make available to the public—

(i) the nursing staff information described in subparagraph (A); and

(R) and the number of mandatory overtime hours a fiscal year, but more importantly, works to support of this bill supports our nation’s nurses during a critical shortage, but more importantly, works to ensure the safety of their patients.

Mr. President, 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. 71

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 called the “Registered Nurse Safe Staffing Act of 2005”.

SEC. 2. FINDINGS. Congress makes the following findings: (1) There are hospitals throughout the United States that have inadequate staffing of registered nurses to protect the well-being and health of the patients.

(2) Studies show that the health of patients in hospitals is directly proportionate to the number of registered nurses working in the hospital.

(3) There is a critical shortage of registered nurses in the United States.

(4) The effect of that shortage is revealed in unsafe staffing levels in hospitals.

(5) Patient safety is adversely affected by these unsafe staffing levels, creating a public health crisis.

(6) Registered nurses are being required to perform professional services under conditions that do not support quality health care delivery in a health care environment for registered nurses.

(7) As a payer for inpatient and outpatient hospital services for individuals entitled to benefits under the Medicare program established under title XVIII of the Social Security Act, the Federal Government has a compelling interest in promoting the safety of such individuals by requiring any hospital participating in such program to establish minimum safe staffing levels for registered nurses.

SEC. 3. ESTABLISHMENT OF MINIMUM STAFFING RATIOS BY MEDICARE PARTICIPATING HOSPITALS. (a) Requirement of Medicare Provider Agreement.—Section 1886 of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (R), by striking “and” and inserting “or” after the comma at the end;

(2) in subparagraph (S), by striking the period at the end and inserting “and”, and by inserting after subparagraph (S) the following new subparagraph:

“(T) in the case of a hospital, to meet the requirements of section 1889.

(b) Medicare Conditions of Participation.—Section 1886 of title XVIII of the Social Security Act is amended by inserting after section 1888 the following new section:

“STAFFING REQUIREMENTS FOR MEDICARE PARTICIPATING HOSPITALS.

SEC. 1889. (a) Establishment of Staffing System for Medicare Participating Hospitals.—(1) In General.—Each participating hospital shall adopt and implement a staffing system that ensures a number of registered nurses on each shift and in each unit of the hospital to ensure appropriate staffing levels for patient care.

(2) Staffing System Requirements.—Subject to paragraph (3), a staffing system adopted and implemented under this section shall—

(A) be based upon input from the direct caregivers, registered nurse staff or their exclusive representatives, as well as the chief nurse executive;

(B) be based upon the number of patients and the level and variance of intensity of care to be provided, with appropriate consideration given to admissions, discharges, and transfers during each shift;

(C) account for contextual issues affecting staffing and the delivery of care, including architecture and geography of the environment and available technology;

(D) reflect the level of preparation and experience of those providing care;

(E) account for staffing level effectiveness or deficiencies in related health care classification, including but not limited to, certified nurse assistants, licensed vocational nurses, licensed psychiatric technicians, nursing assistants, aides, and orderlies;

(F) reflect staffing levels recommended by specialty nursing organizations;

(G) establish upwardly adjustable registered nurse-to-patient ratios based upon registered nurses’ assessment of patient acuity and existing conditions;

(H) provide that a registered nurse shall not be assigned to work in a particular unit with the first having the ability to provide professional care in such unit; and

(I) be based on methods that assure validity and reliability.

(b) Reporting and Release to Public, or Certain Staffing Information.—(1) Requirements for Hospitals.—Each participating hospital shall—

(A) post daily for each shift, in a clearly visible place, a document that specifies in a uniform manner (as prescribed by the Secretary) the current number of licensed and unlicensed nursing staff directly responsible for patient care in each unit of the hospital, identifying specifically the number of registered nurses;

(B) on request, make available to the public—

(i) the nursing staff information described in subparagraph (A); and

(2) in subparagraph (S), by striking the period at the end and inserting “and”, and by inserting after subparagraph (S) the following new subparagraph:

“(T) in the case of a hospital, to meet the requirements of section 1889.

(b) Medicare Conditions of Participation.—Section 1886 of title XVIII of the Social Security Act is amended by inserting after section 1888 the following new section:

“STAFFING REQUIREMENTS FOR MEDICARE PARTICIPATING HOSPITALS.

SEC. 1889. (a) Establishment of Staffing System for Medicare Participating Hospitals.—(1) In General.—Each participating hospital shall adopt and implement a staffing system that ensures a number of registered nurses on each shift and in each unit of the hospital to ensure appropriate staffing levels for patient care.

(2) Staffing System Requirements.—Subject to paragraph (3), a staffing system adopted and implemented under this section shall—

(A) be based upon input from the direct caregivers, registered nurse staff or their exclusive representatives, as well as the chief nurse executive;

(B) be based upon the number of patients and the level and variance of intensity of care to be provided, with appropriate consideration given to admissions, discharges, and transfers during each shift;

(C) account for contextual issues affecting staffing and the delivery of care, including architecture and geography of the environment and available technology;

(D) reflect the level of preparation and experience of those providing care;

(E) account for staffing level effectiveness or deficiencies in related health care classification, including but not limited to, certified nurse assistants, licensed vocational nurses, licensed psychiatric technicians, nursing assistants, aides, and orderlies;

(F) reflect staffing levels recommended by specialty nursing organizations;

(G) establish upwardly adjustable registered nurse-to-patient ratios based upon registered nurses’ assessment of patient acuity and existing conditions;

(H) provide that a registered nurse shall not be assigned to work in a particular unit with the first having the ability to provide professional care in such unit; and

(I) be based on methods that assure validity and reliability.

(b) Reporting and Release to Public, or Certain Staffing Information.—(1) Requirements for Hospitals.—Each participating hospital shall—

(A) post daily for each shift, in a clearly visible place, a document that specifies in a uniform manner (as prescribed by the Secretary) the current number of licensed and unlicensed nursing staff directly responsible for patient care in each unit of the hospital, identifying specifically the number of registered nurses;

(B) on request, make available to the public—

(i) the nursing staff information described in subparagraph (A); and
(ii) a detailed written description of the staffing system established by the hospital pursuant to subsection (a); and

(c) submit to the Secretary in a uniform manner, by the Secretary, the nursing staff information described in subparagraph (A) through electronic data submission not less frequently than quarterly.

(2) RESPONSIBILITIES—The Secretary shall—

(A) make the information submitted pursuant to paragraph (1)(C) publicly available, including by publication of such information on the Internet site of the Department of Health and Human Services; and

(B) establish policies and procedures for such information for accuracy as a part of the process of determining whether an institution is a hospital for purposes of this title.

(3) RECORDKEEPING; DATA COLLECTION; EVALUATION.—

(1) RECORDKEEPING.—Each participating hospital shall maintain for a period of at least 3 years (or, if longer, until the conclusion of pending enforcement activities) such records as the Secretary deems necessary to determine whether the hospital has adopted and implemented a staffing system pursuant to subsection (a).

(2) DATA COLLECTION ON CERTAIN OUTCOMES—The Secretary shall require the collection, maintenance, and submission of data by each participating hospital sufficient to establish the link between the staffing system established pursuant to subsection (a) and—

(A) patient acuity from maintenance of acuity data through entries on patients’ charts;

(B) patient outcomes that are nursing sensitive, such as patient falls, adverse drug events, injuries to patients, skin breakdown, and patient readmissions; and

(C) patient complaints related to staffing levels.

(3) EVALUATION.—Each participating hospital shall annually evaluate its staffing system and also each registered nurse staffing ratio to assure ongoing reliability and validity of the system and ratios. The evaluation shall be conducted by a joint management-staff committee comprised of at least 50 percent of registered nurses who provide direct patient care.

(4) RESPONSIBILITY.—The Secretary shall enforce the requirements and prohibitions of this section in accordance with the succeeding provisions of this subsection.

(2) PROCEDURES FOR RECEIVING AND INVESTIGATING COMPLAINTS.—The Secretary shall establish procedures under which—

(A) a complaint that a participating hospital has violated a requirement or a prohibition of this section; and

(B) such complaints are investigated by the Secretary.

(3) REMEDEES.—If the Secretary determines that a participating hospital has violated a requirement of this section, the Secretary—

(A) shall require the facility to establish a corrective action plan to prevent the recurrence of such violation; and

(B) may impose civil money penalties under paragraph (4).

(4) CIVIL MONEY PENALTIES.—In addition to any other penalties prescribed by law, the Secretary may impose a civil money penalty of not more than $10,000 for each knowing violation of a requirement of this section, except that the Secretary shall impose a civil money penalty of more than $10,000 for each such violation in the case of a participating hospital that the Secretary determines has a pattern or practice of such violations (with the amount of such additional penalties being related to the schedule or methodology specified in regulations).

(2) PROCEDURES.—The provisions of section 1121A and regulations promulgated pursuant to such section apply to a participating hospital only if the patient or employee, or any other person, has presented a grievance to the Secretary, penalties imposed on the hospital in the case of a participating hospital that has entered into a provider agreement under section 1128A.

(3) PUBLIC NOTICE OF VIOLATIONS.—

(1) INTERNET SITE.—The Secretary shall publish on the Internet site of the Department of Health and Human Services the names of participating hospitals on which civil money penalties have been imposed under this section, the violation for which the penalty was imposed, and such additional information as the Secretary determines appropriate.

(2) CHANGE OF OWNERSHIP.—With respect to a participating hospital that has a change in ownership, as determined by the Secretary, penalties imposed on the hospital while under previous ownership shall no longer be published by the Secretary on such Internet site after the 1-year period beginning on the date of change in ownership.

(3) WHISTLEBLOWER PROTECTIONS.—

(1) PROHIBITION OF DISCRIMINATION AND RETALIATION.—A participating hospital shall not discriminate or retaliate in any manner against any patient or employee of the hospital because that patient or employee, or any other person, has presented a grievance or complaint, or has initiated or cooperated in any investigation or proceeding of any kind, relating to the staffing system or other requirements and prohibitions of this section.

(2) RELIEF FOR PREVAILING EMPLOYEES.—An employee of a participating hospital who has been discriminated or retaliated against in employment in violation of this subsection may initiate judicial action in a United States district court and shall be entitled to reinstatement, reimbursement for lost wages, and work benefits caused by the unlawful acts of the employing hospital. Prevailing employees are entitled to reasonable attorney’s fees and costs associated with pursuing the case.

(3) RELIEF FOR PREVAILING PATIENTS.—A patient who has been discriminated or retaliated against in violation of this subsection may initiate judicial action in a United States district court and shall be entitled to reinstatement, liquidated damages of $5,000 for a violation of this statute in addition to any other damages under other applicable statutes, regulations, or common law. Prevailing patients are entitled to reasonable attorney’s fees and costs associated with pursuing the case.

(4) LIMITATION ON ACTIONS.—No action may be brought under paragraph (2) or (3) more than 2 years after the discrimination or retaliation with respect to which the action is brought.

(5) TREATMENT OF ADVERSE EMPLOYMENT ACTIONS.—For purposes of this subsection—

(A) an adverse employment action shall be treated as retaliation or discrimination; and

(B) the term ‘‘adverse employment action’’ includes—

(i) the failure to promote an individual or provide any other person with a benefit related to being a participant in a program or activity to which the individual would otherwise be eligible;

(ii) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual and

(iii) any personnel action that is adverse to the individual concerned.

(6) RELATIONSHIP TO STATE LAWS.—Nothing in this section shall be construed as excluding or relieving any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, nor shall any such law which purports to require or permit the doing of any act which would be an unlawful practice under this title.

(7) RELATIONSHIP TO CONDUCT PROHIBITED UNDER THE NATIONAL LABOR RELATIONS ACT OR OTHER COLLECTIVE BARGAINING LAWS.—Nothing in this section shall be construed as permitting conduct prohibited under the National Labor Relations Act or any other Federal, State, or local collective bargaining law.

(8) REGULATIONS.—The Secretary shall promulgate such regulations as are appropriate and necessary to implement this section.

(9) DEFINITIONS.—In this section—

(A) ‘‘hospital’’ means any hospital that is a hospital for purposes of this title.

(B) ‘‘participating hospital’’ means a hospital that has entered into a provider agreement under section 1128A.

(C) ‘‘registered nurse’’ means an individual who has been granted a license to practice as a registered nurse in at least 1 State.

(D) ‘‘employee’’ means any individual employed by a participating hospital that had a change in ownership, as determined by the Secretary, penalties imposed on the hospital in the case of a participating hospital that has entered into a provider agreement under section 1128A.

(E) ‘‘United States district court’’ means a United States district court and shall be entitled to reinstatement, reimbursement for lost wages, and work benefits caused by the unlawful acts of the employing hospital. Prevailing employees are entitled to reasonable attorney’s fees and costs associated with pursuing the case.

(F) ‘‘adverse employment action’’ means any personnel action that is adverse to the individual concerned.

(G) ‘‘adverse employment action’’ includes—

(i) the failure to promote an individual or provide any other person with a benefit related to being a participant in a program or activity to which the individual would otherwise be eligible;

(ii) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual and

(iii) any personnel action that is adverse to the individual concerned.

(H) ‘‘relating to staffing’’ means any action that is adverse to the individual concerned.

(I) ‘‘hospital’’ means any hospital that is a hospital for purposes of this title.

(J) ‘‘participating hospital’’ means a hospital that has entered into a provider agreement under section 1128A.

(K) ‘‘registered nurse’’ means an individual who has been granted a license to practice as a registered nurse in at least 1 State.

(L) ‘‘employee’’ means any individual employed by a participating hospital that had a change in ownership, as determined by the Secretary, penalties imposed on the hospital in the case of a participating hospital that has entered into a provider agreement under section 1128A.

(M) ‘‘United States district court’’ means a United States district court and shall be entitled to reinstatement, reimbursement for lost wages, and work benefits caused by the unlawful acts of the employing hospital. Prevailing employees are entitled to reasonable attorney’s fees and costs associated with pursuing the case.

(N) ‘‘adverse employment action’’ means any personnel action that is adverse to the individual concerned.

(O) ‘‘adverse employment action’’ includes—

(i) the failure to promote an individual or provide any other person with a benefit related to being a participant in a program or activity to which the individual would otherwise be eligible;

(ii) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual and

(iii) any personnel action that is adverse to the individual concerned.

(P) ‘‘relating to staffing’’ means any action that is adverse to the individual concerned.

(Q) ‘‘hospital’’ means any hospital that is a hospital for purposes of this title.

(R) ‘‘participating hospital’’ means a hospital that has entered into a provider agreement under section 1128A.

(S) ‘‘registered nurse’’ means an individual who has been granted a license to practice as a registered nurse in at least 1 State.

(T) ‘‘employee’’ means any individual employed by a participating hospital that had a change in ownership, as determined by the Secretary, penalties imposed on the hospital in the case of a participating hospital that has entered into a provider agreement under section 1128A.

(U) ‘‘United States district court’’ means a United States district court and shall be entitled to reinstatement, reimbursement for lost wages, and work benefits caused by the unlawful acts of the employing hospital. Prevailing employees are entitled to reasonable attorney’s fees and costs associated with pursuing the case.

(V) ‘‘adverse employment action’’ means any personnel action that is adverse to the individual concerned.

(W) ‘‘adverse employment action’’ includes—

(i) the failure to promote an individual or provide any other person with a benefit related to being a participant in a program or activity to which the individual would otherwise be eligible;

(ii) an adverse evaluation or decision made in relation to accreditation, certification, credentialing, or licensing of the individual and

(iii) any personnel action that is adverse to the individual concerned.

(X) ‘‘relating to staffing’’ means any action that is adverse to the individual concerned.

(Y) ‘‘hospital’’ means any hospital that is a hospital for purposes of this title.

(Z) ‘‘participating hospital’’ means a hospital that has entered into a provider agreement under section 1128A.

(AA) ‘‘registered nurse’’ means an individual who has been granted a license to practice as a registered nurse in at least 1 State.

(BB) ‘‘employee’’ means any individual employed by a participating hospital that had a change in ownership, as determined by the Secretary, penalties imposed on the hospital in the case of a participating hospital that has entered into a provider agreement under section 1128A.
Ms. CANTWELL. Mr. President, last week, during the Senate hearing on the nomination of Governor Mike Johanns to be the Secretary of Agriculture, I spoke in favor of exercising caution with respect to re-opening the U.S.-Canadian border to imports of live animals and processed beef products until the Animal Protection Health Inspection Service fully investigates the most recent case of Mad Cow disease in that country. This legislation is important to our ongoing efforts to eradicate the possibility that Mad Cow disease will infect U.S. cattle herds.

My legislation provides necessary enhancements to current Federal feed regulations. It reduces the chance that the riskiest materials, those most likely to transmit Mad Cow disease, cross-contaminate cattle feed or are accidentally fed to cattle.

Specific Secretary legislation would ban the inclusion of specified risk materials, or SRM, in all animal feed. Currently these materials are only banned from ruminant feed.

As we continue to negotiate the re-opening of export to U.S. beef, a comprehensive SRM ban is a prudent step. It is necessary to assure our trading partners that we have secured our domestic feed, and eliminated the risk of spreading Mad Cow disease through feed.

As our domestic beef producers continue to suffer from the closure of our largest export markets, I encourage my colleagues to join me by cosponsoring this legislation—a measure that will strengthen our Mad Cow firewalls and our assurances to foreign beef consumers. I also hope that as the Senate Agriculture Committee conducts hearings next month into the appropriate Federal response to the most recent Canadian Mad Cow case, the committee will consider examining this legislation as well. The Senate should move toward its swift passage. Mr. President, I ask unanimous consent that a copy 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. 73

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 “Animal Feed Protection Act of 2005”.

SEC. 2. DEFINITIONS

In this Act:

(A) IN GENERAL.—The term “covered article” means—

6. an unprocessed agricultural commodity that is readily identifiable as nonanimal in origin, such as a vegetable, grain, or nut; and

(ii) an article described in subparagraph (A);

7. based on compelling scientific evidence, the Secretary determines does not pose a risk of transmitting prion disease; or

(iii) an article regulated by the Secretary that is determined by the Secretary—

(a)poses a minimal risk of carrying prion disease; and

(b) is necessary to protect animal health or public health.

(3) SPECIFIED RISK MATERIAL.—

(A) IN GENERAL.—The term “specified risk material” means—

(i) the skull, brain, trigeminal ganglia, eyes, tonsils, spinal cord, vertebral column, or dorsal root ganglia of—

(ii) cattle and bison 30 months of age and older; or

(iii) sheep, goats, deer, and elk 12 months of age and older;

(b) any material from a ruminant that—

(i) is in any country at a time at which there was a risk of transmission of BSE in the country, as determined by the Secretary of Agriculture; and

(ii) has the meaning given such term in section 1128(a) of title 10.

(c) MATERIALS.—The term “material” means—

(i) any article regulated by the Secretary that is determined to contain or be produced from specified risk material.

(d) SPECIFIED RISK MATERIALS.—The term “specified risk material” means—

(i) the skull, brain, trigeminal ganglia, eyes, tonsils, spinal cord, vertebral column, or dorsal root ganglia of—

(ii) cattle and bison 30 months of age and older; or

(iii) sheep, goats, deer, and elk 12 months of age and older;

(B) MODIFICATION.—The Secretary shall conduct an annual review of scientific research and may modify the definition of specified risk material based on scientifically credible research.

(B) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

SEC. 3. PROTECTION OF ANIMAL FEED AND PUBLIC HEALTH.

It shall be unlawful for any person to introduce into interstate or foreign commerce a specified article if the covered article contains—

(A) specified risk material from a ruminant; or

(B) any material from a ruminant that—

(i) is in any country at a time at which there was a risk of transmission of BSE in the country, as determined by the Secretary of Agriculture; and

(ii) has the meaning given such term in section 1128(a) of title 10.

(C) ENFORCEMENT.—The Secretary may enforce this Act by—

(i) seizing and destroying an article that is introduced into interstate or foreign commerce in violation of this Act;

(ii) specifying an order requiring any person that introduces an article into interstate or foreign commerce in violation of this Act—

(A) to cease the violation; and

(B) to recall any article that is sold; and

(iii) to refund the purchase price to the purchaser;

(iv) to destroy the article or forfeit the article to the United States for destruction; or

(D) to cease operations at the facility at which the article is produced until the head of the appropriate Federal agency determines that the operations are no longer in violation of this Act.
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(d) CIVIL AND MONETARY PENALTIES.—Not later than 180 days after the date of enactment of this Act, the Secretary shall pro-

omize regulations establishing the appropriate level of civil and monetary penalties necessary to carry out this Act.

SEC. 5. TRAINING STANDARDS.

The Secretary, in consultation with the Secretaries of the Departments of Agriculture and Health and Human Services, shall issue standards for training in handling and processing specified risk materials.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $5,000,000 to carry out this Act.

SEC. 7. EFFECTIVE DATE.

This Act takes effect on the date that is 180 days after the date of enactment of this Act.

By Ms. CANTWELL (for herself and Mrs. MURRAY):

S. 74. A bill to designate a portion of the White Salmon River as a component of the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

Ms. CANTWELL. Mr. President, today I am introducing the White Salmon Wild and Scenic Rivers Act. I am pleased to be joined by the Senior Senator from Washington (Mrs. MUR-
RAY), who has been a strong supporter of this legislation.

The legislation would designate some 20 miles of the main stem of the upper White Salmon River Salmon and one of its tributaries, Cascade Creek, all within the Gifford Pinchot National Forest, as components of the National Wild and Scenic Rivers System. By design-
ating this upper third of the White Salmon, we can permanently protect this special river as a premiere recreational destination, a Southwest Washington economic resource, and an important wildlife habitat.

I am happy to note that my delega-
tion colleague, Congressman BAIRD, re-
cently offered identical legislation in the House.

The White Salmon River’s remark-
able beauty and pristine condition are not in question. In fact, the lower eight miles of the river received protection when Congress granted that stretch of the river Wild and Scenic status in 1986. As we saw then, its protected stat-
tus hasn’t prevented residents and visi-
tors from taking advantage of the unique recreational opportunities the White Salmon River offers. Extending Wild and Scenic protection to the river’s upper reaches today is an impor-
tant step forward in protecting even more of its wild character for fishing, boating, and other recreational activi-
ties.

As one of the best whitewater rivers in the Pacific Northwest, the White Salmon already supports a number of whitewater rafting companies. About 12,000 whitewater boaters visit the river each year. So I see this designa-
tion as not just protecting a pristine river, but also its beneficial impact on the local economy downstream.

Protecting the White Salmon River will help increase opportunities for other outdoor sports, as well. This is an important sector of our state’s econ-

omy. According to the Washington Depart-
ment of Fish and Wildlife, fish and wildlife related recreation pumps nearly $2.2 billion per year into our economy. And we rank first in the North-
west and eighth in the nation in spend-
ing by sport fishers.

Safeguarding the White Salmon through this designation will also be an important step toward restoring wildlife habitat. Once the Condit Dam was removed from the lower reach of the river, white salmon will again be-
come valuable spawning habitat for salmon and steelhead.

I am proud that identical legislation to the measure I introduce today passed the Senate unanimously on Oc-
tober 10, 2004. While the bill narrowly missed clearing the House of Rep-

resentatives, I am confident that be-
cause this bill has a broad range of sup-
port, and is a true win-win proposal for local interests, that it will become law during the 110th Congress.

Mr. President, I look forward to working with my colleagues in the Senate, as well as other members of the Washington state congressional delegation, to ensure swift passage of this important legislation. I ask unani-
mous consent that a copy of the legis-
lation be printed in the RECORD at the conclusion of my remarks.

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

S. 74

Be it enacted by the Senate and House of Rep-

resentatives of the United States in Congress as-
sembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Upper White Salmon Wild and Scenic Rivers Act”.

SEC. 2. UPPER WHITE SALMON WILD AND SCENIC RIVER.

(a) The approximately 16.5-mile segment of the main stem of the White Salmon River from the headwaters on Mount Adams in section 17, township 8 north, range 10 east, downstream to the Mount Adams wilderness boundary as a wild river.

(b) The approximately 5.1-mile segment of Cascade Creek from its headwaters on Mount Adams in section 10, township 8 north, range 10 east, downstream to the Mount Adams Wilderness boundary as a wild river.

(c) The approximately 1.5-mile segment of Cascade Creek from the Mount Adams Wilderness boundary downstream to its con-
fluence with the White Salmon River as a scenic river.

(d) The approximately 11.8-mile segment of the main stem of the White Salmon River from the Mount Adams Wilderness boundary downstream to the Gifford Pinchot National Forest boundary.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Ms. CANTWELL:

S. 75. A bill to permanently increase the maximum annual contribution allowed to be made to Coverdell edu-

cation savings accounts; to the Committee on Finance.

Ms. CANTWELL. Mr. President, today I am introducing two pieces of legislation to help families save for their children’s education.

In today’s global marketplace, ensur-
ing access to high-quality education—
starting in early childhood and grade school, moving on to college and beyond—is central in maintaining Amer-
ica’s competitive edge. To make paying for school easier, I am introducing two pieces of legislation that would expand Coverdell Education Savings Accounts or ESAs: The Education Savings for Students Act and College Savings Act.

Coverdell ESAs are trusts created solely for the educational benefit of any child under the age of 18. Contributions to a Coverdell Education Savings account can be used toward a child’s education from kindergarten through 12th grade, college, and even graduate school. All earnings in the account grow tax-free and can be withdrawn on a tax-deferred basis, if used for edu-
cational expenses. Currently, annual contributions to a Coverdell ESA cannot exceed $2,000. But this particular provision will sunset on 12/31/
2010 unless Congress takes action to ex-
tend it, otherwise the maximum con-
tribution will drop back to a previously set stipulation of $500.

My bill, the Education for Students Act would expand the existing Cover-
dell ESA by permanently increasing the maximum annual contribution from $2,000 to $5,000. This bill keeps the current Coverdell ESA provision that investment earnings accumulate tax-
free and withdrawals from the account are tax-exempt when the child uses the funds for school.

My other bill, the College Savings Act would also permanently increase the maximum annual contribution to a Coverdell ESA to $5,000. Instead of ant-
icipating future earnings, families would be able to deduct the amount they contribute to their education sav-
ings account from income.

Rather than putting away money ad-
hoc, both bills provide a financial in-
centive to save for college or other educational expenses. And since there is no limit on the number of Coverdell accounts that may be opened for a child under age 18, parents have the flexi-
bility to set aside money now through deductible contributions or bank on projected savings through tax-deferred earnings and withdrawals, or even take on both options. The College Savings and Education Savings for Students Acts will help families plan for future educational expenses, paving a path to financial self-sufficiency.

I understand that all families are dif-
ferent. Saving for college may be the last thing on a parent’s mind, espe-
pecially when their child is young and their family has significant financial needs. But just as fast as our children
grow, so does the cost of tuition. Mounting prices for books and materials, plus room and board have made colleges and universities less affordable for most families.

College is expensive. There are many parents whose children aim to go to college, but soon discover they can’t afford it because the price of pursuing a higher education costs too much. If the College Savings and Education for Students Acts became law, families would have another powerful tool to help their children realize their educational dreams.

By saving money early and often, families won’t feel as hard hit by skyrocketing college prices because you’ll know what’s coming in and what’s going out of these accounts.

In 2002, the National Center for Public Policy and Higher Education reported on the national trends of rising college prices. The Center determined that if educational costs are unaddressed, families will be advised of consequences for expanding students’ opportunities to pursue a higher education and future career.

This report found that over the last two decades, the cost of attending two- and four-year public and private colleges have not only grown more rapidly than inflation, but faster than family incomes, increasing the share of family income that is needed to pay for tuition and other college expenses. From 1991 through 2001, tuition at four-year public colleges and universities rose faster than family income in 41 states, including my home state of Washington.

The Washington State Higher Education Coordinating Board reports that, over the last ten years, tuition and fees have far outpaced family income, increasing 89 percent compared to 51 percent in per capita personal income in my state. In comparison, the cost of other consumer goods increased an average of 20 percent during the same time. Per capita personal income in Washington increased 51 percent during this same period.

As a result, more students and families at all income levels are borrowing more money than ever before to pay for college. According to a recent study by the College Board, nonfederal borrowing reached $11.3 billion in 2003-04, up 39 percent over the previous year, and already private sector and public sector college and university tuition fees had increased by 20 percent over the period. Over $10 billion of these loans are private. Over the past five years, borrowing through banks and other private lenders has increased from 7 percent to 16 percent of education loan volume.

Although borrowing is an acceptable way to pay for college, the financial consequences of high debt can still ensue, and students spend years paying back loans, undermining their ability to purchase a home or save for retirement. Additionally, college student loans for an average graduate with about $3,300 in credit card debt alone. Concern about the increase in educational loan debt may cause students to spend more time working than attending class or to opt out of enrolling in college altogether.

Moreover, the steepest increases in college and university tuition have been imposed during times of greatest economic hardship. In the past three years, our economy has experienced a loss of 1.8 million private sector jobs and 2.7 million manufacturing jobs. Preparing America’s workforce and keeping up with the demand for skilled workers across all sectors of the 21st century economy is priority. If we want to maintain our economic competitiveness, it is imperative that there are opportunities for individuals to fully take advantage of educational opportunities.

The Bureau of Labor Statistics reports that six of the ten fastest-growing occupations in the U.S. economy require an associate’s degree or bachelor’s degree, and that all ten of these careers will require some type of skills obtained during post-secondary education. Additionally, college and university education and future career.

Affordability is key to expanding opportunities to go to college. Saving for college early and often will help lift the pressures off of parents who are feeling the financial squeeze of increased tuition and fees. Because many families are qualified for financial aid, I was able to work my way through college using Pell grant funding. But there are many families who do not qualify for Pell or other sources of financial aid.

For these families, Coverdell Education Savings plans provide necessary relief for the middle class. The purpose of education savings plans are to increase saving by increasing net returns. Today, parents can put up to $2,000 a year into Coverdell Education Savings accounts. The actual contribution is not tax deductible, but all earnings in this account are free from taxes when they are withdrawn to pay for school.

However, the current $2,000 annual limit on Coverdell contributions will be repealed in 2010 unless Congress acts to extend it. If we don’t extend the contribution level, the maximum contribution will drop to $500.

While the current tax benefit makes it easier for parents of college-bound children to save for college, the Education Savings for Students Act would increase the annual contributions from $2,000 to $5,000; making this change permanent ensures greater savings for families. By increasing the amount parents can put aside for their children’s college savings, middle-income parents will be able to save more easily for their child’s college education.

Say, for example, parents start saving years before their child is five years old. If they put away just $100.00 a month—at an interest rate of savings of four percent—by the time their kid turns 18, their account would have earned more than $12,400 in interest. Parents will save over $3,100 in taxes when that child is old enough to go to school.

In addition to projected savings, parents also have the option to save now. The College Savings Act would allow families to deduct Coverdell ESA contributions from their taxes each year.

Mr. President, both of these bills, the College Savings Act and the Education Savings for Students Act are financial incentives for people to save by allowing families to deduct the amount they contribute and the interest earnings when their child is ready to go to school. These bills would further lessen the financial burden that parents bear by saving money early and often.

Permanently expanding the Coverdell maximum contribution from its current threshold of $2,000 to $5,000 a year and allowing this contribution to be tax deductible is a common-sense savings vehicle that keeps future college costs from spinning out of control. Increasing contribution caps will make college more affordable at a time when a college education and advanced job training is becoming more and more important for economic success.

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

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

S. 75
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 “The Education Savings for Students Act of 2005”.

SEC. 2. INCREASE IN MAXIMUM ANNUAL CONTRIBUTION FOR COVERDELL EDUCATION SAVINGS ACCOUNTS.
(a) IN GENERAL.—Section 530(b)(1)(A)(iii) of the Internal Revenue Code of 1986 (defining Coverdell education savings account) is amended by striking "$2,000" and inserting "$5,000".

(b) CONFORMING AMENDMENT.—Section 4973(e)(1)(A) of the Internal Revenue Code of 1986 is amended by striking "$2,000" and inserting "$5,000".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

S. 76
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 “The College Savings Act of 2005”.

...
(a) Deduction Allowable.—In the case of an individual, there shall be allowed as a deduction an amount equal to the amount of contributions made by such individual to an education savings account during the taxable year in excess of $5,000.

(b) Definitions.—

(1) Education savings account.—The term ‘education savings account’ means a trust created or organized in the United States exclusively for the purpose of paying the qualified education expenses of an individual who is the designated beneficiary of the trust (and designated as an education savings account at the time created or organized), but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted after the date on which the designated beneficiary attains age 18, or

(B) The trustee is a bank (as defined in section 2701 of the Bankruptcy Code).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.}

SEC. 234. EDUCATION SAVINGS.

(a) Deduction Allowable.—In the case of an individual, there shall be allowed as a deduction an amount equal to the amount of contributions made by such individual to an education savings account during the taxable year in excess of $5,000.

(b) Definitions.—

(1) Education savings account.—The term ‘education savings account’ means a trust created or organized in the United States exclusively for the purpose of paying the qualified education expenses of an individual who is the designated beneficiary of the trust (and designated as an education savings account at the time created or organized), but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted after the date on which the designated beneficiary attains age 18, or

(B) The trustee is a bank (as defined in section 2701 of the Bankruptcy Code).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.}

SEC. 242. EDUCATION SAVINGS.

(a) Deduction Allowable.—In the case of an individual, there shall be allowed as a deduction an amount equal to the amount of contributions made by such individual to an education savings account during the taxable year in excess of $5,000.

(b) Definitions.—

(1) Education savings account.—The term ‘education savings account’ means a trust created or organized in the United States exclusively for the purpose of paying the qualified education expenses of an individual who is the designated beneficiary of the trust (and designated as an education savings account at the time created or organized), but only if the written governing instrument creating the trust meets the following requirements:

(A) No contribution will be accepted after the date on which the designated beneficiary attains age 18, or

(B) The trustee is a bank (as defined in section 2701 of the Bankruptcy Code).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.}

SEC. 3. INCREASE IN MAXIMUM ANNUAL CONTRIBUTION FOR COVERED EDUCATION SAVINGS ACCOUNTS.

(a) In General.—Section 530(b)(1)(A)(iv) of the Internal Revenue Code of 1986 (defining Covered education savings account) is amended by striking ‘$2,000’ and inserting ‘$5,000’.

(b) CONFORMING AMENDMENT.—Section 4973(e)(1)(A) of the Internal Revenue Code of 1986 is amended by striking ‘$2,000’ and inserting ‘$5,000’.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.
“(B) the amount determined under this subsection for the preceding taxable year, re-duced by the sum of—

(i) the distributions out of the accounts for the taxable year (other than distributions described in section 224(e)(4)); and

(ii) the excess (if any) of the maximum amount which may be contributed to the accounts under this paragraph (A) over the amount contributed to the accounts for the taxable year.

(2) SPECIAL RULES.—For purposes of para- graph (A), the following contributions shall not be taken into account:

(A) Any contribution which is distributed out of the education savings account in a distribution to which section 224(e)(3)(C) applies.

(B) Any rollover contribution.

(c) F A I L U R E T O P R O V I D E R E P O R T S O N E D U-CATION SAVINGS ACCOUNTS.—Paragraph (2) of section 6699(a) of the Internal Revenue Code of 1986 (relating to failure to provide reports on individual retirement accounts or annu- lities) is amended by striking “and (D)” at the end of subparagraph (D), by striking the pe-riod at the end of subparagraph (E) and in- serting “or (F)” after such paragraph (E), and by inserting at the end of the following new subparagraph:

“(F) section 224(b)(3)(E) (relating to edu-ca-tion savings accounts).”

(d) C L E R I C A L A M E N D M E N T.—The table of section for part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 224 and inserting the following new items:

“Sec. 224. Education savings.

Sec. 225. Cross reference.”

(e) E F F E C T I V E D A T E .—The amendments made by this section shall apply to contribu-tions made in taxable years beginning after December 31, 2004.

By Mr. S E S S I O N S (for himself and Mr. L I E B E R M A N): S. 77. A bill to amend titles 10 and 38, United States Code, to improve death benefits for the families of deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. S E S S I O N S. Mr. President, I want to take a few minutes to discuss legislation today along with Senator L I E B E R M A N and I believe 15 other cosponsors called the HEROES Act of 2005, the Honoring Every Re- quirement of Exemplary Service Act, that will increase substantially the death benefits provided to the families of our service personnel who lose their lives in service to their country. I see Senator A L L E N. I know he deeply cares about this issue. We are working to- gether on this same idea.

Purposefully, this bill would raise the basic death benefit from $12,420 to $100,000. It will raise the servicemen’s group life insurance payment from $250,000 to $400,000. Senator L I E B E R M A N and I, all of us in this body believe we need to make sure that our service-men’s families are well taken care of if something were to happen to them.

I am very pleased that Senator F R I S T on Friday made this part of his leadership package and that Senator J O H N W A R N E R, chairman of the Armed Serv- ices Committee, promised quick action in the committee on the subject. And I am very pleased that the Defense De-partment has worked with us in help- ing to craft this legislation, actually supporting it and the funding it will re-quire.

I asked last year about it when our defense bill moved. When no consensus was reached as that bill was moving, we put in the legislation a requirement that the DOD work with the Congress to develop a plan to improve death ben efits, and they have done so. It is the right thing to do.

Just last Friday, I was in Iraq. I had the ability to travel throughout that country, and we flew back from Bagh-dad to Kuwait about 9 or 10 that night. On the C-130 in which we flew back, in the bay of that great aircraft were two flag-draped coffins of American service personnel who had given their life to their country. There should be no doubt in any soldier’s mind that if something happens to them while in service to their country, their family will be well taken care of. The Amer- ican people believe that. I believe the people in this Congress will support that.

This legislation needs to be passed promptly. I am proud that Senator W A R N E R and I have indi-cated they would accelerate it and do what they can to see that it does be-come law. I look forward to working with Senator L I E B E R M A N and my fellow Senators to move this bill to final pas-sage.

I see the chairman of Armed Serv- ices, Senator W A R N E R. I express my ap-preciation to him for his commitment to do what he can to move this bill forward promptly.

I yield the floor.

The PRESIDING OFFICER. The Sen-a-tor from Virginia.

Mr. W A R N E R. Mr. President, I thank you for your indulgence to address the Senate on this subject.

Mr. W A R N E R. Mr. President, I thank you for your indulgence to address the Senate on this subject.

Ms. H U T C H I S O N. Mr. President, I am pleased to introduce a bill to provide for permanent marriage penalty relief; to the Committee on Finance.

Ms. H U T C H I S O N. Mr. President, I am pleased to introduce a bill to provide for permanent marriage penalty relief; to the Committee on Finance.

Ms. H U T C H I S O N. Mr. President, I am pleased to introduce a bill to provide for permanent marriage penalty relief; to the Committee on Finance.
permanent tax relief from the marriage penalty—the most egregious, anti-fami-
lity provision that has been in the tax code. One of my highest priorities in
the U.S. Senate has been to relieve American taxpayers of this punitive burden.

Over the past four years we have made important strides to eliminate this unfair tax and provide marriage penalty relief by raising the standard deduction and enlarging the 15 percent tax bracket for married joint fils to twice the single filers. Before these provisions were changed, 44 million married couples, including 2.4 million Texas families, paid an average penalty of $1,480.

Enacting marriage penalty relief has been a giant step for tax fairness, but it may be fleeting. Even as married couples use the money they now save to put food on the table and clothes on their children, a tax increase looms in the future. Since the 2001 tax relief bill was restricted, the marriage penalty provisions would expire in 2011. In 2011, marriage will again be a taxable event and 43 percent of married couples will again pay more in taxes unless we act decisively.

Given the challenges many families face in making ends meet, we must make sure we do not backtrack on this important reform.

The benefits of marriage are well established, yet, without marriage pen-
alty relief, the tax code provides a sig-
nificant disincentive for people to walk down the aisle. Marriage is a funda-
mental institution in our society and should not be discouraged by the IRS. Children living in a married household are far less likely to live in poverty or to suffer from child abuse. Research indi-
cates they are less likely to be de-
pressed or have developmental prob-
lems. Scourges such as adolescent drug use are less common in married fami-
lies, and married mothers are less like-
ly to be victims of domestic violence.

We should celebrate marriage, not penalize it. The bill I am offering would make marriage penalty relief permanent, because we cannot be satis-
fied until couples never again must de-
cide between love and money. Marriage should not be a taxable event.

I call on the Senate to finish the job we started to make marriage penalty relief permanent today.

Mr. President, I ask unanimous con-
sent that a copy 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. 79

Be it enacted by the Senate and House of Repre-
sentatives of the United States of America in Congress assem-
bled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Permanent Marriage Penalty Relief Act of 2005”.

SEC. 2. REPEAL OF SUNSET ON MARRIAGE PEN-
ALTY RELIEF.

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to

sunset of provisions of such Act) shall not apply to sections 301, 302, and 303 of such Act (relating to marriage penalty relief).

By Mr. INOUYE:

S. 79. A bill to require the Secretary of the Army to determine the validity of the claims of certain Filipinos that they performed military service on behalf of the United States during World War II; to the Committee on Veterans' Affairs.

Mr. INOUYE. Mr. President, I am re-
introducing legislation today that would direct the Secretary of the Army to determine whether certain nationals of the Philippine Islands performed military service on behalf of the United States during World War II.

Mr. President, our Filipino veterans fought side by side with Americans and sacrificed their lives on behalf of the United States. This legislation would confirm the validity of their claims and further allow qualified individuals the opportunity to apply for military and veterans benefits that, I believe, they are entitled to. As this population becomes older, it is important for our nation to extend its firm commitment to the Filipino veterans and their fami-
lies who participated in making us the great nation we are today.

Mr. President, I ask unanimous con-
sent that the text of my bill be printed in the RECORD.

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

S. 79

Be it enacted by the Senate and House of Repre-
sentatives of the United States of America in Congress assem-
bly, in the Congress of the United States assembled,

SECTION 1. DETERMINATIONS BY THE SEC-
RETARY OF THE ARMY.

(a) IN GENERAL.—Upon the written applica-
tion of any person who is a national of the Philip-
ines, the Secretary of the Army shall determine whether such person has performed any military service on behalf of the United States during World War II which qualifies such person to receive any mili-
tary, veterans', or other benefits under the laws of the United States.

(b) INFORMATION TO BE CONSIDERED.—In-
making a determination for the purpose of subsection (a), the Secretary shall consider all information and evidence submitted by the appli-
cant, if any.

SEC. 2. CERTIFICATE OF SERVICE.

(a) ISSUANCE OF CERTIFICATE OF SERVICE.—
The Secretary of the Army shall issue a cer-
tificate of service to each person determined by the Secretary to have performed military service described in section 1(a).

(b) EFFECT OF CERTIFICATE OF SERVICE.—A certificate of service issued to any person under subsection (a) shall, for the purpose of any law of the United States, conclusively establish the period, nature, and character of the military service described in the certifi-
cate.

SEC. 3. APPLICATIONS BY SURVIVORS.

An application submitted by a surviving spouse, child, or parent of a deceased person described in section 1(a) shall be treated as an application submitted by such person.

SEC. 4. LIMITATION ON PROSPECTIVE APPLI-
CATION.

The Secretary of the Army may not con-
sider for the purpose of this Act any applica-
tion received by the Secretary more than two years after the date of the enactment of this Act.

SEC. 5. PROSPECTIVE APPLICATION OF DETER-
MINATIONS BY THE SECRETARY OF THE
ARMY.

No benefits shall accrue to any person for any period before the date of the enactment of this Act as a result of the enactment of this Act.

SEC. 6. REGULATIONS.

The Secretary of the Army shall prescribe regulations to carry out sections 1, 3, and 4.

SEC. 7. RESPONSIBILITY OF THE SECRETARY OF VETERANS AFFAIRS.

Any entitlement of a person to receive vet-
ers’ benefits by reason of this Act shall be administered by the Secretary of Veterans Affairs pursuant to regulations prescribed by the Secretary of Veterans Affairs.

SEC. 8. DEFINITION.

In this Act, the term “World War II” means the period beginning on December 7, 1941, and ending on December 31, 1946.

By Mr. INOUYE:

S. 80. A bill to restore the traditional day of observance of Memorial Day, and for other purposes; to the Com-
mittee on the Judiciary.

Mr. INOUYE. Mr. President, in our effort to accommodate many Ameri-
cans making Memorial Day the last Monday in May, we have lost sight of the significance of this day to our na-
tion. My bill would restore Memorial Day to May 30 and authorize our flag to fly at half mast on that day. In addi-
tion, this legislation would authorize the President to issue a proclamation designating Memorial Day and Vet-
ers Day as days for prayer and cere-
monies. This legislation would help re-
store the recognition our veterans de-
serve for the sacrifices they have made on behalf of our Nation.

Mr. President, I ask unanimous con-
sent that the text of my bill be printed in the RECORD.

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

S. 80

Be it enacted by the Senate and House of Repre-
sentatives of the United States of America in Congress assem-
bled,

SECTION 1. RESTORATION OF TRADITIONAL DAY OF OBSERVANCE OF MEMORIAL DAY.

(a) DESIGNATION OF LEGAL PUBLIC HOLIDAY.—Section 6103(a) of title 5, United States Code, is amended by striking “Memorial Day, the last Monday in May.” and inserting the following:

“Memorial Day, May 30.”

(b) OBSERVANCES AND CEREMONIES.—Sec-
tion 116 of title 36, United States Code, is amended—
(1) in subsection (a), by striking “The last Monday in May” and inserting “May 30”;
and
(2) in subsection (b)—
(A) by striking “and” at the end of para-
graph (3);
(B) by redesignating paragraph (4) as para-
graph (5); and
(C) by inserting after paragraph (3) the fol-
lowing new paragraph (4):

“(4) calling on the people of the United States to observe Memorial Day as a day of remembrance for showing respect for American veterans of wars and other military con-

flicts; and”;

SEC. 8. DEFINITION.

In this Act, the term “World War II” means the period beginning on December 7, 1941, and ending on December 31, 1946.
By Mr. INOUYE:

S. 83. A bill to amend the Internal Revenue Code of 1986 to provide tax relief for the conversion of cooperative housing corporations into condominiums; to the Committee on Finance.

Mr. INOUYE. Mr. President, today I rise to introduce legislation which would amend the Internal Revenue Code of 1986 to allow cooperative housing corporations (co-ops), to convert to condominium forms of ownership.

Under current law, a conversion from cooperative shareholding to condominium ownership is taxable at a corporate level as well as an individual level. The conversion is treated as a corporate liquidation, and therefore taxed accordingly. In addition, a capital gains tax is levied on any increase between the owner’s basis in the co-op shares and the fair market value of the condominium interest post-conversion. This double taxation dissuades condominium conversion because the owner is being taxed on the transaction which is nothing more than a change in the form of ownership. While the Internal Revenue Service concedes that there are no discernable advantages to society of the cooperative form of ownership, they do not view federal tax statutes as providing sufficient flexibility with which to address the obstacles of conversion.

Cooperative housing organizes the ownership structure into a corporation, with shares of stock for each apartment unit, which are sold to buyers. The corporation then issues a proprietary lease entitling the owner of the stock to the use of the unit in perpetuity. Because the investment is in the form of a share of stock, investors sometimes lose their entire investment as a result of debt incurred by the corporation in construction and development. In addition, due to the structure of a cooperative housing corporation, a prospective purchaser of shares in the corporation from an existing tenant-stockholder has difficulty obtaining mortgage financing for the purchase. Furthermore, tenant-stockholders of cooperative housing also encounter difficulties in securing bank loans for the full value of their investment.

As a result, owners of cooperative housing are increasingly looking toward conversion to the condominium structure of ownership. Condominium ownership permits the owner of a unit to own the unit itself, eliminating the cooperative housing dilemma of corporate debt that supersedes the investment of cooperative housing share owners, and other financial concerns. The legislation I introduce today will remove the penalty of double taxation from the conversion of cooperative housing to condominium ownership, and will greatly benefit co-op owners across the nation.

The bill does not apply to cooperatives which have been or are now being financed by any federal, state, or local programs for the purpose of assisting in the construction of affordable housing cooperatives or the conversion of rental units to affordable housing cooperatives, as provided in any colleagues’ consideration and support for this measure.

Mr. President, 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. 83

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

SECTION 1. NONRECOGNITION OF GAIN OR LOSS ON DISTRIBUTIONS BY COOPERATIVE HOUSING CORPORATIONS.

(a) IN GENERAL.—Section 224(b)(2)(A) of the Internal Revenue Code of 1986 (relating to distributions by cooperative housing corporations) is amended by striking ‘‘(A) the gain recognized on the distribution of stock held by such corporation shall be recognized as ordinary income,’’ and inserting in lieu thereof—

‘‘(A) any gain shall be recognized on the distribution of stock held by such corporation shall be recognized as ordinary income,’’

(b) EFFECTIVE DATE.—This section shall apply to distributions after the date of the enactment of this Act.

S. 84

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

SECTION 1. CERTAIN SIGHTSEEING FLIGHTS EXEMPT FROM TAXES ON AIR TRANSPORTATION.

(a) IN GENERAL.—Section 4281 of the Internal Revenue Code of 1986 (relating to small aircraft on nonestablished lines) is amended by adding at the end the following new sentence:

‘‘For purposes of this section, any aircraft shall not be considered as operated on an established line if such aircraft is operated in the air transportation excise tax on aerial sightseeing flights will significantly raise the consumer price on air tours. Doing so will cause many small aerial sightseeing tour operators, especially in my home state, to lose customers. Many of these small companies have struggled to stay in business after incurring significant losses in the months following September 11, 2001. When our government imposed flight restrictions across the nation, those flight restrictions prevented many flight operations in all segments of the general aviation industry for many months into early 2002.

Accordingly, I urge my colleagues to support my bill, which would amend the Internal Revenue Code of 1986 to exempt certain sightseeing trips from the air transportation excise tax. Under my bill, air tour operations would still be subject to the aviation fuel excise tax.

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

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

S. 84

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
to transportation beginning on or after the date of the enactment of this Act, but shall not apply to any amount paid before such date.

By Mr. INOUYE:

S. 87. A bill to recognize the organization known as the National Academies of Practice; to the Committee on the Judiciary.

Mr. INOUYE. Mr. President today I am introducing legislation that would provide a federal charter for the National Academies of Practice. This organization represents outstanding health care professionals who have made significant contributions to the practice of applied psychology, medicine, dentistry, nursing, optometry, osteopathic medicine, pharmacy, podiatry, social work, and veterinary medicine.

When fully established, each of the ten academies will possess 15 distinguished practitioners selected by their peers. This umbrella organization will be able to provide the Congress of the United States with a single voice from the perspective of those individuals who are in the forefront of actually providing health care.

As we continue to grapple with the many complex issues surrounding the delivery of health care services, it is clearly in our best interest to ensure that the Congress has direct and immediate access to the recommendations of an interdisciplinary body of health care practitioners.

Mr. President, 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. 87

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 “National Academies of Practice Recognition Act of 2005”.

SEC. 2. CHARTER.

The National Academies of Practice organized and incorporated under the laws of the States in which it carries on its activities, is hereby recognized as such and is granted a Federal charter.

SEC. 3. CORPORATE POWERS.

The National Academies of Practice (referred to in this Act as the “corporation”) shall have all those powers granted to it through its bylaws and articles of incorporation filed in the State in which it is incorporated and subject to the laws of such State.

SEC. 4. OBJECTIVES AND PURPOSES OF THE CORPORATION.

The objectives and purposes for which the corporation is organized shall be provided for in the articles of incorporation and shall include the following:

(1) Honoring persons who have made significant contributions to the practice of applied psychology, medicine, dentistry, nursing, optometry, osteopathic medicine, pharmacy, podiatry, psychology, social work, veterinary medicine, and other health professions.

(2) Improving the effectiveness of such professions by disseminating information about new techniques and procedures, promoting interdisciplinary practices, and stimulating multidisciplinary exchange of scientific and professional information.

(3) Upon request approving the President, the members of the President’s Cabinet, Congress, Federal agencies, and other relevant groups about practitioner issues in health care and health policy, from a multidisciplinary perspective.

SEC. 5. SERVICE OF PROCESS.

With respect to service of process, the corporation shall comply with the laws of the State in which it is incorporated and those States in which it carries on its activities in furtherance of its corporate purposes.

SEC. 6. MEMBERSHIP.

Eligibility for membership in the corporation and the rights and privileges of members shall be as provided in the bylaws of the corporation.

SEC. 7. BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES.

The composition and the responsibilities of the board of directors of the corporation shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

SEC. 8. OFFICERS OF THE CORPORATION.

The officers of the corporation and the election of such officers shall be as provided in the articles of incorporation of the corporation and in conformity with the laws of the State in which it is incorporated.

SEC. 9. RESTRICTIONS.

(a) USE OF INCOME AND ASSETS.—No part of the income or assets of the corporation shall inure to any member, officer, director, or other person.

(b) LOANS.—The corporation shall not make any loan to any officer, director, or employee of the corporation.

(c) POLITICAL ACTIVITY.—The corporation, any officer, any director of the corporation, acting as such officer or director, shall not participate in any political activity or in any manner attempt to influence legislation.

(d) ISSUANCE, DIVIDENDS, AND PAYMENT OF DIVIDENDS.—The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

(e) CLAIMS.—The corporation shall not claim congressional approval or Federal Government authority for any of its activities.

(f) FEDERAL ADVISORY ACTIVITIES.—While providing advice to Federal agencies, the corporation shall be subject to the Federal Advisory Committee Act (5 U.S.C. Appendix; 50 U.S.C. App.; 186 stat. 199).

SEC. 10. LIABILITY.

The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

SEC. 11. MAINTENANCE AND INSPECTION OF BOOKS AND RECORDS.

(a) BOOKS AND RECORDS OF ACCOUNT.—The corporation shall keep and complete books and records of account and shall keep minutes of any proceeding of the corporation involving any of its members, the board of directors, and the Corporation Advisory Committee having authority under the board of directors.

(b) NAMES AND ADDRESSES OF MEMBERS.—The corporation shall keep at its principal office a record of the names and addresses of all members having the right to vote in any proceeding of the corporation.

(c) RIGHT TO INSPECT BOOKS AND RECORDS.—All books and records of the corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time.

(d) APPLICATION OF STATE LAW.—Nothing in this section shall be construed to contravene any applicable State law.

SEC. 12. ANNUAL REPORT.

The corporation shall report annually to the Congress concerning the activities of the corporation during the preceding fiscal year. The report shall not be printed as a public document.

SEC. 13. RESERVATION OF RIGHT TO AMEND OR REPEAL CHARTER.

The right to alter, amend, or repeal this Act is expressly reserved to Congress.

SEC. 14. DEFINITION.

In this Act, the term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SEC. 15. TAX-EXEMPT STATUS.

The corporation shall maintain its status as an organization exempt from Federal taxation as provided in the Internal Revenue Code of 1986 or any corresponding similar provision.

SEC. 16. TERMINATION.

If the corporation fails to comply with any of the restrictions or provisions of this Act the charter granted by this Act shall terminate.

By Mr. INOUYE:

S. 88. A bill to allow the psychiatric or psychological examinations required under chapter 313 of title 18, United States Code, relating to offenders with mental disease or defect, to be conducted by a clinical social worker; to the Committee on the Judiciary.

Mr. INOUYE. Mr. President, today I introduce legislation to amend Title 18 of the United States Code to allow our Nation’s clinical social workers to use their mental health expertise on behalf of the federal judiciary by conducting psychological and psychiatric exams.

I feel that the time has come to allow our Nation’s judicial system to have access to a wider pool of behavioral science and mental health expertise. I am confident that the enactment of this legislation would be very much in our Nation’s best interest.

Mr. President, 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. 88

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 “Psychiatric and Psychological Examinations Act of 2005”.

SEC. 2. EXAMINATIONS BY CLINICAL SOCIAL WORKERS.

Section 4247(b) of title 18, United States Code, is amended, in the first sentence, by striking “psychiatrist or psychologist” and inserting “psychiatrist, psychologist, or clinical social worker”.

By Mr. INOUYE:

S. 89. A bill to amend title VII of the Public Health Service Act to make certain graduate programs in professional
psychology eligible to participate in various health professions loan programs; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, I rise to introduce legislation today to modify Title VII of the Public Health Service Act in order to provide students enrolled in graduate psychology programs with the opportunity to participate in various health professions loan programs.

Enrolling students enrolled in graduate psychology programs with eligibility for financial assistance in the form of loans, loan guarantees, and scholarships will facilitate a much-needed infusion of behavioral science expertise into our community of public health providers. There is a growing recognition of the valuable contribution being made by psychologists toward solving some of our Nation's most distressing problems.

The participation of students from all backgrounds and clinical disciplines is vital to the success of health care training. The Title VII programs play a significant role in providing financial support for the recruitment of minorities, women, and individuals from economically disadvantaged backgrounds. Minority therapists have an advantage in the provision of critical services to minority populations because often they can communicate with clients in their own language and cultural framework. Minority therapists are more likely to work in community settings where ethnic minority and economically disadvantaged individuals are most likely to seek care. It is critical that continued support be provided for the training of individuals who provide health care services to underserved communities.

Mr. President, 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. 90
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This Act may be cited as the "National Center for Social Work Research Act".

SEC. 2. FINDINGS.

Congress finds that—

(1) social workers focus on the improvement of individual and family functioning and the creation of effective health and mental health prevention and treatment interventions in order for individuals to become more productive members of society;

(2) social workers provide front line prevention and treatment services in the areas of school violence, aging, teen pregnancy, mental health care, domestic violence, juvenile crime, and substance abuse, particularly in rural and underserved communities; and

(3) social workers are in an unique position to provide valuable research information on these complex social concerns, taking into account a wide range of social, medical, economic and community influences from an interdisciplinary, family-centered and community-based approach.

SEC. 3. ESTABLISHMENT OF NATIONAL CENTER FOR SOCIAL WORK RESEARCH.

(a) In General.—Section 401(b)(2) of the Public Health Service Act (42 U.S.C. 281(b)(2)) is amended by adding at the end the following:

"(H) The National Center for Social Work Research."

(b) Establishment.—Part E of title IV of the Public Health Service Act (42 U.S.C. 295 et seq.) is amended by adding at the end the following:

"Subpart 7—National Center for Social Work Research"

SEC. 485J. PURPOSE OF CENTER.

The general purpose of the National Center for Social Work Research (referred to in this subpart as the ‘‘Center’’) is the conduct and support of, and dissemination of targeted research concerning social work methods and outcomes related to problems of significant social concern. The Center shall—

(1) promote research and training that is designed to inform social work practices, thus increasing the knowledge base which promotes a healthier America; and

(2) provide policymakers with empirically based research findings to enable such policymakers to better understand complex social issues and make informed funding decisions about service effectiveness and cost efficiency.

SEC. 485K. SPECIFIC AUTHORITIES.

(a) In General.—To carry out the purpose described in section 485J, the Director of the Center may provide research training and instruction and establish, in the Center and in other nonprofit institutions, research traineeships and fellowships in the study and investigation of the prevention, detection, and treatment of disease, health promotion, the association of socioeconomic status, gender, ethnicity, age and geographical location and health, the social work care of individuals with, and families of individuals with, acute and chronic illnesses, child abuse, neglect, and youth violence, and child and family care to address problems of significant social concern especially in underserved populations and underserved geographical areas.

(b) STIPENDS AND ALLOWANCES.—The Director of the Center may provide stipends for individuals receiving training and instruction or traineeships or fellowships under subsection (a) with such stipends and allowances (in cash or in kind) as the Director determines necessary.
SEC. 485L. ADVISORY COUNCIL.

(a) DUTIES.

(1) In General.—The Secretary shall establish an advisory council for the Center that shall consist of the Director of the Center and the Director of the Center on matters related to the activities carried out by and through the Center and the policies with respect to such activities.

(2) Gifts.—The advisory council for the Center may recommend to the Secretary the acceptance, in accordance with section 231, of conditional gifts of real property, or of real property, for the purpose of maintaining facilities for the Center.

(b) MEMBERSHIP.—The advisory council for the Center shall consist of

(A) not more than one-third of such individuals shall be appointed from among the leading representatives of the health and scientific disciplines and professions recognized by the public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(c) TERMS.—The terms of office of members appointed to the advisory council shall be not more than 4 years, except that an individual appointed to fill a vacancy on the advisory council shall serve for the remainder of the term of such individual appointed to the advisory council who has been appointed to fill that vacancy not later than 90 days after the date on which the vacancy occurs.

(d) Chairperson.—The chairperson of the advisory council shall be selected by the Secretary from among the members appointed to the advisory council.

(e) Meetings.—The advisory council shall meet at the call of the chairperson or upon the request of a majority of the members.

(f) Administrative Provisions.—The Chairperson of the Center shall designate a member of the advisory council to serve as the executive officer of the advisory council.

(g) Comments and Recommendations.—The advisory council may prepare, for inclusion in the biennial report under section 485M, comments with respect to the activities of the Center and program policies of the Director of the Center for the fiscal years for which the report is prepared, and the Director shall provide the advisory council with such information as may be appropriate for their effective participation in the functions of the advisory council.

(h) Amendments.—The advisory council may make recommendations to the Secretary for the amendment, modification, or deletion of any provision of this title or any regulation under this title.

(i) Special Assemblies.—The Secretary shall meet at the request of the advisory council to consider any special or urgent matter.

(j) Administrative Provisions.—The Chairperson of the Center shall provide a special assembly of the advisory council to consider any special or urgent matter.

(k) Commissions.—The advisory council may make recommendations to the Secretary for the establishment of commissions, programs of grants for training projects in geriatrics, and to provide for the establishment of a new social work training program to the Committee on Health, Education, Labor, and Pensions.

SEC. 485N. QUARTERLY REPORT.

The Director of the Center shall prepare and submit to Congress a quarterly report that contains a summary of findings and policy implications derived from research conducted or supported through the Center.

By Mr. INOUYE.

S. 91. A bill to amend title VII of the Public Health Service Act to establish a social work training program for social work schools to provide support for training programs in geriatrics, to the Secretary from among the members appointed to the advisory council for the Center to be the chairperson of the advisory council.

The term of office of the chairperson shall be 2 years.

(e) MEETINGS.—The advisory council shall meet at the call of the chairperson or upon the request of a majority of the members.

(f) ADMINISTRATIVE PROVISIONS.—The Director of the Center shall provide a special assembly of the advisory council to consider any special or urgent matter.

(g) COMMISSIONS.—The advisory council may make recommendations to the Secretary for the establishment of commissions, programs of grants for training projects in geriatrics, and to provide for the establishment of a new social work training program to the Committee on Health, Education, Labor, and Pensions.

Despite the impressive range of services social workers provide to people of this Nation, few Federal programs exist to provide opportunities for social work training in health and mental health care.

Social workers have long provided quality mental health services to our citizens and continue to be at the forefront of establishing innovative programs to serve our disadvantaged populations. I believe it is important to ensure that the special expertise social workers possess continues to be available to the citizens of this Nation. This bill, by providing financial assistance to schools of social work and social work students, acknowledges the long history and critical importance of the services provided by social work professionals. I believe it is time to provide them with the recognition they deserve.

By Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.
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 “Strengthen Social Work Training Act of 2005”.

SEC. 2. SOCIAL WORK STUDENTS. (a) Financial Assistance.—Section 736(g)(1)(A) of the Public Health Service Act (42 U.S.C. 293g(a)(1)(A)) is amended by striking “graduate program in behavioral or mental health practice,” “graduate programs in behavioral or mental health, including a school offering graduate programs in clinical social work, or programs in social work”.

(b) Scholarships.—Section 737(d)(1)(A) of the Public Health Service Act (42 U.S.C. 293d(d)(1)(A)) is amended by striking “mental health practice” and inserting “mental health practice (including graduate programs in clinical psychology, graduate programs in clinical social work, or programs in social work)”.

(c) Faculty Positions.—Section 738(a)(3) of the Public Health Service Act (42 U.S.C. 293a(a)(3)) is amended by striking “offering graduate programs in behavioral and mental health” and inserting “offering graduate programs in behavioral and mental health, including graduate programs in clinical psychology, graduate programs in clinical social work, or programs in social work”.

SEC. 3. GERIATRICS TRAINING PROJECTS. Section 733(b)(1) of the Public Health Service Act (42 U.S.C. 293c(b)(1)) is amended by inserting after “offering degrees in social work,” “after teaching hospitals.”.

SEC. 4. SOCIAL WORK TRAINING PROGRAM. Subpart 2 of part E of title VII of the Public Health Service Act (42 U.S.C. 294c(b)(1)) is amended by striking “the fiscal years 2006 through 2008” and inserting “the fiscal years 2006 through 2008”.

(a) Training Generally. The Secretary may make grants to, or enter into contracts with, any public or nonprofit private hospital, any school offering programs in social work, or to or with a public or private nonprofit corporation that the Secretary has determined is capable of carrying out such grant or contract—

(1) to plan, develop, and operate, or participate in, an approved social work training program (including an approved residency or internship program) for students, interns, residents, or practicing physicians;

(2) to provide financial assistance (in the form of traineeships and fellowships) to students, interns, residents, practicing physicians, or other individuals, who—

(A) are in need of such assistance;

(B) are participants in any such program; and

(C) plan to specialize or work in the practice of social work;

(3) to plan, develop, and operate a program for the training of individuals who plan to teach in a social work training program; and

(4) to provide financial assistance (in the form of traineeships and fellowships) to individuals who are participants in any such program who plan to teach in a social work training program.

(b) Academic Administrative Units.—

(1) In General. The Secretary may make grants to, or enter into contracts with, schools offering programs in social work to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in social work.

(2) Preference in Making Awards.—In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant for which an application to expend the award for the purpose of—

(A) establishing an academic administrative unit for programs in social work; or

(B) substantially expanding the programs of such a unit.

(c) Duration of Award. The period during which payments are made to an entity under a grant or contract under subsection (a) may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary and subject to the availability of appropriations for the fiscal year involved to make the payments.

(d) Funding. There are authorized to be appropriated to carry out this section $10,000,000 for each of the fiscal years 2006 through 2008.

(e) Authorization of Appropriations. Section 770(a) of the Public Health Service Act (42 U.S.C. 293k et seq.) is amended—

(1) in paragraphs (1) and (2), by inserting “clinical social worker,” after “psychologist,” each place the term appears;

(2) in paragraph (4)(A), by striking “and psychologists” and inserting “psychologists, clinical social workers,” and

(3) in paragraph (5), by inserting “clinical social worker,” after “psychology,”.

By Mr. INOUYE:

S. 92. A bill to amend title VII of the Public Health Service Act to establish a psychology post-doctoral fellowship program, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. INOUYE. Mr. President, I am introducing legislation today to amend Title VII of the Public Health Service Act to establish a psychology post-doctoral program. Psychologists have made a unique contribution in reaching out to the nation’s medically underserved populations. Expertise in behavioral science is useful in addressing grave concerns such as violence, addiction, mental illness, adolescent and child behavioral disorders, and family disruption. Establishment of a psychology post-doctoral program could be an effective way to find solutions to these issues.

Similar programs supporting additional specialization have traditionally been successful in retaining participants to serve the same populations. For example, mental health professionals who have participated in these specialized federally funded programs have tended to meet their repayment obligations, but have continued to work in the public sector or with the underserved.

While a doctorate in psychology provides broad-based knowledge and mastery in a wide variety of clinical skills, specialized post-doctoral fellowship programs help to develop particular diagnostic and treatment skills required to respond effectively to underserved populations. For example, what appears to be poor academic motivation in a child recently relocated from Southeast Asia might actually reflect a cultural value of reserve rather than a disinterest in academic learning. Similarly, assessment skills enable the clinician to initiate effective treatment.

Domestic violence poses a significant public health problem and is not just a problem for the criminal justice system. Violence against women results in thousands of hospitalizations a year. Rates of child and spouse abuse in rural areas are particularly high, as are the rates of alcohol abuse and depression in adolescents. A post-doctoral fellowship program in psychology of the rural populations could be of special benefit in addressing these problems.

Given the demonstrated success and effectiveness of specialized training programs, it is incumbent upon us to encourage participation in post-doctoral fellowships that respond to the needs of the nation’s underserved.

Mr. President, 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. 92. 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 enacted as the “Psychology Training in the Service of the Public Act of 2005”.

SEC. 2. GRANTS FOR FELLOWSHIPS IN PSYCHOLOGY. Part C of title VII of the Public Health Service Act (42 U.S.C. 293k et seq.) is amended by adding at the end the following:

SEC. 749. GRANTS FOR FELLOWSHIPS IN PSYCHOLOGY. 

(a) IN GENERAL. The Secretary shall establish a psychology post-doctoral fellowship program to make grants to and enter into contracts with eligible entities to encourage the provision of psychological training and services in underserved treatment areas.

(b) ELIGIBLE ENTITIES. In order for an entity to receive a grant under this section an individual shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require, including a certification that such individual—

(1) has received a doctoral degree through a graduate program in psychology and psychiatric services in underserved treatment areas.

(2) has been employed in an underserved population during the period of such grant;

(3) will comply with the provisions of subsection (c); and

(4) will provide any other information or assurances as the Secretary determines appropriate.
“(2) INSTITUTIONS.—In order to receive a grant or contract under this section, an institution shall submit an application to the Secretary at such time, in such form, and containing such information as the Secretary shall require, including a certification that such institution—

“(A) is an entity, approved by the State, that provides medical services in medically underserved areas or to medically underserved populations (including entities that care for the mentally retarded, mental health institutions, and prisons);

“(B) will use amounts provided to such institution under this section to provide financial assistance in the form of fellowships to qualified individuals who meet the requirements of subparagraphs (A) through (C) of paragraph (1);

“(C) will not use more than 10 percent of amounts provided under this section to pay for the administrative costs of any fellowship programs established with such funds; and

“(D) will provide any other information or assurances as the Secretary determines appropriate.

“(c) CONTINUING PROVISION OF SERVICES.—Any individual who receives a grant or fellowship under this section shall certify to the Secretary that such individual will continue to provide the type of services for which the grant or fellowship is awarded for not less than 1 year after the term of the grant or fellowship has expired.

“(d) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Secretary shall promulgate regulations necessary to carry out this section, including regulations that define the terms ‘medically underserved areas’ and ‘medically underserved populations’.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for each of the fiscal years 2006 through 2008.

By Mr. INOUYE:

S. 93. A bill to increase the role of the Secretary of Transportation in administering section 901 of the Merchant Marine Act, 1936, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. LUGAR. Mr. President, on behalf of myself and Senators LEAHY, LINCOLN, DOLE, and SMITH, I rise today to introduce the Good Samaritan Hunger Relief Tax Incentive Act of 2005. This important legislation allows for expanded charitable tax deductions for contributions of food inventory to our nation’s food banks and would permit farmers and businesses of all sizes to take advantage of this tax deduction. Demand on food banks has been rising, and these tax deductions would be an important step in increasing private donations to the nonprofit hunger relief charities playing a critical role in meeting America’s nutritional needs.

To a certain degree, donations have not diminished or have even modestly increased, but most areas surveyed report that donations cannot keep up with the growing demand. According to the U.S. Conference of Mayors and Sodexo USA “Hunger and Homelessness Survey released in December 2004, food bank emergency food assistance has increased fourteen percent. Fifty-six percent of the people requesting emergency food assistance are either children or their parents. The number of elderly persons requesting food assistance has increased by twelve percent. The success of welfare reform legislation has moved many recipients off welfare and into jobs. Over the last decade, in many states, welfare roles have been reduced by more than one half. But we need to recognize that these individuals and their families are living on modest wages. As the states’ unemployment rates have risen, so have the demands placed on the food banks and soup kitchens. The problem of hunger goes well beyond the unemployed. The Mayors’ survey points out that thirty-four percent of people requesting food assistance were working. Due to increases in rent, underemployment, multigenerational residences, families have to make the tough financial decisions. As a result, food needs of families have been pushed further and further down the priority list. This is coupled with the nutritional value becoming a concern for some families because fast food and ‘junk’ food is more economical to those on a tight budget.

Private food banks provide a key safety net against hunger. According to the 2002 report by the U.S. Department of Agriculture, over 13 million children were hungry or at the risk of being hungry.

America’s Second Harvest, a nationwide food bank network, has supported food banks and rescue organization, released a 2001 report entitled “Hunger in America” stating that 23.3 million people sought and received emergency hunger relief from just their network of charitable organizations. That would be the equivalent of the populations of New York, Los Angeles, Chicago, Houston, Philadelphia, San Diego, Phoenix, San Antonio, Dallas, and Detroit combined. In 1997, the USDA estimated that up to 96 billion pounds of food goes to waste each year in the United States at a cost of an estimated $1 billion in increased disposal fees paid by municipalities. This food and fresh produce that is left unharvested or in storage bins, discarded by wholesalers, restaurants, and grocery stores, or reduced by the manufacturing or transportation process. If a small percentage of this wasted food could be redirected to food banks, we could make important strides in our fight against hunger. I believe the enactment of this bill would be a great incentive in redirecting this food from being discarded to being distributed to hungry families.

The Good Samaritan Hunger Relief Tax Incentive Act would allow farmers and small business owners to take a deduction when they donate food to their community food bank. Currently this reduction is available to large corporations but not for small businesses. This approach would stimulate private charitable giving at the community level. Each citizen can make an important contribution to the fight against hunger at a local level. Over the years, I have had the opportunity to visit numerous Hoosier food banks, and have been especially impressed by the remarkable work of these organizations. In many cases, they are partnered with churches and faith-based organizations and are making a tremendous difference in their communities. We should support this private sector activity, which not only feeds people, but also strengthens community bonds and demonstrates the power of faith, charity, and civic involvement.

Thank you, Mr. President. I yield the floor.

By Mr. LAUTENBERG (for himself and Mr. DEWINE):

S. 95. A bill to amend titles 23 and 49, United States Code, concerning length and weight limitations for vehicles operating on Federal-aid highways, and for other purposes; to the Committee on Environment and Public Works.

Mr. LAUTENBERG. Today, I am proud to introduce, along with my colleague Senator DeWine, legislation which will make our roads safer and last longer. Our bill, the “Safe Highways and Reliable Infrastructure Act,” will extend the current limited freeze of current truck size and weight limits set by states, which only applies to our 44,000-mile Interstate Highway System, to the entire 156,000-mile National Highway System (NHS). This extension will make our roads safer, and will further reduce the wear and tear of our highways and bridges.

Fifteen years ago, I got a provision into the ISTEA highway reauthorization bill to ban triple-trailer trucks and other so-called “longer combination vehicles” (LCVs) from New Jersey and most other States. At that time and ever since, the trucking industry has fought to defeat and repeal this ban, under the guise of arguments for “safety rights,” “economic harm” or “unfair re-distribution of business to railroads.” But these are not rational arguments for allowing larger and heavier trucks as well as triple-trailer trucks on our roads. Additionally, the trucking industry’s proclaimed hardships have not materialized. In fact, the trucking companies have survived the current laws quite well, and trucks have redefined their role in our national freight transportation system.

Nobody involved in the shared road with a large tractor-trailer truck has probably wondered whether the truck driver is aware of the smaller vehicles around the truck. Anyone who has seen the third trailer on a triple-trailer truck swinging around in a ‘crack the whip’ fashion probably knows that these trucks are to be avoided.

Moving to the use of even larger trucks is not safe. The U.S. Department of Transportation has determined that multi-trailer trucks are likely to be involved in more fatal crashes—11 percent more than today’s single-trailer trucks. By expanding the limits on triples and other longer combination
vehicles to the entire NHS including more than 2,000 miles of highway in New Jersey the Safe Highways and Infrastructure Protection Act will save lives and prevent further deterioration of our roads and bridges.

The New Jersey sees its share of the nation’s truck traffic. And we are concerned about recent projections that show the amount of traffic increasing considerably over the next 10 to 20 years. We are concerned about these 55-foot, 80,000-pound vehicles on our roads. The pressure from other states to increase weight and length limitations to allow larger trucks to come through our State. This makes truck safety even more important to New Jersey drivers.

Double-trailers and other LCVs do more damage to our roads and bridges but don’t come close to paying associated maintenance and repair costs. Currently, some 37 percent of bridges in New Jersey are considered structurally deficient or functionally obsolete. Their average age is 42 years old. But the fees, tolls, and gasoline taxes paid by the operator of a 100,000-pound truck only covers 40 percent of the cost of the damage that truck does to our roads and bridges; taxpayers make up the difference. I believe that motorists should not have to share the road with these dangerous behemoths and pay for the extra damage they cause.

In the 108th Congress, the Senate passed portions of this legislation in the highway reauthorization legislation package. I believe that if we act to pass this legislation, we can make a big difference in the lives of people who share our highways with large truck traffic.

I thank my colleague Senator DeWine for once again joining me in sponsoring this important legislation, and I look forward to working with my colleagues in the Congress to improve highway safety and increase the remaining life of our country’s roads and bridges.

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

There being no objection, the bill was ordered to be printed in the RECORD.

The bill will be printed in a future edition of the RECORD.

