Senator from Mississippi (Mr. COCHRAN), the Senator from Ohio (Mr. DEWINE), the Senator from North Carolina (Mrs. DOLE), the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. ENSIGN), the Senator from Tennessee (Mr. FRIST), the Senator from Nebraska (Mr. HAGEL), the Senator from Arizona (Mr. KYL), the Senator from Indiana (Mr . LUGAR), the Senator from Pennsylvania (Mr. SANTORUM) , the Senator from Oregon (Mr. SMITH) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S.J. Res. 18, supra.

S. CON. RES. 19

At the request of Mr. CHAMBLISS, the names of the Senator from Florida (Mr. MARTINEZ) and the Senator from South Dakota (Mr. THUNE) were added as cosponsors of S. Con. Res. 19, a concurrent resolution expressing the sense of the Congress regarding the importance of life insurance and recognizing and supporting National Life Insurance Awareness Month.

S. RES. 140

At the request of Mr. MARTINEZ, the names of the Senator from Kansas (Mr. BROWNBACK), the Senator from Wyoming (Mr. ENZI) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. Res. 140, a resolution expressing support for the historic meeting in Havana of the Assembly to Promote the Civil Society in Cuba on May 20, 2005, as well as to all those courageous individuals who continue to advance liberty and democracy for the Cuban people.

AMENDMENT NO. 648

At the request of Mr. VOINOVICH, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of amendment No. 648 intended to be proposed to H.R. 3, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 652

At the request of Mr. DORGAN, the names of the Senator from West Virginia (Mr. ROCKEFELLER) and the Senator from Wisconsin (Mr. FEINGOLD) were added as cosponsors of amendment No. 652 proposed to H.R. 3, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 654

At the request of Mr. DORGAN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of amendment No. 654 intended to be proposed to H.R. 3, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. AKAKA:

S. 1037. A bill to require disclosure of financial relationships between brokers and mutual fund companies, and of certain brokerage commissions paid by mutual fund companies; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce the Mutual Fund Transparency Act of 2005. Mutual funds are vital investment vehicles for middle-income Americans that offer diversification and professional money management. Mutual funds are what average investors rely on for retirement, savings for children's college education, or other financial goals and dreams.

I was outraged by the widespread abuses in the industry. Ordinary investors were being harmed due to the greed of brokers, mutual fund companies, and institutional and large investors. That is why I introduced the Mutual Fund Transparency Act in November 2003 with my colleagues Senator Fitzgerald and Senator LIEBERMAN.

I want to thank the Chairman of the Securities and Exchange Commission, SEC, William Donaldson, for his courageous leadership. Chairman Donaldson has demonstrated a commitment to bring about reforms that better protect investors. I applaud the SEC's enforcement and regulatory efforts in addressing weaknesses and abuses in the mutual fund industry.

The SEC has adopted several reforms that mirror provisions found in my original Mutual Fund Transparency Act. In July 2004, the SEC adopted reforms requiring mutual funds, with certain exemptive rules, to have an independent chairman and ensure that 75 percent of their board members are independent.

Although the SEC has undertaken a number of impressive reforms, I have chosen to reintroduce a modified version of my original bill to further strengthen the independence of boards, make investors more aware of the true costs of their mutual funds, and prevent several key reforms from being rolled back. It is also important to legislatively address areas where the SEC needs additional statutory authority. Legislation is needed to ensure that the increased independence rule applied universally among mutual funds.

My bill includes a number of provisions intended to strengthen mutual fund boards. It will require that mutual fund boards have independent chairmen and that 75 percent of their directors be independent. My bill strengthens the definition of who is considered an independent director and requires independent directors to be approved by shareholders. These steps are necessary to strengthen the ability of mutual fund boards to detect and prevent abuses of investor trust.

My bill will also increase the transparency of the complex financial relationships between brokers and mutual funds in ways that are both meaningful and easy to understand for investors. Shelf-space payments and revenue-sharing agreements between mutual fund companies and brokers present conflicts of interest that must be addressed. Brokers have conflicts of interest, some of which are unavoidable, but these need to be disclosed to investors. Without such disclosure, investors cannot make informed financial decisions. Investors may believe that brokers are recommending funds based on the expectation for solid returns or low volatility, when the broker's recommendation may be influenced by hidden payments. This legislation will require brokers to disclose in writing the amount of compensation the broker will receive due to the transaction, instead of simply providing a prospectus. Currently, the prospectus fails to include the detailed relevant information that investors need to make informed decisions.

The SEC has requested comments on a proposal to require a confirmation notice, as well as increased point-of-sale disclosures, to provide investors with more information about broker conflicts in mutual fund transactions. The SEC is reviewing comments on its proposal, and studying other possibilities. I have included a point-of-sale disclosure requirement in my legislation that was absent in the prior bill. In my bill, investors would have to be provided with the amount of differential payments and average fees for comparable transactions. My legislation also requires that confirmation notices be provided for mutual fund transactions, which will include how their broker was compensated.

To further increase the transparency of the actual costs of the fund, brokerage commissions must be counted as an expense in filings with the SEC and included in the calculation of the expense ratio. Consumers often compare the expense ratios of funds when making investment decisions. However, the expense ratios fail to take into account the cost of commissions in the purchase and sale of securities. Therefore, investors are not provided with a complete and accurate idea of the expenses involved with owning that fund. Currently, brokerage commissions are disclosed to the SEC, but not to individual investors. Right now, brokerage commissions are only disclosed to the investor upon request. My bill puts teeth into brokerage commission disclosure provisions and ensures that commissions will be included in a document that investors have access to and can utilize.

The inclusion of brokerage commissions in the expense ratio creates a powerful incentive to reduce the use of soft dollars. Soft dollars can be used to lower expenses, since most purchases using soft dollars do not count as expenses and are not calculated into the expense ratio. There have been calls for the prohibition of soft dollars. This is a recommendation that needs to be further examined. My bill provides an alternative, which is an incentive for funds to limit the use of soft dollars by identifying them as expenses. If commissions are disclosed in this manner,

the use of soft dollars will be reflected in the higher commission fees and overall expenses. This makes it easier for investors to see the true cost of the fund and compare the expense ratios of funds.

Some may argue that this approach gives an incomplete picture and fails to account for spreads, market impact, and opportunity costs. However, the SEC has the authority to address the issue further if it can determine an effective way to quantify these additional factors. My bill does not impose additional reporting requirements that would be burdensome to brokers. It merely uses what is already reported and presents this information in a manner meaningful to investors.

Another important provision in my bill requires the SEC to conduct a study to assess financial literacy among mutual fund investors. This study is necessary because any additional disclosure requirements for mutual funds will not truly work unless investors are given the tools they need to make smart investment decisions.

Mr. President, my legislation will ensure that mutual fund boards are independent and that investors are provided with more relevant and meaningful disclosures from which they can make better informed choices. I look forward to continue working with my colleagues and the SEC to better protect investors.

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

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

S. 1037

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 ''Mutual Fund Transparency Act of 2005''.

SEC. 2. DISCLOSURE OF FINANCIAL RELATIONSHIPS BETWEEN BROKERS AND MUTUAL FUND COMPANIES.

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(13) CONFIRMATION OF TRANSACTIONS FOR MUTUAL FUNDS.—

''(A) IN GENERAL.—Each broker shall disclose in writing to customers that purchase the shares of an open-end company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8)—

''(i) the amount of any compensation received or to be received by the broker in connection with such transaction from any sources; and

''(ii) such other information as the Commission determines appropriate.

''(B) REVENUE SHARING.—The term 'compensation' under subparagraph (A) shall include any direct or indirect payment made by an investment adviser (or any affiliate of an investment adviser) to a broker or dealer for the purpose of promoting the sales of securities of an open-end company.

''(C) TIMING OF DISCLOSURE.—The disclosure required under subparagraph (A) shall be made to a customer not later than as of the date of the completion of the transaction.

''(D) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of an open-end company; or

''(ii) any other filing of an open-end company with the Commission.

''(E) COMMISSION AUTHORITY.—

''(i) IN GENERAL.—The Commission shall promulgate such final rules as are necessary to carry out this paragraph not later than 1 year after the date of enactment of the Mutual Fund Transparency Act of 2005.

''(ii) FORM OF DISCLOSURE.—Disclosures under this paragraph shall be in such form as the Commission, by rule, shall require.

''(F) DEFINITION.—In this paragraph, the term 'open-end company' has the same meaning as in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5).''.

