brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

AMENDMENT NO. 1622

At the request of Mr. Reed, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of amendment No. 1642 proposed to S. 397, a bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOND:
S. 1553. A bill to amend the Internal Revenue Code of 1986 to enhance tax incentives for small property and casualty insurance companies; to continue providing critical insurance coverage for specific groups, and to make amendments to the Federal Inland Waterways Trust Fund.

Mr. BOND. Mr. President, I rise today to introduce a bill that addresses an inequity and helps clarify a tax provision for American mutual property and casualty insurance companies under the Internal Revenue Code Sections 501(c)(15) and 831(b).

The legislation I am introducing today addresses both of these concerns. This legislation would add definitional language for “gross receipts” clarifying that gross receipts means premiums, plus gross investment income. In addition, the proposal simply increases the Income Election Limit from $1.2 million to $1.971 million, and indexes it annually for inflation.

With this legislation, we have an opportunity to infuse some fairness into our tax code and at the same time help the thousands of farmers, homeowners, and entrepreneurs covered by small P&C insurers in this country. I ask my colleagues to support this legislation, and I look forward to working with the Finance Committee to see it enacted into law.

I ask unanimous consent that the text of the bill be printed in the Record as follows:

S. 1553

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

SECTION 1. CLARIFICATION OF DEFINITION OF GROSS RECEIPTS FOR PURPOSES OF DETERMINING TAX EXEMPTION OF SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) In General.—Section 501(c)(15) of the Internal Revenue Code is amended by adding at the end the following:

“(D) For purposes of subparagraph (A), the term ‘gross receipts’ means the gross amount received during the taxable year from the items described in section 831(b) and (premiums (including deposits and assessments)).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 2. INCREASE IN LIMITATION FOR ALTERNATIVE TAX LIABILITY FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) In General.—Section 831(b)(2)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

“(i) $1,971,000, multiplied by

the lowest multiple of $1,000.’’

(b) Inflation Adjustment.—Paragraph (2) of section 831(b) of such Code is amended by adding at the end the following new subparagraph:

“(C) Inflation Adjustment.—In the case of any taxable year beginning in a calendar year after 2004, the amount set forth in subparagraph (A) shall be increased by an amount equal to—

(i) $1,971,000, multiplied by

the cost-of-living adjustment determined under section 1(a)(3) for such calendar year by substituting ‘calendar year 2005’ for ‘calendar year 1992’ in subparagraph (B) thereof. If the amount as adjusted under the preceding sentence is not a multiple of $1,000, such amount shall be rounded to the nearest multiple of $1,000.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.
know, the Seniors Farmers' Market Nutrition Program (SFMNP) was created through the Farm Security and Rural Investment Act of 2002 (P.L. 107–171). It is a program that provides grants to States, territories, and Native American tribal governments to help low-income seniors purchase fresh, locally grown fruits, vegetables, and herbs from farmers' markets, roadside stands, and community supported agricultural programs. The purpose of the program is to make healthy foods more available to low-income seniors while simultaneously assisting domestic farmers.

Scientific research increasingly confirms that what we eat may have a significant impact on our health, quality of life, and longevity. In the United States, high intakes of fat and saturated fat, and low intakes of calcium and fiber-containing foods such as whole grains, vegetables and fruits are associated with several chronic health conditions that can impair the quality of life and hasten mortality.

According to the United States Department of Agriculture, research continues to find strong links between eating lots of fruits and vegetables and preventing a number of diseases, such as cancer, heart disease, and stroke. Eating more fruits and vegetables may also play a role in preventing other diseases such as high blood pressure and osteoporosis, to name just two.

Two studies, one here in the U.S. and the other in the Netherlands, found eating a diet rich in vitamins E and C may help to lower your risk of Alzheimer's disease. Both found that eating foods high in vitamin E may reduce your risk of Alzheimer's, a degenerative brain disease. The U.S. study found that people with the highest vitamin E intake in their diet had a 70 percent lower frequency of Alzheimer's than those with the lowest amounts of vitamin E in their diet.

Vitamin A, which is found in many different fruits and vegetables, is very important to the health of your eyes. Other nutrients in produce, such as carotenoids, also play a role in maintaining healthy eyes and good vision. An example of a carotenoid is lutein. Lutein is found in dark green leafy vegetables like spinach.

While the health benefits of eating fruits and vegetables may seem obvious, studies have shown that women and 19 percent of men eat the recommended 5 servings of fruits and vegetables every day.

The U.S. Department of Agriculture (USDA) Food and Nutrition Service administers the Seniors Farmers' Market Nutrition Program; and in fiscal year 2003, approximately 800,000 people received SFMNP coupons throughout the country. The food available for sale came from an estimated 14,000 farmers at more than 2,000 farmers' markets and stands, as well as 1,800 roadside stands and 200 community supported agricultural programs. In fiscal year 2005, 46 States, U.S. Territories, and federally recognized Indian tribal governments will operate the SFMNP. Close to 900,000 eligible seniors are expected to receive benefits that can be used at over 4,000 markets, roadside stands and community supported agricultural programs during the 2005 harvest season.

In Washington State, the Seniors Farmers' Market Nutrition Program has been incredibly successful in ensuring access to healthy foods for seniors, as well as bolstering the state's farmers' markets. In fact, according to the Washington State University Nutrition Education program, in Washington State, the Seniors Farmers' Market Nutrition Program reaches about 8,000 lower-income older adults each year in 35 of my State's 39 counties. In 2003, 472 farms, 40 farmers markets, four roadside stands and one community supported agriculture program participated in the SFMNP and the participants in Washington state purchased approximately 90 tons of fresh produce while learning about the role of nutrition in their health in preventing chronic disease.

The bill that I am introducing today aims to better address the growing demand and need for the Seniors Farmers' Market Nutrition Program in four ways.

First, the bill would increase funding from $15 million to $25 million for the program in fiscal year 2005 and continue to expand the program by $25 million each year, until the program's expiration in 2007, meaning that the SFMNP would be funded at not less than $50 million in fiscal year 2006, and at not less than $75 million in fiscal year 2007.

Second, the bill specifies that funds made available through this act will remain available to the program until exhausted. As such, any remaining funds from one fiscal year will roll over into the subsequent fiscal year budget for the SFMNP.

Third, provisions in the bill support administrative costs. Not more than 10 percent of available funds in a fiscal year can be used to cover the operating expenses of the SFMNP.

Finally, the bill grants authority to the Secretary of Agriculture to expand the list of foods eligible for purchase to include minimally processed foods, such as honey, as deemed appropriate.

We should not forget, too, that an obvious and unarguable benefit of the program is the inherent ability of the SFMNP program to strengthen local economies and communities while at the same time works to preserve farmland and open spaces. I sincerely appreciate that the Washington Association of Area Agencies on Aging, as well as the Washington State Farmers Market Association, are supporting this legislation.

The legislation I am introducing today will go a long way in expanding the availability of funding available for the Seniors Farmers' Market Nutrition Program. We all know that value and importance that individuals of all ages eat their requisite servings of vegetables and fruit each day. Such foods are high in fiber and lower the risk of chronic diseases such as heart disease and type 2 diabetes, in addition to colon and rectal cancer, high blood pressure, and obesity. However, food costs are often a significant barrier to developing and maintaining a healthy lifestyle. In establishing the Senior Farmers' Market Nutrition Program in 2002, Congress recognized that it is important to provide a means for low-income seniors and our nation's seniors, and I urge my colleagues to join me in cosponsoring 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. 1555

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

SECTION 1. SENIORS FARMERS' MARKET NUTRITION PROGRAM.

(a) FUNDING.—Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by striking subsection (a) and inserting the following:

“(a) ESTABLISHMENT.—The Secretary of Agriculture shall use funds available to the Commodity Credit Corporation to carry out and expand a seniors farmers' market nutrition program in the following amounts, to remain available until expended:

(1) For fiscal year 2005, not less than $25,000,000.

(2) For fiscal year 2006, not less than $50,000,000.

(3) For fiscal year 2007, not less than $75,000,000.

(b) PURPOSES.—Section 4402(b)(1) of that Act (7 U.S.C. 3007(b)(1)) is amended—

(1) by striking “unprocessed” and inserting “minimally processed”; and

(2) by striking “and herbs” and inserting “herbs, and other locally-produced farm products, as the Secretary considers appropriate”.

(c) ADMINISTRATIVE COSTS: UNEXPENDED FUNDS.—Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by adding at the end the following:

“(d) ADMINISTRATIVE COSTS.—Not more than 10 percent of the funds made available for a fiscal year under subsection (a) may be used to pay the administrative costs of carrying out this section.”

By Mr. WYDEN:

S. 1556. A bill to amend the Specialty Crops Competitiveness Act of 2004 to increase the authorization of appropriated funds for grants to support the competitiveness of specialty crops, to amend the Agricultural Risk Protection Act of 2000 to improve the program of value-added agricultural product market development grants by routing funds through State departments of agriculture to amend the Federal Crop Insurance Act to require a nationwide expansion of the adjusted gross revenue insurance program, and
The bill also authorizes funds for farmers and processors to become "certified." Certification comes in many forms like "Good Agricultural Practices," "Good Handling Practices," or "Organic." Often getting certified is necessary before farmers or processors can effectively market products whether in local grocery stores or to foreign countries. Certified products often fetch premium prices. To encourage farmers to get these certifications and increase their market share this legislation would have the USDA reimburse half the cost of the certifications.

Last, this legislation improves opportunities for specialty crop farmers to improve their crop exports, increase marketing opportunities in emerging markets for the value-added agricultural product to assist the producer of the value-added agricultural product to assist the producer of the value-added agricultural product.

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

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "Specialty Crop and Value-Added Agriculture Promotion Act".

SEC. 2. DEFINITION OF SPECIALTY CROP.

Section 3(1) of the Specialty Crops Competitiveness Act of 2000 (Public 106-86; 7 U.S.C. 1621 note) is amended—

(A) by inserting in paragraph (1) the following: "(i) the term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands.".

(B) by inserting in subsection (b) the following:

(1) GRANTEE STRATEGIES.—A recipient of a competitive grant shall—

(A) develop a business plan for viable marketing opportunities for the value-added agricultural product; or

(ii) in developing strategies that are intended to create marketing opportunities for the producer; and

(B) to an eligible agricultural group, farmer or rancher cooperative, or majority-controlled processor-based business venture (as determined by the State) to assist the entity—

(i) in developing a business plan for viable marketing opportunities for the value-added agricultural product; or

(ii) in developing strategies that are intended to create marketing opportunities in emerging markets for the value-added agricultural product.

(2) AMOUNT OF COMPETITIVE GRANT.—

(A) IN GENERAL.—The total amount provided under paragraph (3) to a grant recipient shall not exceed $500,000.

(B) MAJORITY-CONTROLLED PROCESSOR-BASED BUSINESS VENTURE.—In the case of a State program providing grants to any of the following:

(i) a business venture for which a majority (as determined by the State) of the board of directors or the management of the business venture is composed of producers, processors, or agents respecting the business venture that may be engaged in the business venture; or

(ii) the business venture has engaged in the business venture;

(3) GRANTEE STRATEGIES.—A recipient of a grant under paragraph (3) shall use the grant funds—

(A) to develop a business plan for viable marketing opportunities for a value-added agricultural product; or

(B) to provide financial assistance to an eligible entity to assist in creating marketing opportunities for a value-added agricultural product.

SEC. 3. PERMANENT AUTHORIZATION OF APPROPRIATIONS FOR STATE SPECIALTY CROP PROGRAMS.