By Mr. INOHE:

S. 96. A bill to target Federal funding for research and development, to amend section 1928 of the Social Security Act to encourage the production of influenza vaccines by eliminating the price cap applicable to the purchase of such vaccines under contracts entered into by the Secretary of Health and Human Services, to amend the Internal Revenue Code of 1986 to establish a tax credit to encourage vaccine production capacity, and for other purposes; to the Committee on Finance.

Mr. INOHE. Mr. President, I have long been dedicated to quality healthcare for my constituents in Oklahoma and across America. I supported the Medicare bill of 2003 to give a voluntary prescription drug benefit to seniors. I have championed the rural health care providers, who received some of the greatest benefits of the Medicare bill. In 1997, I was one of few Republican to vote against the Balanced Budget Act of 1997 because of lack of support for rural hospitals. Back then, I made a commitment to not allow our rural hospitals to be closed, and I am pleased we finally addressed that important issue in the Medicare legislation. I sponsored S. 826, the Health Care Access and Rural Equity Act, to protect and preserve access of Medicare beneficiaries to health care in rural regions.

I am a strong advocate of medical liability reform and am an original cosponsor of S. 11, the Patients First Act, to protect patients’ access to quality and affordable health care by reducing the effects of excessive liability costs. There are solutions to alleviate the burden placed on physicians and patients by excessive medical malpractice lawsuits, and I am committed to this vital reform.

I have also worked with officials from the Center for Medicare and Medicaid Services to expand access to lifesaving Implantable Cardiac Defibrillators. I supported legislation to increase the supply of pancreatic islet cell research for children and c-spore a bill to take the abortion pill RU-486 off the market in the United States.

The Federal Government invests in improving hospitals and healthcare initiatives, and I have fought hard to ensure that Oklahoma gets its fair share. Specifically, over the past three years, I have helped to secure $5.2 million in funding for the Oklahoma Medical Research Foundation, the Oklahoma State Department of Health planning initiative for a rapid telemedicine system, the Children’s Health Information System, the University of Oklahoma Health Sciences Center, the Oklahoma Center for the Advancement of Science and Technology, St. Anthony’s Heart Hospital, the Hillcrest Healthcare System, and the Morton Health Center.

Mr. President, the unexpected influenza (flu) vaccine shortage beginning last month highlights the need to encourage the production of flu vaccine in America. As you know, on October 5, 2004, Chiron, a California-based biotechnology company, notified U.S. health officials that its plant in Liverpool, England had been shut down due to vaccine contamination. Almost 50,000 doses of flu vaccine were thrown away, which created a severe shortage for Americans just as the flu season began.

In light of the current shortage, I have examined why America found itself unable to accommodate the public demand for the flu vaccine. As we face the coming flu season, a rapid response is difficult and often impossible. Thirty years ago, more than a dozen American companies were in the flu vaccine business. Today, only two companies make the vaccine for America, and only one is an America-based company. This is no coincidence. High liability costs, tedious production, price caps, and the complicated United States tax code have kept new players out.

In October, President Bush signed the JOBS bill, which curbed the billion-dollar lawsuits that have crippled the flu vaccination industry. By adding flu vaccine to the list of vaccines protected by the National Vaccine Injury Compensation Program (VICP), a no-fault alternative must be used for resolving vaccine injury claims. I am encouraged with this progress, but more can be done to prevent a shortage in the future.

The FY2005 Omnibus bill provides $100 million to the Department of Health and Human Services (HHS) to ensure a year-round flu vaccine production capacity and for the development of new technologies to expand flu vaccine production technologies. The Omnibus language also permits HHS to purchase flu vaccine with these funds, if deemed necessary. Such costly purchasing is a waste of federal dollars that could otherwise be used for research at the National Institutes of Health to develop faster and safer vaccine production technology. My bill strikes the language that allows government purchasing of the flu vaccine with these funds.

Optimizing the flu vaccine production process is imperative. The everlasting nature of the flu virus results in a complicated production process. The dominant strain of the flu virus mutates each year, requiring a different vaccine for every flu season. Because harvesting the flu vaccine currently takes at least six months and requires tens of thousands of fertilized eggs susceptible to contamination, this process must begin nearly a year before the flu season begins.

Research should be focused on developing new technologies to allow us to produce more vaccine—in the same season—when we encounter a shortage. For example, a company in Connecticut is developing a flu vaccine relying on cell lines from silk moths. Reverse genetics technology also holds potential that researchers should explore. These types of innovative research promise to shave at least one month off of production time and significantly reduce cost.

Rather than temporarily masking problems through wasted spending on vaccine surpluses, my bill would ensure that the federal government invests in lagging solutions to the challenges of flu vaccine production. The encouragement of safer and faster flu vaccine production technology is a prudent use of federal research dollars through the National Institutes of Health.

To invest in these new technologies, flu vaccine manufacturers will have to renovate existing facilities or construct new ones. My bill gives a tax...
credit to companies, new and old, to assist them in this important venture. Currently, ten American companies produce the forty-seven FDA-approved vaccines. An investment tax credit will encourage these existing companies to expand production. They will not use the flu vaccine and will invite start-up companies to join the industry. This will better equip the United States market to prevent and deal with a shortage in the future.

Fuller provides a bill removes the suffocating price controls that have discouraged companies from producing the flu vaccine. The Vaccines For Children program (VFC), enacted under the Clinton Administration, imposed a price cap on all vaccines purchased through federal contracts. From a short-sighted perspective, these regulated prices may expand access to vaccines. However, in the long run this policy has devastated the vaccine production industry and decreases the availability of vaccines. This occurred in 1998 when manufacturers of Tetanus Diphtheria vaccine refused to bid on government contracts. Consequently, this vaccine is no longer available to children through the VFC program.

Similarly, the CDC purchased nearly 12 percent of the flu vaccine this season, and significant quantities were purchased through the Department of Defense, the Veteran's Administration, and Medicare. The price controls imposed from federal government purchasing create a high-risk, low-reward business market. Price controls destroy any profit incentive. Manufacturers avoid this artificial environment and will continue to as long as the government oversteps its bounds.

The harmful effect of government price controls is especially pronounced in the flu vaccine market because the vaccine has a single-season shelf life. The difficulty of predicting the demand for vaccines each year exposes companies great risk. A slight drop in demand can force them out of the market. Financial losses—from seven million extra doses in 2002 and 4.5 million extra in 2003—compelled Wyeth Pharmaceutical Company to end its flu vaccine manufacturing.

Scientific experts consider vaccination to be the most effective medical intervention, and we live in an age of unprecedented vaccine development and implementation. We cannot continue to over-regulate the flu vaccine industry and hope companies will hang on and produce vaccines regardless of profit. The current national flu vaccine shortage reveals the need to act.

By Mr. TALENT: S. 102. A bill to provide grants to States to combat methamphetamine abuse; to the Committee on the Judiciary.

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

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

S. 102

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 “Exile Meth Act”.

SECTION 2. ESTABLISHMENT OF GRANT PROGRAM FOR THE ELIMINATION OF METHAMPHETAMINE REPEAT OFFENDERS.

The Attorney General shall establish a program that provides grants to qualified States for combating the problem of methamphetamine abuse, with a specific focus on the prosecution of repeat offenders.

SEC. 3. DEFINITION.

As used in this Act, the term “qualified State” means a State that—

(1) had more than 200 methamphetamine lab seizures in 2004, as reported by the National Clandestine Laboratory Database; and

(2) has a law that a person who possesses or distributes 5 grams or more of methamphetamine, its salts, isomers, or salts of its isomers, or 50 grams or more of a mixture of methamphetamine, its salts, isomers, or salts of its isomers, qualifies for a mandatory minimum sentence, without the possibility of parole, of 5 to 20 years for a first offense, 10 years to life for a second offense, and life for a third offense.

SEC. 4. DISTRIBUTION OF GRANT AMOUNTS.

The Attorney General shall distribute grants authorized under this Act to 2 States.

SEC. 5. ADMINISTRATION.

The Attorney General shall prescribe requirements, including application requirements, for grants under the program established under this Act.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated, in addition to the amounts otherwise required by law to assist in the enforcement and prosecution of methamphetamine offenses and the cleanup of methamphetamine-affected areas, the following:

(b) Prescriptions.—The funds allocated under subsection (a) shall be used to—

(1) train local prosecutors in techniques used to prosecute methamphetamine cases, including the presentation of evidence related to the manufacture of methamphetamine;

(2) train local prosecutors in Federal and State laws involving methamphetamine manufacture or distribution;

(3) cross-designate local prosecutors as special assistant United States attorneys; and

(4) hire additional local prosecutors who qualify as special assistant United States attorneys.

(c) Rural Set-Aside.—Of amounts made available under subsection (a), $3,000,000 shall be available only for prosecutors and law enforcement agents for the investigation and prosecution of methamphetamine cases.

SEC. 7. ENFORCEMENT, PROSECUTION, AND CLEANUP.

Section 101(d) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd(d)) is amended—

(a) Section 101(d) is amended by inserting “and” before the period at the end and inserting “; and” after “investigating and, as appropriate, prosecuting methamphetamine cases;” before “a conviction for a first offense,”

(b) A VAILABILITY.

The Attorney General shall allocate any amounts appropriated pursuant to the authorization under subsection (a) to the hiring and training of special assistant United States attorneys.

(b) Use of Funds.—The funds allocated under subsection (a) shall be used to—

(1) train local prosecutors in techniques used to prosecute methamphetamine cases, including the presentation of evidence related to the manufacture of methamphetamine;

(2) train local prosecutors in Federal and State laws involving methamphetamine manufacture or distribution;

(3) cross-designate local prosecutors as special assistant United States attorneys; and

(4) hire additional local prosecutors who qualify as special assistant United States attorneys.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $3,000,000 for each of the fiscal years 2006 and 2007 to carry out this section.

SEC. 102. EXPANSION OF METHAMPHETAMINE HOT SPOTS PROGRAM TO INCLUDE PERSONNEL AND EQUIPMENT FOR ENFORCEMENT, PROSECUTION, AND CLEANUP.

There are authorized to be appropriated $3,000,000 for each of the fiscal years 2006 and 2007 to carry out this section.

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

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

S. 102

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
January 24, 2005

CONGRESSIONAL RECORD—SENATE
S263

SEC. 202. LOCAL GRANTS FOR TREATMENT OF METHAMPHETAMINE ABUSE AND RELATED CONDITIONS.

Subpart 1 of part B of title V of the Public Health Service Act (42 U.S.C. 290bb et seq.) is amended—

(1) by redesignating the section 514A that relates to methamphetamine and appears after section 514A as section 514B;

(2) in section 514B, as redesignated—

(A) by amending subsection (a)(1) to read as follows:

"(1) GRANTS AUTHORIZED.—The Secretary shall give priority to entities that will serve rural areas experiencing an increase in methamphetamine abuse.;"

(B) by amending subsection (b) to read as follows:

"(b) APPLICATION.—The Secretary, approval of a grant under subsection (a) shall submit an application to the Secretary at such time in such manner, and continuing such information as the Secretary may require.

(c) CONSIDERATION.—In awarding grants or entering into contracts under subsection (a), the Secretary shall ensure that not less than 1 of the centers will focus on methamphetamine abuse in rural areas.

(d) AUTHORIZED ACTIVITIES.—Each center established under this section shall—

(1) engage in research and evaluation of the effectiveness of treatment modalities for the treatment of methamphetamine abuse;

(2) disseminate information to public and private entities on effective treatments for methamphetamine abuse;

(3) provide direct technical assistance to States, political subdivisions of States, and private entities to improve the treatment of methamphetamine abuse; and

(4) provide training on the needs of methamphetamine users and on effective ways of treating methamphetamine abuse to substance abuse treatment professionals and community leaders.

(e) REPORTS.—Each grantee or contractor under this section shall annually submit a report to the Secretary that contains—

(1) a description of the previous year’s activities of the center established under this section;

(2) effective treatment modalities undertaken by the center; and

(3) evidence that demonstrate that such treatment modalities are successful.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are appropriated to the Secretary to carry out the provisions of this section.

SEC. 514C. METHAMPHETAMINE RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE CENTER.

(a) PROGRAM AUTHORIZED.—The Secretary, acting through the Administrator, and in consultation with the National Institutes of Health, shall award grants to, or enter into contracts with, public or private, nonprofit entities to establish a research, training, and technical assistance center to carry out the activities described in subsection (d).

(b) APPLICATION.—A public or private, nonprofit entity seeking a grant or contract under subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) CONSIDERATION.—In awarding grants or entering into contracts under subsection (a), the Secretary shall ensure that not less than 1 of the centers will focus on methamphetamine abuse in rural areas.

(d) AUTHORIZED ACTIVITIES.—Each center established under this section shall—

(1) engage in research and evaluation of the effectiveness of treatment modalities for the treatment of methamphetamine abuse;

(2) disseminate information to public and private entities on effective treatments for methamphetamine abuse;

(3) provide direct technical assistance to States, political subdivisions of States, and private entities to improve the treatment of methamphetamine abuse; and

(4) provide training on the needs of methamphetamine users and on effective ways of treating methamphetamine abuse to substance abuse treatment professionals and community leaders.

(e) REPORTS.—Each grantee or contractor under this section shall annually submit a report to the Secretary that contains—

(1) a description of the previous year’s activities of the center established under this section;

(2) effective treatment modalities undertaken by the center; and

(3) evidence that demonstrate that such treatment modalities are successful.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are appropriated to the Secretary to carry out the provisions of this section.

SEC. 514D. METHAMPHETAMINE RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE CENTER.

(a) PROGRAM AUTHORIZED.—The Secretary, acting through the Administrator, and in consultation with the National Institutes of Health, shall award grants to, or enter into contracts with, public or private, nonprofit entities to establish a research, training, and technical assistance center to carry out the activities described in subsection (d).

(b) APPLICATION.—A public or private, nonprofit entity seeking a grant or contract under subsection (a) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) CONSIDERATION.—In awarding grants or entering into contracts under subsection (a), the Secretary shall ensure that not less than 1 of the centers will focus on methamphetamine abuse in rural areas.

(d) AUTHORIZED ACTIVITIES.—Each center established under this section shall—

(1) engage in research and evaluation of the effectiveness of treatment modalities for the treatment of methamphetamine abuse;

(2) disseminate information to public and private entities on effective treatments for methamphetamine abuse;

(3) provide direct technical assistance to States, political subdivisions of States, and private entities to improve the treatment of methamphetamine abuse; and

(4) provide training on the needs of methamphetamine users and on effective ways of treating methamphetamine abuse to substance abuse treatment professionals and community leaders.

(e) REPORTS.—Each grantee or contractor under this section shall annually submit a report to the Secretary that contains—

(1) a description of the previous year’s activities of the center established under this section;

(2) effective treatment modalities undertaken by the center; and

(3) evidence that demonstrate that such treatment modalities are successful.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are appropriated to the Secretary to carry out the provisions of this section.
Sec. 104. Supplemental grant for population increases in certain States.

Sec. 105. Bonus to reward employment achievement.

Sec. 106. Child support fund.

Sec. 107. Use of funds.

Sec. 108. Repeal of Federal loan for State welfare programs.

Sec. 109. Universal prevention and family self-sufficiency plan requirements.

Sec. 110. Work participation requirements.

Sec. 111. Maintenance of effort.

Sec. 112. Performance improvement.

Sec. 113. Data collection and reporting.

Sec. 114. Direct funding and administration reimbursement.

Sec. 115. Research, evaluations, and national studies.

Sec. 116. Studies by the Census Bureau and the Government Accountability Office.

Sec. 117. Definition of assistance.

Sec. 118. Technical corrections.

Sec. 119. Fatherhood program.

Sec. 120. State option to make TANF programs mandatory partners with other employment training centers.

Sec. 121. Sense of the Congress.

Sec. 122. Extension through fiscal year 2005.

TITTLE II—CHILD CARE

Sec. 201. Short title.


Sec. 203. Authorization of appropriations.

Sec. 204. Application and plan.

Sec. 205. Activities to improve the quality of child care.

Sec. 206. Report by Secretary.

Sec. 207. Definitions.

Sec. 208. Entitlement funding.

TITTLE III—CHILD SUPPORT

Sec. 301. Federal matching funds for limited pass through of child support payments to families receiving TANF.

Sec. 302. State option to pass through all child support payments to families that formerly received TANF.

Sec. 303. Mandatory review and adjustment of child support orders for families receiving TANF.

Sec. 304. Mandatory fee for successful child support collections for family that has never received TANF.

Sec. 305. Report on undistributed child support payments.

Sec. 306. Decrease in amount of child support arrearage triggering passport denial.

Sec. 307. Use of tax refund intercept program to collect past-due child support on behalf of children who are not minors.

Sec. 308. Garnishment of compensation paid to veterans for service-connected disabilities in order to enforce child support obligations.

Sec. 309. Impounding Federal debt collection practices.

Sec. 310. Maintenance of technical assistance funding.

Sec. 311. Maintenance of Federal Parent Locator Service funding.

TITTLE IV—CHILD WELFARE

Sec. 401. Extension of authority to approve demonstration projects.

Sec. 402. Elimination of limitation on number of waivers.

Sec. 403. Elimination of limitation on number of States that may be granted waivers to conduct demonstration projects on same topic.

Sec. 404. Elimination of limitation on number of waivers that may be granted to a single State for demonstration projects.

Sec. 405. Streamlined procedures for consideration of amendments to and extensions of demonstration projects requiring waivers.

Sec. 406. Availability of any amendments.

Sec. 407. Technical correction.

TITTLE V—SUPPLEMENTAL SECURITY INCOME

Sec. 501. Review of State agency blindness and disability determinations.

TITTLE VI—STATE AND LOCAL FLEXIBILITY

Sec. 601. Program coordination demonstration projects.

Sec. 602. State food assistance block grant demonstration project.

TITTLE VII—ABSTINENCE EDUCATION

Sec. 701. Extension of abstinence education program.

TITTLE VIII—TRANSITIONAL MEDICAL ASSISTANCE

Sec. 801. Extension of medicaid transitional medical assistance program through fiscal year 2006.

Sec. 802. Adjustment to payment rates for medicaid administrative costs to prevent duplicative payments and to fund extension of transitional medical assistance.

TITTLE IX—EFFECTIVE DATE

Sec. 901. Effective date.

SEC. 3. REFERENCES.

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Social Security Act.

SEC. 4. FINDINGS.

The Congress makes the following findings:

(1) The Temporary Assistance for Needy Families (TANF) Program established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193) has succeeded in moving families from welfare to work and reducing child poverty.

(A) There has been a dramatic increase in the employment of current and former welfare recipients. The number of working recipients reached an all-time high in fiscal year 1999 and continued steady in fiscal years 2000 and 2001. In fiscal year 2003, 31.3 percent of adult recipients were counted as meeting the work participation requirements. All States but one met the overall participation rate standard in fiscal year 2003, as did the District of Columbia and Puerto Rico.

(B) Earnings for welfare recipients remaining on the rolls have also increased significantly, as have earnings of unemployed households. The increases have been particularly large for the bottom 2 income quintiles, that is, those women who are most likely to be former or present welfare recipients.

(C) Welfare dependency has plummeted. As of June 2004, 1,969,909 families and 4,727,291 individuals were receiving assistance. Accordingly, the number of families in the welfare caseload and the number of individuals receiving cash assistance declined 55 percent and 61 percent, respectively, since the enactment of TANF.

(D) The child poverty rate continued to decline between 1996 and 2003, falling 14 percent from 20.5 to 17.6 percent. Child poverty rates for African-American and Hispanic children have also fallen dramatically during the past 7 years.

By Mr. TALENT (for himself, Mr. SESSIONS, and Mr. DEMINT):

S. 105. A bill to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and to make other improvements; and to provide for the Committee on Finance.

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

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

S. 105

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 "Personal Responsibility, Work, and Family Promotion Act of 2005.''

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

Sec. 3. References.

Sec. 4. Findings.

TITTLE I—TANF

Sec. 101. Purposes.

Sec. 102. Family assistance grants.

Sec. 103. Promotion of family formation and healthy marriage.
As a Nation, we have made substantial progress in reducing teen pregnancies and births, slowing increases in nonmarital childbearing, and improving child support collection rates—established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, child support collection rates have met or exceeded the overall work participation rates required by law, in an average month, only 41 percent of all families had an adult participated in the labor force and was working toward the State’s participation rate. In fiscal year 2003, four jurisdictions failed to meet the more rigorous 2-parent work requirements, and 28 percent of territory residents are not subject to the 2-parent requirements, most because they moved their 2-parent cases to separate State programs where they are not subject to a penalty for failing the 2-parent rates.

In 2002, 34 percent of all births in the U.S. were to unmarried women. And, with fewer teeners entering marriage, the proportion of births to unmarried teens has increased dramatically (80 percent in 2002 versus 30 percent in 1970). The negative consequences of out-of-wedlock birth on the mother, the child, the family, and society are well documented. These include increased likelihood of welfare dependency, increased risk of poverty, poor cognitive development, child abuse and neglect, and teen parenthood, and decreased likelihood of having an intact marriage during adulthood.

In 2003 compared to 324,652 in 1996. Child support collections were made in nearly 8,000,000 cases in fiscal year 2003, significantly more than the almost 4,000,000 cases having a collection in 1996.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 gave many States the flexibility in the use of Federal funds to develop innovative programs to help families leave welfare and begin employment and to encourage the formation of 2-parent families.

Since the welfare reform effort began there has been a dramatic increase in work participation—established under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, child support collection rates have met or exceeded the overall work participation rates required by law, in an average month, only 41 percent of all families had an adult participated in the labor force and was working toward the State’s participation rate. In fiscal year 2003, four jurisdictions failed to meet the more rigorous 2-parent work requirements, and 28 percent of territory residents are not subject to the 2-parent requirements, most because they moved their 2-parent cases to separate State programs where they are not subject to a penalty for failing the 2-parent rates.

SEC. 101. PURPOSES.


(2) by inserting “payable to the State for the

(b) STATE FAMILY ASSISTANCE GRANT—

Section 403(a)(1)(C) (42 U.S.C. 603(a)(1)(C)) is amended by striking “fiscal years 2006 through 2010”.

(c) MATCHING GRANTS FOR THE TERRITORIES—

Section 1108(b)(2) is amended by striking “1997 through 2003” and inserting “2006 through 2010”.

SEC. 102. PROMOTION OF FAMILY FORMATION AND HEALTHY MARRIAGE.

(a) STATE PLANS.—Section 402(a)(1)(A) (42 U.S.C. 602(a)(1)(A)) is amended by adding at the end the following:

(i) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(ii) The amount provided under subparagraph (A) for fiscal year 2005 shall remain available to the Secretary through fiscal year 2006, for grants under this paragraph for fiscal year 2005 shall remain available to the Secretary through fiscal year 2006, for grants under this paragraph for fiscal year 2006.

(iii) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(iv) The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

SEC. 103. PROMOTION OF FAMILY FORMATION AND HEALTHY MARRIAGE.

(a) STATE PLANS.—Section 402(a)(1)(A) (42 U.S.C. 602(a)(1)(A)) is amended by adding after the period the following:

(iii) Programs to reduce the disincentives to marriage in means-tested aid programs, if offered in conjunction with any activity described in this subparagraph.

(iv) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(v) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(vi) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(vii) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(viii) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(ix) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(x) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xi) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xii) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xiii) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xiv) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xv) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xvi) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xvii) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xviii) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xix) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(xx) Programs to promote marriage and marriage advancement, for non-married pregnant women and non-married expectant fathers.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(3) COUNCIL OF AMERICANS OF NON-EQUAL RIGHTS—

The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(4) COUNCIL OF AMERICANS OF NON-EQUAL RIGHTS—

The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(5) COUNCIL OF AMERICANS OF NON-EQUAL RIGHTS—

The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(6) COUNCIL OF AMERICANS OF NON-EQUAL RIGHTS—

The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(7) COUNCIL OF AMERICANS OF NON-EQUAL RIGHTS—

The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.

(8) COUNCIL OF AMERICANS OF NON-EQUAL RIGHTS—

The amendment made by paragraph (1) shall take effect on the date of the enactment of this Act.
(D) DETERMINATION OF STATE PERFORMANCE.—For each bonus year, the Secretary shall:

(1) use the formula developed under subparagraph (A) to determine the performance of each eligible State for the fiscal year that precedes the bonus year; and

(2) prescribe performance standards in such manner and form as the Secretary shall determine.

(ii) The average annual total amount of grants to be made under this paragraph for each bonus year equals $600,000,000.

(iv) Employment Achievement State.

The term 'employment achievement State' means, with respect to a bonus year, an eligible State whose performance determined pursuant to subparagraph (D)(i) for the fiscal year preceding the bonus year equals or exceeds the performance standards prescribed under subparagraph (D)(i) for such preceding fiscal year.

(v) Appropriation.

(i) In general. Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for fiscal years 2006 through 2011 $600,000,000 for grants under this paragraph.

(ii) Extended Availability of Prior Appropriation. Amounts appropriated under section 404(a)(4)(F) of the Social Security Act (as in effect before the date of the enactment of this Act) that have not been expended as of such date of enactment shall remain available through fiscal year 2011 for grants under this paragraph.

(vi) Grants for Tribal Organizations.

This paragraph applies with respect to tribal organizations in the same manner in which this paragraph applies with respect to States. In determining the criteria under which to make grants to tribal organizations under this paragraph, the Secretary shall consult with tribal organizations.

(b) Effective Date.

The amendments made by this subsection shall take effect on the date of the enactment of this Act.

SEC. 106. CONTINGENCY FUND.

(a) Deposits Into Fund.

(1) In general.

(2) Section 403(b)(3) (42 U.S.C. 603(b)(3)) is amended—

(c) Amendment of Section 403(b)(5)(B).

(d) Amendment of Section 403(b)(3).

(e) Authority to Carryover or Reserve

(f) Authority to Carryover or Reserve

(g) Annual Recapture and Reinvestment.

(h) Annual Recapture and Reinvestment.

(i) Annual Recapture and Reinvestment.

(j) Annual Recapture and Reinvestment.

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(ff) Annual Recapture and Reinvestment.

(gg) Annual Recapture and Reinvestment.

(hh) Annual Recapture and Reinvestment.

(ii) Title IX Programs.

(jj) Title IX Programs.

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SEC. 109. UNIVERSAL ENGAGEMENT AND FAMILY SELF-SUFFICIENCY PLAN REQUIREMENTS.

(a) Modification of State Plan Requirements. —Section 402(a)(1)(A) (42 U.S.C. 602(a)(1)(A)) is amended to add the following: -

(1) In general. —A State shall ensure that each family (as defined by the State, consistent with section 407(e)(2)).

(2) Timing. —The State shall comply with paragraphs (1) and (2) of subparagraph (B) by (i) establishing a family self-sufficiency plan developed pursuant to section 408(b).

(b) Establishment of Family Self-Sufficiency Plans. —Section 408(b) (42 U.S.C. 608(b)) is amended to read as follows:

(1) Family Self-Sufficiency Plans.—

(I) In general. —A State to which a grant is made under section 403 shall—

(A) assess, in the manner deemed appropriate by the State, the skills, prior work experience, and employability of each work-eligible individual as defined in section 407(b)(2)(C) receiving assistance under the State plan for self-sufficiency activities (as defined by the State);

(B) establish for each family that includes such an individual, in consultation as the State deems appropriate with the individual, a self-sufficiency plan that specifies appropriate activities described in the plan submitted pursuant to section 402, including direct work activities as appropriate designed to assist the family in achieving their maximum degree of self-sufficiency, and that provides for the ongoing participation of the individual in the activities;

(C) require, at a minimum, each such individual to participate in activities in accordance with the self-sufficiency plan;

(D) provide for the participation of each such individual in the activities specified in the self sufficiency plan, and regularly review the progress of the family toward self-sufficiency;

(E) upon such a review, revise the self-sufficiency plan and activities as the State deems appropriate.

(2) Elements of the Plan. —The State shall comply with paragraph (1) with respect to a family—

(A) in the case of a family that, as of October 1, 2005, is not receiving assistance from the State plan for self-sufficiency activities, not later than 60 days after the family first receives assistance on the basis of the most recent application for assistance; or

(B) in the case of a family that, as of such date, is receiving the assistance, not later than 12 months after the date of enactment of this subsection.

(3) State Discretion. —A State shall have sole discretion, consistent with section 407, to define and design activities for families for purposes of this subsection, to develop methods of monitoring and reviewing progress pursuant to this subsection, and to make modifications to the plan as the State deems appropriate to assist the individual in increasing their degree of self-sufficiency.

(4) Rule of Interpretation. —Nothing in this part shall preclude a State from requiring participation in work and any other activity appropriate for helping families achieve self-sufficiency and improving child well-being.

(b) Family Self-Sufficiency Plans. —Section 408(b) (42 U.S.C. 608(b)) is amended to read as follows:

(1) Family Self-Sufficiency Plans.—

(I) In general. —A State to which a grant is made under section 403 shall—

(A) assess, in the manner deemed appropriate by the State, the skills, prior work experience, and employability of each work-eligible individual as defined in section 407(b)(2)(C) receiving assistance under the State plan for self-sufficiency activities (as defined by the State, consistent with section 407(e)(2)).

(B) establish for each family that includes such an individual, in consultation as the State deems appropriate with the individual, a self-sufficiency plan that specifies appropriate activities described in the plan submitted pursuant to section 402, including direct work activities as appropriate designed to assist the family in achieving their maximum degree of self-sufficiency, and that provides for the ongoing participation of the individual in the activities;

(C) require, at a minimum, each such individual to participate in activities in accordance with the self-sufficiency plan;

(D) provide for the participation of each such individual in the activities specified in the self sufficiency plan, and regularly review the progress of the family toward self-sufficiency;

(E) upon such a review, revise the self-sufficiency plan and activities as the State deems appropriate.

(II) Timing. —The State shall comply with paragraphs (1) and (2) of subparagraph (B) by (i) establishing a family self-sufficiency plan developed pursuant to section 408(b).

SEC. 110. WORK PARTICIPATION REQUIREMENTS.

(a) Elimination of Separate Participation Rate Requirements for 2-Parent Families. —Section 407 (42 U.S.C. 607) is amended by striking subparagraph (B) and inserting the following: -

(1) The average monthly number of countable hours (as defined in subsection (c)(1)) with respect to the counted families for the State for the month; divided by

(ii) 160 multiplied by the number of counted families for the State for the month.

(b) Counted Families Defined. —

(I) In general. —In subparagraph (A), the term ‘counted family’ means, with respect to a State and a month, a family that includes a work-eligible individual and that receives assistance in the month under the State program that is approved under this part, subject to clause (ii).

(II) State option to exclude certain families. —At the option of a State, the term ‘counted family’ shall include—

(i) a family in the first month for which the family receives assistance from a State program funded under this part, subject to the most recent application for such assistance; or

(ii) a case-by-case basis, a family in which the youngest child has not attained 12 months of age.

(III) State option to include individuals receiving assistance under a tribal family assistance plan or tribal work program. —At the option of a State, the term ‘counted family’ may include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412 or under a tribal work program to which funds are provided under this part.

(b) Work-Eligible Individual Defined. —In this section, the term ‘work-eligible individual’ means an individual—

(i) who is married or a single head of household; and

(ii) whose needs are (or, but for sanctions that would be in effect for more than 3 months (whether or not consecutive) in the preceding 12 months or under part D, would be) included in determining the amount of cash assistance to be provided to the family under the State program funded under this part.

(2) Reformulation of Case Load Reduction Credit. —

(I) In general. —Section 407(b)(3)(A)(ii) (42 U.S.C. 607(b)(3)(A)(ii)) is amended to read as follows:

(ii) the average monthly number of families that received assistance under the State program funded under this part during the base year.

(II) Conforming Amendment. —Section 407(b)(3)(B) (42 U.S.C. 607(b)(3)(B)) is amended by striking ‘‘and eligibility criteria’’ and all that follows through the open parenthesis and inserting ‘‘and the eligibility criteria in effect during the then applicable base year’’. 

(2) Base Year Defined. —Section 407(b)(3) (42 U.S.C. 607(b)(3)) is amended by adding at the end the following:

(C) Base year defined. —In this paragraph, the term ‘base year’ means, with respect to a fiscal year—

(i) if the fiscal year is fiscal year 2006, fiscal year 1996;
(ii) if the fiscal year is fiscal year 2007, fiscal year 1998;
(iii) if the fiscal year is fiscal year 2008, fiscal year 2003;
(iv) if the fiscal year is fiscal year 2009 or any succeeding fiscal year, the then 4th preceding fiscal year.

(d) SUPERACHEIVER CREDIT.—Section 407(b) (42 U.S.C. 607(b)) is amended by striking paragraphs (4) and (5) and inserting the following:

"(4) SUPERACHEIVER CREDIT.—
(A) In general.—The participation rate, determined under paragraphs (1) and (2) of this subsection, of a superachiever State for a fiscal year shall be increased by the lesser of—
(i) the amount (if any) of the superacheiver credit applicable to the State; or
(ii) the percentage (if any) by which the minimum participation rate required by subsection (a) for the fiscal year exceeds 50 percent.

(B) SUPERCHEER STATE.—For purposes of subparagraph (A), a State is a superacheiver State if the State caseload for fiscal year 2001 has declined by at least 60 percent from the adjusted State caseload for fiscal year 1995.

(C) AMOUNT OF CREDIT.—The superacheiver credit applicable to a State is the number of percentage points (if any) by which the decline referred to in subparagraph (B) exceeds 60 percent.

(D) DEFINITIONS.—In this paragraph:
(i) the term ‘State’ means the average monthly number of families that received assistance during fiscal year 2001 under the State program funded under this part.
(ii) the term ‘State caseload for fiscal year 1995’ means the average monthly number of families that received aid under the State plan approved under part A as in effect on September 30, 1995 during fiscal year 1995.

(e) COUNTABLE HOURS.—Section 407 of such Act (42 U.S.C. 607) is amended by striking subsections (c) and (d) and inserting the following:

"(c) COUNTABLE HOURS.—
(1) Definition.—In subsection (b)(2), the term ‘countable hours’ means, with respect to a family for a month, the total number of hours in the month in which any member of the family who is a work-eligible individual is engaged in a direct work activity or other activity described in subsection (b)(3). A family may count as an activity that does not address a purpose specified in section 409(a)(7), subject to the provisions of this subsection.

(2) REDUCTION OR TERMINATION OF ASSISTANCE.—
(A) In general.—Except as provided in paragraph (2), if an individual in a family ceases to engage in a direct work activity, subject to clause (ii), the family shall be considered not to be engaged in a direct work activity, subject to clause (ii).

(B) DURATION OF THE CREDIT.—The term ‘qualified activity’ means an activity specified by the State (subject to the exclusion described in paragraph (1)) that meets such standards and criteria as the State may specify, including—
(i) as substance abuse counseling or treatment;
(ii) rehabilitation treatment and services;
(iii) work-related education or training directed at enabling the member to work;
(iv) job search or job readiness assistance;
(v) any other activity that addresses a purpose specified in section 409(a).

(c) LIMITATION.—
(1) In general.—Except as provided in subsection (b), clause (i) shall not apply to a family for more than 3 months in any period of 24 consecutive months.

(f) DIRECTIONAL WORK ACTIVITY.

(1) IN GENERAL.—
(A) In general.—The work-eligible members of a family are engaged in 1 or more qualified activities for the month if—
(i) the family is a work-eligible individual so that participation in a self-sufficiency plan is required; and
(ii) the State does not otherwise engage in activities in support of the family member to provide assistance to needy parents and children.

(b) The term ‘work-eligible’ means, with respect to a family, the term ‘work-eligible individual’ as defined in section 4094(b)(1) for at least 1 month and thereafter until the State determines that the individual has resumed full participation in the activities, subject to such good cause exceptions that the State may establish.

(B)特殊规则—

(i) in general.—In the event of a conflict between a requirement of clause (i) or (ii) of subsection (a) and a requirement of a State constitution, or of a State statute that, before 1966, obligated local government to provide assistance to needy parents and children, the State constitutional or statutory requirement shall control.

(ii) Limitation.—Clause (i) of this subparagraph shall not apply after the 1-year period that begins with the enactment of this subparagraph.

(g) CONFORMING AMENDMENTS—

(1) Section 407(f)(1) (42 U.S.C. 607(f)) is amended in each of paragraphs (1) and (2) by striking ‘work activity described in subsection (d)” and inserting “direct work activity”.

(2) The heading of section 409(a)(14) (42 U.S.C. 609(a)(14)) is amended by inserting “or refusing to engage in activities under a family self-sufficiency plan” after ‘work’.

SEC. 111. MAINTENANCE OF EFFORT.

(a) in general.—Section 409(a)(7) (42 U.S.C. 609(a)(7)) is amended by—


(b) STATE SPENDING ON PROMOTING HEALTHY MARRIAGE.—

(1) in general.—Section 404 (42 U.S.C. 604) is amended by adding at the end the following:

“(i) MARRIAGE PROMOTION.—A State, territory, or tribal organization to which a grant is made under section 409(a)(2) may use a grant made to the State, territory, or tribal organization under any other provision of section 403 for marriage promotion activities, and the amount of any such grant so used shall be considered State funds for purposes of section 409(a)(2).”.

(2) FEDERAL TANF FUNDS USED FOR MARRIAGE PROMOTION EXCLUDED FOR PURPOSES OF MAINTENANCE OF EFFORT REQUIREMENT.—

Section 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)), as amended by section 103(c) of this Act, is amended by adding at the end the following:

“(VI) EXCLUSION OF FEDERAL TANF FUNDS USED FOR MARRIAGE PROMOTION ACTIVITIES.—Such term does not include the amount of any grant made to the State under section 403 that is expended for a marriage promotion activity.”

SEC. 112. PERFORMANCE IMPROVEMENT.

(a) State Plans.—Section 402 (42 U.S.C. 620(a)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by redesignating clause (vi) and clause (vii) (as added by section 103(a) of this Act) as clauses (vii) and (viii), respectively; and

(B) by striking clause (v) and inserting the following:

“(v) The document shall—

1. describe how the State will pursue ending dependence of needy families on government benefits and reducing poverty by promoting job preparation and work;

2. describe how the State will encourage the formation and maintenance of healthy 2-married families, including marriage, responsible fatherhood, and prevent and reduce the incidence of out-of-wedlock pregnancies;
"(III) include specific, numerical, and measurable performance objectives for accomplishing subclauses (I) and (II), and with respect to subclause (I), include objectives consisting of criteria used by the Secretary in establishing performance targets under section 409(a)(4)(B) if available; and,

(IV) describe the methodology that the State used to determine and insert in paragraph (B) State performance in relation to each such objective.

(vi) Describe any strategies and programs the State may be undertaking to address:

(I) employment retention and advancement for recipients of assistance under the program, including placement into high-demand jobs, and whether the jobs are identified using labor market information;

(II) efforts to reduce teen pregnancy;

(III) services for struggling and non-compliant families, and for clients with special problems; and

(IV) program integration, including the extent to which employment and training services under the program are provided through the One-Stop delivery system created under the Workforce Investment Act of 1998, and the extent to which former recipients of such assistance have access to additional employment or training services funded through such Act.

(b) In subparagraph (B), by striking clause (iii) as so redesignated by section 107(b)(1) of this Act, and inserting the following:

"(III) describes the strategies and programs the State is undertaking to engage religious organizations in the provision of services funded under this part.

"(IV) describes the efforts related to section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

"(V) The document shall describe strategies and programs the State is undertaking to engage religious organizations in the provision of services funded under this part.

"(VI) describes the strategies and programs the State is undertaking to engage religious organizations in the provision of services funded under this part.

(c) In section 411(e), as so redesignated by section 107(b)(1) of this Act, after the following:

"(7) in clause (i), by striking ‘‘other than that part of the plan described in paragraph 411(d)(1) (42 U.S.C. 611(d)(1))’’ and inserting ‘‘Other than that part of the plan described in paragraph 411(d)(1) (42 U.S.C. 611(d)(1))’’;

"(8) in clause (ii), by striking ‘‘other than that part of the plan described in paragraph 411(d)(1) (42 U.S.C. 611(d)(1))’’ and inserting ‘‘Other than that part of the plan described in paragraph 411(d)(1) (42 U.S.C. 611(d)(1))’’;

(d) In section 413(d)(1) (42 U.S.C. 613(d)(1)) is amended by adding at the end the following:

"(2) in clause (i), by striking ‘‘other than that part of the plan described in paragraph 411(d)(1) (42 U.S.C. 611(d)(1))’’ and inserting ‘‘Other than that part of the plan described in paragraph 411(d)(1) (42 U.S.C. 611(d)(1))’’;

"(3) in clause (ii), by striking ‘‘other than that part of the plan described in paragraph 411(d)(1) (42 U.S.C. 611(d)(1))’’ and inserting ‘‘Other than that part of the plan described in paragraph 411(d)(1) (42 U.S.C. 611(d)(1))’’.

SEC. 113. DATA COLLECTION AND REPORTING.

(a) CONTENTS OF REPORT.—Section 411(a)(1)(A) (42 U.S.C. 611(a)(1)(A)) is amended—

(1) in the matter preceding clause (i), by inserting ‘‘and on families receiving assistance under State programs funded with other qualified State expenditures (as defined in section 409(a)(7)(B))’’ before the colon;

(2) in clause (ii), by striking ‘‘minor parent, or legal custodian of each adult’’;

(3) in clause (vii), by striking ‘‘and educational level’’;

(4) in clause (ix), by striking ‘‘, and if the latter 2, the amount received’’;

(5) in clause (x)—

(A) by striking ‘‘each type of’’; and

(B) by inserting before the period ‘‘or, if applicable, the reason for receipt of the assistance for a total of more than 60 months’’;

(6) in clause (xi), by striking the subclauses and inserting—

"(I) Subsidized private sector employment.

"(II) Unsubsidized employment.

"(III) Public sector employment, supervised work experience, or supervised community service.

"(IV) On-the-job training.

"(V) Job-related education and placement.

"(VI) Training.

"(VII) Education.

"(VIII) Other activities directed at the purposes of this part, as specified in the State plan submitted pursuant to section 402.

"(7) in clause (xii), by inserting ‘‘and progress toward universal engagement after participation rates’’;

(8) in clause (xiii), by striking ‘‘type and’’ before ‘‘amount of assistance’’;

(9) in clause (xvi), by striking subclause (II) of paragraph (iv) and inserting the following:

"(II) through (V) as subclauses (II) through (IV), respectively; and

(10) by adding at the end the following:

"(viii) provides an assurance that the State will use to measure State performance under section 403(a)(4)(B) if available; and

(b) USE OF SAMPLES.—Section 411(a)(1)(B) (42 U.S.C. 611(a)(1)(B)) is amended—

(1) in clause (i)—

"(A) by striking ‘‘a sample’’ and inserting ‘‘samples’’; and

(2) by inserting before the period ‘‘, except that the Secretary may designate core data elements that must be reported on all families’’;

(2) in clause (ii), by striking ‘‘funded under this part’’ and inserting ‘‘described in sub-paragraph (A)’’;

(c) REPORT ON FAMILIES THAT BECOME INELIGIBLE TO RECEIVE ASSISTANCE.—Section 411(a) (42 U.S.C. 611(a)) is amended—

(1) by striking paragraph (2) and inserting—

"(2) by redesigning paragraph (6) as paragraph (5); and

(3) by inserting after paragraph (5) (as so redesignated) the following:

"(6) REPORT ON FAMILIES THAT BECOME INELIGIBLE TO RECEIVE ASSISTANCE.—The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter the number of families and total number of individuals that, during the month, became ineligible to receive assistance under the State program funded under this part, broken down by the number of families that become so ineligible due to earnings, changes in family composition that result in increased earnings, sanctions, time limits, or other specified reasons.

(d) REGULATIONS.—Section 411(a)(7) (42 U.S.C. 611(a)(7)) is amended—

(1) by inserting ‘‘and to collect the necessary data’’ before ‘‘with respect to which reports’’;

(2) by striking ‘‘subsection’’ and inserting ‘‘section’’; and

(3) by striking ‘‘in defining the data elements’’ and all that follows and inserting ‘‘in defining the data elements, the National Governors Association, the American Public Human Public Service Association, the National Conference of State Legislatures, and others in defining the data elements’’;

(e) ADDITIONAL REPORTS BY STATES.—Section 411 (42 U.S.C. 611) is amended—

(1) by redesignating subsection (a)(7) as subsection (a)(8); and

(2) by inserting after subsection (a) the following:

(2) ANNUAL REPORTS ON PROGRAM CHARACTERISTICS.—Not later than 90 days after the end of fiscal year 2006 and each succeeding fiscal year, each eligible State shall submit to the Secretary a report on the characteristics of the State program funded under this part and other State programs funded with qualified State expenditures, as defined in section 409(a)(7)(B)(i)). The report shall include, with respect to each such program, the program name, a description of program annual purpose, the program eligibility criteria, the sources of program funding, the number of program beneficiaries, sanction policies, and any program work requirements.

(3) MONTHLY REPORTS ON CASELOAD.—Not later than 3 months after the end of a calendar month that begins 1 year or more after the enactment of this subsection, each eligible State shall submit to the Secretary a report on the number of families and total number of individuals receiving assistance in the last fiscal year under the State program funded under this part.

(4) ANNUAL REPORT ON PERFORMANCE IMPROVEMENT.—Not later than 90 days after the end of fiscal year 2007, each eligible State shall submit to the Secretary a report on achievement and improvement during the preceding fiscal year under the program.

(5) ANNUAL REPORTS TO CONGRESS BY THE SECRETARY.—Section 411(e), as so redesignated by subsection (e) of this section, is amended—

(1) in the matter preceding paragraph (1), by striking ‘‘and each fiscal year thereafter’’ and inserting ‘‘and by July 1 of each fiscal year thereafter’’;

(2) in paragraph (2), by striking ‘‘families applying for assistance,’’ and by striking the last comma;

(3) in paragraph (3), by inserting ‘‘and other programs funded with qualified State expenditures (as defined in section 409(a)(7)(B)(i))’’ before the semicolon.

(6) INCREASED STUDY OF STATE SINGLE AUDIT REPORTS.—Section 411 (42 U.S.C. 611) is amended by adding at the end the following:

"(7) INCREASED ANALYSIS OF STATE SINGLE AUDIT REPORTS.—

(1) IN GENERAL.—Within 3 months after a State submits to the Secretary a report pursuant to section 7502a(1)(A) of title 31, United States Code, the Secretary shall analyze the report for the purpose of identifying any policies and practices related to the oversight by the State of nongovernmental entities with respect to contracts entered into by such entities with the State program funded under this part, and determining whether additional actions may be appropriate to help prevent and correct the problems.

The Secretary shall include in each report submitted to the Senate a report pursuant to section 7502a(1)(A) of title 31, United States Code, the Secretary shall analyze the report for the purpose of identifying any policies and practices related to the oversight by the State of nongovernmental entities with respect to contracts entered into by such entities with the State program funded under this part, and determining whether additional actions may be appropriate to help prevent and correct the problems."
(c) REPORT ON ENFORCEMENT OF CERTAIN AFFIDAVITS OF SUPPORT AND SPONSOR DEEMING.—Not later than March 31, 2006, the Secretary of Health and Human Services, in consultation with the State, Tribal, or local entity that submitted to the Congress a report on the enforcement of affidavits of support and sponsor deeming as required by section 412, 421, and 432 of the Social Security Act and the Work Opportunity Reconciliation Act of 1996.

(d) REPORT ON COORDINATION.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Health and Human Services and the Secretary of Labor shall jointly submit a report to the Congress describing efforts to align data elements, definitions, performance measures, and reporting requirements in the Workforce Investment Act of 1998 and part A of title IV of the Social Security Act, and, to the degree each Secretary deems appropriate, at the discretion of either Secretary, any other program administered by the respective Secretary, to allow greater coordination between the welfare and workforce development systems.

SEC. 116. STUDIES BY THE CENSUS BUREAU AND THE BUREAU OF LABOR STATISTICS ACCOUNTABILITY OFFICE.

(a) CENSUS BUREAU STUDY.—


(2) APPROPRIATION.—

(A) In general.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated $102,000,000 for each of fiscal years 2005 through 2010, which shall be available to the Secretary for the purpose of conducting and supporting surveys and demonstration projects by public or private entities, and providing technical assistance to States, Indian tribal organizations, and such other entities as the Secretary may specify that are receiving a grant under this part, which funds are provided under this part, that shall be expended primarily on activities designated to test the effectiveness of tribal child welfare and family support programs, work, earnings and employment development systems.

(B) EXTENDED AVAILABILITY OF FY 2005 FUNDING.—Funds appropriated under this paragraph for fiscal year 2005 shall remain available to the Secretary through fiscal year 2006, for use in accordance with this paragraph for fiscal year 2005.

(3) SET ASIDE FOR DEMONSTRATION PROJECTS FOR COORDINATION OF PROVISION OF CHILD WELFARE AND TANF SERVICES TO TRIBAL FAMILIES AT RISK OF CHILD ABUSE OR NEGLECT.—

(A) In general.—Of the amounts made available under paragraph (1) for a fiscal year, $2,000,000 shall be awarded on a competitive basis to fund demonstration projects designed to test the effectiveness of tribal governments or tribal consortia in coordinating the provision to tribal families at risk of child abuse or neglect of child welfare services and services under tribal programs funded under this part.

(B) USE OF FUNDS.—A grant made to such a project shall be used—

(i) to improve case management for families eligible for assistance from such a tribal program;

(ii) for supportive services and assistance to tribal children in out-of-home placements and the provision of supportive services for such children, including families who adopt such children; and

(iii) for prevention services and assistance to tribal families at risk of child abuse and neglect.

(C) REPORTS.—The Secretary may require a recipient of funds awarded under this paragraph to provide the Secretary with such information as the Secretary deems relevant to enable the Secretary to facilitate and oversee the administration of any project for which funds are provided under this paragraph.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of enactment of this Act.

(b) FUNDING OF STUDIES AND DEMONSTRATIONS.—Section 413(b)(1) (42 U.S.C. 613(b)(1)) is amended by striking “1997 through 2002” and inserting “2006 through 2010”.

(Sec. 117. Definition of Assistance.)

(a) In General.—Section 419 (42 U.S.C. 619) is amended by adding at the end the following:

(8) Assistance.—

(‘‘(A) In General.—The term ‘assistance’ means payment, by cash, voucher, or other means, to or for an individual or family for the purpose of meeting a subsistence need of the individual or family (including clothing, shelter, and related items, but not including costs of transportation or child care).

(B) Exception.—The term ‘assistance’ does not include a payment described in subparagraph (A) to or for an individual or family on a short-term, nonrecurring basis (as defined by the State in accordance with regulations prescribed by the Secretary).’’)

(b) Conforming Amendments.—

(1) Section 404(a)(1) (42 U.S.C. 604(a)(1)) is amended by striking ‘‘assistance’’ and inserting ‘‘aid’’.

(2) Section 404(f) (42 U.S.C. 604(f)) is amended by striking ‘‘assistance’’ and inserting ‘‘benefits or services’’.

(3) Section 408(a)(5)(B)(ii) (42 U.S.C. 608(a)(5)(B)(ii)) is amended in the heading by striking ‘‘assistance’’ and inserting ‘‘aid’’.

SEC. 118. TECHNICAL CORRECTIONS.

(a) Section 408(c)(2) (42 U.S.C. 608(c)(2)) is amended by inserting a comma after ‘‘appropriations’’.


(c) Section 413(b)(2)(A) (42 U.S.C. 613(b)(2)(A)) is amended by striking ‘‘section’’ and inserting sections’’.

(d)(1) Section 413 (42 U.S.C. 613) is amended by striking subsections (b), (c), and (d) and redesignating subsections (e) through (j) and subsections (k) and (l) as sections 112(c) and 115(a) of this Act, respectively as subsections (g) through (j).

(2) Each of the following provisions is amended by striking ‘‘413(j)’’ and inserting ‘‘113(j)’’:


(B) Section 403(a)(5)(F) (42 U.S.C. 603(a)(5)(F)).

(C) Section 408(a)(5)(G)(ii) (42 U.S.C. 608(a)(5)(G)(ii)).


SEC. 119. FATHERHOOD PROGRAM.

(a) Short Title.—This section may be cited as the ‘‘Promotion and Support of Responsible Fatherhood and Healthy Marriage Act of 2005’’.

(b) Fatherhood Program.—

(1) IN GENERAL.—Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193) is amended by adding after subsection (c) the following:

‘‘SEC. 117. FATHERHOOD PROGRAM.

‘‘(a) IN GENERAL.—Title IV (42 U.S.C. 601–679b) is amended by inserting after part B the following:

‘‘PART C—FATHERHOOD PROGRAM

‘‘SEC. 441. FINDINGS AND PURPOSES.

‘‘(a) Findings.—The Congress finds that there is substantial evidence strongly indicating the urgent need to promote and support involved, committed, and responsible fatherhood, and to encourage and support healthy marriages between parents raising children, including data demonstrating the following:

(1) In approximately 84 percent of cases where a parent is absent, that parent is the father.

(2) If current trends continue, half of all children born today will grow up apart from one of their parents, usually their father, at some point before they turn 18.”
not living with their biological father had
cent) live apart from their biological father.
during infancy and early childhood contrib-
significant factor is the father
of effective approaches to accomplishing
order to encourage and facilitate the replica-
stance abuse, child abuse and neglect, teen
and reduced risk of delinquency, crime, sub-
comes for children with respect to measures
reduce child abuse and domestic violence,
and other methods.

—

The Secretary may make grants for fiscal years 2006 through 2010 to public and nonprofit community entities, including religious organizations, and to In-
and how it will address each of the 4 objec-
tions specified in section 441(b)(1); and

A description of the methods to be used
by the entity to assess the extent to which the project was successful in accom-
A demonstration of ability to carry out the
project, by means such as demonstration of
and how it will be carried out, in inclu-
ding any previous experience with similar ac-

A description of the entity or its contractor to assess the

ting to the objectives of the project including,
as appropriate, jobs programs and programs
including working with the State agency re-
ing such substances, and information about
and other methods.

and local child protective service and domes-
ties, and such other programs as the Sec-
that may vary with the Sec-

A description of the project and how it will
will be carried out, including the geo-

The Secretary may make grants, up to 80 percent (or up to 90 percent, if

A description of how the entity will assess for the presence of,
and intervene to resolve, domestic vio-

A statement in-

A description of experience in successfully carrying out
projects of similar design and scope, and
such information as the Secretary may

A description of how it will be carried out, in inclu-
due child support obligations in appro-

A description of the purposes of this section,
by means such as demonstration of
and how it will be carried out, in inclu-
during the period of grant funds.

A commitment to make available to each indi-
vidual participating in the project education and job training programs, and
about the health risks associated with abus-
ing HIV/AIDS, and to coordinate with pro-
viders of services addressing such problems,
as appropriate.

A description of how it will be carried out, in inclu-
during the period of grant funds.

A description of how it will be carried out, in inclu-
during the period of grant funds.

A description of the purposes of this section,
by means such as demonstration of
and how it will be carried out, in inclu-

A statement in-

A description of how the entity will assess for the presence of,
and intervene to resolve, domestic vio-

A statement in-

A description of how it will be carried out, in inclu-
during the period of grant funds.

A description of how it will be carried out, in inclu-
during the period of grant funds.
SEC. 444. MULTICITY, MULTISTATE DEMONSTRATION PROJECTS.

(a) In general.—The Secretary may make grants under this section for fiscal years 2006 through 2010 to eligible entities (as specified in subsection (b)) for multicity, multistate projects demonstrating approaches to achieving the objectives specified in section 441(b)(1). One of the projects shall test the use of married couples to deliver program services.

(b) Eligible entities.—An entity eligible for a grant under this section must be a national nonprofit fatherhood promotion organization that meets the following requirements:

(1) Experience with fatherhood programs.—The organization must have substantial experience in designing and successfully conducting programs that meet the purposes described in section 441.

(2) Experience with multicity, multistate programs and government coordination.—The organization must have experience in simultaneously conducting such programs in more than 1 major metropolitan area, in at least 2 States, and in more than 1 State and in a random selection of individuals to participate in the project and for comparisons with such project, and such other programs as the Secretary may require.

(c) Application requirements.—In order to be eligible for a grant under this section, an entity must submit to the Secretary an application that includes the following:

(1) Qualifications.—

(A) Eligible entity.—A demonstration that the entity meets the requirements of subsection (b).

(B) Other.—Such other information as the Secretary may require, including evidence that the entity has the capacity to carry out the project, including the entity’s ability to provide the non-Federal share of project resources.

(2) Project description.—A description of and commitments concerning the project design, including the following:

(A) Detailed description of the project design and how it will be carried out, which shall—

(i) provide for the project to be conducted in at least 1 metropolitan area;

(ii) state how it will address each of the 4 objectives specified in section 441(b)(1); and

(iii) demonstrate that there is a sufficient number of eligible recipients to allow for a random selection of individuals to participate in the project and for comparisons with appropriate controls groups composed of individuals who have not participated in such projects and

(iv) demonstrate that the project is designed to direct a majority of project resources to demonstrating low-income fathering (but the project need not make services available on a means-tested basis).

(B) Oversight, evaluation, and adjustment component.—An agreement that the entity—

(i) in consultation with the evaluator selected pursuant to section 445, and as required by the Secretary, will modify the project design, initially and (if necessary) subsequently throughout the duration of the project, in order to facilitate ongoing and final oversight and evaluation of project operation and outcomes (by means including, to the maximum extent feasible, random assignment of clients to service recipient and control groups to provide for midcourse adjustments in project design indicated by interim evaluations;

(ii) will submit to the Secretary revised descriptions of the project design as modified in accordance with clause (i); and

(iii) will cooperate fully with the Secretary’s ongoing oversight and final evaluation of the project, by means including affording the Secretary access to the project and to project-related records and documents, studies,

(3) Addressing child abuse and neglect and domestic violence.—A description of how the entity will coordinate with State and local child protective service and domestic violence programs to—

(A) Identify clients at risk of child abuse and neglect and domestic violence;

(B) Provide any child abuse and neglect and domestic violence services that may be available (through the Internet and by telephone) to all interested parties.

(4) Addressing concerns relating to substance abuse and sexual activity.—A commitment to make available to each individual participating in the project education about alcohol, tobacco, and other drugs, and about the health risks associated with abusing such substances, and information about diseases and conditions transmitted through substance abuse and sexual contact, including HIV/AIDS, and to coordinate with providers of services addressing such problems, as appropriate.

(5) Coordination with specified programs.—An undertaking to coordinate, as appropriate, with State and local entities responsible for child support, across the State, and with State and local government agencies and private, nonprofit agencies (including community and religious organizations), including State or local agencies responsible for child support enforcement and workforce development.

(6) Application.—The application must be submitted in accordance with paragraphs (2) through (5). A decision to fund a grant under paragraph (2) shall be made by the Secretary upon publication of a notice inviting applications.

(7) Approval.—The organization shall be approved by the Secretary in accordance with this section, if the Secretary determines that the organization is meeting the requirements of this section.

(8) Grant application.—The Secretary may require such other information as the Secretary deems necessary to make the determination.

(b) Non-Federal share.—The non-Federal share of project costs shall be at least 30 percent of the total project costs, and may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed by the non-Federal sources.

(c) Federal share.—

(1) In general.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

(2) Non-Federal share.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed by the non-Federal sources.

(d) Federal share.—

(1) In general.—Grants for a project under this section for a fiscal year shall be available for up to 80 percent of the cost of such project in such fiscal year.

(2) Non-Federal share.—The non-Federal share may be in cash or in kind. In determining the amount of the non-Federal share, the Secretary may attribute fair market value to goods, services, and facilities contributed by the non-Federal sources.

SEC. 445. EVALUATION.

(a) In general.—The Secretary, directly or by contract or cooperative agreement, shall conduct evaluations of service projects funded under sections 443 and 444 from the standpoint of the purposes specified in section 443(b)(1). Evaluation methodology.—Evaluations under this section shall—

(1) include, to the maximum extent feasible, random assignment of clients to service recipient and other appropriate comparisons of groups of individuals receiving and not receiving services;

(2) describe and measure the effectiveness of the projects in achieving their specific project goals; and

(3) describe and assess, as appropriate, the impact of such projects on marriage, parenting, domestic violence, child abuse and neglect, money management, employment and earnings, payment of child support, and child well-being, health, and education.

(b) Evaluation reports.—The Secretary shall publish the following reports on the results of the evaluation:

(1) An implementation evaluation report covering the pilot project and any activities under this part to be completed by 36 months after initiation of such activities.

(2) A final report on the evaluation to be completed by September 30, 2013.

SEC. 446. PROJECTS OF NATIONAL SIGNIFICANCE.

The Secretary is authorized, by grant, contract, or cooperative agreement, to carry out projects and activities of national significance relating to fatherhood promotion, including—

(1) Collection and dissemination of information.—Assisting States, communities, and private entities, including religious organizations, in efforts to promote and support marriage and responsible fatherhood by collecting, evaluating, developing, and making available (through the Internet and by telephone) to all interested parties information regarding approaches to accomplishing the objectives specified in section 441(b)(1).

(2) Media campaign.—Developing, promoting, and distributing to interested States, local governments, public agencies, and private nonprofit organizations, including charitable and religious organizations, a media campaign that promotes and encourages involved, committed, and responsible fatherhood and married fatherhood.

(3) Technical assistance.—Providing technical assistance, including consultation and training, to public and private entities, including community organizations and faith-based organizations, in the implementation of local fatherhood promotion programs.

(4) Research.—Conducting research related to the purposes of this part.

SEC. 447. NONDISCRIMINATION.

The projects and activities assisted under this part shall be available on the same basis to all faith groups able to benefit from such projects and activities, including married and unmarried fathers and custodial and noncustodial fathers, with particular attention to low-income fathers, and to mothers and expectant mothers on the same basis as to fathers.

SEC. 448. AUTHORIZATION OF APPROPRIATIONS; RESERVATION FOR CERTAIN PURPOSES.

(a) Authorization.—There are authorized to be appropriated $230,000,000 for each of fiscal years 2006 through 2010 to carry out the provisions of this part.

(b) Reservation.—Of the amount appropriated under this section for each fiscal year, not more than 15 percent shall be available for the costs of the multicity, multistate demonstration projects under section 444, evaluations under section 445, technical assistance, and to mothers and expectant mothers on the same basis as to fathers.

SEC. 129. STATE OPTION TO MAKE TANF PROGRAMS MANDATORY PARTNERS WITH ONE-STOP EMPLOYMENT TRAINING CENTERS.

Section 808 of the Social Security Act (42 U.S.C. 608) is amended by adding at the end the following:

“(h) State Option to Make TANF Programs Mandatory Partners with One-Stop Employment Training Centers.

Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by adding after the last referred to in paragraph (1) of such section, unless, after the date of the enactment of
this subsection, the Governor of the State
notifies the Secretaries of Health and Human
Services and Labor in writing of the decision
of the Governor not to make the State pro-
gram a mandatory partner.”

SEC. 121. SENSE OF THE CONGRESS.

It is the sense of the Congress that a State
welfare-to-work program should include a
mentoring program.

SEC. 122. EXTENSION THROUGH FISCAL YEAR
2005.

(a) In General.—Except as otherwise pro-
vided in this Act and the amendments made
by this section, the provisions of the Child
Care and Development Block Grant Act of
1990 (42 U.S.C. 9801 note) are amended by
adding a new subsection a, which reads as
follows:

“(a) G OALS.

(1) by amending subparagraph (D) to read
as follows:

“(D) ENFORCEMENT OF NATIONAL
STANDARDS FOR EARLY CHILDHOOD
EDUCATION, AND NON-SCHOOL-HOURS
PROGRAMS.

(i) the promotion of informed child care
choices, including information about the
quality and availability of child care serv-
ices; and

(ii) research and best practices on chil-
dren’s development, including early cog-
nitive development;

(iii) the availability of assistance to ob-
tain child care services; and

(iv) other programs for which families
that receive child care services for which
financial assistance is provided under this
subchapter may be eligible, including the
food stamp program, the WIC program under
section 17 of the Child Nutrition Act of 1966,
the child and adult care centers program under
section 17 of the Richard B. Russell National
School Lunch Act, and the medicaid and
SCHIP programs under titles XIX and XXI of
the Social Security Act.”;

(b) EFFECTIVE DATE.—Section (a) shall
take effect on the date of the enactment of
this Act.

TITLE II—CHILD CARE

SEC. 201. SHORTHAND.

This title may be cited as the “Caring for
Children Act of 2005”.

SEC. 202. GOALS.

(a) GOALS.—Section 658A(b) of the Child
Care and Development Block Grant Act of
1990 (42 U.S.C. 9801 note) is amended—

(1) by striking “encourage” and inserting “assist”;

(2) by amending paragraph (4) to read as
follows:

“(4) to assist States to provide child care
to low-income parents;”;

(3) by redesignating paragraph (5) as para-
graph (7), and

(4) by inserting after paragraph (4) the fol-
lowing:

“(5) to encourage States to improve the
quality of child care available to families;

“(6) to promote school readiness by encou-
graging the exposure of young children in child
care to developmentally-appropriate activities,
including activities to foster early cognitive and
literacy development; and

“(7) by inserting “through” and inserting “through”.”

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

Section 658B of the Child Care and Devel-
oment Block Grant Act of 1990 (42 U.S.C.
9857(c)(3)(B)) is amended by striking “through
and inserting “through”.”

SEC. 204. APPLICATION AND PLAN.

Section 658B(c)(2) of the Child Care and Devel-
oment Block Grant Act of 1990 (42 U.S.C.
9857(c)(2)) is amended—

(1) by striking paragraph (D) and read as
follows:

“(D) CONSUMER AND CHILD CARE PROVIDER
EDUCATION INFORMATION.—Certify that the
State will collect and disseminate, through
resource and referral services and other
means as determined by the State, to par-
ents of eligible children, child care providers,
and the general public, information regard-
ing—

(i) the promotion of informed child care
choices, including information about the
quality and availability of child care serv-
ices;

(ii) research and best practices on chil-
dren’s development, including early cog-
nitive development;

(iii) the availability of assistance to ob-
tain child care services; and

(iv) other programs for which families
that receive child care services for which
financial assistance is provided under this
subchapter may be eligible, including the
food stamp program, the WIC program under
section 17 of the Child Nutrition Act of 1966,
the child and adult care centers program under
section 17 of the Richard B. Russell National
School Lunch Act, and the medicaid and
SCHIP programs under titles XIX and XXI of
the Social Security Act.”.

(b) IN GENERAL.—Except as otherwise pro-
vided in this Act and the amendments made
by this subsection, the Governor of the State
shall use not less than 6 percent of the amount of such
funds for activities provided through re-
source and referral services or other means,
the purpose of which is to improve the quality of
child care services in the State available to
low-income parents from eligible child care
providers. Such activities include—

(1) programs that provide training, edu-
cation, and other professional development
activities to enhance the skills of the child
care workforce, including training opportu-
nities for caregivers in informal care set-
tings;

(2) activities within child care settings
to enhance early learning for young children,
to promote early literacy, and to foster school
readiness;

(3) initiatives to increase the retention
and re-certification of child care providers,
including tiered reimbursement rates for pro-
viders that meet quality standards as defined
by the State; or

(4) other activities deemed by the State
to improve the quality of child care services
provided in such State.”.

SEC. 205. ACTIVITIES TO IMPROVE THE QUALITY
OF CHILD CARE SERVICES.

Section 658G of the Child Care and Devel-
oment Block Grant Act of 1990 (42 U.S.C.
9858G) is amended to read as follows:

“SEC. 658G. ACTIVITIES TO IMPROVE THE
QUALITY OF CHILD CARE SERVICES.

“(a) That receives funds to carry out
this subchapter for a fiscal year, shall use
not less than 6 percent of the amount of such
funds for activities provided through re-
source and referral services or other means,
the purpose of which is to improve the quality of
child care services in the State available to
low-income parents from eligible child care
providers. Such activities include—

(1) programs that provide training, edu-
cation, and other professional development
activities to enhance the skills of the child
care workforce, including training opportu-
nities for caregivers in informal care set-
tings;

(2) activities within child care settings
to enhance early learning for young children,
to promote early literacy, and to foster school
readiness;

(3) initiatives to increase the retention
and re-certification of child care providers,
including tiered reimbursement rates for pro-
viders that meet quality standards as defined
by the State; or

(4) other activities deemed by the State
to improve the quality of child care services
provided in such State.”.

SEC. 206. REPORT BY SECRETARY.

Section 658L of the Child Care and Devel-
oment Block Grant Act of 1990 (42 U.S.C.
9858L) is amended to read as follows:

“SEC. 658L. REPORT BY SECRETARY.

“(a) REPORT REQUIRED.—Not later than Oc-
tober 1, 2007, and biennially thereafter, the
Secretary shall prepare and submit to the
Committee on Education and the Workforce
of the House of Representatives and the
Committee on Health, Education, Labor and
Pensions of the Senate a report that con-
tains the following:

“(1) A summary and analysis of the data
and information provided to the Secretary in
the State reports submitted under section 658L;

“(2) Aggregated statistics on the supply,
and quality of child care, early education,
and non-school-hours programs.

“(3) An assessment, based on the
State reports submitted under section 658L,
recommendations for the Congress con-
cerning efforts that should be undertaken
to improve the access of the public to quality
and affordable child care in the United
States.

“(b) COLLECTION OF INFORMATION.—The
Secretary may utilize the national child care
data system available through resource and
referral organizations at the local, State,
and national level to collect the information
required by subsection (a)(2).”

SEC. 207. DEFINITIONS.

Section 658P(4)(B) of the Child Care and Devel-
oment Block Grant Act of 1990 (42 U.S.C.
9858P(4)(B)) is amended by striking “85 percent of the State median income” and
including “income ceiling” wholly as published
by the State, prioritized by need.”

SEC. 208. ENTITLEMENT FUNDING.

Section 418(a)(3) (42 U.S.C. 618(a)(3)) is amended—

(1) by striking “and” at the end of subpara-
graph (E); and

(2) by striking the period at the end of sub-
paragraph (F) and inserting “; and”; and

(3) by adding at the end the following:

“(G) $2,917,000,000 for each of fiscal years
2006 through 2010.”.
TITLE III—CHILD SUPPORT

SEC. 301. FEDERAL MATCHING FUNDS FOR LIMITED PASS THROUGH OF CHILD SUPPORT PAYMENTS TO FAMILIES RECEIVING TANF.

(a) In General.—Section 457(a) (42 U.S.C. 675(a)) is amended—

(1) in paragraph (1)(A), by inserting “subject to paragraph (7)” before the semicolon;

and

(2) by adding at the end the following:

“(7) FEDERAL MATCHING FUNDS FOR LIMITED PASS THROUGH OF CHILD SUPPORT PAYMENTS TO FAMILIES RECEIVING TANF.—Notwithstanding paragraph (1), a State shall not be required under State law to be distributed to a family under paragraph (1)(B) and (2)(B) to any family described in paragraph (2) to any family described in paragraph (2), as used in section 454(31) (42 U.S.C. 654(31)) is amended by striking $2,500 (whether or not a charge against the child support on behalf of a child who is a dependent of the obligor or the custodian of the child can be levied under section 454(6)(B)(ii)).

(b) Effective Date.—The amendments made by this section shall take effect on October 1, 2006.

SEC. 305. REPORT ON UNDISTRIBUTED CHILD SUPPORT PAYMENTS.

Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the procedures that the States use generally to locate custodial parents or to locate custodial parents from whom child support has been collected but not yet distributed. The report shall include an estimate of the total amount of undistributed child support and the average length of time it takes undistributed child support to be distributed. To the extent the Secretary deems appropriate, the Secretary shall include in the report recommendations as to whether additional procedures should be established at the State or Federal level to expedite the payment of undistributed child support.

SEC. 306. DECREASE IN AMOUNT OF CHILD SUPPORT ARREARAGE TRIGGERING PASSPORT DENIAL.

(a) In General.—Section 452(k)(1) (42 U.S.C. 652(k)(1)) is amended by striking “$5,000” and inserting “$2,500.”

(b) Effective Date.—The amendments made by this section shall take effect on October 1, 2007.

SEC. 309. IMPROVING FEDERAL DEBT COLLECTION PRACTICES.

(a) In General.—Section 3716(b)(3) of title 31, United States Code, is amended to read as follows:

“(3) FAMILIES THAT NEVER RECEIVED ASSISTANCE.—In the case of any other family, the State shall distribute to the family the portion of the amount so collected that remains after withholding any fee pursuant to section 454(e)(2)(B)(i).

(c) Effective Date.—The amendments made by this section shall take effect on October 1, 2006.

SEC. 310. MAINTENANCE OF TECHNICAL ASSISTANCE FUNDING.

Section 452(i) (42 U.S.C. 652(i)) is amended by inserting “or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater,” before “which shall be available.”

SEC. 311. MAINTENANCE OF FEDERAL PARENT LOCATOR SERVICE FUNDING.

Section 453(o) (42 U.S.C. 653(o)) is amended—

(1) in the 1st sentence, by inserting “or the amount appropriated under this paragraph for fiscal year 2002, whichever is greater,” before “which shall be available”; and

(2) in the 2nd sentence, by striking “for each of fiscal years 1997 through 2001.”

TITLE IV—CHILD WELFARE

SEC. 401. EXTENSION OF AUTHORITY TO PROVE DEMONSTRATION PROJECTS.

Section 1193(a)(2) (42 U.S.C. 1396a(a)(2)) is amended by striking “2005” and inserting “2010”.

SEC. 402. ELIMINATION OF LIMITATION ON NUMBER OF WAIVERS.

Section 1193(a)(2) (42 U.S.C. 1396a(a)(2)) is amended by striking “not more than 10”.

SEC. 403. ELIMINATION OF LIMITATION ON NUMBER OF STATES THAT MAY BE GRANTED WAIVERS TO CONDUCT DEMONSTRATION PROJECTS ON SAME TOPIC.

Section 1190 (42 U.S.C. 1396a-9) is amended by adding at the end the following:

“(h) No Limit on Number of States That May Be Granted Waivers to Conduct Demonstration Projects on Same Topic.

Section 1190 (42 U.S.C. 1396a-9) is amended by adding at the end the following:

“(h) No Limit on Number of States That May Be Granted Waivers to Conduct Demonstration Projects on Same Topic.”
Section 1310 (42 U.S.C. 1320a-9) is further amended by adding at the end the following:

"(i) NO LIMIT ON NUMBER OF WAIVERS GRANTED TO OR DEMONSTRATION PROJECTS THAT MAY BE CONDUCTED BY A SINGLE STATE.—The Secretary shall not impose any limit on the number of waivers that may be granted to a State, or the number of demonstration projects that a State may be authorized to conduct, under this section."

SEC. 405. STREAMLINED PROCESS FOR CONSIDERATION OF AMENDMENTS TO AND EXTENSIONS OF DEMONSTRATION PROJECTS AND ACQUIRING WAIVERS.

Section 1310 (42 U.S.C. 1320a-9) is further amended by adding at the end the following:

"(j) STREAMLINED PROCESS FOR CONSIDERATION OF AMENDMENTS AND EXTENSIONS.—The Secretary shall streamline the process for consideration of amendments and extensions proposed by States to demonstration projects conducted under this section."

SEC. 406. AVAILABILITY OF REPORTS.

Section 1310 (42 U.S.C. 1320a-9) is further amended by adding at the end the following:

"(k) AVAILABILITY OF REPORTS.—The Secretary shall make available to any State or other interested party any report provided to the Secretary under subsection (f)(2), and any evaluation or report made by the Secretary to a demonstration project conducted under this section, with a focus on information that may promote best practices and program improvements."

SEC. 407. TECHNICAL CORRECTION.

The term "extending the demonstration project that includes activities referred to in subsection (b)(2)(H) of this section—"

"(A) a certification that the applicable annual public housing agency plan of any agency affected by the project that is approved under section 5(a) of the United States Housing Act of 1937 (42 U.S.C. 1437c-1) by the Secretary includes the information specified in paragraphs (1) through (4) of this subsection; and

(B) any resident advisory board recommendations, and other information, relating to the project that, pursuant to section 5(a)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437c-2), is required to be included in the public housing agency plan of any public housing agency affected by the project.

(8) OTHER INFORMATION AND ASSURANCES.—Such other information and assurances as the administering Secretary may require.

(d) APPROVAL OF APPLICATIONS.—In general.—The administering Secretary with respect to a qualified program that is identified in an application submitted pursuant to subsection (c) may approve the application and, except as provided in paragraph (2), waive any requirement applicable to the program, to the extent consistent with this section and necessary and appropriate to the conduct of the demonstration project proposed in the application, if the administering Secretary determines that the project—

(A) has a reasonable likelihood of achieving the objectives of the programs to be included in the project;

(B) may reasonably be expected to meet the applicable cost neutrality requirements of paragraph (4), as determined by the Director of the Office of Management and Budget; and

(C) includes the coordination of 2 or more qualified programs.