(b) DISCLOSURE OF BROKERAGE COMMISSIONS.—Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following:

''(k) DISCLOSURE OF BROKERAGE COMMISSIONS.—The Commission, by rule, shall require that brokerage commissions as an aggregate dollar amount and percentage of assets paid by an open-end company be included in any disclosure of the amount of fees and expenses that may be payable by the holder of the securities of such company for purposes of—

''(1) the registration statement of that open-end company; and

''(2) any other filing of that open-end company with the Commission, including the calculation of expense ratios.''.

SEC. 3. MUTUAL FUND GOVERNANCE.

(a) INDEPENDENT FUND BOARDS.—Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(a)) is amended—

(1) by striking ''shall have'' and inserting the following: ''shall—

''(1) have'';

(2) by striking ''60 per centum'' and inserting ''25 percent'';

(3) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(2) have as chairman of its board of directors an interested person of such registered company; or

''(3) have as a member of its board of directors any person that is an interested person of such registered investment company—

''(A) who has served without being approved or elected by the shareholders of such registered investment company at least once every 5 years; and

''(B) unless such director has been found, on an annual basis, by a majority of the directors who are not interested persons, after reasonable inquiry by such directors, not to have any material business or familial relationship with the registered investment company, a significant service provider to the company, or any entity controlling, controlled by, or under common control with such service provider, that is likely to impair the independence of the director.''.

(b) ACTION BY INDEPENDENT DIRECTORS.—Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10) is amended by adding at the end the following:

''(i) ACTION BY BOARD OF DIRECTORS.—No action taken by the board of directors of a registered investment company may require the vote of a director who is an interested person of such registered investment company.

''(j) INDEPENDENT COMMITTEE.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company who are not interested persons of such registered investment company shall establish a committee comprised solely of such members, which committee shall be responsible for—

''(A) selecting persons to be nominated for election to the board of directors; and

''(B) adopting qualification standards for the nomination of directors.

''(2) DISCLOSURE.—The standards developed under paragraph (1)(B) shall be disclosed in the registration statement of the registered investment company.''.

(c) DEFINITION OF INTERESTED PERSON.—Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended—

(1) in subparagraph (A)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of an investment adviser or principal underwriter to such registered investment company, or of any entity controlling, controlled by, or under common control with such investment adviser or principal underwriter;

''(viii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of any entity that has within the preceding 5 fiscal years acted as a significant service provider to such registered investment company, or of any entity controlling, controlled by, or under the common control with such service provider;

''(ix) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with the investment company or an affiliated person of such investment company;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment company; or

''(III) any other reason determined by the Commission.'';

(2) in subparagraph (B)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business relationship with such investment adviser or principal underwriter or affiliated person of such investment adviser or principal underwriter;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment adviser or principal underwriter; or

''(III) any other reason as determined by the Commission:''.

(d) DEFINITION OF SIGNIFICANT SERVICE PROVIDER.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following:

''(53) SIGNIFICANT SERVICE PROVIDER.—

''(A) IN GENERAL.—Not later than 270 days after the date of enactment of the Mutual Fund Transparency Act of 2005, the Securities and Exchange Commission shall issue final rules defining the term 'significant service provider'.

''(B) REQUIREMENTS.—The definition developed under paragraph (1) shall include, at a minimum, the investment adviser and principal underwriter of a registered investment company for purposes of paragraph (19).''.

SEC. 4. FINANCIAL LITERACY AMONG MUTUAL FUND INVESTORS STUDY.

(a) IN GENERAL.—The Securities and Exchange Commission shall conduct a study to identify—

(1) the existing level of financial literacy among investors that purchase shares of open-end companies, as that term is defined under section 5 of the Investment Company Act of 1940, that are registered under section 8 of that Act;

(2) the most useful and understandable relevant information that investors need to make sound financial decisions prior to purchasing such shares;

(3) methods to increase the transparency of expenses and potential conflicts of interest in transactions involving the shares of open-end companies;

(4) the existing private and public efforts to educate investors; and

(5) a strategy to increase the financial literacy of investors that results in a positive change in investor behavior.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 5. STUDY REGARDING MUTUAL FUND ADVERTISING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

(1) existing and proposed regulatory requirements for open-end investment company advertisements;

(2) current marketing practices for the sale of open-end investment company shares, including the use of unsustainable past performance data, funds that have merged, and incubator funds;

(3) the impact of such advertising on consumers;

(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 6. POINT-OF-SALE DISCLOSURE.

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended by section 2, is amended by adding at the end the following:

''(14) BROKER DISCLOSURES IN MUTUAL FUND TRANSACTIONS.—

''(A) IN GENERAL.—Each broker shall disclose in writing to each person that purchases the shares of an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8)—

''(i) the source and amount, in dollars and as a percentage of assets, of any compensation received or to be received by the broker in connection with such transaction from any sources;

''(ii) the amount, in dollars and as a percentage of assets, of compensation received in connection with transactions in shares of other investment company shares offered by the broker, if materially different from the amount under (i);

''(iii) comparative information that shows the average amount received by brokers in connection with comparable transactions, as determined by the Commission; and

''(iv) such other information as the Commission determines appropriate.

''(B) REVENUE SHARING.—The term 'compensation' under subparagraph (A) shall include any direct or indirect payment made by an investment adviser (or any affiliate of an investment adviser) to a broker or dealer for the purpose of promoting the sales of securities of a registered investment company.

''(C) TIMING OF DISCLOSURE.—The disclosures required under subparagraph (A) shall be made to permit the person purchasing the shares to evaluate such disclosures before deciding to engage in the transaction.

''(D) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of a registered investment company; or

''(ii) any other filing of a registered investment company with the Commission.

''(E) COMMISSION AUTHORITY.—The Commission shall promulgate such final rules as are necessary to carry out this paragraph not later than 1 year after the date of enactment of the Mutual Fund Transparency Act of 2005.''.

(b) NATIONAL SECURITIES ASSOCIATION REQUIREMENTS.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) is amended by adding at the end the following:

''(n) NATIONAL SECURITIES ASSOCIATION REQUIREMENTS.—Each national securities association registered pursuant to this section shall issue such rules as necessary not later than 1 year after the date of enactment of the Mutual Fund Transparency Act of 2005 to require that a broker that provides individualized investment advice to a person shall—

''(1) have a fiduciary duty to that person;

''(2) act solely in the best interests of that person; and

''(3) fully disclose all potential conflicts of interest and other information that is material to the relationship to that person prior to the time that the investment advice is first provided to the person and at least annually thereafter.''.

Mr. AKAKA. Mr. President, I ask unanimous consent that a letter in support of my legislation from Fund Democracy, the Consumer Federation of America, Consumer Action, and Consumers Union, as well as a letter of support from AARP, be printed in the RECORD.

The PRESIDENT pro tempore. Without objection, it is so ordered.

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

MAY 16, 2005.

Hon. DANIEL K. AKAKA,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR AKAKA: We are writing to express our enthusiastic support for your Mutual Fund Transparency Act of 2005. Your bill will benefit fund shareholders in three significant respects. First, it will strengthen the independence of fund board to help ensure that the gross abuses of trust committed by fund managers in connection with the recent mutual fund scandal will not be repeated. Second, the bill will require that fund shareholders be provided with full and understandable disclosure of brokers' fees and conflicts of interest, and that when brokers provide individualized investment advice they will be held to the same fiduciary standards to which all other investment advisers are held. Third, the bill will promote competition through increased price transparency, and thereby improve services and reduce costs for the almost 100 million Americans who have entrusted their financial security to mutual funds.

FUND GOVERNANCE

The mutual scandal that erupted in September 2003 and continues to be litigated to this day revealed ''a serious breakdown in management controls in more than just a few mutual fund complexes.'' As noted by the Securities and Exchange Commission:

''The breakdown in fund management and compliance controls evidenced by our enforcement cases raises troubling questions about the ability of many fund boards, as presently constituted, to effectively oversee the management of funds. The failure of a board to play its proper role can result, in addition to serious compliance breakdowns, in excessive fees and brokerage commissions, less than forthright disclosure, mispricing of securities, and inferior investment performance.''

The Act directly addresses the governance weaknesses revealed by the scandal by strengthening the independence of fund directors. It plugs loopholes that have allowed former executives of fund managers and other fund service providers, among others, to qualify as ''independent'' directors when their independence is clearly compromised by their former positions. The Act also ensures that the board's agenda will be set by an independent chairman, and not by the CEO of the fund's manager, as is common practice, and that independent directors will control board matters and the evaluation of independent nominees. The Act's requirement that independent directors seek shareholder approval at least every 5 years will enhance the accountability of independent directors to the shareholders whose interests they are supposed to serve.