Section 101 of the Specialty Crops Competitiveness Act of 2000 (Public 106-86; 7 U.S.C. 1621 note) is amended by striking subsection (a) and inserting the following:

(i) AUTHORIZATION OF APPROPRIATIONS.—

For fiscal year 2006 and every fiscal year thereafter, there is authorized to be appropriated to the Secretary of Agriculture for grants for the study and development of specialty crops:

(a) IN GENERAL.—Section 231 of the Agriculture Risk Protection Act of 2000 (Public Law 106-224; 7 U.S.C. 1621 note) is amended by striking subsection (b) and inserting the following:

(1) GRANT PROGRAM.—

(A) TO A GRANTEE.—(B) GRANT PROGRAM.—

(C) USE OF GRANT FUNDS BY STATES.—A State shall use the grant funds to award grants—

(1) to a State for a fiscal year under subparagraph (A) shall not exceed $3,000,000.

(2) USE OF GRANT FUNDS BY STATES.—A State shall use the grant funds to award competitive grants—

(1) to an eligible independent producer (as determined by the State) of a value-added agricultural product to assist the producer; and
"(6) REPORTS.—Not later than 90 days after the end of a fiscal year for which funds are provided to a State under paragraph (2), the State shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report describing how the funds were used.

(7) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2002.

SEC. 5. REIMBURSEMENT OF CERTIFICATION COSTS.

(a) INCENTIVE PROGRAM.—

(1) IN GENERAL.—The Secretary of Agriculture shall establish an incentive program to encourage the independent third-party certification of agricultural producers and processors for product qualities, production practices, or other product or process attributes that improve the marketability of or value of an agricultural commodity.

(2) INCLUSIONS.—The Secretary shall include independent third-party certification systems, including programs such as Good Agricultural, Good Handling practices, and Good Manufacturing Practices programs.

(b) STANDARDS.—The Secretary shall set standards regarding the types of certification programs, the conditions for certification, and the requirements for continued certification.

(c) LIMITATION ON AMOUNT OF REIMBURSEMENT.—The Secretary of Agriculture shall not reimburse more than 50 percent of the qualified expenses incurred by the producer or processor related to certification.

SEC. 6. NATIONWIDE EXPANSION OF RISK MANAGEMENT AGENCY ADJUSTED GROSS REVENUE INSURANCE PROGRAM.

(a) EXPANSION.—Section 523(e) of the Federal Crop Insurance Act (7 U.S.C. 1523(c)) is amended by adding at the end the following:

"(3) PERMANENT NATIONWIDE OPERATION.—

"(A) IN GENERAL.—Effective beginning with the 2006 reinsurance year, the Corporation shall carry out the adjusted gross revenue insurance program for all States.

(b) PRIORITY IN ALLOCATION.—In selecting States to carry out the program, the Secretary shall give priority to States that produce large quantities of specialty crops.

(c) Certification.—The Secretary participating in the program authorized by this subsection shall develop and implement a certification program to ensure the availability of specialty crops.

SEC. 7. EXPANSION OF FRUIT AND VEGETABLE PROGRAM IN SCHOOL LUNCH PROGRAMS.

The Richard B. Russell National School Lunch Act (42 U.S.C. 1755) is amended—

(1) in section 18 (42 U.S.C. 1769), by striking subsection (g); and

(2) by inserting after section 18 the following:

"SEC. 19. FRUIT AND VEGETABLE PROGRAM.

"(a) IN GENERAL.—The Secretary shall make available in not more than 10 schools in each State, and in elementary and secondary schools on 1 Indian reservation, free fresh and dried fruits and vegetables and frozen vegetable products to children throughout the school day in 1 or more areas designated by the school.

"(b) PRIORITY IN ALLOCATION.—In selecting States to carry out the program, the Secretary shall give priority to States that produce large quantities of specialty crops.

"(c) LIMITATION ON AMOUNT OF REIMBURSEMENT.—There is authorized to be appropriated for fiscal years 2006 and 2007 a total of $20,000,000 for each fiscal year.

By Ms. COLLINS (for herself and Mr. LIEBERMAN):

S. 1558. A bill to amend the Ethics in Government Act of 1978 to prohibit family members of filers from disclosing sensitive information in a public filing and extend the public filing requirement for 5 years; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President, I rise today to introduce legislation that would preserve an important means of protecting the safety of those who work in the Federal judiciary system. This legislation, which I am pleased to sponsor with my distinguished colleague, Senator LIEBERMAN, pertains to information on Federal financial disclosures.

This legislation would amend the Ethics in Government Act to extend for five years the authority to redact financial disclosure statements filed by judges, and other officers and employ-ees of the Federal judiciary. The redaction occurs after a finding is made by the Judicial Conference, in consultation with the United States Marshals Service, that revealing personal and sensitive information could endanger the filer. In such cases, this legislation would allow redactions of information that could put the filer or his or her family at risk.

In 1988, Congress recognized the potential for threats against individual judges as a result of authoriz-ing the judicial branch to redact, when circumstances require, certain information from individual financial disclosure reports before they are released to the public. The redaction provision was set to expire at the end of 2001, but Congress extended the redaction authority for an additional four years. The current authority expires at the end of this year.

The five-year extension in this legislation will help Congress ensure that the Judicial Conference redacts the authority in a manner that achieves the appropriate balance between safety measures and public disclosure. Given recent incidents of violence against judges and their families, the inclusion of threats to the filer's family is necessary to provide security and peace of mind.

The record shows that this redaction authority has been used sparingly and wisely. In its report to the Committee on Homeland Security and Governmental Affairs, the Judicial Conference reported that, of the 3,942 Federal judiciary employees required to file financial disclosure reports in 2004, only 177
reports were partially redacted before release.

For 40 judges, the approved redaction requests were based on specific threats such as high-threat trials, ongoing protective investigations, identify theft, and continuing threats from criminal defense attorneys. For 137 judges, the approved redaction requests were based on general threats and the disclosure of a family member’s unsecured place of work, the judge’s regular presence at an unsecured location, or information that would reveal the residence of the judge or members of the judge’s family.

In response to a request by our Committee, the Government Accountability Office reviewed redaction requests from 1999 through 2002. GAO found that less than 10 percent of annual judicial filings requested any type of redaction.

In each instance where a report was redacted in its entirety, the determination made was that the judge who filed the report was subject to a specific, active security threat. Redactions of information identifying assets, gifts, reimbursements or creditor listings were allowed in only a very limited number of cases, only until the specifically identified threat ceased. According to the Judicial Conference, the most frequent redaction requests now relate to information that would reveal where a judge or a member of the judge’s family can regularly be found.

A partial judicial redaction requires a safe and secure environment. This legislation will help ensure the judicial branch has procedures in place to protect personal information while ensuring the public retains its right to access the annual disclosure reports.

I look forward to working with my colleagues on this important legislation.

By Mr. SANTORUM:

S. 1560. A bill to establish a Congressional Commission on Expanding Social Service Delivery Options; to the Committee on Health, Education, Labor, and Pensions.

Mr. SANTORUM. Mr. President, I rise to introduce a bill that would establish a Congressional Commission to explore the expansion of social services delivery options.

In the past during my time in the United States Senate as it relates to the Congressional Record—Senate

The bipartisan bicameral Congressional Commission would undertake a thoughtful review of existing federal social service programs and make recommendations for program areas that would be appropriate for beneficiary-selected or beneficiary-directed options. The goal is to expand opportunities to improve the quality of life for those in need, but have not always been able to receive any help from the government. This bill provides an opportunity to level the playing field for these providers by determining where we can engage the community and allow beneficiares to be full participants in choosing their provider. The current discrimination against faith-based programs at the federal level prevents our communities from using all our resources to improve and even save lives. And for those are most in need, we need to use every resource we have.

Expanding social service delivery options should be a simple matter of common sense. The formula is simple: faith-based and community organizations have to deliver aid, the more options there are many times the best-source to improve and even save lives. And for those are most in need, we need to use every resource we have.

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By Mr. ENZI (for himself, Mr. JOHNSON, Mr. ALLARD, and Mr. HAGEL).  

S. 1562. A bill to provide for the merger of the bank and savings association deposit insurance funds, to modernize and improve the safety and fairness of the Federal deposit insurance system, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. ENZI. Mr. President, today I rise to introduce the Safe and Fair Deposit Insurance Act of 2005. As many of us in this chamber know, reforming the operations of the Federal Deposit Insurance Corporation has been an important but unfinished matter before the United States Senate for many years. Today, we will take a step closer to a solution by introducing this Act.

Wyoming is a rural State with small banks and lenders. Many people in Wyoming have limited choices when they need to safely deposit their hard-earned money. They usually depend on their local bank or credit union. These financial institutions in turn depend on deposit insurance to make sure that this money will be available in the case of a crisis. This is a relationship based on trust. Customers trust their bank, and banks trust their insurance.

This relationship is even more important in places like Gillette, Wyoming. As Mayor of Gillette, I saw many coal miners retire with considerable pensions that reflected years of hard work in the mines around Gillette. However, these miners received their pensions as a lump sum. Their retirement accounts are often much higher than the maximum insurance levels under current law. In fact, more and more retirement accounts are reaching this upper limit, not just in Wyoming. Workers need a safe place to save their money and build retirement security. That place should be in a local financial institution that invests in its community and economy.

The current FDIC system is in desperate need of improvement. Over the past twenty years, deposit insurance has been eroded by inflation and growing deposit insurance premiums. As inflationary pressures continue, deposit insurance premiums have sprung up, they have enjoyed this insurance without paying their fair share. This relationship is even more important in places like Gillette, Wyoming. Workers need a safe place to save their money and build retirement security. That place should be in a local financial institution that invests in its community and economy.

This bill will make changes to the deposit insurance system that will make it more flexible and quicker to adapt to the unexpected. It will apply an index that will protect coverage levels against future inflation, and raise retirement coverage to protect earnings made over a lifetime of hard work. It will also make premium charges fair by recognizing those institutions who have paid into the system and those who have not. Finally, it will merge the two primary deposit insurance funds. This consolidation will make the system stronger and prevent costly premium charges that will likely be assessed if the system is not reformed.

I would like to thank Senator JOHNSON and Chairman SHELBY for their cooperation and hard work. I urge my colleagues to support this bill and look forward to its passage with all deliberate speed.

By Mr. DEWARNE (for himself and Mrs. LINCOLN): S. 1563. A bill to amend title XIX of the Social Security Act to protect and
strengthen the safety net of children's public health coverage by extending the enhanced Federal matching rate under the State children's health insurance program to children covered by Medicaid at State option and by encouraging innovations in children's enrollment systems, to advance quality and performance in children's public health insurance programs, to provide payments for children's hospitals to reward quality and performance, and for other purposes; to the Committee on Finance.

Mr. DEWINE. Mr. President, today I join my friend and colleague from Arkansas, Senator LINCOLN, to introduce a bill called the Advancing Better Coverage and Care for Children's Health Act or the ABCs for Children's Health Act. It is an important piece of legislation designed to help improve the access and quality of children's health services around the country, including children's hospitals.

Children's Hospitals provide care to hundreds of thousands of children across our Nation every day. They care for the great majority of children who are seriously ill. They are the mainstay of the health care safety net for low-income children.

But, a child who lacks health insurance is still much less likely to have timely access to the medical care they need. That's not right. Two-thirds of the more than 9 million uninsured children in the United States are eligible for Medicaid or SCHIP. They should be enrolled in public coverage when eligible, and we should streamline the eligibility process to make it easier, not more difficult.

President Bush said in 2004, "America's children must also have a healthy start in life . . . we will lead an aggressive effort to enroll millions of poor children who are eligible but not signed up for the government's health insurance. we will not allow a lack of attention or information to stand between these children and the health care they need." The bill we are introducing today would do just that.

Our bill would provide the higher SCHIP federal match to states for children covered by Medicaid at the State option so that States think twice before removing children from the Medicaid rolls during State budget cuts. It would also provide a 90/10 administrative and enrollment systems for children, including technology for "express lane" enrollment, the determination of eligibility for Medicaid and SCHIP when a child applies for another public benefit, like the school lunch program, and the allowance for enrollment by mail or phone.

We also need to do more to help strengthen the system of care to ensure quality and accountability for children's coverage. Our bill would do this by supporting innovative ideas at children's hospitals. Quality improvement funding shouldn't just be available to adult hospitals. Children's hospitals have good ideas, too, and we should support those good ideas.