(2) PROVISIONS EXCLUDED FROM WAIVER AUTHORITY.—A waiver shall not be granted under paragraph (1) if—

(A) with respect to any provision of law relating to—

(i) civil rights or prohibition of discrimination; or

(ii) purposes or goals of any program;

(iii) maintenance of effort requirements;

(iv) health or safety; or

(v) labor standards under the Fair Labor Standards Act of 1938; or

(vi) environmental protection;

(B) with respect to section 241(a) of the Adult Education and Family Literacy Act;

(C) in the case of a program under the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.), with respect to any requirement under section 5 of such Act (42 U.S.C. 1437f-1; relating to public housing agency plans and resident advisory boards);

(D) in the case of a program under the Workforce Investment Act, with respect to any requirement the waiver of which would violate section 189(i)(4)(A)(i) of such Act;

(E) in the case of the food stamp program (as defined in section 3(h) of the Food Stamp Act of 1977 (42 U.S.C. 2012(h))), with respect to any requirement under—
(i) section 6 (if waiving a requirement under such section would have the effect of expanding eligibility for the program), (7)(b) or 16(c) of the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.),
(ii) title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601 et seq.),
(F) except as otherwise provided by statute, if the waiver would waive any funding restriction applicable to a program authorized by a federal act which is not an appropriation Act (but not including program requirements such as application procedures, performance standards, reporting requirements, or eligibility standards), or would have the effect of transferring funds from a program for which there is direct spending (as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985) to another program.

(3) AGREEMENT OF EACH ADMINISTERING SECRETARY REQUIRED.
(A) IN GENERAL.—An applicant may not conduct a demonstration project under this section unless each administering Secretary with respect to any program proposed to be included in the project has approved the application to conduct the project.
(B) AGREEMENT WITH RESPECT TO FUNDING AND IMPLEMENTATION.—Before approving an application to conduct a demonstration project under this section, an administering Secretary shall have in place an agreement with the Secretary with respect to the determination of funds and responsibilities required of the administering Secretary with respect to the project.

(4) COST-NEUTRALITY REQUIREMENT.
(A) GENERAL RULE.—Notwithstanding any other provision of law (except subparagraph (B)), the total of the amounts that may be paid by the Federal Government for a fiscal year with respect to the programs in the State in which an entity conducting a demonstration project under this section is located, as determined by the project shall not exceed the estimated total amount that the Federal Government would have paid for the fiscal year with respect to the programs in such State if the project had not been conducted, as determined by the Director of the Office of Management and Budget.

(B) APPLICABLE IF AN APPLICANT SUBMITS TO THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET A REQUEST TO APPLY THE RULES OF THIS SUBPARAGRAPH TO THE PROGRAMS IN THE STATE IN WHICH THE APPLICANT IS LOCATED THAT ARE AFFECTED BY A DEMONSTRATION PROJECT PROPOSED IN AN APPLICATION SUBMITTED BY THE APPLICANT TO THIS SECTION, DURING EACH OF THE 5 CONSECUTIVE FISCAL YEARS IN WHICH THE PROJECT IS IN EFFECT, AND THE DIRECTOR DETERMINES, ON THE BASIS OF SUPPORTING INFORMATION PROVIDED BY THE APPLICANT, TO GRANT THE REQUEST, THEN, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE TOTAL OF THE AMOUNTS THAT MAY BE PAID BY THE FEDERAL GOVERNMENT FOR THE FISCAL YEAR WITH RESPECT TO THE PROGRAMS IN SUCH STATE WOULD NOT EXCEED THE ESTIMATED TOTAL AMOUNT THAT THE FEDERAL GOVERNMENT WOULD HAVE PAID FOR THE FISCAL YEAR WITH RESPECT TO THE PROGRAMS IF THE PROJECT HAD NOT BEEN CONDUCTED.

(5) 90-DAY APPROVAL DEADLINE.
(A) IN GENERAL.—If an administering Secretary receives an application to conduct a demonstration project under this section, the administering Secretary does not disapprove the application within 90 days after the receipt, then—

(i) the administering Secretary is deemed to have approved the application for such period as is requested in the application, except to the extent inconsistent with subsection (e);
(ii) any waiver requested in the application which applies to a qualified program that is identified in the application and is administered by the administering Secretary is deemed to be granted, except to the extent inconsistent with paragraph (2) or (4) of this subsection;
(iii) the demonstration project under this section may be approved for a term of not more than 5 years.

(1) REPORTS TO CONGRESS.—

(1) REPORT ON DISPOSITION OF APPLICATIONS.—Within 90 days after an administering Secretary receives an application pursuant to this section, the administering Secretary shall submit to each Committee of the Congress which has jurisdiction over a qualified program identified in the application for disposition, a description of the decision of the administering Secretary with respect to the application, and the reasons for approving or disapproving the application.

(2) REPORTS ON PROJECTS.—Each administering Secretary shall provide annually to the Congress a report concerning demonstration projects approved under this section, including—

(A) the projects approved for each applicant;
(B) the number of waivers granted under this section, and the specific statutory provisions waived;
(C) how well each project for which a waiver is granted is improving or enhancing program achievement from the standpoint of quality, cost-effectiveness, or both;
(D) how well each project for which a waiver is granted is meeting the performance objectives specified in subsection (c)(3)(B); and
(E) how each project for which a waiver is granted achieves the cost-neutrality requirements of subsection (d)(4); and
(F) to the extent the administering Secretary deems appropriate, recommendations for modification of programs based on outcomes of the projects.

(5) AMENDMENT TO UNITED STATES HOUSING ACT OF 1937.—Section 5 of the United States Housing Act of 1937 (42 U.S.C. 1437g–1) is amended—

(1) by redesignating paragraph (18) as paragraph (19); and
(2) by inserting after paragraph (17) the following new paragraph:

“(18) PROGRAM COORDINATION DEMONSTRATION PROJECTS.—In the case of an agency that administers a program under section 601(b) of such Act, the information that is required to be included in the application for the purposes of this paragraph is, if the application requests to conduct a demonstration project with respect to such program, the following:

(i) the purpose of the demonstration project;
(ii) the criteria for selection of the demonstration project sites.

(ii) the criteria for selection of the demonstration project sites.

(3) AGREEMENT OF EACH ADMINISTERING SECRETARY REQUIRED.

(1) IN GENERAL.—Each administering Secretary shall—

(a) ESTABLISHMENT.—The Secretary shall establish a program to make grants to States in accordance with this section to provide—

(i) food assistance to needy individuals and families residing in the State;

(ii) funds to operate an employment and training program under subsection (g) for needy individuals under the program; and

(iii) funds for administrative costs incurred in providing assistance.

(b) ELECTION.—

(1) IN GENERAL.—A State may elect to participate in the program established under subsection (a).

(2) ELECTION REVOCABLE.—A State that elects to participate in the program established under subsection (a) may subsequently reelect the Secretary to cease participating in the program established under this section, on a date to be determined by the Secretary.

(c) LEAD AGENCY.—

(1) DESIGNATION.—A State desiring to participate in the program established under subsection (a) shall designate, in an application submitted to the Secretary under subsection (a), an agency of the State government that complies with paragraph (2) to act as the lead agency for the State.

(2) DUTIES.—The lead agency shall—

(a) administer, either directly, through other State agencies, or through local agencies, the assistance received under this section by the State;

(b) develop the State plan to be submitted to the Secretary under subsection (d)(1); and

(c) coordinate the provision of food assistance under this section, which is to be made available to families as would be allowed under such section, and to receive any benefit under, this Act as provided in this section.

(d) APPLICATION AND PLAN.

(1) APPLICATION.—To be eligible to receive assistance under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by regulation require, including—

(A) an assurance that the State will comply with the requirements of this section; and

(B) a plan that meets the requirements of paragraph (2); and

(C) an assurance that the State will comply with the requirements of the State plan under paragraph (3).

(2) REQUIREMENTS OF PLAN.

(A) LEAD AGENCY.—The State plan shall identify the lead agency.

(B) USE OF BLOCK GRANT FUNDS.—The State plan shall provide that the State shall use the amounts provided to the State for each fiscal year under this section—

(i) to provide food assistance to needy individuals and families residing in the State, other than residents of institutions who are ineligible for food stamps under section 3(i);

(ii) to provide administrative costs incurred in providing assistance.

(C) TERRITORIAL STATE.—The State plan shall provide that benefits under this section shall be available throughout the entire State.

(D) HEARINGS.—The State plan shall provide that an individual or family who applies for, or receives, assistance...
under this section shall be provided with notice of, and an opportunity for, a hearing on, any action under this section that adversely affects the individual or family.

(1) Coordination.—The State plan may coordinate assistance received under this section with assistance provided under the State plan under part IV of the Social Security Act (42 U.S.C. 601 et seq.).

(ii) Penalties.—If an individual or family is penalized for violating part A of title IV of the Act, the State plan may reduce the amount of assistance provided under this section or otherwise penalize the individual or family.

(f) Eligibility Limitations.—The State plan shall describe the income and resource eligibility limitations that are established for the receipt of assistance under this section.

(g) Receiving Benefits in More Than One Jurisdiction.—The State plan shall establish a system to verify and otherwise ensure that no individual or family shall receive benefits under this section in more than one jurisdiction within the State.

(ii) Approval of Application and Plan.—During fiscal years 2006 through 2010, the Secretary may approve the applications and State plans that satisfy the requirements of this section, or in the case of the District of Columbia, Guam, and the Virgin Islands of the United States.

(3) Approval of Application and Plan.—The State plan may provide for safeguarding and restricting the use and disclosure of information about any individual or family receiving assistance under this section.

(i) Other Information.—The State plan shall contain such other information as may be required by the Secretary.

(5) Construction of Facilities.—No funds made available under this section shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.

(ii) Benefits for Aliens.—No individual shall be eligible to receive benefits under a State plan approved under subsection (d)(3) if the individual is not eligible to participate in the program under section 517 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601 et seq.).

(j) Employment and Training.—Each State shall implement an employment and training program for needy individuals under the program.

(i) Review of Compliance with State Plan.—The Secretary shall review and monitor State compliance with this section and the State plan approved under subsection (d)(3).

(ii) Noncompliance.—(A) In General.—If the Secretary, after reasonable belief that there is a failure by the State to comply substantially with any provision or requirement set forth in the State plan approved under subsection (d)(3); or

(ii) in the operation of any program or activity for which assistance is provided under this section, there is a failure by the State to comply substantially with any provision of this section, the Secretary shall notify the State of the finding and that no further payments to the State will be made under this section (the program or activity) until the Secretary is satisfied that there is no longer any failure to comply or that the noncompliance will be promptly corrected.

(B) Other Sanctions.—In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary shall, in addition to, or in lieu of, imposing the sanctions described in subparagraph (A), impose other appropriate sanctions, including the withholding or recoupment of money improperly expended for purposes prohibited or not authorized by this section and disqualification from the receipt of financial assistance under this section.

(3) Notice.—The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed, a description of money improperly expended for purposes prohibited or not authorized by this section, and a description of the failure to comply with this section.

(4) Issuance of Regulations.—The Secretary shall establish by regulation procedures for—

(a) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this section; and

(b) imposing sanctions under this section.

(i) Payments.—(1) In General.—For each fiscal year, the Secretary shall pay to a State that has an application approved by the Secretary under subsection (d)(3) an amount that is equal to the allotment of the State under subsection (l)(2) for the fiscal year.

(ii) Method of Payment.—The Secretary shall make payments to a State for a fiscal year under this section by issuing 1 or more letters of credit for the fiscal year, with necessary adjustments on account of overpayments or underpayments, as determined by the Secretary.

(3) Payment Accuracy.—No State may not exceed 30 percent of the total allotment under this section for a fiscal year.

(4) Provision of Food Assistance.—A State may provide food assistance under this section to any individual, without regard to income, age, or any other appropriate standard, as determined by the Secretary.

(5) Definition of Food Assistance.—In this section, the term ‘food assistance’ means assistance that may be used only to obtain food, as defined in section 3(g).

(i) Audits.—(1) Requirement.—After the close of each fiscal year, a State shall arrange for an audit of the expenditures of the State during the program period from amounts received under this section.

(ii) Independent Auditor.—An audit under this section shall be conducted by an entity that is independent of any agency administering activities that receive assistance under this section and be in accordance with generally accepted auditing principles.

(iii) Payment Accuracy.—Each annual audit under this section shall include an audit of payment accuracy under this section that shall be based on a statistically valid sample of the caseload in the State.

(3) Insufficient Funds.—If the Secretary finds that the total amount of allotments to which States would otherwise be entitled for a fiscal year under subparagraph (A) will exceed the amount of funds that will be made available to the States, the Secretary shall reduce the allotments made to States under this section, on a pro rata basis, to the extent necessary to allot under this subsection a total amount that is equal to the funds that will be made available.

TITLE VII—ABSENTEE EDUCATION

SEC. 701. EXTENSION OF ABSENTEE EDUCATION PROGRAM

(a) Extension of Appropriations.—(1) In General.—Section 510(d) (42 U.S.C. 710(d)) is amended in the first sentence by inserting before the period the following: ‘‘and the fiscal year 2010’’.

(2) Additional Funds for Fiscal Year 2005.—(A) In General.—Activities authorized by section 510 of the Social Security Act shall continue through September 30, 2005, in
the manner authorized for fiscal year 2004, and out of any money in the Treasury of the United States not otherwise appropriated, there are hereby appropriated such sums as may be necessary for the purposes of addition to other amounts appropriated for such purpose for fiscal year 2005. Grants and payments may be made pursuant to this authority through the thirtieth day of February 2006.

(2) Effective date.—Subparagraph (A) shall take effect on the date of the enactment of this Act.

(b) Allocation of funds.—Section 510(a) (42 U.S.C. 1905(a)) is amended—

(1) in the matter preceding paragraph (1), by striking “for the fiscal year under section 505(a)” and inserting “for the fiscal year, an application under subsection 505(a), and an application under this section (in such form and meeting such terms and conditions as determined appropriate by the Secretary) will be used to pay for costs—”;

(2) in paragraph (2), to read as follows—

“.(2) The percentage that would be determined for the State under section 502(c)(1)(B)(ii) if the calculation under such section took into consideration only those States that transmitted both such applications for such fiscal year.”

(c) Reallocations of funds.—Section 510 (42 U.S.C. 1905) is amended by adding at the end the following new subsection:

“(e)(1) With respect to reallocations under subsection (a) for fiscal years 2006 and subsequent fiscal years, the amount of any reallocation to a State for a fiscal year that the Secretary determines will not be required to carry out a program under this section during such fiscal year or the succeeding fiscal year shall be available for reallocation from time to time during such fiscal years on such dates as the Secretary may fix, to other States that the Secretary determines—

“(A) require amounts in excess of amounts previously allotted under subsection (a) to carry out a program under this section; and

“(B) have such excess amounts during such fiscal years.

“(2) Reallocations under paragraph (1) shall be made on the basis of such States’ applications under this section, after taking into consideration the population of low-income children in each such State as compared with the population of low-income children in all such States with respect to which a determination under paragraph (1) has been made by the Secretary.

“(3) Any amount reallocated under paragraph (1) to a State is deemed to be part of its allotment under subsection (a).

(d) Effective date.—The amendments made by this section shall be effective with respect to the program under section 510 of the Social Security Act for fiscal years 2006 and subsequent fiscal years.

TITLE VIII—TRANSITIONAL MEDICAL ASSISTANCE


(a) In General.—Section 1925(d) (42 U.S.C. 1396e–6(d)(i)) is amended by striking “2003” and inserting “2006”.

(b) Conforming Amendment.—Section 1902(o)(3)(B) (42 U.S.C. 1396a(o)(3)(B)) is amended by striking “September 30, 2003” and inserting “the last date (if any) on which section 1925 applies under subsection (f) of that section”.

(c) Effective Date.—The amendments made by this section shall take effect on April 1, 2005.


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

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

S. 109

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 “Pharmaceutical Market Access Act of 2005.”

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Americans unjustly pay up to 1000 percent more to fill their prescriptions than consumers in other countries.

(2) The United States is the world’s largest market for pharmaceuticals yet consumers still pay the world’s highest prices.

(3) An unaffordable drug is neither safe nor effective. Allowing the Committee on Agriculture, Nutrition, and Forestry.

Mr. DORGAN. Mr. President, I am an original cosponsor of legislation which was introduced today by Senators JOHNSON and Enzi. This legislation requires that a mandatory system of country-of-origin labeling be in place before the U.S. Department of Agriculture can open the border to imports of live Canadian cattle.

This legislation would not be necessary if USDA and this Administration were not furiously pushing to allow live Canadian cattle into this country. I am very concerned that they are doing this despite the most recent discovery, just a few weeks ago, of two more Canadian cows infected with BSE.

I believe that the decision to open the border to live Canadian cattle should be made based on sound science, not politics. The border should be opened when science indicates that it is safe to do so, and not before.

I also believe that it is necessary that this country have a system of country-of-origin labeling in place before the border is opened. That is the only way American consumers will be able to choose between beef raised in America and beef raised in Canada. Right now there is no way to tell the difference. We must have country-of-origin labeling in place before we allow Canadian cattle into this country, and that is why I am cosponsoring this legislation.

By Mr. VITTER (for himself, Mr. SALAZAR, Mr. THUNE, and Mr. DEMPSEY):
The purposes of this Act are as follows:

(1) To give all Americans immediate relief from the outrageously high cost of pharmaceuticals.

(2) To reverse the perverse economics of the American pharmaceutical market.

(3) To allow the importation of prescription drugs if such drugs and facilities where such drugs are manufactured are approved by the Food and Drug Administration, and to exclude pharmaceutical narcotics.

(4) To require that imported prescription drugs be packaged and shipped using counterfeit-resistant technologies.

SEC. 4. AMENDMENTS TO SECTION 804 OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITIONS.—Section 804(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(a)) is amended to read as follows:

“(a) DEFINITIONS.—In this section:

(1) ‘‘Register’’ means a person that is licensed by a State to practice pharmacy, including a pharmacists, wholesaler, or wholesaler.

(2) ‘‘PERMITTED COUNTRY’’ means a country, or economic area that is listed in subparagraph (A) of section 802(b)(1), except that the Secretary—

(A) may add a country, union, or economic area to such list for purposes of this section if the Secretary determines that the country, union, or economic area has a pharmaceutical infrastructure that is substantially equivalent or superior to the pharmaceutical infrastructure of the United States, taking into consideration pharmacist qualifications, pharmacy storage procedures, the drug distribution system, the drug dispensing system, and market regulation; and

(B) may remove a country, union, or economic area from such list if the country, union, or economic area no longer meets the criteria set forth in section 802(b)(1).

(3) ‘‘Pharmacist’’ means a person licensed by a State to practice pharmacy, including the dispensing and selling of prescription drugs.

(4) ‘‘Pharmacy’’ means a person that is licensed by a State to engage in the business of selling prescription drugs at retail that employs 1 or more pharmacists.

(5) ‘‘Prescription Drug’’ means a drug subject to the requirements of section 804(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(e)) is amended to read as follows:

“(A) is approved under section 505(b)(1); and

(B) is not—

(i) a drug manufactured through 1 or more biotechnology processes;

(ii) a drug that is required to be refrigerated; or

(iii) a photoreactive drug.

(7) ‘‘QUALIFYING LABORATORY’’—The term ‘‘qualifying laboratory’’ means a laboratory in the United States that has been approved by the Secretary for the purposes of this section.

(9) ‘‘REGISTERED EXPORTER’’—The term ‘‘registered exporter’’ means a person that is in the business of exporting a drug to individuals in the United States (or that seeks to be in such business), for which a registration under this section has been approved and is in effect.

(10) ‘‘WHOLESALER’’—

(A) ‘‘In general’’—The term ‘‘wholesaler’’ means a person licensed by a State to act as a distributor of prescription drugs in the United States under section 536(e)(2)(A).

(B) ‘‘EXCLUSION’’—The term ‘‘wholesaler’’ does not include a person authorized to import drugs under section 804(d)(1).

(1) IN GENERAL.—Section 804(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(b)) is amended to read as follows:

“(b) REGULATIONS.—Section 804(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(b)) is amended by—

(1) in subparagraph (B) (as so redesignated), by striking ‘‘importer’’ and inserting ‘‘exporter’’;

(2) in subparagraph (C), by striking the last sentence and inserting—

‘‘(C) update such list promptly after the enactment of the Pharmaceutical Market Access Act of 2005, the Secretary, after consultation with the United States Trade Representative and the Commission of Customs, shall promulgate regulations permitting pharmacists, pharmacies, wholesalers, and individuals to import qualifying drugs from permitted countries into the United States.’’;

(c) LIMITATION.—Section 804(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(c)) is amended by striking ‘‘prescription drug’’ each place it appears and inserting ‘‘qualifying drug’’.

(1) INFORMATION AND RECORDS.—Section 804(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(d)(1)) is amended—

(1) by striking (G) and redesignating subparagraphs (H) through (N) as subparagraphs (G) through (M), respectively;

(2) in subparagraph (H) (as so redesignated), by striking ‘‘most recent’’; and

(3) in subparagraph (L) (as so redesignated), by striking ‘‘(J) and (L)’’ and inserting—

‘‘(J) and (K)’’.

(1) TESTING.—Section 804(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(e)) is amended to read as follows:

(1) TESTING.—Section 804(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(e)) is amended to read as follows:

(e) TESTING.—Section 804(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(e)) is amended to read as follows:

(f) REGISTRATION OF EXPORTERS; INSPECTIONS.—Section 804(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(f)) is amended to read as follows:

(1) REGISTRATION OF EXPORTERS; INSPECTIONS.—

(A) IN GENERAL.—Any person that seeks to be a registered exporter (referred to in this subsection as the ‘‘registrant’’) shall submit to the Secretary a registration that includes the following:

(1) ‘‘(A) The name of the registrant and identification of all places of business of the registrant that relate to qualifying drugs, including each warehouse or other facility owned or controlled by, or operated for, the registrant.

(2) ‘‘An agreement by the registrant to—

(i) make its places of business that relate to qualifying drugs (including warehouses and other facilities owned or controlled by, or operated for, the registrant) available to the Secretary for on-site inspections, without prior notice, for the purpose of determining whether the registrant is in compliance with this Act’s requirements;

(ii) export only qualifying drugs;

(iii) export only to persons authorized to import the drugs;

(iv) notify the Secretary of a recall or withdrawal of a qualifying drug distributed in a permitted country to or from which the registrant has exported or imported, or intends to export or import, to the United States;

(v) monitor compliance with registration conditions and report any noncompliance promptly;

(vi) submit a compliance plan showing how the registrant will correct violations, if any; and

(vii) promptly notify Secretary of changes in the registration information of the registrant.

(2) NOTICE OF APPROVAL OR DISAPPROVAL.—

(A) IN GENERAL.—Not later than 90 days after receiving a completed registration from a registrant, the Secretary shall—

(i) notify such registrant of receipt of the registration;

(ii) assign such registrant a registration number; and

(iii) approve or disapprove the application.

(B) DISAPPROVAL OF APPLICATION.—

(1) IN GENERAL.—The Secretary shall disapprove a registration, and notify the registrant of such disapproval, if the Secretary has reason to believe that such registrant is not in compliance with a registration condition.

(2) SUBSEQUENT APPROVAL.—The Secretary may subsequently approve a registration that was denied under clause (1) if the Secretary finds that the registrant is in compliance with all registration conditions.

(3) LIST.—The Secretary shall—

(A) maintain an up-to-date list of registered exporters (including qualifying Internet pharmacies that sell qualifying drugs to individuals);”

(4) EDUCATION OF CONSUMERS.—The Secretary shall carry out activities, by use of the Internet website and toll-free telephone number under paragraph (3), that educate consumers with regard to the availability of qualifying drugs for import for personal use under this section, including information on how to verify whether an exporter is registered.

(5) INSPECTION OF IMPORTERS AND REGISTRED EXPORTERS.—The Secretary shall inspect the warehouses, other facilities, and records of importers and registered exporters as often as the Secretary determines necessary to ensure that such importers and registered exporters are in compliance with this Act’s requirements.

(g) SUSPENSION OF IMPORTATION.—Section 804(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 386(g)) is amended by—

(1) striking ‘‘and the Secretary determines that the public is adequately protected from
counterfeit and violative prescription drugs being imported under subsection (b); and

(2) by adding after the period at the end the following: The Secretary shall reinstate the registration for a specific importer upon a determination by the Secretary that the violation has been corrected and that the importer has demonstrated that further violations will not occur. This subsection shall not apply to a prescription drug imported by an individual, or to a prescription drug shipped to an individual by a qualifying Internet pharmacy.

(b) WAIVER AUTHORITY FOR INDIVIDUALS.—Section 804(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(j)) is amended by adding at the end the following:

"(1) IMPORTATION BY INDIVIDUALS.—Not later than 180 days after the enactment of the Pharmaceutical Market Access Act of 2005, the Secretary shall by regulation permit an individual to import a drug from a permitted country to the United States if the drug is—

(A) a qualifying drug;

(B) imported from a licensed pharmacy or qualifying Internet pharmacy;

(C) for persons’ use by an individual, or family member of the individual, not for resale;

(D) in a quantity that does not exceed a 90-day supply for a 90-day period; and

(E) accompanied by a copy of a prescription for the drug, which—

(i) is valid under applicable Federal and State laws and

(ii) was issued by a practitioner who is authorized administer prescription drugs.

(2) DRUGS DISPENSED OUTSIDE THE UNITED STATES.—An individual may import a drug from a country that is not a permitted country if—

(A) the drug was dispensed to the individual by a pharmacy in such country, and the drug was dispensed in accordance with the laws and regulations of such country;

(B) the individual is entering the United States and the drug accompanies the individual at the time of entry;

(C) the drug is approved for commercial distribution in the country in which the drug was obtained;

(D) the drug does not appear to be adulterated; and

(E) the quantity of the drug does not exceed a 14-day supply.

(1) REPEAL OF CERTAIN PROVISIONS.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384 et seq.) is amended by striking subsections (l) and (m).

SEC. 5. REGISTRATION FEES.

Subchapter C of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 397 et seq.) is amended by adding at the end the following:

"PART 5—FEES RELATING TO PRESCRIPTION DRUG IMPORTATION

SEC. 740A. FEES RELATING TO PRESCRIPTION DRUG IMPORTATION.

"(a) REGISTRATION FEE.—The Secretary shall establish a registration fee program under which a registered exporter under section 804 shall be required to pay an annual fee to the Secretary in accordance with this subsection.

"(b) WILHELM REICHHERST."
(I) unfair or discriminatory acts and practices.—

(a) unfair or discriminatory acts and practices prescribed in section 38 of the Federal Trade Commission Act; or

(b) any civil action under subparagraph (A), the Commission at the same time as the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission at the same time as the attorney general files the action.

(ii) intervention.—

(i) In general.—On receiving notice under subparagraph (A)(ii), the Commission shall have the right to intervene in the action that is the subject of the notification. If the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act.

(ii) effect of subsection.—

(A) In general.—The attorney general of a State may bring a civil action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction for a violation of paragraph (1) to—

(A) enjoin that practice;

(B) enforce compliance with this subsection;

(C) obtain damages, restitution, or other compensation on behalf of the residents of the State, and persons doing business in the State, including treble damages; or

(D) obtain such other relief as the court may consider to be appropriate.

(III) actions by states.—

(A) in general.—On receiving notice under subparagraph (A), the Attorney General shall have the right to bring an action on behalf of the residents of the State, and persons doing business in the State, in a district court of the United States of appropriate jurisdiction for a violation of paragraph (1) to—

(A) enjoin that practice;

(B) obtain damages, restitution, or other compensation on behalf of the residents of the State, and persons doing business in the State, including treble damages; or

(C) obtain such other relief as the court may consider to be appropriate.

(B) enforcement.—

(1) in general.—Before filing an action under clause (1), the attorney general of the State involved shall provide to the Federal Trade Commission—

(aa) written notice of that action; and

(bb) a copy of the complaint for that action.

(2) effect of subsection.—

(A) in general.—On receiving notice under subparagraph (A), the Commission shall have the right to intervene in the action that is the subject of the notification. If the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act.

(ii) intervention.—

(A) In general.—On receiving notice under subparagraph (A), the Commission shall have the right to intervene in the action that is the subject of the notification. If the attorney general determines that it is not feasible to provide the notice described in that subclause before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Federal Trade Commission under section 18(a)(1)(B) of the Federal Trade Commission Act.
(1) The Secretary—; and
(2) adding at the end the following:

"(2) SUSPENSION AND TERMINATION OF EXPORTERS.—

(A) SUSPENSION.—With respect to the effectiveness of a registration submitted under subsection (f) by a registered exporter:

(i) Subject to clause (ii), if the Secretary determines that, under the registration, the registered exporter has failed to maintain substantial compliance with all registration conditions, the Secretary may terminate the registration.

(ii) If the Secretary determines that, under color of the registration, the registered exporter has exported a drug that is not a qualitatively equivalent drug that does not meet the criteria under this section, or has exported a qualifying drug to an individual in violation of this section, the Secretary shall immediately suspend the registration.

A suspension under the preceding sentence is not subject to the provision by the Secretary of prior notice, and the Secretary shall provide to the registered exporter involved an opportunity for a hearing not later than 10 days after the date on which the registration is suspended.

(B) TERMINATION.—The Secretary, after notice and opportunity for a hearing, may terminate the registration under subsection (f) of a registered exporter if the Secretary determines that the registered exporter has engaged in a pattern or practice of violating 1 or more registration conditions, or if on 1 or more occasions the Secretary has under subparagraph (A)(ii) suspended the registration of the registered exporter. The Secretary may make the termination permanent, or for a fixed period of not less than 1 year. During the period in which the registration of a registered exporter is terminated, any registration submitted under subsection (f) by such exporter or a person who is a partner in the export enterprise or a principal officer in such enterprise, and any registration for the assistance of such exporter or such a person, has no legal effect under this section.".

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act (and the amendments made by this Act).

By Mrs. FEINSTEIN.

S. 110. A bill for the relief of Robert Liang and Alice Liang; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today private relief legislation to pursue and, to a degree, achieved the American Dream.

Mr. and Mrs. Liang’s quest to legalize their immigration status began in 1993 when they filed for relief from deportation before an immigration judge. The Immigration and Naturalization Service, however, did not act on their application until nearly 5 years later, in 1997, after which time the immigration laws had significantly changed.

According to the immigration judge, had the INS acted on their application for relief from deportation in a timely manner, they would have qualified for suspension of deportation, given that they were long-term residents of this country with US citizen children and other positive factors. By the time INS processed their application, however, Congress passed the Illegal Immigration Reform and Immigrant Responsi-

I supported the changes of the 1996 law, but I believe sometimes there are exceptions which merit special consideration. The Liangs are such a couple and family. Perhaps what distinguishes this family from many others is that through hard work and perseverance, Mr. Liang has achieved a significant degree of success in the United States while battling a serious form of Post Traumatic Stress Disorder. According to his psychologist, this disorder stems from the persecution he, his family and community experienced in his native

...
country of Laos during the Vietnam War. Throughout his childhood and adolescence, Mr. Liang was exposed to numerous traumatic experiences, including the murder of his mother by the North Vietnamese and frequent episodes of wartime violence. He also routinely witnessed the brutal persecution and deaths of others in his village. In 1975, he was granted refugee status in Taiwan.

The emotional impact of Mr. Liang’s experiences in his war-torn native country have been profound and continue to haunt him. In addition to being diagnosed with Post Traumatic Stress Disorder, his psychologist has also indicated that he suffers from severe clinical depression, which has been exacerbated by the prospect of being deported to Taiwan, where on account of his nationality, he believes he and his family would be treated as second-class citizens. Moreover, Mr. Liang believes that the pursuit of further mental health treatment in Taiwan would only exacerbate the stigma of being an outsider in a country whose language he does not speak. Given those prospects, he also fears the impact this would have on the well-being and future of his children.

Given these extraordinary and unique facts, I ask my colleagues to support this private relief bill on behalf of the Liang family.

I also ask unanimous consent that the text of the legislation be printed in the RECORD and that the attached three letters of community support also be printed.

The Liang family are members in good standing of the San Carlos Chamber of Commerce. As such they have shown their commitment to be members in good standing of the San Carlos business community. Chamber members tend to reflect a desire for community involvement and support for their city. The Liangs took the initiative to start a business here when they remained were destroyed. They have a very loyal cadre of customers.

The Chamber is always happy to see good small businesses like Fon Yong thrive. The Chamber stands behind Alice and her family in their quest for permanent residence in the United States. Alice is well known to all who frequent her restaurant. She has a warm, friendly personality. Alice, a business woman who even takes the time to remember what her regulars’ favorites are.

The Liang family is a stable one and they contribute so much to the community. They have done good rather than harm as they settled here. I hope you can respond positively to their example and settle the immigration issue quickly.

Sincerely,

Sheryl Pomerenk
CEO, San Carlos Chamber of Commerce

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HON. DIANNE FEINSTEIN, S. 331 Hart Senate Office Building, Washington, D.C.

DEAR SENATOR FEINSTEIN: I am writing in support of a private bill for Robert and Alice Liang, two outstanding residents of our community for whom removal from this country would represent an unfair hardship.

Robert and Alice are two of the most caring and hardworking people I have ever met. Despite the demands of running a small business and taking care of their three children, they are always trying to help others in need. Recently, Alice heard about Chloe Chang, a young girl who had acute promyelocytic leukemia. Chloe had undergone chemotherapy, but had a relapse. She needed a bone marrow transplant, and was looking for a donor. Her family was facing mounting bills from the donor search. Alice asked me if there was any way she could help. I should point out that she had never met this family, she just knew they were in need from newspaper articles and TV broadcasts. We put together a fund-raising dinner event at Stanford University in which I helped to promote. Robert and Alice worked all day cooking a hundred dinners. Together, we raised almost a thousand dollars to help Chloe’s family.

This is not the only time that Robert and Alice have gone out of their way to help others, even while they themselves face deportation. It amazes me that they can think of others at such a time, but that’s the kind of people they are. I am so worried about Robert, especially, because he is still suffering from all the things he saw as a child and a teenager in Laos. People were dragged out and killed in front of him, and his own mother was killed by the Communists before the rest of the family escaped. After two decades of peace, Robert is still troubled, and I can’t even think what it will do to him to have that taken away. I want you as my senator to do whatever it takes to make sure that these two wonderful people can stay here where they belong. Please sponsor a private bill and try to convince other members of Congress to support it. If there’s anything I can do to help, please let me know.

Sincerely,

Barbara Maas

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S. 111. A bill for the relief of Shigeru Yamada; to the Committee on the Judiciary.

Dear Mrs. FEINSTEIN,

Mr. President, I offer today private relief legislation to provide lawful permanent residence status to Shigeru Yamada, a 22-year-old Japanese national who lives in Chula Vista, CA.

I have decided to introduce a private bill on his behalf because I believe that Mr. Yamada represents a model American citizen, for whom removal from this country would represent an unfair hardship.

Without your help, Mr. Yamada will be forced to return to a country in which he lacks any linguistic, cultural or family ties.

Mr. Yamada legally entered the United States with his mother and two sisters in 1992 at the young age of 10. The family was fleeing from Mr. Yamada’s alcoholic father, who had been physically abusive to his mother, the children and even his own parents. Since then, he has had no contact with his father and is unsure if he is even alive. Tragically, Mr. Yamada experienced further hardship when his mother was killed in a car crash in 1995. Orphaned at the age of 13, Mr. Yamada
spent time living with his aunt before moving to Chula Vista to live with a close friend of his late mother.

The death of his mother marked more than a personal tragedy for Mr. Yamada; it also served to impede the procedures for him to legalize his immigration status. At the time of her death, Mr. Yamada’s family was living legally in the United States. His mother had acquired a student visa for herself and her children qualified as her dependents. Her death revoked his immigration status in the United States. In addition, Mr. Yamada’s mother was engaged to an American citizen at the time of her death. Had she survived, her son would likely have become an American citizen through this marriage.

Mr. Yamada has exhausted all administrative options under our current immigration system. Throughout high school, he contacted attorneys in the hopes of legalizing his status, but his attempts were unsuccessful. Unfortunately, Mr. Yamada and those who know him, Mr. Yamada, the only option available to him today is private relief legislation.

For several reasons, it would be tragic for Mr. Yamada to be deported from the United States and forced to return to Japan.

First, since arriving in the United States, Mr. Yamada has lived as a model American. He graduated with honors from Eastlake High School in 2000, the year Mr. Yamada was named the “Most Inspirational Player of the Year” in junior varsity baseball and football, as well as, Varsity football. His football coach, Mr. Jose Mendoza, expressed his admiration by saying that he has “seen in Shigeru Yamada the responsibility, dedication and loyalty that the average American holds to be virtuous.”

Second, Mr. Yamada has distinguished himself as a local volunteer. As a member of the Eastlake High School Link Crew, he helped freshman find their way around campus, offered tutoring and mentored services, and set an example of how to be a successful member of the student body. After graduating from high school, he volunteered his time for 4 years as the coach of the Eastlake High School Girl’s softball team. As the former head coach, who has since retired, Dr. Charlie Stickler describes him as an individual full of “integrity” who understands that as a coach it is important to work as a “team player.” His level of commitment to the team was further illustrated to Dr. Sorge when he discovered, halfway through the season, that Mr. Yamada’s commute to and from practice was 2 hours long each way. It took courage to volunteer his time to coach and never bring up the issue of how long his commute takes him each day. Dr. Sorge hopes that, once Mr. Yamada legalizes his immigration status, he will be formally hired to continue coaching the team.

Third, sending Mr. Yamada back to Japan would be an immense hardship for him and his family here. Mr. Yamada does not speak Japanese. He is unaware of the nation’s current cultural trends. And, he has no immediate family members that he knows of in Japan. Currently, both of his sisters are in the process of legalizing their immigration status in the United States. His older sister is married to a United States citizen, and his younger sister is being adopted by a maternal aunt, who is a United States citizen. Since all of his family lives in California, sending Mr. Yamada back to Japan would serve to split his family apart and separate him from everyone and everything that he knows. His sister contends that her younger brother would be “lost” if he had to return to live in Japan on his own. It is unlikely that he would be able to find any gainful employment in Japan due to his inability to speak or read the language.

As a member of the Chula Vista community, Mr. Yamada has distinguished himself as an honorable individual. His teacher, Mr. Robert Hughes, describes him as being an “upstanding ‘All American’ young man.” Until being picked up during a routine check of riders’ immigration status on a city bus, he had never been arrested or convicted of any crime. Mr. Yamada is not, and has never been, a burden on the State. He has never received any Federal or State assistance.

Currently, Mr. Yamada holds sophomore status at Southwestern Community College. However, he is taking this semester off in order to alleviate his financial burdens by working full time. He had hoped to pursue a career in law enforcement, but his plans have recently changed due to his current immigration status dilemma. Until he obtains permanent resident status, Mr. Yamada will be prohibited from pursuing a career in law enforcement. Due to the circumstances, Mr. Yamada has changed his career goal to that of becoming a high school teacher. Mr. Yamada’s commitment to his education is admirable. He could have easily taken a different path but, through his own “individual fortitude,” he has dedicated himself to his studies so that he can live a better life.

With his hard work and giving attitude, Shigeru Yamada represents the ideal American citizen. Although born in Japan, he is truly American in every other sense. I ask you to help right a wrong and grant Mr. Yamada lawful permanent resident status so that he can continue towards his bright future. Given these extraordinary and unique facts, I ask my colleagues to support this private relief bill on behalf of Mr. Yamada.

I ask unanimous consent that the text of the bill be printed in the RECORD and that the three letters of community support be printed in the RECORD.

The remainder of the debate being no objection, the material was ordered to be printed in the RECORD, as follows:

**SECTION 1. PERMANENT RESIDENT STATUS FOR SHIGERU YAMADA.**

(a) In General.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act (8 U.S.C. 1151), Shigeru Yamada shall be eligible for issuance of an immigrant visa or for adjustment of status to lawful permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) Adjustment of Status.—If Shigeru Yamada enters the United States before the filing deadline specified in subsection (c), Shigeru Yamada shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 203 of the Immigration and Nationality Act (8 U.S.C. 1255) as of the date of enactment of this Act.

(c) Deadline for Application and Payment of Fees.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) Reduction of Immigrant Visa Numbers.—Upon the granting of an immigrant visa or permanent resident to Shigeru Yamada, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of birth of Shigeru Yamada under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Shigeru Yamada under section 203(e) of that Act.

**EASTLAKE HIGH SCHOOL, Chula Vista, CA January 17, 2005.

Senator DIANNE FEINSTEIN, U.S. Senate, Washington, D.C.

DEAR SENATOR FEINSTEIN: I am more than happy to write this letter on behalf of Shigeru Yamada as he pursues his efforts to stay in the United States. I was Shigeru’s counselor while he attended Eastlake High School. During that time he always displayed exemplary behavior, academic focus, and personal determination.

Academically Shigeru was a model student. He earned a 3.8 grade point average; he made the National Honor Roll and was nominated to Who’s Who Among High School Students for three straight years. Shigeru plans to attend a university to study sports medicine and physical therapy so he has set high goals for himself. He has the ability to not only handle college-level work, but to thrive on the challenge the university will
bring. His quiet determination has been an example to his peers and was a joy to his instructors.

Shigeru Yamada not only took the most from his high school experience, but he has consistently “given back” his talents, time, and effort to serve the school community. He was elected ASB president during his senior year. He demonstrated leadership skills as president of the Inter-Club Council on campus; he mentored incoming ninth-grade students; he worked on various service projects. In addition to his involvement in student government, Shigeru participated in football, baseball, and wrestling. He was named "Student Athlete of the Year" for both his junior varsity baseball and football teams. He was also awarded the J.T. Franks Memorial Award (most inspirational varsity football). This award carries a great deal of respect amongst the players as it is named after a teammate who died of cancer. Shigeru was a role model for our students when he attended our school. He earned good grades; he was an athlete; and he was involved in a variety of additional activities. He is the kind of student that Eastlake High School has been proud to have.

A further testimony to Shigeru’s character is what he has been doing since graduating. This young man has come back to serve as an assistant football and wrestling coach for our students. He gives his time and energy to working with individual students during the week and weekends; he not only teaches them on how to improve their athletic skills, but he is also a wonderful role model and mentor. He is someone to whom the young men can relate, a person whose opinions are valued. I have personally seen Shigeru interact with these boys; the respect he gives them and the respect they give Shigeru is an absolute reflection of the positive influence he has in their lives.

Shigeru is seeking permanent resident status in the United States through a private bill that you have agreed to sponsor. Were he not in question. However, since she died a few years ago in a car accident, Shigeru has had to get through high school without her guidance and support, and now his future in the United States is in jeopardy. Shigeru Yamada has already proven himself to be a hard-working, law-abiding, goal-oriented young man. He has already proven himself to be a productive member of society. And, most importantly, Shigeru wants to not only take the best this society has to offer, but to also give back to the society to make it a better place for those around him.

Perhaps the best endorsement that I can give is that I would be proud to claim Shigeru Yamada as my son. He embodies all the qualities that I have tried to instill in my own children. I urge you to support the bill that would give Shigeru Yamada permanent residency in the United States. He will represent all of us well.

Sincerely,

ANN M. STEVENS, Asst. Principal.

By Mrs. FEINSTEIN.

S. 112. A bill for the relief of Denes Fulop and Gyorgyi Fulop; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today a private immigration relief bill to provide lawful permanent residence status to Denes and Gyorgyi Fulop, Hungarian nationals who have lived in California for more than 20 years. The Fulops are the parents of six U.S. citizen children. Today, they face deportation having exhausted all administrative remedies under our immigration law.

The Fulop’s story is a compelling one and one which I believe merits Congress’ consideration for humanitarian relief.

The most poignant tragedy to affect this family occurred in May 2000, when the Fulop’s eldest child, Robert “Bobby” Fulop, an accomplished 15-year-old teenager, died suddenly of a heart aneurism. Bobby was considered the shining star of his family.

That same year, the Fulop’s six-year-old daughter, Elizabeth, was diagnosed with moderate pulmonary stenosis, a potentially life-threatening heart condition and a frightening situation similar to Bobby’s. Not long ago, she successfully undergone heart surgery, but requires medical supervision to ensure her good health.

The Fulop’s youngest child, Matthew, was born seven weeks premature. He subsequently underwent several kidney surgeries and is still being closely monitored by physicians.

Compounding these tragedies is the fact that today the Fulops face deportation. They face deportation, in part, because as U.S. citizen children. Today, they face deportation, in part, because of their parent’s immigration status. Due to large backlogs, the INS did not interview them until 1996. By the time their applications were considered, the new 1996 immigration law had taken effect. Given their one-time 90 day trip outside the United States, they were ineligible for relief pursuant to the cancellation of removal provisions of the Immigration and Nationality Act.

One cannot help but conclude that had the INS acted on the Fulop’s application for relief from deportation in a timely manner, they would have qualified for suspension of deportation under the pre-1996 law, given that they were long-term residents of the United States with U.S. Citizen children and many positive factors in their favor.

The irony of this situation is that the Fulops were gone from the United States for nearly five months in 1995 because they traveled to Hungary to help Mr. Fulop’s brother build his home. Mr. Fulop’s brother is handicapped and they went to help remodel his home.

The Fulops are good and decent people. Mr. Fulop is a masonry contractor and the owner and president of his own construction company—Sumeg International. He has owned this business for 10 full-time employees.

The couple are active in their church and community. As Pastor Peter Peknic of the Pentecostal Church of San Diego says in his letter of support, “...the family is an exceptional asset to their community.” Mrs. Fulop has served as a Sunday school teacher and volunteers regularly at Heritage K-8 Charter School in Escondido. Mrs. Morris, a Heritage K-8 Charter School faculty member says in her letter of support that Mrs. Fulop is “...a valued asset to our school and community.”

As a former president, this is a tragic situation. Essentially, as happened to many families under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the rules of the game were...
changed in the middle. When the Fulops applied for relief from deportation they were eligible for suspension of deportation by the time the INS got around to their application, nearly three years later, they were no longer eligible and in fact suspension of deportation as a form of relief ceased to exist.

The Fulops today have been in the United States since the early 1980s. Most harmful is the effect that their deportation will have on the children, all of whom were born here and who range from one year old to 17 years of age. Their eldest, Dennis, is a 4.0 honor student at Palomar Community College having graduated from high school one year early. His sister, Linda, has a 3.8 grade point average and is an honor student in high school.

It is my hope that Congress sees fit to provide an opportunity for this family to remain together in the United States for many years here, the profound sadness they have already experienced and the harm that would come from their deportation to their six U.S. citizen children.

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

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

S. 112

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

SECTION 1. ADJUSTMENT OF STATUS.

(a) In General.—Notwithstanding any other provision of law or any order, for the purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Denes Fulop and his wife, Joy, and their six children are hereby permitted to remain in the United States given their many years here, the profound sadness they have already experienced and the harm that would come from their deportation to their six U.S. citizen children.

(b) Application and Payment of Fees.—Subsection (a) shall apply only if the applications for issuance of immigrant visas or the applications for adjustment of status are filed with appropriate fees within 2 years after the enactment of this Act.

(c) Reduction of Immigrant Visa Numbers.—Upon the granting of immigrant visas to Denes Fulop and Gyorgyi Fulop, the Secretary of State shall instruct the proper officer to reduce by 2, during the current or subsequent fiscal year, the total number of immigrant visas that are made available to nationals of the alien’s country of birth under section 202(e) or 203(a) of the Immigration and Nationality Act (8 U.S.C. 1552(e), 1553(a)), as applicable.

APOSTOLIC CHRISTIAN CHURCH
ESCONDIDO, CA

DEAR MEMBERS OF CONGRESS, I am writing this letter on behalf of the Fulop Family. I want to express my appreciation for Mrs. Fulop’s involvement at our elementary school.

Abigail Fulop is a successful kindergarten student in many capacities above her grade level. Sarah and Elizabeth Fulop attend Heritage charter as well and are outstanding students.

Mrs. Fulop volunteers on a regular basis in my kindergarten classroom helping students become better readers. She takes a reading group and works on reading strategies that also take students from the mainstream reading group and helps them. She also takes time out of her daughter’s class. Her time and effort fosters a learning environment. Recently, she participated in a cooking demonstration for the class. She also takes time out of her busy schedule to help her daughter’s third grade teacher plan and prepare for field trips.

In all these things I have confidence that she is a valuable asset to our school and community. Please consider supporting their desire to remain with us. Please feel free to contact me with any questions.

Sincerely,

PETER PETROVIC, Pastor

HERITAGE K-8 CHARTER SCHOOL
ESCONDIDO, CA, JANUARY 14, 2005.

DEAR MEMBERS OF CONGRESS, I am writing this letter on behalf of the Fulop Family. I want to express my appreciation for Mrs. Fulop’s involvement at our elementary school. Abigail Fulop is a successful kindergarten student in many capacities above her grade level. Sarah and Elizabeth Fulop attend Heritage charter as well and are outstanding students.

Mrs. Fulop volunteers on a regular basis in my kindergarten classroom helping students become better readers. She takes a reading group and works on reading strategies that also take students from the mainstream reading group and helps them. She also takes time out of her daughter’s class. Her time and effort fosters a learning environment. Recently, she participated in a cooking demonstration for the class. She also takes time out of her busy schedule to help her daughter’s third grade teacher plan and prepare for field trips.

In all these things I have confidence that she is a valuable asset to our school and community. Please consider supporting their desire to remain with us. Please feel free to contact me with any questions.

Sincerely,

MRS. MORRIS

R. RIMMER CONSTRUCTION INC.
CARDIFF, CA, JANUARY 13, 2005.

TO WHOM IT MAY CONCERN: The purpose of this letter is to describe my relationship with Dennis Fulop, whom I have known for approximately twenty-two years. As a building contractor in the San Diego area I have been fortunate to have worked with Dennis for most of those years. He has constructed nearly all of the foundations for the room additions and new houses that I have built. Dennis has also constructed most of the driveways, sidewalks, retaining walls, fireplaces and masonry on my projects. He has also attended to much of my finish grading, drainage and backhoe construction needs.

Dennis has long been an invaluable member of my construction “team”. He is very knowledgeable in nearly all construction matters. He has always been very reliable and responsible in meeting deadlines and upholding high standards of construction quality.

Dennis is also a very successful small business owner. He has his own credit accounts with all of the necessary construction suppliers and to my knowledge has always paid his bills in a timely manner. In fact, I have never been contacted or liened by any of his suppliers to date. Dennis is also very proficient at managing and providing work for his employees.

Dennis’s wife, Joy is a dedicated wife and mother to their six children.

I am very thankful to know the Fulop family personally and I can assure you the value and deeply held convictions make them valuable contributors to the local community and society as a whole.

Sincerely,

RON RIMMER

S. 113. A bill to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust; to the Committee on Indian Affairs.

Mr. President, I rise today to introduce legislation that would strike a small provision in the Omnibus Indian Advancement Act of 2000; language that circumvents the Indian Gaming Regulatory Act’s common-sense protections and safeguards the inappropriate siting of Nevada-style casinos.

In December 2000, a one-paragraph provision was attached to the Omnibus Indian Advancement Act taking land into trust for a single Indian tribe—the Lytton—with the aim of allowing the tribe to bypass the federal and state review process and expedite plans to establish a large, off-reservation gaming complex in an urban area near San Francisco. Most astoundingly, this provision included a clause which mandated that the Secretary of Interior backdate the acquisition of this land to October 17, 1988—despite the fact that the land was actually taken into trust in 2004. This backdating permitted the tribe to completely circumvent the Indian Gaming Regulatory Act’s requirements for gaming on newly acquired lands and avoid an important consultative process prescribed in federal law. Today California is home to 110 federally recognized tribes. Sixty-six tribes have gaming compacts with the state and there are 57 tribal casinos. With more than 50 tribes seeking federal recognition and approximately 25 recognized tribes seeking gaming compacts from the Governor, revenues from California’s tribal gaming industry are expected to be the highest of any state’s by the end of the decade. According to the latest statistics released by the National Indian Gaming Association, in 2003 California by itself accounted for about half of the increase in gaming revenues nationwide.

Mr. President, I have serious reservations about the expansion of Nevada-style gaming—with its slot machines and in-house banking—into urban areas, and I am particularly concerned about off-reservation gambling and “reservation shopping”. Off-reservation casinos often cause counties additional costs in public and local services, and are responsible for an increase of traffic and crime within local communities.
That is why Section 20 of the Indian Gaming Regulatory Act requires that tribes complete a “two-part determination” process prior to engaging in Class III gaming on newly acquired, or offreservation lands. Under this law, tribes that propose Class III gaming on land acquired after October 17, 1988, must receive the approval of both the state Governor and the Secretary of the Interior. In addition, this process requires that the Secretary of the Interior consult with local communities and nearby tribes before making a final decision in these cases.

In August 2004, the Lytton tribe and the Governor of my state reached an agreement on a compact that would have permitted the tribe to develop a 68-story casino housing 5,000 slot machines. Notably, this would be the largest inventory of slot machines found in any casino outside of Connecticut. After the State Legislature balked at approving the deal, the Governor and the tribe agreed to put forward a revised compact that would allow for a 2,500 slot casino, while permitting the tribe to negotiate for additional slots in 2008. This latest proposal remains unratified by the State Legislature.

Mr. President, without this legislation, the Lytton tribe will be able to open a massive gambling complex in a metropolitan area outside the regulations set up by the Indian Gaming Regulatory Act. Allowing this to happen would set a dangerous precedent not only for California, but every state where tribal gaming is permitted.

The potential today is extremely limited. This legislation would not reverse restoration of the tribe. It would not infringe on Native American sovereignty. It does not affect the land acquisition or even block the casino project itself. It seeks to give the State and the local communities a voice in the process and ensure that gaming continues to be organized within the framework of the Indian Gaming Regulatory Act.

The Indian Gaming Regulatory Act has provided this Nation with a fair and balanced approach to Indian gaming by facilitating tribal plans for economic recovery without compromising a multitude of factors that should be taken into account when deciding on the siting of casinos. This law works. It is a fair process that should continue to be followed.

It is simply not asking too much to require that the Lytton be subject to the regulatory and approval processes applicable to newly acquired tribal lands by the Indian Gaming Regulatory Act.

I hope my colleagues will support this legislation and I look forward to working with the Chairman and Ranking Member of the Indian Affairs Committee to pass this legislation quickly.

I ask unanimous consent that the text of the bill be printed in the Record, as follows:

S. 113
Be it enacted by the Senate and House of Represent-atives of the United States of America in Congress assembled.

SECTION 1. LYTON RANCHeria OF CALIFORNIA.
Section 819 of the Omnibus Indian Ad- vancement Act (114 Stat. 2019) is amended by striking the last sentence.

By Mr. KERRY (for himself, Mr. KENNEDY, Mrs. MURRAY, Mr. LAUTENBERG, Mr. CORZINE, and Ms. CANTWELL):

S. 114. A bill to amend titles XIX and XXI of the Social Security Act to ensure that every uninsured child in America has health insurance coverage, and for other purposes; to the Committee on Finance.

Mr. KENNEDY. Mr. President, I'm honored to join my friend and colleague, Senator KERRY, in introducing this legislation to guarantee affordable health insurance for every child. We made a good start toward this goal in the 1990s, by enacting the Children’s Health Insurance Program to cover more low-income children. Now it is time to finish the job.

Tweleve million Americans who are twenty-one years old or younger have no health insurance today. Seven million are eligible for Medicaid or CHIP, but five million are not eligible for these current programs.

Every uninsured child represents a national failure. Every uninsured child is at risk for losing the healthy start in life that should be birthright of every American. Every uninsured child is a potential source of heartbreak for parents and other loved ones. Every uninsured child is an American tragedy waiting to happen.

This year, three hundred eighty thousand children suffering from asthma will never see a doctor. Five hundred thousand children with recurrent earaches will never see a doctor. Five hundred thousand children with severe throat infections will never see a doctor.

Uninsured children pay for their lack of coverage in human suffering, unnecessary disability, and even death, and our society pays too. Sicker children cannot learn. Every child whose education is limited or whose future potential is lost because of avoidable illness is a loss to America, because America’s children are America’s future.

The legislation we are introducing today will guarantee coverage for every child twenty-one years of age or younger. It makes health insurance affordable for every family, and it also asks families to share the responsibility of covering their children, when they are able to do so.

The bill expands Medicaid and CHIP up to 300 percent of poverty. Families of moderate means will be able to obtain subsidized coverage for their children. Families with incomes above 300 percent of poverty will be able to buy into Medicaid or CHIP for their children, and they will be guaranteed that the cost will not exceed 5 percent of their family income.

The bill also lifts the cap on CHIP funding that has caused some States to limit enrollment. It assists States financially by shifting current State spending for children under 100 percent of poverty to the Federal government. It requires all States to adopt the prov- en methods that encourage families to enroll and stay enrolled—methods such as presumptive eligibility, the ability to apply on line or by telephone for the coverage, and coverage for at least three months without eligibility rede- terminations.

This legislation is vitally important to all children. It is a pledge that they will have access to good health care without regard to their family’s wealth. It is a commitment to a healthy start in life for every child.

As important as those objectives are, the significance of this legislation goes beyond coverage of all children. It is a major step toward the day when the tastes of each and every American, whatever their age or income. We will not rest until that goal is achieved, and I commend Senator KERRY for leading this essential effort.

By Mrs. FEINSTEIN:

S. 115. A bill to require Federal agen- cies, and persons engaged in interstate commerce, in possession of electronic data containing personal information, to disclose any unauthorized acquisition of such information; to the Com- mittee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Notification of Risk to Personal Data Act of 2005. This legislation will require that individuals are notified when their most sensitive personal information is stolen from a corporate or government database. This is the second Congress in a row that I have introduced this legislation—it is time for us to pass it to give Americans the notice they need to protect themselves from identity thieves.

Specifically, the bill would require government or private entities to notify individuals if a data breach has compromised their Social Security number, driver’s license number, credit card number, debit card number or financial account numbers.

In most cases, if authorities know that someone is a victim of a crime, the victim is notified. But, that isn’t the case if an individual’s most sensitive personal information is stolen from a computer database.

Measuring the problem of security breaches is difficult, because many companies never report breaches of their systems for fear that their reputation for securing data would be damaged. But, in a survey conducted in 2004 by the FBI and the Computer Security Institute, 52 percent of respondents reported some level of unauthorized use of their computer systems.

Data breaches are becoming all too common. Consider the following incidents which have compromised the
The legislation’s notification scheme minimizes the burdens on companies or agencies that must report a data breach. In general, notice would have to be provided to each person whose data was compromised in writing or through e-mail. But there are important exceptions. First, companies that have developed their own reasonable notification policies are given a safe harbor under the bill and are exempted from its notification requirements. Second, encrypted data is exempted.

Third, where it is too expensive or impractical (e.g., contact address information is incomplete) to notify every individual who is harmed, the bill allows entities to send out an alternative form of notice called “substitute notice.” Substitute notice includes posting notice on a website or notifying major media. Substitute notice would be triggered if any of the following factors exist:

(i) the agency or person demonstrates that the cost of providing direct notice would exceed $250,000;
(ii) the affected class of subject persons to be notified exceeds $500,000; or
(iii) the agency or person does not have sufficient information to notify people whose information is at risk.

The bill has a tough, but fair enforcement regime. Entities that fail to comply with the bill will be subject to fines.

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 ‘Notification of Risk to Personal Data Act’.

SEC. 2. DEFINITIONS. In this Act, the following definitions shall apply:

(A) means the compromise of the security, confidentiality, or integrity of computerized personal information.

(B) means an individual’s Social Security number, state identification number, driver’s license number, financial account number, or credit card number.

(C) means the compromise of the security, confidentiality, or integrity of computerized personal information.

(D) means any individual’s Social Security number, state identification number, driver’s license number, financial account number, or credit card number.

The legislation’s notification scheme minimizes the burdens on companies or agencies that must report a data breach. In general, notice would have to be provided to each person whose data was compromised in writing or through e-mail. But there are important exceptions. First, companies that have developed their own reasonable notification policies are given a safe harbor under the bill and are exempted from its notification requirements. Second, encrypted data is exempted.

Third, where it is too expensive or impractical (e.g., contact address information is incomplete) to notify every individual who is harmed, the bill allows entities to send out an alternative form of notice called “substitute notice.” Substitute notice includes posting notice on a website or notifying major media. Substitute notice would be triggered if any of the following factors exist:

(i) the agency or person demonstrates that the cost of providing direct notice would exceed $250,000;
(ii) the affected class of subject persons to be notified exceeds $500,000; or
(iii) the agency or person does not have sufficient information to notify people whose information is at risk.

The bill has a tough, but fair enforcement regime. Entities that fail to comply with the bill will be subject to fines.

Enabling consumers to be notified in a timely manner of security breaches involving their personal data will help combat the growing scourge of identity theft. If individuals are informed of the theft of their Social Security numbers or other sensitive personal information, they can take immediate preventative action.

They can place a fraud alert on their credit report to prevent crooks from obtaining credit cards in their name.

They can monitor their credit reports to see if unauthorized activity has occurred.

They can cancel any affected financial or consumer or utility accounts; and

They can change their phone numbers if necessary.

I look forward to working with my colleagues to pass this vitally needed legislation. This bill will give ordinary Americans more control and confidence about the safety of their personal information. Americans will have the security of knowing that should a breach occur, they will be notified and be able to take protective action.

Thank you, 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. 115

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 ‘Notification of Risk to Personal Data Act’.

SEC. 2. DEFINITIONS. In this Act, the following definitions shall apply:

(A) means the compromise of the security, confidentiality, or integrity of computerized personal information that results in, or there is a reasonable basis to conclude has resulted in, an unauthorized acquisition of and access to personal information maintained by the person or business; and

(B) does not include good faith acquisition of personal information by an employee or agent of the personal or business for the purposes of the person or business, if the personal information is not used or subject to further unauthorized disclosure.

(3) PERSON.—The term “person” has the same meaning given such term in section 551(1) of title 5, United States Code.

(4) PERSONAL INFORMATION.—The term “personal information” means an individual’s last name in combination with any 1 or more of the following elements, when either the name or the data elements are not encrypted:
(A) Social security number.
(B) Driver’s license number or State identification number.
(C) Account number, credit or debit card number, other account number with any of the following: account security code, access code, or password that would permit access to an individual’s financial account.

(5) SUBSTITUTE NOTICE.—The term “substitute notice” means—
(A) e-mail notice, if the agency or person has an e-mail address for the subject person;
(B) the posting of the notice on the Internet site of the agency or person, if the agency or person maintains an Internet site; or
(C) notification to major media.

SEC. 3. DATABASE SECURITY.

(a) Disclosure of Security Breach.—
(1) in General.—Any agency, or person engaged in interstate commerce, that owns or licenses electronic data containing personal information shall, following the discovery of a breach of security of the system containing such data, notify any resident of the United States whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.
(2) General.—Any agency, or person engaged in interstate commerce, in possession of electronic data containing personal information shall, following the discovery of a breach of security of the system containing such data, notify any resident of the United States whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person through a breach of security of the system containing such data.

(3) Timeliness of notification.—Except as provided in paragraph (4), all notifications required under paragraphs (1) and (2) shall be made as expeditiously as possible and without unreasonable delay following—
(A) the discovery by the agency or person of a breach of security of the system; and
(B) any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system.

(4) Delay of Notification Authorized for Law Enforcement Purposes.—If a law enforcement agency determines that the notification required under this subsection would impede a criminal investigation, such notification may be delayed until such law enforcement agency determines that the notification will no longer compromise such investigation.

(5) Methods of Notice.—An agency, or person engaged in interstate commerce, shall be in compliance with this subsection if it provides the resident, owner, or licensee, as appropriate, with—
(A) substitute notification;
(B) e-mail notice, if the person or business has an e-mail address for the subject person; or
(C) substitute notice, if—
(i) the agency or person demonstrates that the cost of providing direct notice would exceed $250,000;
(ii) the affected class of subject persons to be notified exceeds 500,000; or
(iii) the agency or person does not have sufficient contact information for those to be notified.

(6) Alternative Notification Procedures.—Notwithstanding any other obligation under this subsection, an agency, or person engaged in interstate commerce, shall be deemed to be in compliance with this subsection if the agency or person—
(A) maintains its own reasonable notification and response policies with respect to an information security policy for the treatment of personal information; and
(B) notifies subject persons in accordance with its information security policy in the event of a breach of security of the system.

(7) Reasonable Notification Procedures.—In the event of a breach of security of the system involving personal information described in section 2(c)(1), the term “reasonable notification procedures” means procedures that—
(A) use a security program reasonably designed to block unauthorized transactions before they are charged to the customer’s account;
(B) provide for notice to be given by the owner or licensee of the database, or another party acting on behalf of such owner or licensee, when the program indicates that the breach of security of the system has resulted in fraud or unauthorized transactions, but does not necessarily require notice in other circumstances; and
(C) are subject to examination for compliance with the requirements of this Act by 1 or more Federal functional regulators (as defined in section 560 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), with respect to the operation of the security program and the notification procedures.

(b) Civil Remedy.—
(1) Penalties.—Any agency, or person engaged in interstate commerce, that violates this section shall be subject to a fine of not more than $5,000 per day, to a maximum of $25,000 per day while such violations persist.
(2) Equitable Relief.—Any person engaged in interstate commerce that violates, promotes to violate, or has violated this section may be enjoined from further violations by a court of competent jurisdiction.
(3) Other Rights and Remedies.—The rights and remedies available under this subsection are cumulative and shall not affect any other rights and remedies available under law.

(c) Enforcement.—The Federal Trade Commission is authorized to enforce compliance with this section, including the assessment of fines under subsection (b)(1).

SEC. 4. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) in General.—
(1) Civil Actions.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in interstate commerce, that violates, promotes to violate, or has violated section 2(4)(C), the term “reasonable notification procedures” means procedures that—
(A) use a security program reasonably designed to block unauthorized transactions before they are charged to the customer’s account;
(B) provide for notice to be given by the owner or licensee of the database, or another party acting on behalf of such owner or licensee, when the program indicates that the breach of security of the system has resulted in fraud or unauthorized transactions, but does not necessarily require notice in other circumstances; and
(C) are subject to examination for compliance with the requirements of this Act by 1 or more Federal functional regulators (as defined in section 560 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), with respect to the operation of the security program and the notification procedures.

(b) Civil Remedy.—
(1) Penalties.—Any agency, or person engaged in interstate commerce, that violates this section shall be subject to a fine of not more than $5,000 per day, to a maximum of $25,000 per day while such violations persist.
(2) Equitable Relief.—Any person engaged in interstate commerce that violates, promotes to violate, or has violated this section may be enjoined from further violations by a court of competent jurisdiction.
(3) Other Rights and Remedies.—The rights and remedies available under this subsection are cumulative and shall not affect any other rights and remedies available under law.

(c) Enforcement.—The Federal Trade Commission is authorized to enforce compliance with this section, including the assessment of fines under subsection (b)(1).

SEC. 5. EFFECT ON STATE LAW.

The provisions of this Act shall supersede any inconsistent provisions of law of any State or unit of local government relating to the notification of any resident of the United States of any breach of security of an electronic database containing such resident’s personal information (as defined in this Act), except as provided under sections 1798.82 and 1798.29 of the California Civil Code.

SEC. 6. EFFECTIVE DATE.

This Act shall take effect 6 months after the date of enactment of this Act.

By Mrs. FEINSTEIN:
S. 116. A bill to require the consent of an individual prior to the sale and marketing of such individual’s personally identifiable information, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am pleased to re-introduce the “Privacy Act of 2005.”

This legislation would establish, for the first time, a comprehensive national system of privacy protection. This is the second Congress in a row that I have introduced this legislation. Every year that we wait, more Americans become victims of identity theft. It is time for us to act.

As you know, Mr. President, I have ardently fought for years for legislation to hamper identity theft. Today, this legislation is one of three bills that I am introducing to continue that fight. I am also introducing the Social Security Number Misuse Prevention Act of 2005, and the Notification of Right to Personal Data Act of 2005. I urge my colleagues to pass all of them, to protect Americans from those who would steal our virtual identities.

At the heart of this bill is the requirement that companies may not sell consumers’ most intimate personal information unless consumers affirmatively give their authorization. This is known as “opt-in.” Therefore, companies must obtain consumers’ written consent prior to selling their personal health information, financial information, social security numbers, and drivers’ license data (opt-in). For this sensitive data, the bill gives the individual ultimate control over whether
or not his or her information is shared. If an individual does not actively decide to permit sharing of personal data, the data is not disclosed.

The bill recognizes that different sorts of information deserve different levels of protection. For information that is that personal, but not as intimate, the bill allows businesses more flexibility. Therefore, for other personal information—names, physical addresses, e-mail addresses, telephones, photographs, birth dates, places of origin, identification numbers, companies can sell the information so long as consumers receive notice of the companies' intent, and an opportunity to object and prohibit the sale of their information. This is known as “opt-out.”

That is structure of the overall bill. Let me take a moment to go over some of the specifics.

For financial data, the Privacy Act would tighten the information-sharing provisions of the Gramm-Leach-Bliley Act. This legislation would modify that statute, to prohibit the sale or disclosure of sensitive personal financial information to third parties unless the consumer affirmatively consents or opts in. This legislation would require that banks let consumers opt out of the sharing of their personal financial information with the bank's affiliates or joint partners. The bill makes exceptions for vital public safety concerns or joint marketing efforts.

For sensitive medical information, this legislation would expand on the Department of Health and Human Services privacy regulations, by extending the restrictions placed on “covered entities” (health insurers, health providers, and health care clearinghouses) to “non-covered entities” (business associates, health researchers, schools or universities, and life insurers). All of these entities will be able to share information only with the patients' consent.

For Social Security numbers, this bill will prohibit the sale or display of an individual's Social Security number to the general public without the individual's express consent, and prohibit federal, state, and local governments from displaying the numbers on the Internet, or from printing them on checks or driving licenses. This legislation also recognizes legitimate uses of Social Security numbers, by allowing the sale of Social Security numbers between businesses, or between the government and businesses, among other exceptions.

This legislation protects the privacy of information regardless of the medium through which it is collected. Therefore, it recognizes that both paper and electronic records are important to protecting the identities of Americans.

To minimize the regulatory burden of these privacy rules, the bill sets up a safe harbor so that industries that established approved policies will be exempt from some regulatory requirements of the legislation.

To ensure uniformity of the laws across all 50 states, the bill preempts inconsistent state laws regarding the treatment of non-sensitive information.

I note that this legislation is modeled on the California Financial Information Privacy Act, which gives consumers the right to opt-out before financial companies share their most intimate data. The plan is a good one for Californians, and it is a good one for all Americans. The fact that the California law is under assault in the courts makes it all the more vital that the uniform, national standards I introduce today becomes law.

I want to give a sense of why this legislation is so necessary. Recent statistics on the growth of identity theft show we have no time to waste in protecting potentially sensitive information.

For years, identity theft has topped the list of complaints reported to the Federal Trade Commission. In 2003, the Commission received over half a million such complaints, about 42 percent of the total. While the FTC will not report its numbers for 2004 until early February, I unfortunately expect to again see identity theft as the cause of the most complaints.

According to a 2003 report from the FTC, 10 million Americans discovered that year their identities had been stolen. The report also stated that consumers have to spend an average of 30 hours to clear their name; The Identity Theft Resource Center puts the number at 175 hours. And as Attorney General John Ashcroft said last August, “Identity theft costs the nation’s businesses nearly $50 billion a year in fraudulent transactions and often involves coordinated criminal conduct.”

My own State, California, has more victims of identity theft than any other state. The FTC recorded 39,452 complaints of identity theft cases in 2004 in California alone.

But the numbers tell only part of the story. More important are the individual people whose lives have been devastated by identity theft. Let me tell you one story that I find particularly disturbing:

Eric Drew was a patient in a hospital receiving a bone marrow transplant. Yet unbeknownst to him, a worker in the hospital had stolen Drew's identity, and had taken advantage of this sick patient. As the Associated Press reported, “Drew said that while he was lying in a hospital bed, dying from cancer and weak from massive doses of chemotherapy, he began to get mail thanking him for opening accounts he knew nothing about.” In this case, luckily, the criminal was caught and convicted.

Since I introduced this legislation for the first time in the 108th Congress, there are millions more stories like this one.

Indeed, there are also new common methods of identity theft. There has been a massive upswing in the phenomenon known as “Phishing,” in which criminals send emails to people, spoofed to fraudulently look like banks and other financial institutions. These emails are designed to steal from the unwitting consumers, but to literally lock them out of their own accounts. This one sort of identity theft has, according to a December study from e-mail security company MessageLabs, increased by almost tenfold over the last year.

Given the grave risks that technology poses to our privacy, it is our responsibility to start taking action. This is especially the case for older Americans, who are disproportionately vulnerable to identity theft, as I tried to highlight last year by cosponsoring the “Protecting Older Americans From Fraud Month” resolution last October.

I would like to highlight some of the key provisions of this legislation.

For financial information this legislation tightens the privacy provisions of the Financial Services Modernization Act, commonly known as the Gramm-Leach-Bliley Act. Under Gramm-Leach-Bliley, a bank can share a customer's personal information with other companies so long as it gives consumers notice and the right to opt-out of the data sharing.

The problem with the prevailing opt-out is that most people throw away their privacy notices from banks along with the rest of the unrelenting pile of commercial solicitations they receive. Since the passage of Gramm-Leach-Bliley, banks have sent out over one billion privacy notices.

According to available published information, fewer than 5 percent of bank customers have opted out of sharing their personal information, and for many financial institutions, the response rate has been less than one percent.

Accordingly, this legislation prohibits the sale or disclosure of sensitive personal financial information to third parties unless the consumer affirmatively consents or opts in—the burden thus shifts off of the consumer.

This legislation also toughens Federal financial privacy laws for affiliate-sharing and joint-marketing. An affiliate is a company that is linked by common ownership with another company. Under Federal law, a bank can share with affiliates or joint marketing partners, regardless if the consumer wants this information shared.

This legislation would require that banks give consumers the option of opting out of the sharing of their personal financial information with the bank's affiliates or joint partners. I would also like to describe several other key components of the financial privacy section.
The bill prohibits banks from denying a customer financial product or financial service just because the customer chooses to not disclose his personal information to third parties, affiliates, or joint venture partners. However, the bill does allow banks to offer incentives to customers to encourage them to permit the sharing of their personal information.

Additionally, the bill permits banks to disclose, but not sell, personal information of third parties for vital public interest purposes such as identifying or locating missing and abducted children, witnesses, criminals and fugitives. Health information is only used if the patient consents. This is a crucial step to protect what is truly our most intimate information.

This legislation would preserve the privacy of health information where the information is sold. Any business associate, life insurer, school or non-covered entity trying to sell or market protected health information would, like covered entities, have to get the patient’s prior consent. This is the strongest level of protection under this bill.

The Driver’s Privacy Protection Act, DPPA was amended in 2000 to offer some meaningful protections for drivers’ privacy. For example, under the DPPA, a State Department of Motor Vehicles must obtain the prior consent (opt-in) of the driver before ‘‘highly sensitive information’’ is defined as a physical copy of a driver’s license, a Social Security number, medical or disability information, and other information can be disclosed to a third party.

However, loopholes remain. Other sensitive information found on a driver’s license is not equal protection.

This legislation would expand the definition of ‘‘highly sensitive information’’ to include a physical copy of a driver’s license, the driver identification number, birth date, information on the driver’s physical characteristics and any biometric identifiers, such as a fingerprint, that are found on the driver’s license.

Thus, this bill would ensure consumers have control over how their motor vehicle records and driver’s license data are used.

I would like to take a moment to highlight the Social Security number section of this legislation. I have also introduced a stand-alone bill, the ‘‘Social Security Number Misuse Prevention Act of 2005.’’

It is crucial to protect Social Security numbers because Social Security numbers are the key to a person’s identity. Many identity theft cases start with the theft of a Social Security number. Once a thief has access to a victim’s Social Security number, it is only a short step to acquiring credit cards, driver’s licenses, or other crucial identification documents.

This legislation bars the sale or display of Social Security numbers to the public except in a very narrow set of circumstances. In general display or sale is permitted only if the Social Security number holder affirmatively consents or if there are compelling public safety needs. Government entities will have to redact Social Security numbers from electronic records that are readily available to the public on the Internet. If these governments will no longer be permitted to use the Social Security number as the default driver’s license number.

The legislation, however, recognizes that some industries rely on Social Security numbers to exchange information for certain transactions.

Thus, the bill directs the Attorney General to develop regulations allowing for the sale or purchase of Social Security Numbers to facilitate business-to-business and business-to-government transactions, so long as businesses put appropriate safeguards in place and do not permit public access to the number.

This legislation codifies steps Congress can take to protect citizens from identity thieves and other predators of personal information.