Although the SEC recently adopted rules requiring independent fund chairmen and a 75% independent board, these rules will not prevent fund managers from terminating independent chairmen or reducing independent representation on the board to the statutory minimum of 40%. The SEC's rules apply only when the funds choose to rely on certain exemptive rules. If there is a conflict between the fund's independent directors and the fund manager, the fund manager can simply stop relying on the rules and seek to install its own executives in a majority of board positions. This is precisely what Don Yacktman did when the independent directors of his funds opposed him, and it will undoubtedly be repeated the next time that there is a similar confrontation. More importantly, independent directors know from the Yacktman experience that the protection given them by the SEC is limited, and they therefore will be less likely to stand up for shareholders than if—as you have proposed—the SEC's requirements were codified.

FIDUCIARY DUTIES AND FULL DISCLOSURE FOR ALL INVESTMENT ADVISERS

Recent regulatory investigations and enforcement actions have uncovered persistent and widespread sales abuses by brokers. Regulators have found that brokers have systematically overcharged investors for commissions, routinely made improper recommendations of B shares, accepted undisclosed directed brokerage payments in return for distribution services, and received revenue sharing payments that create incentives to favor funds that pay the highest compensation rather than funds that are the best investment option for their clients.

Last fall, the Commission promised that it would address the problems that have so long plagued brokers' sales practices, but the Commission's efforts have fallen far short of the mark. Its recent proposals fail to require full disclosure of brokers' compensation,

much less the disclosure of information that would enable investors to fully evaluate their brokers' conflicts of interests. The new disclosure requirements that you have proposed will ensure that brokers' conflicts of interest will be fully transparent to investors. Investors will be able to view the amount the broker is being paid for the fund being recommended compared with the (often lesser) amount the broker would receive for selling a different fund, which cannot help but direct investors' attention to the conflict of interest created by differential compensation structures. We especially applaud your proposal to ensure that all broker compensation, including revenue sharing payments, is disclosed in the point-of-sale document, which ensures that disclosure rules will not create an incentive for brokers to favor revenue sharing as a means of avoiding disclosure.

Remarkably, in the wake of a longstanding pattern of brokers' sales abuses, the Commission has recently repealed Congress's narrow exemption from advisory regulation for brokers who provide only ''solely incidental'' advice. The Commission's strained interpretation of ''solely incidental'' advice to include any advice provided ''in connection with and reasonably related to a broker's brokerage services''[3] has effectively stripped advisory clients of the protections of an entire statutory regime solely on the ground that the investment advice happens to be provided by a broker. The Commission's position flatly contradicts the text and purpose of the Investment Advisers Act, which, as the Supreme Court has stated: ''reflects a congressional recognition ''of 'the delicate fiduciary nature of an investment advisory relationship,' as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.''

Your proposal restores crucial components of Congress's carefully constructed regulatory scheme for the distinct and complementary regulation of brokerage and advisory services. It properly recognizes that a ''fiduciary, which Congress recognized the investment adviser to be,'' is also what consumers expect an investment adviser to be, as is generally the case when professional services are provided on a personalized basis. The Act also recognizes the importance of''expos[ing] all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested'' by requiring full disclosure of such conflicts of interests and other material information at the time that the prospective client is deciding whether to enter into the relationship.

FEE DISCLOSURE AND PRICE COMPETITION

Your fee disclosure provisions will do double duty, by addressing conflicts of interest and brokers' sales abuses while also promoting competition, thereby improving services and driving down expenses. Requiring brokers to disclose the amount of differential payments and average fees for comparable transactions will provide the kind of price transparency that is a necessary predicate for price competition and the efficient operation of free markets. In addition, the requirement that funds disclose the amount of commissions they pay will ensure that the fund expense ratio includes all of the costs of the fund's operations and enable investors to make more informed investment decisions. The best regulator of fees is the market, but the market cannot operate efficiently when brokers and funds are permitted to hide the actual cost of the services they provide.

FINANCIAL LITERACY AND FUND ADVERTISEMENTS

Finally, we strongly agree that there is a need to further study of financial literacy, including especially information that fund investors need to make informed investment decisions and methods to increase the transparency of fees and potential conflicts of interest. Your proposed study of mutual fund advertisements is also timely, as the regulation of fund ads continues to permit misleading touting of out sized short-term performance and other abuses.

Mutual funds are Americans' most important lifeline to retirement security. The regulation of mutual funds, however, has not kept pace with their enormous growth. We applaud your continuing efforts to enhance investor protection, promote vigorous market competition and create wealth for America's mutual fund investors through effective disclosure and truly independent board oversight.

Respectfully submitted,

MERCER BULLARD,
Founder and President, Fund Democracy, Inc.
BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.
KEN MCELDOWNEY,
Executive Director, Consumer Action.
SALLY GREENBERG,
Senior Counsel, Consumers Union.

AARP,
E STREET, NW,
Washington, DC, May 13, 2005.

Hon. DANIEL K. AKAKA,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR AKAKA: AARP supports your continuing efforts to expand investor awareness of mutual fund costs, to promote fund competition by making those costs transparent and comparable, and to improve the independent oversight and governance functions of fund boards of directors. Building on legislation that you introduced in November of 2003, which AARP supported, we are also pleased to support the updated and upgraded legislation that you are introducing today, the ''Mutual Fund Transparency Act of 2005.''

We believe that there exists a growing need for legislative action that clarifies, reinforces, strengthens, and secures the corrective rule-making efforts undertaken by the U.S. Securities and Exchange Commission (SEC) that were—in part—stimulated by your earlier legislative proposal. We look forward to working with you on these issues that are critical to the economic security of millions of Americans—particularly those of or near retirement age. If you have any questions, please do not hesitate to call me, or have your staff call Roy Green of our Federal Affairs Department.

Sincerely,

DAVID CERTNER,
Director, Federal Affairs.

By Mr. HATCH:

S. 1039. A bill to amend the Internal Revenue Code of 1986 to modify the treatment of depreciation of refinery property; to the Committee on Finance.

Mr. HATCH. Mr. President, I rise today to introduce the Gas Price Reduction through Increased Refining Capacity Act of 2005, S. 1039.

This bill provides tax incentives to encourage increases in oil refining capacity in the United States. By increasing domestic refining capacity, we will increase supply of refined oil products, thus decreasing the price of gasoline at the pump.

This bill is the second in a package of three bills I am proposing to promote long-term solutions to our Nation's energy needs.

Our nation needs clean, affordable sources of energy, and we should increase our energy security by focusing on those sources of energy that can be developed domestically.

Two weeks ago I introduced the CLEAR ACT, which provides market solutions to promote breakthroughs in the use of alternative fuels and technologies in our transportation sector.

The third bill, which I will introduce in the near future, will focus on increasing U.S. energy independence through the development of our nation's gigantic, untapped oil shale and tar sands reserves.

Both Republicans and Democrats recognize that increasing our domestic supplies of crude oil is not an effective solution unless we can increase our capacity to refine it. This is the genesis of the Gas Price Reduction Through Increased Refining Capacity Act.

Refining capacity in the United States cannot keep up with demand. In fact, there has not been a new refinery built in the United States since the 1976.

But that is only part of the story.

The fact is that the economics of refining are so tough that we have actually lost about 200 refineries since the last one was built. So now, our powerful Nation is down to only 149 overworked refineries.

Technological improvements at existing refineries have brought some increase to capacity, but these increases have fallen far short of demand. As a result, we now meet the gap in demand by importing more and more oil products that have already been refined, which makes us all the more dependent on foreign suppliers.

Every day, I hear from Utahns who are burdened by rapidly rising gas prices. Let me quote from just a portion of a letter from one of my constituents, Richard Decker of West Jordan, Utah:

''I am interested in knowing the progress or status of planning to protect Americans from the continually rising oil prices . . . I am just a normal guy with a tiny family. Given salaries, inflation, lack of fuel efficient automobiles at a decent price, I worry if I and others will be able to make a decent life here—not just in Utah but in America. Personally, I wish I had the option of a hydrogen-powered vehicle that would completely rid us of the dependence on foreign oil imports.

However, this isn't likely soon, so can we work on the gas prices? Do you have any suggestions? . . . Keep up the good work. Best Regards, Richard Decker''

My answer to Richard is that we hear him, and we are trying to respond.

We have a serious problem.