Cincinnati Children's Hospital in Ohio is leading the way in improving care for children with diabetes, cystic fibrosis and other chronic conditions. The hospital is deeply committed to patient safety, in the effectiveness of care, in operational efficiency, in patient access to care, and in more patient-centered care. These are the reforms we need to pursue for children in Medicaid and for all children. Our bill would help Cincinnati Children's Hospital and our other Children's Hospitals speed their journey to better, safer, more cost-effective care.

A hospital that makes the effort to improve care and outcomes for children should be compensated for that effort. We need to reward quality and performance for children in Medicaid, like we are doing for seniors in Medicare. The development of hospital quality measures, testing their ability to gauge effective care and rewarding performance, should apply to all hospitals, including children's hospitals.

That's why we have worked with the National Association of Children's Hospitals to introduce a bill that would provide payments for children's hospitals, including children's hospitals.

Our bill would provide for a demonstration program in Medicaid to evaluate evidenced-based quality and performance measures in children's health services, with grants for States and/or providers in three areas: health information technology and evidenced-based outcome measures, disease management for children with chronic conditions, and evidenced-based approaches to improving the delivery of hospital care for children. The bill would also provide for a national Children's Hospital pay-for-performance demonstration program, rewarding Children's Hospitals, which provide critical access to services and voluntarily participate, for reporting and meeting quality and performance measures.

Evaluating the national measures of quality in Children's Hospitals, their success in capturing performance, and their improvement in performance across States' varying methods of payments, would give States, the Federal Government, and Children's Hospitals an essential base of information in measuring performance in children's hospital care. And that is something we vitally need.

I urge my colleagues to support and co-sponsor this bill.
SEC. 102. ENHANCED MATCHING RATE FOR THE EFFECTIVE ENROLLMENT AND RETENTION OF CHILDREN UNDER MEDICAID.

(a) IN GENERAL.—Section 1902(a)(3) of the Social Security Act (42 U.S.C. 1396a(a)(3)) is amended—

(1) in subparagraph (E), by striking “plus” at the end and inserting ‘‘plus’’; and

(2) by adding at the end the following:

‘‘(F) 90 percent of the sums expended during such quarter which are attributable to the operation, implementation, and evaluation of such enrollment systems as the Secretary determines are likely to provide more efficient and effective administration of the plan’s enrollment and retention of eligible children, including—

(i) ‘‘express lane’’ enrollment for children through procedures to ensure that children’s eligibility for medical assistance is determined and expedited through the use of technology and shared information with other public benefit programs, such as the school lunch program under the Richard B. Russell National School Lunch Act and the food stamp program under the Food Stamp Act of 1977;”

(iii) procedures which allow for the enrollment of children by mail or through the Internet;

(iv) the timely evaluation, assistance, and determination of the child’s eligibility for medical assistance;

(v) procedures which allow for passive re-enrollment of children to protect the loss of coverage among eligible children; and

(vi) such other enrollment system changes as the Secretary determines are likely to provide more efficient and effective administration of the plan’s enrollment and retention of eligible children plus’’.

(b) EXCLUSION FROM ERRONEOUS EXCESS PAYMENT DETERMINATION.—Section 1902(a)(1)(D) of such Act (42 U.S.C. 1396a(a)(1)(D)) is amended by adding at the end the following:

‘‘(i) Notwithstanding clauses (ii) and (iii), and subject to subclause (II), in determining the amount of erroneous excess payments, there shall not be included any erroneous payments made with respect to medical assistance provided to children who are erroneously enrolled or erroneously provided with continued enrollment under this title as a result of the application of enrollment systems described in subsection (a)(3)(F).

‘‘(II) Subclause (I) shall only apply with respect to erroneous payments made during the first 5 fiscal years that begin on or after the date of enactment of this clause.’’
experts described in subsection (f) and with participating States or providers, the Secretary shall establish uniform measures (adjusted for patient acuity), collect data, and conduct, with respect to the 3 demonstration project categories described in subsection (c),

(f) CONSULTATION.—In developing and implementing demonstration project categories under this section, the Secretary shall consult with national pediatric provider organizations, consumers, and such other entities or individuals with relevant expertise as the Secretary deems necessary.

(g) REPORT.—Not later than 6 months after the completion of all demonstration projects conducted under this section, the Secretary shall submit a report to Congress that includes the findings of the evaluation and recommendations with respect to

(1) expanding the projects to additional sites; and

(2) the broad implementation of identified successful children's hospitals' strategies in improvement and performance in the delivery of medical assistance provided to children under the medicaid program.

SEC. 205. FUNDING.

In order to carry out the provisions of this title, out of funds in the Treasury not otherwise appropriated, there are appropriated to the Secretary

(1) $25,000,000 for fiscal year 2006;

(2) $30,000,000 for fiscal year 2007; and

(3) $35,000,000 for each of the fiscal years 2008, 2009, and 2010.

TITLE III—ENSURING ACCESS TO CARE

SEC. 301. PAY FOR PERFORMANCE FOR CHILDREN'S CRITICAL ACCESS HOSPITALS.

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the “Secretary”), acting through the Administrator of the Centers for Medicare & Medicaid Services (in this section referred to as the “Administrator”), shall implement a 4-year program to develop, implement, and evaluate a pay-for-performance program for eligible critical access hospitals designed to improve quality and access to care for children. The Secretary and the Administrator shall consult with national pediatric organizations and individuals with expertise in pediatric measures of quality and performance.

(b) CONSIDERATION.—In developing the program described in subsection (a), the Secretary shall consider the following:

(1) conducting an independent evaluation;

(2) consult with States, eligible children's hospitals participating in the program, the National Association of Children's Hospitals and Related Institutions, and other national pediatric organizations and individuals with expertise in pediatric measures of quality and performance;

(3) provide a detailed description of the measures and payment enhancements used in determining and rewarding performance under the program;

(4) assess the impact of rewarding performance through the Federal supplemental payments provided under the program, including with respect to any changes in access to care or changes in the capacity of the medicaid program to pay for care provided under the program;

(5) assess how State hospital payment methodologies under the medicaid program, including hospital and physician payments and coverage, affect the capacity of the medicaid program to pay for care provided under the program; and

(6) include recommendations to the Committee on Finance of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding the implementation and design of the performance-based payments provided under the program.

SEC. 302. INCLUSION OF CHILDREN'S HOSPITALS AS COVERED ENTITIES FOR PURPOSES OF LIMITATION OF PURCHASED DRUG PRICE.

(a) IN GENERAL.—Section 360B(a)(4) of the Public Health Service Act (42 U.S.C. 256b(a)(4)) is amended by adding at the end the following new subparagraph:

"(L) A children's hospital described in section 138D(4)(B)(ii) of the Social Security Act which meets the requirements of clause (i) of subparagraph (B) of this section, is eligible for coverage provided by the Secretary under the medicaid program, as provided by paragraph (1) of subparagraph (L) and which would meet the requirements of clause (ii) of such subparagraph if that clause were applied by taking into account the percentage of the population of individuals who are pregnant women or are provided with medical assistance by any other hospital participating in the State medicaid program, including any State-owned or operated hospital or any hospital operated by a State university system.

(b) EFFECTIVE DATE.—The amendment made by this subparagraph shall apply with respect to any drug purchased on or after the date of enactment of this Act.

Mrs. LINCOLN. Mr. President, I am pleased to join my colleague Senator Mike DeWine to introduce "The ABCs of Medicaid for Children's Health Act of 2005," which seeks to expand access to quality health care for all children who are...
This measure seeks to ensure the closure of the facility and the orderly disposition of the property, while addressing the concerns of Anne Arundel County, the NSA, the District of Columbia and all surrounding neighborhoods and residences. Above all, it would serve the youth currently being held at the facility by helping to place them in an environment that is more suitable for successful rehabilitation. I hope this measure can be acted upon quickly by the Congress and 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 introduced.

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

SECTION 1. DISPOSITION OF OAK HILL PROPERTY.

(a) IN GENERAL.—The Oak Hill property shall be disposed of as follows:

(1) The portion of the property which is located west of the Baltimore-Washington Parkway shall be transferred to the jurisdiction of the Director of the National Security Agency, who shall use such portion for parkland purposes.

(2) Subject to subsection (b), the portion of the property which is located east of the Baltimore-Washington Parkway and 200 feet and further north of the Patuxent River shall be transferred to the Secretary of the Army through the Chief of Engineers for use by the Director of the National Security Agency, who may lease such portion to the District of Columbia.

(3) The portion of the property which is located east of the Baltimore-Washington Parkway and south of the portion described in subsection (a) shall be transferred to the jurisdiction of the Administrator of General Services, who shall in turn convey such portion to Anne Arundel County, Maryland, in accordance with subsection (a)(3).

(b) PAYMENT FOR CONSTRUCTION OF NEW JUVENILE DETENTION FACILITY FOR DISTRICT OF COLUMBIA.—As a condition of the transfer under subsection (a)(3), the Administrator of General Services shall enter into an agreement with the Mayor of the District of Columbia under which—

(1) the juvenile detention facility for the District of Columbia currently located on the Oak Hill property shall be closed; and

(2) subject to appropriations, the Agency shall pay for the construction of a replacement facility at a site to be determined, with priority given to a location within the District of Columbia.

(c) CONVEYANCE OF PORTION OF PROPERTY TO ANNE ARUNDEL COUNTY.—

(1) IN GENERAL.—The Administrator of General Services shall convey, without consideration, to Anne Arundel County, Maryland, all right, title, and interest of the United States in and to the portion of the Oak Hill property referred to in subsection (a)(3).

(2) TERMS AND CONDITIONS OF CONVEYANCE.—The conveyance under paragraph (1) shall be carried out under such terms and conditions as may be agreed to by the Administrator and Anne Arundel County, except that, as a condition of the conveyance—

(A) Anne Arundel County shall agree to dedicate a portion of the property which is adjacent to the Patuxent River to parkland and recreational use; and

(B) Anne Arundel County shall agree to reimburse the National Security Agency for the amounts paid by the Agency under subsection (b) for the construction of a new juvenile detention facility for the District of Columbia, but only if the County makes 25 percent or more of the property conveyed under this subsection available for purposes other than open space or recreational use.

SEC. 2. OAK HILL PROPERTY DEFINED.

In this Act, the term “Oak Hill property” means the Federal property consisting of approximately 800 acres near Laurel, Maryland, a portion of which is currently used by the District of Columbia as a juvenile detention facility, and which is shown on Map Number 20 in the records of the Department of Assessments and Taxation, Tax Map Division, of Anne Arundel County.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
Mr. LEVIN. Mr. President, tax shelter and tax haven abuses are undermining the integrity of our tax system, robbing the Treasury of tens of billions of dollars each year, and shifting the tax burden from high income individuals and businesses onto the backs of middle income families. These abuses account for a significant portion of the more than $300 billion in taxes owed by individuals, businesses, and organizations that goes unpaid each year. As a matter of fairness, these abuses must be stopped.

Today, I would like to take a few minutes to try to cut through the haze of these schemes to see them for what they really are and explain what our bill would do to stop them. First, I will look at our investigation into abusive tax shelters and discuss the provisions we have included in this bill to combat them. Then, I will turn to tax haven abuses and our proposed remedies.

For three years, the Permanent Subcommittee on Investigations has been conducting an investigation into the design, sale, and implementation of abusive tax shelters. While I initiated this investigation when I was Chairman of our Subcommittee in 2002, it has since had the support of our new Chairman, Senator OBAMA, and has been conducted by our Subcommittee staff.

Abusive tax shelters are very different from legitimate tax shelters, such as deducting the interest paid on your home mortgage or Congressionally approved tax deductions for building affordable housing. Abusive tax shelters are complicated transactions promoted to provide large tax benefits unintended by the tax code. Abusive tax shelters are marked by one characteristic: there is no real economic or business rationale other than tax avoidance. As Judge Learned Hand wrote in Gregory v. Helvering, they are “entered upon for no other motive but to escape taxation.”