It restores to an individual more control over her most sensitive personal information, such as Social Security numbers, health information, and financial information. It also sets reasonable guidelines for businesses that handle our personal information every day. Every American has a fundamental right to privacy, no matter how fast our technology grows or changes. Social Security numbers are readily available to the public on the Internet. If these governments will no longer be permitted to use the Social Security number as the default driver’s license number.

I would like to take this opportunity to thank all my colleagues who co-sponsored this legislation. It would not have been possible without your support.

I ask unanimous consent that the text of the legislation be printed in the RECORD.
IN GENERAL.—It is unlawful for a commercial entity to collect personally identifiable information and disclose such information to any nonaffiliated third party for marketing purposes or sell such information to any nonaffiliated third party, unless the commercial entity provides—

(A) notice to the individual to whom the information is provided in accordance with the requirements of subsection (b); and

(B) an opportunity for such individual to restrict the disclosure or sale of such information.

(2) EXCEPTION.—A commercial entity may collect personally identifiable information and use such information to market to potential customers such entity’s product.

(3) NOTICE.—(A) A notice under subsection (a) shall contain statements describing the following:

(i) The identity of the commercial entity collecting the personally identifiable information.

(ii) The types of personally identifiable information that are being collected on the individual.

(iii) How the commercial entity may use such information.

(B) A description of the categories of potential recipients of such personally identifiable information.

(C) Whether the individual is required to provide personally identifiable information in order to do business with the commercial entity.

(D) How an individual may decline to have such personally identifiable information used or sold as described in subsection (a).

(2) TIME OF NOTICE.—Notice shall be conveyed prior to the sale or use of the personally identifiable information as described in subsection (a) in such a manner as to allow the individual a reasonable period of time to consider the notice and limit such sale or use.

(3) MEDIUM OF NOTICE.—The medium for providing notice must be—

(A) the same medium in which the personally identifiable information is or will be collected, or a medium approved by the individual; or

(B) in the case of oral communication, notice may be conveyed orally or in writing.

(4) REMOVAL OF NOTICE.—The notice shall be clear and conspicuous.

(c) OPT-OUT.—(1) HEALTHCARE TO OPT-OUT OF SALE OR MARKETING.—The opportunity provided to limit the sale of personally identifiable information to nonaffiliated third parties or the disclosure of such information for marketing purposes, shall be easy to use, accessible and available in the medium the information is collected, or in a medium approved by the individual.

(2) DURATION OF LIMITATION.—An individual’s limitation on the sale or marketing of personally identifiable information shall be considered granted, unless otherwise specified by the individual.

(3) REVOCA TION OF CONSENT.—After an individual grants consent to the use of that individual’s personally identifiable information, the individual may revoke the consent at any time, except to the extent that the commercial entity has taken action in reliance thereon. The commercial entity shall provide the individual an opportunity to revoke consent that is easy to use, accessible, and available in the medium the information was or is collected.

(4) NOT APPLICABLE.—This section shall not apply to disclosure of personally identifiable information.

A commercial entity may not be held to have violated any provision of this title if such entity complies with self-regulatory guidelines that—

(1) are issued by seal programs or representatives of the marketing or online industries or by any other person; and

(2) are approved by the Federal Trade Commission.

(3) OTHER ACTS.—Nothing contained in this title shall preclude a violation of section 101 if such agency submits a written request to the Commission to enforce such violations and includes in such request—

(1) a description of the entities regulated by such agency that will be subject to the provisions of section 101; and

(2) a list of proposed rules that such agency shall use in regulating such entities and enforcing section 101.

(4) ACTIONS BY THE COMMISSION.—Absent transfer of enforcement authority to a Federal agency under subsection (c), the Federal Trade Commission shall prevent any person from violating section 101 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as provided to such Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Any entity that violates section 101 is subject to the penalties and entitled to the privileges and immunities provided in such Act. The Commission, after public comment has been received, may promulgate rules in accordance with section 5 of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) RELATIONSHIP TO OTHER LAWS.—Nothing contained in this title shall be construed to restrict commercial entities from obtaining or disclosing personally identifying information from public records.

(c) CONSTRUCTION.—Nothing contained in this title shall be construed to restrict commercial entities from obtaining or disclosing personally identifying information from public records.

(d) ENFORCEMENT.—(1) IN GENERAL.—In general, a commercial entity or department providing financial assistance to any entity required to comply with section 101 of this Act shall issue regulations requiring that such entity comply with such section or forfeit some or all of such assistance. Such regulations shall prescribe sanctions for noncompliance that are necessary to require that such department or agency provide notice of failure to comply with such section prior to any action being taken against such recipient, and require a determination be made prior to any action being taken against such recipient that compliance cannot be secured by voluntary means.

(2) FEDERAL FINANCIAL ASSISTANCE.—The term “Federal financial assistance” means assistance through a grant, cooperative agreement, loan, or contract other than a contract of insurance or guaranty.

SEC. 103. SAFE HARBOR.

A commercial entity may not be held to have violated any provision of this title if such entity complies with self-regulatory guidelines that—

(1) are issued by seal programs or representatives of the marketing or online industries or by any other person; and

(2) are approved by the Federal Trade Commission.

(3) OTHER ACTS.—Nothing contained in this title shall be construed to restrict commercial entities from obtaining or disclosing personally identifying information from public records.

(d) ENFORCEMENT.—(1) IN GENERAL.—In general, a commercial entity or department providing financial assistance to any entity required to comply with section 101 of this Act shall issue regulations requiring that such entity comply with such section or forfeit some or all of such assistance. Such regulations shall prescribe sanctions for noncompliance that are necessary to require that such department or agency provide notice of failure to comply with such section prior to any action being taken against such recipient, and require a determination be made prior to any action being taken against such recipient that compliance cannot be secured by voluntary means.

(2) FEDERAL FINANCIAL ASSISTANCE.—The term “Federal financial assistance” means assistance through a grant, cooperative agreement, loan, or contract other than a contract of insurance or guaranty.
(B) a home or other physical address, including the street name, zip code, and name of a city or town;
(C) an e-mail address;
(D) a telephone number;
(E) a photograph or other form of visual identification;
(F) a birth date, birth certificate number, or place of birth for that person;
(G) information concerning the individual that is combined with any other identifier in this paragraph.

Prohibited.—In this section:

(1) Display, sale, or purchase of social security numbers

(a) Definitions.—In this section:

(4) The display, sale, or purchase of social security numbers

(b) Limitation on display, sale, or purchase

(2) for a public health purpose, including

(c) Procedures for consent.—In order for consent to exist under subsection (b) or (c), the person disclosing or seeking to display, selling or attempting to sell, or purchasing or attempting to purchase, an individual’s social security number shall—

(1) inform the individual of the general purpose for which the number will be used, the types of persons to whom the number may be available, and a scope of transactions permitted by the consent; and

(2) obtain the affirmatively expressed consent (electronically or in writing) of the individual.

(5) if the display, sale, or purchase of the number

(d) Limitation on sale, or purchase

(3) for a national security purpose;

(5) when the transmission of the number

(4) for a law enforcement purpose, including

(c) Effective date.—The amendments made by this section shall take effect on the date that is 30 days after the date on which the date of enactment of this section, except

(3) required, authorized, or excepted under any Federal law;

(2) for a public health purpose, including

(a) Definitions.—In this section:

(5) when the transmission of such a number is part of a data matching program involving a Federal, State, or local agency or

(7) if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program

(6) if the transmission of such a number is incidental to, and in the course of, the sale, lease, franchising, or merger of all, or a portion of, a business;

(4) if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program

(2) the transmission of such a number is part of a data matching program involving a Federal, State, or local agency or

(3) if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program

(6) if the transmission of such a number is part of a data matching program involving a Federal, State, or local agency or

(2) for a public health purpose, including

(3) for a national security purpose;

(4) for a law enforcement purpose, including

(a) Definitions.—In this section:

(b) Limitation on display, sale, or purchase

(2) for a public health purpose, including

(c) Effective date.—The amendments made by this section shall take effect on the date that is 30 days after the date on which

(5) when the transmission of such a number is part of a data matching program involving a Federal, State, or local agency or

(3) required, authorized, or excepted under any Federal law;

(2) for a public health purpose, including

(5) if the display, sale, or purchase of the number

(d) Limitation on sale, or purchase

(c) Effective date.—The amendments made by this section shall take effect on the date that is 30 days after the date on which

(3) required, authorized, or excepted under any Federal law;

(2) for a public health purpose, including

(5) when the transmission of such a number is part of a data matching program involving a Federal, State, or local agency or

(4) for a law enforcement purpose, including

(b) Limitation on display, sale, or purchase

(3) for a national security purpose;

(4) for a law enforcement purpose, including

(a) Definitions.—In this section:

(b) Limitation on display, sale, or purchase

(2) for a public health purpose, including

(c) Effective date.—The amendments made by this section shall take effect on the date that is 30 days after the date on which

(3) required, authorized, or excepted under any Federal law;
“(2) Exception for Government Entities Already Placing Public Records on the Internet or in Electronic Form.—Not later than 60 days after the date of enactment of this Act, the Attorney General shall prescribe such rules and regulations as are necessary to promulgate regulations to implement and clarify the uses occurring as a result of an interaction between businesses, government entities, and the public, and to Federal, State, and local governments of complying with the regulations and shall consider the following:

(A) The cost and burden of technology available to a governmental entity to reformat social security numbers on public records for the purpose of displaying or selling such records to the general public.

(B) The cost or burden to the general public, businesses, commercial enterprises, non-profit organizations, and to Federal, State, and local governments of complying with section 1028A with respect to such records.

(C) The benefit to the general public, businesses, commercial enterprises, non-profit organizations, and to Federal, State, and local governments if the Attorney General determines that section 1028A applies to such records.

(d) Harvested Social Security Numbers.—Section 1028A shall apply to any public record of a government entity which contains social security numbers extracted from other public records for the purpose of displaying or selling such records to the general public.

(e) Attorney General Rulemaking on Paper Records.—(1) In general.—Not later than 60 days after the date of enactment of this Act, the Attorney General shall determine the feasibility and advisability of applying section 1028A to records listed in paragraph (2) that appear on paper or on another non-electronic medium.

(2) List of paper and other non-electronic records.—The records listed in this paragraph are as follows:

(A) Professional or occupational licenses.

(B) Marriage licenses.

(C) Birth certificates.

(D) Employee identification cards.

(E) Other short public documents that display a social security number in a routine and consistent manner on the face of the document.

(3) Criteria for Attorney General Review.—In determining whether section 1028A should apply to the records listed in paragraph (2), the Attorney General shall consider the following:

(A) The cost or burden to the general public, businesses, commercial enterprises, non-profit organizations, and to Federal, State, and local governments of complying with section 1028A.

(B) The benefit to the general public, businesses, commercial enterprises, non-profit organizations, and to Federal, State, and local governments if the Attorney General were to determine that section 1028A should apply to such records.

(4) Effective Date.—The regulations and shall consider the following:

(A) A review of the uses of social security numbers in non-federal public records.

(B) A review of the manner in which public records are stored (with separate reviews for both paper records and electronic records);

(C) A review of the advantages or utility of public records that contain social security numbers, including the utility for law enforcement, and for the promotion of homeland security;

(D) A review of the disadvantages or drawbacks of public records that contain social security numbers, including criminal activity, compromised personal privacy, or threats to homeland security;

(E) The costs and benefits for State and local governments of removing social security numbers from public records, including a review of current technologies and procedures for removing social security numbers from public records; and

(F) An assessment of the benefits and costs to businesses, their customers, and the general public of prohibiting the display of social security numbers on public records (with separate reviews for both paper records and electronic records).

(5) Effective Date.—The prohibition with respect to electronic versions of new classes of public records under section 1028B(b) of title 18, United States Code (as added by subsection (a)(1)) shall not take effect until the date that is 60 days after the date of enactment of this Act.

SEC. 204. RULEMAKING AUTHORITY OF THE ATTORNEY GENERAL.

(a) In general.—Except as provided in subsection (b), the Attorney General may prescribe such rules and regulations as the Attorney General deems necessary to carry out the provisions of section 1028A of title 18, United States Code (as added by section 202(a)(1)).

(b) Display, Sale, or Purchase Rulemaking With Respect to Interactions Between Businesses, Government Entities, and Individuals.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall prescribe such rules and regulations as are necessary to promulgate regulations to implement and clarify the uses occurring as a result of an interaction between businesses, government entities, and the public, and to Federal, State, and local governments of complying with the regulations and shall consider the following:

(A) A review of the uses of social security numbers in non-federal public records.

(B) A review of the manner in which public records are stored (with separate reviews for both paper records and electronic records);

(C) A review of the advantages or utility of public records that contain social security numbers, including the utility for law enforcement, and for the promotion of homeland security;

(D) A review of the disadvantages or drawbacks of public records that contain social security numbers, including criminal activity, compromised personal privacy, or threats to homeland security;

(E) The costs and benefits for State and local governments of removing social security numbers from public records, including a review of current technologies and procedures for removing social security numbers from public records; and

(F) An assessment of the benefits and costs to businesses, their customers, and the general public of prohibiting the display of social security numbers on public records (with separate reviews for both paper records and electronic records).

(2) Effective Date.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall prescribe such rules and regulations as the Attorney General deems necessary to carry out the provisions of section 1028A of title 18, United States Code (as added by section 202(a)(1)).

(3) report to Congress.—Not later than 1 year after the date of enactment of this Act, the Attorney General shall submit to Congress a report on the study conducted under paragraph (1). The report shall include a detailed description of the activities and results of the study and recommendations for such legislative action as the Attorney General determines to be appropriate.

(4) Definitions.—For purposes of this section, the term "social security number" means a number issued by the Commissioner of Social Security, the Chairman of the Federal Trade Commission, and such other heads of Federal agencies as the Attorney General determines appropriate, shall conduct such rulemaking procedures in accordance with subchapter II of chapter 5 of title 5, United States Code (as amended by title V of this Act), and shall consider the following:

(A) The benefit to a particular business, to customers of the business, and to the general public of displaying, sale, or purchase of such individual’s social security number.

(B) The costs that businesses, customers, and the general public may incur as a result of prohibitions on the display, sale, or purchase of social security numbers.

(C) The risk that a particular business practice will promote the use of a social security number to commit fraud, deception, or theft.

(D) The presence of adequate safeguards and procedures to prevent—

(i) misuse of social security numbers by employers, businesses, and the general public of complying with the regulations and shall consider the following:

(A) The use of social security numbers by employers, businesses, and the general public to commit fraud, deception, or theft.

(B) The presence of adequate safeguards and procedures to prevent—

(i) misuse of social security numbers by employers, businesses, and the general public to commit fraud, deception, or theft.

(ii) inappropriation, inappropriation, or inappropriation of social security numbers by the general public to commit fraud, deception, or theft.

(iii) the general public to commit fraud, deception, or theft.

(iv) disclosure of social security numbers by the general public to commit fraud, deception, or theft.

(v) disclosure of social security numbers by the general public to commit fraud, deception, or theft.

(vi) inappropriation of social security numbers by the general public to commit fraud, deception, or theft.

(vii) disclosure of social security numbers by the general public to commit fraud, deception, or theft.

(viii) the general public to commit fraud, deception, or theft.

(ix) the general public to commit fraud, deception, or theft.

(x) the general public to commit fraud, deception, or theft.

(xi) the general public to commit fraud, deception, or theft.

(xii) the general public to commit fraud, deception, or theft.

(xiii) the general public to commit fraud, deception, or theft.

(xiv) the general public to commit fraud, deception, or theft.

(xv) the general public to commit fraud, deception, or theft.

(xvi) the general public to commit fraud, deception, or theft.

(xvii) the general public to commit fraud, deception, or theft.

(xviii) the general public to commit fraud, deception, or theft.

(xix) the general public to commit fraud, deception, or theft.

(xx) the general public to commit fraud, deception, or theft.

(2) Prohibition of Use of Social Security Account Numbers on Checks Issued for Payment by Governmental Agencies.—

(A) in general.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 616(c)(2)(C)) is amended by adding at the end the following:

(B) Effective date.—The amendment made by this subsection shall apply with respect to violations of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 616(c)(2)(C)), as added by paragraph (1), occurring after the date that is 3 years after the date of enactment of this Act.
SEC. 206. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following:

"SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

"(a) IN GENERAL.—A commercial entity may not require an individual to provide the individual’s social security number when purchasing a commercial good or service unless the entity determines that such disclosure is necessary to verify the identity of the consumer to effect, administer, or enforce the transaction or request or authorized by the consumer, or to prevent fraud.

"(b) APPLICATION OF CIVIL MONEY PENALTIES.—This section shall be deemed to be a violation of section 1129(a)(3)(C).

"(c) APPLICATION OF CRIMINAL PENALTIES.—A violation of this section shall be deemed to be a violation of section 206(a)(8).

"(d) LIMITATION ON CLASS ACTIONS.—No class action alleging a violation of this section shall be maintained under this section by an individual or any private party in Federal or State court.

"(e) STATE ATTORNEY GENERAL ENFORCEMENT.—

"(1) IN GENERAL.—

"(A) CIVIL ACTIONS.—In any case in which the Attorney General of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that is prohibited under this section, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

"(i) enjoin that practice;

"(ii) obtain a court order with such section;

"(iii) obtain damages, restitution, or other compensation on behalf of residents of the State;

"(iv) obtain such other relief as the court may consider appropriate.

"(B) NOTICE.—

"(i) IN GENERAL.—Before filing an action under subparagraph (A), the attorney general of the State involved shall provide notice to the Attorney General—

"(I) written notice of the action; and

"(II) a copy of the complaint for the action.

"(ii) EXEMPTION.—

"(I) IN GENERAL.—Clause (i) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the State attorney general determines that it is not feasible to provide the notice described in subparagraph paragraph before the filing of the action.

"(III) NOTIFICATION.—With respect to an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Attorney General at the same time as the State attorney general files the action.

"(2) INTERVENTION.—

"(A) IN GENERAL.—On receiving notice under paragraph (1)(B), the Attorney General shall have the right to intervene in the action that is the subject of the notice.

"(B) EFFECT OF INTERVENTION.—If the Attorney General intervenes in the action under paragraph (A), the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

"(C) CONSTRUCTION.—For purposes of bringing an action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

"(I) conduct investigations;

"(II) obtain documents and other evidence;

"(III) conduct a hearing; and

"(IV) obtain such other relief as the court may authorize.

"(3) LAWS AND REGULATIONS.—

"(A) IN GENERAL.—In any action brought under paragraph (1), the Attorney General may obtain an order that the defendant—

"(i) is an inhabitant; or

"(ii) may be served with process.

"(B) SUNSET.—This section shall not apply on or after the date that is 1 year after the date of enactment of this Act.

"(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is commenced by the Attorney General of the United States, the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

"(5) COSTS.—In any action under this section, the United States shall be entitled to recover its costs of prosecution and any reasonable fees paid to experts and consultants.

"(6) CONSTRUCTION.—In this section—

"(A) the term ‘attorney general’ means the attorney general of a State;

"(B) the term ‘court’ includes any court of the United States that has jurisdiction to entertain an action described in paragraph (1); and

"(C) the term ‘social security’ means social security numbers issued by the Social Security Administration.

"SEC. 207. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

"(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

"(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a-8(a)(1)) is amended—

"(A) by striking ‘who’ and inserting ‘who or’;

"(B) by striking ‘makes’ and all that follows through ‘shall be subject to’ and inserting the following:

"‘(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;’

"(C) by striking ‘false or misleading’ and all that follows through ‘subject to’ and inserting the following:

"‘false or misleading or that the withholding of such disclosure is misleading, shall be subject to’;

"(2) LIMITATION ON CLASS ACTIONS.—The second sentence of section 1129(a)(2)(A) of the Social Security Act (42 U.S.C. 1320a-8(a)(2)(A)) is amended—

"(A) by striking ‘who’ and inserting ‘who or’;

"(B) by striking ‘makes’ and all that follows through ‘shall be subject to’ and inserting the following:

"‘(C) by striking ‘false or misleading’ and all that follows through ‘subject to’ and inserting the following:

"‘false or misleading or that the withholding of such disclosure is misleading, shall be subject to’;

"(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is commenced by the Attorney General of the United States, the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

"(5) CONSTRUCTION.—In this section—

"(A) the term ‘attorney general’ means the attorney general of a State;

"(B) the term ‘court’ includes any court of the United States that has jurisdiction to entertain an action described in paragraph (1); and

"(C) the term ‘social security’ means social security numbers issued by the Social Security Administration.

"SEC. 208. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

"(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

"(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a-8(a)(1)) is amended—

"(A) by striking ‘who’ and inserting ‘who or’;

"(B) by striking ‘makes’ and all that follows through ‘shall be subject to’ and inserting the following:

"‘(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;’

"(C) by striking ‘false or misleading’ and all that follows through ‘subject to’ and inserting the following:

"‘false or misleading or that the withholding of such disclosure is misleading, shall be subject to’;

"(2) LIMITATION ON CLASS ACTIONS.—The second sentence of section 1129(a)(2)(A) of the Social Security Act (42 U.S.C. 1320a-8(a)(2)(A)) is amended—

"(A) by striking ‘who’ and inserting ‘who or’;

"(B) by striking ‘makes’ and all that follows through ‘shall be subject to’ and inserting the following:

"‘(C) by striking ‘false or misleading’ and all that follows through ‘subject to’ and inserting the following:

"‘false or misleading or that the withholding of such disclosure is misleading, shall be subject to’;

"(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is commenced by the Attorney General of the United States, the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

"(5) CONSTRUCTION.—In this section—

"(A) the term ‘attorney general’ means the attorney general of a State;

"(B) the term ‘court’ includes any court of the United States that has jurisdiction to entertain an action described in paragraph (1); and

"(C) the term ‘social security’ means social security numbers issued by the Social Security Administration.

"SEC. 209. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

"(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

"(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a-8(a)(1)) is amended—

"(A) by striking ‘who’ and inserting ‘who or’;

"(B) by striking ‘makes’ and all that follows through ‘shall be subject to’ and inserting the following:

"‘(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;’

"(C) by striking ‘false or misleading’ and all that follows through ‘subject to’ and inserting the following:

"‘false or misleading or that the withholding of such disclosure is misleading, shall be subject to’;

"(2) LIMITATION ON CLASS ACTIONS.—The second sentence of section 1129(a)(2)(A) of the Social Security Act (42 U.S.C. 1320a-8(a)(2)(A)) is amended—

"(A) by striking ‘who’ and inserting ‘who or’;

"(B) by striking ‘makes’ and all that follows through ‘shall be subject to’ and inserting the following:

"‘(C) by striking ‘false or misleading’ and all that follows through ‘subject to’ and inserting the following:

"‘false or misleading or that the withholding of such disclosure is misleading, shall be subject to’;

"(4) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is commenced by the Attorney General of the United States, the Attorney General shall have the right to be heard with respect to any matter that arises in that action.

"(5) CONSTRUCTION.—In this section—

"(A) the term ‘attorney general’ means the attorney general of a State;

"(B) the term ‘court’ includes any court of the United States that has jurisdiction to entertain an action described in paragraph (1); and

"(C) the term ‘social security’ means social security numbers issued by the Social Security Administration.
(b) APPLICATION OF CIVIL MONEY PENALTIES TO ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a-8(a)), as amended by subsection (a)(1), (2), and (3), shall apply with respect to any violation of such section if—

(1) by redesignating paragraph (2) as paragraph (4);

(2) by redesigning the last sentence of paragraph (2) and inserting such paragraph after paragraph (1); and

(3) by inserting after paragraph (2) (as so redesignated) the following:

"...any person (including an organization, agency, or other entity) who—

(A) uses a social security account number that such person knows or should know has been requested or obtained by the Commissioner of Social Security (in an exercise of authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Commissioner by any person;

(B) falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to any individual, when such person knows or should know that such number is not the social security account number assigned by the Commissioner to such individual;

(C) offers a social security card issued by the Commissioner of Social Security, or possesses such a card with intent to alter it;

(D) knowingly displays, sells, or purchases a card that is, or purports to be, a card issued by the Commissioner of Social Security, or possesses such a card with intent to display, purchase, or sell it;

(E) counterfeits a social security card, or possesses a counterfeit social security card with intent to display, sell, or purchase it;

(F) compels the disclosure of, or knowingly displays, sells, or purchases the social security account number of any person in violation of the laws of the United States;

(G) with intent to deceive the Commissioner of Social Security as to such person’s true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner with respect to any information required by the Commissioner in connection with the establishment and maintenance of the records provided for in section 205(c)(2);

(H) offers, for a fee, to acquire for any individual, or to assist in acquiring for any individual, social security account number or a number which purports to be a social security account number;

(I) being an officer, employee of a Federal, State, or local agency in possession of any individual’s social security account number, willfully acts or fails to act so as to cause a violation by such agency of clause (v) or (x) of section 205(c)(2), shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each violation. Any such act shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from such violation, of not more than twice the amount of any benefits or payments paid as a result of such violation.

(c) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(b)(2)(B) of the Social Security Act (42 U.S.C. 1320a-8(e)(2)(B)) is amended by striking "in the case of amounts recovered arising out of a determination relating to title VIII or XVI, the case of any other amounts recovered under this section."

(d) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of the Social Security Act (42 U.S.C. 1320a-8(e)(3)(A)) is amended by striking "charging fraud or false statements".

(2) Section 1129(b)(1) of the Social Security Act (42 U.S.C. 1320a-8(c)(1)) is amended by striking "and representations" and inserting "; representations, or actions which...

(3) Section 205(c)(2) of the Social Security Act (42 U.S.C. 1320a-8(e)(1)(A)) is amended by striking "statement or representation referred to in subsection (a) was made" and inserting "statement or representation occurred".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to violations of sections 1129 and 1129A of the Social Security Act (42 U.S.C. 1320a-8 and 1320a-8a), as amended by paragraph (1), committed after the date of enactment of this Act.

(2) VIOLATIONS BY GOVERNMENT AGENTS IN POSSESSION OF SOCIAL SECURITY NUMBERS.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 1320a-8(a)(3)(1)), as added by subsection (b), shall apply with respect to violations of that section occurring on or after the effective date described in section 202(c).

SEC. 208. CRIMINAL PENALTIES FOR THE MISUSE OF A SOCIAL SECURITY NUMBER.

(a) PROHIBITION OF WRONGFUL USE AS PERSONAL IDENTIFICATION NUMBER.—No person may obtain any individual’s social security account number other than by sub-...
‘‘(1) the sale or other disclosure of nonpublic personal information to an affiliate or a nonaffiliated third party—

‘‘(A) as necessary to effect, administer, or enforce a financial product or financial service authorized by the consumer to whom the information pertains, or in connection with—

‘‘(i) servicing or processing a financial product or service requested or authorized by the consumer;

‘‘(ii) maintaining or servicing the account of the consumer with the financial institution or the private label credit card program or other extension of credit on behalf of such entity; or

‘‘(iii) the sale or other disclosure of nonpublic personal information to an affiliate or other entity as part of a primary market sale or other sale, merger, transfer, or exchange of all or a portion of a business or operating unit of the covered entity, as those terms are defined in section 502(e)(1)(C) and inserting ‘‘502(e)(1)(C)’’ and inserting ‘‘502(g)(13)(A)(ii)’’;’’

SEC. 305. REGULATORY AUTHORITY.

Not later than 6 months after the date of enactment of this Act, the agencies referred to in section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) shall promulgate final regulations in accordance with that section to carry out the amendments made by this Act.

SEC. 306. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 6 months after the date of enactment of this Act.

TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION

SEC. 401. DEFINITIONS.

In this title:

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘‘business associate’’ means, with respect to a covered entity or a person—

(i) on behalf of such covered entity or of an organized health care arrangement in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of—

(I) a function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

(ii) any other function or activity regulated under subchapter C of title 45, Code of Federal Regulations; or

(B) in connection with a judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes, as authorized by law.

‘‘(b) DENIAL OF SERVICE PROHIBITED.—A financial institution may not deny any consumer access to a financial product or a financial service as a result of the refusal by the consumer to grant consent to disclosure under this section or the exercise by the consumer of a nondisclosure option under this section, except that nothing in this subsection may be construed to prohibit a financial institution from offering incentives to elicit consumer consent to the use of his or her nonpublic personal information.’’.

(b) REPEAL OF REGULATORY EXEMPTION AUTHORITY.—Section 504 of the Gramm-Leach-Bliley Act (15 U.S.C. 6804) is amended—

(1) by striking subsection (b);

(2) by striking ‘‘(a) REGULATORY AUTHORITY.’’;

(3) by redesigning paragraphs (1), (2), and (3) as subsections (a), (b), and (c), respectively, and moving the margins 2 ems to the left; and

(4) by striking ‘‘paragraph (1)’’ and inserting ‘‘paragraph (a)’’.

SEC. 304. CONFORMING AMENDMENTS.

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 503(b)(1) (15 U.S.C. 6803(b)(1))—

(A) by inserting ‘‘affiliates’’ and before ‘‘nonaffiliated’’;

(B) in subparagraph (A), by striking ‘‘502(e)’’ and inserting ‘‘502(g)’’; and


SEC. 305. REGULATORY AUTHORITY.

Not later than 6 months after the date of enactment of this Act, the agencies referred to in section 504(a)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)) shall promulgate final regulations in accordance with that section to carry out the amendments made by this Act.

SEC. 306. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 6 months after the date of enactment of this Act.

TITLE IV—LIMITATIONS ON THE PROVISION OF PROTECTED HEALTH INFORMATION

SEC. 401. DEFINITIONS.

In this title:

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘‘business associate’’ means, with respect to a covered entity or a person—

(i) on behalf of such covered entity or of an organized health care arrangement in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, performs, or assists in the performance of—

(I) a function or activity involving the use or disclosure of individually identifiable health information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or

(ii) any other function or activity regulated under subchapter C of title 45, Code of Federal Regulations; or

(B) in connection with a judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes, as authorized by law.

‘‘(b) DENIAL OF SERVICE PROHIBITED.—A financial institution may not deny any consumer access to a financial product or a financial service as a result of the refusal by the consumer to grant consent to disclosure under this section or the exercise by the consumer of a nondisclosure option under this section, except that nothing in this subsection may be construed to prohibit a financial institution from offering incentives to elicit consumer consent to the use of his or her nonpublic personal information.’’. 
health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of individually identifiable health information from the covered entity or arrangement to the person from another business associate of such covered entity or arrangement, to the person.

(B) LIMITATIONS.—(i) A covered entity participating in an organized health care arrangement that performs a function or activity as described by subparagraph (A)(i) for or on behalf of the covered entity or health care arrangement, or that provides a service as described in subparagraph (A)(ii) to or for such organized health care arrangement, does not, simply through its performance of such function or activity the provision of such service, become a business associate of other covered entities participating in such organized health care arrangement.

(ii) LIMITATION.—A covered entity may be a business associate of another covered entity.

(2) COVERED ENTITY.—The term ‘covered entity’ means—

(A) a health plan;

(B) a health care clearinghouse;

(C) a health care provider who transmits any health information in electronic form in connection with a transaction covered by any 160 through 161 of title 45, Code of Federal Regulations.

(3) DISCLOSURE.—The term ‘disclosure’ means the release, transfer, provision of access to, or divulgation in any other manner of information outside the entity holding the information.

(4) EMPLOYER.—The term ‘employer’ has the meaning given that term in section 301(d) of the Internal Revenue Code of 1986.

(5) GROUP HEALTH PLAN.—The term ‘group health plan’ includes an insurance company, insurance issuer (as defined in section 223 of the Internal Revenue Code of 1986), including any other person or organization that provides health benefits to or on behalf of 50 or more participants (as defined in section 3(37) of Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(37)), including items and services paid for as medical care, to employees or their dependents directly or through insurance, reimbursement, or indemnification.

(i) A health plan or employee of any agency or authority of the United States, a territory, a political subdivision of a State, or an Indian tribe, or a person performing services under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or Indian tribe, that the plan provides, or pays for, the cost of medical care, or any organization, including the employees and agents of such public agency or Indian tribe, that the plan provides, or pays for, health care in the normal course of business.

(ii) A health plan or organization that is other than providing, or paying the cost of, health care, that is authorized by law to oversee the health care in the same manner and to the same extent as such an HMO.

The term ‘health insurance issuer’ means an individual or group plan that provides, or pays for the cost of, any policy, plan, or program to the extent that it provides, or pays for the cost of, health care for the purpose of offering or providing health benefits to the employees of 2 or more employers.

The term ‘health plan’ includes—

(i) any policy, plan, or program to the extent that it provides, or pays for the cost of, health care for the purpose of offering or providing health benefits to the employees of 2 or more employers.

(ii) a health insurance issuer, employer, or government program in which the employee or any agency or authority of the United States Code;

(iii) the health care program for active military personnel under title 10, United States Code;

(iv) an issuer of a Medicare supplemental policy (as defined in section 1882 of the Social Security Act, 42 U.S.C. 1395cc(g)(1));

(v) an issuer of a Medicare policy, excluding a nursing home fixed-amount indemnity policy;

(vi) an employee welfare benefit plan or any other arrangement that is established or maintained for the purpose of offering or providing health benefits to the employees of 2 or more employers.

(vii) the health care program for active military personnel under title 10, United States Code;

(viii) the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (as defined in section 1727(b) of the Internal Revenue Code of 1986), including the employees and agents of such company.

The term ‘high risk pool’ includes any individual or group plan, or combination of individual or group plans, that is a mechanism of the type described in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg-9)(a)(2); and

(b) excluding—

(i) any policy, plan, or program to the extent that it provides, or pays for the cost of, health care, or whose principal purpose is other than providing, or paying the cost of, health care, or whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.

(15) INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.—The term ‘individually identifiable health information’ means information that is a subset of health information, including demographic information collected from an individual, that—

(A) is created or received by a covered entity or employer; and

(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future physical or mental health or condition of an individual.

(16) LIFE INSURER.—The term ‘life insurer’ means a life insurance company (as defined in section 380A of the Internal Revenue Code of 1986), including the employees and agents of such company.

The term ‘medical care’ includes—

(1) a prescription.

(2) any other provision of health care (as defined in section 1861 of the Social Security Act (42 U.S.C. 1395x), including the employees and agents of such a provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

(3) a combination of such items and services.

The term ‘privacy act’ means—

(A) any policy, plan, or program to the extent that it provides, or pays for the cost of, health care for the purpose of offering or providing health benefits to the employees of 2 or more employers.

(B) an HMO that is a mechanism of the type described in section 2791(a)(2) of the Public Health Service Act (42 U.S.C. 300gg-9)(a)(2); and

(ii) a government-funded program (other than 1 listed in clause (i) through (xvi) of subparagraph (A)), whose principal purpose is other than providing, or paying the cost of, health care, or whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.

The term ‘privacy act’ means—

(A) any policy, plan, or program to the extent that it provides, or pays for the cost of, health care, or whose principal purpose is other than providing, or paying the cost of, health care, or whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.

The term ‘privacy act’ means—

(ii) a government-funded program (other than 1 listed in clause (i) through (xvi) of subparagraph (A)), whose principal purpose is other than providing, or paying the cost of, health care, or whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.

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The term ‘privacy act’ means—

(ii) a government-funded program (other than 1 listed in clause (i) through (xvi) of subparagraph (A)), whose principal purpose is other than providing, or paying the cost of, health care, or whose principal activity is the direct provision of health care to persons, or the making of grants to fund the direct provision of health care to persons.
(17) MARKETING.—The term “marketing” means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

(18) NONCOVERED ENTITY.—The term “noncovered entity” means any person or public or private entity that is not a covered entity, including limited service plan, employer, public health authority, health oversight agency, or law enforcement official, or any person acting as an agent of such entities or persons.

(19) ORGANIZED HEALTH CARE ARRANGEMENT.—The term “organized health care arrangement” means:

(A) a clinically integrated care setting in which individuals typically receive health care from more than 1 health care provider;

(B) an organized system of health care in which more than 1 covered entity participates, and in which the participating covered entities:

(i) hold themselves out to the public as participating in a joint arrangement; and

(ii) participate in joint activities including at least:

(I) utilization review, in which health care decisions by participating covered entities are reviewed by other participating covered entities acting as a third party on their behalf;

(II) quality and improvement activities, in which treatment provided by participating covered entities is assessed by other participating covered entities or by a third party on their behalf; or

(III) payment activities, if the financial risk for delivering health care is shared, in part or in whole, by participating covered entities through the joint arrangement and if protected health information created or received by a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk;

(C) a group health plan and a health insurance issuer or HMO with respect to such group health plan, but only with respect to protected health information created or received by such health insurance issuer or HMO that relates to individuals who are not participants or beneficiaries in such group health plan;

(D) a group health plan and 1 or more other group health plans each of which are maintained by the same plan sponsor; or

(E) the group health plans described in subparagraphs (D)(i) and (D)(ii) with respect to such group health plans, but only with respect to protected health information created or received by such health insurance issuers or HMOs that relates to individuals who are or have been participants or beneficiaries in any of such group health plans.

(20) PROTECTED HEALTH INFORMATION.—(A) In GENERAL.—The term “protected health information” means individually identifiable health information that, except as provided in subparagraph (B), is—

(i) transmitted by electronic media;

(ii) maintained in any medium described in the definition of electronic media in section 162.103 of title 45, Code of Federal Regulations; or

(iii) transmitted or maintained in any other form or medium.

(B) In GENERAL.—The term “protected health information” does not include individually identifiable health information in—


(2) records described in subsection (a)(4)(B)(iv) of that Act; or

(3) employment records held by a covered entity in its role as an employer.

(21) PUBLICITY.—The term “publicity” includes any action taken by a public health authority, health oversight agency, public employee, public health authority, health oversight agency, or law enforcement official, or any person acting as an agent of such entities or persons.

(22) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(23) SALE; SELL; SOLD.—The terms “sale”, “sell”, and “sold”, with respect to protected health information, mean the exchange of such information for anything of value, directly or indirectly, including the licensing, bartering, or renting of such information.

(24) SALE; SELL; SOLD.—The term “sale” means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information with an entity that maintains such information.

(25) WRITING.—The term “writing” means in either a paper-based or computer-based form, including electronic and digital signatures.

(26) W RITING.—The term “writing” means individually identifiable health information that is valid under section 403. When a covered entity is reviewed by other participating covered entities or by a third party on their behalf for the purpose of administering the sharing of financial risk, such information shall be construed as required under this section as required under paragraphs (B) and (C).

(27) PLAIN LANGUAGE.—An authorization described in subsection (a) shall—

(A) contain the name or other specific identification of the person, or class of persons, authorized to sell the information;

(B) contain the name or other specific identification of the person, or class of persons, to whom the information is to be sold;

(C) include a statement that the individual has a right to revoke the authorization in writing and the exceptions to the right to revoke, and a description of the procedure involved in such revocation;

(D) include a statement that the individual has a right to revoke the authorization in writing and the exceptions to the right to revoke, and a description of the procedure involved in such revocation;

(E) be in writing and include the signature of the individual and the date if the authorization is signed by a personal representative of the individual, a description of such representative’s authority to act for the individual; and

(F) include a statement explaining the purpose for which such information is sold.

(28) PLAIN LANGUAGE.—The authorization shall be written in plain language.

(29) NOTICE.—(1) In GENERAL.—The authorization shall include a statement that the individual may—

(A) inspect or copy the protected health information to be sold; and

(B) refuse to sign the authorization.

(2) CONFORMING TO.—The authorization shall provide the individual with a copy of the signed authorization.

SEC. 403. AUTHORIZATION FOR SALE OR MARKETING OF PROTECTED HEALTH INFORMATION BY NONCOVERED ENTITIES.

(a) VALID AUTHORIZATION.—A valid authorization is a document that complies with all requirements of this section. Such authorization may include additional information not required under this section, provided that such information is not inconsistent with the requirements of this section.

(b) DEFUNCT AUTHORIZATION.—An authorization is not valid, if the document submitted has any of the following defects:

(1) The expiration date has passed or the expiration event is known by the noncovered entity to have occurred.

(2) The authorization has not been filled out completely, with all of the elements described in subsections (e) and (f).

(3) The authorization is known by the noncovered entity to have been revoked.

(4) The authorization lacks an element required by subsections (e) and (f).

(5) Any material information in the authorization is known by the noncovered entity to be false.

(c) REVOCATION OF AUTHORIZATION.—An individual may revoke an authorization provided under this section at any time prior to the expiration date, except to the extent that the noncovered entity has taken action in reliance thereon.

(d) DOCUMENTATION.—(1) In GENERAL.—A noncovered entity must document and retain any signed authorization under this section as required under paragraph (2).

(2) STANDARDS.—A noncovered entity shall, if a communication is required by this title to be in writing, maintain such writing, or an electronic copy, as documentation.

(3) RETENTION PERIOD.—A noncovered entity shall retain the documentation required by this section for 6 years from the date of its creation or the date when it last was in effect, whichever is later.

(e) CONTENT OF AUTHORIZATION.—(1) CONTENT.—An authorization described in subsection (a) shall—

(A) contain a description of the information to be sold that identifies such information in a specific and meaningful manner; and

(B) include the name or other specific identification of the person, or class of persons, authorized to sell the information;

(C) include the name or other specific identification of the person, or class of persons, to whom the information is to be sold;

(D) include a statement that the individual has a right to revoke the authorization in writing and the exceptions to the right to revoke, and a description of the procedure involved in such revocation;

(E) include a statement that the individual has a right to revoke the authorization in writing and the exceptions to the right to revoke, and a description of the procedure involved in such revocation;

(F) be in writing and include the signature of the individual and the date if the authorization is signed by a personal representative of the individual, a description of such representative’s authority to act for the individual; and

(G) include a statement explaining the purpose for which such information is sold.

(2) PLAIN LANGUAGE.—The authorization shall be written in plain language.

(f) NOTICE.—(1) In GENERAL.—The authorization shall include a statement that the individual may—

(A) inspect or copy the protected health information to be sold; and

(B) refuse to sign the authorization.

(2) CONFORMING TO.—The authorization shall provide the individual with a copy of the signed authorization.
(g) MODEL AUTHORIZATIONS.—The Secretary, after notice and opportunity for public comment, shall develop and disseminate model written authorizations of the type described in subsection (f) and model statements of the limitations on such authorizations. Any authorization obtained on a model authorization form developed by the Secretary pursuant to this subsection shall not be deemed to satisfy the requirements of this section.

(h) NONCOERCION.—A covered entity or noncovered entity shall not condition the purchase of a product or the provision of a service to an individual based on whether such individual provides an authorization to such entity as described in this section.

SEC. 404. PROHIBITION AGAINST RETALIATION.

A noncovered entity that collects protected health information, may not adversely affect another person, directly or indirectly, because such person has exercised a right under this title, disclosed information relating to a possible violation of this title, or associated with, or assisted, a person in the exercise of a right under this title.

SEC. 405. RULE OF CONSTRUCTION.

The requirements of this title shall not be construed to impose any additional requirements or in any way alter the requirements imposed upon covered entities under parts 160 through 164 of title 45, Code of Federal Regulations.

SEC. 406. REGULATIONS.

(a) IN GENERAL.—The Secretary shall promulgate regulations implementing the provisions of this title.

(b) TIMEFRAME.—Not later than 1 year after the date of enactment of this Act, the Secretary shall publish proposed regulations in the Federal Register. With regard to such proposed regulations, the Secretary shall provide an opportunity for submission of comments by interested persons during a period of less than 60 days. Not later than 2 years after the date of enactment of this Act, the Secretary shall publish final regulations in the Federal Register.

SEC. 407. ENFORCEMENT.

(a) IN GENERAL.—A covered entity or noncovered entity that knowingly violates section 162 shall be subject to a civil money penalty under section 164.

(b) NONCOERCION.—The civil money penalty described in subsection (a) shall not exceed $100,000. In determining the amount of any penalty to be assessed under this section, the Secretary shall take into account the prevalence of such violations and take into account the previous record of compliance of the entity being assessed with the applicable provisions of this title and the gravity of the violation.

(c) ADMINISTRATIVE REVIEW.—

(1) OPPORTUNITY FOR HEARING.—The entity assessed shall be afforded an opportunity for a hearing by the Secretary upon request made within 30 days after the date of the issuance of a notice of assessment. In such hearing the decision shall be made on the record. Notice of such hearing shall be mailed to the entity at its address in the United States Code. If no hearing is requested, the assessment shall constitute a final and unappealable order.

(2) HEARING PROCEDURE.—If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within 30 days after the date of the decision of the judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (d).

(d) ADMINISTRATIVE APPEAL.—

(1) FILING OF ACTION FOR REVIEW.—Any entity against whom an order imposing a civil money penalty has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which such entity is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within 30 days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary.

(2) CERTIFICATION OF ADMINISTRATIVE RECORD.—The Secretary shall promptly certify and file in the court the record upon which the penalty was imposed.

(3) STANDARD FOR REVIEW.—The findings of the Secretary shall be set aside only if found to be an abuse of discretion, as provided by section 706(e) of title 5, United States Code.

(4) APPEAL.—Any final decision, order, or judgment of the district court concerning such review shall be subject to appeal as provided in chapter 38 of title 28 of such Code.

(5) FAILURE TO PAY ASSESSMENT; MAINTENANCE OF ACTION.—

(1) FAILURE TO PAY ASSESSMENT.—If any entity fails to pay an assessment after it has become a final judgment, or after the court has entered final judgment in favor of the Secretary, the Secretary shall recover the amount assessed by action in the appropriate United States district court.

(2) NONREVIEWABILITY.—In such action the validity and appropriateness of the final order imposing the penalty shall not be subject to review:

(A) PAYMENT OF PENALTIES.—Except as otherwise provided under this subsection, the penalties prescribed in this section shall be paid to the Secretary otherwise provided, penalties collected under this section shall be paid to the Secretary.

(B) FILING OF COMPLAINT.—In such action, the Secretary or the Attorney General intervenes and files a complaint for the action.

(C) JUDICIAL REVIEW.—In such action the validity and appropriateness of the final order imposing the penalty shall be subject to review:

(i) PAYMENT OF PENALTIES.—Except as otherwise provided, the penalties prescribed under this section shall be paid to the Secretary or the Attorney General for the action.

(ii) A copy of the complaint for the action.

(3) STANDARD FOR REVIEW.—In such action the validity and appropriateness of the final order imposing the penalty shall be subject to review:

(A) PAYMENT OF PENALTIES.—Penalties imposed under this section shall be paid to the Secretary or the Attorney General in the action.

(B) FILING OF COMPLAINT.—In such action the Secretary or the Attorney General intervenes as a party in interest, files a complaint for the action, and the Secretary or the Attorney General discloses any information that is relevant to the action.

(C) JUDICIAL REVIEW.—In such action the validity and appropriateness of the final order imposing the penalty shall be subject to review:

(i) PAYMENT OF PENALTIES.—Penalties imposed under this section shall be paid to the Secretary or the Attorney General for the action.

(ii) A copy of the complaint for the action.

(4) REMEDIES.—In such action the Secretary or the Attorney General intervenes as a party in interest, files a complaint for the action, and the Secretary or the Attorney General discloses any information that is relevant to the action.

(A) PAYMENT OF PENALTIES.—Penalties imposed under this section shall be paid to the Secretary or the Attorney General in the action.

(B) FILING OF COMPLAINT.—In such action the Secretary or the Attorney General intervenes as a party in interest, files a complaint for the action, and the Secretary or the Attorney General discloses any information that is relevant to the action.

(C) JUDICIAL REVIEW.—In such action the validity and appropriateness of the final order imposing the penalty shall be subject to review:

(i) PAYMENT OF PENALTIES.—Penalties imposed under this section shall be paid to the Secretary or the Attorney General for the action.

(ii) A copy of the complaint for the action.

(5) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on such attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE ATTORNEY GENERAL OF THE UNITED STATES.—In any case in which an action is instituted by or on behalf of the Attorney General or any practice that is prohibited under title I, II, IV, or V of this Act or under any amendment made by such a title, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that practice.

(e) Venue; Service of Process.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States for the district in which the relevant property is located or in which the transaction giving rise to such action occurred.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is a resident; or

(B) may be found.

SEC. 601. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by a violation of any provision of this Act made by a person in a practice that is prohibited under title I, II, or IV of this Act or under any amendment made by such a title, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with such titles or such amendments;

(C) obtain damages, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may deem proper to be accorded.

(b) NOTICE.—

(1) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Attorney General—

(A) written notice of the action; and

(B) a copy of the complaint for the action.

(2) EXEMPTION.—The notice required under paragraph (1) shall not be considered a notice of violation of title I, II, IV, or V of this Act under any amendment made by such a title.
By Mrs. FEINSTEIN (for herself and Mr. VOINOVICH):

S. 117. A bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers; to the Committee on Health, Education, Labor, and Pensions.

Mrs. FEINSTEIN. Mr. President. I rise today with Senator VOINOVICH to introduce legislation to expand the federal loan forgiveness program to include Head Start teachers. Nationwide, only 30 percent of Head Start teachers have completed a baccalaureate or advanced degree program.

In California, that number is even smaller: about eighteen percent of Head Start teachers have completed a bachelor’s degree.

To prepare Head Start children for elementary school, we must recruit highly qualified teachers who have demonstrated knowledge and teaching skills in reading, writing, and other areas of the preschool curriculum with a particular focus on cognitive learning.

Recruiting and maintaining teachers with such qualifications is the only way to ensure cognitive development and ensure that our children start elementary school ready to learn. A survey conducted by the U.S. Department of Health and Human Services called the Head Start Family and Child Experiences Survey (FACES) found a strong relationship between the education of Head Start teachers and classroom quality. Teachers with higher education levels were found to be more sensitive and responsive to their children, to have more high-quality language activities, and more creative activities in their classrooms.

Teachers with higher levels of education also had classes with higher quality language activities such as reading books for the children and provided more opportunities for children to develop skills in expressing thoughts.

Head Start is the primary federal program that has the potential to reach out to low-income children early in their formative years when their cognitive skills are just developing. We know that poor children disproportionately start school behind their peers—they are less likely to count to 10 or to recite the alphabet.

Many of our nation’s youngest children enter elementary school without the basic skills necessary to succeed. Often these children lag behind their peers throughout their academic career. As taxpayers, we will spend millions on efforts to help these children catch up. Many of these children will never catch up.

A recent national study by The High/Scope Perry Preschool confirms the importance of providing preschool children with the opportunity early on to gain the basic skills necessary for school.

The study found that preschoolers were more likely to graduate from high school and be employed at age 40, earn more money a year, and were more likely to own a home and have a savings account.

We can save millions by providing low-income children with access to quality preschool where they will gain the necessary skills to succeed in school and life.

In order to give every child a head start in life, we must continue to recruit highly qualified teachers to the Head Start field and prevent the best teachers from leaving.

Many Head Start programs across the country, including in California, are losing qualified teachers to local school districts in part because the pay is lower.

Nationally, the average Head Start teacher earns a salary of $21,287 compared to $43,152 for an elementary school teacher.

Head Start teachers are making half of what elementary school teachers are paid on average.

Low pay, combined with increasing student debt, is a real deterrent to getting college graduates to become Head Start teachers. And every teacher that Head Start loses impacts the quality and access to services for our nation’s low-income children.

One way to recruit and retain highly qualified Head Start teachers is to offer incentives to pursue a career in this field.

Current law allows elementary and secondary school teachers to receive up to $5,000 in loan forgiveness in exchange for five years of service. We believe Head Start teachers should be given this same opportunity.

The legislation we are introducing today is meant to encourage recent graduates, current Head Start teachers without a degree, and college students to enter and remain in the Head Start field.

In exchange for 5 years of service, a Head Start teacher could receive up to $5,000 of their federal loans forgiven. We must continue to improve the Head Start program so that children will have the necessary cognitive skills when they leave the program, such as being able to count to ten, begin to recite the alphabet, and recognize sizes and colors.

This is just the first step. To further ensure cognitive learning, we must also continue to raise the standards and pay for Head Start teachers.

Providing our nation’s low-income children with access to highly educated and qualified teachers so that they enter school ready to learn is critical to their future success and should be a priority of this Congress.

I urge my colleagues to support this legislation. 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. 117

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
Mr. VOINOVICH. Mr. President, I am pleased to join my friend and colleague from California, Senator DIANNE FEINSTEIN, in introducing very important legislation that I believe will encourage young teachers to go into early childhood education, improve the qualifications of current early educators, and lead to a better education for our Nation’s youngest children.

Study after study on human development has found that there is no more important time in a child’s life than their earliest years. In fact, the learning opportunities in these years have a critical and decisive impact on the development of the brain and on the nature and extent of their adult capacities.

To maximize their potential, we must begin to teach our children the necessary learning skills they will utilize throughout their lives as early as possible; well before they reach kindergarten.

I know of few other programs that have the same potential to meet this goal as Head Start. When I was Governor of Ohio, we invested heavily in Head Start, increasing funding from $24 million in 1996, to $180 million in 1998.

By the time I left office, there was a space available for every eligible child in Ohio whose parents wanted them in a Head Start or pre-school program, and because of our efforts, Ohio led the Nation in terms of children served by Head Start.

Now that I am in the Senate, I continue to believe that it is absolutely critical that we do more to help our young people prepare to begin school “ready to learn.”

The results of a survey undertaken by the U.S. Department of Health and Human Services in 1999 and 2000 has shown a significant correlation between the quality of education a child receives and the amount of education that child’s teacher possesses.

Unfortunately, nationwide, just 30 percent of Head Start teachers have earned a baccalaureate or advanced degree.

Under Ohio law, by 2007, all Head Start teachers must have at least an associate’s degree. It is hoped that this requirement will encourage Head Start educators to pursue a bachelor’s or even an advanced degree. After all, the more education our teachers have, the better off our children will be.

Unfortunately, we all know, education can be expensive.

The bill we are introducing is designed to encourage currently enrolled and incoming college students working on a bachelor’s or a master’s degree to pursue a career as a Head Start teacher. It is also intended to assist current Head Start teachers, who wish to pursue a degree, to remain in the field.

In exchange for a 5-year teaching commitment in a qualified Head Start program, a full time graduate with a minimum of a bachelor’s degree could receive up to $5,000 in forgiveness for their Federal student loan. Current law already permits elementary and secondary educators to receive this type of loan forgiveness. It is time to give Head Start teachers this same opportunity.

Recruiting and retaining Head Start and early childhood teachers continues to be a challenge for Ohio and other States. This is not surprising. On average, Head Start teachers earn about half of the average salary of kindergarten teachers. For Head Start providers, this financial difference combined with the growing cost of a college education makes it difficult to recruit quality teachers.

This bill will help communities, schools and other funded Head Start providers to meet the challenge of recruiting and retaining high quality teachers. It is one of the best ways that I know of where we can make a real difference in the lives of our most precious resource, our children.

One of the best uses of our Federal education resources is to target them toward our youngest citizens where they can have the most impact.

I am pleased to have been able to work with my colleague Senator FEINSTEIN on this legislation, and I ask for my colleagues’ support.

By Mrs. FEINSTEIN:

S. 118. A bill for the relief of Maria Cristina DeGrassi; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today private relief legislation to provide lawful permanent residence status to Maria Cristina DeGrassi, a 37-year-old severely disabled Italian national who spent her childhood in San Mateo, California.

I have decided to offer private relief legislation on Ms. DeGrassi’s behalf because I believe that her removal from the United States would be tragically unfair not only to her, but to her sister and brother-in-law, Daniela Degrassi and Luca Prasso, who reside legally in the United States and who are Ms. DeGrassi’s closest family and only lifetime caregivers.

Ms. DeGrassi has legally resided in the United States since 1997 on a non-immigrant tourist visa. However, she is not like an ordinary tourist. She cannot enjoy California’s beautiful coast, playing with her children. She cannot tour Hollywood movie studios or Napa Valley wineries. Ms. DeGrassi was born premature in 1965 and, consequently, is severely mentally handicapped and autistic. Because of these disabilities, Ms. DeGrassi has the mental capacity of a two-year-old, cannot speak and understands only a few sentences in Italian.

In addition to these challenges, Ms. DeGrassi was diagnosed with diabetes in 2001 and now requires daily insulin shots and a carefully monitored diet.

For Ms. DeGrassi, the sum of these health problems means that she must have 24-hour-a-day, 7-day-a-week personal care and attention. Luckily, however, there are two people in Ms. DeGrassi’s life who are more than happy not only to care for her daily needs, but to love and nurture her.

Ms. DeGrassi’s sister, Daniela, and her brother-in-law, Luca, are legal permanent residents of the United States. Mr. Prasso is a highly skilled and valued employee of PDI-DreamWorks, the world renowned movie production company. Serving as a Character Technical Supervisor and earning nearly $200,000 per year, Mr. Prasso has worked on such critically acclaimed films as “Shrek” and “ANTZ.” In the course of that work, Mr. Prasso has developed and patented new technologies and become a leader in his field. In a letter in support of this legislation, Mr. Prasso referred to Ms. DeGrassi’s skills as “rare” and “irreplaceable.”

Daniela Degrassi has also excelled in the United States, starting a successful freelance photography career and business.

Together, Mr. Prasso and Daniela Degrassi have provided Ms. DeGrassi with the love, care and attention that she so desperately needs. When Ms. DeGrassi’s father and aunt died in 1997, the only family she knew was the only family left who was willing to care for her. The choice for them was clear. Mr. Prasso wrote in a letter he sent me, “My wife and I then faced a big decision. We refuse[d] completely to put her in an institution. We [could] not accept the idea of not being able to properly take care of her. No other relative was alive or came forward to offer help. We were the only and closest persons to Cristina. We decided to take care of her like a daughter.”

For the past seven years, Mr. Prasso and Daniela Degrassi have done just that, organizing their lives around caring for and attending to Ms. DeGrassi.
They cook for her and clothe and bathe her on a daily basis. Because of the close monitoring Ms. Degrassi's diabetic condition requires, when the couple wants to go out to dinner or see a movie, they must do so separately so that she will always be with Ms. Degrassi in case of an emergency.

Despite the hardships that caring for Ms. Degrassi have imposed upon Mr. Prasso and Daniela Degrassi, the experience has deeply enriched their lives. In Mr. Prasso’s letter, he wrote, “despite my long work hours and my wife[s] new successful business as a photographer, we are able and fully committed to continue to take care of Cristina 24 hours a day. . . . The reward of facing with Cristina an amazing thing and makes all the pain disappear.”

Unfortunately, if this private relief bill is not approved, this wonderful family will face a tragic set of choices. Since 1997, Ms. Degrassi has applied for and always received six-month extensions of her non-immigrant tourist visa. The DeGrassi’s lawyer has informed the couple that approval of the current petition is unlikely and has recommended they withdraw their petition. This would leave Ms. Degrassi with nothing. There are no other avenues available for her to remain in the United States lawfully. In short, if this private relief legislation is not approved, Ms. Degrassi will be forced to return to Italy.

However, Mr. Prasso and Daniela Degrassi’s love for their sister will never allow her to return to Italy alone. Ms. Degrassi’s removal, the couple will leave their lives in California and move back with her in order to continue to provide the care and attention on which Ms. Degrassi depends.

The consequences of such a move will be tragic for this family. It will mean the end of Mr. Prasso’s highly accomplished career with DreamWorks, as well as, the end of the photography career Daniela Degrassi has worked so hard to build. In addition, both Mr. Prasso and Daniela Degrassi are eligible to become United States citizens this year. I can think of no compelling reasons why the United States should not enable this family to continue as they have in California. Because of the substantial salary that Mr. Prasso and Daniela Degrassi earn and because of the monthly pension Ms. Degrassi receives from the Italian government, there is almost no chance that Ms. Degrassi will become a burden on the state or federal government.

In Mr. Prasso’s letter to me, he made this simple request, “We are looking forward to finding a permanent solution to this dilemma that does not involve dismembering this family or giving up on a wonderful job. A solution that will allow us to live a normal life like a normal family.”

We can make this solution a reality for Ms. Degrassi and this wonderful family. For that reason, I offer this private relief legislation and ask my colleagues to support it.

Given these extraordinary and unique facts, I ask my colleagues to support this private relief bill on behalf of Ms. Degrassi.

I also 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. 118

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

SECTION 1. ADJUSTMENT OF STATUS.

(a) In General.—Notwithstanding any other provision of law or any order, for the purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Maria Cristina DeGrassi shall be deemed to have been lawfully admitted to, and remained in, the United States, and shall be eligible for issuance of an immigrant visa or for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(b) Application and Payment of Fees.—Subsection (a) shall apply only if the application for adjustment of status or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(c) REDCROSS OR IMMIGRANT VISAS, NUMBERS.— Upon the granting of an immigrant visa to Maria Cristina DeGrassi, the Secretary of State shall instruct the proper officer to reduce the immigration visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Mr. SCHUMER, Mr. HAGEL, Mr. DURBIN, Mr. DEWINE, Ms. CANTWELL, Mr. INOUYE, and Mr. FEINGOLD):

S. 119. A bill to provide for the protection of unaccompanied alien children, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I introduce today the “Unaccompanied Alien Child Protection Act of 2005,” legislation to reform the way the federal government treats unaccompanied alien children who are apprehended by federal immigration officials at our borders or within the United States.

I first introduced legislation similar to this bill during the 107th Congress and still strongly believe that its passage is necessary to ensure the proper treatment of unaccompanied alien children within our federal system. With each passing year, as members realize the necessity for this legislation, the bill has moved further along in the process.

I am pleased to be joined by Senators COLLINS, SCHUMER, HAGEL, DURBIN, DEWINE, CANTWELL, INOUYE and FEINGOLD as original co-sponsors of this legislation.

During the 108th Congress, the “Unaccompanied Alien Child Protection Act” passed the Senate by unanimous consent, after garnering no less than 34 co-sponsors. Unfortunately, the bill stalled in the House of Representatives.

So today I re-introduce this legislation, and again, this will be one of my top priorities. I believe we have a special obligation to ensure that every child that comes into contact with federal officials is afforded fair and humane treatment.

In 2004, approximately 6,200 unaccompanied alien children were apprehended by Department of Homeland Security officials and transferred to the care of the Office of Refugee Resettlement within the Department of Health and Human Services. This number has grown over the years and shows no signs of abating.

Thousands of foreign-born children under the age of 18 enter the United States each year unaccompanied by parents or other legal guardians. These children are among the most vulnerable of the immigrant population and these numbers are going to continue to grow given the greater emphasis on enforcement actions by immigration officials—which I support—and the relatively unchanged conditions bringing them here.

These children are from all over the world, although the majority encountered by immigration officials today are from Honduras, Guatemala and El Salvador. Some are asylum seekers fleeing human rights-performed conflict in their homelands. Others are fleeing abuses specific to children, such as forced recruitment of child soldiers, forced prostitution and servitude, sexual slavery and exploitation, child labor, abuse of street children, child brides and female genital mutilation. Yet other children come to the United States because they have been abused, abandoned or neglected by their parents or caregivers. And finally, some are seeking to reunify with family members already in the United States or seeking a better life.

Historically, U.S. immigration law and policies have been developed and implemented without regard to their effect on children. This result has been similar to trying to fit a square peg in a round hole—it just doesn’t work.

Under current immigration law, these children are forced to struggle through a system designed for adults, with no thought to their capacity to understand nuanced legal principles or courtroom and administrative procedures. Because of this, children who may very well be eligible for relief are often vulnerable to being deported back to the very life-threatening situations from which they fled—before they are even able to make their cases before the Department of Homeland Security or an immigration judge.

Prior to March 1, 2003, the Immigration and Naturalization Service had responsibility for the detection and treatment of unaccompanied alien children. Unfortunately, the Immigration and Naturalization Service fell short in
fulfilling these responsibilities. The legislation that I am introducing today builds on Section 462 of Public Law 107–296, the Homeland Security Act of 2002, which provided for the transfer of responsibility for the care and placement of unaccompanied alien children from the now-abolished Immigration and Naturalization Service to the Office of Refugee Resettlement within the Department of Health and Human Services.

Section 462 was based on S. 121, comprehensive legislation relating to unaccompanied alien children that I introduced during the 107th Congress.

With the enactment of the Homeland Security Act of 2002, we set into motion the centralization of responsibility for the care and custody of unaccompanied alien children with the Office of Refugee Resettlement. The first phase of this transfer of responsibility occurred on March 1, 2003. Once the transition was completed, we finally resolved the conflict of interest inherent in the former system which pitted the enforcement side of the Immigration and Naturalization Service against the benefits side of that same agency in the care of unaccompanied alien children.

I am pleased that the provision transferring responsibility for the care and custody of unaccompanied alien children was contained in the Homeland Security Act and that by all accounts, the transition in the care of children between the affected agencies has gone well.

But, the transfer of authority to the Office of Refugee Resettlement—by itself—is not enough to ensure that these children are treated fairly and humanely. Congress now has a responsibility to go beyond the simple transfer to actually laying out the process and steps to ensure that unaccompanied alien children are treated fairly and humanely. The Department of Homeland Security and the Department of Justice with the tools they will need to succeed in their missions regarding the care of unaccompanied alien children after the transfer of jurisdiction took place.

First of all, I want to stress that this bill is not about benefits, as it provides no new immigration benefit to unaccompanied alien children. Rather, this bill is about the process of how we treat these children.

The “Unaccompanied Alien Child Protection Act” provides guidance and instruction to the Office of Refugee Resettlement, the Department of Homeland Security and the Department of Justice in the following areas:

First, in the custody, release, family reunification and detention of unaccompanied alien children;

Second, it provides access by unaccompanied alien children to guardians ad litem and pro bono counsel;

Third, it streamlines the Special Immigrant Juvenile (SIJ) program and provides guidance on the training of federal government officials and private parties who come into contact with unaccompanied alien children;

Fourth, it requires the issuance of guidelines specific to children’s asylum claims;

Fifth, it authorizes appropriations for the care of unaccompanied alien children; and

Sixth, it amends the Homeland Security Act of 2002 to provide additional responsibilities and powers to the Office of Refugee Resettlement with respect to unaccompanied alien children.

Central throughout the “Unaccompanied Alien Child Protection Act” are two concepts:

The United States government has a fundamental responsibility to protect unaccompanied children in its custody; and in all proceedings and actions, the government should have as a priority protecting the interests of these children.

I first became involved in this issue in 2000 when I heard about a young 15-year-old Chinese girl who stood before a United States immigration court facing deportation proceedings with her hands chained to her waist, like a criminal. She had found her way to the United States and had attempted to stow away in a container ship captured off of Guam, hoping to escape the repression she had experienced in her home country.

She had been placed on a boat bound for the United States by her very own parents, seeking China’s strict family planning laws. Under these laws, she was denied citizenship, education and medical care. She came to this country alone and desperate.

And what did our immigration authorities do when they found her? The Immigration and Naturalization Service detained her in a juvenile jail in Portland, Oregon for eight months before her asylum hearing, and more than seven weeks after she was granted asylum.

At her asylum hearing, the young girl stood before a judge, unrepresented by counsel, confused and unable to understand the proceedings against her. She could not wipe away the tears from her face because her hands were chained to her waist. According to a lawyer who later came to represent her, “her only crime was that her parents had put her on a boat so she could get a better life over here.”

While the young girl eventually received asylum in our country, she unnecessarily faced an ordeal no child should bear under our immigration system. This young Chinese girl represents only one of the more than 6,000 foreign-born children who, without parents or legal guardians to protect them, are discovered in the United States each year in need of protection.

This is unacceptable treatment and we have a responsibility to do better than this.

Imagine the fear of an unaccompanied alien child, in the United States alone, without a parent or guardian. Imagine that child being thrust into a system he or she does not understand, provided no access to pro bono counsel or guardians ad litem, placed in jail with adults or housed with juveniles with serious criminal convictions. I find it hard to believe that our country would allow children to be treated in such a manner.

That is why I am introducing this legislation today. The “Unaccompanied Alien Child Protection Act” will help our country fulfill the special obligation to these children to treat them fairly and humanely.

I am proud to have the support of the United States Conference of Catholic Bishops, the Women’s Commission on Refugee Women and Children, the Lutheran Immigration and Refugee Service, Amnesty International USA and the United Nations High Commissioner for Refugees, and many other organizations with whom I have worked closely to develop this legislation.

I urge my colleagues to join with me by cosponsoring this important measure and ensuring that these reforms are finally enacted.

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. 119

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Unaccompanied Alien Child Protection Act of 2005”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents
Sec. 2. Definitions

TITLE I—CUSTODY, RELEASE, FAMILY REUNIFICATION, AND DETENTION

Sec. 101. Procedures when encountering unaccompanied alien children
Sec. 102. Family reunification for unaccompanied alien children with relatives in the United States
Sec. 103. Appropriate conditions for detention of unaccompanied alien children
Sec. 104. Repatriated unaccompanied alien children
Sec. 105. Establishing the age of an unaccompanied alien child
Sec. 106. Effective date

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

Sec. 201. Guardians ad litem
Sec. 202. Counsel
Sec. 203. Effective date; applicability

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile visa
Sec. 302. Training for officials and certain private parties who come into contact with unaccompanied alien children
Sec. 303. Report
Sec. 304. Effective date

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children with serious criminal convictions
Sec. 402. On-boarding for children
Sec. 403. Effective date

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, January 24, 2005.
Sec. 601. Additional responsibilities and powers of the Office of Refugee Resettlement with respect to unaccompanied alien children

Sec. 602. Technical corrections

Sec. 603. Effective date

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**TITLE VI—AMENDMENTS TO THE HOMELAND SECURITY ACT OF 2002**

**SEC. 601. PROVISIONS WHEN ENCOUNTERING UNACCOMPANIED ALIEN CHILDREN.**

(a) UNACCOMPANIED CHILDREN FOUND ALONG THE UNITED STATES BORDER OR AT UNITED STATES PORTS OF ENTRY.—

(1) IN GENERAL.—Subject to paragraph (2), if an immigration officer finds an unaccompanied alien child who is described in paragraph (2) at a land border or port of entry of the United States and determines that such child is inadmissible under the Immigration and Nationality Act (8 U.S.C. 1182(a)(4); and

(b) RETURN OF CHILD TO THE CHILD’S COUNTRY OF NATIONALITY OR COUNTRY OF LAST HABITUAL RESIDENCE.—

(2) SPECIAL RULE FOR CONTIGUOUS COUNTRIES.—

(A) IN GENERAL.—Any child who is a national or habitual resident of a country that is contiguous with the United States and that has an agreement in writing with the United States providing for the safe return of unaccompanied alien children who are nationals or habitual residents of such country shall be treated in accordance with paragraph (1), if a determination is made on a case-by-case basis that—

(i) such child is a national or habitual resident of a country described in this subparagraph; and

(ii) the child does not have a fear of return to the child’s country of nationality or country of last habitual residence owing to a fear of persecution; and

(iii) the return of such child to the child’s country of nationality or country of last habitual residence would not endanger the life or safety of such child; and

(iv) the child is able to make an independent decision to withdraw the child’s application for admission due to age or other lack of capacity.

(B) RIGHT OF CONSULTATION.—Any child described in subparagraph (A) shall have the right, and shall be informed of that right in the child’s native language—

(i) to consult with a consular officer from the child’s country of nationality or country of last habitual residence prior to repatriation; and

(ii) to consult, telephonically, with the Office.

(c) RULE FOR APPEARNCEHIPS AT THE BORDER.—The custody of unaccompanied alien children described in paragraph (2) shall be treated in accordance with subsection (b).

(b) CARE AND CUSTODY OF UNACCOMPANIED ALIEN CHILDREN FOUND IN THE INTERIOR OF THE UNITED STATES.—

(1) ESTABLISHMENT OF JURISDICTION.—

(A) IN GENERAL.—Except as otherwise provided under subparagraphs (B) and (C) and subsection (a), the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be under the jurisdiction of the Office.

(B) EXCEPTION FOR CHILDREN WHO HAVE COMMITTED CRIMES.—Notwithstanding subparagraph (A), the care and custody of any unaccompanied alien child who—

(i) has been charged with any felony, excluding offenses proscribed by the Immigration and Nationality Act (8 U.S.C. 1111 et seq.), while such charges are pending; or

(ii) has been convicted of any such felony.

(C) EXCEPTION FOR CHILDREN WHO THREATEN NATIONAL SECURITY.—Notwithstanding subparagraph (A), the Director shall retain control of the custody of any unaccompanied alien child if the Secretary has substantial evidence, based on an individualized determination, that such child could significantly endanger the national security of the United States.

(D) TRAFFICKING VICTIMS.—For purposes of section 424(a) of the Homeland Security Act of 2002 (6 U.S.C. 279) and this Act, an unaccompanied alien child who is eligible for services authorized under the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106–366), shall be considered to be in the custody of the Office.

(2) NOTIFICATION.—The Secretary shall promptly notify the Office upon—

(i) the apprehension of an unaccompanied alien child;

(ii) the discovery that an alien in the custody of the Director is an unaccompanied alien child;

(iii) any claim by an alien in the custody of the Director that such alien is under the age of 18; or

(iv) any suspicion that an alien in the custody of the Director who has claimed to be over the age of 18 is actually under the age of 18.

(B) SPECIAL RULE.—In the case of an alien described in clause (ii) or (iv) of subparagraph (A), the Director shall make an age determination in accordance with section 105 and take whatever other steps are necessary to determine whether such alien is eligible for treatment under section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act.

(3) TRANSFER OF UNACCOMPANIED ALIEN CHILDREN.—

(A) TRANSFER TO THE OFFICE.—The care and custody of an unaccompanied alien child shall be transferred to the Office—

(i) in the case of a child not described in subparagraph (B) or (C) of paragraph (1), not later than 72 hours after a determination is made that such child is an unaccompanied alien child;

(ii) in the case of a child whose custody and care has been retained or assumed by the Director determining that such individual or entity is no longer able to care for the child;

(iii) in the case of an alien described in subparagraph (B) or (C) of paragraph (1), immediately following a determination that the child no longer meets the description set forth in such subparagraphs; or

(iv) in the case of a child who was previously released to an individual or entity described in section 102(a)(1), upon a determination by the Director that such individual or entity is no longer able to care for the child.

(B) TRANSFER TO THE DIRECTORATE.—Upon determining that a child in the custody of the Office is described in subparagraph (B) or (C) of paragraph (1), the Director shall transfer the care and custody of such child to the Directorate.

(C) PROMPTNESS OF TRANSFER.—In the event of a need to transfer a child under this paragraph, the sending office shall make prompt arrangements to transfer the child and the receiving office shall make prompt arrangements to receive such child.

(D) DETERMINATION.—In any case in which the age of an alien is in question and the resolution of questions about the age of such alien would affect the alien’s eligibility for any of the programs described in the Homeland Security Act of 2002 (6 U.S.C. 279) or this Act, a determination of whether or not such
alien meets such age requirements shall be made by the Director in accordance with section 105.

SEC. 102. FAMILY REUNIFICATION FOR UNACCOMPANIED ALIEN CHILDREN WITH RELATIVES IN THE UNITED STATES.

(a) PLACEMENT AUTHORITY.—

(1) IN GENERAL.—Subject to the discretion of the Director under paragraph (4), section 163(a)(2), and section 462(b)(2) of the Homeland Security Act of 2002 (6 U.S.C. 273(b)(2)), an unaccompanied alien child in the custody of the Office shall be promptly placed with 1 of the following individuals or entities in the following order of preference:

(A) a parent who seeks to establish custody, as described in paragraph (3)(A).

(B) a legal guardian who seeks to establish custody, as described in paragraph (3)(A).

(C) an adult relative.

(D) an individual or entity designated by the parent or legal guardian that is capable and willing to care for the well-being of the child.

(E) a State-licensed juvenile shelter, group home, or foster care program willing to accept physical custody of the child.

(F) a qualified adult or entity seeking custody of the child when it appears that there is no other likely alternative to long-term detention in a child detention facility. Reunification does not appear to be a reasonable alternative. For purposes of this subparagraph, the Office shall decide who is a qualified adult or entity and appropriate adults in accordance with such decision.

(2) SUITABILITY ASSESSMENT.—Notwithstanding paragraph (1), no unaccompanied alien child shall be placed with a person or entity unless a valid suitability assessment conducted by an agency of the State of the child’s proposed residence, by an agency authorized by that State to conduct such an assessment, or by an appropriate voluntary agency contracted with the Office to conduct such assessments, has found that the person or entity is capable of providing for the child’s physical and mental well-being.

(3) RIGHT OF PARENT OR LEGAL GUARDIAN TO CUSTODY OF UNACCOMPANIED ALIEN CHILD.—

(A) PLACEMENT WITH PARENT OR LEGAL GUARDIAN.—If an unaccompanied alien child is placed with any person or entity other than a parent or legal guardian, an individual to the State bar association of which the attorney is a member, or to other appropriate disciplinary authorities, for appropriate disciplinary action, which may include private or public admonition or censure, suspension, or disbarment of the attorney from the practice of law.

(b) REQUIRED DISCLOSURE.—The Secretary of Health and Human Services or the Secretary of Homeland Security shall provide the information required under this section, and any other information derived from such furnished information, to—

(1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or

(2) an official corer for purposes of affirmative identification of an individual (whether or not such individual is deported as a result of a crime).