It is easy to point a finger at the energy companies for high gas prices, but the reality is that government rules and regulations combined with a complete lack of a national energy policy and unfriendly tax rules have kept our refining capacity far short of our need. There are no silver bullets that will bring price relief immediately, but we can act now to start meeting this need.

Last year, Secretary of Energy Spencer Abraham asked the National Petroleum Council to make recommendations to improve our oil supply and to increase our nation's oil refining capacity. Among the Council's recommendations was a call to adjust the depreciation schedule for new refining equipment from 10 years to five years to make refineries consistent with other manufacturers in the U.S.

I believe that the 10-year depreciation schedule is unwarranted, and that it has contributed to a hostile economic environment for refineries. Leveling the playing field on depreciation is long overdue, and the Gas Price Reduction Act would accomplish that goal.

But it is also important that we see this new refining capacity as soon as possible. So, I have added a provision in my bill aimed at pushing refining companies to act quickly to increase capacity. For refiners that can commit to starting construction on new refining equipment before 2007 and have new facilities built by 2011, the bill would allow a complete write-off for their new equipment in the first year. This is a powerful incentive, and I believe it will capture the attention of decision-makers in the refining industry.

Again, the goal of the Gas Price Reduction Act is to get results as soon as possible, and I believe my legislation will make a difference. This bill will not bring immediate relief at the pump. But it will begin to put the brakes on escalating prices in the next few years and increase our nation's control over our energy future.

There are other good reasons to support this bill.

As part of my three-pronged approach to meeting our Nation's energy needs, it is in accord with the President's energy plan.

It does not provide a windfall to oil companies but puts refineries on an equal footing with other industries in the manufacturing sector, which already have a five-year depreciation.

It is important to note that S. 1039 does nothing to weaken our strong environmental laws and regulations; rather, it would lead to cleaner technologies as refineries upgrade equipment.

This bill is also an essential part of our strategy to increase domestic production. When we begin to realize the potential of our vast oil shale and tar sands reserves we will need domestic refining capacity to handle any increase in domestic crude oil production.

Finally, I must point out that, in the long run, this bill will not have any cost, since refineries are allowed to change the timing of the depreciation of their equipment, but not the amount.

I urge my colleagues in the Senate to join me in this important effort to increase our refining capacity, lower gas prices for our citizens, and provide for our Nation's security through increased energy independence.

By Mrs. FEINSTEIN:

S. 1040. A bill to amend the Truth in Lending Act to provide for enhanced disclosure under an open end credit plan; to the Committee on Banking, Housing, and Urban Affairs.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Credit Card Minimum Payment Notification Act.

Today, 144 million Americans utilize credit cards and charge more debt on those cards than ever before. In 1990, Americans charged $338 billion on credit cards. By 2003, that number had risen to $1.5 trillion.

Many Americans now own multiple credit cards. In 2003, 841 million bank-issued credit cards were in circulation in the U.S. That number becomes nearly 1.4 billion credit cards, when cards issued by stores and oil companies are factored in. That's an average of 5 credit cards per person.

The proliferation of credit cards can be traced, in part, to a dramatic increase in credit card solicitation. In 1993, credit card companies sent 1.52 billion solicitations to American homes; in 2001, they sent over 5 billion.

As one would expect, the increase in credit cards has also yielded an increase in credit card debt. Individuals get 6, 7, or 8 different credit cards, pay only the minimum payment required, and many end up drowning in debt. That happens in case after case.

Since 1990, the debt that Americans carry on credit cards has more than tripled, going from about $238 billion in 1990 to $755 billion in 2004.

As a result, the average American household now has about $7,300 of credit card debt.

As has been discussed much in this Congress, the number of personal bankruptcies has doubled since 1990. Many of these personal bankruptcies are people who utilize credit cards. These cards are enormously attractive. However, these individual credit card holders receive no information on the impact of compounding interest. They pay just the minimum payment. They pay it for 1 year, 2 years—they make additional purchases, they get another card, and another, and another.

Unfortunately, these individuals making the minimum payment are witnessing the ugly side of the ''Miracle of Compound Interest.'' After 2 or 3 years, many find that the interest on the debt is such that they can never repay these cards, and do not know what to do about it.

Statistics vary about the number of individuals who make only the minimum payments. One study determined that 35 million pay only the minimum on their credit cards. In a recent poll, 40 percent of respondents said that they pay the minimum or slightly more. What is certain is that many Americans pay only the minimum, and that paying only the minimum has harsh financial consequences.

I suspect that most people would be surprised to know how I much interest can pile up when paying the minimum. Take the average household, with $7,300 of credit card debt, and the average credit card interest rate, which in April, before the most recent Federal Reserve Board increase of the prime rate, was 16.75 percent. If only the 2 percent minimum payment is made, it will take them 44 years and $23,373.90 to pay off the card. And that is if the family doesn't spend another cent on their credit cards—an unlikely assumption. In other words, the family will need to pay over $16,000 in interest to repay just $7,300 of principal.

For individuals or families with more than average debt, the pitfalls are even greater. $20,000 of credit card debt at the average 16.75 percent interest rate will take 58 years and $65,415.28 to pay off if only the minimum payments are made.

And 16.25 is percent only the average interest rate. The prime rate, despite recent increases, remains relatively low—at 6 percent. However, interest rates around 20 percent are not uncommon. In fact, among the 10 banks that are the largest issuers of credit cards, the top interest rates on credit cards are between 23 and 31 percent—and that does not factor in various penalties and fees. When penalty interest rates are factored in, the highest rates are 41 percent. In 1990, the highest interest rate—even with penalties, was 22 percent, a little more than half of what they are today.

Even if we assume only a 20 percent interest rate, a family that has the average debt of $7,300 at a 20 percent interest rate and makes the minimum payments will need an incredible 76 years and $41,884 to pay off that initial $7,300 of debt. That's $34,584 in interest payments—more than 4 times the original debt. And these examples are far from extreme.

Moreover, these are not merely statistics, but are reflective of very real situations for many people. On March 6, the Washington Post ran a headline story on its front page, entitled ''Credit Card Penalties, Fees Bury Debtors.'' I would recommend this article to my colleagues, because it illustrates part of the problem—that credit card companies, aggressively marketing their products, end up charging outrageous interest and fees to their customers. I ask unanimous consent that the article be included in the RECORD. The article highlighted the following stories:

Ohio resident, Ruth Owens tried for 6 years to pay off a $1,900 balance on her

Discover card, sending the credit company a total of $3,492 in monthly payments from 1997 to 2003. Yet her balance grew to $5,564.28.

Virginia resident Josephine McCarthy's Providian Visa bill increased to $5,357 in 2 years, even though McCarthy has used the card for only $218.16 in purchases and has made monthly payments totaling $3,058.

Special-education teacher Fatemeh Hosseini, from my state of California, worked a second job to keep up with the $2,000 in monthly payments she collectively sent to five banks to try to pay $25,000 in credit card debt. Even though she had not used the cards to buy anything more, her debt had nearly doubled to $49,574 by the time she filed for bankruptcy last June.

Unfortunately, these stories are not unique.

Part of the problem goes back to changes made in the credit card industry. For a long time, most banks required their customers to pay 5 percent of their credit card balance every month. That was before Andrew Kahr, a credit card industry consultant, got involved. Mr. Kahr realized that if customers were able to pay less, they would borrow more, and he convinced his clients that they should reduce the minimum payment to just 2 percent.

The PBS program ''Frontline'', ran a program in November of last year titled ''The Secret History of the Credit Card'' that examined the rapid growth of the credit card industry and included an interview with Mr. Kahr.

Mr. Kahr's innovation has been a windfall for the credit card industry. If consumers are paying a lower percentage of their balance as the minimum payment, the credit card companies will make more money over time. In fact, many in the industry refer to individuals who pay their credit card bills in full as ''deadbeats'', because they are less profitable than individuals who carry large balances, who are known as ''revolvers.''

And Mr. Kahr's own research showed that just making the minimum payment eased consumers' anxiety about carrying large amounts of credit card debt—they believe they are still being financially prudent.

The bill I am proposing speaks directly to those types of consumers. There will always be people who cannot afford to pay more than their minimum payments. But, there are also a large number of consumers who can afford to pay more but feel comfortable paying the minimum payment because they don't realize the consequences of doing so.

Now I am certainly not trying to demonize credit cards or the credit card industry. Credit cards are an important part of everyday life. However, I do think that people should understand the dangers of paying only their monthly minimums. In this way individuals will be able to act responsibly.

It's not necessarily that people don't understand the basics of interest. Most of us just don't realize how fast it compounds or how important it is to do the math to find out what it means to pay a minimum requirement.