Likewise, tax haven is simply a country or jurisdiction that imposes little or no tax on income and offers non-residents the ability to escape taxes in their home country. The abuse of tax havens occurs when income is attributed to that country, even though little or no business activity actually occurs there. Tax havens are also characterized by corporate, bank, and tax secrecy laws that make it difficult for other countries to find out who and how they are using the tax haven to cheat on their taxes.

Today’s tax dodges are often tough to prosecute. Crimes such as terrorism, murder, and fraud produce instant recognition of the immorality involved. Abusive tax shelters and tax havens, by contrast, are often “MEGOs,” meaning “My Eyes Glaze Over.” Those who cook up these concoctions count on their complexity to escape scrutiny and public ire. But regardless of how complicated or eye-glazing, the hawking of abusive tax shelters by tax professionals like accountants, bankers, investment advisers, and lawyers to thousands of people like late-night, cut-rate T.V. bargainists is scandalous and has got to stop. Hiding tax schemes through offshore companies and bank accounts in tax havens with secrecy laws also needs to be attacked with the full force of the law.

Tax shelter and tax haven abuses are part of an IRS effort to settle cases involving a set of abusive tax shelters known as “Son of Boss.” To date, more than 1,200 taxpayers have admitted wrongdoing and agreed to pay back taxes and interest totaling more than $3.7 billion. That’s billions of dollars the IRS has collected on just one type of tax shelter, demonstrating both the depth of the problem and the potential for progress.

The IRS has identified abusive tax shelter promoters of abusive tax shelters. It codifies and strengthens the economic substance doctrine, which eliminates tax benefits for transactions that have no real business purpose apart from avoiding taxes. The bill deters banks’ participation in abusive shelter activities by requiring regulators to develop new examination procedures to detect and stop such activities. It ends outdated communication barriers between key enforcement agencies to allow the exchange of information relating to tax evasion cases.

The bill also requires the Treasury Department to issue tougher standards for tax shelter opinion letters, It increases incentives for whistleblowers to report tax evasion to the IRS. The bill also provides for increased disclosure of tax shelter information to Congress. It simplifies and clarifies an existing prohibition on accountants being paid contingent fees which increase as tax losses increase. It expresses the sense of the Senate that the IRS needs more funding to combat tax shelter abuses.

Let me be more specific about these key provisions to curb abusive tax shelters.

Title I of the bill strengthens two very important penalties that the IRS can use in its fight against the professionals who make these complex abusive shelters possible. A year ago, the penalty for promoting an abusive tax shelter, as set forth in Section 6700 of the tax code, was the lesser of $1,000 or 100 percent of the promoter’s gross income derived from the prohibited activity. That meant in most cases the maximum fine was $1,000.

Many abusive tax shelters sell for $100,000 or $250,000 apiece. Our investigation uncovered some tax shelters that were sold for as much as $2 million or even $5 million apiece, as well as instances in which the same cookie-cutter tax opinion letter was sold to 100 or even 200 clients. There are big bucks to be made in this business, and a $1,000 fine is laughable.

The Senate acknowledged that last year when it adopted the Levin-Coleman amendment to the JOBS Act, S. 1637, raising the Section 6700 penalty on abusive tax shelter promoters to 100 percent of the fees earned by the promoter from the abusive shelter. A 100 percent fine would have ensured that the abusive tax shelter hucksters would not get to keep a single penny of their ill-gotten gains. That figure, however, was cut in half in the conference report, setting the penalty at 50 percent of the fees earned and allowing the promoters of abusive shelters to make a tidy profit.

While 50 percent is an obvious improvement over $1,000, this penalty still
is inadequate and makes no sense. Why should anyone who pushes an illegal tax shelter that robs our Treasury of much needed revenues get to keep half of his ill-gotten gains? What deterrent effect is created by a penalty that allows promoters to keep half of their fees if caught, and of course, all of their fees if they are not caught? Tax shelter promoters ought to face a penalty that is at least as harsh as the penalty imposed on the person who purchases their tax product, not one because the promoter is usually as culpable as the taxpayer, but also so promoters think twice about pushing abusive tax schemes.

Effective penalties should make sure that the peddler of an abusive tax shelter is deprived of every penny of profit earned from selling or implementing the shelter and then is fined on top of that. Specifically, Section 101 of this bill would increase the maximum penalty from 15 percent to 100 percent of the promoters’ gross income from the prohibited activity, or the amount assessed against the taxpayer—including back-taxes, interest and penalties.

A second penalty provision in the bill addresses what our investigation found to be one of the biggest problems: the knowing assistance of accounting firms, law firms, banks, and others to help taxpayers Under the leadership of Senators Grassley and Baucus, the Chairman and Ranking Member of the Finance Committee, the Senate has voted on multiple occasions to enact this economic substance provision, but the House conferees have rejected it each time. Since no tax shelter legislation would be complete without addressing this issue, Title III of this comprehensive bill proposes once more to include the economic substance doctrine in the tax code. I hope that with continued pressure, it will become law in this Congress.

The bill will also help fight abusive tax shelters that are disguised as complex investment opportunities and use financing or securities transactions provided by financial institutions. In reality, tax shelter schemes lack the economic risks and rewards associated with a true investment. These phony transactions instead often rely on the temporary suspension of money in low risk schemes mischaracterized as real investments. The financing or securities transactions called for by these schemes are often supplied by a bank, securities firm, or other financial institution. Currently, the tax code prohibits financial institutions from providing products or services that aid or abet tax evasion or that promote or implement abusive tax shelters. The agencies that oversee these financial institutions, however, are not experts in banking and securities law and generally lack the expertise to spot tax issues. Section 202 would crack down on financial institutions’ illegal tax shelter activities by requiring federal bank regulators and the SEC to work with the IRS to develop examination techniques to detect such abusive activities and put an end to them.

These examination techniques would be used at least every 2 years, preferably in combination with routine regulatory examinations, and the regulators would report potential violations to the IRS. The agencies would also be required to prepare joint reports to Congress in 2007 and 2010 on preventing the participation of financial institutions in tax evasion or tax shelter activities.

During hearings before the Permanent Subcommittee on Investigations on tax shelters in November 2003, IRS Commissioner Mark Everson testified that his agency was barred by Section 6103 of the tax code from communicating information to other federal agencies that would assist those agencies in their law enforcement duties. He pointed out that the IRS was barred from providing tax return information to the SEC, federal bank regulators, and the Public Company Accounting Oversight Board (PCAOB) for, example, when that information might assist the SEC in evaluating whether an abusive tax shelter resulted in deceptive accounting in a public company’s financial statements, might have helped the Federal Reserve examine whether a bank selling tax products to its clients had violated the law against promoting abusive tax shelters, or help the PCAOB judge whether an accounting firm had impaired its independence by selling tax shelters to its audit clients.

A recent example demonstrates how ill-conceived these information barriers are: A few months ago the IRS offered a settlement initiative to companies that participated in an abusive tax shelter involving the transfer of stock options to family-controlled entities. Over a hundred corporations and executives responded with admissions of wrongdoing. In addition to tax violations, their misconduct may be linked to securities law violations and improprieties by corporate auditors or banks, but the IRS has informed the Subcommittee that it is currently barred from providing information to other federal agencies. These examination techniques would be used at least every 2 years, preferably in combination with routine regulatory examinations, and the regulators would report potential violations to the IRS. The agencies would also be required to prepare joint reports to Congress in 2007 and 2010 on preventing the participation of financial institutions in tax evasion or tax shelter activities.
agencies could then use this information only for law enforcement purposes, such as preventing accounting firms or banks from promoting abusive tax shelters, or detecting accounting fraud in the financial statements of public companies.

Another finding of the Subcommittee investigation is that some tax practitioners are circumventing current State and Federal constraints on charging tax service fees that are dependent on the amount of promised tax benefits. Traditionally, accounting firms charged flat fees or hourly fees for their tax services. In the 1990s, however, they began charging "value added" fees based on, in the words of one accounting firm’s manual, "the value of the services provided, as opposed to the time required to perform the services." In addition, some firms began charging "contingent fees" that were calculated according to the size of the paper "loss" that could be produced by a client and used to enhance a client’s other taxable income—the greater the so-called loss, the greater the fee.

In response, many States prohibited accounting firms from charging contingent fees to avoid giving incentives for these firms to devise ways to shelter substantial sums. The SEC and the American Institute of Certified Public Accountants also issued rules restricting contingent fees, allowing them in only limited circumstances. Recently, the Public Company Accounting Oversight Board sent the SEC for approval a similar rule prohibiting public accounting firms from charging contingent fees for tax services provided to the public companies they audit. Each of these Federal, State, and professional ethics rules seeks to limit the use of contingent fees under certain, limited circumstances.

The Subcommittee investigation found that tax shelter fees, which are typically substantial and sometimes exceed $1 million, are often linked to the amount of a taxpayer’s projected paper losses which can be used to shelter income from taxation. For example, in three tax shelters examined by the Subcommittee, documents show that the fees were equal to a percentage of the paper loss to be generated by the transaction. In one case, the fees were 5% and in the other two transactions the firm’s "tax loss" that clients could use to reduce other taxable income. In other words, the greater the loss that could be concocted for the taxpayer or "investor," the greater the fee. How’s that for turning capitalism on its head!

In addition, evidence indicated that, in at least one instance, a tax advisor was willing to deliberately manipulate the way he handled certain tax products to circumvent contingent fee prohibitions. An internal document at an accounting firm related to a specific tax shelter, for example, identified the States that prohibited contingent fees. Then, rather than prohibit the tax shelter transactions in those States or require an alternative fee structure, the memorandum directed the firm’s tax professionals to make sure the engagement letter was signed, the engagement was managed, and the bulk of services was performed "in a jurisdiction that does not prohibit contingent fees."

Right now, the prohibitions on contingent fees are complex and must be evaluated in the context of a patchwork of Federal, State, and professional ethics rules. Section 201 of the bill would establish a single enforceable rule, applicable nationwide, that would prohibit tax practitioners from charging fees calculated according to a projected or actual amount of tax savings or paper losses.

Past laws, such as the Whistleblower Protection Act and qui tam lawsuits under the False Claims Act, demonstrate that individuals with inside information can help expose serious misconduct that the U.S. government might otherwise miss. The tax arena is no different. Persons with inside information can help expose millions of dollars in tax fraud if they are willing to step forward and tell the IRS what they know about specific instances of misconduct.

Under current law, potential whistleblowers with inside information about tax misconduct do not have an established IRS office that is sensitive to them, provides assistance, and oversees the calculation and payment of monetary rewards for important information. Section 206 of this bill, which is very similar to a provision developed by the Senate Finance Committee, would, among other measures, establish a Whistleblowers Office within the IRS, codify standards for the payment of monetary rewards, and exempt whistleblower monetary payments from the alternative minimum tax.

Each of these measures is intended to increase incentives for persons to blow the whistle on tax misconduct. The one key difference between our bill and the Finance Committee provision is that we would continue to give the IRS the discretion to determine the amount of money paid to an individual whistleblower; our bill would not enable whistleblowers to appeal to a court to obtain additional facts specific to the analysis that goes into evaluating a whistleblower’s assistance and calculating a reward makes court review inadvisable. The existence of an appeal also invites litigation and necessitates the expenditure of substantial sums. The new Whistleblowers Office is intended to promote the consistent, equitable treatment of persons who report tax misconduct, without also incurring expensive and time-consuming litigation.

Section 205 of the bill would direct the Treasury Department to issue new standards for tax practitioners issuing opinion letters on the tax implications of potential tax shelters as part of Circular 230. The public has traditionally relied on tax opinion letters to obtain informed and trustworthy advice about what a tax transaction means if it meets the requirements of the law. The Permanent Subcommittee on Investigations has found that, in too many cases, tax opinion letters no longer contain disinterested and reliable tax advice. Even when issued by supposedly reputable accounting or law firms.