(c) PENALTY.—Whoever knowingly uses, publishes, or communicates to another to be examined in violation of this section shall be fined not more than $10,000.

SEC. 103. APPROPRIATE CONDITIONS FOR DETENTION OF UNACCOMPANIED ALIEN CHILDREN.

(a) STANDARDS FOR PLACEMENT.—

(1) PROHIBITION OF DETENTION IN CERTAIN FACILITIES.—Except as provided in paragraph (2), an unaccompanied alien child shall not be placed in an adult detention facility or a facility housing adults or other children.

(2) DETENTION IN APPROPRIATE FACILITIES.—An unaccompanied alien child who has exhibited a violent or criminal behavior that endangers others may be detained in conditions appropriate to such behavior in a facility appropriate for delinquent children.

(b) DETAILED STANDARDS.—The Secretary of Homeland Security shall promulgate rules specifying standards for conditions of detention in such placements that provide for—

(i) educational services appropriate to the child;

(ii) medical care;

(iii) mental health care, including treatment for trauma, physical and sexual violence, or abuse;

(iv) access to telephones;

(v) access to legal services;

(vi) access to interpreters; and

(vii) supervision by professionals trained in the care of children, taking into account the special cultural, linguistic, and experiential needs of children in immigration proceedings;

(viii) recreational programs and activities;

(ix) spiritual and religious needs; and

(x) such other requirements as may be determined necessary to the care of alien children.

(b) NOTIFICATION OF CHILDREN.—Regulations promulgated under subparagraph (A) shall provide that all children are notified of such standards orally and in writing in the child’s native language.

(b) PROHIBITION OF CERTAIN PRACTICES.—

The Director and the Secretary shall develop procedures prohibiting the unreasonable use of—

(1) shackling, handcuffing, or other restraint on children;

(2) solitary confinement; or

(3) pat or strip searches.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to supersede procedures favoring release of children to appropriate adults or entities or placement in the least restrictive setting possible, as defined in the Stipulated Settlement Agreement.

SEC. 104. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.

(a) COUNTRY CONDITIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the extent consistent with the treaties and other international agreements to which the United States is a party, and to the extent practicable, the United States Government should undertake efforts to ensure that it does not repatriate children in its custody into settings that would threaten the life and safety of such children.

(b) FACTORS FOR ASSESSMENT.—The Director shall consult the Country Reports on Human Rights Practices published by the Department of State shall contain an assessment of the degree to which each country protects children from smugglers and traffickers.

(c) BURDEN OF PROOF.—

(1) GENERAL.—In determining whether to repatriate an unaccompanied alien child to a particular country, the Secretary of Homeland Security shall consult the Country Reports on Human Rights Practices published by the Department of State shall contain an assessment of the degree to which each country protects children from smugglers and traffickers.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the number of unaccompanied alien children ordered removed and the number of such children actually removed from the United States; and

(B) a description of the type of immigration relief sought and denied to such children.

(c) STATEMENT OF NATIONALITIES.—A statement of the nationalities, ages, and gender of such children, and a description of procedures used to effect the removal of such children from the United States;
SEC. 105. ESTABLISHING THE AGE OF AN UNACCOMPANIED ALIEN CHILD.

(a) Procedure.

(1) IN GENERAL.—The Director shall develop procedures to make a prompt determination of the age of an alien in the custody of the Department of Homeland Security or the Office, when the age of the alien is at issue.

(2) EVIDENCE.—The procedures developed under paragraph (1) shall—

(A) permit the presentation of multiple forms of evidence, including testimony of the child, to determine the age of the unaccompanied alien for purposes of placement, custody, parole, and detention; and

(B) allow the appeal of a determination to an immigration judge.

(3) ACCESS TO ALIEN.—The Secretary of Homeland Security shall permit the Office to have reasonable access to aliens in the custody of the Secretary so as to ensure a prompt determination of the age of such alien.

(b) Prohibition on Sole Means of Determining Age.

(1) IN GENERAL.—No person shall serve as a guardian ad litem unless such person—

(i) is a child welfare professional or other individual with experience in child welfare matters; and

(ii) shall be permitted to review all records and information relating to such proceedings that are not deemed privileged or classified;

(C) may seek independent evaluations of the child;

(D) shall be notified in advance of all hearings or interviews involving the child that are held in connection with proceedings or matters under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), and shall be given a reasonable opportunity to be present at such hearings or interviews;

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of each child to be placed in a different placement, absent compelling and unusual circumstances warranting the transfer of such child before such notification.

(2) TRAINING TOPICS.—The training provided under paragraph (1) shall include training in—

(A) the circumstances and conditions that unaccompanied alien children face; and

(B) various immigration benefits for which such alien child might be eligible.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child’s age;

(B) investigate the facts and circumstances relevant to the child’s presence in the United States, including facts and circumstances—

(i) arising in the country of the child’s nationality or last habitual residence; and

(ii) relating to the child’s departure from such country;

(C) work with counsel to identify the child’s eligibility for relief from removal or voluntary departure and to share with counsel information collected under subparagraph (B); and

(D) develop recommendations on issues relative to the child’s custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that, to the maximum extent practicable, each child selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than one year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

SEC. 106. EFFECTIVE DATE.

This title shall take effect on the date of enactment of this Act.

TITLE II—ACCESS BY UNACCOMPANIED ALIEN CHILDREN TO GUARDIANS AD LITEM AND COUNSEL

SEC. 201. GUARDIANS AD LITEM.

(a) Establishment of Guardian Ad Litem Program.

(1) APPOINTMENT.—The Director may appoint a guardian ad litem, who meets the qualifications described in paragraph (2), for an unaccompanied alien child. The Director is encouraged to wherever practicable, to contract with a voluntary agency for the selection of an individual to be appointed as a guardian ad litem under this paragraph.

(b) Qualifications of Guardian Ad Litem.

(1) IN GENERAL.—No person shall serve as a guardian ad litem unless that person—

(i) is a child welfare professional or other individual who has received training in child welfare matters; and

(ii) possesses special training on the nature of problems encountered by unaccompanied alien children.

(2) PROHIBITION.—A guardian ad litem shall not be an employee of the Office, the Executive Office for Immigration Review, or the Office, or the Executive Office for Immigration Review.

(c) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child’s age;

(B) investigate the facts and circumstances relevant to the child’s presence in the United States, including facts and circumstances—

(i) arising in the country of the child’s nationality or last habitual residence; and

(ii) relating to the child’s departure from such country;

(C) work with counsel to identify the child’s eligibility for relief from removal or voluntary departure and to share with counsel information collected under subparagraph (B); and

(D) develop recommendations on issues relative to the child’s custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that, to the maximum extent practicable, each child selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(3) SCOPE OF PROGRAM.—

(A) SELECTION OF SITE.—The Director shall select 3 sites in which to operate the pilot program established under paragraph (1).

(B) ACCESS TO ALIEN.—To the greatest extent possible, each site selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(C) WORK WITH COUNSEL.—The guardian ad litem provisions in this section; and

(E) shall be permitted to consult with the child during any hearing or interview involving such child; and

(F) shall be provided at least 24 hours advance notice of each child to be placed in a different placement, absent compelling and unusual circumstances warranting the transfer of such child before such notification.

(2) TRAINING TOPICS.—The training provided under paragraph (1) shall include training in—

(A) the circumstances and conditions that unaccompanied alien children face; and

(B) various immigration benefits for which such alien child might be eligible.

(3) DUTIES.—The guardian ad litem shall—

(A) conduct interviews with the child in a manner that is appropriate, taking into account the child’s age;

(B) investigate the facts and circumstances relevant to the child’s presence in the United States, including facts and circumstances—

(i) arising in the country of the child’s nationality or last habitual residence; and

(ii) relating to the child’s departure from such country;

(C) work with counsel to identify the child’s eligibility for relief from removal or voluntary departure and to share with counsel information collected under subparagraph (B); and

(D) develop recommendations on issues relative to the child’s custody, detention, release, and repatriation;

(E) take reasonable steps to ensure that, to the maximum extent practicable, each child selected under subparagraph (A) should have at least 25 children held in immigration custody at any given time.

(4) REPORT TO CONGRESS.—Not later than one year after the date on which the first pilot program site is established under paragraph (1), the Director shall submit a report on the achievement of the purposes described in paragraph (2) to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

SEC. 202. COUNSEL.

(a) ACCESS TO COUNSEL.

(1) IN GENERAL.—The Director shall ensure that all unaccompanied alien children in the custody of the Office or the Director, who are not described in section 101(a)(2), have competent counsel to represent them in immigration proceedings or matters.

(2) PRO BONO REPRESENTATION.—To the maximum extent practicable, the Director shall—

(A) make every effort to utilize the services of competent pro bono counsel who agree to provide representation to such children without charge; and

(B) ensure that placements made under subparagraphs (D), (E), and (F) of section 101(a)(2) in cities where there is a demonstrated capacity for competent pro bono representation.

(3) DEVELOPMENT OF NECESSARY INFRASTRUCTURES AND SYSTEMS.—In ensuring that legal representation is provided to unaccompanied alien children, the Director shall develop the necessary mechanisms to identify and make available to pro bono providers, legal assistance and representation, and to recruit such entities.

(4) CONTRACTING AND GRANT MAKING AUTHORITY.—

(A) IN GENERAL.—The Director shall enter into contracts with, or award grants to, non-profit agencies with relevant expertise in the delivery of immigration-related legal services to children in order to carry out the responsibilities of this Act, including providing legal orientation, screening cases for referral, recruiting, training, and overseeing pro bono attorneys.

(B) SUBCONTRACTING.—Nonprofit agencies may enter into subcontracts with, or award grants to, private entities with relevant expertise in the delivery of immigration-related legal services to children in order to carry out this subsection.

(5) CONSIDERATIONS REGARDING GRANTS AND CONTRACTS.—In awarding grants and entering into contracts with agencies under this paragraph, the Director shall take into consideration the capacity of the agencies in questions to properly administer the services covered by such contracts or grants without an undue conflict of interest.

(6) MODEL GUIDELINES ON LEGAL REPRESENTATION OF CHILDREN.—

(A) DEVELOPMENT OF GUIDELINES.—The Executive Office for Immigration Review, in consultation with voluntary agencies and national experts, shall develop model guidelines for the legal representation of alien children in immigration proceedings. Such guidelines shall be based on the child’s asylum guidelines, the American Bar Association Model Rules of Professional Conduct, and other relevant domestic or international sources.

(B) PURPOSE OF GUIDELINES.—The guidelines developed under subparagraph (A) shall...
be designed to help protect each child from any individual suspected of involvement in any criminal, harmful, or exploitative activity associated with the smuggling or trafficking of children while ensuring the fairness of the removal proceeding in which the child is involved.

(C) IMPLEMENTATION.—The Executive Office for Immigration Review shall adopt the guidelines developed under subparagraph (A) and submit the guidelines for adoption by national, State, and local bar associations.


(a) In general.—Counsel shall have reasonable access to an unaccompanied alien child, including access while the child is being held in detention, in the care of a foster family, or in any other setting that has been determined by the Office.

(b) Restriction on transfers.—Absent compelling and unusual circumstances, no child who is represented by counsel shall be transferred from the child’s placement to any other place unless advance notice of at least 24 hours is made to counsel of such transfer.

(c) Opportunity to consult with counsel.—An unaccompanied alien child in the custody of the Office may not be consented to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

(d) Access to recommendations of guardian ad litem.—Counsel shall be given an opportunity to review the recommendation by a guardian ad litem for the handling of children.

(e) Notice to counsel during immigration proceedings.—Counsel shall be given prompt and adequate notice of all immigration matters affecting or involving an unaccompanied alien child, including adjudications, proceedings, and processing, before such actions are taken.

(f) Opportunity to consult with counsel.—An unaccompanied alien child in the custody of the Office may not be consented to any immigration action, including consenting to voluntary departure, unless first afforded an opportunity to consult with counsel.

Sec. 302. Effective date; applicability.

(a) Effective date.—This title shall take effect 180 days after the date of enactment of this Act.

(b) Applicability.—The provisions of this title shall apply to all unaccompanied alien children in Federal custody on, before, or after the effective date of this title.

TITLE III—STRENGTHENING POLICIES FOR PERMANENT PROTECTION OF ALIEN CHILDREN

Sec. 301. Special immigrant juvenile visa.

(a) J visa.—Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended to read as follows:

"(J) an immigrant who is 18 years of age or younger on the date of application and who is present in the United States;"

(3) An analysis of the worldwide situation identifying unaccompanied alien children with pending immigration applications for relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, and curricular modules or formats that are currently used by these professionals.

(b) Training of directorate personnel.—The Director of the Department of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. Training for Border Patrol agents and immigration inspectors shall include specific training on identifying children at the United States border; the processes for the removal of entry of unaccompanied alien children; the procedures for the release of unaccompanied alien children who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

Sec. 303. Report.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year on the Committee on Appropriations of the Senate and the Committee on the Judiciary of the House of Representatives that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of guardians ad litem and counsel services under this Act; and

(4) any other information that the Director or the Secretary of Health and Human Services determines to be appropriate.

Sec. 304. Effective date.

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.

TITLE IV—CHILDREN REFUGEE AND ASYLUM SEEKERS

Sec. 401. Guidelines for children’s asylum claims.

(a) Sense of Congress.—Congress commends the Immigration and Nationalization Service for its issuance of its “Guidelines for Children’s Asylum Claims,” dated December 20, 1998, and encourages and supports the implementation of such guidelines by the Immigration and Naturalization Service (and its successor entities) in an effort to facilitate the handling of children’s asylum claims.

(b) Training.—The Secretary shall provide periodic comprehensive training under the “Guidelines for Children’s Asylum Claims” to asylum officers, immigration judges, members of the Board of Immigration Appeals, and immigration officers who have contact with children in order to familiarize and sensitize such officers to the needs of children asylum seekers. Voluntary agencies shall be allowed to participate in such training.

Sec. 402. Unaccompanied refugee children.

(a) Identifying unaccompanied refugee children.—Section 207(e) of the Immigration and Nationality Act (8 U.S.C. 1157(e)) is amended—

(1) by redesignating paragraphs (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), and (7), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) An analysis of the worldwide situation identifying unaccompanied refugee children, by region, which shall include an assessment of—

(A) the number of unaccompanied refugee children, by region; and

(B) the capacity of the Department of State to identify such refugees;"

(4) the fate that will befall such unaccompanied alien children.

Sec. 502. Unaccompanied child.

(a) Definitions.—In this title—

"(J) an immigrant who is 18 years of age or younger on the date of application and who is present in the United States;"

(3) An analysis of the worldwide situation identifying unaccompanied alien children with pending immigration applications for relief potentially available. The Director shall be responsible for establishing a core curriculum that can be incorporated into education, training, and curricular modules or formats that are currently used by these professionals.

(b) Training of directorate personnel.—The Director of the Department of Health and Human Services, shall provide specialized training to all personnel of the Directorate who come into contact with unaccompanied alien children. Training for Border Patrol agents and immigration inspectors shall include specific training on identifying children at the United States border; the processes for the removal of entry of unaccompanied alien children; the procedures for the release of unaccompanied alien children who have been victimized by smugglers or traffickers, and children for whom asylum or special immigrant relief may be appropriate, including children described in section 101(a)(2).

Sec. 303. Report.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit a report for the previous fiscal year on the Committee on Appropriations of the Senate and the Committee on the Judiciary of the House of Representatives that contains—

(1) data related to the implementation of section 462 of the Homeland Security Act (6 U.S.C. 279);

(2) data regarding the care and placement of children in accordance with this Act;

(3) data regarding the provision of guardians ad litem and counsel services under this Act; and

(4) any other information that the Director or the Secretary of Health and Human Servives determines to be appropriate.

Sec. 304. Effective date.

The amendment made by section 301 shall apply to all aliens who were in the United States before, on, or after the date of enactment of this Act.
SEC. 601. ADDITIONAL RESPONSIBILITIES AND POWERS OF THE OFFICE OF REFUGEE RESETTLEMENT WITH RESPECT TO UNACCOMPANIED ALIEN CHILDREN.

(a) ADDITIONAL RESPONSIBILITIES OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 276(b)(1)) is amended—

(1) by striking subsection (c); and

(2) by deleting the period at the end and inserting “; and” after “(b)”;

(b) ADDITIONAL POWERS OF THE DIRECTOR.—Section 462(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 276(b)(1)) is amended—

(1) by striking “and” and inserting “or”; and

(2) by deleting the period at the end and inserting “; and” after “(b)”; and

(c) EFFECTIVE DATE.—The amendments made by this title shall take effect as if included in the Homeland Security Act of 2002 (6 U.S.C. 276)) is amended by adding at the end the following:

“(1) SEC. 603. EFFECTIVE DATE.
The amendments made by this title shall take effect on the date of the enactment of this title, except that the amendments made by subsection (d) shall take effect as if included in the Homeland Security Act of 2002 (6 U.S.C. 276 et seq.).”

By Mrs. FEINSTEIN:

S. 120. A bill for the relief of Esdriondo Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I offer today private immigration relief legislation to provide lawful permanent residence status to Esdriondo Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola and Cindy Jael Arreola.

Mr. and Mrs. Arreola have lived in the United States for almost 20 years. Two of their five children, Nayely, age 18, and Cindy, age 16, also stand to benefit from this legislation. Their other three children are 13, Daniel, age 9, and Saray, age 8, are United States citizens.

The story of the Arreola family is compelling and I believe they merit Congress’s special consideration for such an extraordinary form of relief as a private bill.

The Arreolas are in this uncertain situation in part because of grievous errors committed by their previous counsel, who has since been disbarred. In fact, the attorney’s conduct was so egregious that it compelled an immigration judge to write the Executive Office of Immigration Review seeking his disbarment for the detriment he caused his immigration clients.

Mr. Arreola has lived in the United States since 1986. He was an agricultural migrant worker in the fields of California for several years, and as such has been eligible for permanent residence through the Seasonal Agricultural Workers, SAW, program.

The Arreolas also have other family members who are lawful permanent residents of this country or United States citizens. Mrs. Arreola has three brothers who are U.S. citizens and Mr. Arreola has a brother who is a U.S. citizen. It is also my understanding that they have no immediate family in Mexico.

According to immigration authorities, this family has never had any problems with law enforcement. I am convinced that they have perfectly legal reasons for every year from 1990 to the present. They have always worked hard to support themselves. As I previously mentioned, Mr. Arreola was previously employed as a farm worker, but now has his own business repairing electronics. His business has been successful enough to enable him to purchase a home for his family.

Mr. Arreola was previously employed as a farm worker, but now has his own business repairing electronics. His business has been successful enough to enable him to purchase a home for his family.
It seems so clear to me that this family has embraced the American dream and their continued presence in our country would do so much to enhance the values we hold dear. Enactment of the legislation I have introduced today will enable the Arreolas to continue to make significant contributions to their community as well as the United States.

I ask my colleagues to support this private bill. I also ask unanimous consent that the text of the legislation be printed in the RECORD and that the three letters of community support be printed in the RECORD.

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

"S. 120

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

SECTION 1. ADJUSTMENT OF STATUS.

(a) In General.—Notwithstanding any other provisions of law, for the purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola, the Secretary of State shall be deemed to have been lawfully admitted to, and remained in, the United States, and shall be eligible for issuance of an immigrant visa or for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(b) APPLICATION AND PAYMENT OF FEES.—Subparagraph (a) shall apply only if the applications for issuance of immigrant visas or the applications for adjustment of status are filed with appropriate fees within 2 years after the enactment of this Act.

(c) REDUCTION OF IMMIGRANT VISAS NUMBERS.—Upon the granting of immigrant visas to Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola, the Secretary of State shall instruct the proper officer to reduce by 4, during the current or subsequent fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth under section 202(e) or 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(e), 1153(a)), as applicable.

FRESNO PACIFIC UNIVERSITY,

HON. DIANNE FEINSTEIN,

WASHINGTON, DC.

Senator Feinstein: I am writing to ask you to continue your support for the Arreola family of Porterville, CA, and to ask you to reintroduce a private bill to grant the family permanent residency. It is laudable that you came to this family's aid in May 2003 because of the outpouring of support from immigration attorney. You recognized the outstanding academic achievements of Nayely, Esidronio and Maria Arreola's oldest daughter, as one of the most compelling reasons to allow the family to remain in the United States. You recognized that the "Arreola family had and continues to embrace the American dream and that their continued presence in our country would enhance the values that we as Americans hold dear." Unfortunately the private bill you introduced did not go anywhere because the family is in need of your support again.

You were right about Nayely!!! Nayely Arreola, the oldest daughter, has continued in her academic achievements and community service. The leaders at Fresno Pacific University saw in Nayely, a young person who will become exemplary of all that is good in the American dream. She has heart in the face of tough times, desire leading to solid community service, and leadership that our nation needs. It is with that I praise you for all you have done so far for this family. I am urging that the Arreola bill be reintroduced so that this great family can stay in the United States.

While Nayely was at Granite Hills High School, she was my prized pupil. I am the Speech and Debate teacher and Nayely represented our school in the Optimist Speech contest and the Lions Club Speech contest. In the Optimist contest she was a Club and Zone winner and last year in the Lions Club contest she was a California State winner. It was not only had my respect as a speaker and student in my program, she had my highest opinion as the person she represented to her peers and teachers. I can honestly say Nayely was the hardest working student I have encountered in my tenure at Granite Hills High. She graduated fourth in her class and was a C. S. F. seal bearer at graduation. She was the president of the Key Club where she assisted in food, coat and toy drives for the needy of our community. She was a NON-COLLEGE bounder, which means she will be a freshman and her orientation to our school.

Nayely Arreola is more than a remarkable student, she is a remarkable person. Everything she has done has been to try storm her way to a University in the United States. She was accepted at Fresno Pacific University as a President’s Scholar. She is doing an outstanding job at Fresno Pacific University as a freshman. She is America’s dream-her contribution to our country will be great. I have watched with great pride as she has grown into a wonderful young lady, ready to take on the world.

Please, urge you to reintroduce this bill and work to have it passed.

CHRISTINE L. AMANN,
Reading Specialist/Speech Coordinator.

By Mr. DEWINE (for himself, Mr. DURBIN, Mr. ALLEN, Mr. HAGEL, Mr. COLEMAN, Mr. JOHNSON, Mr. OBAMA, and Mr. LEAHY):

S. 121. A bill to amend titles 10 and 38, United States Code, to improve the benefits provided to distinguished members of the Armed Forces who have died in active service in connection with the operations of a United States Armed Force, and to authorize the Secretary of Defense to provide such benefits for deceased members of the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. DEWINE. Mr. President, I rise today to honor the many families of our Nation’s servicemen and women. We owe them a tremendous debt of gratitude for the services they have performed in supporting their family members in uniform. These families embody courage, patriotism, and dedication.

Mr. President, we have all heard the saying, “If the military wanted you to have a family, they would have issued you one at boot camp.” But, the truth today is that more than 50% of America’s men and women in uniform are single parents, and about half of the families also have children. These families supply endless support for our service-men and women in life and I believe we need to provide them that same support in the event of the death of the service member while serving on active duty. That is why I am working with my colleagues Senators DURBIN, ALLEN, HAGEL, COLEMAN, JOHNSON, OBAMA, and LEAHY in introducing legislation today.
to improve critical survivor benefits for those families who have lost a loved one on active duty.

Our legislation would amend four key benefit programs to improve the overall quality of life for survivors and dependents. First, it would increase the death gratuity to $100,000 and create a death gratuity for each child under the age of 18 in the amount of $25,000. Currently, the gratuity for spouses is just $12,000, while no benefit exists for dependent children. This change would provide flexibility for the spouse in maintaining a home, paying off remaining debt, and providing immediate funds to transition the family to a life without the service member. Additionally, the dependent benefit would offer surviving children an initial investment that can be used to transition to adulthood, for example, as a down payment on a house or for college tuition.

Second, our legislation would extend military health insurance, known as TRICARE Prime, to every dependent child of a deceased service member at no cost until the age of 21, or until 23 if the dependent attends college. The Department of Defense indicated that this change would provide dependents approximately $15,000 per year compared to the cost of private health insurance premiums. Expanded TRICARE coverage also guarantees that surviving dependents would continue to have access to some of the best doctors this country has to offer and would receive adequate health care and treatment.

Third, our legislation would increase the dependency and indemnity compensation, or DIC, for a spouse to $1,150 per month, as well as $750 per month for each child. In July 2004, the Government Accountability Office released a report titled “Military Personnel: Survivor Benefits for Service members and Federal, State, and City Employees.” This report outlined hypothetical situations to demonstrate the benefits received at certain pay grades. This report indicated that an E-3, meaning a Private First Class or a Lance Corporal, with two dependents and three years of service would receive $1,182 per month from the Survivor Benefit Plan, SBP, and $1208 per month for DIC. This equals $28,680 per year for the family to live on if the surviving spouse is not employed.

In 2003, the USDA Center for Nutrition Policy and Promotion released a report on the costs associated with raising children. The study indicated that, on average across the United States, families spent between $8,500 and $10,500 per child on expenses in a two child, husband-wife family. Further, this study indicated that families with a household income below $47,000 per year were only able to spend from $7000 to $9000 per year on expenses to raise a child. For the hypothetical family I just described, it would cost more than $18,000 per year just to meet the expenses of raising the two dependents.

However, since the household income, if the surviving spouse is not employed, would reach just $28,860, then it is likely that only about $14,000 will be spent for that purpose. Clearly, that’s just not enough. Our bill would help ensure that the essential needs of the family can be met.

Finally, our legislation would increase the benefits available from the Survivors’ and Dependents’ Educational Assistance Program. It would eliminate the current 45 month cap on benefits payable, establish an $80,000 lump sum that can be drawn down for any educational expenses, including tuition, fees, room, board, and books. Under current law, a survivor only has access to about $38,867 if he/she attends college or a trade school on a full-time basis. As we know, this amount would not even guarantee a survivor access to a college degree from a state university. In fact, let’s use the Ohio State University as an example. This public institution will cost in-state students only $18,600 for the 2004-2005 school year. Now, if there were no cost increases over the course of a four year matriculation, which, in this day and age, is an unrealistic assumption, a degree from OSU would cost $75,600. That is $36,733 more than the current benefit available from the Department of Veterans Affairs. Clearly a gap exists.

Mr. President, we owe the families of those who have lost loved ones in active duty our gratitude and support. The President’s inauguration last week reminded me of something President Abraham Lincoln said in his second inaugural address. He said this: ‘With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in, to bind up the nation’s wounds, to care for him who shall have borne the battle and for his widow and his orphan. ‘...’ It is time to do a better job of caring for these families. Here that is where this Congress does what is right. I ask my colleagues to stand with me in support for these families and do our part, as they have done theirs.

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. DEATH GRATUITY PAYABLE WITH RESPECT TO DECEASED MEMBERS OF THE UNIFORMED SERVICES WHO DIE WHILE SERVING ON ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.

(a) PERIOD OF ELIGIBILITY.—Section 1079(g) of title 10, United States Code, is amended—

(i) by inserting “(1)” after “(1)”; and

(ii) by striking the second sentence and inserting the following:

‘‘(1) the date on which the child ceases to be a child of the deceased, in fact dependent on the deceased, under section 1477.’’;

(b) EFFECTIVE DATE.— Except as provided in paragraph (2), this section and the amendments made by this section shall take effect as of October 1, 2001, and shall apply with respect to deaths occurring on or after such date.

SEC. 2. INCREASED PERIOD OF CONTINUED TRICARE COVERAGE OF CHILDREN OF MEMBERS OF THE UNIFORMED SERVICES WHO DIE WHILE SERVING ON ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.

(a) PERIOD OF ELIGIBILITY.—Section 1079(g) of title 10, United States Code, is amended—

(i) by inserting “(1)” after “(1)”; and

(ii) by striking the second sentence and inserting the following:

‘‘(1) the date on which the child ceases to be a child of the deceased, in fact dependent on the deceased, under section 1477.’’;

(b) EFFECTIVE DATE.—Except as provided in paragraph (2), this section and the amendments made by this section shall take effect as of October 1, 2001, and shall apply with respect to deaths occurring on or after such date.

SEC. 3. CONFORMING AMENDMENTS.—(A) Section 1477(d) of such title is amended by striking ‘‘he receives the death gratuity,’’ and inserting in lieu thereof ‘‘he is receiving payment of a death gratuity under section 1475 or 1476 of this title.’’;

(B) Section 1479 of such title is amended—

(i) by striking ‘‘immediate’’; and

(ii) by inserting ‘‘or 1476(e)’’ after ‘‘section 1475’’.

(c) EFFECTIVE DATE.—Except as provided in paragraph (2), this section and the amendments made by this section shall take effect as of October 1, 2001, and shall apply with respect to deaths occurring on or after such date.

SEC. 4. CONFORMING AMENDMENTS.—(A) Section 1079(g) of title 10, United States Code, is amended—

(i) by inserting “(1)” after “(1)”; and

(ii) by striking the second sentence and inserting the following:

‘‘(1) the date on which the child ceases to be a child of the deceased, in fact dependent on the deceased, under section 1477.’’;

(b) EFFECTIVE DATE.—Except as provided in paragraph (2), this section and the amendments made by this section shall take effect as of October 1, 2001, and shall apply with respect to deaths occurring on or after such date.
of any period of twelve consecutive months that is pursued by an eligible person who is concurrently engaged in agricultural employment which is relevant to such institution or agricultural courses as determined under standards prescribed by the Secretary.

(4) A course or courses or other program of special educational assistance as provided in section 3532(b) of this title.

(5) A program of apprenticeship or other on-job training pursued in a State as provided in section 3532(d) of this title.

(6) A program of apprenticeship or other on-job training pursued in a State as provided in section 3532(e) of this title.

SEC. 5. EXPANSION AND ENHANCEMENT OF SURVIVAL ASSISTANCE.

(a) In General.—Subsection (a) of section 3532 of title 38, United States Code, is amended to read as follows:

"3532. Amount of educational assistance

"(a) The aggregate amount of educational assistance to which an eligible person is entitled under this chapter is $50,000, as increased from time to time under section 3564 of this title.

"(b) Within the aggregate amount provided for in subsection (a), educational assistance under this chapter may be paid for any purpose, and in any amount, as follows:

1. A program of education consisting of institutional education

2. A full-time program of education that consists of institutional courses and alternate phases of training in a business or industrial establishment being specifically supplemental to the institutional portion.

3. A full-cooperative program consisting of institutional agricultural courses prescheduled to fall within forty-four weeks

"(c) In the matter preceding paragraph (1), by striking "or an eligible person" and inserting "or an eligible person as defined in section 3560(a) of this title"; and

(2) in the flush matter following paragraph (1), by inserting "among others, and includes, "chapter 34," and

(c) In the case of an eligible spouse or surviving spouse, a program of education exclusively by correspondence as provided in section 3566 of this title.

SEC. 6. EXPANSION AND ENHANCEMENT OF SURVIVAL AND DEPENDENT EDUCATIONAL ASSISTANCE.

(a) Termination of Limitation and Restoration of Continuation Requirements.

(b) Effective Date.—This section and the amendments made by this section shall take effect on the date of enactment of this Act.
2004 (title I of Public Law 108–454), by striking paragraph (3) and inserting the following new paragraph (3):

"(3) In this subsection, the term individual means an eligible veteran who is entitled to monthly educational assistance allowances payable under section 3015(e) of this title.".

(b) OTHER CONFORMING AMENDMENTS.—(1) Section 3524 of title 38, United States Code, is amended by striking "allowance" each place it appears.

.(A) Section 3531 of this title is amended—

[(1) by striking the item relating to section 3531 and inserting the following new item: "3531. Educational assistance.

(2) by striking the item relating to section 3532, and inserting the following new items:

"3532. Amount of educational assistance.

3533. Tutorial assistance."

(2) by striking the items relating to section 3534, and inserting the following new item:

"3541. Special restorative training."

(e) CLERICAL AMENDMENTS.—The table of sections of chapter 35 of title 38, United States Code, is amended—

(1) by striking the item relating to section 3511 and inserting the following new item:

"3511. Treatment must be interrupted in pursuit of programming education.";

(2) by striking the items relating to section 3533, 3532, and 3533 and inserting the following new items:

"3531. Educational assistance.

3532. Amount of educational assistance.

3533. Tutorial assistance.

3541. Special restorative training."

(f) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on October 1, 2001.

(2) The amendments made by subsections (a)(2)(B) and (c)(2)(G)(ii) shall take effect on the date of the enactment of this Act.

(3) Notwithstanding the effective date under paragraph (1) of the amendment to section 3564 of title 38, United States Code, made by subsection (c)(2)(E), the Secretary of Veterans Affairs shall make the first increase in the aggregate amount of educational assistance under section 3532 of such title as required by such section 3564 (as so amended) for fiscal year 2006.

By Mr. FEINGOLD:

S. 122. A bill to abolish the death penalty under Federal law; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I introduce the Federal Death Penalty Abolition Act of 2005. This bill would abolish the death penalty at the Federal level. It would put an immediate halt to executions and forbid the imposition of the death penalty as a sentence for violations of Federal law.

Since 1976, when the death penalty was reinstated by the Supreme Court, there have been almost 1,000 executions across the country, including three at the Federal level. At the same time, over 100 people on death row were later found innocent and released from death row. Exonerated inmates are not only removed from death row, but many are usually released from prison altogether. Apparently, these people never should have been convicted in the first place. While death penalty proponents claim that the death penalty is fair, efficient, and a deterrent, the fact remains that our criminal justice system has failed and has resulted in at least 117 very grave mistakes.

Nine hundred and forty-four executions, and 117 exonerations in the modern death penalty era. That is an embarrassing statistic, one that should have us all questioning the use of capital punishment in this country. And we continue to see more cases in which our justice system has failed. Since I first introduced this bill in November of 1999, 36 death row inmates have been exonerated throughout the country, 12 since I introduced this bill in the last Congress in February 2003. Since I last introduced this bill, 115 people have been executed nationwide. How many innocents are among them? We may never know.

While executions continue and the death row population grows, the national debate on the death penalty intensifies and has become even more vigorous. The number of voices joining in to express doubt about the use of capital punishment in America is growing. As evidence of the flaws in our system, many people are aware that has not escaped the attention of the American people. Layer after layer of confidence in the death penalty system has been gradually peeling away, and the voices of those questioning its fairness have grown louder and louder. Now they can be heard from college campuses and courtrooms and podiums across the Nation, to the Senate Judiciary Committee hearing room, to the Supreme Court. We must not ignore them.

That our modern society relies on killing as punishment is disturbing enough. Even more disturbing, however, is that our States' and Federal Government's use of the death penalty is often far from fair and just. These principles are the foundation of our criminal justice system. It is clear that the reduction of executions has led to a reduction of executions.

Three years ago, Governor George Ryan took the historic step of placing a moratorium on executions in Illinois, and creating an independent, blue ribbon commission to review the State's death penalty system. The Commission conducted an extensive study of the death penalty in Illinois and released a report with 85 recommendations for reform of the death penalty system.

The Commission concluded that the death penalty system is not fair, and that the risk of executing the innocent is alarming. Governor Ryan later commuted the sentences of all remaining Illinois death row inmates to life in prison before he left office in January 2003.

Illinois is not alone. Four years ago, then Governor Parris Glendening learned of suspected racial disparities in the administration of the death penalty in Maryland. Governor Glendening did not look the other way. He commissioned the University of Maryland to study that State's death penalty and found that 49 percent of all of the Federal Government first resumed death penalty executions after enactment of a 1988 Federal law that provided for the death penalty for murder in the course of a drug-killing conspiracy. The Federal death penalty was then expanded significantly in 1994, when the Omnibus Crime Bill allowed its use to apply to a total of some 60 Federal offenses. Since 1994, Federal executions seeking the death penalty have now accelerated.

A survey on the Federal death penalty showed troubling racial and geographic disparities in the Federal Government's administration of the death penalty. In other words, who lives and who dies in the Federal system appears to relate to the color of the defendant's skin. The region of the country where the defendant is incarcerated is of no consequence. Attorney General Janet Reno was so disturbed by the results of that report that she ordered a further, in-depth study of the results. Attorney General John Ashcroft pledged to continue that study and we still await the results of that further study. The Federal Government must do all that it can to ensure that no person is ever subject to harsher penalties because of the color of the defendant's skin.

I am certain that not one of my colleagues here in the Senate, not one, would defend racial discrimination in this ultimate punishment. The most fundamental guarantee of our Constitution is equal justice under law, and equal protection of the laws. Yet, if we have a system in place today that raises grave questions about whether that guarantee is being met.

While the Federal death penalty system is clearly plagued by flaws, there are 38 States across the country that also authorize the use of capital punishment. And like the Federal system, those systems are not free from error.

Five years ago, Governor George Ryan took the historic step of placing a moratorium on executions in Illinois, and creating an independent, blue ribbon commission to review the State's death penalty system. The Commission conducted an extensive study of the death penalty in Illinois and released a report with 85 recommendations for reform of the death penalty system. The Commission concluded that the death penalty system is not fair, and that the risk of executing the innocent is alarming. Governor Ryan later commuted the sentences of all remaining Illinois death row inmates to life in prison before he left office in January 2003.

Illinois is not alone. Four years ago, then Governor Parris Glendening learned of suspected racial disparities in the administration of the death penalty in Maryland. Governor Glendening did not look the other way. He commissioned the University of Maryland to study that State's death penalty and found that 49 percent of all...
simply more likely to receive a death sentence than blacks who kill blacks, or than white killers. According to the report, black offenders who kill whites are four times as likely to be sentenced to death as blacks who kill blacks, and twice as likely to get a death sentence as whites who kill whites.

Maryland and Illinois are not exceptions to a rule, nor anomalies in an otherwise perfect system. In fact, since reidentification of the modern death penalty, the execution of capital cases across the country have involved white victims, even though only 50 percent of murder victims are white. Nationwide, more than half of the death row inmates are African Americans or Hispanic Americans.

There is evidence of racial disparities, inadequate counsel, prosecutorial misconduct, and false scientific evidence in death penalty systems across the country. While the research done in Maryland and Illinois has yielded shocking results, there are 36 other States that authorize the use of the death penalty, most of them far more frequently. Twenty of the 38 States that authorize capital punishment have executed more inmates than Maryland, and 14 of those States have carried out more executions than Illinois. So while we are closer to uncovering the unthinkable truth about the flawed system in the Maryland and Illinois death penalty systems, there are 36 other systems in this country that are most likely plagued with the same flaws. And yet, the killing continues.

At the beginning of 2005, I cannot help but believe that our progress has been tarnished by our Nation’s not only continuing, but increasing use of the death penalty. We are a Nation that prides itself on the fundamental principles of justice, liberty, equality and due process. We are a Nation that scrutinizes the human rights records of other countries, yet we are one of the first nations to speak out against torture and killings by foreign governments. We should hold our own system of justice to the highest standard.

Over the last few years, some prominent voices in our country have done just that. And they are not just voices of liberals, or of the faith community. They are the voices of Justice Sandra Day O’Connor, Reverend Pat Robertson, former FBI Director William Sessions, Republican Governor George Ryan, and Democratic Governor Parris Glendening. The voices of those questioning our application of the death penalty are growing in number, and they are growing louder.

And while we examine the flaws in our death penalty system, we cannot help but note that our use of the death penalty stands in stark contrast to the majority of nations, which have abolished the death penalty in law or practice. A total of 177 countries that have abolished the death penalty in law or in practice. The European Union denies membership in the alliance to those nations that use the death penalty. In fact, it passed a resolution calling for the immediate and unconditional global abolition of the death penalty, and it specifically called on all States within the United States to abolish the death penalty. This is significant because it reflects the unanimous view of a group of nations with which the United States enjoys the closest of relationships and shares the deepest common values.

One of the most troubling in the international context is that the United States is now one of only five countries that imposes the death penalty for crimes committed by juveniles. So, while a May 2002 Gallup poll found that 69 percent of Americans oppose the death penalty for those under the age of 18, we are one of only five nations on this earth that puts to death people who were under 18 years of age when they committed their crimes. The others are Iran, the Democratic Republic of Congo, Nigeria, and Saudi Arabia. In the last decade, the United States has executed more juvenile offenders than all other nations combined.

These are countries that we often criticize for human rights abuses. We should remove any basis for charges that human rights violations are taking place on our own soil by halting the execution of people who were not even adults when they committed the crimes they were sentenced to die. No one can reasonably argue that executing child offenders is a normal or acceptable practice in the world community. And I do not think that we should be proud that the United States is the world leader in the execution of child offenders.

As we begin a new year and another Congress, our society is still far from fully just. The continued use of the death penalty shames us. The penalty is wrong and it is immoral. The adage “two wrongs do not make a right,” applies here in the most fundamental way. Our Nation has long ago done away with other barbaric punishments like whipping and cutting off the ears of criminals. Just as our Nation did away with these punishments as contrary to our humanity and ideals, it is time to abolish the death penalty as we seek justice in this new century. And it is not just a matter of morality. The continued validity of our justice system as a truly just system that deserves the respect of our own people and the world requires that we do so. Our Nation’s striving to remain the leading defender of freedom, liberty and equality demands that we do so.

Abolishing the death penalty will not be an easy task. It will take patience, persistence, and courage. As we work to move forward in a rapidly changing world, let us leave this archaic practice behind.

I ask my colleagues to join me in taking the first step in abolishing the death penalty in our great Nation. I also call on each State that authorizes the use of the death penalty to cease this practice. Let us step away from the culture of violence and restore fairness and integrity to our criminal justice system.

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. 122

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 “Federal Death Penalty Abolition Act of 2005”

SEC. 2. REPEAL OF FEDERAL LAWS PROVIDING FOR THE DEATH PENALTY.

(a) HOMICIDE-RELATED OFFENSES.—

(1) MURDER RELATED TO THE SMUGGLING OF ALIENS.—Section 274(a)(1)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(B)(i)) is amended by striking “punished by death”.

(2) DESTRUCTION OF AIRCRAFT, MOTOR VEHICLES, OR RELATED FACILITIES RESULTING IN DRUGHT.—Section 31 of title 18, United States Code, is amended by striking “to the death penalty or”.

(3) MURDER COMMITTED DURING A DRUG-RELATED DRIVE-BY SHOOTING.—Section 36(b)(2)(A) of title 18, United States Code, is amended by striking “death or”.

(4) MURDER COMMITTED AT AN AIRPORT SERVING INTERNATIONAL CIVIL AVIATION.—Section 37(a) of title 18, United States Code, is amended in the following paragraph (2), by striking “punished by death”.

(5) CIVIL RIGHTS OFFENSES RESULTING IN DEATH.—Chapter 13 of title 18, United States Code, is amended—

(A) in section 241, by striking “or”, or may be sentenced to death”; and

(B) in section 242, by striking “or, or may be sentenced to death”;

(C) in section 245(b), by striking “or”, or may be sentenced to death”;

(D) in section 246(d), by striking “or, or may be sentenced to death”;

(E) in section 271, by striking “or”, or may be sentenced to death”;

(F) MURDER OF A MEMBER OF CONGRESS, AN IMPORTANT EXECUTIVE OFFICIAL, OR A SUPREME COURT JUSTICE RESULTING IN DEATH OR SERVING INTERNATIONAL CIVIL AVIATION.—Section 371 of title 18, United States Code, is amended—

(A) in subsection (a)(2), by striking “death or”; and

(B) in subsection (d)(2), by striking “death or”.

(7) DEATH RESULTING FROM OFFENSES INVOLVING TRANSPORTATION OF EXPLOSIVES, DESTRUCTION OF GOVERNMENT PROPERTY, OR DESTRUCTION OF PROPERTY RELATED TO FOREIGN OR INTERSTATE COMMERCE.—Section 844 of title 18, United States Code, is amended—

(A) in subsection (d), by striking “or” to the death penalty”;

(B) in subsection (f)(3), by striking “subject to the death penalty”;

(C) in subsection (i), by striking “or” to the death penalty”; and

(D) in subsection (n), by striking “other than the death penalty”.

(8) EXECUTING ONCE OR MORE USE OF A FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME.—Section 922(j)(1) of title 18, United States Code, is amended by striking “by death or”.

(9) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking “death or”.

(10) FIRST DEGREE MURDER.—Section 1111(b) of title 18, United States Code, is amended by striking “by death or”.

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(11) MURDER BY A FEDERAL PRISONER.—Section 1118 of title 18, United States Code, is amended—
(A) in subsection (a), by striking “by death or”; and
(B) in subsection (b), in the third undesignated paragraph—
(i) by inserting “or” before “an indeterminate”
(ii) by striking “, or an unexecuted sentence of death”.
(12) MURDER OF A STATE OR LOCAL LAW ENFORCEMENT OFFICER OR OTHER PERSON AIDING IN A FEDERAL INVESTIGATION; MURDER OF A STATE CORRECTIONAL OFFICER.—Section 1121 of title 18, United States Code, is amended—
(A) in subsection (a), by striking “by sentence of death”; and
(B) in subsection (b)(1), by striking “or death”.
(13) MURDER DURING A KIDNAPPING.—Section 1210(a) of title 18, United States Code, is amended by striking “death or”.
(14) MURDER DURING A HOSTAGE-TAKING.—Section 1210(a) of title 18, United States Code, is amended by striking “death or”.
(15) MURDER WITH THE INTENT OF PREVENTING TESTIMONY BY A WITNESS, VICTIM, OR INFORMANT.—Section 1512(a)(2)(A) of title 18, United States Code, is amended by striking “the death penalty or”.
(16) Mailing of INJURIOUS ARTICLES WITH INTENT TO KILL OR RESULTING IN DEATH.—Section 1118 of title 18, United States Code, is amended by striking “to the death penalty or”.
(17) ASSASSINATION OR KIDNAPPING RESULTING IN THE DEATH OF THE PRESIDENT OR VICE PRESIDENT.—Section 1111 of title 18, United States Code, is amended by striking “death or”.
(18) MURDER FOR HIRE.—Section 1958(a) of title 18, United States Code, is amended by striking “death”.
(19) MURDER INVOLVED IN A HAVOC-KETTENRING OFFENSE.—Section 1959(a)(1) of title 18, United States Code, is amended by striking “the death penalty or”.
(20) WILLFUL WRECKING OF A TRAIN RESULTING IN DEATH.—Section 1992(b) of title 18, United States Code, is amended by striking “to the death penalty or”.
(21) BANK ROBBERY-RELATED MURDER OR KIDNAPPING.—Section 2113(e) of title 18, United States Code, is amended by striking “death”.
(22) MURDER RELATED TO A CARJACKING.—Section 2119(c) of title 18, United States Code, is amended by striking “or sentenced to death”.
(23) MURDER RELATED TO AGGRAVATED CHILD SEXUAL ABUSE.—Section 2241(c) of title 18, United States Code, is amended by striking “unless the death penalty is imposed,”.
(24) MURDER RELATED TO SEXUAL ABUSE.—Section 2245 of title 18, United States Code, is amended by striking “punished by death or”.
(25) MURDER RELATED TO SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(d) of title 18, United States Code, is amended by striking “unless the death penalty is imposed,”.
(26) MURDER COMMITTED DURING AN OFFENSE AGAINST MARITIME NAVIGATION.—Section 2290(a)(1) of title 18, United States Code, is amended by striking “punished by death or”.
(27) MURDER COMMITTED DURING AN OFFENSE AGAINST A MARITIME FIXED PLATFORM.—Section 2323(a) of title 18, United States Code, is amended by striking “punished by death or”.
(28) TERRORIST MURDER OF A UNITED STATES NATIONAL NOT IN ANOTHER COUNTRY AGAINST A MARITIME FIXED PLATFORM.—Section 2332(a)(1) of title 18, United States Code, is amended by striking “death or”.

(19) MURDER BY THE USE OF A WEAPON OF MASS DESTRUCTION.—Section 2332a of title 18, United States Code, is amended—
(A) in subsection (a), by striking “punished by death”; and
(B) in subsection (b), by striking “by death or”.
(20) MURDER BY ACT OF TERRORISM TRANSMITTED THROUGH COMPUTER NETWORKS, LAW ENFORCEMENT OFFICER.—Section 2332b(h)(1)(A) of title 18, United States Code, is amended by striking “by death or”.
(21) MURDER INVOLVING TORTURE.—Section 2381(a)(1) of title 18, United States Code, is amended by striking “punished by death or”.
(22) MURDER RELATED TO A CONTINUING CRIMINAL ENTERPRISE OR RELATED MURDER OF A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER.—Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended—
(A) in each of subparagraphs (A) and (B) of subsection (e)(1), by striking “, or may be sentenced to death”;
(B) by striking subsections (g) and (h) and inserting the following:
(g) [Reserved.]
(h) [Reserved.]
(C) in subsection (j), by striking “and to appropriateness in that case of imposing a sentence of death or”;
(D) in subsection (k), by striking “, other than death,” and all that follows before the period and inserting “authorized by law”;
(E) by striking subsections (l) and (m) and inserting the following:
(l) [Reserved.]
(m) [Reserved.].
(23) DEATH RESULTING FROM AIRCRAFT HI-JACKING.—Section 4652 of title 49, United States Code, is amended—
(A) in subsection (a)(2), by striking “put to death or”;
(B) in subsection (b)(1)(B), by striking “put to death or”.
(24) NON-HOMICIDE RELATED OFFENSES.—
(1) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking “punished by death or” and all that follows before the period and inserting “imprisoned for any term of years or for life”.
(2) TRESPASS.—Section 2801 of title 18, United States Code, is amended by striking “shall suffer death or”.
(3) REPEAL OF CRIMINAL PROCEDURES RELATING TO IMPOSITION OF DEATH SENTENCE.—
(1) IN GENERAL.—Section 3521 of title 18, United States Code, is repealed.
(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by striking the item relating to chapter 229.

SEC. 3. PROHIBITION ON IMPOSITION OF DEATH SENTENCE.
(a) IN GENERAL.—Notwithstanding any other provision of law, no person may be sentenced to death or put to death on or after the date of enactment of this Act for any violation of Federal law if any violation of Federal law shall serve a sentence of life imprisonment without the possibility of parole.

By Mr. FEINGOLD:
S. 123. A bill to amend part D of title XVIII of the Social Security Act to provide for negotiation of fair prices for Medicare prescription drugs; to the Committee on Finance.
Mr. FEINGOLD. Mr. President, today I am introducing a bill that will fix one of the fundamental flaws of the Medicare prescription drug benefit signed into law last Congress. The “Efficiency in Government Health Care Spending Act” will remove language included in the Medicare Modernization Act that prohibits the Medicare program from negotiating prescription drug prices with manufacturers. I believe that the Medicare prescription drug benefit does far too little to bring down the prices of prescription drugs, and that there are not enough measures to keep the skyrocketing cost of the program in check. In fact, it actually takes away the best tool the Medicare program could use in bringing down prescription drug prices by denying the government the ability to negotiate price discounts on behalf of Medicare beneficiaries.

My bill will allow the Federal Government to take advantage of the purchasing power of the Medicare program, saving taxpayers’ dollars while reducing the costs of prescription drugs for Medicare beneficiaries. We need to act now to fix the flaws included in the Medicare prescription drug benefit before the benefit begins next year. Mr. President, I ask unanimous consent that the bill be printed in the RECORD.

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

S. 123

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 “Efficiency in Government Health Care Spending Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Prohibiting the Federal Government from negotiating prescription drug prices with manufacturers fails to take advantage of the purchasing power of the Medicare program.

(2) Negotiating prescription drug prices can reduce the costs of prescription drugs for both the Medicare program and taxpayers.

(3) A 2002 study by the inspector general of the Department of Health and Human Services found that—

(A) both the Medicare program and the beneficiaries of the Medicare program continue to pay too much for medical equipment and medical supplies; and

(B) if the Medicare program paid the same prices for 16 health care supplies as the Department of Veterans Affairs, which directly negotiates prices with manufacturers, pays for those supplies, the Federal Government could save $508,000,000.

SEC. 3. SENSE OF THE SENATE REGARDING THE USE OF AUTHORITY TO NEGOTIATE PRICES FOR MEDICARE PRESCRIPTION DRUGS.

It is the sense of the Senate that the Secretary of Health and Human Services should exercise the authority under section 1860D–11(i)(1), as amended by section 4, so as to assure an affordable Medicare drug benefit for Medicare beneficiaries and taxpayers.

SEC. 4. NEGOTIATING PRICES FOR MEDICARE PRESCRIPTION DRUGS.

(a) NEGOTIATION.—Section 1860D–11 of the Social Security Act (42 U.S.C. 1395w–11) is amended—
"(1) Authority To Negotiate: No National Formulary.—

"(2) No National Formulary.—In order to promote competition under this part and in furtherance of the goals of provider quality care and containing costs under this part, the Secretary shall have authority similar to that of other Federal entities that purchase prescription drugs in bulk to negotiate contracts with manufacturers of covered part D drugs, consistent with the requirements and in furtherance of the goals of provider quality care and containing costs under this part.

"(b) Effective Date.—The amendment made by this section shall take effect as if included in the enactment of section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173).

By Mr. FEINGOLD:

S. 124. A bill to amend title XVIII of the Social Security Act to repeal the MA Regional Plan Stabilization Fund; to the Committee on Finance.

Mr. FEINGOLD. Mr. President, today I am introducing a bill that will remove the multi-billion dollar "stabilization fund" from the new Medicare prescription drug benefit. This stabilization fund is in essence a slush fund that gives billions of dollars to private insurance companies. This is not an efficient use of taxpayers' dollars. In fact, it's not clear why it's even necessary, as private managed care plans are successful in bringing costs down, as backers of the new Medicare bill expect, and if seniors supposedly want to choose private plans, as backers of the new Medicare bill believe, then why should American taxpayers pay private companies more money to get more people to enroll in them?

We should not be subsidizing private health insurance companies in the name of Medicare reform. It is fiscally irresponsible, in a time of record deficits, to give taxpayers' dollars as a giveaway to private insurance companies. By removing this multi-billion slush fund, my bill will save the American taxpayers $10 billion. Many analysts, including the Administration's analysts, predict that the new Medicare prescription drug benefit will far surpass the $300 billion budgeted for it. We need to look carefully at how we spend Medicare dollars, so that we can ensure that the program remains solvent for future generations.

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. 124

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

SECTION 1. REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.-The purpose of this section is to repeal the Federal budget deficit and to more efficiently use taxpayer dollars in health care spending.

(b) Repeal of MA Regional Plan Stabilization Fund.—Section 1858 of the Social Security Act (42 U.S.C. 1395w-26a) is amended—

(1) by striking subsection (e);
(2) by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively; and
(3) in subsection (e), as so redesignated, by striking "subject to subsection (e)",

(c) Conferring Amendment.—Section 1851(i)(2) of the Social Security Act (42 U.S.C. 1395w-21(i)(2)), as amended by section 21(d)(5) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended by striking "1858(b)" and inserting "1858(g)".

(d) Effective Date.—The amendments made by this section shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173).

By Mrs. BOXER (for herself, Mrs. Feinstein, Mr. Durbin, and Mr. Inouye):

S. 125. A bill to designate the United States courthouse located at 501 I Street in Sacramento, California, as the "Robert T. Matsui United States Courthouse"; to the Committee on Environment and Public Works.

Mrs. BOXER. Mr. President, I am introducing legislation today to name the courthouse in Sacramento, California, as the "Robert T. Matsui United States Courthouse"; to the Committee on Environment and Public Works.

Mrs. BOXER. Mr. President, I am introducing legislation today to name the courthouse in Sacramento, California, as the "Robert T. Matsui United States Courthouse". I am pleased to be joined in this effort by Senators Feinstein and Durbin.

Congressman Matsui's death on January 1, 2005 was shocking to all of us. Naming the Federal Courthouse in Sacramento in his honor would be a very appropriate memorial to his continual efforts toward a just and fair society.

After his childhood internment, Bob Matsui could have chosen to dwell on the sadness of his early years. Instead, he chose to give his life to public service, working to improve the lives of those in his congressional district and all Americans. He was a true patriot.

He was first elected to Congress in 1978, and spent the past 26 years representing the citizens of Sacramento with distinction and pride. He served as a senior member of the Committee on Ways and Means, and took a particular interest in complex public policy issues including tax, international trade, social security, healthcare, and welfare reform.

Congressman Matsui's dedication to the well-being of America's children earned him the Congressional Advocate of the Year award from the Child Welfare League of America in 1992 and 1994. The Congressman was also honored with the Anti Defamation League's Lifetime Achievement Award for his commitment to human rights.

Included in Congressman Matsui's long list of legislative achievements were his accomplishments to benefit the people of his district including flood control, transportation, and his success in obtaining $142 million in federal funding for the courthouse in Sacramento.

A graduate of the University of California at Berkeley and Hastings College of Law, he founded his own law practice in 1967, and was elected to the Sacramento City Council in 1971. After winning reelection in 1975 he became vice mayor of Sacramento in 1977. Congressman Matsui is survived by his wife, Doris Matsui, their son Brian and his wife Amy, and granddaughter, Anna.

By Mr. INOUYE:

S. 127. A bill to amend chapter 81 of title 5, United States Code, to authorize the use of clinical social workers to conduct evaluations to determine work-related emotional and mental illnesses; to the Committee on Homeland Security and Governmental Affairs.

Mr. INOUYE. Mr. President, today I introduce the Clinical Social Workers' Recognition Act to correct a continuing problem in the Federal Employees Compensation Act. This bill will also provide clinical social workers the recognition they deserve as independent providers of quality mental health care services.

Clinical social workers are authorized to independently diagnose and treat mental illnesses through public and private health insurance plans across the nation. However, Title V of the United States Code, does not permit the use of mental health evaluations conducted by clinical social workers for use as evidence in determining workers' compensation claims brought by federal employees. The bill I am introducing corrects this problem.

I am introducing a bill to give employees who have a mental health problem the right to select a clinical social worker through their health plans to provide mental health services, but may not go to this same professional for workers' compensation evaluations. The failure to recognize this important and well-imposed and undue burden on federal employees where clinical social workers are the only available providers of mental health care.

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. 127

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 "Clinical Social Workers' Recognition Act of 2005":

SEC. 2. EXAMINATIONS BY CLINICAL SOCIAL WORKERS FOR FEDERAL EMPLOYEE COMPENSATION CLAIMS.—Section 8101 of title 5, United States Code, is amended—

(1) in paragraph (2), by striking "(and osteopathic practitioners'); and "(osteopathic practitioners, and clinical social workers’’; and

(2) in paragraph (3), by striking "osteopathic practitioners’ and inserting "osteopathic practitioners, clinical social workers’’.

Mr. President, I am introducing legislation today to name the courthouse in Sacramento, California, as the "Robert T. Matsui United States Courthouse"; to the Committee on Environment and Public Works.
By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 128. A bill to designate certain public land in Humboldt, Del Norte, Mendocino, Lake, and Napa Counties in the State of California as wilderness, to designate segments of the Black Butte River in Mendocino County, California as a wild or scenic river, and for other purposes: to the Committee on Energy and Natural Resources.

Mrs. BOXER. Mr. President, I am introducing a bill today that will protect hundreds of thousands of acres of wilderness in Northern California. The Northern California Coastal Wild Heritage Act would designate over 300,000 acres in 14 areas as wilderness and would protect 21 miles of the Black Butte Creek as wild and scenic.

The Senate passed this legislation during the 108th Congress, and I am hopeful this year that the bill will become law.

California’s natural treasures have always been one of the things that make California unique, drawing millions of people to over the years to revel in their beauty. But that beauty must not be taken for granted. It is important that we move now to designate these special places in California as wilderness to protect them for the enjoyment of future generations.

That is why I introduced the statewide California Wild Heritage Act during the 107th Congress and the 108th Congress, and I will soon be reintroducing it. The California Wild Heritage Act would protect more than 2.5 million acres of public land throughout the state of California, as well as the free-flowing portions of 23 rivers. Every acre of wild land is a treasure, but the areas protected in this bill are some of California’s most precious.

I am pleased to join Representative Mike Thompson of California in introducing this legislation, which protect those portions of our state that are located in California’s First Congressional District. The areas protected under this legislation are some of the most magnificent wild places in our state. For example, in southwestern Humboldt and northwestern Mendocino counties, over 12,000 acres of the King Range will be protected as wilderness. This is the wildest portion of the California coast, boasting the longest stretch of undeveloped coastline in the United States outside of Alaska.

This bill will protect watersheds that provide clean water to our cities and farms. This bill would also protect the precious plant and animal species that make their home in these areas. Endangered and threatened species whose habitats will be protected by this bill include the bald eagle, California brown pelican, steelhead trout, coho salmon, bald eagle, peregrine falcon, northern spotted owl, and Roosevelt elk.

During the last 20 years, 675,000 acres of unprotected wilderness lost their wilderness character due to activities such as logging and mining. As our population increases, and California becomes home to almost 50 million people by the middle of the century, development pressures threaten our remaining wild places. We must protect our precious wild rivers before they are lost forever.

Mr. President, those of us who live in the United States have a very special responsibility to protect our natural heritage. With this legislation, we are taking a step closer to being the legacy for our children’s children, and their children.

By Mr. TALENT:

S. 129. A bill to amend title 23, United States Code, to provide for HOV facilities; to the Committee on Environment and Public Works.

Mr. TALENT. Mr. President, I am pleased to be introducing this bill, which will allow more owners of hybrid electric vehicles, or HEVs, to have access to HOV lanes on Federal highways. For all of us who have a desire to lessen our dependence on foreign oil and encourage the use of renewable energy, this bill is a step forward towards achieving those goals.

The language that is currently in the highway bills passed by the House and the Senate allows hybrid vehicles that achieve a 45 mile-per-gallon fuel economy highway rating to use HOV lanes. Any hybrid that achieves that kind of fuel economy certainly deserves to get that status, because it is a very impressive fuel economy rating and represents a substantial improvement over non-hybrid vehicles. What the 45 mile-per-gallon standard fails to take into account, however, is that many larger hybrid vehicles achieve a much larger fuel economy improvement over their internal combustion engine counterparts, and thus save more energy, than smaller non-hybrid vehicles manage to meet the standard but are a less drastic improvement over their non-hybrid counterparts.

To illustrate this, take the 2005 model Honda Civic HEV, which gets just over 45 miles-per-gallon. This represents less than a 40 percent improvement over the comparable internal combustion model. The 2005 Ford Escape HEV, on the other hand, is a truck, so it gets fewer miles per gallon than a typical hybrid. However, this is a 75 percent improvement over its internal combustion engine counterpart, and in addition, the Escape HEV emits 3-4 tons fewer greenhouse gases every year than the non-hybrid.

There is no reason to discriminate against these larger, American-made hybrids like the Ford Escape. They are truly engineering marvels and are so clearly beneficial for the environment. The bill that I have sponsored will give States the discretion to open up their HOV lanes to hybrid vehicles that achieve a substantial increase in fuel economy relative to comparable gasoline vehicles, or achieve a substantial increase in lifetime fuel savings relative to comparable gasoline vehicles. It creates a minimum standard of improvement necessary for hybrids, but gives States the option of increasing the requirements. This bill also allows States to open HOV lanes to single occupancy advanced lean burn vehicles that achieve at least a 25 percent increase in fuel economy relative to comparable gasoline vehicles and that are certified to Clean Air Act Tier 2 standards.

I am hopeful that my colleagues on both sides of the aisle can agree that we should do all we can to encourage the use of renewable energy in our country, and hybrid vehicles are an important part of that. The people who drive these vehicles are doing their part to help clean up the air and increase energy conservation, and we should give more people an incentive to buy these vehicles by giving them access to HOV lanes.

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. 129

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

SECTION 1. HOV FACILITIES.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"§ 165. HOV facilities

(a) DEFINITIONS.—In this section:

(1) DEDICATED ALTERNATIVE FUEL VEHICLE.—The term ‘dedicated alternative fuel vehicle’ means a vehicle that operates solely on—

(A) methanol, denatured ethanol, or other alcohols;

(B) a mixture containing at least 85 percent of methanol, denatured ethanol, or other alcohols by volume with gasoline or other fuels;

(C) natural gas;

(D) liquefied petroleum gas;

(E) hydrogen;

(F) coal derived liquid fuels;

(G) fuels (except alcohol) derived from biological materials;

(H) electricity, including electricity from solar energy;

(i) any other fuel that the Secretary prescribes by regulation that is not substantially petroleum and that would yield substantially greater energy security and environmental benefits.

(2) LOW-EMISSION AND ENERGY-EFFICIENT VEHICLE.—The term ‘low-emission and energy-efficient vehicle’ means a vehicle that—

(A) has been certified by the Administrator of the Environmental Protection Agency as meeting the Tier II emission level established in regulations prescribed by the Administrator under section 202(i) of the Clean Air Act (42 U.S.C. 7521(n)) for that make and model year vehicle; and

(B)(i) has propulsion energy drawn from onboard hybrid sources of stored energy that are—

(I) an internal combustion or heat engine using consumable fuel;
‘(II) a rechargeable energy storage system; and

‘(III) certified by the manufacturer to have achieved either a 10 percent or more increase in fuel economy relative to a comparable vehicle that is an internal combustion gasoline fueled vehicle (other than a vehicle that has propulsion energy from such onboard renewable energy sources), or a 10 percent or more vehicle increase in lifetime fuel savings relative to a comparable vehicle, determined in accordance with guidelines prescribed by the Administrator of the Environmental Protection Agency not later than 180 days after the date of enactment of this section, specifying procedures and methods for calculating other increase and making the comparison, except that the State agency referred to in this section may, subject to the guidelines and procedures under this paragraph, apply, at its discretion, a percentage under this subclause in furtherance of its responsibilities with respect to a HOV facility specified in subsection (e); or

‘(4) is a dedicated alternative fuel vehicle.

‘(5) STATE AGENCY.—The term ‘State agency’, as used with respect to a HOV facility, means an agency of a State or local government (including a State transportation department) having jurisdiction over the operation of the facility.

‘(6) ADVANCED LEAN BURN TECHNOLOGY VEHICLE.—The term ‘advanced lean burn technology vehicle’ means a vehicle with an internal combustion engine that—

‘(A) is designed to operate primarily using more air than is necessary for complete combustion of fuel;

‘(B) incorporates direct injection;

‘(C) has a maximum 125 percent of city fuel economy of a comparable vehicle; and

‘(D) has received a certificate that the vehicle meets or exceeds—

‘(i) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 II emission standard established by regulations under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)); and

‘(ii) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin IV emission standard established by regulations under section 202(i) of the Clean Air Act (42 U.S.C. 7521(i)).

‘(b) In General.—

‘(1) AUTHORITY OF STATE AGENCIES.—A State agency that has jurisdiction over the operation of a HOV facility shall establish the occupancy requirements of vehicles operating on the facility.

‘(2) OCCUPANCY REQUIREMENT.—Except as otherwise provided by this section, not fewer than 2 occupants per vehicle may be required for use of a HOV facility.

‘(c) EXCEPTIONS TO OCCUPANCY REQUIREMENT.—Notwithstanding the occupancy requirement of paragraph (b), the following exceptions shall apply with respect to a State agency operating a HOV facility:

‘(1) MOTORCYCLES AND BICYCLES.—

‘(A) In General.—Subject to subparagraph (B), the State agency shall allow motorcycles and bicycles to use the HOV facility.

‘(B) SAFETY EXCEPTION.—

‘(i) In General.—A State agency may restrict the use of the HOV facility by motorcycles or bicycles if the agency certifies to the Secretary that such use would create a safety hazard and the Secretary accepts the certification.

‘(ii) Notice.—The Secretary may accept a certification under clause (i) only after the Secretary has received written notice of the certification in the Federal Register and provides an opportunity for public comment.

‘(2) PUBLIC TRANSPORTATION VEHICLES.—The State agency may allow public transportation vehicles to use the HOV facility if the agency—

‘(A) establishes requirements for clearly identifying the vehicles; and

‘(B) establishes procedures for enforcing the restrictions on the use of the facility by the vehicles.

‘(3) HIGH OCCUPANCY TOLL VEHICLES.—The State agency may allow vehicles that are not otherwise exempt under this subsection to use the HOV facility by—

‘(A) the operators of the vehicles pay a toll charged by the agency for use of the facility; and

‘(B) the agency—

‘(i) establishes a program that addresses how motorists can enroll and participate in the toll program; and

‘(ii) develops, manages, and maintains a system that will automatically collect the toll; and

‘(iii) establishes policies and procedures to—

‘(I) manage the demand to use the facility by varying the toll amount that is charged; and

‘(II) enforce violations of use of the facility; and

‘(III) permit low-income individuals to pay reduced tolls.

‘(4) LOW-EMISSION AND ENERGY-EFFICIENT VEHICLES.—

‘(A) INHERENTLY LOW-EMISSION VEHICLES.—Before September 30, 2009, the State agency may allow vehicles that are certified and labeled as inherently low-emission vehicles under section 88.311-95 of title 40, Code of Federal Regulations, to use the HOV facility if the agency establishes procedures for enforcing restrictions on the use of the facility by the vehicles.

‘(B) OTHER LOW-EMISSION AND ENERGY-EFFICIENT VEHICLES.—Before September 30, 2009, the State agency may allow vehicles that are certified as and labeled low-emission and energy-efficient vehicles under subsection (f) to use the HOV facility if the agency—

‘(i) establishes a program that addresses how the vehicles are selected and certificated; and

‘(ii) establishes requirements for labeling the vehicles and procedures for enforcing those requirements;

‘(iii) continuously monitors, evaluates, and reports to the Secretary on the performance of the vehicles; and

‘(iv) imposes on the use of the HOV facility by vehicles that do not satisfy established occupancy requirements any restrictions that are necessary to ensure that neither the performance of an individual HOV facility nor the HOV facility system are seriously degraded.

‘(5) ADVANCED LEAN BURN TECHNOLOGY VEHICLES.—Before September 30, 2009, the State agency may allow vehicles that are certified as and labeled as advanced lean burn technology vehicles under subsection (f) to use the HOV facility if the agency—

‘(A) establishes a program that addresses how the vehicles are selected and certificated; and

‘(B) establishes requirements for labeling the vehicles and procedures for enforcing those requirements;

‘(C) continuously monitors, evaluates, and reports to the Secretary on the performance of the vehicles; and

‘(D) imposes on the use of HOV facilities by vehicles that do not satisfy established occupancy requirements any restrictions that are necessary to ensure that neither the performance of individual HOV facilities nor the HOV facility system are seriously degraded.

‘(6) REQUIREMENTS APPLICABLE TO TOLLS.—

‘(1) IN GENERAL.—Notwithstanding section 301, tolls may be charged under paragraphs (3) and (4) of subsection (c), subject to the requirements of section 129.

‘(2) HOV FACILITIES ON THE INTERSTATE SYSTEM.—Notwithstanding section 129, tolls may be charged under paragraphs (3) and (4) of subsection (c) on a HOV facility on the Interstate System.

‘(3) EXCESS TOLL REVENUES.—If a State agency makes a certification under paragraphs (3) and (4) of subsection (c), the State shall give priority consideration to develop alternatives to single occupancy vehicle travel or improve highway safety in the use of toll revenues under that sentence.

‘(4) HOV FACILITY GUIDELINES, OPERATION, MONITORING, AND ENFORCEMENT.—

‘(1) IN GENERAL.—A State agency that allows low-emission and energy-efficient vehicles to use a HOV facility under subsection (c)(4) in a fiscal year shall certify to the Secretary that the agency will carry out the following responsibilities with respect to the facility in the fiscal year:

‘(A) Establish, manage, and support a performance-monitoring, evaluation, and reporting program for the facility that provides for continuous monitoring, assessment, and reporting on the effects that low-emission and energy-efficient vehicles may have on the operation of the facility and adjacent highways.

‘(B) Establish, manage, and support an enforcement program that ensures that the facility is operated in accordance with this section.

‘(C) Limit or discontinue the use of the facility by low-emission and energy-efficient vehicles if the performance of the vehicle has degraded the operation of the facility.

‘(2) MINIMUM AVERAGE OPERATING SPEED; DRAINED FACILITY.

‘(A) MINIMUM AVERAGE OPERATING SPEED DEFINED.—In this paragraph, the term ‘minimum average operating speed’ means—

‘(i) 45 miles per hour, in the case of a HOV facility with a speed limit of 50 miles per hour or greater; and

‘(ii) not more than 10 miles per hour below the speed limit, in the case of a HOV facility with a speed limit of less than 50 miles per hour.

‘(B) STANDARD FOR DETERMINING DEGRADA- TION.—For purposes of paragraph (1), the operation of a HOV facility shall be considered to be degraded if vehicles operating on the facility fail to maintain a minimum average operating speed 90 percent of the time over a consecutive 180-day period, except during evening weekday peak hours.

‘(C) CERTIFICATION AND LABELING OF LOW- EMISSION AND ENERGY-EFFICIENT VEHICLES AND ADVANCED LEAN BURN TECHNOLOGY VEHICLES.—Not later than 180 days after the date of enactment of this section, the Administrator of the Environmental Protection Agency shall promulgate a final rule establishing requirements for—

‘(i) certification of vehicles—

‘(A) as low-emission and energy-efficient vehicles; and

‘(B) as advanced lean burn technology vehicles; and

‘(ii) labeling of the vehicles certified under paragraph (1).’.

‘(2) TECHNICAL AMENDMENT.—Section 102(c) of title 23, United States Code, is amended by striking from ‘‘10 years from ‘‘after’’ and inserting ‘‘10 years (or any longer period that the State requests and the Secretary determines to be reasonable) after’’.

‘(3) CONFORMING AMENDMENTS.—

‘(1) PROGRAM EFFICIENCIES.—Section 102 of title 23, United States Code, is amended by striking ‘‘the term ‘highway’ means—’’ and inserting ‘‘the term ‘highway’ means—’’.

‘(2) TOLL FACILITIES.—Section 113(a) of title 23, United States Code, is amended by striking ‘‘toll; and’’ and inserting ‘‘toll’’.

‘(3) EXCESS TOLL REVENUES.—Section 113(a)(2) of title 23, United States Code, is amended by striking ‘‘toll; and’’ and inserting ‘‘toll’’.

‘(4) FUNDING FOR HIGHWAY PROTECTION ACTIVITIES.—Section 122 of title 23, United States Code, is amended by striking ‘‘toll; and’’ and inserting ‘‘toll’’.
S. 130

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

SECTION 1. DISTRICT JUDGESHIP FOR THE DISTRICT OF NEBRASKA.

(a) In General.—The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the district of Nebraska.

(b) Technical and Conforming Amendment.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Nebraska and inserting the following:—

``Nebraska .......... 4."

By Mr. INHOFE (for himself and Mr. VOINOVICH):

S. 131.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. TITLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Clear Skies Act of 2005".

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Emission reduction programs.
"TITLE IV—EMISSION REDUCTION PROGRAMS"
"PART A—GENERAL PROVISIONS"
"Sec. 401. (Reserved)
"Sec. 402. Definitions.
"Sec. 403. Allowance system.
"Sec. 404. Permits and compliance plans.
"Sec. 405. Monitoring, reporting, and enforcement requirements.
"Sec. 406. Excess emissions penalty; general compliance with other provisions; enforcement.
"Sec. 407. Election for additional units.
"Sec. 408. Clean coal technology regulatory incentives.
"Sec. 409. Electricity reliability.
"PART B—SULFUR DIOXIDE EMISSION REDUCTIONS
"SUBPART 1—ACID RAIN PROGRAM
"Sec. 411. Definitions.

(2) Chapter Analysis.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"165. HOV facilities.

By Mr. HAGEL (for himself and Mr. NELSON of Nebraska):

S. 130.—Resolved, That the additional district judge designated for the district of Nebraska; to the Committee on the Judiciary.

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

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

S. 130

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

SECTION 1. DISTRICT JUDGESHIP FOR THE DISTRICT OF NEBRASKA.

(a) In General.—The President shall appoint, by and with the advice and consent of the Senate, one additional district judge for the district of Nebraska.

(b) Technical and Conforming Amendment.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to Nebraska and inserting the following:

'Nebraska ............ 4'.

By Mr. INHOFE (for himself and Mr. VOINOVICH):

S. 131.—Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. TITLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Clear Skies Act of 2005".

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Emission reduction programs.
"TITLE IV—EMISSION REDUCTION PROGRAMS"
"PART A—GENERAL PROVISIONS"
"Sec. 401. (Reserved)
"Sec. 402. Definitions.
"Sec. 403. Allowance system.
"Sec. 404. Permits and compliance plans.
"Sec. 405. Monitoring, reporting, and enforcement requirements.
"Sec. 406. Excess emissions penalty; general compliance with other provisions; enforcement.
"Sec. 407. Election for additional units.
"Sec. 408. Clean coal technology regulatory incentives.
"Sec. 409. Electricity reliability.
"PART B—SULFUR DIOXIDE EMISSION REDUCTIONS
"SUBPART 1—ACID RAIN PROGRAM
"Sec. 411. Definitions.