The bottom line is that for many consumers, the 2 percent minimum payment is a financial trap.

The Credit Card Minimum Payment Notification Act is designed to ensure that people are not caught in this trap through lack of information. The bill tracks the language of the amendment originally proposed to the Bankruptcy bill that was co-sponsored by Senator KYL, Senator BROWNBACK, and myself.

Let me tell you exactly what this bill would do. It would require credit card companies to add two items to each consumer's monthly credit card statement: 1. A notice warning credit card holders that making only the minimum payment each month will increase the interest they pay and the amount of time it takes to repay their debt; and 2. Examples of the amount of time and money required to repay a credit card debt if only minimum payments are made; OR if the consumer makes only minimum payments for six-consecutive months, the amount of time and money required to repay the individual's specific credit card debt, under the terms of their credit card agreement.

The bill would also require that a toll free number be included on statements that consumers can call to get an estimate of the time and money required to repay their balance, if only minimum payments are made.

And, if the consumer makes only minimum payments for six consecutive months, they will receive a toll free number to an accredited credit counseling service.

The disclosure requirements in this bill would only apply if the I consumer has a minimum payment that is less than 10 percent of the debt on the credit card, or if their balance is greater than $500. Otherwise, none of these disclosures would be required on their statement.

The language of this bill comes from a California law, the ''California Credit Card Payment Warning Act,'' passed in 2001. Unfortunately, in 2002, this California law was struck down in U.S. District Court as being preempted by the 1968 Truth in Lending Act. The Truth in Lending Act was enacted in part because Congress found that, ''The informed use of credit results from an awareness of the cost of thereof by consumers.'' Consequently, this bill would amend the Truth in Lending Act, and would also further its core purpose.

These disclosures allow consumers to know exactly what it means for them to carry a balance and only make minimum payments, so they can make informed decisions on credit card use and repayment.

The disclosure required by this bill is straightforward how much it will cost to pay off the debt if only minimum payments are made, and how long it will take to do it. As for expense, my staff tells me that on the website Cardweb.com, there is a free interest calculator that does these calculations in under a second. Moreover, I am told that banks make these calculations internally to determine credit risk. The expense would be minimal.

Percentage rates and balances are constantly changing and each month, the credit card companies are able to assess the minimum payment, late fees, over-the-limit fees and finance charges for millions of accounts.

If the credit card companies can put in their bills what the minimum monthly payment is, they can certainly figure out how to disclose to their customers how much it might cost them if they stick to that minimum payment.

The credit card industry is the most profitable sector of banking, and last year it made $30 billion in profits. MBNA's profits alone last year were one-and-a-half times that of McDonald's. Citibank was more profitable than Microsoft and Walmart. I don't think they should have any trouble implementing the requirements of this bill.

I believe that this is extraordinarily important and that it will minimize bankruptcies. With companies charging very substantial interest rates, they have an obligation to let the credit card holder know what those minimum payments really mean. I have people close to me I have watched, with 6 or 7 credit cards, and it is impossible for them, over the next 10 or 15 years, to pay off the debt if they continue making just minimum payments.

We now have a bankruptcy bill that has passed into law. I continue to believe that a bill requiring a limited but meaningful disclosure by credit cards companies is a necessary accompaniment. I think you will have people who are more cautious, which I believe is good for the bankruptcy courts in terms of reducing their caseloads, and also good for American consumers.

The credit card debt problem facing our Nation is significant. I believe that this bill is an important step in providing individuals with the information needed to act responsibly, and it does so with a minimal burden on the industry.

I urge my colleagues to support this legislation.

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

[From the Washington Post, Mar. 6, 2005]

CREDIT CARD PENALTIES, FEES BURY DEBTORS; SENATE NEARS ACTION ON BANKRUPTCY CURBS

(By Kathleen Day and Caroline E. Mayer)

For more than two years, special-education teacher Fatemeh Hosseini worked a second job to keep up with the $2,000 in monthly payments she collectively sent to five banks to try to pay $25,000 in credit card debt.

Even though she had not used the cards to buy anything more, her debt had nearly doubled to $49,574 by the time the Sunnyvale,

Calif., resident filed for bankruptcy last June. That is because Hosseini's payments sometimes were tardy, triggering late fees ranging from $25 to $50 and doubling interest rates to nearly 30 percent. When the additional costs pushed her balance over her credit limit, the credit card companies added more penalties.

''I was really trying hard to make minimum payments,'' said Hosseini, whose financial problems began in the late 1990s when her husband left her and their three children. ''All of my salary was going to the credit card companies, but there was no change in the balances because of that interest and those penalties.''

Punitive charges—penalty fees and sharply higher interest rates after a payment is late—compound the problems of many financially strapped consumers, sometimes making it impossible for them to dig their way out of debt and pushing them into bankruptcy.

The Senate is to vote as soon as this week on a bill that would make it harder for individuals to wipe out debt through bankruptcy. The Senate last week voted down several amendments intended to curb excessive fees and other practices that critics of the industry say are abusive. House leaders say they will act soon after that, and President Bush has said he supports the bill.

Bankruptcy experts say that too often, by the time an individual has filed for bankruptcy or is hauled into court by creditors, he or she has repaid an amount equal to their original credit card debt plus double-digit interest, but still owes hundreds or thousands of dollars because of penalties.

''How is it that the person who wants to do right ends up so worse off?'' Cleveland Municipal Judge Robert J. Triozzi said last fall when he ruled against Discover in the company's breach-of-contract suit against another struggling credit cardholder, Ruth M. Owens.

Owens tried for six years to payoff a $1,900 balance on her Discover card, sending the credit company a total of $3,492 in monthly payments from 1997 to 2003. Yet her balance grew to $5,564.28, even though, like Hosseini, she never used the card to buy anything more. Of that total, over-limit penalty fees alone were $1,158.

Triozzi denied Discover's claim, calling its attempt to collect more money from Owens ''unconscionable.''

The bankruptcy measure now being debated in Congress has been sought for nearly eight years by the credit card industry. Twice in that time, versions of it have passed both the House and Senate. Once, President Bill Clinton refused to sign it, saying it was unfair, and once the House reversed its vote after Democrats attached an amendment that would prevent individuals such as antiabortion protesters from using bankruptcy as a shield against court-imposed fines.

Credit card companies and most congressional Republicans say current law needs to be changed to prevent abuse and make more people repay at least part of their debt. Consumer-advocacy groups and many Democrats say people who seek bankruptcy protection do so mostly because they have fallen on hard times through illness, divorce or job loss. They also argue that current law has strong provisions that judges can use to weed out those who abuse the system.

Opponents also argue that the legislation is unfair because it ignores loopholes that would allow rich debtors to shield millions of dollars during bankruptcy through expensive homes and complex trusts, while ignoring the need for more disclosure to cardholders about rates and fees and curbs on what they say is irresponsible behavior by the credit card industry. The Republican majority, along with a few Democrats, has voted down dozens of proposed amendments to the bill, including one that would make it easier for the elderly to protect their homes in bankruptcy and another that would require credit card companies to tell customers how much extra interest they would pay over time by making only minimum payments.

No one knows how many consumers get caught in the spiral of ''negative amoritization,'' which is what regulators call it when a consumer makes payments but balances continue to grow because of penalty costs. The problem is widespread enough to worry federal bank regulators, who say nearly all major credit card issuers engage in the practice.

Two years ago regulators adopted a policy that will require credit card companies to set monthly minimum payments high enough to cover penalties and interest and lower some of the customer's original debt, known as principal, so that if a consumer makes no new charges and makes monthly minimum payments, his or her balance will begin to decline.

Banks agreed to the new rules after, in the words of one top federal regulator, ''some arm-twisting.'' But bank executives persuaded regulators to allow the higher minimum payments to be phased in over several years, through 2006, arguing that many customers are so much in debt that even slight increases too soon could push many into financial disaster.

Credit card companies declined to comment on specific cases or customers for this article, but banking industry officials, speaking generally, said there is a good reason for the fees they charge.

''It's to encourage people to pay their bills the way they said they would in their contract, to encourage good financial management,'' said Nessa Feddis, senior federal counsel for the American Bankers Association. ''There has to be some onus on the cardholder, some responsibility to manage their finances.''

High fees ''may be extreme cases, but they are not the trend, not the norm,'' Feddis said.

''Banks are pretty flexible,'' she said. ''If you are a good customer and have an occasional mishap, they'll waive the fees, because there's so much competition and it's too easy to go someplace else.'' Banks are also willing to work out settlements with people in financial difficulty, she said, because ''there are still a lot of options even for people who've been in trouble.''