Instead, some tax opinion letters have become marketing tools used by tax shelter promoters and their allies to sell clients on their latest tax products. In many of these cases, financial interests and biases were concealed, unreasonable factual assumptions were used to justify dubious legal conclusions, and taxpayers were misled about the risk that the proposed transaction would later be designated an illegal tax avoidance. The Reform Act of 1993 would address these abuses and restore the integrity of tax opinion letters.

The Treasury Department recently adopted standards that address a number of the abuses affecting tax shelter opinion letters, including: preventing concealed conflict of interest; independent letter writers; avoiding conflicts of interest that would impair auditor independence; ensuring appropriate fee charges; preventing practitioners and firms from aiding and abetting the understatement of tax liability by clients; and banning the promotion of potentially abusive tax shelters.

By addressing each of these areas, a beefed-up Circular 230 could help reduce the ongoing abusive practices related to tax shelter opinion letters.

The bill would also provide for increased disclosure of tax shelter information to Congress. Section 204 would make it clear that companies providing tax return preparation services to taxpayers cannot refuse to comply with a Congressional document subpoena by citing Section 7216, a consumer protection provision that prohibits tax return preparers from disclosing taxpayer information to third parties. Several accounting and law firms have made this claim in response to document subpoenas issued by the Permanent Subcommittee on Investigations, contending they were barred by the non-disclosure provision in Section 7216 from producing documents related to taxes abusive tax shelters to clients for a fee.

The accounting and law firms maintained this position despite an analysis provided by the Senate legal counsel showing that the nondisclosure provision was never intended to create a privilege or to override a Senate subpoena, as demonstrated in federal regulations interpreting the provision. This
Section 401 of the bill would give the Treasury Secretary the discretion to designate such an offshore tax haven as a "treaty opponent." The Secretary would then fail to report the income related to the tax credit for income attributed to an offshore tax haven. These restrictions would not only deter U.S. taxpayers from doing business with uncooperative tax havens, they would also provide the United States with powerful weapons to convince tax havens to cooperate fully with U.S. tax enforcement efforts and help end offshore tax evasion abuses.

Sections 403 and 404 further address offshore tax evasion. Section 403 would toughen penalties on eligible taxpayers who did not participate in Treasury programs designed to encourage voluntary disclosure of previously unreported income placed by the taxpayer in offshore accounts and accessed by credit card or other financial arrangement. Under Section 403, the Secretary would authorize Treasury to promulgate regulations to stop ongoing foreign tax credit abuses in which, among other schemes, taxpayers claim credit on their U.S. tax returns for paying foreign taxes, but then fail to report the income related to the tax credit for income attributed to an offshore tax haven.

The eyes of some people may glaze over when tax shelters and tax havens are discussed, but unscrupulous taxpayers and tax professionals see illicit actions to disguise their income or create phony losses to shelter their U.S. income from taxation. Under Sections 401 and 402 of the bill, persons doing business in tax havens targeted by Treasury as uncooperative would be denied U.S. tax benefits and incur increased disclosure requirements. First, the bill would disallow the tax benefits of deferral and foreign tax credits for income attributed to an offshore tax haven. Taxpayers would be required to provide greater disclosure of their activities, including disclosing on their returns any payment above $10,000 to a person or account located in a designated haven. These restrictions would not only deter U.S. taxpayers from doing business with uncooperative tax havens, they would also provide the United States with powerful weapons to convince tax havens to cooperate fully with U.S. tax enforcement efforts and help end offshore tax evasion abuses.

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The Treasury Secretary would also have the discretion to designate as "treaty opponents" countries that fail to cooperate with U.S. tax enforcement efforts. A "treaty opponent" would lose the benefits of deferral and foreign tax credits, and the Secretary would require increased disclosure of taxpayers' activities. Under Section 401 of the bill, taxpayers would be required to provide greater disclosure of their activities, including disclosing on their returns any payment above $10,000 to a person or account located in a designated haven. These restrictions would not only deter U.S. taxpayers from doing business with uncooperative tax havens, they would also provide the United States with powerful weapons to convince tax havens to cooperate fully with U.S. tax enforcement efforts and help end offshore tax evasion abuses.

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Connor's commitment to crack down on their tax abuses must be as strong as their determination to get away with ripping off America and American taxpayers. Our bill provides our government the tools of abusive tax shelters and uncooperative tax havens and to punish the powerful professionals who push them.

It's long past time for Congress to act to end the shifting of a disproportional tax burden onto the shoulders of honest Americans.

I ask unanimous consent that the material be printed in the Record.

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

**SUMMARY OF TAX SHELTER AND TAX HAVEN REFORM ACT OF 2005**

**TITLE I—STRENGTHENING TAX SHELTER PENALTIES**

Strengthens the penalties for: promoting abusive tax shelters; and knowingly aiding or abetting a taxpayer in understating tax liability.

**TITLE II—PREVENTING ABUSIVE TAX SHELTER TRANSACTIONS**

**PROHIBIT TAX SERVICE FEES DEPENDANT UPON SPECIFIC TAX SAVINGS**

Prohibits charging a fee for tax services in an amount that is calculated according to or dependant upon a projected or actual amount of tax savings or losses offsetting taxable income. Builds on contingent fee prohibitions in more than 20 states, AICPA rules applicable to accountants, SEC regulations applicable to auditors of publicly traded corporations, and proposed PCAOB rules for auditors. Based upon investigation by Permanent Subcommittees on Investigations showing tax practitioners are circumventing current constraints.

**DETER FINANCIAL INSTITUTION PARTICIPATION IN ABUSIVE TAX SHELTER ACTIVITIES**

Requires Federal bank regulators and the SEC to develop examination techniques to detect violations by financial institutions of the prohibition against providing products or services that aid or abet tax evasion or that promote or implement abusive tax shelters. Regulators must use such techniques at least every 2 years in routine or special examinations of specific institutions and report potential violations to the IRS. The agencies must also prepare a joint report to Congress in 2007 and 2010 on preventing the participation of financial institutions in tax evasion or tax shelter activities.

**INCREASE DISCLOSURE OF CERTAIN TAX SHELTER INFORMATION**

Authorizes Treasury to share certain tax return information with the SEC, Federal bank regulators, or PCAOB, under certain circumstances, to enhance tax shelter enforcement or combat financial accounting fraud. Clarifies that subpoenaed authority to obtain information (but not a taxpayer return) from tax return preparers. Clarifies Congressional authority to obtain certain tax information (but not a taxpayer return) from Treasury related to an IRS decision to grant, deny, revoke, or restore an organization’s tax exempt status.

**REQUIRE TOUGHER TAX SHELFER OPINION STANDARDS FOR TAX PRACTITIONERS**

Codifies and expands Treasury's authority to beef up Circular 230 standards for tax practitioners providing “opinion letters” on specific tax shelter transactions.

**INCREASE INCENTIVES FOR IRS WHISTLEBLOWERS**

Encourages persons to blow the whistle on tax misconduct by establishing a Whistleblowers Office within the IRS to provide consistent, equitable treatment of taxpayers. The IRS must also develop an annual plan to maximize the receipt of whistleblower information, and to report potential violations to the IRS. The agencies must also prepare a joint report to Congress in 2007 and 2010 on the effectiveness of the IRS's whistleblower program. Estimated to raise $407 million over 10 years. Deny tax deduction for fines, penalties and settlements.

Clarifies that penalties, fines and settlements paid to the government are not deductible to the SEC defund the Senate in the Highway Bill. Estimated to raise $200 million over 10 years.

“Sense of the Senate” on IRS Enforcement Priorities

Establishes the Sense of the Senate that additional funds should be appropriated for IRS enforcement, and that the IRS should devote proportionately more of its enforcement funds to combat: (1) the promotion of abusive tax shelters for corporations and high net worth individuals and the aiding or abetting of tax evasion, (2) the involvement of accounting, law and financial firms in such promotion and aiding or abetting, and (3) the use of offshore financial accounts to conceal taxable income.

**TITLE III—REQUIRING ECONOMIC SUBSTANCE**

**STRENGTHEN THE ECONOMIC SUBSTANCE DOCTRINE**

Strengthens and codifies the economic substance doctrine to invalidate transactions that have no economic substance or business purpose apart from tax avoidance or evasion. Also increases penalties for understatements attributable to a transaction lacking in economic substance. Passed by the Senate in the Highway Bill. Estimated to raise $15.9 billion over 10 years.

**SECTION I. SHORT TITLE; ETC.**

(a) SHORT TITLE.—This Act may be cited as the “Tax Shelter and Tax Haven Reform Act of 2005.”

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title; etc.

**TITLE I—STRENGTHENING TAX SHELTER PENALTIES**

Sec. 101. Penalty for promoting abusive tax shelters.

Sec. 102. Penalty for aiding and abetting the understatement of tax liability.

**TITLE II—PREVENTING ABUSIVE TAX SHELTER TRANSACTIONS**

Sec. 201. Prohibited fee arrangement.

Sec. 202. Preventing tax shelter activities by financial institutions.

Sec. 203. Information sharing for enforcement purposes.

Sec. 204. Disclosure of information to Congress.

Sec. 205. Tax opinion standards for tax practitioners.

Sec. 206. Whistleblower reforms.

Sec. 207. Denial of deduction for certain fines, penalties, and other amounts.

Sec. 208. Sense of the Senate on tax enforcement priorities.

**TITLE III—REQUIRING ECONOMIC SUBSTANCE**

Sec. 301. Clarification of economic substance doctrine.

Sec. 302. Penalty for understatements attributable to transactions lacking economic substance, etc.

Sec. 303. Denial of deduction for interest on underpayment attributable to noneconomic substance transactions.
TITLE IV—DETERRING UNCOOPERATIVE TAX HAVENS

Sec. 401. Disclosure payments to persons in uncooperative tax havens.

Sec. 402. Detering uncooperative tax havens by respecting allowable tax benefits.

Sec. 403. Doubling of certain penalties, fines, and interest underpayments, and going after certain offshore financial arrangements.

Sec. 404. Treasury regulations on foreign tax credit limitation.

TITLE I—STRENGTHENING TAX SHELTER PENALTIES

SEC. 101. PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.

(a) PENALTY FOR PROMOTING ABUSIVE TAX SHELTERS.—Section 6700 (relating to promoting abusive tax shelters, etc.) is amended—

(1) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively,

(2) by striking “a penalty” and all that follows through the first sentence of subsection (a) and inserting “a penalty determined under subsection (b)”, and

(3) by inserting after subsection (a) the following new subsection:

“(b) AMOUNT OF PENALTY; LIABILITY FOR PENALTY.—

“(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed the greater of—

“(A) 150 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty, and

“(B) if readily subject to calculation, the total amount of underpayment of the taxpayer (including penalties, interest, and taxes) in connection with the understatement of the liability for tax.

“(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

“(3) LIABILITY FOR PENALTY.—If more than one person liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice shall be jointly and severally liable for the penalty under subsection (b).’’.

(b) REPORT TO INTERNAL REVENUE SERVICE.—In any case in which an examination conducted under this section with respect to a financial institution or other entity reveals a potential violation, such agency shall promptly notify the Internal Revenue Service of such potential violation for investigation and enforcement by the Internal Revenue Service in accordance with applicable provisions of law.

(c) REPORT TO CONGRESS.—The Federal banking agencies and the Commission shall submit a joint written report to Congress in 2010 on their finding violations of sections 6700 and 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisors, as appropriate.

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

(1) the terms “broker”, “dealer”, and “investment adviser” have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

(2) the term “Commission” means the Securities and Exchange Commission;

(3) the term “depository institution” has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(4) the term “Federal banking agencies” has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); and

(5) the term “Secretary” means the Secretary of the Treasury.

SEC. 201. PROHIBITED FEE ARRANGEMENT.