(2) Chapter Analysis.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"165. HOV facilities."
section 424, 434, 454, or 474 shall submit to the Administrator such information. The Administrator is not required to allocate allowances under such sections to a unit for which the owner or operator fails to submit information in accordance with the regulations promulgated under this subparagraph.

(6) COAL.—The term ‘coal’ means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

(7) COAL- DERIVED FUEL.—The term ‘coal-derived fuel’ means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

(8) COAL-FIRED.—The term ‘coal-fired’ with regard to a unit means, except under subpart 1 of part B, subpart 1 of part C, and sections 424 and 434, combusting coal or any coal-derived fuel alone or in combination with any amount of other fuel in any year.

(9) COGENERATION UNIT.—The term ‘ cogeneration unit’ means, except under subpart 1 of part B and subpart 1 of part C, a unit that produces through the sequential use of energy—

(A) electricity; and

(B) useful thermal energy (such as heat or steam) for industrial, commercial, heating, or cooling purposes.

(10) COMBUSTION TURBINE.—

(A) IN GENERAL.—The term ‘combustion turbine’ means any combustion turbine that is not a part of a combined cycle plant.

(B) INCLUSION.—The term ‘combustion turbine’ includes a simple cycle combustion turbine, a combined cycle combustion turbine and any duct burner or heat recovery device used to extract heat from the combustion turbine exhaust, and a regenerative combustion turbine.

(11) COMMENCE COMMERCIAL OPERATION.—The term ‘commence commercial operation’ with regard to a unit means the start up of the unit’s combustion chamber and the commencement of the generation of electricity for sale.

(12) COMPLIANCE PLAN.—The term ‘compliance plan’ means either—

(A) a statement that the facility will comply with all applicable requirements under this title; or

(B) filed under subpart 1 of part B or subpart 1 of part C, where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the facility is in compliance with the requirements of that subpart.

(13) CONTINUOUS EMISSION MONITORING SYSTEM.—The term ‘continuous emission monitoring system’ (CEMS) means the equipment, systems, and related components, as required by section 405, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and is electrically or pneumatically linked to a continuous recording or reporting device.

(14) DESIGNATED REPRESENTATIVE.—The term ‘designated representative’ means a responsible person or official authorized by the owner or operator of a unit and the facility that includes the unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances, the submission of and compliance with permits, permit applications, and compliance plans.

(15) DUCT BURNER.—The term ‘duct burner’ means a device that uses exhaust from a combustion turbine to burn fuel for heat recovery.

(16) FACILITY.—The term ‘facility’ means all buildings, structures, or installations located on 1 or more contiguous or adjacent properties under common control of the same person or persons.

(17) FOSSIL FUEL.—The term ‘fossil fuel’ means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

(18) FOSSIL FUEL-FIRED.—The term ‘fossil fuel-fired’, with regard to a unit, means the combustion of fuel that is composed of at least 10 percent fossil fuel.

(19) FUEL OIL.—The term ‘fuel oil’ means a petroleum-based fuel, including diesel fuel or petroleum derivatives.

(20) GAS-FIRED.—The term ‘gas-fired’, with regard to a unit, means, except under subpart 1 of part B and subpart 1 of part C, combusting only natural gas or fuel oil, with natural gas comprising at least 90 percent, and fuel oil comprising no more than 10 percent, of the unit’s total heat input in any year.

(21) GASIFY.—The term ‘gasify’ means to convert carbon-containing material into a gas consisting primarily of carbon monoxide and hydrogen.

(22) GENERATOR.—The term ‘generator’ means a device that produces electricity and, under subpart 1 of part B and subpart 1 of part C, that is reported as a generating unit pursuant to Department of Energy Form 860.

(23) HEAT INPUT.—

(A) IN GENERAL.—The term ‘heat input’, with regard to a specific period of time, means the product (in million Btu) of—

(i) the gross calorific value of the fuel (in million Btu/lb); and

(ii) the fuel feed rate into a unit (in lb of fuel/time).

(B) EXCLUSIONS.—The term ‘heat input’ does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

(24) INTEGRATED GASIFICATION COMBINED CYCLE PLANT.—The term ‘integrated gasification combined cycle plant’ means any combination of equipment used to gasify fossil fuels (with or without other material) and then burn the gas in a combined cycle combustion turbine.

(25) OIL-FIRED.—The term ‘oil-fired’, with regard to a unit, means, except under sections 424 and 434, combusting only oil for more than 10 percent the unit’s total heat input, and combusting no coal or coal-derived fuel, in any year.

(26) OPERATOR.—The term ‘operator’ means the utility unit.

(27) PERMITTING AUTHORITY.—The term ‘permitting authority’ means the Administrator without cost to the recipient, in accordance with section 474.

(28) POTENTIAL ELECTRICAL OUTPUT.—The term ‘potential electrical output’ with regard to a generator means the nameplate capacity of the generator multiplied by 8,760 hours.

(29) SIMPLE CYCLE COMBUSTION TURBINE.—The term ‘simple cycle combustion turbine’ means a combustion turbine that does not extract heat from the combustion turbine exhaust gas.

(30) STATIONARY SOURCE.—The term ‘stationary source’ means any building, structure, facility, or installation located on one or more contiguous or adjacent properties under common control or ownership of the same person or persons which emits or may emit any air pollutant subject to regulations under the Clear Skies Act of 2005.

(31) STATE.—The term ‘State’ means—

(A) 1 of the 48 contiguous States, Alaska, Hawaii, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands; or

(B) under subpart 1 of part B and subpart 1 of part C, 1 of the 48 contiguous States or the District of Columbia.

(32) UNIT.—The term ‘unit’ means—

(A) a fossil fuel-fired boiler, combustion turbine, or integrated gasification combined cycle plant; and

(B) under subpart 1 of part B and subpart 1 of part C, a fossil fuel-fired combustion device and

(C) a stationary source that—

(i) emits nitrogen oxides, sulfur dioxide, mercury, or any combination of those substances; and

(ii) is elected under section 407.

(33) UTILITY UNIT.—The term ‘utility unit’ shall have the meaning set forth in section 411.

(34) YEAR.—The term ‘year’ means a calendar year.

SEC. 403. ALLOCATION SYSTEM.

(a) ALLOCATIONS.—

(1) IN GENERAL.—For the emission limitation programs under this title, the Administrator shall allocate allowances for an affected unit, to be held or distributed by the designated representative of the owner or operator in accordance with this title as follows:

(A) sulfur dioxide allowances in an amount equal to the annual tonnage emissions calculation under section 413, 414, 415, or 416, except as otherwise specifically provided elsewhere in subpart 1 of part B or in an amount calculated under section 424, 434, or 444;

(B) nitrogen oxides allowances in an amount calculated under section 454; and

(C) mercury allowances in an amount calculated under section 474.

(2) NO JUDICIAL REVIEW. —Notwithstanding any other provision of law to the contrary, the calculation of the allocation for any unit and the design of the allocation system used in such calculation, under sections 424, 434, 444, and 474 shall not be subject to judicial review.

(b) ALLOCATION WITHOUT COST.—Allocations shall be allocated by the Administrator without cost to the recipient, in accordance with this title.

(c) ALLOWANCE TRANSFER SYSTEM.—Allocations allocated or sold by the Administrator under this title may be transferred among designated representatives of the owners or operators of affected facilities under this title and any other person, as provided by the allowance system regulations promulgated by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as appropriate by the Administrator. With regard to nitrogen oxides allowances and mercury allowances, the Administrator shall implement this subsection by promulgating regulations not later than twenty-four months after the date of enactment of the Clear Skies Act of 2005. The regulations under this subsection shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this title. Such regulations shall prohibit the use of any allowance prior to the calendar year in which the allowance was allocated and shall provide, consistent with the purposes of this title, for the identification of
unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years. Such regulations shall provide, or shall amend regulations that transferred allowances shall not be effective until certification of the transfer, signed by a responsible officer of the transferee, is received and recorded by the Administrator.

(c) Allowance Tracking System.—The Administrator shall promulgate regulations establishing a permit program for recording and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. Such system shall provide, by twenty-four months prior to the compliance year, for one or more facility-wide accounts for holding sulfur dioxide allowances, nitrogen oxides allowances, and, if applicable, mercury allowances for all affected units at an affected facility. With regard to sulfur dioxide allowances, the Administrator shall implement this subsection under 40 CFR part 73 (2002), amended as applicable, by the Administrator under this title, except in accordance with sections 412(c), 422, 432, 452, and 472.

(d) Allowances.—A sulfur dioxide allowance, nitrogen oxides allowance, or mercury allowance allocated or sold by the Administrator under this title, shall be construed as affecting the applicability of the Federal Energy Regulatory Commission regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as affecting the application of, or compliance with, any provisions of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and implementation plans. The provisions in this section shall be construed as requiring a change of any kind in any State law with respect to utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this section shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such programs are authorized. No allowances, or credits or deductions related to allowances, may be used or sold to a person by the Administrator, or may be received, held, or temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V of the Clean Air Act or section 404 of the Clean Water Act (33 U.S.C. 1254) with respect to the unit for which such allowance was originally allocated and recorded.

(2) Emissions.—It shall be unlawful for any affected unit or for the affected units at a facility to emit sulfur dioxide, nitrogen oxides, and mercury, as the case may be, during a compliance year.

(e) Use of Allowances.—(1) Except for allowances subject to (E), the allowances directly purchased for use in the year specified in subparagraph (A) shall be, in accordance with paragraph (1), deposited in the Compliance Assistance Account.

(2)除受(2)的限制外，如果允许直接使用，在排放年期结束后，或者公共公用设施或其他单位获得的允许，或者受(2)的限制。

(f) Use of Allowances.—Allowances may not be used prior to the calendar year for which they were allocated for the year in which the affected facility consists of one or more affected facilities. Nothing in this section or the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring, and enforcement obligations under this Act, or relieve affected facilities of their requirements and liabilities under the Act.

(1) Competitive Bidding for Power Supply.—Nothing in this subsection shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is authorized. No allowances, or credits or deductions related to allowances, may be used or sold to a person by the Administrator, or may be received, held, or temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V of the Clean Air Act or section 404 of the Clean Water Act (33 U.S.C. 1254) with respect to the unit for which such allowance was originally allocated and recorded.

(1) IN GENERAL.—Nothing in this section shall be construed as affecting the application of, or compliance with, any provisions of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and implementation plans. The provisions in this section shall be construed as requiring a change of any kind in any State law with respect to utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this section shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is authorized. No allowances, or credits or deductions related to allowances, may be used or sold to a person by the Administrator, or may be received, held, or temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V of the Clean Air Act or section 404 of the Clean Water Act (33 U.S.C. 1254) with respect to the unit for which such allowance was originally allocated and recorded.

(1) IN GENERAL.—Nothing in this section shall be construed as affecting the application of, or compliance with, any provisions of this Act to an affected unit or facility, including the provisions related to applicable National Ambient Air Quality Standards and implementation plans. The provisions in this section shall be construed as requiring a change of any kind in any State law with respect to utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this section shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is authorized. No allowances, or credits or deductions related to allowances, may be used or sold to a person by the Administrator, or may be received, held, or temporarily or permanently transferred in accordance with this title and the regulations of the Administrator without regard to whether or not a permit is in effect under title V of the Clean Air Act or section 404 of the Clean Water Act (33 U.S.C. 1254) with respect to the unit for which such allowance was originally allocated and recorded.
under section 413 (b), (c), (d), or (f), section 416, and section 411 (d) or (e), the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations prescribed by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on alternative monitoring and compliance in the manner and time authorized under subpart 1 of part B or subpart 1 of part C.

(1) OTHER STATEMENTS.—Submission of a statement by the owner or operator, or the designated representative, of a facility that includes a unit subject to the emissions limitations under sections 422, 432, 452, and 472 that the owner or operator will hold sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions, as the case may be, in the amount required by such sections shall be deemed to meet the proposed and approved compliance planning requirements of this section and title V with regard to subparts A through D.

(3) RECORDING OF TRANSFERS.—Recording by the administrator of transfers of allowances shall amend automatically, and will not reopen or require reopening of, any applicable proposed or approved permit applications, compliance plans, and permits.

(c) The permitting authority of each facility under this title that includes an affected unit subject to title V shall submit a permit application and compliance plan with the required information under sections 412 (c), 422, 432, 441, 452, and 472 for sulfur dioxide emissions, nitrogen oxide emissions, and mercury emissions from such unit to the permitting authority in accordance with the deadline for submission of permit applications and compliance plans under title V. The permitting authority shall issue a permit to the owner or operator, or the designated representative of such owner or operator, that satisfies the requirements of title V and this title.

(d) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section.

(4) ADMINISTRATION.—

(1) IN GENERAL.—It shall be unflawful for any person to operate any facility subject to this title in an unusual manner or to require the owner or operator of any facility subject to this title to operate the facility in an unusual manner.

(2) PASSIVE LESSOR.—A passive lessor, of a person who has an equitable interest through such lesser, whose rental payments are not based, either directly or indirectly, upon the revenues earned from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purposes of holding or distributing allowances, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

(5) SECURITY INTEREST.—A security interest in an affected unit subject to title V shall not affect the right of the owner or operator to collect sufficient information to comply with the requirements of this title.

(6) NATURE OF OPERATIONS.—In order to ensure reliability of electric power, nothing in this title or title V shall be construed as requiring termination of operations of a unit serving a generator for failure to have an approved permit or compliance plan under this section.

(7) CERTIFICATE OF REPRESENTATION.—No permit shall be issued under this section to an affected unit or facility until the designated representative of the owners or operators has filed a certificate of representation with the Administrator under this title, including the holding and distribution of allowances and the proceeds of transactions involving allowances.

(8) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 2 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.

(a) IN GENERAL.—The owner and operator of any facility subject to this title shall begin to implement CEMS on each affected unit subject to subpart 2 of part B or part C at the facility, and to quality assure the data, for sulfur dioxide, opacity, and volumetric flow at each such unit.

(b) INSTALLATION AND OPERATION.

(1) IN GENERAL.—The owner and operator of any facility subject to this title shall begin to implement CEMS on each facility subject to this title to monitor the emissions from each affected unit at the facility, and to quality assure the data for fluorides, opacity, and volumetric flow at each such unit.

(2) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 3 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.

(b) DEADLINE FOR AFFECTED UNITS UNDER SUBPART 3 OF PART B FOR INSTALLATION AND OPERATION OF CEMS.

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complying with the requirements of this section, and any regulations implementing this section.

SEC. 406. EXCESS EMISSIONS PENALTY; GENERAL ALLOCATION ALLOWANCES AND OTHER PROVISIONS; ENFORCEMENT.

(4) EXCESS EMISSIONS PENALTY.—
(1) AMOUNT FOR OXIDES OF NITROGEN.—The owner or operator of any unit subject to the requirements of this section that emits nitrogen oxides for any calendar year in excess of the unit’s emissions limitation requirement shall be liable for the payment of an excess emissions penalty, where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated on the basis of the number of tons emitted in excess of the emissions limitation requirement multiplied by $2,000.

(2) AMOUNT FOR SULFUR DIOXIDE BEFORE 2008.—The owner or operator of any unit subject to the requirements of section 412(c) that emits sulfur dioxide for any calendar year before 2008 in excess of the sulfur dioxide allowances that the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f) or (g). That penalty shall be calculated as follows:

(A) The product of the unit’s excess emissions (in tons) multiplied by $3,000, if within 30 days from the date on which the owner or operator was required to hold sulfur dioxide allowances;

(B) The owner or operator offsets the excess emissions in accordance with paragraph (b)(1); and

(C) The owner or operator receives the penalty paid under this subparagraph.

(2) AMOUNT FOR SULFUR DIOXIDE AFTER 2007.—If the units at a facility that are subject to the requirements of section 412(c) emit sulfur dioxide for any calendar year after 2007 in excess of the sulfur dioxide allowances that the owner or operator of the facility holds for use for the facility for that calendar year, the owner or operator shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 110(f). That penalty shall be calculated under paragraph (4)(A) or (4)(B).

(4) UNAVAILABILITY OF EMISSIONS DATA.—
(1) SULFUR DIOXIDE AND NITROGEN OXIDES.—With respect to sulfur dioxide and nitrogen oxides, if CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, reasonably satisfactory to the Administrator, on emissions during that period, the Administrator shall determine in coordination with the owner, shall calculate emissions for that period pursuant to regulations promulgated for such purpose. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit’s owner or operator for any fine, penalty, fee, or assessment against the unit for the same violation under any other section of this Act.

(2) MERCURY.—With respect to mercury, if CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, reasonably satisfactory to the Administrator, on emissions during that period, the Administrator shall determine in coordination with the owner, shall calculate emissions for that period pursuant to regulations promulgated for such purpose. The owner or operator shall be liable for excess emissions fees and offsets under section 406 in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit’s owner or operator for any fine, penalty, fee, or assessment against the unit for the same violation under any other section of this Act.

(d) IMPLEMENTATION.—With respect to sulfur dioxide, nitrogen oxides, opacity, and volumetric flow, the Administrator shall implement subsections (a) and (c) under 40 CFR part 75 (2002), amended, as appropriate by the Administrator. With regard to mercury, the Administrator shall implement subsections (a) and (c) by issuing proposed regulations not later than 38 months before the commencement date of the mercury allowances requirement set forth in this Act, and final regulations not later than 24 months before that commencement date.

It shall be unlawful for the owner or operator of any facility subject to this title to operate a facility without

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Index, on November 15, 1990, and annually thereafter.

“(d) PROHIBITION.—It shall be unlawful for the owner or operator of any unit or facility liable to be determined to be a facility subject to this section to fail—

“(1) to pay the penalty under subsection (a); or

“(2) to offset excess emissions as required by subsection (b).

“(e) SAVINGS PROVISION.—Nothing in this title shall limit or otherwise affect the applicability of section 113, 114, 120, or 304 except as otherwise explicitly provided in this title.

“(f) OTHER REQUIREMENTS.—Except as expressly provided, compliance with the requirements of this Act shall not exempt or exclude the owner or operator of any facility subject to this title from compliance with any other applicable requirements of this Act. Notwithstanding any other provision of this Act, no State or political subdivision thereof shall restrict or interfere with the transfer, sale, or purchase of allowances under this title.

“(g) VIOLATIONS.—Violation by any person subject to this title of any prohibition of, requirement of, or regulation promulgated pursuant to, or violation of, this Act shall be a violation of this Act. In addition to the other requirements and prohibitions provided for in this title, the operation of any affected unit or the affected unit owner or operator shall be subject to the CAA and any comparable State law, if the data establishes comparable State law is necessary to generate reliable data for compliance determinations.

“SEC. 407. ELECTION FOR ADDITIONAL UNITS.

“(a) GENERAL.—The owner or operator of any affected unit that is not an affected EGU under subpart 2 of part B and subpart 2 of part C and whose emissions of sulfur dioxide and nitrogen oxides are vented only through a stack or duct may elect to designate the unit as an affected unit under subpart 2 of part B and subpart 2 of part C.

“(b) EFFECT OF DESIGNATION.—If the owner or operator elects to designate a unit that is solid fuel-fired and emits mercury vented only through a stack or duct, the unit owner or operator shall also designate the unit as an affected unit under part D. If an elected unit fires only gaseous fuels, the unit may be designated under subpart 2 of part C.

“(c) APPLICATION.—An owner or operator making an election under subsection (a) shall submit an application for the election to the Administrator for approval.

“(d) APPROVAL.—Subject to subsections (d) through (m), if the Administrator determines that an application for an election under subsection (b) meets the requirements of subsection (a), the Administrator shall approve the designation as an affected unit under subpart 2 of part B and subpart 2 of part C if, applicable under part D, the unit owner or operator shall calculate, at the election of the owner or operator, the relevant emissions for the years preceding the year for which the Administrator determines that the unit is an affected unit under subpart 2 of part B and subpart 2 of part C.

“(e) DESIGNATION FOR PRODUCT OUTPUT BASIS.—

“(A) IN GENERAL.—The owner or operator of a unit that is subject to new source performance standards or other measures imposed by this Act on a product output basis rather than a heat input basis may elect to designate the unit as an affected unit under subpart 2 of part B and subpart 2 of part C.

“(B) BASELINE PRODUCT OUTPUT AND EMISSIONS BASELINES.—For the purposes of this paragraph, for those units using a product output basis, the baseline product output and baseline product emissions for a given period shall be calculated, at the election of the owner or operator of the relevant unit, as—

“(1) the average of the highest product output for 3 of the 5 years preceding the year for which the Administrator is determining the allocations; and

“(2) for emissions baselines, the average of the relevant emissions for the same years used to determine product output.

“(f) ALLOCATIONS.—

“(A) IN GENERAL.—The Administrator shall promulgate regulations determining the allocations of sulfur dioxide allowances and nitrogen oxides allowances each year during which a unit is an affected unit under subsection (e).

“(B) ALLOCATIONS.—The regulations shall provide that the allocations shall be determined as a percentage (beginning January 1, 2010) and 50 percent (beginning January 1, 2018) of the unit’s baseline heat input or product output under subsection (d) multiplied by the lesser of—

“(1) the unit’s baseline sulfur dioxide emission rate or nitrogen oxides emission rate, as the case may be; or

“(2) the total most stringent Federal or State emission limitation for sulfur dioxide or nitrogen oxides applicable to the year on which the unit’s baseline heat input or product output is based under subsection (d).

“(g) VIOLATIONS.—For purposes of this section, the Administrator shall consider the cost of generating more reliable data compared to the quantitative importance of the resulting gain in quantifying emissions.

“(h) EMISSION LIMITATIONS.—Nothing in this title shall limit or otherwise affect the applicability of section 412(c), 422, 432, 452, and 472, as the case may be, shall be deemed a violation, with each ton or, in the case of mercury, each ounce emitted in excess of allowances held constituting a separate violation.
a unit is a designated unit under this section.

(B) ALLOCATIONS.—The regulations shall provide for allocations equal to the lesser of—

(i) the product obtained by multiplying—

(ii) the unit’s baseline heat input or product output.

(C) ALLOWANCES.—The allowances allocated to units under paragraphs (1) and (2) shall comprise a separate limitation on emissions from sections 423, 433, 453, 473, and other provisions of this Act. These allowances shall be traded with allowances allocated under paragraphs 414, 424, 454, and 474, as applicable, on the conditions that—

(A) the designated unit either achieves a Class I area on which construction commenced after the date of enactment of this section or designation of the unit under section 112(n)(1)(A), for purposes of this paragraph (1), the Administrator shall determine whether the application is complete.

(B) DETERMINATION OF COMPLETION.—Unless an application accepted under paragraph (1) is determined to be incomplete under subparagraph (A), the application shall be subject to paragraph (2).

(ii) a State baseline heat input or product output.

(D) IN GENERAL.—Allowances allocated to units under paragraphs (1) and (2) shall comprise a separate limitation on emissions from sections 423, 433, 453, 473, and other provisions of this Act. These allowances shall be traded with allowances allocated under paragraphs 414, 424, 454, and 474, as applicable, on the conditions that—

(A) the designated unit either achieves a Class I area on which construction commenced after the date of enactment of this section or designation of the unit under section 112(n)(1)(A), for purposes of this paragraph (1), the Administrator shall determine whether the application is complete.

(B) DETERMINATION OF COMPLETION.—Unless an application accepted under paragraph (1) is determined to be incomplete under subparagraph (A), the application shall be subject to paragraph (2).

(i) APPLICABILITY.—

(1) APPLICABILITY.—

(ii) an estimate of any increase or decrease in the annual emissions of criteria pollutants and of those hazardous air pollutants subject to emission limitations under the NESHAPs identified in subsection (j)(1) from such sources that might reasonably be expected to occur for each year from 2010 through 2018.

(iii) an estimate of any increase or decrease in the annual emissions of criteria pollutants and of those hazardous air pollutants subject to emission limitations under the NESHAPs identified in subsection (j)(1) from such sources that might reasonably be expected to occur for each year from 2010 through 2018, if such sources estimated in clauses (i) and (ii) are not designated under this section;

(iv) a description of the public health and environmental impacts associated with the emissions increases and decreases described in clauses (i) and (ii).

(D) ADDITIONAL AUTHORITY.—

(i) IN GENERAL.—Notwithstanding subsection (j)(1), the Administrator shall promulgate regulations establishing the annual emissions limits for hazardous air pollutants listed under section 112(b), other than mercury compounds, from sources designated under this section in accordance with section 112(c)(2).

(ii) DETERMINATION.—Not later than 2 years after the date on which the final report described by paragraph (k)(1) is published, the Administrator shall make a determination based on the study and other information satisfying the criteria of the Data Quality Act whether to establish emissions limitations under section 112(f) for sources designated under this section.

(K) EXEMPTION FROM MAJOR SOURCE PRECONSTRUCTION REVIEW REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS.—

(i) MAJOR SOURCE EXEMPTION.—

(A) IN GENERAL.—Subject to subparagraph (B), a unit designated as an affected unit under this section shall be exempted to be a major source, or a part of a major emitting facility or major station source for purposes of compliance with the requirement in paragraphs and the 20-year period beginning on the date of enactment of the Clear Skies Act of 2005.

(B) APPLICABILITY.—Subparagraph (A) applies only if, beginning on the date that is 8 years after the date of enactment of this section or designation of a unit as an affected unit.

(ii) the designated unit either achieves in fact, or is subject to a regulatory requirement to achieve, a limit on the emissions of particulate matter from the affected unit to not greater than the level applicable to the unit either pursuant to subpart D of part 60 of title 40, Code of Federal Regulations, or the national emissions standards for hazardous air pollutants for industrial boilers and process heaters issued pursuant to section 112 or;

(iii) the owner or operator of the affected unit properly operates, maintains, and repairs pollution control equipment to limit emissions of particulate matter; and

(iv) the owner or operator of the designated unit uses good combustion practices to minimize emissions of carbon monoxide.

(2) CLASS I AREA PROTECTIONS.—Notwithstanding the exemption in paragraph (1), an affected unit located in a Class I area on which construction commenced after the date of enactment of this...
section is subject to those provisions under part C of title I to the review of a new or modified major stationary source's impact on a Class I area.

(1) IN GENERAL.—No unit designated under this section shall transfer or bank allowances produced as a result of reduced utilization or shutdown, except that such allowances may be transferred or carried forward for use in subsequent years to the extent that—

(A) reduced utilization or shutdown results from the replacement of the unit designated under this section, with any other unit or units subject to the requirements of this subpart; and

(B) the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units.

(2) NO GREATER ALLOCATION.—In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions reductions from the precombustion, combustion, or postcombustion installation of clean coal technology project.

No violation.—No allowances allocated under this Act shall subject the unit to the requirements of section 111 or to the review and determination of the Administrator under section 111 or to the review and determination of the Secretary of Energy in coordination with the relevant State or Federal agency; shall not be subject to standards of performance prescribed under part C or D, any State may adopt and the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

(ii) exemption for reactivation of very clean units.—Physical changes or changes in the method of operation associated with the commencement of commercial operations of a coal-fired utility unit after a period of commercial operation shall not subject the unit to the requirements of section 111 or part C of the Act where—

(1) has not been in operation for the two-year period prior to November 15, 1990, and the emissions from such unit, prior to the time of commencement, and

(2) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) is equipped with low-NOx burners prior to the time of commencement; and

(4) is otherwise in compliance with the requirements of this Act.

(2) DEFINITION OF PRODUCT OUTPUT.—In this section, the term ‘product output’ means the output of a stationary source that produces a commercial product other than a fuel that is used as input to a process.

SEC. 408. CLEAN COAL TECHNOLOGY REGULATORY INCENTIVES.

(a) Definition.—For purposes of this section, ‘clean coal technology’ means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or carbon capture technology and is not in widespread use as of November 15, 1990.

(b) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of clean coal technology demonstration project shall mean a project using funds appropriated under the heading ‘Department of Energy—Clean Coal Technology’, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(2) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 111 or part C or D of title I.

(3) PASSENGER TRANSPORTATION.—For purposes of this title, clean coal technology demonstration projects that constitute repowering as defined in section 411, any qualifying project shall not be subject to standards of performance under section 111 or to the review and permitting requirements of part C for any pollution control technology project.

(4) EPA REGULATIONS.—Not later than two years after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to require under section 111 and parts C and D, as applicable, any technologies consistent in this subsection. With respect to parts C and D, such regulations or rulings shall apply to all areas in which EPA is the permitting authority and in which the State is the permitting authority under part C or D, any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations of a coal-fired utility unit after a period of commercial operation shall not subject the unit to the requirements of section 111 or part C of the Act where—

(1) was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(2) is equipped with low-NOx burners prior to the time of commencement; and

(3) is otherwise in compliance with the requirements of this Act.

SEC. 409. ELECTRICITY RELIABILITY.

(a) RELIABILITY.—At any time prior to the applicability of this Act under sections 422, 432, 452, and 472, in order to ensure the reliability of an electric utility company or system, including any energy department, municipally or privately owned, for a specified geographic area or service territory, as determined by the Department of Energy in consultation with the relevant electric companies and associated industries, the ability of vendors to meet the demands of consumers at fair prices with meaningful guarantees or warranties as to availability, delivery dates and meeting contracted pollution control reduction requirements or emissions limitations; with similar considerations for nitrogen oxides, mercury or particulate matter control technology, or any combination thereof.

(b) DESIGN AND CONSTRUCTION RESOURCES.—The availability and limitations of key sulfur dioxide, nitrogen oxides or mercury control technologies and North American construction resources. The design resources shall include Architect Engineer-Boilermakers, Iron Workers, Electricians, Me-
Federal or State utility agency or reliability council; or

‘‘(iii) a supply shortage of coal needed to meet emissions control expectations for any proposed new facility.’’

‘‘(E) POSITIVE DETERMINATION.—A company or system which submits a petition to install sulfur dioxide, nitrogen oxides, mercury, or particulate matter control technology on any combination thereof, on affected units equaling 25 percent or more of its coal-fired capacity shall be presumed to meet the requirements to hold such allowances equal to the petitioned year’s emissions.

‘‘(4) COMPLIANCE.—Upon a positive determination by the Secretary of Energy in accordance with subparagraph (E), such affected units will be granted a 1-year extension from the relevant applicability date under this title.

‘‘(b) SUBMISSION OF PETITION.—During any year covered by this title, an affected unit may submit a petition in accordance with paragraph (a) to a annual sulfur dioxide allowances, nitrogen oxides allowances, and mercury allowances, as the case may be, allocated for the immediate next year to meet the applicable requirements to hold such allowances equal to the petitioned year’s emissions.

‘‘(c) PRESIDENTIAL WAIVER.—Notwithstanding any other provision of this Act, The President of the United States shall have authority to temporarily grant waivers from emission limitations under this title to prevent a supply shortage of coal needed to serve a generator.

‘‘(d) PRESIDENTIAL DETERMINATION.—If the President determines that the reliability of any portion of national electricity supply or national security is impaired.

‘‘PART B—SULFUR DIOXIDE EMISSION REDUCTIONS

‘‘Subpart 1.—Acid Rain Program

‘‘SEC. 411. DEFINITIONS.

‘‘For purposes of this subpart and part 1 of part B:

‘‘(A) a period of 25 years.

‘‘(1) ACTUAL 1985 EMISSION RATE.—The term ‘actual 1985 emission rate’, for electric utility units, means the annual sulfur dioxide emissions rate in pounds per million Btu as reported in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Section 2, National Utility Reference File (NURF).

‘‘(2) ALLOWABLE 1985 EMISSION RATE.—The term ‘allowable 1985 emission rate’ means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in tons or in pounds per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation.

‘‘(3) ALTERNATIVE METHOD OF COMPLIANCE.—The term ‘alternative method of compliance’, means a method of compliance in accordance with one or more of the following authorities:

‘‘(A) a substituted plan submitted and approved in accordance with subsections 413(b) and (c);

‘‘(B) a phase I extension plan approved by the Administrator under section 413(d), using qualifying phase I technology determined by the Administrator in accordance with that section.

‘‘(4) BASELINE.—The term ‘baseline’ means the annual amount of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units (‘mmBtu’s), calculated as follows:

‘‘(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average of emissions due to fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Section 767. For any utility unit for which a baseline is not established in accordance with paragraph (A), the baseline shall be the level specified for such unit in the 1985 (NAPAP) Emissions Inventory, Version 2. The corrected data base as established by the Administrator pursuant to paragraph (3). For nonutility units, the baseline in the NAPAP Emissions Inventory, Version 2, shall be the relevant applicability date under this title.

‘‘(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3), the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the Administrator shall prescribe by regulation to be promulgated not later than 18 months after November 15, 1990.

‘‘(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subpart and correct any factual errors in data from which affected phase II units’ baselines or actual 1985 emission rates have been calculated.

‘‘(5) BASIC PHASE II ALLOWANCE ALLOCATIONS.—The term ‘basic phase II allowance allocations’ means:

‘‘(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i), and (j) of section 414.

‘‘(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); and (i) and (j) of section 414.

‘‘(6) CAPACITY FACTOR.—The term ‘capacity factor’ means the ratio between the actual electric output from a unit and the potential electric output from that unit.

‘‘(7) COMMENCEMENT.—The term ‘commenced’ as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction so that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

‘‘(8) COMMERCIAL OPERATION.—The term ‘commenced commercial operation’ with regard to a unit means the start up of the unit’s combustion chamber and commencement of the generation of electric energy for sale.

‘‘(9) CONSTRUCTION.—The term ‘construction’ means the fabrication, erection, or installation of an affected unit.

‘‘(10) EXISTING UNIT.—The term ‘existing unit’ means a unit (including units subject to section 111) that commenced commercial operation before November 15, 1990.

‘‘(11) INDEPENDENT POWER PRODUCER.—The term ‘independent power producer’ means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

‘‘(12) INDEPENDENT POWER PRODUCTION FACILITY.—The term ‘new independent power production facility’ means a facility that—

‘‘(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

‘‘(B) in nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of the date of the enactment of the Clean Air Act Amendments of 1990); and

‘‘(C) is a new unit required to hold allowances under this subpart.

‘‘(13) INDUSTRIAL SOURCE.—The term ‘industrial source’ means a unit that does not serve a generator that produces electricity, a ‘nonutility unit’ as defined in this section, or an access source.

‘‘(14) LIFE-OF-THE-UNIT, FIRM POWER CONTRACTUAL ARRANGEMENT.—The term ‘life-of-the-unit, firm power contractual arrangement’ means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit’s total costs, pursuant to a contract either—

‘‘(A) for the life of the unit;

‘‘(B) for a cumulative term of no less than 30 years, including contracts that permit an electric utility to sell an electric utility in early termination;

‘‘(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, whichever is greatest; or

‘‘(D) that commenced commercial operation on or after November 15, 1990.

‘‘(15) NONUTILITY UNIT.—The term ‘nonutility unit’ means a unit other than a utility unit.

‘‘(16) PHASE II BONUS ALLOWANCE ALLOCATIONS.—The term ‘phase II bonus allowance allocations’ means:

‘‘(A) For calendar years 2000 through 2009, inclusive, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i), and (j) of section 414.

‘‘(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 412 and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); and (i) and (j) of section 414.

‘‘(17) QUALIFYING PHASE I TECHNOLOGY.—The term ‘qualifying phase I technology’ means a technological system of continuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide resulting from the use of fuels which were not subject to treatment prior to combustion.
December 31, 2007, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator. 

(2) PROHIBITION OF EXCEEDING SOURCE ALLOWANCES.—Starting January 1, 2008, a new utility unit shall be subject to the prohibition in subsection (a). 

(3) ELIGIBILITY FOR ALLOCATION OF SULFUR DIOXIDE ALLOWANCES.—New utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1), unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 414. New utility units may obtain allowances from the reserve established hereunder. 

(4) EFFECT ON OTHER EMISSION LIMITATIONS.—(A) EMISSION LIMITATIONS. —Upon the allocation of allowances under this subpart, the prohibition in paragraph (a) and any other emission limitation applicable under this subpart to the units for which such allowances are allocated. 

(5) LIMITATION ON REGULATIONS. —In order to ensure electricity reliability, regulations establishing a system for issuing, recording, and tracking allowances under section 403(b) and former paragraphs shall not require transfer of allowances among units unless it shall require recording. The owners or operators of such units shall act through a designated representative. 

(c) PROHIBITIONS. —(1) IN GENERAL. —It shall be unlawful for any person to own, use, or transfer any allowance allocated under this subpart, except in accordance with regulations promulgated by the Administrator. 

(2) PROHIBITION OF EXCEEDING UNIT ALLOWANCES.—For any unit on or after January 1, 1995 through 2007, it shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances allocated to the unit for that year by the owner or operator of the unit. 

(3) PROHIBITION OF EXCEEDING SOURCE ALLOWANCES.—Starting January 1, 2008, it shall be unlawful for any new utility unit located in any State and that produces electricity for sale; or 

(d) RESERVE. —(1) IN GENERAL. —(A) Units that cogenerate steam and electricity.—A unit that cogenerates steam and electricity is not a ‘utility unit’ for purposes of this subpart. It is included in a subpart described in subparagraph (A) that— 

(1) was in commercial operation during 1985; but (2) did not during 1985, serve a generator located in any State with a potential electric output capacity of more than 25 megawatts electrical output to any utility power distribution system for sale. 

(2) UTILITY UNIT. —(A) IN GENERAL. —The term ‘utility unit’ means— 

(1) a unit that serves a generator located in any State and that produces electricity for sale; or 

(b) NEW UTILITY UNITS. —(1) New utility units may obtain allowances from the reserve established hereunder. 

(c) PROHIBITIONS. —(1) IN GENERAL. —It shall be unlawful for any person to own, use, or transfer any allowance allocated under this subpart, except in accordance with the regulations promulgated by the Administrator. 

(2) PROHIBITION OF EXCEEDING UNIT ALLOWANCES.—For any year 1995 through 2007, it shall be unlawful for any affected unit to emit a total amount of sulfur dioxide during the year in excess of the number of allowances held for the source for that year by the owner or operator of the source. 

(3) PROHIBITION OF EXCEEDING SOURCE ALLOWANCES.—Starting January 1, 2008, it shall be unlawful for any affected unit located in any State that produces electricity for sale. 

shall not be a utility unit for purposes of this subpart. 

(1) UNITS THAT COGENERATE STEAM AND ELECTRICITY.—A unit that cogenerates steam and electricity is not a ‘utility unit’ for purposes of this subpart. It is included in a subpart described in subparagraph (A) that— 

(1) was in commercial operation during 1985; but 

(2) did not during 1985, serve a generator located in any State and that produces electricity for sale.

....
Steam) pursuant to paragraph (1). Such allocations in an amount equal to 200,000 multi-

diana, or Ohio (other than units at Kyger

1995 and ending in 1999, inclusive, the Admin-

graph (1), in each calendar year beginning in

section (b), the Administrator shall dis-

and which will ensure the emissions reduc-

may approve a substitution proposal in

posal in accordance with section 404(c) if the

may include in its section 404 permit appli-

ator of an affected unit under subsection (a)

ances in an amount equal to 200,000 multi-

ances in an amount equal to 200,000 multi-

(5) documentation, to the satisfaction of

(3) calculation of the annual average ton-

(2) the original affected unit’s baseline,

(4) emissions rates and tonnage limita-

(6) such other information as the Admin-

(c) ADMINISTRATOR’S ACTION ON SUBSTI-

(b) SUBSTITUTIONS.—The owner or oper-

(1) the designation of the substitute unit

(2) requirement for extension pro-

(1) IN GENERAL.—The owner or operator of

(4) any affected unit subject to an emissions

(2) REQUIREMENTS FOR EXTENSION PRO-

(3) ALLOCATION OF INITIAL ALLOWANCES.

(3) ALLOCATION OF INITIAL ALLOWANCES.

(2) REQUIREMENTS FOR EXTENSION PRO-

(4) any affected unit subject to an emissions

(6) PROVISION OF ALLOCATION IN ADDITION

(7) DEDUCTION FROM ANNUAL ALLOWANCE

(7) DEDUCTION FROM ANNUAL ALLOWANCE

(6) ALLOCATION OF ADDITIONAL ALLOW-

(7) DEDUCTION FROM ANNUAL ALLOWANCE

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(6) ALLOCATION OF ADDITIONAL ALLOW-

(7) DEDUCTION FROM ANNUAL ALLOWANCE

(7) DEDUCTION FROM ANNUAL ALLOWANCE


shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

(c) Early Reductions.—

(1) In General.—In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements—

(A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and

(B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances.

(2) Limitations.—In the case of an affected unit under this section in subsection (a), the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which

(i) the product of the unit's baseline sulfur dioxide emission rate (in lbs per mmBtu), divided by 2,000 excesses

(ii) the lesser of

(I) 2.50, or

(II) the most stringent emission rate (in lbs per mmBtu) applicable to the unit under the applicable implementation plan—

(3) No Basis for Excused Performance.—In no event shall the provisions of this paragraph be interpreted as an event of force majeure or a commercial impracticability or in any other way as a basis for excused performance by a utility system under a coal sales contract in effect before November 15, 1990.

* * *

**TABLE A—Affected Sources and Units in Phase I and Their Sulfur Dioxide Allowances (Tons)**

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<th>Phase I allowances</th>
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“(I) ENERGY CONSERVATION AND RENEWABLE ENERGY.—

“(A) QUALIFIED ENERGY CONSERVATION MEASURE.—The term ‘qualified energy conservation measure’ means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

“(B) QUALIFIED RENEWABLE ENERGY.—The term ‘qualified renewable energy’ means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

“(C) ELECTRIC UTILITY.—The term ‘electric utility’ means any person, State agency, or Federal agency, which sells electric energy.

“(2) ALLOWANCES FOR EMISSIONS AVOIDED THROUGH ENERGY CONSERVATION AND RENEWABLE ENERGY.—

“(A) IN GENERAL.—The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an electric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g), up to a total of 300,000 allowances for allocation from such Reserve.

“(B) REQUIREMENTS FOR ISSUANCE.—The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

“(1) Such electric utility is paying for or participating in the qualified energy conservation measures or qualified renewable energy.

“(2) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

“(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

“(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

“(III) In the case of electric utilities subject to the jurisdiction of a State regulatory authority such plan shall have been approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall have been approved by the Administrator.

“(IV) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of

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**TABLE A—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—Continued**
Energy has certified that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the costs to such electric utility of such electric utility steam generating unit, as determined by reason of the implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would be allocated under subparagraph (B) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

(3) Period of applicability. — Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992, and before the earlier of (i) December 31, 2000, or (ii) the date the electric utility steam generating unit is retired from service.

(4) Determination of avoided emissions. —

(a) Application. — In order to receive allowances under this subsection, an electric utility shall make an application which—

(i) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of this subsection;

(ii) calculates, in accordance with subparagraphs (F) and (G), the number of tons of carbon dioxide emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

(iii) demonstrates that the requirements of subparagraph (B) have been met.

(b) Approval. — Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. Such application shall include a statement of the calculation used to determine the accuracy and compliance with this subsection and the rules under this subsection of any electric utility steam generating unit whose historical annual emission rates are not subject to the jurisdiction of a State regulatory authority. Each utility subject to subsection (a) of this section shall establish a State regulatory authority with jurisdiction over the State-to-State in accordance with the Administrator's rules. The Administrator shall publish and make available the findings of this review no less than annually.

(c) Conservation and renewable energy Reserve. — The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate a portion of the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 411. In order to allow this reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. Notwithstanding the prior sentence, if an allowance is allocated to the Reserve on January 1, 2010, the Administrator shall allocate such allowances for affected units under section 414 on a pro rata basis. For purposes of this section and section 414, the term 'pro rata basis' refers to the ratio which the reductions made in such unit's allowances to reserve under this subsection bears to the total of such reductions for all such units.

(d) Allowance allocation for units in certain utility systems with optional baseline. —

(1) Optional baseline for units in certain systems. — In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

(A) has an emission rate below 1.0 lbs/mmBtu;

(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil-fueled units below 1.0 lbs/mmBtu, at the election of the owner or operator of such unit, the unit's baseline may be calculated—

(i) as provided under section 411, or

(ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

(2) Allowance allocation. — Whenever a unit subject to this paragraph subjects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to subsection (a), this section, and section 414 (as basic phase II allowance allocations) in an amount equal to the baseline established by the Administrator for the allowance for each year after 1985. Such allowance allocation shall be in lieu of any allocation of allowances for this subsection.

(2) Reserve allowances. — In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until January 1, 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraphs (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu but less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances...
from the reserve created pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit’s baseline and the unit’s annual fuel consumption at a 60 percent capacity factor.

“(3) PROHIBITION.—After January 1, 2000, it shall be unlawful for any existing utility unit whose actual 1985 sulfur dioxide emissions rate is equal to, or greater than, 2.50 lbs/mmBtu whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 2.50 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 2.50 lbs/mmBtu owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe and an actual 1985 emission rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

“(4) ANNUAL ALLOWANCE ALLOCATIONS.—After January 1, 2000, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1), which is located in a State with a generating capacity of more than 30,000,000 kw in 1988 and for which there was a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980, and December 31, 1985, allowances equal to the difference between the product of its baseline multiplied by the lesser of its actual or allowable 1985 emissions rate and an actual 1985 emission rate, divided by 2,000, and (B) the number of allowances allocated for each unit pursuant to paragraph (1): Provided, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restructure imposed in the preceding sentence the amount of annual allowances allocated for each unit under this paragraph.

“(1) FUELED UNITS BELOW 75 MWE AND ABOVE 1.20 LBS/MMBTU.—

“(i) the product of the lesser of 0.60 lbs/mmBtu and a baseline capacity factor multiplied by the lesser of its actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of the unit’s baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit’s total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

“(ii) the product of the lesser of 2.50 lbs/mmBtu and an actual 1985 emission rate equal to, or greater than, 2.50 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit’s total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

“(2) STEAM-ELECTRIC CAPACITY LESS THAN 250 MWE.—After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than,

“(3) STEAM-ELECTRIC CAPACITY BETWEEN 250 AND 490 MWE.—After January 1, 2000 it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 2.50 lbs/mmBtu owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe and an actual 1985 emission rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

“(4) RESERVE ALLOWANCE.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowances allocations, beginning January 1, 2000, and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit’s baseline and the unit’s fuel consumption at a 60 percent capacity factor. The amount by which the number of allowances allocated pursuant to subsection (a)(2) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit’s baseline and the unit’s fuel consumption at a 60 percent capacity factor.

“(5) CERTAIN ELECTRIC UTILITY SYSTEMS.—After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit’s baseline and the unit’s fuel consumption at a 60 percent capacity factor.

“(a) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices;

“(b) has at least 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 MWe; and

“(c) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility Study, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.10 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the total annual emissions of all affected units at the source.

“(A) the lessor of 0.60 lbs/mmBtu or the unit’s allowable 1985 emission rate is equal to, or greater than, 0.60 lbs/mmBtu to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of the unit’s baseline multiplied by—

“(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit’s total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

“(2) RATE BETWEEN 0.60 AND 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lessor of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of the unit’s baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit’s total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

“(B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit’s total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

“(3) RESERVE ALLOWANCE.—

“(A) In general.—In addition to allowances allocated pursuant to paragraph (1) and section 412(a) as basic phase II allowances allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit’s baseline and the unit’s fuel consumption at a 60 percent capacity factor.

“(B) CERTAIN ELECTRIC UTILITY SYSTEMS.—After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 111 of the Act or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 2.50 lbs/mmBtu owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe and an actual 1985 emission rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the total annual emissions of all affected units at the source. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit’s total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.
adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds

(ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 412(a)(1) as basic phase II allocation

(B) UNITS SUBJECT TO CERTAIN LIMITATIONS.—In addition to allowances allocated pursuant to paragraph (2) and section 412(a) as basic phase II allocation, at the election of the designated representative of the operating company, beginning January 1, 1990, and for the calendar year years thereafter and after including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of this subsection in an amount equal to the product of the unit's baseline multiplied by the lesser of 1.20 lbs/mmBtu or the unit's sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(iii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 412(a) as basic phase II allocation.

(C) ELECTING BY OPERATING COMPANY.—An operating company subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B) only in accordance with this sub-paragraph.

(4) ALTERNATIVE ALLOCATION.—Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6), allowances for a unit subject to the emissions limitation requirements of this subsection in an amount equal to the product of the unit's baseline multiplied by the lesser of 1.20 lbs/mmBtu or the unit's sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) TECHNOLOGY DEMONSTRATION GRANT.—For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2002, the Administrator shall allocate for the unit an annual amount equal to the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(6) OIL AND GAS-FIRED UNITS EQUAL TO OR GREATER THAN 0.60 LBS/MMBTU AND LESS THAN 1.20 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu, to exceed a 1.20 lbs/mmBtu sulfur dioxide emission rate.

(7) OIL AND GAS-FIRED UNITS LESS THAN 0.60 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.60 lbs/mmBtu to exceed a 0.60 lbs/mmBtu sulfur dioxide emission rate.

(8) OIL AND GAS-FIRED UNITS LESS THAN 0.30 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.30 lbs/mmBtu to exceed a 0.30 lbs/mmBtu sulfur dioxide emission rate.

(9) OIL AND GAS-FIRED UNITS LESS THAN 0.15 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.15 lbs/mmBtu to exceed a 0.15 lbs/mmBtu sulfur dioxide emission rate.

(10) OIL AND GAS-FIRED UNITS LESS THAN 0.05 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.05 lbs/mmBtu to exceed a 0.05 lbs/mmBtu sulfur dioxide emission rate.

(11) OIL AND GAS-FIRED UNITS LESS THAN 0.01 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.01 lbs/mmBtu to exceed a 0.01 lbs/mmBtu sulfur dioxide emission rate.

(12) OIL AND GAS-FIRED UNITS LESS THAN 0.005 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.005 lbs/mmBtu to exceed a 0.005 lbs/mmBtu sulfur dioxide emission rate.

(13) OIL AND GAS-FIRED UNITS LESS THAN 0.001 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.001 lbs/mmBtu to exceed a 0.001 lbs/mmBtu sulfur dioxide emission rate.

(14) OIL AND GAS-FIRED UNITS LESS THAN 0.0005 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.0005 lbs/mmBtu to exceed a 0.0005 lbs/mmBtu sulfur dioxide emission rate.

(15) OIL AND GAS-FIRED UNITS LESS THAN 0.0001 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.0001 lbs/mmBtu to exceed a 0.0001 lbs/mmBtu sulfur dioxide emission rate.

(16) OIL AND GAS-FIRED UNITS LESS THAN 0.00005 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.00005 lbs/mmBtu to exceed a 0.00005 lbs/mmBtu sulfur dioxide emission rate.

(17) OIL AND GAS-FIRED UNITS LESS THAN 0.00001 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.00001 lbs/mmBtu to exceed a 0.00001 lbs/mmBtu sulfur dioxide emission rate.

(18) OIL AND GAS-FIRED UNITS LESS THAN 0.000005 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.000005 lbs/mmBtu to exceed a 0.000005 lbs/mmBtu sulfur dioxide emission rate.

(19) OIL AND GAS-FIRED UNITS LESS THAN 0.0000005 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.0000005 lbs/mmBtu to exceed a 0.0000005 lbs/mmBtu sulfur dioxide emission rate.

(20) OIL AND GAS-FIRED UNITS LESS THAN 0.00000005 LBS/MMBTU.—After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit with a sulfur dioxide emission rate less than 0.00000005 lbs/mmBtu to exceed a 0.00000005 lbs/mmBtu sulfur dioxide emission rate.
to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(2) The facility has been selected as a winning bidder in a utility competitive bidding.

(b) Oil and Gas-Fired Units Less Than 10 Percent Oil Consumed.—

(1) IN GENERAL.—After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption was less than 50 percent through November 15, 1990, on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide limitation calculated by the product of the unit’s baseline multiplied by the unit’s actual 1985 emissions rate divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than 80 percent of the unit’s total annual emissions for a year after 2007, or the owner or operator of the source that includes such unit holds allowances to emit not less than the total annual emissions of all affected units at the source.

(2) RESERVE ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and basic phase I allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit’s annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1988, multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) ADDITIONAL ALLOWANCES.—In addition to allowances allocated pursuant to paragraph (1) and basic phase I allowance allocations, beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the unit’s baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) UNITS IN HIGH GROWTH STATES.—

(1) ANNUAL ALLOCATIONS.—In addition to allowances allocated pursuant to this section and section 412(a) as basic phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually for each unit, subject to an emissions limitation requirement under this section, and located in a State that has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change 1981–1988 released by the United States Department of Commerce, and

(2) HAD AN INSTALLED ELECTRICAL GENERATING CAPACITY OF MORE THAN 30,000,000 KW IN 1988, IN AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN—

(i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit’s annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1988, inclusive (as elected by the owner or operator); and

(ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section.

Provided, That the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit’s annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1988, inclusive, shall be allocated to the owner or operator of the source that includes such unit.

(2) ADDITIONAL ALLOCATIONS.—Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 403(a)(1) as basic phase II allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1)—

(A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more from November 15, 1990, or

(B) whose annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1988 exceeded 1.2 lbs/mmBtu as of January 1, 2000;

(c) ALLOCATIONS AFTER JANUARY 1, 2010.—

After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 414.

SEC. 416. ELECTION FOR ADDITIONAL SOURCES.

(a) APPLICABILITY.—The owner or operator of any unit that becomes, an affected unit under section 412(b), 413, or 414, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subpart. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan that meets the requirements of this section.

(b) ELECTIONS SUBMITTED BEFORE JANUARY 1, 2002.—For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) before January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit’s 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit’s actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator); divided by 2,000.

(c) ALLOCATIONS AND PERMITS.—

(i) ELECTIONS SUBMITTED AFTER JANUARY 1, 2002.—For a unit for which an election, along with a permit application and compliance plan, is submitted to the Administrator under paragraph (a) on or after January 1, 2002, annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit’s 1985 actual or allowable emission rate in lbs/mmBtu, or the unit’s actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator); divided by 2,000.

(d) LIMITATION.—Any unit designated under section 416 shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section with substitute energy generated by any other unit or units subject to the requirements of sections 404, 405, 406, and 412.

(e) LIMITATION.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the product of the baseline multiplied by the lesser of the unit’s 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit’s actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator); divided by 2,000.

(f) ALLOWANCES AND PERMITS.—The Administrator shall allocate allowances to units subject to the provisions of this section.

(g) PORTION OF ALLOWANCES FOR STATES WITH EMIS-

SIONS RATES AT OR BELOW 0.80 LBS/MMBTU.

(i) ELECTION OF GOVERNOR.—In addition to basic phase I allowance allocations, upon the election of the Governor of any State, with a 1985 statewide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other phase I bonus allowance allocations, allowances from the reserve created pursuant to section 412(a) to all such units in the State in an amount equal to 125,000 multiplied by the unit’s pro rata share of electricity generated in calendar years 1985 through 1987 minus all fossil-fired utility steam units in all States eligible for the election.

(ii) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 419, the Governor of a State eligible to make an election under paragraph (a) shall notify the Administrator of such election. In the event that the Governor of a State eligible to make an election under section 419, the Governor shall notify the Administrator of the Governor’s elections, the Administrator shall allocate allowances pursuant to this subsection.

(iii) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 414.
allowances shall authorize operation of a unit in violation of any other requirements of this Act.

“(f) IMPLEMENTATION.—The Administrator shall implement this section under 40 CFR part 74 (2002), amended as provided by the Administrator.

**SEC. 416. AUCTIONS, RESERVE.**

“(a) SPECIAL RESERVE OF ALLOWANCES.—For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

“(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

“(2) 2.5 percent of the basic phase 11 allowance allocation of allowances for each year beginning in the year 2000; which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

“(b) AUCTION SALE.—The Administrator shall establish an Auction Sub-account in the Special Reserve established under this section. The Auction Sub-account shall be used to sell allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year from 2000 through 2009, inclusive.

“(2) ANNUAL AUCTIONS.—Commencing in 1995 and in each year thereafter until 2010, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator. The Administrator may by delegation or contract provide for the sale of allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table C. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to

“(3) PROCEDURES.—

“(A) TRANSFER.—Notwithstanding section 3302 of title 31 of the United States Code or any other provision of law, within 90 days of receipt of a notification the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or opera-

tors of the affected units at an affected source from whom allowances were withheld under subsection (b). No funds transferred from a purchaser to a seller of allowances shall be transfers or made by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

“(B) RETURN.—Each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld. With 170 days after the date of enactment of the Clear Skies Act of 2005, any allowance withheld pursuant to paragraph (1) that was not offered for sale at an auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

“(4) RECORDING BY EPA.—The Administrator shall record and publicly report the net proceeds of the allowance sales under this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subsection.

“(d) TERMINATION OF AUCTIONS.—Not later than the commencement date of the sulfur dioxide allowance requirement under section 422, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator’s supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

“(e) APPLICABLE LAW.—The Administrator shall implement this section under 40 CFR part 74 (2002), amended as provided by the Administrator.

**SEC. 418. INDUSTRIAL SULFUR DIOXIDE EMISSIONS**

“(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator shall transmit to the Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in section 411(11)), including units subject to section 411(g)(2), for all years for which data are available, as well as the likely trend in such emission over the following twenty-year period. The reports shall also contain estimates of actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214. To the extent practicable, the Administrator shall provide for the reports for purposes of section 424, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year, during the year or two years following the year in which the report was issued.

“(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 411(g)(2), and any reasonable estimates of such emissions do not exceed 5.60 million tons per year, the Administrator shall take such actions under the Act as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 411(g)(2), under section 111(b), as well as promulgation of standards of performance for existing sources, including units subject to section 411(g)(2), under authority of this section.

**SEC. 419. TERMINATION.**

Starting January 1, 2005, the operators of affected units and affected facilities under sections 412(b) and 416 shall no longer be subject to the requirements of sections 412 through 417.

**Subpart 2—Clear Skies Sulfur Dioxide Allowance Program**

**SEC. 421. DEFINITIONS.**

For purposes of this subpart—

“(1) AFFECTED EGU.—The term affected EGU—

“(A) for a unit serving a generator before the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator before that date of enactment of the Clear Skies Act of 2005, or a cogeneration unit that would, but for this subsection, be a unit designed to combust coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year, during the year or two years following the date of enactment of the Clear Skies Act of 2005, and any other fuel.

“(B) for a unit serving a generator on or after the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator before that date of enactment of the Clear Skies Act of 2005, or a cogeneration unit that would, but for this subsection, be a unit designed to combust coal or any coal-derived fuel alone or in combination with any other fuel.

“(2) BASELINE EMISSIONS.—The term baseline emissions—

“(B) for a unit serving a generator on or after the date of enactment of the Clear Skies Act of 2005, a unit in a State serving a generator before that date of enactment of the Clear Skies Act of 2005, or a cogeneration unit that would, but for this subsection, be a unit designed to combust coal or any coal-derived fuel alone or in combination with any other fuel.

“(3) EASTERN BITUMINOUS.—The term eastern bituminous means bituminous that is from a mine located in a State east of the Mississippi River.

“(4) GENERAL ACCOUNT.—The term general account means an account in the Allowance Tracking System established by the Administrator for any person under 40 CFR part 74.31(c) (2002), amended as provided by the Administrator.

“(B) RETURN. The term coal-fired with regard to a unit means, for purposes of section 424, combusting fuel or any coal-derived fuel alone or in combination with any amount of any other fuel in any year, during the year or two years following the date of issuance of this final rule.

**SEC. 422. REQUIREMENTS AND PROHIBITIONS.**

“(c) PROHIBITION. The Administrator shall have the authority to prohibit any person from using a system of continuous emission reduction which—

“(1) does not take into consideration the cost of achieving such emission reduction, the ancillary benefits (such as reduced hazardous air pollutant emissions and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources;

“(2) includes a system of continuous emission reduction which is not the best system of continuous emission reduction which—

“(1) does not take into consideration the cost of achieving such emission reduction, the ancillary benefits (such as reduced hazardous air pollutant emissions and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources;

“(2) includes a system of continuous emission reduction which is not the best system of continuous emission reduction which—

“(1) does not take into consideration the cost of achieving such emission reduction, the ancillary benefits (such as reduced hazardous air pollutant emissions and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources;
percent of the unit’s total heat input, and combusting no coal or coal-derived fuel, in any year during 1998 through 2002, or for a unit that commenced operation on or after January 1, 2003, a unit designed to combust oil for more than 10 percent of the unit’s total heat input and not to combust any coal or coal-derived fuel.”

(b) Allocation Held.—Only sulfur dioxide allowances under section 425 shall be held in order to meet the requirements of subsection (a).

**SEC. 422. APPLICABILITY.**

(a) **Provisions starting January 1, 2010.** It shall be unlawful for the affected EGUs at a facility to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

(b) **Allocations Held.**—Only sulfur dioxide allowances under section 425 shall be held in order to meet the requirements of subsection (a).

**SEC. 423. LIMITATIONS ON TOTAL EMISSIONS.** For affected EGUs for 2010 and each year thereafter, the Administrator shall remove from the unit the amount of sulfur dioxide allowances determined under section 424.

**TABLE A—TOTAL SO2 ALLOWANCES ALLOCATED FOR EGUS**

<table>
<thead>
<tr>
<th>Year</th>
<th>Percent of the Total Amount of Sulfur Dioxide Allocations Allocated for 2010 and Each Year Thereafter</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>4,416,667</td>
</tr>
<tr>
<td>2011-2012</td>
<td>4,416,667</td>
</tr>
<tr>
<td>2013-2017</td>
<td>4,500,000</td>
</tr>
<tr>
<td>2018 and thereafter</td>
<td>3,000,000</td>
</tr>
</tbody>
</table>

**SEC. 424. EGU ALLOCATIONS.**

(a) **In General.**—Not later than 3 years before the commencement date of the sulfur dioxide allowance requirement of section 422, the Administrator shall promulgate regulations determining allocations of sulfur dioxide allowances for affected EGUs for each year during 2010 and thereafter. The regulations shall provide that:

(i) 93 percent of the total amount of sulfur dioxide allowances shall be allocated to fossil-fuel-fired affected EGUs under section 424 shall be by the Administrator to individual EGUs as follows:

(A) For each unit account and each general account in the Allowance Tracking System, the Administrator shall determine the total amount of sulfur dioxide allowances allocated under subpart 1 for 2010 and thereafter that are recorded, as of 12:00 noon, Eastern Standard time, on the date 180 days after enactment of the Clear Skies Act of 2005. The Administrator shall determine this amount in accordance with 40 CFR part 73 (2002), as amended by the Administrator, except that the Administrator shall apply a discount rate of 7 percent for each year after 2010 to the amounts of sulfur dioxide allowances allocated for 2011 or thereafter, and shall determine the amount of sulfur dioxide allowances allocated each year under section 425 to be allocated for units under subparagraph (A) and, in the case of facilities not receiving allowances, the amount of the unit’s total amount of sulfur dioxide allowances determined under clause (ii) for the unit accounts of the units at the facility and shall allocate to each general account in the Allowance Tracking System the amount of sulfur dioxide allowances determined under clause (ii) for that general account under section 422.

(ii) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(iii) For all such other units at the facility that are not covered by clause (i) or (ii), multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(iv) If the total of the amounts for all facilities under clauses (i), (ii), and (iii) exceeds the allocation under subparagraph (A), the Administrator shall allocate the amount of sulfur dioxide allowances determined under clause (i) to the units of the total amount of sulfur dioxide allowances determined under clause (i) and (ii) to the total of the amounts for all facilities under clause (i), (ii), and (iii).

(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i), (ii), and (iii) or, if the total of the amounts for all facilities under clause (ii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv).

(b) **The Administrator shall allocate each year for units under subparagraph (A) that commenced commercial operation before January 1, 2001, an amount of sulfur dioxide allowances determined by:**

(i) For such units at the facility that are coal-fired, multiplying 0.40 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(ii) For such units at the facility that are oil-fired, multiplying 0.20 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(iii) For all such other units at the facility that are oil-fired, multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(iv) For all such other units at the facility that are not covered by clause (i) or (ii), multiplying 0.05 lb/mmBtu by the total baseline heat input of such units and converting to tons.

(v) Allocating to each facility the lesser of the total of the amounts for the facility under clauses (i), (ii), and (iii) or, if the total of the amounts for all facilities under clause (ii) exceeds the allocation amount under subparagraph (A), the amount under clause (iv).

(c) The Administrator shall allocate to each facility’s account in the Allowance Tracking System an amount of sulfur dioxide allowances equal to the total amount of sulfur dioxide allowances determined under clause (ii) for the unit accounts of the units at the facility and shall allocate to each general account in the Allowance Tracking System the amount of sulfur dioxide allowances determined under clause (ii) for that general account under section 422.

(d) The Administrator shall allocate each year for units under subparagraph (A) that commenced commercial operation on or after January 1, 2001, an amount of sulfur dioxide allowances determined for each such unit at the facility by multiplying the applicable annual allocation amount from section 422 by 481 by the applicable “baseline heat input,” considering fuel and combustion type, as defined in section 402(5)(B) and converting to tons.

(E) In the event that allocation demand exceeds supply, the Administrator shall allocate sulfur dioxide allowances under subparagraph (B), giving first priority to units qualifying under subparagraph (B), second priority to units qualifying under subparagraph (C), and third priority to units qualifying under subparagraph (D). Allocations under subparagraph (D) shall be allocated to units on a first come first served basis determined by date of unit commercial operation or by the Administrator if such unit actually commences operation. As such, allocations to units under subparagraph (D) will not be reduced as a result of new units commencing commercial operation.

(b) **Failure to Promulgate.—**

(i) **Annual Notice.**—For each year 2010 and thereafter, if the Administrator has not promulgated regulations, determining allocations under subsection (a), each affected EGU shall comply with section 422 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances the affected EGU believes it has for the relevant year and the amount of sulfur dioxide emissions for such year. The amount of sulfur dioxide emissions shall be determined using reasonable industrial standards. The Administrator has promulgated applicable monitoring and alternative monitoring requirements.

**SEC. 425. DISPOSITION OF SULFUR DIOXIDE ALLOWANCES ALLOCATED UNDER SUBPART 1.**

(a) **Removal from Accounts.**—After allocating allowances under section 425(a)(1), the Administrator shall remove from the unit accounts and general accounts in the Allowance Tracking System all amounts of sulfur dioxide allowances and retired allowances allocated each year for units under subparagraph (A) by the Administrator.

(b) **Application.**—Not later than 18 months after the enactment of the Clear Skies Act of 2005, an owner or operator of an EGU that commenced commercial operation before January 1, 2001 and that during 2001 combusted Eastern bituminous coal may submit an application for the Administrator to authorize the sale of unallocated or reduced allowances allocated under subparagraph (D) for the year 2001 and thereafter.

**SEC. 426. INCENTIVES FOR SULFUR DIOXIDE EMISSION CONTROL TECHNOLOGY.**

(a) **Reserve.** The Administrator shall establish a reserve under subparagraph (A) of sulfur dioxide allowances comprising 83,334,000 sulfur dioxide allowances for 2010, 83,333,000 sulfur dioxide allowances for 2011, and 83,333,000 sulfur dioxide allowances for 2012.

(b) **Application.**—Not later than 18 months after the enactment of the Clear Skies Act of 2005, an owner or operator of an EGU that commenced commercial operation after January 1, 2001 and that during 2001 combusted Eastern bituminous may submit an application to the Administrator for the sale of unallocated or reduced allowances allocated under subparagraph (D) for the year 2001 and thereafter.
"(1) A statement that the owner or operator will install and commence commercial operation of specified sulfur dioxide control technology at the unit within 24 months after the commencement of the application under subsection (c) if the unit is allocated the sulfur dioxide allowances requested under paragraph (4). The owner or operator shall provide evidence of control technology specified in paragraph (1), a specified tonnage of sulfur dioxide emission reductions during the period starting with the commencement of operation of sulfur dioxide control technology under paragraph (1) through 2009, the unit will combust Eastern bituminous coal at a percentage of the unit’s total heat input equal to or exceeding 25 percent of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

(2) A statement that, during the period starting with the commencement of operation of sulfur dioxide control technology under paragraph (1) through 2009, the unit will combust Eastern bituminous coal at a percentage of the unit’s total heat input equal to or exceeding 25 percent of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

(3) A demonstration that the unit will achieve, while combusting fuel in accordance with paragraph (2) and operating the sulfur dioxide control technology specified in paragraph (1), a specified tonnage of sulfur dioxide emission reductions during the period starting with the commencement of operation of sulfur dioxide control technology under paragraph (1) through 2009, the unit will combust Eastern bituminous coal at a percentage of the unit’s total heat input equal to or exceeding 25 percent of total heat input combusted by the unit in 2001 if the unit is allocated the sulfur dioxide allowances requested under paragraph (4).

(4) A request that the Administrator allocate for the unit a specified number of sulfur dioxide allowances from the reserve under subsection (a) for the period starting with the commencement of operation of the sulfur dioxide control technology under paragraph (1) through 2009.

(5) A statement of the ratio of the number of sulfur dioxide allowances requested under paragraph (4) to the tonnage of sulfur dioxide emissions reductions under paragraph (3).

(c) APPROVAL OR DISAPPROVAL.—By order subject to notice and opportunity for comment, the Administrator shall—

(1) determine whether each application meets the requirements of subsection (b);

(2) list the applications meeting the requirements of subsection (b) and their respective allowance-to-emission-reduction ratios under paragraph (b)(5) in order, from lowest to highest, of such ratios;

(3) for each application listed under paragraph (2), determine the amount of sulfur dioxide emission reductions requested by each allowance-to-emission-reduction ratio on the list that equals or is less than the ratio for the application;

(4) sum, for each allowance-to-emission-reduction ratio in the list under paragraph (2), the amounts of sulfur dioxide allowances determined under paragraph (3);

(5) based on the calculations in paragraph (4), determine which allowance-to-emission-reduction ratio on the list under paragraph (2) results in the total amount of allowances that does not exceed 250,000 allowances; and

(6) approve each application listed under paragraph (2) if the ratio of total heat input combusted by the unit exceeds the allowance-to-emission-reduction ratio determined under paragraph (5) and disapprove all the other applications.

(d) In an owner or operator whose application is approved under subsection (c) shall install and operate a CEMS for monitoring sulfur dioxide and to quality assure the data. The installation of the CEMS and the quality assurance of data shall be in accordance with subparagraph (a)(2)(E) for monitoring total heat input and subparagraph 405, except that, where two or more units utilize a single stack, and one or more units are not subject to such standards, separate monitoring shall be required for each unit.

(e) ALLOCATIONS.—Not later than 6 months after the commencement date of the sulfur dioxide allowance requirement of section 422, for the units for which applications are approved under subsection (c), the Administrator shall allocate sulfur dioxide allowances as follows:

(1) For each unit, the Administrator shall multiply the allowance-to-emission-reduction ratio determined under paragraph (2) by the ratio determined under paragraph (5) and, for each application that the Administrator approved under subsection (c) by the lesser of—

(A) the total amount of sulfur dioxide emissions reductions requested by the unit, during the period starting with the commencement of operation of the sulfur dioxide control technology under subparagraph (b)(1) through 2009, through use of such control technology; or

(B) the tonnage of sulfur dioxide emission reductions under paragraph (b)(3).

(2) If the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, the Administrator shall multiply 250,000 sulfur dioxide allowances by the ratio of the amount of sulfur dioxide allowances determined for each unit under paragraph (1) to the total amount of sulfur dioxide allowances determined for all units under paragraph (1).

(3) The Administrator shall allocate to each unit a specified number of sulfur dioxide allowances determined for each unit under paragraph (1) or, if the total amount of sulfur dioxide allowances determined for all units under paragraph (1) exceeds 250,000 sulfur dioxide allowances, the Administrator shall allocate for each unit the lesser of the amount determined under paragraph (2). The Administrator shall allocate to the facilities under section 424 paragraphs (1) and (2) on a pro rata basis any allowances under those paragraphs any unallocated allowances under this paragraph.

Subpart 3—Western Regional Air Partnership

§ 431. Definitions

(a) FOR PURPOSES OF THIS SUBPART—

(1) ADJUSTED BASELINE HEAT INPUT.—The term ‘‘adjusted baseline heat input’’ means the average annual heat input used by a unit during the three years in which the unit had the highest heat input for the period from the eighth through the fourth year before the first covered year.

(2) AFFECTED EGU.—The term ‘‘affected EGU’’ means an affected EGU under subparagraph 2 that is in a WRAP State and that—

(3) ALLOWANCES HELD.—Only sulfur dioxide allowances under sections 432 through 434 shall be held in order to meet the requirements of subsection (a).

(4) COVERED YEAR.—The term ‘‘covered year’’ means—

(5) OIL-FIRED.—The term ‘‘oil-fired’’ with regard to a unit means, for purposes of section 434, a unitcombusting fuel oil for more than 10 percent of the unit's total heat input, and combusting no coal or coal-derived fuel, and any year during the period from the eighth through the fourth year before the first covered year.

(6) WRAP STATE.—The term ‘‘WRAP State’’ means Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming.

§ 432. Applicability

(a) PROHIBITION.—Starting January 1 of the first covered year, it shall be unlawful for the affected EGUs to emit a total amount of sulfur dioxide during the year in excess of the number of sulfur dioxide allowances held for such facility for that year by the owner or operator of the facility.

(b) ALLOWANCES HELD.—Only sulfur dioxide allowances under section 432 shall be held in order to meet the requirements of subsection (a).

§ 433. Limitations on Total Emissions

For affected EGUs, the total amount of sulfur dioxide allowances that the Administrator shall allocate for each covered year under section 434 shall equal 271,000 tons.

§ 434. EGU Allocations

(a) IN GENERAL.—By January 1 of the year before the first covered year, the Administrator shall promulgate regulations determining, for each covered year, the allocations of sulfur dioxide allowances for the WRAP State that face that year's allotment for EGUs as of December 31 of the fourth year before the covered year by—

(1) for such units at the facility that are oil-fired, the allocation of 0.8 percent of the total adjusted baseline heat input of such units and converting to tons;
for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NOx burner technology. The Administrator shall base such rate on the degree of reduction achievable through the retrofit application of the best system of continuous emission limitation that is capable of achieving the applicable emission limitation. The Attorney General shall determine that such rates are not more stringent than the applicable emission limitation.

(b) Failure to promulgate.—If the Administrator fails to promulgate regulations under subsection (a) determining the alternative emission rate, the permitting authority shall implement the applicable emission limitation. The Attorney General shall determine that such rates are not more stringent than the applicable emission limitation.

(c) Alternative emission limitations.—The permitting authority shall base such determination upon a reasonable showing favoring the permitting authority, in accordance with regulations established by the Administrator, the owner or operator.

The Administrator shall, upon request of an owner or operator of a unit subject to subsection (b) of this section, establish an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) upon a determination that—

(A) the actual annual emission rate for such units that ensure that

(1) A LERNATIVE CONTEMPORANEOUS EMIS-

(1) AFFECTED EGU.—The term "affected EGU" means—

(2) for such units at the facility that are oil-fired, multiplying 0.2 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons;

(3) for all other units at the facility that are not covered by paragraph (1) or (2) multiplying 0.05 lb/mmBtu by the total adjusted baseline heat input of such units and converting to tons; or

(4) multiplying by 0.95 the allocation amount under section 433 by the ratio of the total of the amounts for all facilities under paragraphs (1), (2), and (3); and

(5)(A) 5 percent of the total amount of sulfur dioxide allowances allocated under section 433 shall be allocated for units at a facility that are affected EGU's, but did not receive sulfur dioxide allocations under paragraph (4). These units shall be allocated allowances in accordance with paragraphs (1), (2), and (3).

(5)(B) All allowances allocated under subparagraph (A) will not be reduced as a result of new units commencing commercial operation.

(C) Allowing permits to accumulate monitoring and alternative monitoring requirements.

(1) Reconciliation.—Upon promulgation of regulations under subsection (a) determining the allocations for 2010 and thereafter, if the Administrator has not promulgated regulations, determining allocations under paragraph (a), each affected EGU shall comply with section 422 by providing annual notice to the permitting authority. Such notice shall indicate the amount of allowances that the affected EGU believes are allocable to the relevant year and the amount of sulfur dioxide emissions for such year.

(2) Roosevelt and the amount of sulfur dioxide emissions shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements.

(1) For purposes of this subpart: ACAID Rain Program

SEC. 442. TERMINATION.—Starting January 1, 2008, the owner or operator of affected EGU's that does not receive any allowance under section 441 shall be subject to the requirements of that section.

Subpart 2—Clear Skies Nitrogen Oxides Allowance Program

SEC. 451. DEFINITIONS.—For purposes of this subpart:

(1) AFFECTED EGU.—The term "affected EGU" means—

(a) Applicability.—On the date that a coal-fired utility unit becomes an affected EGU, an affected utility unit commences commercial operation for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

(b) Emission limitations.—

(1) The permitting authority shall, by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitation shall not exceed the levels as listed below: Provided. That the Administrator may set a rate higher than that listed
capacity of 25 megawatts or less, or a cogeneration unit that meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 16 of the Code of Federal Regulations (as in effect for 2002) does not include a solid waste incineration unit subject to section 129 or a unit for the treatment, storage, or disposal of hazardous waste subject to section 3005 of the Solid Waste Disposal Act.