Many bankruptcy lawyers disagree. James S.K. ''Ike'' Shulman, Hosseini's lawyer, said credit card companies hounded her and did not live up to several promises to work with her to cut mounting fees.

Regulators say it is appropriate for lenders to charge higher-risk debtors a higher interest rate, but that negative amortization and other practices go too far, posing risks to the banking system by threatening borrowers' ability to repay their debts and by being unfair to individuals.

U.S. Bankruptcy Judge David H. Adams of Norfolk, who is also the president of the National Conference of Bankruptcy Judges, said many debtors who get in over their heads ''are spending money, buying things they shouldn't be buying.'' Even so, he said, ''once you add all these fees on, the amount of principal being paid is negligible. The fees and interest and other charges are so high, they may never be able to pay it off.''

Judges say there is little they can do by the time cases get to bankruptcy court. Under the law, ''the credit card company is legally entitled to collect every dollar without a distinction'' whether the balance is from fees, interest or principal, said retired U.S. bankruptcy judge Ronald Barliant, who presided in Chicago. The only question for the courts is whether the debt is accurate, judges and lawyers say.

John Rao, staff attorney of the National Consumer Law Center, one of many consumer groups fighting the bankruptcy bill, says the plight consumers face was illustrated last year in a bankruptcy case filed in Northern Virginia.

Manassas resident Josephine McCarthy's Providian Visa bill increased to $5,357 from $4,888 in two years, even though McCarthy has used the card for only $218.16 in purchases and has made monthly payments totaling $3,058. Those payments, noted U.S. Bankruptcy Judge Stephen S. Mitchell in Alexandria, all went to ''pay finance charges (at a whopping 29.99%), late charges, over-limit fees, bad check fees and phone payment fees.'' Mitchell allowed the claim ''because the debtor admitted owing it.'' McCarthy, through her lawyer, declined to be interviewed.

Alan Elias, a Providian Financial Corp. spokesman, said: 'When consumers sign up for a credit card, they should understand that it's a loan, no different than their mortgage payment or their car payment, and it needs to be repaid. And just like a mortgage payment and a car payment, if you are late you are assessed a fee.'' The 29.99 percent interest rate, he said, is the default rate charged to consumers ''who don't meet their obligation to pay their bills on time'' and is clearly disclosed on account applications.

Feddis, of the banker's association, said the nature of debt means that interest will often end up being more than the original principal. ''Anytime you have a loan that's going to extend for any period of time, the interest is going to accumulate. Look at a 30–year-mortgage. The interest is much, much more than the principal.''

Samuel J. Gerdano, executive director of the American Bankruptcy Institute, a nonpartisan research group, said that focusing on late fees is ''refusing to look at the elephant in the room, and that's the massive levels of consumer debt which is not being paid. People are living right up to the edge,'' failing to save so when they lose a second job or overtime, face medical expense or their family breaks up, they have no money to cope.

''Late fees aren't the cause of debt,'' he said.

Credit card use continues to grow, with an average of 6.3 bank credit cards and 6.3 store credit cards for every household, according to Cardweb.com Inc., which monitors the industry. Fifteen years ago, the averages were 3.4 bank credit cards and 4.1 retail credit cards per household.

Despite, or perhaps because of, the large increase in cards, there is a ''fee feeding frenzy,'' among credit card issuers, said Robert McKinley, Cardweb's president and chief executive. ''The whole mentality has really changed over the last several years,'' with the industry imposing fees and increasing interest rates if a single payment is late.

Penalty interest rates usually are about 30 percent, with some as high as 40 percent, while late fees now often are $39 a month, and over-limit fees, about $35, McKinley said. ''If you drag that out for a year, it could be very damaging,'' he said. ''Late and over-limit fees alone can easily rack up $900 in fees, and a 30 percent interest rate on a $3,000 balance can add another $1 ,000, so you could go from $2,000 to $5,000 in just one year if you fail to make payments.''

According to R.K. Hammer Investment Bankers, a California credit card consulting firm, banks collected $14.8 billion in penalty fees last year, or 10.9 percent of revenue, up

from $10.7 billion, or 9 percent of revenue, in 2002, the first year the firm began to track penalty fees.

The way the fees are now imposed, ''people would be better off if they stopped paying'' once they get in over their heads, said T. Bentley Leonard, a North Carolina bankruptcy attorney. Once you stop paying, creditors write off the debt and sell it to a debt collector. ''They may harass you, but your balance doesn't keep rising. That's the irony.''

By Mrs. FEINSTEIN:

S. 1041. A bill for the relief of Alfredo Plascencia Lopez and Maria Del Refugio Plascencia; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am offering today private relief legislation to provide lawful permanent residence status to Alfredo Plascencia Lopez and his wife, Maria del Refugio Plascencia, Mexican nationals living in San Bruno, CA.

I have decided to offer legislation on their behalf because I believe that, without it, this hardworking couple and their four United States citizen children would endure an immense and unfair hardship. Indeed, without this legislation, this family may not remain a family for much longer.

In the seventeen years that the Plascencias have been here, they have worked to adjust their status through the appropriate legal channels, only to have their efforts thwarted by inattentive legal counsel.

Repeatedly, the Plascencia's lawyer refused to return their calls or otherwise communicate with them in any way, thereby leaving them in the dark. He also failed to forward crucial immigration documents, or even notify the Plascencias that he had them. Because of the poor representation they received, Mr. and Mrs. Plascencia only became aware that they had been ordered to leave the country fifteen days prior to their deportation. Although the family was stunned and devastated by this discovery, they acted quickly to fire their attorney for gross incompetence, secure competent counsel, and file the appropriate paperwork to delay their deportation to determine if any other legal action could be taken.

For several reasons, it would be tragic for this family to be removed from the United States.

First, since arriving in the United States in 1988, Mr. and Mrs. Plascencia have proven themselves to be a responsible and civic-minded couple who share our American values of hard work, dedication to family and devotion to community.

Second, Mr. Plascencia has been gainfully employed at Vince's Shellfish for the past 13 years, where his dedication and willingness to learn have propelled him from part-time work to a managerial position. He now oversees the market's entire packing operation and several employees. The President of Vince's Shellfish, in one of the several dozen letters I have received in support of Mr. Plascencia, referred to him as ''a valuable and respected employee'' who ''handles himself in a very professional manner'' and serves as ''a role model'' to other employees. Others who have written to me praising Mr. Plascencia's job performance have referred to him as ''gifted,'' ''trusted,'' ''honest'' and ''reliable.''

Third, like her husband, Mrs. Plascencia has distinguished herself as a medical assistant at a Kaiser Permanente hospital in the Bay Area. Not satisfied with working as a maid at a local hotel, Mrs. Plascencia went to school, earned her high school equivalency degree, improved her skills and became a medical assistant.

For four years, Mrs. Plascencia was working in Kaiser Permanente's Oncology Department, where she attended to cancer patients. Her colleagues, many of whom have written to me in support of her, commend her ''unending enthusiasm'' and have described her work as ''responsible,'' ''efficient,'' and ''compassionate.'' In fact, Kaiser Permanente's Director of Internal Medicine, Nurse Rose Carino, wrote to say that Mrs. Plascencia is ''an asset to the community and exemplifies the virtues we Americans extol: hardworking, devoted to her family, trustworthy and loyal, [and] involved in her community. She and her family are a solid example of the type of immigrant that America should welcome wholeheartedly.'' Nurse Carino went on to write that Mrs. Plascencia is ''an excellent employee and role model for her colleagues. She works in a very demanding unit, Oncology, and is valued and depended on by the physicians she works with.'' The physicians themselves confirm this. For example, Dr. Laurie Weisberg, the Chief of Oncology at Kaiser Permanente, writes that Mrs. Plascencia ''is truly an asset to our unit and is one of the main reasons that it functions effectively.''

Together, Mr. and Mrs. Plascencia have used their professional successes to realize many of the goals dreamed of by all Americans. They saved up and bought a home. They own a car. They have good health care benefits and they each have begun saving for retirement. They want to send their children to college and give them an even better life.

This private relief bill is important because it would preserve these achievements and ensure that Mr. and Mrs. Plascencia will be able to make substantive contributions to the community in the future. It is important, also, because of the positive impact it will have on the couple's children, each of whom is a United States citizen and each of whom is well on their way to becoming productive members of the Bay Area community.

Christina, 13, is the Plascencia's oldest child, and an honor student with a 3.0 grade-point average at Parkside Intermediate School in San Bruno.