(a) IN GENERAL.—Section 6701, as amended by this Act, is amended—

(1) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively,

(2) by striking “(a)”, “(b)”, and “(f)” in paragraphs (2) and (3) of subsection (g) as redesignated by paragraph (1) and inserting “(a)” and “(f)” in place thereof, and

(3) by inserting “and” in subsection (e) the following new paragraph:

“(f) PROHIBITED FEE ARRANGEMENT.—

“(1) IN GENERAL.—Any person who makes an agreement for, charges, or collects a fee which is for services provided in connection with the internal revenue laws, and the amount of which is calculated according to, or is dependent upon, a projected or actual amount of—

“(A) tax savings or benefits; or

“(B) losses which can be used to offset other taxable income, shall pay a penalty with respect to such fee activity in the amount determined under subsection (b).

“(2) RULES.—The Secretary may issue rules to carry out the purposes of this subsection and may provide exceptions for fee arrangements that are in the public interest. ’’

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 102. PENALTY FOR AIDING AND ABETTING THE UNDERSTATEMENT OF TAX LIABILITY.

(a) IN GENERAL.—Section 6701(a) (relating to imposition of penalty) is amended—

(1) by inserting “the tax liability or” after “respect to”,

(2) by inserting “aid, assistance, procurement, or advice with respect to such” before “portion both places it appears in paragraphs (2) and (3), and

(3) by inserting “of aid, assistance, procurement, or advice each such” before “document” in the matter following paragraph (2).

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

“(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

“(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed the greater of—

“(A) 150 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty, and

“(B) if readily subject to calculation, the total amount of underpayment of the taxpayer (including penalties, interest, and taxes) in connection with the understatement of the liability for tax.

“(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

“(3) LIABILITY FOR PENALTY.—If more than one person liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice shall be jointly and severally liable for the penalty under subsection (b).’’.

(b) AMOUNT OF PENALTY.—Subsection (b) of section 6701 (relating to penalties for aiding and abetting understatement of tax liability) is amended to read as follows:

“(b) AMOUNT OF PENALTY; CALCULATION OF PENALTY; LIABILITY FOR PENALTY.—

“(1) AMOUNT OF PENALTY.—The amount of the penalty imposed by subsection (a) shall not exceed the greater of—

“(A) 150 percent of the gross income derived (or to be derived) from such aid, assistance, procurement, or advice provided by the person or persons subject to such penalty, and

“(B) if readily subject to calculation, the total amount of underpayment of the taxpayer (including penalties, interest, and taxes) in connection with the understatement of the liability for tax.

“(2) CALCULATION OF PENALTY.—The penalty amount determined under paragraph (1) shall be calculated with respect to each instance of aid, assistance, procurement, or advice described in subsection (a), each instance in which income was derived by the person or persons subject to such penalty, and each person who made such an understatement of the liability for tax.

“(3) LIABILITY FOR PENALTY.—If more than one person liable under subsection (a) with respect to providing such aid, assistance, procurement, or advice shall be jointly and severally liable for the penalty under subsection (b).’’.

(2) R ULES.—The Secretary may issue rules to carry out the purposes of this subsection and may provide exceptions for fee arrangements that are in the public interest.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to activities after the date of the enactment of this Act.

TITLE II—PREVENTING ABUSIVE TAX SHELTERS

SEC. 202. PREVENTING ABUSIVE TAX SHELTERS.

(a) EXAMINATIONS.—

(1) DEVELOPMENT OF EXAMINATION TECHNIQUES.—Each of the Federal banking agencies and the Commission shall, in consultation with the Internal Revenue Service, develop examination techniques to detect potential violations of section 6701 or 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

(2) FREQUENCY.—Not less frequently than once each 2-year period the Federal banking agencies and the Commission shall implement the examination techniques developed under paragraph (1) with respect to each of the depository institutions, brokers, dealers, or investment advisers subject to their enforcement authority. Such examination shall, to the extent possible, be conducted by any examiner by such agency otherwise required or authorized by Federal law.

(b) REPORT TO INTERNAL REVENUE SERVICE.—In any case in which an examination conducted under this section with respect to a financial institution or other entity reveals a potential violation, such agency shall promptly notify the Internal Revenue Service of such potential violation for investigation and enforcement by the Internal Revenue Service in accordance with applicable provisions of law.

(c) REPORT TO CONGRESS.—The Federal banking agencies and the Commission shall submit a joint written report to Congress in 2010 on their finding violations of sections 6700 and 6701 of the Internal Revenue Code of 1986, by depository institutions, brokers, dealers, and investment advisers, as appropriate.

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

(1) the terms “broker”, “dealer”, and “investment adviser” have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

(2) the term “Commission” means the Securities and Exchange Commission;

(3) the term “depository institution” has the same meaning as in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c));

(4) the term “Federal banking agencies” has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)); and

(5) the term “Secretary” means the Secretary of the Treasury.

SEC. 203. INFORMATION SHARING FOR ENFORCEMENT PURPOSES.

(a) PROMOTION OF PROHIBITED TAX SHELTERS OR TAX AVOIDANCE SCHEMES.—Section 6103(h) (relating to disclosure to certain Federal officers and employees for purposes of tax administration, etc.) is amended by adding at the end the following new paragraph:

“(7) DISCLOSURE OF RETURNS AND RETURN INFORMATION RELATED TO PROMOTION OF PROHIBITED TAX SHELTERS OR TAX AVOIDANCE SCHEMES.—

“(A) WRITTEN REQUEST.—Upon receipt by the office of a written request which meets the requirements of subparagraph (B) from the head of the United States Securities and Exchange Commission, an appropriate Federal banking agency as defined under section 1813(q) of title 12, United States Code, or the Public Company Accounting Oversight Board, a return or return information shall be disclosed to such requestor’s officers and employees who are personally and directly engaged in an investigation, examination, or proceeding by such requestor to evaluate, detect, or deter conduct by a financial institution, issuer, or public accounting firm, or associated person, in connection with a potential violation of section 6701 (promotion of abusive tax shelters), 6701 (aiding and abetting understatement of tax liability), or
activities related to promoting or facilitating inappropriate tax avoidance or tax evasion. Such disclosure shall be solely for use by such officers and employees in such investigation, examination, or proceeding.

“(B) REQUIREMENTS.—A request meets the requirements of this subparagraph if it sets forth—

(i) the nature of the investigation, examination, or proceeding;

(ii) the statutory authority under which such investigation, examination, or proceeding is being conducted;

(iii) the name or names of the financial institution, issuer, or public accounting firm to which such return information relates;

(iv) the taxable period or periods to which such return information relates, and

(v) the specific reason or reasons why such disclosure is, or may be, relevant to such investigation, examination, or proceeding.

(C) FINANCIAL INSTITUTION.—For the purposes of this paragraph, the term ‘financial institution’ means a depository institution, foreign bank, insured institution, industrial loan company, broker, dealer, investment company, or investment advisor, or other entity subject to regulation or oversight by the United States Securities and Exchange Commission or an appropriate Federal banking agency.

(b) FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—Section 6103(f) (relating to disclosure of returns, unless such returns are available to the public) is amended to read as follows:

“(f) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR USE IN FINANCIAL AND ACCOUNTING FRAUD INVESTIGATIONS.—

(A) IN GENERAL.—Upon receipt of a written request from a committee or subcommittee of Congress, copies of documents related to a determination by the Secretary to grant, deny, revoke, or restore an organization’s exemption from taxation under section 501 shall be provided to such committee or subcommittee, including any application notice of status, or supporting information provided by such organization to the Internal Revenue Service; any letter, analysis, or other documentary evidence provided by or for the Internal Revenue Service evaluating, determining, explaining, or relating to the tax exempt status of such organization (other than returns unless such returns are available to the public under section 6103 or 6110); and any communication between the Internal Revenue Service and any other party relating to the tax exempt status of such organization.

(B) ADDITIONAL INFORMATION.—Section 6103(f) shall apply with respect to—

(i) the application for exemption of any organization described in subsection (c) or (d) of section 501 which is exempt from taxation under section 501 for any taxable year and any application referred to in subparagraph (B) of subsection (a)(1) of this section, and

(ii) any other papers which are in the possession of the Secretary and which relate to such application, as if such papers constituted returns.

(C) EFFECTIVE DATE.—The amendments made by this section shall apply to disclosures and to information and document requests made after the date of the enactment of this Act.

SEC. 205. TAX OPINION STANDARDS FOR TAX PRACTITIONERS.

Section 6103 of title 26, United States Code, is amended to read as follows:

“(d) The Secretary of the Treasury shall impose acceptable standards to the rendering of written advice with respect to any listed transaction or any entity, plan, arrangement, or other transaction which has a potential for tax avoidance or evasion. Such standards shall address, but not be limited to, the following issues:

(1) Independence of the practitioner issuing the advice and persons promoting, marketing, or recommending the subject of the advice.

(2) Collaboration among practitioners, or between a practitioner and other party, which could result in such collaborating parties having a joint financial interest in the subject of the advice.

(3) Avoidance of conflicts of interest which would impair auditor independence.

(4) For written advice issued by a firm, standards for reviewing and ensuring the consensus support of the firm for positions taken.

(5) Reliance on reasonable factual representations by the taxpayer and other parties.

(6) Appropriateness of the fees charged by the practitioner for the written advice.

(7) Preventing practitioners and firms from aiding or abetting the understatement of tax liability by clients.

(8) Banning the promotion of potentially abusive or illegal tax shelters.’’.

SEC. 206. WHISTLEBLOWER REFORMS.

(a) IN GENERAL.—Section 7623 (relating to expenses of detection of underpayments and fraud, etc.) is amended—

(1) by striking ‘‘The Secretary’’ and inserting ‘‘(a) in general.—The Secretary’’;

(2) by striking ‘‘(b)’’ and inserting ‘‘(b) Awards to Whistleblowers.—’’;

(3) by striking ‘‘(c)’’ and inserting ‘‘(c) In General.—’’;

(4) by adding at the end the following new subsections:

‘‘(B) A DDITIONAL INFORMATION.—

(1) IN GENERAL.—If the Secretary proceeds with an administrative action described in subsection (a) based on information brought to the Secretary’s attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action, and shall be determined in the sole discretion of the Whistleblower Office.

‘‘(2) AWARD IN CASE OF LESS SUBSTANTIAL CONTRIBUTION.—

(A) IN GENERAL.—In the event the action described in paragraph (1) is one which the Whistleblower Office determines to be based principally on disclosures of specific allegations (other than those disclosed by the individual described in paragraph (1)) resulting from a judicial or administrative hearing, from a governmental report, hearing, or investigation, from the news media, the Whistleblower Office may award such sums as it considers appropriate, but in no case more than 10 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. Such awards shall depend upon the significance of the individual’s information and the role of such individual and any legal representative of such individual in contributing to such action.

‘‘(B) NONAPPLICATION OF PARAGRAPH WHERE INDIVIDUAL IS ORIGINAL SOURCE OF INFORMATION.—Subparagraph (A) shall not apply if the information resulting in the initiation of the action described in paragraph (1) was originally provided by the individual described in paragraph (1).

(c) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to any action—

(1) against any taxpayer, but in the case of a居民 individual, on which the individual’s gross income exceeds $200,000 for any taxable year subject to such action, and
“(B) if the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $20,000.

“(4) ADDITIONAL RULES.—(A) IN GENERAL.—No contract with the Internal Revenue Service is necessary for any individual to receive an award under this subsection.

“(B) REPRESENTATION.—Any individual described in paragraph (1) or (2) may be represented by counsel.

“(C) AWARD NOT SUBJECT TO INDIVIDUAL ALTERNATIVE MINIMUM TAX.—No award received under this subsection shall be included in gross income for purposes of determining alternative minimum taxable income.

“(D) WHISTLEBLOWER.—

“(1) IN GENERAL.—There is established in the Internal Revenue Service an office to be known as the ‘Whistleblower Office’ which—

“(A) shall analyze information received from any individual described in subsection (b) and either investigate the matter itself or assign it to the appropriate Internal Revenue Service office.