(2) ADJUSTED BASELINE HEAT INPUT.—The term ‘‘adjusted baseline heat input’’ with regard to a unit, means for purposes of allocating nitrogen oxides allowances in a particular year under this subpart, the units baseline heat input:

(A) 1.0 for affected coal-fired units for 2008 and each year thereafter;

(B) 0.55 for affected oil- and gas-fired units located in a Zone 1 State for years 2008 through 2017 inclusive;

(C) 0.8 for affected oil- and gas-fired units located in a Zone 1 State for 2018 and each year thereafter;

(D) 0.4 for affected oil- and gas-fired units located in a Zone 2 State for 2008 and each year thereafter.

(3) THE DOUBLE NITROGEN OXIDES EMISSIONS RATE.—The term ‘‘double nitrogen oxides emissions rate’’ means the most stringent Federal, State, or local emission limitation for nitrogen oxides that applies to the unit as of the date of enactment of this subpart. If the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual emissions limitation from the emissions limitation that establishes the allowable rate. Such limitation shall not include any requirement to hold nitrogen oxides allowances under the Federal NOx Budget Trading Program as codified at 40 CFR part 97 (2002), or any State program adopted to meet the requirements of the NOx SIP Call as codified at 40 CFR 51, 121 (2002).

(4) ZONE 1 STATE.—The term ‘‘Zone 1 State’’ means Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, the fine grid portion (as defined in section 51.121 of title 40, Code of Federal Regulations (as in effect for 2002)) of Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas east of Interstate 35, Vermont, Virginia, West Virginia, and Wisconsin.

(5) ZONE 2 STATE.—The term ‘‘Zone 2 State’’ means American Samoa, Arizona, California, Colorado, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, Hawaii, Idaho, Kansas, the coarse grid portion (as defined in section 51.121 of title 40, Code of Federal Regulations (as in effect for 2002)) of Missouri, Montana, Nebraska, North Dakota, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas west of Interstate 35, Utah, the Virgin Islands, Washington, and Wyoming.

SEC. 452. APPLICABILITY.

(a) ZONE 1 PROHIBITION.—

(1) IN GENERAL.—Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 1 State to emit the total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the NAAQS generator or the facility owner or operator.

(2) LIMITATION.—Only nitrogen oxides allowances under section 452(a) shall be held in order to meet the requirements of paragraph (1), except as provided under section 465.

(b) ZONE 2 PROHIBITION.—

(1) IN GENERAL.—Starting January 1, 2008, it shall be unlawful for the affected EGUs at a facility in a Zone 2 State to emit a total amount of nitrogen oxides during a year in excess of the number of nitrogen oxides allowances held for such facility for that year by the NAAQS generator or the facility owner or operator.

(2) LIMITATION.—Only nitrogen oxides allowances under section 452(b) shall be held in order to meet the requirements of paragraph (1).

SEC. 453. LIMITATIONS ON TOTAL EMISSIONS.

(a) ZONE 1 ALLOCATIONS.—For affected EGUs in the Zone 1 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(a) as specified in table A.

Table A—Total NOx Allowances Allocated for EGUs in Zone 1

<table>
<thead>
<tr>
<th>Year</th>
<th>NOx allowances allocated</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-2017</td>
<td>1,473,603</td>
</tr>
<tr>
<td>2018 and thereafter</td>
<td>1,073,603</td>
</tr>
</tbody>
</table>

(b) ZONE 2 ALLOCATIONS.—For affected EGUs in Zone 2 States for 2008 and each year thereafter, the Administrator shall allocate nitrogen oxides allowances under section 454(b) as specified in table B.

Table B—Total NOx Allowances Allocated for EGUs in Zone 2

<table>
<thead>
<tr>
<th>Year</th>
<th>NOx allowances allocated</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008 and thereafter</td>
<td>714,794</td>
</tr>
</tbody>
</table>

SEC. 454. EGU ALLOCATIONS.

(a) EGU ALLOCATIONS IN THE ZONE 1 STATES.—

(1) EPA REGULATIONS.—The term ‘‘EGU allocations in the Zone 1 States’’ means the amount of nitrogen oxide allowances allocated to each affected EGU in the Zone 1 States for 2008 and each year thereafter, if the Administrator determines by the date on which the unit commences operation.

(2) FORMULA FOR ALLOCATION.—

(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), the regulations shall specify that the allocation of nitrogen oxide allowances for each year shall be the product obtained by multiplying—

(i) the baseline heat input of the unit; and

(ii) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

(B) MAXIMUM ALLOCATION.—Notwithstanding subparagraph (A) and paragraph (3), no unit shall receive an allocation in excess of the product obtained by multiplying—

(i) the product of 0.95 and the allocation amount under section 453(a); and

(ii) the ratio that—

(A) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

(bb) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 1 States, including those affected EGUs that receive allowances under paragraph (2). 

(C) ADDITIONAL ALLOCATIONS.—Notwithstanding clause (i) and subparagraph (E), the regulations promulgated under paragraph (1) shall specify that the allocation of nitrogen oxide allowances for each unit referred to in clause (A) for each year shall be the product obtained by multiplying—

(i) the baseline heat input of the unit; and

(ii) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

(D) NO REDUCTION IN ALLOCATIONS.—Allocations to units under this paragraph shall not be reduced as a result of new units commencing operation.

(E) DISTRIBUTION OF REMAINING ALLOWANCES.—Any nitrogen oxide allowances remaining after the allocation of allowances under subparagraph (B) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that subparagraph and paragraphs (2) and (3).

(F) FAILURE TO PROMULGATE REGULATIONS.—For calendar year 2008 and each calendar year thereafter, if the Administrator has not promulgated the regulations determining the allocations under this subpart—

(A) each affected unit shall comply with section 3005 of the Clean Air Act by providing notice to the permitting authority that indicates the amount of allowances the affected unit believes the affected unit has for the relevant year, including the quantity of nitrogen oxide emissions of the affected unit for that year;

(B) the amount of nitrogen oxide emissions of an affected unit described in subparagraph (A) shall be determined using reasonable industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

(C) upon promulgation of regulations under this subpart for Zone 1 determining the allocations for 2008 and each year thereafter, and promulgation of regulations under section 403(b) providing for the transfer of nitrogen oxides and regulations under section 404(a) establishing an Allowance Transfer System for nitrogen oxide allowances—

(i) the emissions of each unit shall be compared to and reconciled with actual allocations to the unit under the regulations; and

(ii) each unit shall not have more than 270 days to submit allowances to the Administrator for any allowable shortfalls (including submitted allowances obtained and held by any mechanism.
consistent with this Act, including direct sale).

(b) EGU ALLOCATIONS IN THE ZONE 2 STATES

(1) EPA REGULATIONS.—Not later than 18 months before the date on which the nitrogen oxides allowance requirement under section 453 takes effect, the Administrator shall promulgate regulations determining the allocation of nitrogen oxide allowances for 2008 and each subsequent year for units at a facility in a Zone 2 State that are affected EGUs as of the date of enactment of this section.

(2) FORMULA FOR ALLOCATION.—

(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), the regulations shall specify that the allocation of nitrogen oxide allowances for each unit referred to in paragraph (1) for each year shall be the product obtained by multiplying—

(i) the product of 0.95 and the allocation amount under section 453(b); and

(ii) the ratio that

(I) the total quantity of the adjusted baseline heat input of the units at the facility; bears to

(II) the total quantity of adjusted baseline heat input to all affected EGUs in the Zone 2 States.

(B) MAXIMUM ALLOCATION.—Notwithstanding subparagraph (A) and paragraph (3), no unit shall receive an allocation in excess of the product obtained by multiplying—

(i) the baseline heat input of the unit; and

(ii) the ratio determined by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

(3) DISTRIBUTION OF REMAINING ALLOWANCES.—

(A) IN GENERAL.—Subject to paragraph (2)(B), any nitrogen oxide allowances remaining after the allocation of allowances under paragraph (1) shall be distributed on a pro rata basis among the units that received nitrogen oxide allowances under that paragraph.

(B) ADDITIONAL REMAINING ALLOWANCES.—Any nitrogen oxide allowances remaining after each iteration of the calculation under subparagraph (A) as a result of the calculation under paragraph (2)(B) shall be allocated in accordance with subparagraph (A).

(4) SET-ASIDE FOR NEW UNITS.—

(A) IN GENERAL.—Notwithstanding subparagraph (A) and paragraph (3), the regulations promulgated under paragraph (1) shall specify that the allocation of nitrogen oxide allowances for each unit referred to in subparagraph (A) for each year shall be the product obtained by multiplying—

(i) the product of 0.05 and the allocation amount under section 453(a); and

(ii) the ratio determined by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

(B) FORMULA FOR ALLOCATION.—

(I) IN GENERAL.—Subject to clause (ii) and subparagraph (B), the regulations promulgated under paragraph (1) shall specify that the allocation of nitrogen oxide allowances for each unit referred to in subparagraph (A) for each year shall be the product obtained by multiplying—

(i) the product of 0.05 and the allocation amount under section 453(a); and

(ii) the quotient obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

(II) METHOD OF ALLOCATION.—Allowances allocated under this paragraph shall be allocated to each unit on a first-come basis determined by the date on which the unit commences operation.

(IV) NO REDUCTION IN ALLOWANCES.—Allocation of allowances under this section shall not be reduced as a result of new units commencing commercial operations.

(5) FAILURE TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under this subsection for Zone 2 determining the allocations for 2008 and each year thereafter, the Administrator shall promulgate regulations under subsection (A) shall be determined using reasonable industry methods unless the Administrator has promulgated applicable monitoring and alternative monitoring requirements; and

(C) upon promulgation of regulations under this subsection for Zone 2 determining the allocations for 2008 and each year thereafter, and promulgation of regulations under section 403(c) establishing an Allowance Transfer System for nitrogen oxide allowances:

(i) the emissions of each unit shall be compared to and reconciled with actual allocations to the unit under the regulations; and

(ii) each unit shall not have more than 365 days to submit allowances to the Administrator, without recompense, for any allowance shortfall (including submitted allowances obtained and held by any mechanism consistent with this Act, including direct sale).

SEC. 455. NITROGEN OXIDES EARLY ACTION REDUCTION CREDITS

(1) CREDITS.—Except as provided in subsection (e), the Administrator shall promulgate regulations that authorize the allocation of nitrogen oxide allowances to units designated under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2008.

(2) EMISSIONS REDUCTIONS.—No allowances shall be allocated under this section for emissions reductions that are—

(aa) attributable to pollution control equipment or combustion technology improvements that were operational at any time prior to the date of enactment of this section;

(bb) attributable to fuel switching;

(bb) required under any Federal or State regulation for the applicable year; or

(dd) made to a unit subject to regulation in the applicable implementation plan of a NOx SIP Call State (as defined in section 461(3)) that meet the requirements under sections 51.121 and 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004) during the period beginning on May 1 and ending on September 30.

(e) EXCEPTION.—This section shall not apply to credits that are—

(i) made during the period beginning on May 1 through September 30 for each year thereafter; or

(ii) the ratio obtained by dividing the allowable nitrogen oxides emissions rate of the unit by 2000.

SEC. 461. DEFINITIONS.

For purposes of this subpart:

(1) OZONE SEASON.—The term ‘ozone season’ means—

(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period May 1 through September 30 for each year starting in 2003; and

(B) with regard to all other States, the period May 1 through September 30 for each year starting in 2004 and thereafter.

(2) NON-OZONE SEASON.—The term ‘non-ozone season’ means—

(A) with regard to Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Rhode Island, the period October 1 through April 30; and

(B) with regard to all other States, the period October 1, 2003, through May 30, 2004 and the period October 1 through April 30 thereafter.

(3) NOx SIP call state.—The term ‘NOx SIP Call State’ means Connecticut, Delaware, the District of Columbia, Indiana, Kentucky, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and the fine grid portions of Alabama, Georgia, Michigan, and Missouri.

(4) FINE GRID PORTIONS OF ALABAMA, GEORGIA, MICHIGAN, AND MISSOURI.—The term ‘fine grid portions of Alabama, Georgia, Michigan, and Missouri’ means the areas in Alabama, Georgia, Michigan, and Missouri subject to 40 CFR part 95 (2000).

SEC. 462. GENERAL PROVISIONS.

The provisions of sections 402 through 406 shall not apply to this subpart.
SEC. 463. APPLICABLE IMPLEMENTATION PLAN.

(a) SIPs.—Except as provided in subsection (b), the applicable implementation plan for each NO\textsubscript{X} SIP Call State shall be consistent with the requirements, to ensure that the NO\textsubscript{X} SIP Call State’s nitrogen oxides budget and compliance supplement pool, in sections 51.121 and 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004).

(b) REQUIREMENTS.—Notwithstanding any provision to the contrary in section 51.121 or 51.122 of title 40, Code of Federal Regulations (as in effect for calendar year 2004):

(1) IMPLEMENTATION PLAN.—The applicable implementation plan for each NO\textsubscript{X} SIP Call State shall implement the requirements of the required emission control measures starting no later than the first ozone season.

(2) EXEMPTION.—Starting January 1, 2008:

(A) the owners and operators of a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D shall no longer be subject to the requirements in a NO\textsubscript{X} SIP Call State’s applicable implementation plan that meet the requirements of subsection (a) and paragraph (1); and

(B) notwithstanding subparagraph (A), if the Administrator determines, by December 31, 2007, that the applicable implementation plan meets the requirements of subsection (a) and paragraph (1), such applicable implementation plan shall be deemed to continue to meet such requirements.

(c) SAVINGS PROVISION.—Nothing in this section or section 464 shall preclude or deny the right or the due process or the political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard, relating to a boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this Act.

SEC. 464. TERMINATION OF FEDERAL ADMINISTRATION OF NO\textsubscript{X} TRADING PROGRAM FOR EGUS.

Starting January 1, 2008, with regard to any boiler, combustion turbine, or integrated gasification combined cycle plant subject to emission reduction requirements or limitations under part B, C, or D, the Administrator shall not administer any nitrogen oxides program included in any NO\textsubscript{X} SIP Call State’s applicable implementation plan and meeting the requirements of section 463(a) and (b)(1).

SEC. 465. CARRYFORWARD OF PRE-2008 NITROGEN OXIDES ALLOWANCES.

The Administrator shall promulgate regulations as necessary to assure that the requirements of paragraphs (a) and (b)(1) of section 452(a)(1) may be met using nitrogen oxides allowances allocated for an ozone season before 2008 under a nitrogen oxides trading program that the Administrator administers, is included in a NO\textsubscript{X} SIP Call State’s applicable implementation plan, and meet the requirements of section 463(a) and (b)(1).

SEC. 466. NON-OZONE SEASON VOLUNTARY AHC CREDITS.

An affected facility that voluntarily elects to operate select catalytic reduction devices shall be entitled to the credit described in paragraph (1) of this subsection, during the non-ozone season under section 462(1) shall be credited 0.5 allowances per ton of NO\textsubscript{X} emissions avoided as a result of these controls. The amount avoided will equal every ton of nitrogen oxides reduction below the allowable emission rate. The Administrator shall determine if any other existing NO\textsubscript{X} emission control devices are generally uneconomic to operate unless EGUs are provided incentives to reduce emissions during the non-ozone season. If the Administrator finds that incentives using different control equipment are necessary to make the operation of these devices practical, the Administrator shall specify these types of control devices and, for any affected facility with these specified devices, installed prior to enactment of this title, which voluntarily elects to operate these devices during the non-ozone season under section 462(2) shall be credited 0.5 allowances per ton of emissions avoided as a result of the control devices operated by the affected facility during the non-ozone season.

SEC. 471. DEFINITIONS.

For purposes of this part:

(1) ADJUSTED BASELINE HEAT INPUT.—The term ‘‘adjusted baseline heat input’’ with regard to a unit means the unit’s baseline heat input multiplied by—

(A) 1.0, for the portion of the baseline heat input that is the unit’s average annual combustion of bituminous during the years on which the unit’s baseline heat input is based;

(B) 1.0, for the portion of the baseline heat input that is the unit’s average annual combustion of lignite during the years on which the unit’s baseline heat input is based;

(C) 0.95, for the portion of the baseline heat input that is the unit’s average annual combustion of subbituminous during the years on which the unit’s baseline heat input is based; and

(D) 1.0, for the portion of the baseline heat input that is not covered by subparagraph (A), (B), or (C) for the entire baseline heat input for which baseline heat input is not based on the unit’s heat input in specified years.

(2) AFFECTED EGU.—The term ‘‘affected EGU’’ means—

(A) for a unit serving a generator before the date of enactment of the Clean Skies Act of 2005, a coal-fired unit in a State serving a generator with a nameplate capacity of greater than 25 megawatts that produced or produces electricity for sale during 2002 or any year thereafter, except for a cogeneration facility that meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during 2002 and each year thereafter;

(B) for a unit commencing service of a generator on or after the date of enactment of the Clean Skies Act of 2005, a coal-fired unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator, except for a cogeneration facility that meets the criteria for qualifying for a cogeneration facilities codified in section 292.205 of title 18 of the Code of Federal Regulations as issued on April 1, 2002, during 2002 and each year thereafter;

(C) for a unit commencing service of a generator on or after the date of enactment of the Clean Skies Act of 2005, a coal-fired unit in a State serving a generator that produces electricity for sale during any year starting with the year the unit commences service of a generator;

(D) the term ‘‘affect’’ used in subparagraph (C) is defined in section 462(c)(2) of this Act.

(3) ALLOWANCES.—The term ‘‘allowances’’ means—

(A) any allowances that may be used for compliance with the Mercury Allowances program established by section 472 or the Mercury Allowances program established by section 473, as applicable;

(B) any allowances that may be used for compliance with the Acid Emissions Allowances program established by section 476; and

(C) any other allowances that the Administrator may promulgate as necessary.

(4) ACRE.—The term ‘‘acres’’ means—

(A) 43,560 square feet;

(B) 208.71 acres; and

(C) any other unit as may be determined by the Administrator.

(5) AVERAGE ANNUAL COMBUSTION.—The term ‘‘average annual combustion’’ means—

(A) the average annual combustion of bituminous for the affected EGU for the years in which the unit commences service of a generator on or after the date of enactment of the Clean Skies Act of 2005; and

(B) the average annual combustion of lignite and subbituminous for the affected EGU for the years in which the unit commences service of a generator on or after the date of enactment of the Clean Skies Act of 2005.

SEC. 472. APPLICABILITY.

Starting January 1, 2010, it shall be unlawful for the affected EGUs at a facility in commercial operation during the year in excess of the number of mercury allowances held for such facility for that year by the owner or operator of the facility to exceed the number of allowances calculated as follows:

SEC. 473. LIMITATIONS ON TOTAL EMISSIONS.

For affected EGUs for 2010 and each year thereafter, the Administrator shall allocate mercury allowances pursuant to section 474.

SEC. 474. EGU ALLOWANCES.

(a) IN GENERAL.—Not later than 24 months before the commencement date of the mercury allowance requirement of section 472, the Administrator shall promulgate regulations determining allocations of mercury allowances for 2010 and thereafter for units in a facility in commercial operation by and are affected EGUs as of date of enactment. The regulations shall provide that the Administrator shall allocate each year for such units an amount determined by multiplying by 0.95 the allocation amount in section 473 by the ratio of the total amount of the adjusted baseline heat input of such units at the facility to the total amount of adjusted baseline heat input of all affected EGUs.

(b) NEW FACILITIES.—5 percent of the total amount of nitrogen oxides allowances allocated each year under section 473 shall be allocated for units at a facility that commence commercial operation and are aff-
(a) DEFINITIONS.—For purposes of this section—

(1) COMMENCED.—The term ‘commenced’, with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, all necessary engineering, design, and procurement requirements. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 18 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation.

(2) CONSTRUCTION.—The term ‘construction’ means an activity undertaken with the intent to construct a facility. This term includes any activity that is determined reasonable of commerce, industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative the promulgation of regulations (a) determining the allocations for 2010 and thereafter, and promulgating other subsection 403(c) establishing an Allowance Transfer System for mercury allowances, each unit’s emissions shall be compared to and reconcile with its actual allocations under the promulgated regulation. Each unit will have nine (9) months to submit allowances to the Administrator for any allowances shortfall. The submitted allowances may have been obtained and held by any mechanism consistent with the Act including, but not limited to, direct sale.

SEC. 475. MERCURY EARLY ACTION REDUCTION CREDITS

(a) IN GENERAL.—The Administrator shall promulgate regulations within 18 months authorizing the allocation of mercury allowances under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

(b) NONALLOCATION OF ALLOWANCES.—No allowances allocated under subsection (a) shall be used or traded by any owner or operator of any affected unit until the date on which the standards promulgated under subsection (b) are substantially implemented and held by any mechanism consistent with the Act including, but not limited to, direct sale.

(c) MERCURY EARLY ACTION CREDITS—The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under section 474 and shall be allocated at the end of each compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

(d) EARLY COMPLIANCE ALLOWANCE CREDITS.—The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credits. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

SEC. 481. NATIONAL EMISSION STANDARDS FOR HUMAN SARCHEMICALS—RESEARCH, ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY

SEC. 481. NATIONAL EMISSION STANDARDS FOR AFFECTED UNITS

(a) DEFINITIONS.—For purposes of this section—

(1) COMMENCED.—The term ‘commenced’, with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, all necessary engineering, design, and procurement requirements. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 18 months prior to the date on which the unit begins operation.

(2) CONSTRUCTION.—The term ‘construction’ means an activity undertaken with the intent to construct a facility. This term includes any activity that is determined reasonable of commerce, industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative the promulgation of regulations (a) determining the allocations for 2010 and thereafter, and promulgating other subsection 403(c) establishing an Allowance Transfer System for mercury allowances, each unit’s emissions shall be compared to and reconcile with its actual allocations under the promulgated regulation. Each unit will have nine (9) months to submit allowances to the Administrator for any allowances shortfall. The submitted allowances may have been obtained and held by any mechanism consistent with the Act including, but not limited to, direct sale.

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(d) EARLY COMPLIANCE ALLOWANCE CREDITS.—The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credits. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

PART E—NATIONAL EMISSION STANDARDS FOR HUMAN SARCHEMICALS—RESEARCH, ENVIRONMENTAL ACCOUNTABILITY; MAJOR SOURCE PRECONSTRUCTION REVIEW AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY

SEC. 481. NATIONAL EMISSION STANDARDS FOR AFFECTED UNITS

(a) DEFINITIONS.—For purposes of this section—

(1) COMMENCED.—The term ‘commenced’, with regard to construction, means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, all necessary engineering, design, and procurement requirements. For boilers and integrated gasification combined cycle plants, this term does not include undertaking such a program or entering into such an obligation more than 36 months prior to the date on which the unit begins operation. For combustion turbines, this term does not include undertaking such a program or entering into such an obligation more than 18 months prior to the date on which the unit begins operation.

(2) CONSTRUCTION.—The term ‘construction’ means an activity undertaken with the intent to construct a facility. This term includes any activity that is determined reasonable of commerce, industry accepted methods unless the Administrator has promulgated applicable monitoring and alternative the promulgation of regulations (a) determining the allocations for 2010 and thereafter, and promulgating other subsection 403(c) establishing an Allowance Transfer System for mercury allowances, each unit’s emissions shall be compared to and reconcile with its actual allocations under the promulgated regulation. Each unit will have nine (9) months to submit allowances to the Administrator for any allowances shortfall. The submitted allowances may have been obtained and held by any mechanism consistent with the Act including, but not limited to, direct sale.

SEC. 475. MERCURY EARLY ACTION REDUCTION CREDITS

(a) IN GENERAL.—The Administrator shall promulgate regulations within 18 months authorizing the allocation of mercury allowances under this section that install or modify pollution control equipment or combustion technology improvements identified in such regulations after the date of enactment of this section and prior to January 1, 2010.

(b) NONALLOCATION OF ALLOWANCES.—No allowances allocated under subsection (a) shall be used or traded by any owner or operator of any affected unit until the date on which the standards promulgated under subsection (b) are substantially implemented and held by any mechanism consistent with the Act including, but not limited to, direct sale.

(c) MERCURY EARLY ACTION CREDITS—The allowances allocated to any unit under this paragraph shall be in addition to the allowances allocated under section 474 and shall be allocated at the end of each compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.

(d) EARLY COMPLIANCE ALLOWANCE CREDITS.—The Administrator shall promulgate regulations as necessary to ensure affected units receive early compliance allowance credits. Early compliance allowances shall be allocated at the end of an early compliance year. Should the Administrator fail to promulgate allocation regulations by the end of a given year, early compliance allowances for each year shall be allocated at the earliest possible time after allocation regulations are promulgated.
and neither uses add-on controls nor is located within 50 km of a class I area.

(2) COAL-FIRED COMBUSTION TURBINES.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any coal-fired combustion turbine that is a new affected unit to discharge into the atmosphere any gases which contain sulfur dioxide in excess of 2.0 lb/MWh; nitrogen oxides in excess of—

(i) 0.289 lb/MWh (12 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine and is located within 50 km of the I-70/70/75 complex; or

(ii) 1.01 lb/MWh (42 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine; is not a simple cycle combustion turbine; is not dual-fuel capable; or is a simple cycle combustion turbine, is dual-fuel capable, and does not use add-on controls; or is not a cycle combustible turbine and is located within 50 km of the I-70/70/75 complex.

(3) COMBUSTION TURBINES THAT ARE NOT GAS-FIRED OR COAL-FIRED.—After the effective date of standards promulgated under subsection (b), no owner or operator shall cause any combustion turbine that is not gas-fired or coal-fired and that is a new affected unit to discharge into the atmosphere any gases which contain—

(A) sulfur dioxide in excess of 2.0 lb/MWh;

(B) nitrogen oxides in excess of—

(i) 0.289 lb/MWh (12 ppm at 15 percent oxygen), if the unit is not a simple cycle combustible turbine, is dual-fuel capable, and uses add-on controls; or

(ii) 1.01 lb/MWh (42 ppm at 15 percent oxygen), if the unit is a simple cycle combustion turbine; is not a simple cycle combustion turbine; is not dual-fuel capable; or is a simple cycle combustion turbine, is dual-fuel capable, and does not use add-on controls.

(C) particulate matter in excess of 0.20 lb/MWh.

(e) PERIODIC REVIEW AND REVISION.—

(1) IN GENERAL.—The Administrator shall, at least annually following the promulgation of standards under subsection (b), review and, if appropriate, revise such standards to reflect the degree of emission limitation and control technology achievement that can be achieved through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impacts and energy requirements). When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall promulgate standards under this section, consider the emission limitations and percent reductions achieved in practice.

(2) EXCEPTION.—Notwithstanding the requirements of paragraph (1) the Administrator need not review any standard promulgated under subsection (b) if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.

(f) EFFECTIVE DATE.—The standard promulgated pursuant to this section shall become effective upon promulgation.

(g) INNOVATIVE CONTROL TECHNOLOGIES.

(1) IN GENERAL.—Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards promulgated under this section for affected units within such State. If the Administrator finds the State procedure is adequate, the Administrator shall delegate to such State, any authority the Administrator has under this Act to implement and enforce such standards.

(2) ENFORCEMENT.—Nothing in this subsection shall prohibit the Administrator from enforcing standards promulgated under this section.

(h) VIOLATIONS.—After the effective date of standards promulgated under this section, it shall be unlawful for any owner or operator of any affected unit to operate such unit in violation of any standard, established by this section applicable to such unit.

(i) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections III(e), 113, 114, and 115, the Administrator shall prepare for the enforcement of this Act, each standard established pursuant to this section shall be treated in the same manner as a standard promulgated under section 111. Each affected unit subject to standards under this section shall be treated in the same manner as a station source under section 111.

(j) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt and enforce, at a rate or standard relating to air pollutants, or other EGU's, that is more stringent than a regulation, requirement, limitation, or standard of the Administrator under this section or under any other provision of this Act.

(k) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to affected units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no new affected units standards under this section shall be subject to standards under section 111 of this Act.

SBC 482. RESEARCH, ENVIRONMENTAL MONITORING, AND DEVELOPMENT.

(1) PURPOSES.—The Administrator, in collaboration with the Secretary of Energy and the Secretary of the Interior, shall conduct a comprehensive program of research, environmental monitoring, and assessment to enhance scientific understanding of the human health and environmental effects of particulate matter and mercury; facilitate research into and development of innovative technologies to control sulfur dioxide, nitrogen oxides, mercury, and particulate matter at all existing and new technology levels; and improve understanding of the health effects of fine particulate matter components related to electricity generation emissions (as distinct from other fine particle fractions) and their contribution to mercury emissions from the combustion of all fuel types, and develop any other requirements applicable to such emissions from such fuel types.

(2) General Research.—The Administrator shall—

(A) support research activities related to the chronic effects of fine particulate matter on mortality and morbidity; and

(B) improve understanding of the health effects of fine particulate matter components related to emissions from the combustion of all fuel types and their contribution to mercury emissions from such fuel types.

(3) Monitoring.—The Administrator shall—

(A) develop and improve monitoring and assessment of sulfur dioxide, nitrogen oxides, mercury, and their transformation products, and track changes in human health and the environment attributable to emission reductions under this title and;

(B) periodically provide peer-reviewed reports on the costs, benefits, and effectiveness of emission reductions achieved under this title.

(4) DEVELOPMENT.—The Administrator shall conduct research and development activities to improve understanding of the health effects of fine particulate matter on mortality and morbidity, and their contribution to mercury emissions from such fuel types.

(5) Technology Development.—The Administrator shall—

(A) support research and development activities related to the chronic effects of fine particulate matter on mortality and morbidity; and

(B) improve understanding of the health effects of fine particulate matter components related to emissions from the combustion of all fuel types and their contribution to mercury emissions from such fuel types.

(6) Integrated Control.—The Administrator shall conduct research and development activities related to the chronic effects of fine particulate matter on mortality and morbidity; and

(B) improve understanding of the health effects of fine particulate matter components related to emissions from the combustion of all fuel types and their contribution to mercury emissions from such fuel types.
(7) characterize mercury emissions from low-rank coals, for a range of traditional control technologies, like scrubbers and selective catalytic reduction; and

(b) (i) conduct modification and controls for dry-bottom boilers.

(d) ENVIRONMENTAL ACCOUNTABILITY.

(1) MONITORING AND ASSESSMENT.—The Administrator shall conduct a program of environmental standards and assessment to track on a continuing basis, changes in human health and the environment attributable to the emission reductions required under this title. Such a program shall—

(A) develop and employ methods to routinely monitor, collect, and compile data on the status and trends of mercury and its transformation products in emissions from affected facilities, atmospheric deposition, surface water quality, and biological systems. Emphasis shall be placed on those methods that—

(i) improve the ability to routinely measure mercury in dry deposition processes;

(ii) improve understanding of the spatial and temporal distribution of mercury deposition in order to determine source-receptor relationships and patterns of long-range, regional, and local deposition;

(iii) improve understanding of aggregate exposures and additive effects of methylmercury and other pollutants; and

(iv) improve understanding of the effectiveness and cost of mercury emissions controls;

(B) modernize and enhance the national air quality and atmospheric deposition monitoring networks in order to cost-effectively expand and integrate, where appropriate, monitoring capabilities for sulfur, nitrogen, and mercury emissions to meet the assessment and reporting requirements of this section;

(C) perform and enhance long-term monitoring of sulfur, nitrogen, and mercury, and parameters related to acidification, nutrient enrichment, and mercury bioaccumulation in freshwater and marine biota;

(D) maintain and upgrade models that describe the interactions of emissions with the atmosphere and resulting air quality implications and models that describe the response of ecosystems to atmospheric deposition;

(E) assess indicators of ecosystems health related to sulfur, nitrogen, and mercury, including characterization of the causes and effects as well as measures to air pollutants and evaluation of recovery.

(2) REPORTING REQUIREMENTS.—Not later than January 1, 2008, and not later than every 4 years thereafter, the Administrator shall provide a peer reviewed report to the Congress on the costs, benefits, and effectiveness of emission reduction programs under this title.

(A) The report under this subparagraph shall address the relative contribution of emission reductions from U.S. electricity generating units to the emission reductions achieved under other titles of the Clean Air Act with respect to—

(i) actual and projected emissions of sulfur dioxide and nitrogen oxides; and

(ii) average ambient concentrations of sulfur dioxide and nitrogen oxides transformed products, related air quality parameters, and indicators of reductions in human exposure;

(iii) status and trends in total atmospheric deposition of sulfur, nitrogen, and mercury as well as regional, localized estimates of total atmospheric deposition;

(iv) status and trends in visibility;

(v) status of terrestrial and aquatic ecosystems; and

(vi) status of mercury and its transformation products in fish;

(vii) causes and effects of atmospheric deposition, including changes in surface water quality and nearcoastal watersheds, streams, lakes, rivers, estuaries, and nearcoastal waters;

(viii) occurrence and effects of coastal eutrophication and episodic acidification, particularly with respect to high elevation watersheds; and

(ix) reduction in atmospheric deposition rates that should be achieved to prevent or reduce adverse ecological effects.

(B) The report under this subparagraph shall address the relative contribution of the United States to world-wide emissions as well as a comparison of the stringency of federal and international requirements under the Act to other countries.

SEC. 483. MAJOR SOURCE PRECONSTRUCTION REQUIREMENTS AND BEST AVAILABLE RETROFIT CONTROL TECHNOLOGY REQUIREMENTS; APPLICATION TO AFFECTED UNITS.

(a) MAJOR SOURCE EXEMPTION.—An affected unit shall be considered neither a major emitting facility or major stationary source nor a part of a major emitting facility or major stationary source, for purposes of compliance with the requirements of parts C and part D of title I, and shall not otherwise be subject to requirements under section 169A or 169B, for a period of 20 years after the date of enactment of this section. This applicability provision only applies to affected units that do not meet the performance standards of section 481 or meet the following requirements within 3 years after the date of enactment of the Clean Skies Act of 2006:

(1) The owner or operator of the affected unit properly operates, maintains and repairs pollution control equipment to limit emissions of mercury, or the owner or operator of the affected unit is subject to an enforceable permit issued pursuant to title V or a permit program approved or promulgated as part of an application implemented plan to limit the emissions of particulate matter from the affected unit to 0.03 lb/mmBtu within eight years after the date of enactment of the Clean Skies Act of 2006, and

(2) The owner or operator of the affected unit uses good combustion practices to minimize emissions of nitrogen oxides. Good combustion practices may be accomplished through control technology, combustion technology improvements, or workplace practices.

(b) CLASS I AREA PROTECTIONS.—Notwithstanding the provisions ofsubsection (a), an affected unit located within 50 km of a Class I area on which construction commences after the date of enactment of the Clean Skies Act of 2006 is subject to those provisions under part C of title I pertaining to the review of a new or reconstructed major stationary source’s impact on a Class I area.

(c) PRECONSTRUCTION REQUIREMENTS.—Except as provided in title III of the PM 2.5 National Ambient Air Quality Standards and Subpart 2 of part C, or part D.

SEC. 3. OTHER AMENDMENTS.

(a) TITLE I.—Title I of the Clean Air Act is amended as follows:

(1) In section 103 by repealing subparagraphs (E) and (F).

(2) In section 107(d)(4)(A)—

(A) by striking “or” at the end of clause (ii);

(ii) by striking the period at the end of clause (ii) and inserting “;”;

(ii) by striking the period at the end of clause (iii) and inserting “; or”;

(iii) by adding at the end the following:

(iv) notwithstanding clauses (i) through (iii) and subsection (d)(3), if requested by a State, an area may be redesignated as transitional or nonattainment by the Administrator, in consultation with the relevant State, to a secondary ambient air quality standard or the 8-hour ozone national primary or secondary ambient air quality standard if—

(I) the Administrator has performed air quality modeling and, in the case of an area that needs additional local control measures, the State has performed supplemental air quality modeling, demonstrating that the area will attain the applicable standard or standards not later than December 31, 2015;

(II) such modeling demonstration and all necessary local controls have been approved into the State implementation plan not later than 1 year after the date of enactment of the Clear Skies Act of 2006; and

(III) such area has not made a finding that the criteria污染物s have not been achieved not later than 180 days after the date of that approval.”.
(3) In section 110 as follows:

(A) By amending clause (i) of subsection (a)(2)(D) by inserting "except as provided in subsection (q)," before the word "prohibit-

(B) By adding the following new subsections at the end thereof:

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(q) AGENCY PLANS.—
(1) IN GENERAL.—The Administrator shall, in reviewing, under subsection (a)(2)(D)(i), any plan with respect to affected units, with-
including the provisions of section 128(d)(1)—
(A) consider, among other relevant fac-
tors, emissions reductions required to occur by the attainment date or dates of any rele-
vant nonattainment areas in the other State or States;
(B) not require submission of plan provi-
sions mandating emissions reductions from such affected units, unless the Administrator determines that—
(i) emissions from such units may be re-
duced at least as cost-effectively as emis-
sions reductions in the State or each other State from each other principal category of sources of the relevant pollutant, pollutant,
or pre-cursors thereof, including industrial boilers, coal-fired and natural gas-fired mobile sources, and any other category of sources that the Administrator may iden-
ify;
(ii) reductions in such emissions will im-
prove air quality in the other State's or States' nonattainment areas at least as cost-
effectively as reductions in emissions in the State or each other State from each other principal category of sources of the relevant pollutant, pollutants, or pre-cursors thereof, to the maximum extent that a methodology is reasonably available to make such a determi-
nation;
(C) develop an appropriate peer-reviewed methodology for making determinations under subparagraph (B) by December 31, 2006; and
(D) not require submission of plan provi-
sions subjecting affected units, within the meaning of section 128(d)(1), to requirements with an effective date prior to December 31, 2014.

(2) PROXIMITY.—In making the determina-
tion under clause (ii) of subparagraph (B) of paragraph (1), the Administrator will use the best available peer-reviewed models and methodology to consider the proximity of the source or sources to the other State or States and incorporate other source charac-
teristics.

(3) EFFECT ON REGULATIONS.—Nothing in paragraph (1) shall be interpreted to require revisions to the provisions of 40 CFR parts 51, 121, and 122 (2001) as applicable.

(U) TRANSITIONAL AREAS.—

(1) MAINTENANCE.—
(A) SUBMISSION OF INVENTORY AND ANAL-
YSES.—As making determinations pursuant to section 128(d)(1)—
(A) STUDY.—The Administrator shall per-
form a study of the hazards to public health reasonably anticipated to occur as a result of emissions controls installed or anticipated to be installed in order to meet other emission reduction requirements under this Act by 2018; and, be based on a peer re-
viewed study with notice and opportunity to comment, to be completed not before Janu-
ary 2015. Any such regulations shall be pro-
mulgated within, and shall not take effect before, the date eight years after the com-
mencement of the period of time described in section 702. To the extent prac-
ticable, the categories and subcategories listed pursuant to subparagraph (a) shall con-
sist with the list of source categories es-
ablished pursuant to section 111 and part C.

(B) By amending subparagraph (A) of sub-
section (b)(2)(D)(i) by striking "section 110(a)(2)(D)(i)" and inserting "section 110(a)(2)(D)(i)" and deleting the last sentence.

(C) By adding at the end the following:

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(d) DEFINITIONS.—
(1) IN GENERAL.—For purposes of this sub-
section, the term "affected unit" means any unit that is subject to emission limitations under subpart 2 of part B, subpart 2 of part C, or part D, or is a designated unit under section 407.

(2) PENDING FOR AFFECTED UNITS.—To the extent that any petition submitted under subsection (b) after the date of enactment of the Clear Skies Act of 2005 seeks a finding for any affected unit, then, notwithstanding any provision in subsections (a) through (c) to the contrary:

(B) The Administrator may not determine that affected units emit, or would emit, any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i) unless that Adminis-
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months after November 15, 1990, to require that all affected sources subject to subpart 1 of part B of title IV of the Clean Air Act as of December 31, 2009, shall also monitor carbon dioxide emissions according to the timetable as in section 405(b). The regulations shall require that such data be reported to the Administrator. The provisions of section 405(b) of title IV of the Clean Air Act shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 405. The Administrator shall implement this subsection under 40 CFR part 75 (2002), amended as appropriate by the Administrator. 1

By Mr. SMITH (for himself and Mrs. LINCOLN):
S. 132. A bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance; to the Committee on Finance.

Mr. SMITH. Mr. President, today, I am reintroducing important legislation to help more Americans realize the dream of homeownership. The Mortgage Insurance Fairness Act of 1996 would make mortgage insurance payment premiums tax deductible. In doing so, it will help more lower-income Americans purchase homes for their families.

It is widely recognized that homeownership leads to stable and safe communities. As such, the Federal Government has long sought to increase homeownership. President Bush has announced a goal of 5.5 million new homeowners by the year 2010. Achieving that goal requires helping those that have typically had difficulty purchasing homes—young people, low-income families, members of minority groups.

Government and private mortgage insurance programs help first-time, low-income and veteran borrowers afford to purchase homes. The Veterans Affairs (VA), Federal Housing Authority (FHA), Regional Housing Authority (RHA) and Private Mortgage Insurance (PMI) programs allow buyers to make a down payment of 3 percent or less of the appraised value. For many lower- and middle-income families, mortgage insurance makes it possible for them to buy their first home.

In Oregon, more than 137,000 families held mortgages with either FHA or private mortgage insurance in 2002. In 2001, 62 percent of the insured home purchases in Oregon were low-income borrowers, and insured mortgages covered 25 percent of all home purchase loans that year.

Nationwide, mortgage insurance covers over half of home loans made to African American and Hispanic borrowers. Similarly, over half of the loans to borrowers with incomes below the median income were covered by mortgage insurance. The people who use mortgage insurance are regular working families who live in every community throughout the country. In all, more than twelve million American families pay mortgage insurance.

Currently, these borrowers are not allowed to deduct the cost of their mortgage insurance from their Federal taxes. If these payments were made deductible, the cost of homeownership would go down and more families would be able to buy homes. It is estimated that the Mortgage Insurance Fairness Act would increase the number of homeowners by 300,000 per year.

The term ‘mortgage insurance’ means—

(1) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration; and

(2) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1996 (12 U.S.C. 4901), as in effect on the date of the enactment of this Act). The amount otherwise allowable as a deduction under clause (i) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer’s adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

This Act may be cited as the ‘Mortgage Insurance Fairness Act’.

SEC. 2. PREMIUMS FOR MORTGAGE INSURANCE.
(a) In general. Paragraph (3) of section 163(h) of the Internal Revenue Code of 1986 (relating to qualified residence interest) is amended by adding after subparagraph (D) the following new subparagraph:

(4) Mortgage insurance premiums treated as interest.—

(1) In general. Premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence of the taxpayer shall be treated for purposes of this subsection as qualified residence interest.

(2) Phasedown.—The amount otherwise allowable as a deduction under clause (1) shall be reduced (but not below zero) by 10 percent of such amount for each $1,000 ($500 in the case of a married individual filing a separate return) (or fraction thereof) that the taxpayer’s adjusted gross income for the taxable year exceeds $100,000 ($50,000 in the case of a married individual filing a separate return).

(b) Definition and special rules. Paragraph (4) of section 163(h) of the Internal Revenue Code of 1986 (relating to qualified residence interest) is amended by adding at the end the following new subparagraphs:

(1) Qualified mortgage insurance.—The term ‘qualified mortgage insurance’ means—

(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration; and

(ii) private mortgage insurance as defined by section 2 of the Homeowners Protection Act of 1996 (12 U.S.C. 4901), as in effect on the date of the enactment of this Act.

(2) Special rules for prepaid qualified mortgage insurance.—Any amount paid by the taxpayer for qualified mortgage insurance that is prepaid allocable to any mortgage the payment of which extends to periods that are after the close of the taxable year in which such amount is paid shall be chargeable to capital account and shall be treated as paid in such periods to which so allocable. No deduction shall be allowed for the unamortized balance of such account if such mortgage is satisfied before the end of its term. The preceding sentences shall not apply to amounts paid for qualified mortgage insurance coverage provided by the Veterans Administration or the Rural Housing Administration.”.

SEC. 3. INFORMATION RETURNS RELATING TO MORTGAGE INSURANCE.
Section 6065H of the Internal Revenue Code of 1986 (relating to returns relating to mortgage interest received in trade or business from individuals) is amended by adding at the end the following new subsection:

“(b) Returns relating to mortgage insurance premiums.—

“(1) In general.—The Secretary may prescribe, by regulations, that any person who, in the course of a trade or business, receives from any individual premiums for mortgage insurance aggregating $600 or more for any calendar year, shall make a return with respect to each such individual. Such return shall be in such form, shall be made at such time, and shall contain such information as the Secretary may prescribe.

“(2) Statement to be furnished to individuals with respect to whom information is required.—Every person required to make a return under paragraph (1) shall furnish to each individual with respect to whom a return is made a written statement showing such information as the Secretary may prescribe. Such written statement shall be furnished on or before January 31 of the year following the calendar year for which the return under paragraph (1) was required to be made.

“(3) Special rules.—For purposes of this subsection—

(A) the rules similar to the rules of subsection (c) shall apply, and

(B) the term ‘mortgage insurance’ means—

(i) mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration; and

(ii) private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1996 (12 U.S.C. 4901), as in effect on the date of the enactment of this Act). The amendments made by this Act shall apply to amounts paid or accrued after the date of enactment of this Act in taxable years ending after such date.

By Mr. TALENT (for himself and Mr. FRINGOLD):
S. 133. A bill to amend section 302 of the PROTECT Act to modify the standards for the issuance through the AMBER Alert communications network; to the Committee on the Judiciary.

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

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

S. 133

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, This Act may be cited as the ‘Tory Jo’s AMBER Response Act’.
January 24, 2005

CONGRESSIONAL RECORD — SENATE

S349

SEC. 2. MINIMUM STANDARDS FOR ISSUANCE AND DISSEMINATION OF ALERTS THROUGH AMBER ALERT COMMUNICATION NETWORK.

Section 302(b) of the PROTECT Act (42 U.S.C. 5791a(b)) is amended by adding at the end the following:

“(5) The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), allow for the dissemination of alerts through an AMBER Alert communication network to facilitate the recovery of abducted newborns.”

SEC. 3. DEFINITION.

Title III of the PROTECT Act (42 U.S.C. 5791 et seq.) is amended by adding at the end the following:

“SEC. 306. DEFINITION.

‘Child’ means—

(1) an individual under 18 years of age; or

(2) a newborn.”

By Mrs. FEINSTEIN (for herself and Mrs. BOXER):

S. 134. A bill to adjust the boundary of Redwood National Park in the State of California; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce legislation sponsored by Senator BOXER to adjust the boundary of Redwood National Park in the State of California to include the addition of the Mill Creek property. This continues the effort initiated in the last Congress with the leadership of Congressman MIKE THOMPSON, to solidify and expand the co-operative management relationship between the United States Government and the State of California, working together to protect forever the ancient majesty of the redwood forest.

In 2002, the California Department of Parks and Recreation acquired from the Save-the-Redwoods League 25,000 acres of forest land known as the Mill Creek property in Del Norte County, which is contiguous with the Redwood National and State Parks boundary. This bill would include within the park boundary the Mill Creek acquisition and about 900 acres of land acquired and added to the State redwood parks since the 1978 expansion of the Redwood National Park boundary. There would be no Federal costs for land acquisition or development resulting from this legislation.

Approval of the expansion of the boundary of the Redwood National Park to include the headwaters of Mill Creek will complete the vision of the Redwood Park embraced by Senator Kuchel in S.1370 that he introduced in 1967, a vision dating back to the McLaughlin-Cook report issued by the National Park Service in 1937. Protection of the headwaters of Mill Creek will secure the long term viability of the ancient redwoods already within Redwood National and State Park. It would permanently safeguard the coho salmon and steelhead in the clear, cold waters of this forest.

These lands will be managed by the same cooperative management agreement between the National Park Service and the California Department of Parks and Recreation. This partnership is viewed as a model of interagency cooperative management efforts and will provide for more efficient and cost-effective management of an ecologically significant resource.

This bill enjoys strong support from local and Federal officials, including Del Norte County and the Department of the Interior. Given this support and lack of controversy, I believe this legislation to be of great importance to ensure that our Redwood National Park is further protected.

I have long held a deep interest in protecting California’s magnificent Redwoods. The coast redwood, the sequoia sempervirens, is native only to the West Coast where it stands in a narrow band from the tip of the Big Sur Coast to the Chetco River, just north of the California-Oregon border.

The redwood forest is greater than any other tree in the world and traces its lineage to among the oldest of living things. The cathedrals formed by these ancient trees inspire the best in us as a people. The redwood forests of California are a national and worldwide treasure that is ours to protect and preserve.

In 1966, the Headwaters Agreement was negotiated in part in my offices to protect approximately 7,600 acres of old growth redwood, which was the largest group of redwoods held in private ownership at the time. It is my great pleasure today to introduce this legislation to extend our national commitment to collaboration in preservation of the redwoods and the watersheds they anchor.

I applaud Congressman MIKE THOMPSON’s commitment to this issue and urge my colleagues to support this legislation.

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. 134

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 “Redwood National Park Boundary Adjustment Act of 2005”.

SEC. 2. REDWOOD NATIONAL PARK BOUNDARY ADJUSTMENT.

Section 2(a) of the Act of Public Law 90–545 (16 U.S.C. 79b(a)) is amended—

(1) in the first sentence, by striking “(a) The area” and all that follows through the period at the end and inserting the following: “(a)(1) The Redwood National Park consists of the land generally depicted on the map entitled ‘Redwood National Park, Revised Boundary’, numbered 167/65052, and dated February, 2003.”;

(2) by inserting after paragraph (1) (as designated by paragraph (1)) the following:

“(2) The map referred to in paragraph (1) shall—

(A) be on file and available for public inspection in the appropriate offices of the National Park Service; and

(B) provided by the Secretary of the Interior to the appropriate officers of Del Norte and Humboldt Counties, California.”; and

(3) in the second sentence—

(A) by striking “The Secretary” and inserting the following:

“(3) The Secretary; and

(B) by striking “one hundred and six thousand acres” and inserting “133,000 acres”.

By Mrs. FEINSTEIN:

S. 136. A bill to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing education services for students attending schools located within Redwood National Park, to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. I rise today to introduce a bill that combines needed help for small Yosemite schools, and an addition to the beautiful Golden Gate National Recreation Area. Each of these bills individually has passed both the House and Senate in previous Congresses.

The first title of this legislation provides critical funds to three small schools nestled in the heart of Yosemite National Park. These schools represent a dying breed of education models; they are small schools that teach children who live in remote communities and are taught by one or a group of teachers. At El Portal, three teachers instruct 53 students in seven grades. Wawona has 17 students in seven grades who are taught by one teacher/principal. And Yosemite Valley serves 60 students in 8 grades who are taught by two teachers.

The remote location of these schools, their small sizes and California’s unique method for funding education, have all contributed to the schools amassing a combined deficit of $290,000. In their efforts to continue to provide basic educational services to students, the schools have had to cut supplemental instruction that would normally be available to students taught outside of the park.

Some have suggested that these schools consolidate into one to pool their limited resources. While this may seem to solve the problem, you must understand that many of these students already travel many miles on treacherous mountainous roads to attend their current schools. If the three schools were to consolidate, this problem would be exacerbated, requiring many students to make a 2 hour commute to their new schools.

SEC. 306. DEFINITION.

For purposes of this title, the term ‘child’ means—

(1) an individual under 18 years of age; or

(2) a newborn.”

By Mrs. FEINSTEIN:

S. 136. A bill to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing education services for students attending schools located within Redwood National Park, to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area; to the Committee on Energy and Natural Resources.
I do not believe this is a viable option and that is why I support this legislation.

Last year, Senator Bingaman, Congressman Radanovich and I worked out a compromise on this legislation that would allow the park while protecting the National Park Service’s budget. The compromise includes the following terms:

For fiscal year 2006 through 2009, the Secretary of the Interior may provide at minimum up to $400,000 in funds to the Bass Lake Union Elementary School District and the Mariposa Unified School District for educational services to students who are dependents of persons engaged in the administration, operation, and maintenance of the Park or students who live at or near the Park; the Secretary can only provide the funds if the State of California and local agencies maintain 2005 per-student funding levels to the schools, and the Secretary also must make sure that the assistance to the schools does not reduce the remaining funding available to Yosemite National Park below fiscal year 2005 levels.

Furthermore, this legislation allows the Park Service to allot federal funds for the continuing operation of a bus service that shuttles visitors through Yosemite National Park—the Yosemite Area Regional Transportation System. The Secretary funded a demonstration project that allowed YARTS to offer services on a temporary basis expired in May 2002 and since then, YARTS has leveraged local funds to ensure that service is continued.

Both the Park Service and YARTS are supportive of continuing their mutually beneficial agreement. This legislation would do just that by taking the burden off local entities and providing the necessary assistance that this service needs.

I am also pleased to introduce today a second title in this legislation to allow the National Park Service to extend the boundaries of the Golden Gate National Recreation Area, GGNSA, by acquiring critical natural landscapes and scenic vistas.

This bill meets several distinct needs in California and national needs of all National Park System visitors by adding 4,600 acres of pristine natural land to the boundary of the Golden Gate Recreation Area. It will protect four major watersheds, preserve the home of numerous threatened, rare and endangered species, and also allow the region to become critical new trail links to contiguous State and county parks, and establish a dramatic and logical southern entrance to the park.

A key component of this legislation is its three-way, local-state-federal partnership. Half of the total purchase price of these lands has already been donated by local and State sources. Additionally, this legislation specifically provides that all land transactions involve a willing seller and willing buyer.

Furthermore, this bill has the strong support of local community groups, the former Golden Gate National Recreation Area Advisory Commission, the San Mateo County Board of Supervisors, the National Park Service, and the California State Farm Bureau. It also has the endorsement of the San Francisco Chronicle and the San Jose Mercury News. I know of no opposition to this bill.

Expanding the boundary of the Golden Gate National Recreation Area to include Rancho Corral de Tierra through such a beneficial partnership is an opportunity to be missed. A vast land within a major metropolitan area that offers extraordinary scenic views of the Pacific coastline and the greater Bay Area, a place with plants found nowhere else on earth find refuge, a home for rare and endangered animals, is available now for protection and enjoyment. We have the chance to enjoy this special land and to leave a lasting legacy for our children and our grandchildren.

California’s national parks are truly invaluable and the park that this bill supports offers an opportunity for visitors and residents to enjoy unique national habitats and offers a unique chance for the National Park Service and the community to work together, not only to protect the environment, but also the interests of the nearby communities and national and international visitors.

This bill enjoys strong support from local and State officials and I hope that it will have as much strong bipartisan support this Congress, as it did last Congress. Congressman Tom Lantos plans to introduce companion legislation for this bill in the House and I applaud his leadership on this issue.

I urge my colleagues to support this bill. 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. 136
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TABLE OF CONTENTS.
The table of contents of this Act is as follows:

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TITLE I—YOSEMITE NATIONAL PARK AUTHORIZED PAYMENTS

 Sec. 101. Payments for educational services.

 Sec. 102. Payments for construction, construction contracts, or major capital improvements.

 Sec. 103. Authorization for park facilities to be located outside the boundaries of Yosemite National Park.

TITLE II—RANCHO CORRAL DE TIERRA GOLDEN GATE NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT

 Sec. 201. Short title.


 TITLE I—YOSEMITE NATIONAL PARK AUTHORIZED PAYMENTS

 SEC. 101. PAYMENTS FOR EDUCATIONAL SERVICES.

(a) In General.—(1) For fiscal years 2006 through 2009, the Secretary of the Interior may provide funds to the Bass Lake Joint Union Elementary School District and the Mariposa Unified School District in the State of California for educational services to students—

(A) who are dependents of persons engaged in the administration, operation, and maintenance of Yosemite National Park; or

(B) who live within or near the park upon recommendation by the United States.

(2) The Secretary’s authority to make payments under this section shall terminate if the State of California or local education agencies do not continue to provide funding to the schools referred to in subsection (a) at per student levels that are no less than the amount provided in fiscal year 2005.

(3)(A) The Secretary may use an authorized funding source to make payments under this section only if the funding available to the park for the prior fiscal year is greater than or equal to the lesser of—

(1) $400,000 in any fiscal year; or

(2) the amount necessary to provide students described in subsection (a) with educational services that are normally provided and generally available to students who attend public schools elsewhere in the State of California.

(B) The Secretary may use funds available to the National Park Service from appropriations, donations, or fees.

(2) Funds from the following sources shall not be used to make payments under this section:


(B) Emergency appropriations for flood recovery at Yosemite National Park.

(3)(A) The Secretary may use an authorized funding source to make payments under this section only if the funding available to Yosemite National Park from such source (after subtracting any payments to the park districts authorized under this section) is greater than or equal to the amount made available to the park for the prior fiscal year, or in fiscal year 2005, whichever is greater.

(B) It is the sense of Congress that any payments made under this section should not result in a reduction of funds to Yosemite National Park from any specific funding source and that with appropriated funds, funding levels should reflect annual increases in the park’s operating base funds that are generally made to units of the National Park System.

SEC. 102. AUTHORIZATION FOR PARK FACILITIES TO BE LOCATED OUTSIDE THE BOUNDARIES OF YOSEMITE NATIONAL PARK.

(a) FUNDING AUTHORITY FOR TRANSPORTATION SYSTEMS AND EXTERNAL FACILITIES.—Section 814(c) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 376c) is amended—

(1) in the heading by inserting “and Yosemite National Park” after “Zion National Park”;

(2) in the first sentence—
(A) by inserting “and Yosemite National Park” after “Zion National Park”; and
(B) by inserting “or transportation systems or after appropriated funds”; and
(C) by deleting the second sentence by striking “facilities” and inserting “systems or facilities”;

(b) **CLARIFYING AMENDMENT FOR TRANSPORTATION FUNDING AUTHORITY.**—Section 501 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5981) is amended in the first sentence by striking “service contract” and inserting “service contract, cooperative agreement, or other contractual arrangement”.

**TITLE II—RANCHO CORRAL DE TIERRA GOLDEN GATE NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT**

**SEC. 201. SHORT TITLE.**
This title may be cited as the “Rancho Corral de Tierra Golden Gate National Recreation Area Boundary Adjustment Act”.

**SEC. 202. GOLDEN GATE NATIONAL RECREATION AREA, CALIFORNIA.**
(a) Section 2(a) of Public Law 92–589 (16 U.S.C. 460bb–1(a)) is amended—
(1) by striking “The recreation area shall comprise” and inserting the following:

"(1) **INITIAL LANDS.**—The recreation area shall comprise:"

(2) by striking “shall include the following:

"(2) ADDITIONAL LANDS.—In addition to the lands described in paragraph (1), the recreation area shall include the following:


(B) Lands and waters in San Mateo County generally depicted on the map entitled ‘Sweeney Ridge Addition, Golden Gate National Recreation Area,’ numbered NRA GG-08,000-A, and dated May 1980.


(3) **ACQUISITION LIMITATION.—**The Secretary may acquire land described in paragraph (2)(E) only from a willing seller."

By Mr. KERRY:

S. 137. A bill to modify the contract consolidation requirements in the Small Business Act, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. KERRY (for himself and Mr. BINGAMAN):

S. 138. A bill to make improvements to the microenterprise programs administered by the Small Business Administration; to the Committee on Small Business and Entrepreneurship.

By Mr. KERRY:

S. 139. A bill to amend the Small Business Act to direct the Administrator of the Small Business Administration to establish a vocational and technical entrepreneurship development program; to the Committee on Small Business and Entrepreneurship.

Mr. KERRY. Mr. President, as Ranking Member of the Small Business and Entrepreneurship Committee, today I am introducing a package of bills that will help small business owners with access to loans, business counseling and Federal procurement opportunities. Each of the bills was previously introduced as part of the Committee’s extensive Small Business Administration reauthorization proposal that passed the Senate unanimously last Congress. These are provisions that are necessary for enabling our nation’s small businesses to continue to have the resources and tools they need to compete with larger companies. They will help America’s budding entrepreneurs continue to seek out business opportunities and continue to start businesses. Enactment of this assertion means that the Federal government is not there to make the road to success more difficult for small businesses, but to help them where the private sector will not.

Mr. President, the first bill of this package is the Small Business Federal Contractor Safeguard Act. It includes essential contractor protections that were a part of the Small Business Administration reauthorization package that passed the Senate unanimously last Congress but was stalled during negotiations in the House of Representatives. These much-needed protections will help level the playing field for small firms and create a procurement atmosphere that fosters competition, fair access and equal opportunity for smaller entities.

With Federal agencies awarding larger, more complex and more costly contracts, and with less staff at the Small Business Administration and within Agencies, the problems associated with contract bundling are the very ones that the Small Business Administration reauthorization package that passed the Senate unanimously last Congress was trying to deal with. With oversight, the nation’s small businesses and its taxpayers are the ones shouldering the burden when small business goals continue to be unmet. In addition to helping small businesses obtain access to procurement opportunities, these goals are meant to help the government benefit from the cost-savings and innovations small business contractors can often provide.

Significant steps were made during the last Congress to address the challenges of contract bundling; however, it is my belief that passing and implementing binding statutory requirements is the only long-term solution to the on-going problem of contract bundling, also called contract consolidation. The first section of the bill creates a two-tiered approach to preventing unnecessary contract consolidation. Civilian agencies will be required to meet specific standards if they attempt to consolidate contracts. The first tier calls for $2 million in additional requirements for those contracts above $5 million. The Department of Defense is required to meet two types of similar requirements for contracts above $5 million and $7 million. The bill also eliminates the use of the term “contract bundling” and expands the definition of “contract consolidation,” closing a loophole that has been widely used to the detriment of many small businesses.

In addition to increasing opportunities for prime contracts by eliminating unnecessary contract consolidation, this bill addresses another serious problem the dishonest treatment of small business subcontractors by large business prime contractors. Small businesses have been severely hamstrung by the dishonest practices of some large business prime contracts that delay paying their subcontractors, falsely report their subcontracting plans and use “bait and switch” tactics.

This bill holds prime contractors responsible for the validity of subcontracting data, requiring the CEO to certify to the accuracy of the subcontracting report under penalty of law. It also makes the penalties for falsifying data included in subcontracting reports match the current $500,000 penalty for businesses that falsify their status as a small business.

Under this bill, if one intentionally falsifies data as a part of a subcontracting report to a federal Agency, he is defrauding the United States government and will be punished to the full extent of the law.

Finally, the bill requires contracting officers to maintain a database of contract performance that is made available to the small business subcontractor upon completion of the contract. This report can then be used as a record of past performance, building a history that will help successful small firms bid on future Federal prime contracts or subcontracts. Each contracting officer will be empowered to refer the contractor upon request to the inspector General of that Agency for a complete investigation.

The second bill of this small business legislative package is the SBA Microenterprise Improvements Act. It was also included as part of the Small Business Administration reauthorization package and passed by the Senate unanimously last Congress. I am reintroducing these provisions because they are vital to the microenterprise programs administered by the SBA: the Microloan Program and the Program for Investment in Microentrepreneurs (PRIME).

As I have stated on numerous occasions, I disagree with the Administration’s proposals to cut back funding for microloans and training assistance intended to encourage entrepreneurship and foster America’s smallest small businesses. And I wholeheartedly disagree with the Administration’s ill-
founded argument that these borrowers are being, or will be, served through the SBA’s 7(a) loan guarantee program. SBA’s loan programs are not one-size fits all. The small borrower in the Microloan program is different, and therefore, the loan will be different. The small business borrower being served through the 7(a) loan program. Both lending vehicles are important, but they are different, and one is not a substitute for the other.

Who are the borrowers being served through the microloan program? Thirty percent are African American; 11 percent are Hispanic; 37 percent are women; and, anywhere from 30 percent to 40 percent go to small businesses in rural areas. Because of their size, the forsize of the loan they need and their relative inexperience, small businesses borrowers are turned away by banks, and yet the Administration proposed cutting the Microloan program by 36 percent in Fiscal Year 2005 budget, and cut all funding in its fiscal year 2005 budget. The SBA needs to fully fund these programs and put more resources into the office that manages the program. Four people are not enough to manage 1,400 loans and 180 grant activities were run by the SBA’s long-time manager of microenterprise programs, Jody Raskind, is leaving the Agency. All those who support the good work of fostering SBA’s Microloan program are sorry to see her go, not because her dedication, and hard work, but also because they are concerned that the Administration will never really fill the job, letting the programs languish. I urge the Administration to move quickly to fill that position, just as the private sector can contract with an outside expert and the amount of technical assistance (TA) funds an intermediary can contract with an outside expert and the amount of grants a lender can use to compensate prospective borrowers. In addition, this bill requires the SBA to report annually on the requirements that states that Agency must contract out 7 percent of its loan dollars for intermediary training.

Last, the SBA Microenterprise Improvements Act, like S.1375, requires the SBA to develop an improved subsidy rate model to determine the cost of microloans. The one the Agency has used since the program’s inception does not reflect the performance of the program. In Fiscal Year 2003, the administration’s budget doubled the subsidy rate (which is the government’s cost of the program) from 6.78 percent to 13.05 percent, even though the program had not experienced any losses of federal funds since the first loan was made in 1992. This broken method of calculating the cost of these loans is a waste of taxpayer money because Congress has to appropriate unnecessary funds to run the program. Now is the time to modernize.

The second part of the SBA Microenterprise Improvements Act also comes from S.1375, but was not included in the small business reauthorization bill that passed Congress last session. It begins by reauthorizing the PRIME program through 2007 and transfers its legislative language from the Riegle Community Development and Regulatory Improvement Act of 1994 to section 37 of the Small Business Act. Additionally, it includes a provision to expand the program to the long-term economic handicap existing in Native American communities nationwide. There are a number of microenterprise organizations in states across the country that are willing and prepared to take on the additional challenge of assisting disadvantaged Native American entrepreneurs, and there are a number of Native American communities that are eager to explore a different path to economic development. However, there are currently a limited amount of funds to allow that to happen. Again, I commend Senator Bingaman for his continued attention to these needs, for his continued support of small business legislation to address them, and for his foresight and vision for Native Americans in New Mexico and across the country. The Native American communities of our nation will be better off with the assistance that this provision makes possible.

Again, it is time to move forward. Out of 66 pages of Small Business Administration reauthorizations and improvements that were slipped into the Omnibus Appropriations Act that passed at the end of the 108th Congress, these non-controversial provisions were included. They should have been.

The third part of the package that I am introducing today is a reintroduction of The Vocational and Technical Entrepreneurship Development Act. Last Congress, I introduced this important piece of legislation as a companion to H.R. 1387, which bears the same name and was considered by the House, in the 107th and 108th Congresses, by Congressman Robert Brady of Pennsylvania.

Let me begin by reminding my colleagues that the Small Business Administration’s Office of Advocacy states that only half of all small businesses survive past four years and that management and education remain two of the most important ingredients to small business success. We often think that small businesses simply need money to succeed, but while adequate financing is vital, so too is careful planning and competent management. Often Americans who work in the trade sector—construction, plumbing, electrical—make $10,000, to make it consistent with similar changes enacted in December 2003. Second, this bill also contains a change to the Microlenders eligibility. Rather than limiting eligibility to the expertise of the entity, this bill makes it possible for new entities to qualify as the SBA microlending intermediaries if they have staffs who are experienced in this unique or specialized lending and technical assistance.

Microloan intermediaries that have a microloan portfolio with an average loan size of not more than $10,000 will now be eligible to receive an interest rate lower than the normal rate extended by the SBA to intermediaries. Third, because of their size, the microloan programs languish. I urge the Administration to move quickly to fill that position, just as the private sector can contract with an outside expert and the amount of grants a lender can use to compensate prospective borrowers. In addition, this bill increases the SBA’s authority to provide direct, in-depth technical assistance and counseling to disadvantaged Native American small business owners. The rationale for amending the PRIME Act, rather than creating a separate program, is that PRIME is currently operational and simply needs additional targeted efforts and funding so it can better address the needs of the Native American entrepreneurial community. The Bingaman-Kerry approach uses an existing program structure to help find a solution to the long-term economic handicap existing in Native American communities nationwide. There are a number of microenterprise organizations in states across the country that are willing and prepared to take on the additional challenge of assisting disadvantaged Native American entrepreneurs, and there are a number of Native American communities that are eager to explore a different path to economic development. However, there are currently a limited amount of funds to allow that to happen. Again, I commend Senator Bingaman for his continued attention to these needs, for his continued support of small business legislation to address them, and for his foresight and vision for Native Americans in New Mexico and across the country. The Native American communities of our nation will be better off with the assistance that this provision makes possible.

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Let me begin by reminding my colleagues that the Small Business Administration’s Office of Advocacy states that only half of all small businesses survive past four years and that management and education remain two of the most important ingredients to small business success. We often think that small businesses simply need money to succeed, but while adequate financing is vital, so too is careful planning and competent management. Often Americans who work in the trade sector—construction, plumbing, electrical—make revolving-term loans or longer fixed-term loans to small businesses. Currently, intermediaries may only make “short-term” loans with fixed terms, which restrict the ability of
program that allows workers within the trades industry to move toward starting a new business by giving them the entrepreneurial skills to successfully manage a small business. Many small businesses fail not because they don’t know the industry or marketing, but because they don’t know the ins and outs of running a successful business.

The purpose of the Vocational and Technical Entrepreneurship Development Act is to assist in the development of curricula that will encourage the successful growth of small businesses. This legislation passed the House in each of the last Congresses, but was not taken up by the full Senate. I hope that the committee and full Senate will act quickly on it now.

The bill, in a business-education partnership, establishes a “vocational entrepreneurship development demonstration program,” under which the SBA will make grants, through the Small Business Development Center network, to provide technical assistance to high school and technical career institutes, vo-tech schools, to promote small business ownership in their curriculum.

The SBDC program is designed to deliver such up-to-date counseling, training and technical assistance in all aspects of small business management and is the ideal vehicle to provide such a program. A grant awarded under this program will be worth at least $200,000—which, in today’s environment where vo-tech programs get short-changed in government education budgets, can do a great deal to help rebuild a worker-strapped trades industry.

There has been some concern that this legislation will duplicate programs such as those at the Department of Education’s Office of Vocational and Adult Education, or the OVAE, which already provide valuable vocational education. The OVAE, and other such government programs, however, focus on helping workers gain new and updated skills so that they may find employment. In contrast, this legislation is targeted toward turning workers, not into better employees, but into potential employers. Traditional vocational education programs do not provide entrepreneurial training. This is a fundamental difference between this legislation’s objective and that of the traditional vocational education provided by the Department of Education. Giving our trades industry professionals the skills to be successful business owners creates better employers and better, long-lasting businesses. This, in turn, will go a long way toward creating additional trade jobs across the country.

I again want to commend Representative BRADY for his years of hard work on behalf of entrepreneurs not just from his home State but on behalf of every trades industry worker who has ever thought of becoming his or her own boss by starting a business.

Mr. President, I urge all of my colleagues to cosponsor and support these three bills.

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

S. 137

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 Federal Contractor Safeguard Act of 2005.”

SEC. 2. CONTRACT CONSOLIDATION.

(a) DEFINITIONS.—Section 3(6) of the Small Business Act (15 U.S.C. 632(o)) is amended to read as follows:—

(1) the terms ‘consolidation of contract requirements’ and ‘consolidation’, with respect to contract requirements of a military department, Defense Agency, Department of Defense Field Activity, or any other Federal department or agency having contracting authority mean a use of a solicitation to obtain offers for a single contract or a multiple award contract, or more contract requirements that of the department, agency, or activity for goods or services that—

(A) have previously been provided to or performance of, or agency, to contract requirements under 2 or more separate contracts that are smaller in size than the total cost of the contract for which the offers are solicited; or

(B) are of a type capable of being provided or performed by a small business concern for that department, agency, or activity under 2 or more separate contracts that are smaller in size than the total cost of the contract for which the offers are solicited;

(2) the term ‘multiple award contract’ means—

(A) a contract that is entered into by the Administrator of General Services under the multiple award schedule program referred to in section 2302(c) of title 10, United States Code;

(B) a multiple award task order contract or delivery order contract that is entered into under the authority of sections 2304a through 2304d of title 10, United States Code, or sections 303H through 303K of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 2304a through 2304d and 303H through 303K); and

(C) any other indeterminate delivery, indeterminate quantity contract that is entered into under the authority of sections 2 or more sources pursuant to the same solicitation; and

(3) the term ‘senior procurement executive’ means—

(A) with respect to a military department, the official designated under section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) as the senior procurement executive for the military department;

(B) with respect to a Defense Agency or a Department of Defense Field Activity, the official so designated for the Department of Defense; and

(C) with respect to a Federal department or agency other than those referred to in subparagraphs (A) and (B), the official so designated by that department or agency.’.”

(b) PROCUREMENT STRATEGIES.—Section 15(e) of the Small Business Act (15 U.S.C. 64(e)) is amended—

(1) in paragraph (2)—

(A) by striking “(A) In general,”; and

(B) by striking subparagaphs (B) and (C); and

(2) by amending paragraph (3) to read as follows—

“(3) LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CONSOLIDATION.—(A) CERTAIN DEFENSE CONTRACT REQUIREMENTS.—An official of a military department, defense agency, or Department of Defense Field Activity shall not execute an acquisition strategy involving consolidation of contract requirements of the military department, agency, or activity with a total value in excess of $5,000,000, unless the senior procurement executive—

(i) conducts market research;

(ii) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements; and

(iii) determines that the consolidation is necessary and justified.

(B) CERTAIN CIVILIAN AGENCY CONTRACT REQUIREMENTS.—The head of a Federal agency not described in subparagraph (A) that has contracting authority shall not execute an acquisition strategy that includes consolidation of contract requirements of the agency with a total value in excess of $7,000,000, unless the senior procurement executive of the agency—

(i) conducts market research;

(ii) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements; and

(iii) determines that the consolidation is necessary and justified.

(C) ADDITIONAL REQUIREMENTS FOR HIGHER VALUE CONSOLIDATED CONTRACTS.—In addition to meeting the requirements under subparagraph (A) or (B), a procurement strategy by a civilian agency that includes a consolidated contract valued at more than $7,000,000 by a defense agency that includes a consolidated contract valued at more than $7,000,000 shall include—

(i) an assessment of the specific impediments to participation by small business concerns as prime contractors that will result from the consolidation;

(ii) the identification of the alternative strategies that would reduce or minimize the scope of the consolidation and the rationale for not choosing those alternatives;

(iii) actions designed to maximize small business participation as subcontractors, including provisions that encourage small business teaming for the consolidated requirement; and

(iv) actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded to meet the requirements.

(D) NECESSARY AND JUSTIFIED.—A senior procurement executive may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for purposes of subparagraph (A), (B), or (C), if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under clause (ii) of any of those subparagraphs, as applicable. Savings in administrative or personnel costs alone shall not constitute, for such purpose, a sufficient justification for a consolidation of contract requirements in a procurement, unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.

(e) BENEFITS.—Benefits considered for purposes of this paragraph may include cost and, regardless of whether quantifiable in dollar amounts—

(i) quality;

(ii) acquisition cycle; and

(iii) terms and conditions; and
(iv) any other benefit directly related to national security or homeland defense.

(c) ADDITIONAL TO TECHNICAL ADVISERS.—Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) is amended—

(1) in paragraph (5), by striking "bundled contract" and inserting "consolidated contract";

(2) in paragraph (8), by striking "representative"—

and inserting "representative at each major procurement center under subsection (1)";

(3) in subsection (15) of the Small Business Act (15 U.S.C. 644(k)) is amended—

(1) by redesignating paragraphs (2) through (7) and paragraphs (3) through (8), respectively;

(2) by striking "(l)(1)" and inserting "(2)";

(3) by inserting before paragraph (2), as re-designated, the following:

"(l)(1) The Administration shall assign not fewer than 1 procurement center representative at each major procurement center, in addition to not fewer than 1 for each State.

(4) in paragraph (2), as redesignated, by striking "to the representative referred to in subsection (k)(6)" and inserting "to the tradition of the procurement center representative and the commercial market representative, with each such position filled by a different individual, and each such representative having separate and distinct duties and responsibilities.

(5) by striking paragraph (2) each place that term appears and inserting "paragraph (3)";

(e) REPORT REQUIREMENTS.—Section 15(p)(4)(B) of the Small Business Act (15 U.S.C. 644(p)(4)(B)) is amended—

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the period at the end and inserting the following: "and"

and;

and;

(3) by adding at the end the following:

"(iii) a description of best practices for maximizing small business prime and subcontracting opportunities.