Erika, 9, and Alfredo, Jr., 7, are enrolled at Belle Air Elementary, where they have worked hard at their studies and received praise and good grades from their teachers. In fact, last year, the principal of Erika's school recognized her as the ''Most Artistic'' student in her class. Recently, Erika's teacher, Mrs. Nascon, remarked on a report card, ''Erika is a bright spot in my classroom.''

The Plascencia's youngest child is 2-year-old Daisy.

Removing Mr. and Mrs. Plascencia from the United States would be most tragic for their children. Children who were born in the United States and who through no fault of their own have been thrust into a situation that has the potential to alter their lives dramatically.

It would be especially tragic for the Plascencia's older children—Christina, Erika and Alfredo—to have to leave the United States. They are old enough to understand that they are leaving their schools, their teachers, their friends and their home. They would leave everything that is familiar to them. Their parents would find themselves in Mexico without a job and without a house. The children would have to acclimate to a different culture, language and way of life.

The only other option would be for Mr. and Mrs. Plascencia to leave their children here with relatives. This separation is a choice which no parents should have to make.

Many of the words I have used to describe Mr. and Mrs. Plascencia are not my own. They are the words of the Americans who live and work with the Plascencias day in and day out and who find them to embody the American spirit. I have sponsored this private relief bill, and ask my colleagues to support it, because I believe that this is a spirit that we must nurture wherever we can find it. Forcing the Plascencias to leave the United States would extinguish that spirit.

I ask unanimous consent that the text of the private relief bill and the numerous letters of support my office has received from members of the San Bruno community be the printed in the RECORD.

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

S. 1041

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

SECTION 1. PERMANENT RESIDENT STATUS FOR ALFREDO PLASCENCIA LOPEZ AND MARIA DEL REFUGIO PLASCENCIA.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Alfredo Plascencia Lopez and Maria Del Refugio Plascencia shall each be eligible for the issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for 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 Alfredo Plascencia Lopez and Maria Del Refugio Plascencia enter the United States before the filing deadline specified in subsection (c),

Alfredo Plascencia Lopez and Maria Del Refugio Plascencia shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act 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 immigrant visas or the application for adjustment of status are 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 immigrant visas or permanent residence to Alfredo Plascencia Lopez and Maria Del Refugio Plascencia, the Secretary of State shall instruct the proper officer to reduce by 2, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the aliens' birth 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 the aliens' birth under section 202(e) of that Act.

VINCE'S SHELLFISH CO., INC.,
San Bruno, CA, January 12, 2005.

Sen. DIANNE FEINSTEIN,
U.S. Senate, San Francisco, CA.

DEAR SENATOR DIANNE FEINSTEIN: I am writing on behalf of Maria and Alfredo Plascencia from San Bruno, California. Alfredo has worked for me at Vince's Shellfish Co. Inc. for the past 13 years. Alfredo is well respected here at Vinces. Alfredo is a very reliable, dependable individual who has worked his way up and is now a foreman who is in charge of our packing department. Alfredo is responsible for 10 employees at this time.

On a personal basis, Alfredo is a fine father. He is trying desperately to keep his family together. It has been a 15-year struggle for Mr. and Mrs. Plascencia to create a better life in America for their four U.S. born children. If Mr. and Mrs. Plascencia were to face deportation it would be devastating for his four children.

At this time I support the private bill that is to be presented before the Senate at the end of this month. The Plascencia family will greatly benefit from its passing.

Sincerely,

CHRISTOPHER N. SVEDISC,
President.

THE PERMANENTE
MEDICAL GROUP, INC.,
South San Francisco, CA., January 13, 2005.

Re Alfredo Plascencia Lopez and Maria del Refugio Plascencia

Sen. DIANNE FEINSTEIN,
San Francisco, CA.

DEAR SENATOR: We are writing to you in representation of the Oncology department staff at Kaiser Permanente So. San Francisco. We are shocked to hear the events regarding Maria and Alfredo's United States residency status and we are convinced that it could not be due to any omissions on their part. We have the pleasure and good fortune of working with Maria for over four years and she has always distinguished herself for her intelligence, and good judgment. She is truly an asset to our unit and is one of the main reasons that it functions effectively and to the betterment of our patients. This letter is a plea to ask you to reconsider the deportation of this young couple. Their four children, who are all United States citizens, do not need to suffer this ordeal, which seems to be a horrible nightmare. They deserve to stay in America, as these are the kind of citizens that we should welcome with open arms. Maria and Alfredo save and spend their money wisely. They have been able to save enough to buy a home for their family in our community. We can't even imagine their loss, as well as ours, if Maria and Alfredo are required to leave the United States. They both love our country and they support it with their heart and soul.

Maria seems to have an unending energy and enthusiasm volunteering numerous hours at her church, the community, as well as working full time in a fast paced medical environment, caring for her four children and attending college to continue her education to become a registered nurse. Maria and Alfredo are raising four exceptional children who are excelling in school and extracurricular activities. It would cause an immeasurable hardship on these children if their parents are not allowed to stay in the United States. Therefore, we ask you please allow them to stay so that their children can continue with their education and their lives. The effect on their children would be emotionally and mentally severe and it would seem unfair to all to allow this situation to happen to people who deserve to be in this country.

We will like for our plea to be heard by the members of the Senate and for them to consider the acceptance of the private bill on behalf of this family. Please consider the high regard that Maria and Alfredo have earned with their fellow workers when making the determination regarding of their residency status.

Sincerely,

Laurie Weisberg, M.D. Chief of Oncology, Edmond Schmulbach, M.D. Oncology Specialist, William Huang, M.D. Oncology Specialist, Kelly Sutter, RNNP Oncology, Jodie L. Beyer, pharm. D. Oncology pharmacist, Cynthia Galicia, RN Oncology Infusion Dept., Clarita Difuntorum, RN, Oncology Infusion Dept., Gail Walker, RN Oncology Infusion Dept., Fran Luna, RN Oncology Infusion Dept., Marita Tumaneng, RN Oncology Infusion Dept., Barbara Modica, MA Oncology Dept., Jenifer Ogolin, MA Oncology Dept., Kathie Ankers, MA Gastroenterology Dept., and Tracy Thurman, MA Gastroenterology Dept.

SAN BRUNO PARK SCHOOL DISTRICT,
BELLE AIR SCHOOL,
San Bruno, CA, January 14, 2005.

DEAR SENATOR FEINSTEIN: I am writing in behalf of the Plascencia Family. I have known this family for over ten years as the Principal of Belle Air Elementary School. I have the utmost respect for the parents and their family values. The children are wonderful. They are well taken care of and are well adjusted. I am so worried that if they are separated from their parents the affect of the separation will cause reprievable damage to their well being. I have personally counseled the children during the drama of the possible deportment of their parents. I saw the deep sadness and worry that the stress caused. I know that parents wanted a better life for their children and have worked very hard to actualize that. To take the parents and or move this family would be tragic. There are so many undeserving people who will stay in the United States that should leave and be sent back to their countries. But this family is not one. They are a picture of the American dream. They work hard, support their family, church and community. Their children have grown to be proud American citizens. The oldest daughter Christy is an honor student and a cheerleader at Parkside Middle School and a graduate of Belle Air. Christy's brother and sister, Alfredo and Erica, are both on our school's student council. They too, are very bright students.

Please do not let an injustice of deportment happen to this family. Please assist them and keep them a family unit. We have so many children hurt and scared already in the world. Please do not add these children and this family to the numbers. This family and these children are what help keep American values and traditions alive. I came from an immigrant family and have made it my mission to give back to others by working in education and that is why I am personally writing this letter because I know what family, hard work, and love can do to produce productive adults and citizens.

Please find it in your heart, to help this family.

If you need to speak with me personally feel free to contact me.

Sincerely,

ANGELA M. ADDIEGO,
Belle Air School, Principal.

MENSAJEROS DE CRISTO, COMUNIDAD
DE ORACIÓN Y EVANGELIZACIÓN,
ALL SOULS PARISH,
San Francisco, CA, January 13, 2005.

Sen. DIANNE FEINSTIEN,
San Francisco, CA.

This letter represents the community and is in regards to the situation of Maria and Alfredo Plascencia. We would like to make you aware of a few facts and information that may have possible bearing on Mr. and Mrs. Placencia's situation.

They have both been productive and valued members, of long standing, of our community and in our church.

Maria and Alfredo have been active members of All Souls Parish since 1997, Where they are currently serving as counselor of Mensajeros de Cristo. They have shown high moral standard through the years.