“(B) shall monitor any action taken with respect to such matter.

“(C)(i) shall inform such individual that it has accepted the individual’s information for further review.

“(ii) may ask such individual and any legal representative of such individual to not disclose any information so provided,

“(D) may require such individual and any legal representative of such individual to not disclose any information so provided,

“(E) may ask for additional assistance from such individual or any legal representative of such individual and

“(F) shall determine the amount to be awarded to such individual under subsection (b).

“(2) FUNDING FOR OFFICE.—From the amounts available for expenditure under subsection (a), the Whistleblower Office shall be credited with an amount equal to the awards made under subsection (b). These funds shall be used to maintain the Whistleblower Office and also to reimburse other Internal Revenue Service offices for related costs, such as costs of investigation and collection.

“(3) REQUEST FOR ASSISTANCE.—

“(A) IN GENERAL.—Any assistance requested under paragraph (1) or (2) shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter under subsection (a).

“(B) ENSURING DIRECTION AND CONTROL.—To the extent the disclosure of any returns or return information to the individual or legal representative is required for the performance of such assistance, such disclosure shall be pursuant to a contract entered into between the recipient of such information and the recipients of such disclosure subject to section 6103(n).

“(B) FUNDING OF ASSISTANCE.—From the funds made available to the Whistleblower Office under paragraph (2), the Whistleblower Office may reimburse the costs incurred by any legal representative in providing assistance described in subparagraph (A).

“(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred on or after the date of the enactment of this Act, except that such amendment shall not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Such exception shall not apply to an order or agreement requiring court approval unless the approval was obtained before such date.

“SEC. 206. SENSE OF THE SENATE ON TAX ENFORCEMENT PRIORITIES.

“It is the sense of the Senate that additional funds should be appropriated for Internal Revenue Service enforcement efforts and that the Internal Revenue Service should devote proportionately more of its enforcement funds—

“(1) to combat the promotion of abusive tax shelters for corporations and high net worth individuals and the aiding and abetting of tax evasion,

“(2) to stop accounting, law, and financial firms involved in such promotion and aiding and abetting,

“(3) to combat the use of offshore financial accounts by persons and other amounts.

“TITLES III—REQUIRING ECONOMIC SUBSTANCE

“SEC. 301. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

“(a) IN GENERAL.—Subsection (g) of section 7701 is amended by redesignating subsection (h) as subsection (g) and by inserting after subsection (g) the following new subsection:

“(o) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE, ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall be treated as having economic substance only if the requirements of this paragraph are met.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction has economic substance only if—

“(I) the transaction involves a change in the economic position of an individual, this subsection shall apply only to transactions entered into in connection
with a trade or business or an activity engaged in for the production of income.

(2) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lesser of tangible property or other lease, if

(1) the expected net tax benefits with respect to the leased property shall not include the benefits of

(I) a deduction;

(II) any tax credit, or

(III) any other deduction as provided in guidance by the Secretary, and

(2) the portion of any such benefits are allowable.

(3) OTHER COMMON LAW DOCTRINES NOT APPLIED.—Except as otherwise provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this section shall be construed as being in addition to any other such rule of law.

(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.

(5) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 302. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6622A the following new subsection:

SEC. 662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(1) IMPOSITION OF PENALTY.—If a taxpayer has a noneconomic substance transaction understatements of any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

(2) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any non-economic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement related to the return.

(3) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

(1) IN GENERAL.—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term ‘noneconomic substance transaction’ means any transaction if:

(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(o)(2), or

(B) the transaction fails to meet the requirements of any similar rule of law.

(4) CROSS REFERENCE.—

(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e). . .

(2) For purposes of this section, any reportable transaction overstatement for any taxable year, there has an noneconomic substance transaction understatement at a rate prescribed under section 6662B(c).”.

(b) CROSS REFERENCES.—

(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e). . .

(2) For purposes of this section, any reportable transaction overstatement at a rate prescribed under section 6662B(c).”.

(c) UNCOOPERATIVE TAX HAVEN.—For purposes of the following new subparagraph—

(1) IN GENERAL.—The term ‘uncooperative tax haven’ means any foreign jurisdiction which is identified on a list maintained by the Secretary under paragraph (2) as being a jurisdiction—

(A) which imposes no or nominal taxation either generally or on specified classes of income, and

(B) has corporate, business, bank, or tax secrecy or confidentiality rules and practices, or has ineffective information exchange practices which, in the judgment of the Secretary, effectively limit or restrict the ability of the United States to obtain information relevant to the enforcement of this title.

(2) MAINTENANCE OF LIST.—Not later than November 1 of each calendar year, the Secretary shall issue a list of foreign jurisdictions with which the Secretary determines qualify as uncooperative tax havens under paragraph (1).

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 303. DENIAL OF DEDUCTION ON INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUB-
which the United States is a member uncooperative with international tax enforcement or information exchange and the United States concurs in the determination.

(3) REGULATIONS.—The Secretary shall prescribe regulations similar to the regulations issued under section 996B(c) to carry out the purposes of this subsection.

(4) IDENTIFIED TAX HAVEN INCOME WHICH IS SUBJECT F income.—

(a) IDENTIFIED TAX HAVEN INCOME WHICH IS SUBJECT F income.—

(1) DETERMINATION OF PENALTY.—

(A) APPLICABLE PENALTY.—The term ''applicable penalty'' means any penalty, addition to tax, and interest or applicable penalty prescribed disallowing a credit under subsection (a) with respect to any foreign tax.

(B) COMMUNICATIONS.—For purposes of paragraph (1), the term ''communications'' means the Internal Revenue Service of such arrangement.

(2) APPLICABLE TAXPAYER.—For purposes of this subsection, the term ''applicable taxpayer'' means the Internal Revenue Service. The Secretary may waive the application of paragraph (1) for any taxpayer if the Secretary or the Secretary's delegate determines that—

(i) the use of such offshore payment mechanism or financial arrangement was incidental to the payment of Federal income tax attributable to periods described in subparagraph (A) with respect to all such jurisdictions;

(ii) in the case of a trade or business, such use took place in the ordinary course of the trade or business of the taxpayer, and the results of such use would serve the public interest.

(3) REGULATIONS.—The Secretary shall prescribe regulations to carry out the purposes of this subsection.

(iii) DETERMINATION OF PENALTY.—

(A) APPLICABLE PENALTY.—

(B) COMMUNICATIONS.—

(C) APPLICABLE PENALTY.—

(3) REGULATIONS.—The Secretary shall prescribe regulations similar to the regulations issued under section 996B(c) to carry out the purposes of this subsection.

(4) REGULATIONS.—The Secretary shall prescribe regulations similar to the regulations issued under section 996B(c) to carry out the purposes of this subsection.

(5) REGULATIONS.—The Secretary shall prescribe regulations similar to the regulations issued under section 996B(c) to carry out the purposes of this subsection.
will do much to ensure that the public trust in our tax laws is restored.

Two years ago, as Chairman of the Permanent Subcommittee on Investigations, I held Subcommittee hearings on abusive tax shelters. It became clear to the Subcommittee that some tax avoidance schemes are clearly abusive. These abusive shelters relied on sham transactions with no financial or economic utility other than to manufacture tax benefits.

Above all, tax shelters hurt the American people. For example, a recent IRS study estimates the Nation’s “tax gap”—the difference between the amount of taxes owed and the amount collected was $335 billion in 2001. The study also found that over 60 percent of the “tax gap” is due to taxpayers underreporting their taxes. This means that honest taxpayers are forced to pay more to make up for those taxpayers who dodge Uncle Sam.

The use of abusive tax shelters exploded during the high-flying 1990s, when many firms were awash in cash and were more concerned with generating fees than remaining compliant with the code. The lure of millions of dollars in fees clearly played a role in the decision on the part of tax professionals to drive a Brinks truck through any purported tax loophole.

Abusive tax shelters require accountants and financial advisors who develop and structure transactions to take advantage of loopholes in the tax code. Lawyers provide cookie cutter tax opinions deeming the transactions to be legal. Bankers provide loans with little or no credit risk, yet the amount of the loan creates a multi-million dollar tax loss.

This became a game. Reputable professionals were able to earn huge profits by providing services that offered a “veil of legitimacy” to the transactions. The parties involved were careful to hide the transactions from IRS detection by failing to register and failing to provide lists of clients who used the transactions to the IRS.

It was clear to the Subcommittee that the promoters of these tax shelters failed to register transactions with the IRS partly because the penalties for failing to register were so low compared to the expected profits. In other words, the risk-benefit ratio was entirely lopsided in the favor of the promoters.

The promoters of these tax shelters cost this country tens of billions of dollars each year and may be the largest single source of the $300 billion tax gap between what is owed and what is collected by the U.S. Treasury. The investigators on the Senate Permanent Subcommittee on Investigations found that more than half of all federal contractors may have subsidiaries in tax havens and that almost half of all foreign profits of U.S. corporations in a recent year were in tax havens.

My esteemed colleagues also heard testimony that between 1–2 million individual taxpayers may be hiding funds in offshore tax havens. Many of these tax havens refuse to cooperate with U.S. tax enforcement officials.

This is not a political issue of how low or high taxes ought to be. This is a basic issue of fairness and integrity. Corporate and individual taxpayers alike must have confidence that those who disregard the law will be identified and adequately punished. Those who enforce the law need the tools and resources to do so. We cannot reasonably expect an American business to subject itself to a competitive disadvantage by following the law while watching its competitors defy the law without repercussion.

This bill cracks down on those individuals and businesses that establish virtual residences in tax havens abroad with the unfair advantage of the very real advantages of actual residence here in the United States.

This bill clarifies that the sole purpose of a transaction cannot legally be to evade tax liability. This bill increases penalties for those who profit by manipulating and exploiting our tax laws, resulting in higher rates and greater complexity for the rest of us.

My mother taught me that there is no such thing as a free lunch—someone always has to pay. And when one of us shirks our duty to pay, the burden gets shifted to others, in this case to ordinary taxpayers and working Americans without access to sophisticated tax preparers or corporate loopholes.

This bill strengthens our ability to stop shifting the tax burden to working families. The money saved by this bill, for example, can reduce the burden on Americans who can least afford it. It will help reduce our unnecessary budget deficits being financed by rising debt to foreign nations.

The money saved by this bill can also be used to protect children in low income families from unfair tax increases caused by inequities in the child tax credit. In fact, this fall, I intend to introduce legislation to ensure that the child tax credit is not reduced solely because a family’s income fails to keep pace with inflation. We need less than half of the savings generated by this bill, we could shield more than four million children from the annual tax increase their families face as a result of stagnant wages and inflation under current law.

All of us should pay our fair share of American taxes. There is no excuse for benefiting from the laws and services, institutions and economic structure of our nation while evading your responsibility to do your part for this country. I believe it is our job to keep the system fair, and that’s what this bill seeks to do.

I commend Senator Levin and Senator Coleman for their leadership on this important issue. I am proud to be a cosponsor of this bill and urge my colleagues to support it.

By Mr. ROBERTS (for himself and Mr. KENNEDY):

S. 1570. A bill to promote employment of individuals with severe disabilities through Federal Government contracting and procurement processes, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. ROBERTS. 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. 1570

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 "Employer Work Incentive Act for Individuals with Severe Disabilities".

SEC. 2. PURPOSE.

The purpose of this Act is to promote employment opportunities for individuals with severe disabilities, by requiring Federal agencies to offer incentives to Government contractors and subcontractors that employ substantial numbers of individuals with severe disabilities.

SEC. 3. JOBS INITIATIVE FOR INDIVIDUALS WITH SEVERE DISABILITIES.