(f) CONFORMING AMENDMENTS.—Section 15(p) of the Small Business Act (15 U.S.C. 644(p)) is amended—

(1) by redesignating subsection by heading by striking "BUNDLED CONTRACTS" and inserting "CONSOLIDATED CONTRACTS";

(2) by striking the heading to paragraph (1), by striking "BUNDLED CONTRACT" and inserting "CONSOLIDATED CONTRACT";

(3) in the heading to paragraph (4), by striking "CONTRACT BUNDLING" and inserting "CONTRACT CONSOLIDATION";

(4) by striking "bundled contracts" each place that term appears and inserting "consolidated contracts";

(5) by striking "bundled contract" each place that term appears and inserting "consolidated contracts";

(6) by striking "bundle of contract requirements" each place that term appears and inserting "consolidated contract requirements";

(7) in paragraph (4)(B)(ii)(I), by striking "previously bundled" and inserting "previously consolidated";

(8) in paragraph (4)(B)(ii)(I), by striking "were bundled" and inserting "were consolidated";

(9) in paragraph (4)(B)(ii)(II)(bb), by striking "bundling the contract requirements" and inserting "the consolidation of contract requirements";

(10) in paragraph (4)(B)(ii)(II)(cc), by striking "bundled status" and inserting "consolidated status";

SEC. 3. AGENCY ACCOUNTABILITY.

(a) IN GENERAL.—Each procurement employee—

(1) shall communicate to their subordinates the importance of achieving small business goals; and

(2) shall have as an annual performance evaluation at least one measurement of the success of that procurement employee in small business utilization, in accordance with the goals established under this section.

(b) Definition.—In this section, the term "procurement employee" means a senior procurement executive, senior program manager, or small and disadvantaged business utilization manager of a Federal agency having contracting authority.

SEC. 4. SMALL BUSINESS PARTICIPATION IN PRIME CONTRACTING.

(a) RESERVED CONTRACTS.—Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended by adding at the end the following:

"(4) Any adjustment to the simplified acquisition threshold (as defined in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))) shall be immediately matched by an identical adjustment to the small business reserve for purposes of this subsection.

(b) PARTICIPATION IN MULTIPLE AWARD CONTRACTS. —Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) is amended—

(1) in paragraph (2), by striking "(3) In carrying out paragraph (1)" and inserting "(3) In carrying out paragraphs (1) and (2)";

(2) in paragraph (3), by striking "(Nothing in paragraph (1) and inserting "(4) Nothing in this subsection";

and

by inserting after paragraph (1) the following:

"(3)(A) In the case of offers under multiple award contracts, including Federal Supply Schedule contracts and multiple agency contracts (subject to the small business reserve, contracting officers shall consider not fewer than 2 small business concerns if such small business concerns can offer the items sought by the contracting officer on competitive terms, with respect to price, quality, and delivery schedule, with the goods or services available in the market.

"(B) If only 1 small business concern can satisfy the requirement, the contracting officer shall include such small business concern in their evaluation.

(c) REPORT REQUIREMENTS.—Section 15(p)(v) of the Small Business Act (15 U.S.C. 644(p)(v)) is amended—

(1) by inserting before the heading, by striking "BUNDLED CONTRACTS" and inserting "CONSOLIDATED CONTRACTS";

(2) by inserting after paragraph (1), by striking "BUNDLED CONTRACT" and inserting "CONSOLIDATED CONTRACT";

(3) in the heading to paragraph (4), by striking "CONTRACT BUNDLING" and inserting "CONTRACT CONSOLIDATION";

(4) by striking "bundled contracts" each place that term appears and inserting "consolidated contracts";

(5) by striking "bundled contract" each place that term appears and inserting "consolidated contracts";

(6) by striking "bundle of contract requirements" each place that term appears and inserting "consolidated contract requirements";

(7) in paragraph (4)(B)(ii)(I), by striking "previously bundled" and inserting "previously consolidated";

(8) in paragraph (4)(B)(ii)(I), by striking "were bundled" and inserting "were consolidated";

(9) in paragraph (4)(B)(ii)(II)(bb), by striking "bundling the contract requirements" and inserting "the consolidation of contract requirements";

and

(10) in paragraph (4)(B)(ii)(II)(cc), by striking "bundled status" and inserting "consolidated status";

SEC. 5. SMALL BUSINESS PARTICIPATION IN SUBCONTRACTING.

(a) CERTIFICATIONS REQUIRED.—Section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)) is amended—

(1) in subparagraph (E), by striking "and" at the end;

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

(3) by adding at the end the following:

"(G) certification that the offeror or bidder will acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction or business concerns in the amount and quality used in preparing the bid or proposal, unless such small business concerns are no longer the result of the bid or proposal, or can no longer meet the quality, quantity, or delivery date.

(b) PENALTIES FOR FALSE CERTIFICATIONS.—Section 8(n) of the Small Business Act (15 U.S.C. 637(n)) is amended by striking "a bundled contract" and inserting "any contract in this Act" and inserting "or the reporting requirements of section 8(d)(11)

SEC. 6. EVALUATING SUBCONTRACT PARTICIPATION IN AWARDING CONTRACTS.

(a) SIGNIFICANT FACTORS.—Section 8(d)(4)(G) of the Small Business Act (15 U.S.C. 637(d)(4)(G)) is amended by striking "a bundled contract" and inserting "any contract in this Act".

(b) EVALUATION REPORTS.—Section 8(d)(10) of the Small Business Act (15 U.S.C. 637(d)(10)) is amended—

(1) in subparagraph (A), by striking "is authorized to" and inserting "shall";

(2) in subparagraph (B), by striking "and" at the end;

(3) in subparagraph (C), by striking the period at the end and inserting "; and";

(4) by adding at the end the following:

"(D) report the results of each evaluation under subparagraph (C) to the appropriate contracting officer.";

(c) CENTRALIZED DATABASE; PAYMENTS PENDING REPORTS.—Section 8(d)(10) of the Small Business Act (15 U.S.C. 637(d)(10)) is amended—

(1) by redesignating paragraph (11) as paragraph (14); and

(2) by inserting after paragraph (10) the following:

"(11) CERTIFICATION.—A report submitted by the prime contractor pursuant to paragraph (8)(E) to determine the attainment of a subcontract utilization goal under any subcontracting plan entered into with a Federal agency under this subsection shall contain the name and signature of the president or chief executive officer of the contractor, certifying that the subcontracting data provided in the report are accurate and complete.

(12) CENTRALIZED DATABASE.—The results of an evaluation under paragraph (10)(C) shall be included in a national centralized governmentwide database.

SEC. 7. BUSINESSLIKE REPORT CONGRESS.

(a) PROHIBITION.—Section 8(n) of the Small Business Act (15 U.S.C. 637(n)) is amended—

(1) by redesignating paragraph (3) as paragraph (4); and

(2) by adding after paragraph (2) the following:

"(3) ANNUAL REPORT.—
(a) IN GENERAL.—The Associate Administrator of Business Development of the Administration shall collect data on the BusinessLINC program and submit an annual report to the Congress, on the performance of the program to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(b) CONTENTS.—The report submitted under subparagraph (A) shall include—

(i) the number of programs administered in each State;

(ii) the corresponding grant awards and the date of each award;

(iii) the dollar amount of the contracts in effect as a result of the BusinessLINC program; and

(iv) the number of teaming arrangements or partnerships created as a result of the BusinessLINC program.

SEC. 3. PRIME REAUTHORIZATION AND TRANSFER TO THE SMALL BUSINESS ACT.

(a) PROGRAM REAUTHORIZATION.—Subtitle C of Title VII of the Community Development and Regulatory Improvement Act of 1994 (15 U.S.C. 6901 note) is amended by striking "25 percent" and inserting "30 percent".

(b) ESTABLISHMENT OF PROGRAM.—The Administration shall establish a microenterprise development program to provide financial assistance to disadvantaged entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

(1) Very Low-Income Person.—The term 'very low-income person' means having an income, adjusted for family size, of not more than 130 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that section.

(2) Disadvantaged Individual.—A qualified organization shall use grants made under this section—

(i) to provide training and technical assistance to disadvantaged entrepreneurs;

(ii) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist such organizations and programs in developing microenterprise training and services;

(iii) to aid in researching and developing the practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs;

(iv) to provide training and technical assistance to disadvantaged Native American entrepreneurs and prospective entrepreneurs; and

(v) for such other activities as the Administrator determines is consistent with the purposes of this section.

(3) QUALIFIED ORGANIZATIONS.—For purposes of eligibility for assistance under this section, organizations to which such assistance is made available under this section—

(i) shall be nonprofit organizations, or a program of such organizations that agrees to act jointly as a qualified organization under this section;

(ii) shall have the same meaning as in section 4(a) of the Small Business Act (15 U.S.C. 636(m)(3)(F)(iii));

(iii) shall be an entity that agrees to provide financial assistance to disadvantaged entrepreneurs;

(iv) shall be an eligible entity as defined in section 7(m)(9)(B) of the Small Business Act (15 U.S.C. 636(m)(4)(E)(i)); and

(v) shall be a qualified entity as defined in section 7(m)(9)(B)(vii) of the Small Business Act (15 U.S.C. 636(m)(4)(E)(i)).

(4) PROGRAM RULES.—The Administration shall establish a subsidy model for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

(5) COLLABORATIVE.—The term 'collaborative' means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this section.

(6) DISADVANTAGED ENTREPRENEUR.—The term 'disadvantaged entrepreneur' means a microenterprise development program that—

(A) is a low-income person;

(B) is a very low-income person; or

(C) lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

(7) DISADVANTAGED NATIVE AMERICAN ENTREPRENEUR.—A disadvantaged Native American entrepreneur means a disadvantaged entrepreneur who is also a member of an Indian Tribe.

(8) INTERMEDIARY.—The term 'intermediary' means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs, as authorized under subsection (d).

(9) LOW-INCOME PERSON.—The term 'low-income person' means having an income, adjusted for family size, of not more than—

(A) for metropolitan areas, 80 percent of the area median income; and

(B) for nonmetropolitan areas, the greater of—

(i) 80 percent of the area median income; or

(ii) 80 percent of the statewide nonmetropolitan area median income.

(10) MICROENTERPRISE.—The term 'microenterprise' means the owner or developer of a microenterprise.

(11) MICROENTERPRISE DEVELOPMENT ORGANIZATION.—The term 'microenterprise development organization' means a sole proprietorship, partnership, or corporation that—

(A) has fewer than 5 employees; and

(B) generally lacks access to conventional loans, equity investment services.

(12) SMALL BUSINESS.—The term 'small business' means the owner or developer of a microenterprise.

SEC. 4. SMALL BUSINESS—LINC PROGRAM.

(a) PROGRAM REAUTHORIZATION.—Subtitle C of Title VII of the Community Development and Regulatory Improvement Act of 1994 (15 U.S.C. 6901 note) is amended by striking "25 percent" and inserting "30 percent".
"(B) LIMIT ON INDIVIDUAL ASSISTANCE.—No single person may receive more than 10 percent of the total funds appropriated under this section in a single fiscal year.

(2) EXAMINATION.—The Administrator shall ensure that not less than 50 percent of the grants made under this section are used to benefit very low-income persons, including those residing on Indian reservations.

(3) SUBGRANTS AUTHORIZED.—

(A) IN GENERAL.—A qualified organization receiving assistance under this section may provide grants using that assistance to qualified small and emerging microenterprise organizations, subject to such rules and regulations as the Administrator determines to be appropriate.

(B) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 percent of assistance received by a qualified organization under this section may be used for administrative expenses in connection with the making of subgrants under subparagraph (A).

(4) DIVERSITY.—In making grants under this section, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities serving diverse populations.

(5) PROHIBITION ON PREFERENTIAL CONSIDERATION OF CANDIDATES FOR PROGRAM PARTICIPANTS.—In making grants under this section, the Administrator shall ensure that any application made by a qualified organization that is a participant in the programs published under section 7(m) of the Small Business Act does not receive preferential consideration over applications from other qualified organizations that are not participants in such program.

(1) MATCHING REQUIREMENTS.—

(A) IN GENERAL.—Financial assistance under this section shall be matched with funds from sources other than the Federal Government on the basis of not less than 50 percent of the total funds appropriated under this section shall be matched with in-kind resources of a grant recipient from public or private sources.

(B) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement in paragraph (1).

(C) EXCEPTION.—

(A) IN GENERAL.—In the case of an applicant for assistance under this section with severe constraints on available sources of matching assistance, the Administrator may reduce or eliminate the matching requirements of paragraph (1).

(B) LIMITATION.—Not more than 10 percent of the total funds made available from the Administration in any fiscal year to carry out this section may be exempted from the matching requirements of paragraph (1), as authorized by subparagraph (A) of this paragraph.

(D) APPLICATION FOR ASSISTANCE.—An application for assistance under this section shall be submitted in such form and in accordance with such procedures as the Administrator shall establish.

(h) RECORDKEEPING AND REPORTING.—

(1) IN GENERAL.—Each organization that receives assistance from the Administration in accordance with this section shall—

(A) submit to the Administrator not less than once in every 18-month period, financial statements audited by an independent certified public accountant;

(B) submit an annual report to the Administration on its activities; and

(C) keep such records as may be necessary to disclose the manner in which any assistance under this section is used.

(2) ACCESS.—The Administration shall have access upon request, for the purposes of determining compliance with this section, to any records of any organization that receives assistance from the Administration in accordance with this section.

(3) DATASET.—The Administrator is authorized to establish requirements that each grant recipient develops assistance from the Administration in accordance with this section shall collect information relating to, as applicable—

(A) the number of individuals counseled or trained;

(B) the number of hours of counseling provided;

(C) the number of startup small business concerns formed;

(D) the number of small business concerns expanded;

(E) the number of low-income individuals counseled or trained; and

(F) the number of very low-income individuals counseled or trained.

(1) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated to the Administrator $15,000,000 for each of the fiscal years 2005 through 2007 to carry out the provisions of this section, which shall remain available until expended.

(B) TRAINING FOR NATIVE AMERICAN ENTREPRENEURS.—In addition to the amount authorized to be appropriated under this subparagraph, there are authorized to be appropriated to the Administrator $2,000,000 for each of the fiscal years 2005 through 2007 to carry out the provisions of subsection (c)(4), which shall remain available until expended.

(c) TRANSFER PROVISIONS.—

(1) SMALL BUSINESS ACT AMENDMENTS.—The Small Business Act (15 U.S.C. 631 et seq.) is amended by redesignating section 37 as section 38.

(2) TRANSFER.—Section 37 of the Riegle Community Development and Regulatory Improvement Act of 1994 (15 U.S.C. 6901 note), as so designated by subsection (a) of this section, is transferred to, and inserted after, section 38 of the Small Business Act.

(d) REPORT TO ADMINISTRATOR.—

(A) IN GENERAL.—Each grantee under this subsection shall submit to the Administrator an annual report describing how the funds provided under this subsection have been used.

(B) CLEARINGHOUSE.—The Association shall act as a clearinghouse of information and expertise regarding vocational and technical entrepreneurship education programs.

(C) EVALUATION OF PROGRAM.—Not later than March 31, 2008, the Administrator shall transmit to Congress a report containing an evaluation of the program.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Vocational and Technical Entrepreneurship Development Act of 2005."
There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 140

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(1) SHORT TITLE.—This Act may be cited as the “Domestic Defense Fund Act of 2005”.
(2) TABLE OF CONTENTS.—
Sec. 1. Short title; table of contents Sec. 2. Findings Sec. 3. Definitions Sec. 4. Grants to States, units of general local government and Indian tribes; authorizations Sec. 5. Statement of activities and review Sec. 6. Activities eligible for assistance Sec. 7. Allocation and distribution of funds Sec. 8. State and regional planning and com-
munication system Sec. 9. Urban Area Security Initiative Sec. 10. Flexible emergency assistance fund Sec. 11. Federal preparedness, equipment, and training standards Sec. 12. Nondiscrimination in programs and activities Sec. 13. Remedies for noncompliance with requirements Sec. 14. Reporting requirements Sec. 15. Consultation by Attorney General Sec. 16. Intrastate agreements or compacts; purposes Sec. 17. Matching requirements; suspension of requirements for economically distressed areas

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Since the September 11, 2001, terrorist attacks on our country, communities all across America have been on the front lines in the war against terrorism on United States soil.
(2) Since September 11, 2001, communities have been forced to bear a significant portion of the burden that goes along with the war against terrorism, a burden that local governments should not have to bear alone.
(3) Our homeland defense will only be as strong as the weakest link at the State and local level. By providing our communities with the resources and tools they need to bolster emergency response efforts and provide for other emergency response initiatives, we will have a better-prepared home front for the war against terrorism.
(4) Homeland security experts have repeatedly called upon Congress to allocate homeland security resources based on threat- and risk-based factors. The National Commission on Terrorist Attacks Upon the United States (referred to in this Act as the “9/11 Commission”) stated in its report: “We understand the contention that every State and local need to have some minimum infrastructure for emergency response. But Federal homeland security assistance should not remain a program of general revenue sharing. It needs to supplement State and local resources based on the risks or vulnerability that merit additional support. Congress should not use this money as a pork barrel.” The Commission made unequivocally clear that the current method of allocating the majority of Federal homeland security resources to states and local governments, as a per capita basis alone, must be changed.
(5) Not only did the 9/11 Commission recommend that such changes be made in how Federal homeland security assistance are allocated, but commissions before it, such as the Homeland Security Independent Task Force of the Council on Foreign Relations, chaired by former Secretary of Defense William S. Cohen, have strongly recommended it as well.

(6) The Hart-Rudman Commission stated almost 2 years ago that: “Congress should establish a system for allocating scarce resources based less on dividing the spoils and more on identifying threats and vulnerabilities. To do this, the Federal Gov-
ernment should consider such factors as pop-
ulation, population density, vulnerability as-
seessment, and presence of critical infrastruc-
ture within each State.”

(7) In addition to the need for threat and risk-based funding, direct funding to our major cities and rural areas is necessary. It is necessary if we are to ensure that those communities, who are on the front lines of our nation’s homeland defense, receive critical Federal homeland security resources quickly and efficiently. Numerous reports by organizations such as the United States Con-
ference of Mayors, have clearly dem-
strated that the current method of distrib-
uting Federal homeland security resources

intended for local communities has not worked. Too often, too many communities receive resources, if at all, years after Congress appropriated the subject funds.

SEC. 3. DEFINITIONS.

(a) DEFINITIONS.—As used in this Act, the following definitions shall apply:
(1) Cty.—The term “Cty.” means—
(A) any unit of general local government that is classified as a municipality by the United States Census Bureau;
(B) any other unit of general local government that is a town or township and which, in the determination of the Secretary—
(i) possesses powers and performs functions comparable to those associated with municip-
alities; or
(ii) is closely settled; and

(c) Inclusion of local governments in metropolitan areas.

(7) POPULATION.—The term “population” means the total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period of time.

(8) SECRETARY.—The term “Secretary” means the Secretary of the Department of Homeland Security.

(9) STATE.—The term “State” means any State of the United States, or any instru-
mental of the thereof approved by the Governor, the Commonwealth of Puerto Rico, the United States Virgin Islands, American Samoa, Guam, and the Northern Mariana Is-
lands.

(10) UNIT OF GENERAL LOCAL GOVERNMENT.—The term “unit of general local government” means any city, county, town, township, par-
village, or other general purpose polit-
ical subdivision of a State; a combination of such political subdivisions is recognized by the Secretary; and the District of Columbia.

(11) URBAN AREA.—The term “urban area” means any county within a metro-
politan area.

(b) BASIS AND MODIFICATION OF DEFINITIONS.—
(1) BASIS.—Where appropriate, the definitions listed in subsection (a) shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available 90 days before the be-
inning of such fiscal year.

(2) MODIFICATION.—The Secretary may by regulation change or otherwise modify the meaning of the term referenced in subsection (a) in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) DESIGNATION OF PUBLIC AGENCIES.—The chief executive officer of a State or a unit of general local government or 1 or more public agencies, including existing local public agencies, to undertake activities authorized under this Act.

(d) INCLUSION OF LOCAL GOVERNMENTS IN URBAN COUNTIES.—With respect to any program year beginning with the program year for which grants are made available from amounts appropriated for fiscal year 2005 under section 4, the program year of any unit of general local government which is in-
cluded under paragraph (1) that was classified as a metropolitan area in such program year may, upon submission of written notification to the Secretary, refer its classification as a metropolitan city for all purposes under this Act, if it elects to have its population included in an urban county under subsection (d).
(1) Notification by urban county.—Any county seeking qualification as an urban county, including any urban county seeking to continue such qualification, shall notify each local government located in the county, including each city located within its geographical boundaries and eligible to elect to have its population excluded from that of the county, of its opportunity to apply for such an election. Such notification shall, at a time and in a manner prescribed by the Secretary, be so provided as to provide a reasonable period for response to the election for which such qualification is sought.

(2) Failure of local government to elect to be an urban county.—If the final election results in an eligible unit of general local government which is provided such notification and which does not, at a time and in a manner prescribed by the county, certify to the county that it has elected to exclude its population from that of the county shall, if the county qualifies as an urban county, be included in the population of such urban county as provided under subsection (d).

SEC. 4. GRANTS TO STATES, UNITS OF GENERAL LOCAL GOVERNMENT AND INDIAN TRIBES.

(a) Authorization.—The Secretary may award grants to States, units of general local government, and Indian tribes to carry out activities in accordance with this Act.

(b) Authorization of Appropriations.—

(1) In general.—There are authorized to be appropriated to carry out this Act—

(A) $35,000,000 for each of the fiscal years 2006 through 2009; and

(B) such sums as may be necessary for fiscal years 2010 and each fiscal year thereafter.

(2) State, regional, and local planning, training, and communication systems.—There are authorized to be appropriated to carry out section 3—

(A) $1,000,000,000 for each of the fiscal years 2006 through 2009; and

(B) such sums as may be necessary for fiscal year 2010 and each fiscal year thereafter.

(3) Urban area security initiative (UASI).—There are authorized to be appropriated to carry out section 5—

(A) $2,000,000,000 for each of the fiscal years 2006 through 2009; and

(B) such sums as may be necessary for fiscal year 2010 and each fiscal year thereafter.

(4) Urban area security initiative flexible emergency assistance.—There are authorized to be appropriated to carry out section 6—

(A) $500,000,000 for each of the fiscal years 2006 through 2009; and

(B) such sums as may be necessary for fiscal year 2010 and each fiscal year thereafter.

(c) Supplement not supplant.—Funds appropriated pursuant to the authority of this section shall be used to supplement and not supplant full Federal funding for other first responder programs, including—

(1) the Community Oriented Policing Services Program, as authorized under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3786dd et seq.);

(2) the Local Law Enforcement Block Grant Program, as authorized under the Violent Crime Control and Law Enforcement Assistance Act of 1994 (Public Law 103-322) and described in H.R. 728, as passed by the House of Representatives on February 14, 1995;

(3) the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, as authorized under part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3786ee et seq.)


SEC. 5. STATEMENT OF ACTIVITIES AND REVIEW.

(a) Application.—

(1) In general.—A State, metropolitan city, urban county, or unit of general local government, as authorized under subsection (b) or (i) of section 7 shall submit an application to the Secretary that contains—

(A) a statement of homeland security objectives for such grantee for the period for which such grant is made; and

(B) the certifications required under paragraph (2) and, if appropriate, subsection (b).

(2) Grantee statement.—

(A) Contents.—

(i) LOCAL GOVERNMENT.—In the case of the metropolitan cities or urban counties receiving grants under section 7(b) and units of general local government receiving grants under section 7(i)(3), the statement of projected use of funds shall consist of proposed homeland security activities.

(ii) STATES.—In the case of States receiving grants under section 7, the statement of projected use of funds shall consist of the method by which the States will distribute funds to units of general local government.

(B) Consultation.—In preparing the statement required under this subsection, the grantee shall consult with appropriate local emergency response authorities.

(c) Final statement.—A copy of the final statement and the certifications required under paragraph (2) and, if appropriate, subsection (b), shall be furnished to the Secretary and the Attorney General.

(d) Modifications.—Any final statement of activities may be modified or amended from time to time by the grantee in accordance with the same procedures required under this paragraph for the preparation and submission of such statement.

(e) Certification of enumerated criteria by grantee to Secretary.—A grant under section 7 shall not be awarded unless the grantee certifies to the Secretary that the grantee—

(A) has developed a homeland security plan that identifies both short- and long-term homeland security needs that have been developed in accordance with the primary objective and requirements of this Act; and

(B) will comply with the other provisions of this Act and applicable laws.

(2) Submission of annual performance reports, audits, and adjustments.—

(A) In general.—Each grantee shall submit to the grantee, a performance and evaluation report concerning the use of funds made available under section 7, together with an assessment of the grantees’ relationships with the objectives identified in the grantee’s statement under subsection (a)(2).

(B) Uniform reporting requirements.—

(A) Recommendations by national associations.—The Secretary shall encourage and assist national associations of grantees and units of general local government, and national associations of units of general local government in nonqualifying areas to develop and recommend to the Secretary, not later than 1 year after the date of enactment of this Act, uniform methods and procedures for conducting evaluations, measuring, and auditing performance.

(B) Establishment of uniform reporting requirements.—Based on the Secretary’s assessment of the results submitted pursuant to subparagraph (A), the Secretary shall establish uniform reporting requirements for grantees, States, and units of general local government respectively.

(C) Reviews and audits.—Not less than annually, the Secretary shall make such reviews and audits as may be necessary or appropriate to determine—

(1) in the case of grants awarded under section 7(b), whether the grantee—

(i) has carried out its activities;

(ii) where applicable, has carried out its activities and its certifications in accordance with the requirements and the primary objective and requirements of this Act and with other applicable laws; and

(iii) has a continuing capacity to carry out those activities in a timely manner; and

(2) in the case of grants awarded under section 7(i), whether the State—

(i) has distributed funds to units of general local government in a timely manner and in accordance with the methods of distribution described in its statement; and

(ii) has made such reviews and audits of the units of general local government as may be necessary or appropriate to determine whether they have satisfied the applicable performance criteria described in subparagraph (A).

(4) Adjustments.—The Secretary may make adjustments in the amount of the annual grants in accordance with the Secretary’s findings under this subsection. With respect to assistance made available to units of general local government under section 7(i)(3), the Secretary may adjust, reduce, or withdraw such assistance, or take other action as appropriate in accordance with the Secretary’s reviews and audits under this subsection, except that funds already expended on eligible activities under this Act shall not be recaptured or deducted from future assistance to such units of general local government.

(f) Audits.—Insofar as they relate to funds provided under this Act, the financial transactions and other actions of recipients of such funds may be audited by the General Accounting Office under such rules and regulations as may be prescribed by the Comptroller General of the United States. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by such recipients pertaining to such financial transactions and necessary to facilitate the audit.

(g) Metropolitan city as part of urban county.—In any case in which a metropolitan city is located, in whole or in part, within an urban county, the Secretary may, upon the joint request of such city and county, approve the inclusion of the metropolitan city as part of the urban county for purposes of submitting a statement under subsection (a) and carrying out activities under this Act.

SEC. 6. ACTIVITIES ELIGIBLE FOR ASSISTANCE.

Activities assisted under this Act may include—

(1) funding additional law enforcement, fire, and emergency response resources, including covering overtime expenses;

(2) purchasing and refurbishing personal protective equipment for fire, police, and emergency personnel and acquire state-of-the-art technology to improve communication and streamlining efforts;

(3) improving cyber and infrastructure security by improving—

(A) security for water treatment plants, distribution systems, other water infrastructure, nuclear power plants, electrical grids, and energy infrastructures, submitted pursuant to subparagraph (A), the Secretary shall establish uniform reporting requirements for grantees, States, and units of general local government respectively.

(B) security for tunnels, bridges, locks, canals, railway systems, airports, land and water ports, and other transportation infrastructure;

(C) security for oil and gas pipelines and storage facilities;
(D) security for chemical plants and transportation of hazardous substances;
(E) security for agriculture infrastructure; and
(F) security for national icons and Federal facilities that may be terrorist targets;
(g) assisting local emergency planning committees so that local public agencies can design, review, and improve disaster response systems;
(h) assisting communities in coordinating their efforts and sharing information with all reporting agencies involved in responding to terrorist attacks;
(i) establishing timely notification systems that enable communities to communicate with each other when a threat emerges;
(j) improving communication systems to provide information to the public in a timely manner about the facts of any threat and the precautions the public should take; and
(k) devising a homeland security plan, including determining long-term goals and short-term objectives, evaluating the progress of the plan, and carrying out the management, coordination, and monitoring of activities necessary for effective planning implementation.

SEC. 7. ALLOCATION AND DISTRIBUTION OF FUNDS.

(a) SET-ASIDE FOR INDIAN TRIBES.—
(1) IN GENERAL.—The Secretary shall re-
serve 1 percent of the amount appropriated for grants pursuant to section 4(b)(1) (excluding the amounts for activities described in section 6) for grants to Indian tribes.

(b) ALLOCATION TO METROPOLITAN CITIES AND URBAN COUNTIES.—
(1) ALLOCATION PERCENTAGE.—Of the amount remaining after allocations have been made to Indian tribes under subsection (a), the Secretary shall, not later than 60 days after the date on which such funds are appropriated, allocate and directly transfer 70 percent to metropolitan cities and urban counties.

(2) ENTITLEMENT.—The Secretary, after no-
tice and public comment, shall promulgate regulations, which establish the criteria described in subparagraph (A).

(c) COMPUTATION OF AMOUNT ALLOCATED TO METROPOLITAN CITIES AND URBAN COUNTIES.—
(1) VULNERABILITY AND THREAT FACTORS.—The Secretary shall determine a numerical value for each metropolitan city as it pertains to nuclear security;

(F) the vulnerability of the metropolitan city as it pertains to land and water port security;

(G) the vulnerability of the metropolitan city as it pertains to the security of energy infrastructure;

(H) the vulnerability of the metropolitan city as it pertains to the security of inland waterway infrastructure;

(I) the vulnerability of the metropolitan city as it pertains to the security of freight and passenger rail transportation infrastructure;

(J) the vulnerability of the metropolitan city as it pertains to the security of aviation infrastructure;

(K) the vulnerability of the metropolitan city as it pertains to the security of agriculture infrastructure;

(L) the proximity of the metropolitan city to the nearest national icons and Federal facilities that may be a terrorist target, as determined by the Department of Homeland Security, and the proximity of all metropolitan cities that are located within 50 miles of an international border, the ratio under paragraph (1)(F) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of an international border.

(M) the threat to the metropolitan city based upon the information from the Department of Homeland Security;

(N) the vulnerability of the metropolitan city defined and determined by the Department of Transportation; the ratio under paragraph (1)(F) shall be 1 divided by the total number of metropolitan cities that are located within 50 miles of critical inland water infrastructure, not to exceed 100.

(2) RELATIVE WEIGHT OF FACTORS.—In de-
termining the weighted average of the ratios under paragraph (1), the threat, as defined by paragraph (1)(M), shall constitute 25 percent;

(ii) the remaining factors shall be equally weighted.

(B) POPULATION DENSITY.—The metropolitan cities shall be ranked according to the density of their populations in calculating the weighted average of this factor. The pop-
ulation density ratio shall be 1 divided by the total number of metropolitan cities, not to exceed 100.

(C) PROXIMITY TO INTERNATIONAL BORDERS.—If a metropolitan city is located within 50 miles of an international border, the ratio under paragraph (1)(C) shall be 1 divided by the total number of metropolitan cities that are not located within 50 miles of an international border.

(D) VULNERABILITY AS IT PERTAINS TO CHEM-
ICAL SECURITY.—If a metropolitan city is among the 25 largest United States ports, as stated by the Department of Transport-
ation, Bureau of Transportation Statis-
tics, United States Ports Report by All Land Modes; or
(ii) one of the 25 largest United States water ports by metric tons and value, as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics.

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attack, the ratio under paragraph (1)(L) shall be 1 divided by the total number of metropolitan-politcal cities that are located within 50 miles of such icons or Federal buildings, not to exceed 100.

(M) INTELLIGENCE.—If a metropolitan city is among the 100 metropolitan cities that have been identified by the Department of Homeland Security as being special alert or heightened alert status for the longest periods of time, the ratio under paragraph (1)(M) shall be 1 divided by the total number of metropolitan cities that have been identified by the Department of Homeland Security, not to exceed 100.

(D) VULNERABILITY AS IT PERTAINS TO CHEMICAL SECURITY.—If an urban county is within 100 miles of a chemical weapons release (as specified in the most recent risk management plans filed with the Environmental Protection Agency or another instrumentality of the Department of Homeland Security that captures the same information for the same facilities), the ratio under paragraph (1)(D) shall be 1 divided by the total number of urban counties that are located within 50 miles of a chemical weapons release, not to exceed 100.

(E) VULNERABILITY AS IT PERTAINS TO NUCLEAR SECURITY.—If an urban county is located within 50 miles of an operating nuclear power plant, the ratio under paragraph (1)(E) shall be 1 divided by the total number of urban counties, not to exceed 100, which are located within 50 miles of an operating nuclear power plant.

(F) VULNERABILITY AS IT PERTAINS TO PORT SECURITY.—If an urban county is located within 50 miles of: (i) one of the 75 largest United States ports, as stated by the Department of Transportation, Bureau of Transportation Statistics, United States Ports Report by All Land Mores; or (ii) one of the 25 largest United States airports, as stated by the Department of Transportation, Maritime Administration, United States Foreign Waterborne Transportation Statistics, the ratio under paragraph (1)(F) shall be 1 divided by the total number of urban counties that are located within 50 miles of a United States land or water port, not to exceed 100.

(G) VULNERABILITY AS IT PERTAINS TO ENERGY INFRASTRUCTURE SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, non-nuclear power generating plants, compressors, and other significant components of critical energy infrastructure as identified by the Department of Energy or the Department of Homeland Security, the ratio under paragraph (1)(G) shall be 1 divided by the total number of urban counties that are located within 50 miles of critical energy infrastructure, not to exceed 100.

(H) VULNERABILITY AS IT PERTAINS TO LAND AND WATER PORT SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, the most significant locks, canals, and other critical components of the United States inland and waterway system infrastructure as identified by the Department of Transportation, the ratio under paragraph (1)(H) shall be 1 divided by the total number of urban counties that are located within 50 miles of critical inland water infrastructure, not to exceed 100.

(I) VULNERABILITY AS IT PERTAINS TO RAIL TRANSPORTATION INFRASTRUCTURE SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, the largest railroad hubs and other significant components of critical freight and passenger rail infrastructure, as identified by the Department of Transportation, the ratio under paragraph (1)(I) shall be 1 divided by the total number of urban counties that are located within 50 miles of critical rail infrastructure, not to exceed 100.

(J) VULNERABILITY AS IT PERTAINS TO AVIATION INFRASTRUCTURE SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, major passenger or cargo airports that are significant components of the Nation’s air transportation infrastructure as identified by the Department of Transportation, the ratio under paragraph (1)(J) shall be 1 divided by the total number of urban counties that are located within 50 miles of such critical air transportation infrastructure, not to exceed 100.

(K) VULNERABILITY AS IT PERTAINS TO AGRICULTURE INFRASTRUCTURE SECURITY.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, major feed yards, food processing facilities, and other significant components of the Nation’s agriculture infrastructure, as defined and determined by the Department of Agriculture and the Department of Homeland Security, the ratio under paragraph (1)(K) shall be 1 divided by the total number of urban counties that are located within 50 miles of such agriculture infrastructure, not to exceed 100.

(L) PROXIMITY TO NATIONAL ICONS AND FEDERAL BUILDINGS.—If an urban county is among the 100 urban counties that are closest to, or within 50 miles of, national icons and Federal buildings that the Department of Homeland Security determines are most vulnerable with respect to a terrorist attack, the ratio under paragraph (1)(L) shall be 1 divided by the total number of urban counties that are located within 50 miles of such icons or Federal buildings, not to exceed 100.

(M) INTELLIGENCE.—If an urban county is among the 100 urban counties that have been identified by the Department of Homeland Security as being special alert or heightened alert status for the longest periods of time, the ratio under paragraph (1)(M) shall be 1 divided by the total number of urban counties that have been identified by the Department of Homeland Security, not to exceed 100.

(e) EXCLUSIONS.—(1) IN GENERAL.—In computing amounts or exclusions under subsection (d) with respect to any urban county, units of general local government located in the county that are not included in the population of the county in determining the eligibility of the county to receive a grant under this subsection shall be excluded, except that any independent city (as defined by the Bureau of the Census) shall be included if it—

(A) is not part of any county; (B) is not slightly contiguous to the county; (C) is contiguous to the urban county; (D) has entered into cooperation agreement with the urban county, which provides that the urban county shall undertake or assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; or

(E) is not included as a part of any other unit of general local government for purposes of this section.

(2) INDEPENDENT CITIES.—Any independent city that is included in any fiscal year for purposes of computing amounts pursuant to the preceding sentence shall not be eligible to receive assistance under subsection (i) for that fiscal year.

(i) INCLUSIONS.—(1) LOCAL GOVERNMENT STRADDLING COUNTY LINE.—In computing amounts under subsection (d) with respect to any urban county, there shall be included all of the area of any unit of local government that is part of, but is not located entirely within the boundaries of, such urban county if—

(A) the part of such unit of local government located in the county that is part of, but is not located entirely within the boundaries of, such urban county if—

(A) is not part of any county; (B) is not slightly contiguous to the county; (C) is contiguous to the urban county; (D) has entered into cooperation agreement with the urban county, which provides that the urban county shall undertake or assist in the undertaking of essential community development and housing assistance activities with respect to such independent city; and

(E) is not included as a part of any other unit of general local government for purposes of this section.

(2) INDEPENDENT CITIES.—Any independent city that is included in any fiscal year for purposes of computing amounts pursuant to the preceding sentence shall not be eligible to receive assistance under subsection (i) for that fiscal year.
of any other unit of local government for the purpose of this section.

(2) USE OF GRANTS OUTSIDE URBAN COUNTY.—Any amount received under this section by a metropolitan city or an urban county described in paragraph (1) may be used with respect to the part of such unit of local government that is outside the boundaries of such urban county.

(g) POPULATION.—

(1) EFFECT OF CONSOLIDATION.—Where data are available, the amount to be allocated to a metropolitan city or an urban county that has been formed by the consolidation of 1 or more metropolitan cities within an urban county shall be equal to the sum of the amounts that would have been allocated to the constituent cities and the balance of the consolidated government, if such consolidation had not occurred.

(2) LIMITATION.—Paragraph (1) shall apply only to a consolidation that—

(A) included all metropolitan cities that received grants under this section for the fiscal year preceding such consolidation and that were located within the urban county;

(B) included the entire urban county that received a grant under this section for the fiscal year preceding such consolidation; and

(C) terminated on or after January 1, 2005.

(h) REALLOCATION.—

(1) IN GENERAL.—Except as provided under paragraph (2), any amounts allocated to a metropolitan city or an urban county other than an included unit of general local government that qualifies to be in receipt of funds under this section by an urban county described under subsection (a) may be reallocated in the succeeding fiscal year as the Secretary determines to be appropriate.

(2) LIMITATIONS.—

(A) SO THAT THE NONQUALIFYING COMMUNITIES.—The Secretary shall make a pro rata reduction of each amount allocated to the nonqualifying communities in each State under subparagraph (A) so that the nonqualifying communities in each State receive the same percentage of the total amount available under this subsection as that percentage of the amounts that would have been allocated to the nonqualifying communities if the total amount available had equaled the total amount allocated under subparagraph (A).

(B) PRO RATA REDUCTION.—The Secretary shall make a pro rata reduction of each amount allocated to the nonqualifying communities in each State under subparagraph (A) so that the nonqualifying communities in each State receive the same percentage of the total amount available under this subsection as that percentage of the amounts that would have been allocated to the nonqualifying communities if the total amount available had equaled the total amount allocated under subparagraph (A).

(3) DISTRIBUTION.—

(A) STATES.—The Secretary shall distribute amounts it receives under this subsection to units of general local government located in nonqualifying areas of the State in such manner and at such time as the Secretary shall prescribe, consistent with the statement submitted under section 5(a), and not later than 45 days after the date on which the Secretary receives such amounts from the Federal Government.

(B) CERTIFICATION.—Before a State may receive or distribute amounts allocated under this subsection, the State must certify that—

(i) with respect to units of general local government in nonqualifying areas, the State—

(1) provides, or will provide, technical assistance to units of general local government in connection with homeland security initiatives;

(2) has consulted with local elected officials from among units of general local government located in nonqualifying areas of the State in determining the distribution of funds required by subparagraph (A); and

(3) has consulted with local elected officials from among units of general local government located in nonqualifying areas of the State in determining the distribution of funds required by subparagraph (A); and

(ii) with respect to units of general local government in nonqualifying areas, the State—

(1) provides, or will provide, technical assistance to units of general local government in connection with homeland security initiatives;

(2) has consulted with local elected officials from among units of general local government located in nonqualifying areas of the State in determining the distribution of funds required by subparagraph (A); and

(3) has consulted with local elected officials from among units of general local government located in nonqualifying areas of the State in determining the distribution of funds required by subparagraph (A); and

(3) has consulted with local elected officials from among units of general local government located in nonqualifying areas of the State in determining the distribution of funds required by subparagraph (A); and

(3) has consulted with local elected officials from among units of general local government located in nonqualifying areas of the State in determining the distribution of funds required by subparagraph (A); and

(iii) the amount the State would otherwise be allocated under the formula set forth in this section;

(B) EXCEPTION.—Notwithstanding subparagraph (A), the United States Virgin Islands, American Samoa, and the Northern Mariana Islands shall each be allocated 0.25 percent of the total amount appropriated in any fiscal year for grants to States under this section.

(i) ADMINISTRATION.—

(1) IN GENERAL.—Each State shall be responsible for the administration of all funds received and distributed under paragraph (1). Except as provided under subparagraph (B), the State shall pay for all administrative expenses incurred by the State in carrying out its responsibilities under this Act.

(2) BUDGET.—The amounts received by each State for distribution in nonqualifying areas, the State may deduct an amount to—

(i) the first $150,000 of its administrative expenses under this subsection; and

(ii) 50 percent of any State administrative expenses under this subsection in excess of $150,000, which amount shall not exceed 2 percent of the amount received by the State under paragraph (1).

(3) DISTRIBUTION.—Any distribution by the Secretary under paragraph (1) shall be made in accordance with—

(i) determinations of the Secretary;

(ii) statements submitted and the other requirements under section 5 (except for subsection (c)); and

(iii) regulations and procedures prescribed by the Secretary.

(4) REALLOCATION.—

(1) FAILURE TO COMPLY.—Any amounts allocated for use in a State under paragraph (1) that are not received by the State for any fiscal year because of failure to meet the requirements of subsection (a) or (b) of section 5 shall be reallocated in the succeeding fiscal year in such amounts as the Secretary determines to be appropriate.

(5) SINGLE UNIT.—Any combination of units of general local governments may not be required to obtain recognition by the Secretary to be treated as a single unit of general local government for purposes of this subsection.

(6) MINIMUM AMOUNT.—

(A) IN GENERAL.—Except as provided under paragraph (2), each unit of general local government in nonqualifying areas that would be entitled to receive funds under this Act and under this section, the greater of—

(i) 0.25 percent of the total amount appropriated for the fiscal year for grants to States that are not located on an international border under this section;

(ii) 0.45 percent of the total amount appropriated for the fiscal year for grants to States that are located on an international border; or
amounts to which metropolitan cities and urban counties would be entitled under this section, and funds are not otherwise appropriated to meet the deficiency, the Secretary shall transfer to the emergency assistance fund, from which the Secretary shall provide funds directly to States and units of local government for increased personnel and other factors considered appropriate by the Secretary.

(b) MINIMUM AMOUNT PROVISION.—The provision under section 10(c)(4) relating to a minimum amount applicable to amounts allocated to States under this section.

(c) LOCAL COMMUNICATIONS SYSTEMS.—

(A) IN GENERAL.—From the amounts appropriated pursuant to subsection (b)(4), $50,000,000 shall be used by the States to develop and maintain local communications systems that can be used between and among first responders, including law enforcement, fire, and emergency medical personnel.

(B) USE OF FUNDS.—Of the amount allocated under subsection (a),

(1) $25,000,000 shall be used by the States for homeland defense planning and coordination within each State;

(2) $35,000,000 shall be used by regional, multistate, or inter-state authorities for homeland defense planning and coordination within each region;

(3) $5,000,000 shall be used by the States to develop and maintain state-wide training facilities and best-practices clearinghouses; and

(4) $40,000,000 shall be used by the States and units of general local government to develop and maintain state-wide communications systems that can be used between and among first responders at the State and local level, including law enforcement, fire, and emergency personnel.

(c) ALLOCATIONS TO STATES.—

(1) IN GENERAL.—Amounts allocated to States under this section shall be allocated among the States based on factors such as threat, vulnerability, population, population density, the presence of critical infrastructure, and other factors considered appropriate by the Secretary.

(2) MINIMUM AMOUNT PROVISION.—The provision under subsection (a)(4) relating to a minimum amount applicable to amounts allocated to States under this section.

(d) DISTRIBUTION OF FUNDS.—Each State shall distribute amounts reserved for local communications systems in that State under subsection (a) to units of general local government not later than 45 days after the State receives such amounts from the Federal Government.

(e) CONTRIBUTIONS TO REGIONAL COOPERATIONS.—Funds allocated under subsection (b)(2) shall be allocated to regional cooperatives, associations, and regional, multistate, or intrastate authorities, based upon the population of the areas covered by each regional cooperative.

SEC. 9. URBAN AREA SECURITY INITIATIVE.

SEC. 10. FLEXIBLE EMERGENCY ASSISTANCE FUND.

(a) IN GENERAL.—From the amounts appropriated pursuant to section 4(b)(4), $50,000,000 shall be used to create a flexible emergency assistance fund, from which the Secretary shall provide funds directly to States and units of local government that incur extraordinary homeland security costs.

(b) RELEASE OF FUNDS.—The Secretary may release emergency assistance funds to a State or local community as the Secretary determines to be appropriate, including—

(1) when the Secretary determines that a State or local community may be the specific target of a terrorist threat;

(2) when a local community is the venue of a high-profile event related to homeland security or terrorism;

(3) when the State or local community has been asked to assist in a Federal investigation concerning homeland security or terrorism; and

(4) when an agency of the Federal Government has requested the State or local community to assist in performing homeland security functions.

(c) REIMBURSEMENTS.—The Secretary may disburse flexible emergency assistance funds to reimburse States and units of general local government for increased personnel costs associated with the activation of first responders who serve in the Reserves or National Guard.

(d) MINIMUM AMOUNT.—Section 101(c)(3) of the USA PATRIOT ACT (42 U.S.C. 3711(c)(3)) and section 7(c)(4) of this Act shall not apply to funds awarded under this section.

SEC. 11. FEDERAL PREPAREDNESS, EQUIPMENT, AND TRAINING STANDARDS.

(a) IN GENERAL.—The Department of Homeland Security shall develop national homeland security preparedness, first responder training, and equipment standards, and best practices to facilitate the most effective and efficient use of funds authorized under this Act.

(b) CONSULTATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall develop the standards described in subsection (a) in consultation with first responders, States, local communities, nonprofit homeland security experts, and such other persons and organizations as the Secretary determines to be appropriate.

(c) REPORTS.—

(1) DEVELOPMENT OF STANDARDS AND BEST PRACTICES.—The Secretary shall submit a report to Congress on the progress made in developing the standards and best practices described in subsection (a).

(2) ALLOCATION METHODS.—The Secretary shall submit a report to Congress detailing the specific methods used to make the allocations under section 9. The report shall be submitted in unclassified form to the greatest extent consistent with the protection of law enforcement-sensitive information and classified information and in accordance with applicable law. The report may contain a classified annex, if necessary.

SEC. 12. NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES.

(a) IN GENERAL.—No person in the United States shall, on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this Act.

(b) AGE OR HANDICAP.—Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (29 U.S.C. 601 et seq.) or with respect to otherwise qualified handicapped individual as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any such program or activity.
General and other Federal departments and agencies administering Federal grant-in-aid programs.

SEC. 16. INTERSTATE AGREEMENTS OR COMPACTS; PURPOSES.

The consent of Congress is hereby given to any 2 or more States to enter into agreements or compacts, not in conflict with any law of the United States—

(1) for cooperative effort and mutual assistance in support of homeland security planning and programs carried out under this Act as they pertain to interstate areas and to localities within such States; and

(2) to establish such agencies, joint or otherwise, that the States consider desirable for making such agreements and compacts effective.

SEC. 17. MATCHING REQUIREMENTS; SUSPENSION OF REQUIREMENTS FOR ECONOMICALLY DISTRESSED AREAS.

(a) Matching Requirement.—Grant recipients shall contribute, from funds other than those of the Temporary Assistance for Needy Families program, an amount equal to 10 percent of the total funds received under this Act, which shall be used in accordance with the grantee’s statement of homeland security objectives.

(b) Waiver for Economic Distress.—The Secretary shall waive the matching requirement under subsection (a) for grant recipients that the Secretary determines to be economically distressed.

By Mr. LEVIN (for himself and Mr. JEFFORDS):

S. 141. A bill to amend part A of title IV of the Social Security Act to allow up to 24 months of vocational educational training to be counted as a work activity under the temporary assistance to needy families program; to the Committee on Finance.

I am pleased to be joined by Senator JEFFORDS in reintroducing legislation that seeks to add an important measure of flexibility to a provision of the Temporary Assistance to Needy Families program, TANF, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The legislation we are introducing increases the limit on the amount of vocational educational training that a State can count towards meeting its work participation rate, from 12 to 24 months.

This legislation enjoys the support of the American Association of University Women, with over 100,000 members; The Workforce Alliance, a coalition of experienced leaders nationwide from the field of workforce development, who know what works in preparing people for jobs; the National Association of State Directors of Career Technical Education Consortium; the Center for Law and Social Policy and the American Association of Community Colleges.

Under the pre-1996 Aid to Families with Dependent Children program, recipients could participate in post-secondary vocational training or community college programs for up to 24 months. While I support TANF’s emphasis on moving welfare recipients more quickly into jobs, I am troubled by the restriction on post-secondary education training, limiting it to 12 months. One year of vocational education is, under current law, an approved work activity, but the second year of post-secondary education study is not.

The limitation on post-secondary education and training raises a number of concerns, not the least of which is whether individuals may be forced into lower paying, short-term employment that will lead them back onto public assistance because they are unable to support themselves or their families. Well, according to recent studies, this is exactly what has happened in far too many cases.

According to a findings of the Congressional Research Service, although the majority of recipients who leave the welfare rolls left because they became employed, most remained poor. The research also revealed that the hourly wage for these former welfare recipients ranged from $5.50 to $8.80 per hour.

Study after study indicates that short-term training programs raise the income of workers only marginally, while completion of at least a 2-year associate degree has the greater potential of breaking the cycle of poverty for welfare recipients. According to the U.S. Census Bureau, the mean earnings of adults with an associate degree are 20 percent higher than adults who have not achieved such a degree.

In June of 2003, we were very pleased that our proposal was included in the Senate Finance Committee reported bill, which reauthorized TANF. However, the reauthorization bill was not considered by the full Senate. Rather the Temporary Assistance for Needy Families Act has been twice extended.

It is our hope that the Senate will again act favorably and expeditiously on this legislation and that the House again act favorably and expeditiously. It is our hope that the Senate will again act favorably and expeditiously on this legislation and that the House will support this much-needed State flexibility. We must do what is necessary to achieve TANF’s intended goal of getting people back off of welfare and onto self-sufficiency.

All citizens should have the opportunity to become productive and successful members of the workforce. Again, I urge my colleagues to act quickly on this legislation. This modification will give the States the flexibility they need to improve the economic status of families across America.

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. 141

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

SECTION 1. INCREASE IN NUMBER OF MONTHS OF VOCATIONAL EDUCATIONAL TRAINING COUNTED AS A WORK ACTIVITY UNDER THE TANF PROGRAM.

Section 407(d)(6) of the Social Security Act (42 U.S.C. 607(d)(6)) is amended by striking “12” and inserting “24”.

By Mr. DAYTON:

S. 143. A bill to ensure that Members of Congress do not receive better prescription drug benefits than Medicare beneficiaries; to the Committee on Homeland Security and Governmental Affairs.

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

S. 143

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 called the “Taste of Our Own Medicine Act of 2005”.

SEC. 2. LIMITATION ON PRESCRIPTION DRUG BENEFITS OF MEMBERS OF CONGRESS. (a) LIMITATION ON BENEFITS.—Notwithstanding any other provision of law, the actuarial value of the prescription drug benefits of any Member of Congress enrolled in a health benefits plan under chapter 89 of title 5, United States Code, may not exceed the actuarial value of basic prescription drug coverage as defined in section 16062–2(a)(3) of the Social Security Act (42 U.S.C. 1396w–12(a)(3)), as added by section 101(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173, 117 Stat. 2071).

(b) REGULATIONS.—The Director of the Office of Personnel Management shall promulgate regulations to carry out this section.

By Mr. KOHL (for himself and Mr. CORZINE):

S. 144. A bill to change the date for regularly scheduled Federal elections and establish polling place hours; to the Committee on Rules and Administration.

Mr. KOHL. Mr. President, today I am introducing the Weekend Voting Act. This legislation will change the day for Congressional and Presidential elections from the first Tuesday in November to the first weekend in November. This legislation is virtually identical to legislation that I first proposed in 1997 in the 105th Congress and most recently reintroduced in the 107th Congress.

The last two elections have revealed a glaring need for us to rethink how we conduct elections in our Nation. The 2000 election galvanized Congress into passing major election reform legislation. The Help American Vote Act, which was enacted into law in 2002, was an important step forward in establishing minimum standards for states in the administration of federal elections and in providing funds to replace outdated voting systems and improve election administration. The HAVA legislation also created a new federal entity, the Election Assistance Commission, to serve as a clearinghouse for election administration information. That Commission is finally on its feet after a delayed start.

However, as the 2004 election made clear, there is much that still needs to be done.

With more and more voters needing to cast their ballots on Election Day, we need to build on the movement...
which already exists to make it easier for Americans to cast their ballots by providing alternatives to voting on just one election day. Twenty-six States, including my own state of Wisconsin, now permit any registered voter to vote by absentee ballot. These innovations constitute 45 percent of the voting age citizens of the United States. Twenty-three states permit in-person early voting at election offices or at other satellite locations. The state of Oregon now conducts statewide elections completely by mail. These innovations are critical if we are to conduct fair elections for it has become unreasonable to expect that a nation of 294 million people can line up at the same time and cast their ballots at the same time. And if we continue to try to do so, we will encounter even more reports of broken machines and long lines in the rain and registration errors that create barriers to voting.

That is why I have been a long-time advocate of moving our Federal election day from the first Tuesday after the first Monday in November to the first weekend in November. Holding our federal elections on a weekend will create more opportunities for voters to cast their ballots and will help end the gridlock at the polling places which threaten to undermine our elections.

Under this bill, polls would be open nationwide for a uniform period of time from Saturday, 6 p.m. eastern time to Sunday, 6 p.m. eastern time. Polls in other time zones would also open and close at this time. Election officials would be permitted to close polls during the overnight hours if they determine it would be inefficient to keep them open. Because the polls are open from Saturday to Sunday, they also would not interfere with religious observances.

Keeping polls open the same hours across the continental United States, also solves the challenge of keeping results on one side of the country, or even a State, from influencing voting in places where polls are still open. Moving elections to the weekend will expand the pool of buildings available for polling stations and people available to work at the polls, addressing the critical shortage of poll workers.

Most important, weekend voting has the potential to increase voter turnout by giving all voters ample opportunity to get to the polls and will end the critical shortage of poll workers. The critical shortage of poll workers.

Most important, weekend voting has the potential to increase voter turnout by giving all voters ample opportunity to get to the polls and will end the critical shortage of poll workers.

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

SEC. 2. CHANGE IN CONGRESSIONAL ELECTION DAY TO SATURDAY AND SUNDAY.

Section 25 of the Revised Statutes (2 U.S.C. 7) is amended to read as follows:

"SEC. 25. The first Saturday and Sunday after the first Friday in November, in every even numbered year, are established as the Election Day in each of the States and Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January thereafter as first mentioned in the law of the State wherein the same is located.

SEC. 3. CHANGE IN PRESIDENTIAL ELECTION DAY TO SATURDAY AND SUNDAY.

Section 1 of title 3, United States Code, is amended by striking "Tuesday next after the first Monday" and inserting "first Saturday and Sunday after the first Friday".

SEC. 4. POLLING PLACE HOURS IN CONTINENTAL UNITED STATES.

(a) In General.—

(1) PRESIDENTIAL GENERAL ELECTION.—Chapter 1 of title 3, United States Code, is amended—

(A) by redesignating section 1A as section 1A; and

(B) by inserting before section 1A the following:

"1. Polling place hours in continental United States

"(a) Definitions.—In this section:

"(1) CONTINENTAL UNITED STATES.—The term 'continental United States' means the States (other than Alaska and Hawaii) and the District of Columbia.

"(2) PRESIDENTIAL GENERAL ELECTION.—The term 'Presidential general election' means the election for President and Vice President.

"(b) Polling Place Hours.—

"(1) IN GENERAL.—Each polling place in the continental United States shall be open, with respect to a Presidential general election, beginning on Saturday at 6:00 p.m. eastern standard time and ending on Sunday at 6:00 p.m. eastern standard time.

"(2) EARLY CLOSING.—A polling place may close between the hours of 12:00 p.m. (midnight) and 5:00 a.m. local time as provided by the law of the State in which the polling place is located.

"(c) CONGRESSIONAL GENERAL ELECTION.— Section 25 of the Revised Statutes (2 U.S.C. 7) is amended—

(A) by redesigning section 25 as section 25A; and

(b) by inserting before section 25A the following:

"SEC. 25. POLLING PLACE HOURS IN THE CONTINENTAL UNITED STATES.

"(a) Definitions.—In this section:

"(1) CONTINENTAL UNITED STATES.—The term 'continental United States' means a State (other than Alaska and Hawaii) and the District of Columbia.

"(2) CONGRESSIONAL GENERAL ELECTION.—The term 'congressional general election' means the general election for the office of Senator or Representative or Delegate or Resident Commissioner to, the Congress.

"(b) Polling Place Hours.—

"(1) IN GENERAL.—Each polling place in the continental United States shall be open, with respect to a congressional general election, beginning on Saturday at 6:00 p.m. eastern standard time and ending on Sunday at 6:00 p.m. eastern standard time.

"(2) EARLY CLOSING.—A polling place may close between the hours of 12:00 p.m. (midnight) and 5:00 a.m. local time as provided by the law of the State in which the polling place is located.

b) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 1 of title 3, United States Code, is amended by striking the item relating to section 1A and inserting the following:
"1. Polling place hours in continental United States.
"1A. Time of appointing electors.
'(2) Sections 871(b) and 1751(f) of title 18, United States Code, are each amended by striking "title 3, United States Code, sections 1 and 2" and inserting "sections 1A and 2 of title 3".

By Mr. ALLARD (for himself, Mr. INHOFE, Mr. LOTT, Mr. ENZI, Mr. DEMENT, Mr. SANTORUM, Mr. CRAPO, Mr. SESSIONS, Mr. VITTER, Mr. THUNE, Mr. ALEXANDER, Mr. PUSEY, Mr. TALENT, Mr. BURR, MRS. HUTCHISON, Mr. KYL, MRS. DOLE, Mr. MARTINEZ, Mr. ISAKSON, Mr. MCCONNELL, Mr. HATCH, Mr. ROBERTS, and Mr. CORNYN):

S. J. Res. 1. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage; to the Committee on the Judiciary.

Mr. ALLARD. Mr. President, I would like to first express my gratitude to the leadership for making the Marriage Protection Amendment a priority in this Congress. The Marriage Protection Amendment is a constitutional amendment that I have introduced today. It is S. J. Res. 1. In the press conference earlier today I indicated I hoped that the designation of the number would reflect its priority with the leadership. I realize that was an overly optimistic request, but I am very pleased we have the support from leadership that we do and that it is among their priority items. We have the complete support of the leadership. They all signed as cosponsors on S. J. Res. 1.

As of this very moment, we have a quarter of the Senate who have signed on as cosponsors. I think that is fabulous. It is certainly a better start than we had the last time. In the last session, if my memory serves me correctly, I think we only had about 13 or so cosponsors on it, even after we had the debate in the Senate. So even before we have sent out a letter to our colleagues in the Senate, we have 25 original cosponsors. I am excited about that.

So today we have reintroduced the Marriage Protection Amendment in the Senate. The intent and policy goals remain the same as last year. It is the same bill we debated on the floor of the Senate. What it does is define marriage as a union between a man and a woman.

The amendment represents a democratic process: the will of the American people following recent and widespread efforts by activist courts to change this ages-old definition of marriage.

People say, well, what about the rights of the State legislature? What we are trying to do is protect the voice of the American people. The right place for this to be determined is in the legislative bodies of this country, in the Congress of the United States and each and every legislature in every State, and not in the Federal courts. The amendment does restrict the ability of the courts to define marriage.

Mr. President, before I wrap up, I ask unanimous consent that Senator COBURN be added as an original cosponsor and Senator STEVENS be added as an original cosponsor.

The Marriage Protection Amendment does not override State and local authority. Under the Marriage Protection Amendment, cities, States, and private companies would still be free to determine for themselves civil union, benefit, and partnership definitions.

The Marriage Protection Amendment would not permit the redefining of marriage, a definition agreed upon by every civilization, culture, ethnicity, and religion around the world.

The definition of marriage in itself is not discriminatory. Those who have been opposed to the amendment tried to make that argument in the last session. Even civil rights leaders, Hispanic and African Americans, have said this is not a civil rights issue.

Congress does have a vital role to play in this debate. The policy goals are widely agreed upon. Recent election results illustrate broad support for the definition of marriage.

Mr. President, 14 million voters in 11 States voted for constitutional amendments on November 2, 2004, with an average majority of 67 percent. This reflects great support throughout the country. Some 13 States voted on the ballot issue in 2004.

Mr. President, I ask unanimous consent to have the information on this chart printed in the Record, which illustrates what happened in each one of those elections.

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

2004 STATEWIDE BALLOT RESULTS ON MARRIAGE AMENDMENTS

<table>
<thead>
<tr>
<th>State</th>
<th>Date of vote</th>
<th>Referred by</th>
<th>Vote in legislature</th>
<th>Signatures required</th>
<th>Signatures turned in</th>
<th>Certified by SOS</th>
<th>Outcome of vote</th>
<th>Percentages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas</td>
<td>Nov. 2</td>
<td>People’s Initiative</td>
<td>N/A</td>
<td>40,570</td>
<td>200,000</td>
<td>Certified</td>
<td>Passed</td>
<td>Y: 75</td>
</tr>
<tr>
<td>Georgia</td>
<td>Nov. 2</td>
<td>Legislation</td>
<td>S: 40–34</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Passed</td>
<td>N: 77</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Nov. 2</td>
<td>Legislation</td>
<td>S: 33–4–3</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Passed</td>
<td>N: 73</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Sept. 18</td>
<td>Legislation</td>
<td>S: 31–6</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Passed</td>
<td>N: 75</td>
</tr>
<tr>
<td>Michigan</td>
<td>Nov. 2</td>
<td>People’s Initiative</td>
<td>N/A</td>
<td>317,757</td>
<td>500,000</td>
<td>Certified</td>
<td>Passed</td>
<td>Y: 79</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Nov. 2</td>
<td>Legislation</td>
<td>S: 51–0–3</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Passed</td>
<td>N: 76</td>
</tr>
<tr>
<td>Missouri</td>
<td>Aug. 3</td>
<td>Legislation</td>
<td>S: 76–8</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>Passed</td>
<td>N: 74</td>
</tr>
<tr>
<td>Montana</td>
<td>Nov. 2</td>
<td>People’s Initiative</td>
<td>N/A</td>
<td>41,000</td>
<td>70,000</td>
<td>Certified</td>
<td>Passed</td>
<td>N: 66</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Nov. 2</td>
<td>People’s Initiative</td>
<td>N/A</td>
<td>25,688</td>
<td>52,000</td>
<td>Certified</td>
<td>Passed</td>
<td>Y: 73</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Nov. 2</td>
<td>People’s Initiative</td>
<td>N/A</td>
<td>90,000</td>
<td>104,360</td>
<td>Certified</td>
<td>Passed</td>
<td>Y: 67</td>
</tr>
<tr>
<td>Oregon</td>
<td>Nov. 2</td>
<td>People’s Initiative</td>
<td>N/A</td>
<td>100,840</td>
<td>204,360</td>
<td>Certified</td>
<td>Passed</td>
<td>Y: 68</td>
</tr>
</tbody>
</table>

Mr. ALLARD. The emphasis here must be on the process, democratic, deliberative, and responsive to the electorate, not to just appointed judges and lawyers. We want the American public to have a say in this debate. Courtrooms are not the place for this important decision about the most fundamental institution of mankind, and that is the definition of marriage. Courts should interpret the law, not write it.

So we are eager to begin to have hearings, to talk about the research, to debate and have constructive dialog on this very important issue. It is important to the American people. It is important we continue to move forward with the momentum that has evolved as a result of our debate last year and the momentum that has evolved as a result of the elections of this past fall. I am excited about introducing the Marriage Protection Amendment, which is exactly the same amendment we debated on the floor of the Senate last year.

Mr. President, before I wrap up, I ask unanimous consent that Senator COBURN be added as an original cosponsor and Senator STEVENS be added as an original cosponsor.

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

Mr. ALLARD. Again, in conclusion, I thank the leadership for their support and my colleagues for their support on this particular amendment. We had a number of elections for Senate seats where this was a very important issue and critical to the election of many of our new Members in the Senate. We have at least five votes that have switched as a result of this election. I think that is the American people having an opportunity to speak their mind.
I can say, this amendment is to protect the voice of the American people. The proper way to have this debate is in the legislative bodies of America. That includes the Congress and each and every legislature.

Again, I am very proud to be an amendment leader for this particular issue. I also thank my colleagues who showed up at the press conference this morning to talk about this issue, particularly Senator SANTORUM, Senator HUTCHISON, Senator SESSIONS, and Senator THUNE who joined me in the press conference. I thank them for their leadership this morning in that press conference.

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

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

S. J. Res. 1
Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

SECTION 1. This article may be cited as the ‘Marriage Protection Amendment’.

SECTION 2. Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the constitution of any State, shall be construed to require that marriage or the legal incidence thereof be conferred upon any union other than the union of a man and a woman."

By Mr. CRAIG:
S. J. Res. 2. A joint resolution proposing an amendment to the Constitution of the United States relative to require a balanced budget and protect Social Security surplus; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, today I am reintroducing the Balanced Budget Amendment to the Constitution of the United States. When we were in deficit and when we were in surplus, I have always said, if we could adopt one fundamental reform to the way the Federal Government does business, this is it. The fiscal events of the last few years have again demonstrated the need for this long-term, fundamental, permanent reform.

For many Americans, one of the signs of our deep respect for the Constitution is our acknowledgement that, in exceptional cases, a problem rises to such a level that it can be adequately addressed only in the Constitution—by way of a constitutional amendment.

From 1998 through 2001, Congress balanced the Federal budget. These four budget surpluses in a row, for the first time since the 1920s, set the modern record for balancing the Federal budget. The first Republican Congresses in 40 years made balancing the budget our top priority, and did what was necessary, reaching across the aisle and working on a bipartisan basis. We ran surpluses and began the process we needed to pay down the national debt. This in turn promised, among other things, to help us safeguard the future of Social Security.

Then terrorist threats. Historically, that principle has been reflected in every significant balanced budget constitutional amendment, in exceptions for war and imminent military threats. Historically, that principle was followed even when balancing the budget was the norm, because the U.S. Government was authorized when necessary to fight and win a war.

Beyond that, we must keep all other Federal spending under control, so that we return, as soon as possible, to balancing the budget.

In other words, the return to deficit spending will be a temporary problem only if we make a permanent commitment to the moral imperative of fiscal responsibility.

We always did, and always will, need a balanced budget amendment to our Constitution.

Even in the heady days of budget surpluses, I always maintained the only way to guarantee that the Federal Government would stay fiscally responsible was to add a balanced budget amendment to our Constitution.

Before we balanced the budget in 1998, the Government was deficit spending for 28 years in a row and for 59 out of 67 years. The basic law of political economy—was not repealed in 1998, but only restrained some, when we came together and briefly faced up to the great threat to the future posed by decades of debt.

Now, the Government is back to borrowing. And for some, a return to deficit spending seems to have been liberating, as the demands for new spending only seem to be multiplying again.

That is why, today, I am again introducing a balanced budget amendment to the Constitution and calling upon my colleagues to send it to the States for ratification.

The amendment I introduce today is the same one I sponsored in the 108th Congress. This is essentially the same as the amendment that came within a single vote of the two-thirds necessary for passage, twice in two previous Senatorates. In addition, this amendment would not count the Social Security surplus in its calculation of a balanced budget. Those amounts would be set aside exclusively to meet the future needs of Social Security beneficiaries.

It’s a new day, a new year, and a new Senate. We have the opportunity of a new start and, hopefully, the wisdom of experience. Today, with the first piece of legislation I am introducing in the 109th Congress, I call on the Senate to safeguard the future, by considering and passing a balanced budget amendment to the Constitution—a bill of economic rights for our future and our children.

I ask unanimous consent that a copy of this joint resolution, proposing a balanced budget amendment to the Constitution, be printed in the RECORD.

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

S. J. Res. 2
Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission by the Congress:

ARTICLE—

SECTION 1. Total outlays for any fiscal year shall not exceed total receipts for that fiscal year, unless three-fifths of the whole number of each House of Congress shall provide by law for such an increase by a rollcall vote.

SECTION 2. Total receipts shall include all receipts of the United States Government except those derived from borrowing. Total outlays shall include all outlays of the United States Government except for repayment of debt principal.

SECTION 3. Any surplus of receipts (including attributable interest) relative to outlays of the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds shall not be counted for purposes of this article. Any deficit of receipts (including attributable interest) relative to outlays of the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds shall be counted for purposes of this article.

SECTION 4. The limit on the debt of the United States held by the public shall not be increased, unless three-fifths of the whole number of each House shall provide by law for such an increase by a rollcall vote.

SECTION 5. Prior to each fiscal year, the President shall transmit to the Congress a proposed budget for the United States Government for that fiscal year, in which total outlays do not exceed total receipts.

SECTION 6. No bill to increase revenue shall become law unless approved by a majority of the whole number of each House by a rollcall vote.

SECTION 7. The Congress may waive the provisions of this article for any fiscal year.
in which a declaration of war is in effect. The provisions of this article may be waived for any fiscal year in which the United States is engaged in military conflict which causes a serious and continuing threat to national security and is so declared by a joint resolution, adopted by a majority of the whole number of each House, which becomes law.

“Section 8. The Congress shall enforce and implement this article by appropriate legislation, which may rely on estimates of outcomes and receptors.

“Section 9. This article shall take effect the second fiscal year beginning after its ratification.”

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 7—RELATING TO THE DEATH OF HOWARD S. LIEBENGOOD, FORMER SERGEANT AT ARMS OF THE SENATE

Mr. Frist (for himself, Mr. Alexander, Mr. Domini, Mr. Cochrane, Mr. Hagel, Mr. Warner, Mr. Biden, Mr. Harkin, Mr. Specter, Mr. Graham) submitted the following resolution; which was considered and agreed to:

S. RES. 7

Whereas Howard S. Liebengood served as a captain in the United States Army Military Police Corps in Vietnam from 1968 to 1970, receiving the Bronze Star and the Army Commendation Medal for his exemplary service;

Whereas Howard S. Liebengood began his service to the Senate in 1973 as minority counsel to the Senate Watergate Committee;

Whereas Howard S. Liebengood served as an aide to the Senate Church Committee in 1975, as the minority staff director of the Senate Select Committee on Intelligence in 1976, and as legislative counsel to Senate Majority Leader Howard H. Baker, Jr., in 1980;

Whereas Howard S. Liebengood served as Sergeant at Arms of the Senate from 1981 to 1983;

Whereas Howard S. Liebengood served as chief of staff to Senator Fred Thompson from 2001 to 2003, and as chief of staff to Senator Majority Leader William H. Frist, M.D., from 2003 until his death in January, 2005;

Whereas Howard S. Liebengood was a caring and devoted husband, father, and colleague who served with the utmost humility and distinction and was admired and respected by all as a teacher, adviser, and friend; and

Whereas Howard S. Liebengood inspired others through his personal leadership, generosity, and great love for the United States: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Senate has heard with profound sorrow and deep regret the announcement of the death of Howard S. Liebengood; and

(2) the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy of these resolutions to the family of Howard S. Liebengood.

SENATE RESOLUTION 8—EXPRESSING THE SENSE OF THE SENATE REGARDING THE MAXIMUM AMOUNT OF A FEDERAL PELL GRANT

Ms. Collins (for herself, Mr. Feingold, and Mr. Coleman) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. Res. 8

Whereas public investment in higher education yields a return of several dollars for each dollar invested;

Whereas higher education promotes economic opportunity and recipients of bachelor's degrees earn 73 percent more in lifetime earnings than those with only a secondary school diploma and are also significantly less likely to be unemployed;

Whereas access to a college education has become an essential tool for American society, and is vital to upholding our belief in equality of opportunity;

Whereas for a generation, the Federal Pell Grant has served as an essential mechanism for providing access to higher education;

Whereas when viewed in constant dollars, the value of today's Pell Grant maximum award has actually declined by 16 percent since the mid 1970s;

Whereas grant aid as a portion of student aid has fallen significantly in the past 30 years;

Whereas in 1975, grant aid constituted approximately 80 percent of total student aid awarded to college students and loans constituted only 17 percent, now this has reversed with grants making up only 38 percent, and loans covering 56 percent of total student aid; and

Whereas the increasing reliance on borrowing to finance a higher education is particularly burdensome on low-income families and has negative consequences for the enrollment of these students.

Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the maximum Federal Pell Grant for which a student should be eligible during award year 2005–2006 should be $4,500; and

(2) the authorized levels for the Federal Pell Grant maximum amount found in section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) should be set high enough to accommodate a Federal Pell Grant amount of $9,000 by award year 2010–2011.

Ms. Collins. Mr. President, I rise today to introduce the first piece of legislation that I will sponsor in the 110th Congress relying on the Senate to strengthen the Pell grant program so that more families can afford higher education.

The Pell grant program is the single largest source of grant aid for postsecondary education funded by the Federal Government. It provides grants to students based on their level of financial need to support their studies at the institutions they have chosen to attend. For this fiscal year, the Pell program is funded at $12.8 billion and is estimated to serve more than 5.3 million students.

I am pleased to have Senator Feingold and Senator Coleman joining me in this bipartisan effort to marshal additional Federal resources for the Pell program. They each have been a leader in the effort to expand access to higher education.

Our system of higher education is in many ways the envy of the world, but its benefits have not been equally available. Unfortunately, it is still the case that one of the most determinative factors of whether students will pursue higher education is their family income. Students from families with incomes above $75,000 are more than twice as likely to attend college as students from families with incomes of less than $25,000.

Even more unsettling are studies demonstrating the negative effect of unmet financial need on college attendance for even the most academically prepared students. Among the most highly qualified high school students, those from low-income families were 43 percent less likely to continue college than their wealthier counterparts.

To help remedy these inequities, the Federal Government has wisely invested in a need-based system of student financial aid designed to help remove the economic barriers to higher education. Central to this effort over the past 30 years has been the Pell grant program. This program was designed as the cornerstone of Federal student assistance.

Unfortunately, the purchasing power of the Pell grant has been significantly eroded in recent years, forcing students to rely increasingly on loans to finance their higher education. In 1975, the maximum Pell grant covered approximately 80 percent of the costs of attending a public, 4-year institution. Today, it covers less than half of these costs, forcing students to make up the difference by taking on larger and larger amounts of debt. On average, students from the University of Maine graduate with approximately $18,000 in debt from Federal student loans alone, and this reflects national trends. As startling as this figure is, it does not include additional indebtedness that many students incur through private loans or credit card debt to finance their education.

The decline in the value of grant aid and the growing reliance on loans bring our negative consequences. The staggering amount of loans can force some students to abandon their plans to attend college altogether. According to the College Board, low-income families are significantly less willing, by almost 50 percent, to finance a college education through borrowed money than their wealthier counterparts.

That does not surprise me. Many working families in Maine are committed to living within their means. Understandably, they are extremely wary of the staggering amount of debt that is now required to finance a college education.

I also know this to be true from my experiences as a college administrator at Husson College in Maine. At Husson, 85 to 90 percent of students currently receive some sort of Federal financial aid, and approximately 60 percent of students receive Pell grants.

As Linda Conant, the financial aid director at Husson told me many years ago, ‘‘You cannot imagine how difficult it is to sit with a family and to explain to them the amount of loans that are needed to finance a post-secondary degree. It..."