They are well thought of and respected by the congregation.

Please take this information into consideration when evaluating their status of Staying in this country.

Should you need any additional information, please do not hesitate to contact us.

Sincerely,

HUGO LARA,
Mensajeros de Cristo, Coordinator.

JANUARY 13, 2005.

Senator DIANNE FEINSTEIN,
San Francisco, CA.

This letter is just to let you know that, I know Maria and Alfredo Plascencia since March 1999. When he joined the Charismatic Renewal of the Archdioceses of San Francisco, though the prayer group Mensajeros de Cristo from the parish of All Souls in South San Francisco.

Maria and Alfredo are people with great moral principles, good citizens, and good examples of their community. They are very active members of the above prayer group.

If you have any questions or concerns please feel free to contact me.

Sincerely yours,

ISABEL TOVAR,
Hispanic Director, Charismatic Renewal, Archdioceses of San Francisco.

CITY OF SAN BRUNO,
January 12, 2005.

Senator DIANNE FEINSTEIN,
San Francisco, CA.

HON. SENATOR FEINSTEIN: We are writing to you regarding, Alfredo and Maria Plascencia, citizens of the City of San Bruno, who are about to be deported in the very near future.

Mr. and Mrs. Plascencia, in the sixteen years they have resided in this country and

raised their children, have proven to be hard working and law-abiding people trying to provide a better place for their family. While we are certainly aware of the laws of this country we believe that this is a time when we should do everything possible to allow legal residency so this family can stay in this country.

We urge you to afford the Plascencia family whatever consideration possible.

Sincerely yours,

LARRY FRANZELA,
Mayor.
JIM RUANE,
Vice Mayor.
CHRIS PALLAS,
Councilmember.
IRENE O'CONNELL,
Councilmember.
KEN IBARRA,
Councilmember.

ST. BRUNO'S CHURCH,
San Bruno, CA, January 13, 2005.

Sen. DIANE FEINSTEIN,
U.S. Senate,
Washington, DC.

The purpose of this letter is to present my observations on Alfredo Placencia Lopez and Maria Placencia's character and work ethic. I first came to know them in our Church when they came to worship on a Sunday. This happened around January 1998.

And so far, the last 7 years both Alfredo and Maria have been two of our outstanding parishioners at St. Bruno's Church. They come to Sunday Mass and worship, and have been involved in many ministries and services here in our Church at St. Bruno's. Alfredo has been especially a minister of hospitality, always welcoming people to church and participation in the life of the community, helping to provide a spirit of acceptance and concern among our people and providing bread and refreshments for some gatherings. Alfredo has also reached out to the homeless for whom we have a shelter in our Parish and especially providing them with food. Maria has been especially involved as a teacher, faithfully giving to our children the fundamentals of our Faith, of the Gospel and of a Christian moral life. She has founded a Children's Choir and leads them with our Special Music for Sunday worship. They have four children all of whom have been baptized at St. Bruno's Church and come to our School of Religion and our Church.

Alfredo and Maria have been most generous with their time, their talents and their money, sharing all these with the members of our Church Community. They have also frequently donated food to the Church and to the Pastor. I have found them to be really good Christian people, most generous, considerate, kind, honest and reliable. If they would have to leave the United States, it will be most difficult for them and for their children who have been growing in a Christian environment and are doing so well; it would be a tremendous loss. We too here in our Church would find it difficult without them. For they are a great asset to this country and to our Church and to many people.

We appreciate whatever you can do for them to help them get their legal papers of residence in the United States.

Thank you very much.

Sincerely yours,

RENÉ GOMEZ,
Pastor of St. Bruno's Church.

SAN BRUNO, CA,
January 13, 2005.

Re Alfredo Placencia Lopez and/or Maria Del Refugio Placencia.

TO WHOM IT MAY CONCERN: My name is Elisa Alvarez. Alfredo and Maria Placencia and Family are my neighbors and friends, I have known them since 1999. They live on 3rd Ave. and I live on 4th. Since I have known them I saw that they are a very close and spiritual family. I enjoyed their company because they have been a great example of how a close family they are and how spiritual they are. They are great parents and they love and are very close with the rest of their family. They always go every where together as a family, you never see them without each other. They always get together with the rest of their relatives they are very close family. They invited me one night to a prayer group and even offered to pick me up and take me and bring me home when I was going through some hard times. This experience was so moving, and it help me and my whole life changed from that day on. I have became very spiritual thanks to the Alfredo and Maria. I met them at St. Bruno's Church. They always do voluntary work at the church they both do so much for our parish and are always willing to help anyone who needs it.

If Alfredo and Maria are separated from their children and family it will be very hard for their children to be with out their parents or I know if they all go to Mexico it will be very hard for this family to survive there. I hope you can help them by not separating this family, they are hard workers and I'm sure they would never be a burden for this country. This is a very nice young family, you don't see families like this one these days. I hope everything can be done so Alfredo and Maria can get their permanent residency and their lives can get back to normal and . they don't have to suffer from this bad roller coaster.

Thank you for your attention to this letter.

Sincerely,

ELISA ALVAREZ.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 142—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES TRADE REPRESENTATIVE SHOULD BRING A CASE BEFORE THE WORLD TRADE ORGANIZATION REGARDING THE VIOLATIONS OF INTELLECTUAL PROPERTY RIGHTS BY THE PEOPLE'S REPUBLIC OF CHINA

Mr. DORGAN (for himself and Mr. GRAHAM) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 142

Whereas at the Joint Commission on Commerce and Trade (JCCT) meeting in April 2004, the People's Republic of China committed to undertake a significant reduction of infringements on intellectual property rights;

Whereas on April 29, 2005, the United States Trade Representative concluded that, "China has not resolved critical deficiencies in (intellectual property rights) protection and enforcement and, as a result, infringements remain at epidemic levels";

Whereas the United States Trade Representative found that "China's inadequate intellectual property rights enforcement is resulting in infringement levels at 90 percent or above for virtually every form of intellectual property,";

Whereas United States Trade Representative further concluded that "there has not been a significant reduction in (intellectual property rights) infringements throughout China," notwithstanding China's commitment in April 2004 to achieve such a reduction;

Whereas, according to the United States Chamber of Commerce, China's violations of intellectual property rights are costing United States industry an estimated $200,000,000,000 per year; and

Whereas the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (described in section 101(d)(15) of the Uruguay Round Agreements Act) is intended to provide a mechanism for the enforcement of intellectual property rights: Now, therefore, be it

Resolved, That it is the sense of the Senate that the United States Trade Representative should immediately initiate a case against the People's Republic of China through the World Trade Organization dispute settlement process.

SENATE RESOLUTION 143—TO AUTHORIZE THE SENATE LEGAL COUNSEL TO APPEAR IN LEGAL PROCEEDINGS IN THE NAME OF THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS IN CONNECTION WITH ITS INVESTIGATION INTO THE UNITED NATIONS' "OIL-FOR-FOOD" PROGRAMME

Mr. FRIST (for himself and Mr. REID) submitted the following resolution; which was considered and agreed to:

S. RES. 143

Whereas, the Permanent Subcommittee on Investigations is conducting an inquiry into the United Nations' "Oil-for-Food" Programme;

Whereas, the Subcommittee has need to obtain access to evidence from an individual formerly associated with the Independent Inquiry Committee, a committee formed by the United Nations to investigate claims relating to the Programme;

Whereas, in the course of the Subcommittee's efforts to obtain access to such evidence, legal issues may arise requiring the Subcommittee to appear in the courts of the United States;

Whereas, pursuant to sections 703(c), 706(a), and 713(a) of the Ethics in Government Act of 1978, 2 U.S.C. 288b(c), 288e(a), and 288l(a), the Senate may direct its Counsel to appear as amicus curiae or to intervene in the name of a subcommittee of the Senate in any legal action in which the powers and responsibilities of Congress under the Constitution are placed in issue: Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized, when directed by the Permanent Subcommittee on Investigations, or by the Chairman and Ranking Minority Member, acting jointly, to appear in the name of the Subcommittee as amicus curiae, intervenor, applicant or respondent in United Nations v. Robert Parton or any related action or proceeding.

SENATE CONCURRENT RESOLUTION 33—EXPRESSING THE SENSE OF THE CONGRESS REGARDING THE POLICY OF THE UNITED STATES AT THE 57TH ANNUAL MEETING OF THE INTERNATIONAL WHALING COMMISSION

Ms. SNOWE (for herself, Ms. CANTWELL, Mr. LEVIN, Mr. KENNEDY, Mr.