(a) PREFERENCE FOR CONTRACTORS EMPLOYING INDIVIDUALS WITH SEVERE DISABILITIES.—

The Secretary of Federal Procurement Policy Act (41 U.S.C. 465 et seq.) is amended by adding at the end the following new section:
"SEC. 42. PREFERENCE FOR CONTRACTORS EMPLOYING INDIVIDUALS WITH SEVERE DISABILITIES.

(a) Preference—When entering into a contract, the head of an executive agency shall give a preference in the source selection process to each offeror that submits with its offer a written pledge that the contractor is an eligible business for purposes of this section.

(b) Uniform Pledge.—The Federal Acquisition Regulation shall set forth the pledge that is to be used in the administration of this section.

(c) Responsibility of the Secretary of Labor.—The Secretary of Labor shall maintain on the Internet web site of the Department of Labor a list of contractors that have submitted the pledge as described in subsection (a).

(d) Definitions.—In this section:

(1)(A) The term "eligible business" means a nonprofit or for-profit business entity that—

(i) except as provided in subparagraph (B), demonstrates that it has established an integrated employment setting, as defined by the Secretary of Labor;

(ii) employs individuals with severe disabilities in not less than 25 percent of the full-time equivalent positions of the business, or

(iii)(D) pays wages to each of the individuals with severe disabilities at not less than the applicable rate described in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)), regardless of whether the individuals are engaged in supported employment, or training, under a contract with an executive agency or a program that receives Federal funds; and

(2) does not employ any individual with a severe disability pursuant to a special certificate issued under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)); and

(4) makes contributions for at least 50 percent of the total cost of the annual premiums for health insurance coverage for its employees.

(2) In the case of an entity that has a contract with an executive agency in effect on the date of enactment of the Employer Work Incentive Act for Individuals with Severe Disabilities, subparagraph (A)(i) shall not apply until 3 years after that date of enactment.

(a)(A) The term "individual with a severe disability" means an individual who is a disabled beneficiary (as defined in section 1148(c)(2) of the Social Security Act (42 U.S.C. 1320b-19(c)(2))) or an individual who would be considered to be such a disabled beneficiary but for having income or assets in excess of the income or asset eligibility limits established under title II or XVI of the Social Security Act, respectively (42 U.S.C. 401 et seq., 1381 et seq.).

(b)(B) The term "individuals with severe disabilities" means more than 1 individual with a severe disability.

(b) Clerical Amendment.—The table of contents in section 1(b) of such Act is amended by adding at the end the following new item:

"Sec. 42. Preference for contractors employing individuals with severe disabilities.".

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 1571. A bill to amend title 38, United States Code, to establish a comprehensive program for testing and treatment of veterans for the Hepatitis C virus; to the Committee on Veterans' Affairs.

Mr. CORZINE. Mr. President, I rise today along with my colleague, Senator Bayh, to introduce the Veterans Comprehensive Hepatitis C Health Care Act. This bill would fundamentally change the way the Department of Veterans Affairs is addressing the growing Hepatitis C epidemic, and would create a national standard for testing and treating veterans with the virus.

Hepatitis C is a disease of the liver caused by contact with the Hepatitis C virus. It is primarily spread by contact with infected blood. The CDC estimates that 1.8 percent of the population is infected with the Hepatitis C virus, and that number is much higher among veterans. Vietnam-era veterans are considered to be at greater risk because many were exposed to Hepatitis C-infected blood as a result of combat-related surgical care during the Vietnam War. In fact, data from the Veterans Administration suggests that as many as 18 percent of all veterans and 64 percent of Vietnam veterans are infected with Hepatitis C Virus (HCV).

And yet, most veterans who have Hepatitis C don't even know it—and often do not get treatment until it's too late. Despite recent advances in treating Hepatitis C, the VA still lacks a comprehensive, consistent, uniform approach to testing and treating veterans for the virus. Only a fraction of the eight million veterans enrolled nationally in the VA Health Care System have been tested to date. Part of the problem stems from a lack of qualified, full-time medical personnel to administer and analyze the tests. Most of the 172 VA hospitals in this country have only one doctor, working a half day a week, to conduct and analyze all the tests. At this rate, it will take years to test the entire enrolled population—years that many of these veterans may not have.

To address this growing problem, I am again introducing the Comprehensive Hepatitis C Health Care Act. This legislation will improve access to Hepatitis C testing and treatment for all veterans, ensure that the VA spends all allocated Hepatitis C funds on testing and treatment, and sets new, national policies for Hepatitis C care. Congressman Rodney Frelinghuysen from New Jersey has introduced companion legislation in the House of Representatives.

The bill would improve testing and treatment for veterans by requiring annual screening tests for Vietnam-era veterans enrolled in the VA health system, and providing annual tests, upon request, to other veterans enrolled in the system. Further, it would require the VA to treat any enrolled veteran who tests positive for the Hepatitis C virus, regardless of service-connected disability status or priority group categorization. The VA would be required to provide at least one dedicated health care professional—a doctor and a nurse—at each VA Hospital for testing and treatment of this disease.

This bill would also increase the amount of money dedicated to Hepatitis C testing and treatment, and would make sure that funds are spent where they are needed most. Beginning in FY06, Hepatitis C funding would be shifted to the Specific Purpose account under the Veterans Health Administration, and would be dedicated solely for the purpose of paying for the costs associated with treating veterans with the Hepatitis C virus. The bill would allocate these funds to the 22 Veterans Integrated Service Networks (VISN) based on each VISN's Hepatitis C incidence rate, or the number of veterans infected with the virus.

In addition, this bill will end the confusing patchwork of policies governing the care of veterans with Hepatitis C throughout the nation. This legislation directs the VA to develop and implement a standardized, national Hepatitis C policy for its testing protocol, treatment options and education and notification efforts. The bill further directs the VA to develop an outreach program to notify veterans who have not been tested for the Hepatitis C virus of the need for such testing and the availability of such testing through the VA. And finally, this legislation would establish Hepatitis C Centers of Excellence in geographic areas with high incidence of Hepatitis C infection.

The VA currently lacks a comprehensive national strategy for combating this deadly disease. The Veterans Comprehensive Hepatitis C Health Care Act will ensure that veterans will finally be provided with the access to testing and treatment that they have more than earned and deserve. And, the Federal Government will actually save money in the long run by testing and treating this infection early. The alternative is much more costly treatment of end-stage liver disease and the associated complications, or other disorders.

The VA has known about the problem of Hepatitis C among veterans since 1992, but they have not acted. We must address this critical issue for the brave men and women who have placed their lives in danger to protect the United States. I urge my colleagues to support this bill in supporting this crucial 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. 1571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
S9494

CONGRESSIONAL RECORD — SENATE  July 29, 2005

SEC. 1. SHORT TITLE. This Act may be cited as the “Veterans Comprehensive Hepatitis C Health Care Act”.

SEC. 2. COMPREHENSIVE HEPATITIS C HEALTH CARE TESTING AND TREATMENT PROGRAM FOR VETERANS.

(a) IN GENERAL.—Chapter 17 of title 38, United States Code, is amended by inserting after section 1720E the following new section:

§ 1720F. Hepatitis C testing and treatment

''(a) INITIAL TESTING.—(1) During the 1-year period beginning on the date of the enactment of the Veterans Comprehensive Hepatitis C Health Care Act, the Secretary shall provide a blood test for the Hepatitis C virus to—

(A) each veteran who—

(i) served in the active military, naval, or air service during the Vietnam era; or

(ii) is considered to be at risk;

(B) a blood test for the Hepatitis C virus to—

(i) a veteran who—

(I) is enrolled to receive care under section 1710 of this title; and

(II) seeks or accepted, under section 1729 of this title or under any other provision of law, for treatment under subsection (b), out regard to priority group categorization versus the "VERA" subaccount.

(b) ALLOCATIONS TO VISNS.—In allocating funds appropriated for the Department of Veterans Affairs for the “Medical Care” account to the Veterans Integrated Service Networks, the Secretary of Veterans Affairs shall allocate funds for detection and treatment of the Hepatitis C virus based upon incidence rates of that virus among veterans (oration overall population of veterans) in each such network.

(c) LIMITATION ON USE OF FUNDS.—Amounts appropriated for the Department of Veterans Affairs for the Hepatitis C detection and treatment through the “Specific Purpose” sub-account may not be used for any other purpose.

SEC. 3. FUNDING FOR HEPATITIS C PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS.

(a) PROGRAM ACCOUNT.—Beginning with fiscal year 2006, amounts appropriated for the Department of Veterans Affairs for Hepatitis C detection and treatment shall be provided, within the “Medical Care” account through the “Specific Purpose” subaccount, rather than the “VERA” subaccount.

(b) ALLOCATIONS TO VISNS.—In allocating funds appropriated for the Department of Veterans Affairs for the “Medical Care” account to the Veterans Integrated Service Networks, the Secretary of Veterans Affairs shall allocate funds for detection and treatment of the Hepatitis C virus based upon incidence rates of that virus among veterans (oration overall population of veterans) in each such network.

SEC. 4. NATIONAL POLICY.

(a) STANDARDIZED NATIONAL POLICY.—The Secretary of Veterans Affairs shall develop and implement policy to be applied throughout the Department of Veterans Affairs health care system with respect to the Hepatitis C virus. The policy shall include guidance for the Hepatitis C virus, treatment options, education and notification efforts, and establishment of a specific Hepatitis C diagnosis code for measurement and treatment purposes.

(b) OUTREACH.—The Secretary shall, on an annual basis, take appropriate actions to notify veterans who have been tested for the Hepatitis C virus the need for such testing and the availability of such testing from the Department of Veterans Affairs.

SEC. 5. HEPATITIS C CENTERS OF EXCELLENCE.

(a) ESTABLISHMENT.—The Secretary of Veterans Affairs shall establish at least 1, and not more than 3, additional Hepatitis C centers of excellence or additional sites at which activities of Hepatitis C centers of excellence are carried out. Each such additional center or site shall be established at a Department of Veterans Affairs medical center in 1 of the 5 geographic service areas (known as a Veterans Integrated Service Network) for which a national case rate of Hepatitis C in fiscal year 1999.

(b) FUNDING.—Funding for the centers or sites established under subsection (a) shall be provided from amounts available to the Central Office of the Department of Veterans Affairs and shall be in addition to amounts allocated for Hepatitis C pursuant to section 3.

By Mr. JOHNSON (for himself and Mr. BINGAMAN):

S. 1595. A bill to amend title XIX of the Social Security Act to clarify the application of the 100 percent Federal medical assistance percentage under the Medicaid program for services provided by the Indian Health Service or an Indian tribe or tribal organization directly or through referral, contract, or other arrangement; to the Committee on Finance.

Mr. JOHNSON. Mr. President, today I am introducing legislation that will make a necessary clarification to current legislation regarding the application of the federal medical assistance percentage or FMAP. I am joined by Senator BINGAMAN in introducing this bill.

The Indian Health Care Improvement Act, IHCIA, provides for 100 percent Federal medical assistance percentage, FMAP, applicable to Medicaid services "received through an Indian Health Service facility." This definition has created some issues for new Medicaid payments when applying for the full FMAP rate for services provided to Native Americans that are referred by an Indian Health Service facility to a non-IRS facility.

North Dakota and South Dakota have been in the courts with the Centers for Medicare and Medicaid Services or CMS over this issue. Since last year when CMS determined that the 100 percent FMAP was not allowable for referred services, North Dakota and South Dakota appealed and prevailed in a lawsuit at the district court level. The Federal appeals court has now reversed the district court's decision and affirmed that those states must repay CMS for the excess payments. While this lawsuit is still pending, the decision states that there is a lack of clarity in the statute pertaining to how referred patients are covered through the Federal match.

CMS disallowed $1 million in payments that South Dakota's Department of Social Services had billed Medicaid through the 100 percent FMAP for Indian patients seen in non-IHS facilities through referrals. At issue is a lack of specificity regarding how far "received through" should extend. The most recent court decision even states "the statutory language is susceptible to multiple interpretations."

The legislation I am introducing today will clarify the statute and make it completely clear that any services provided under a state Medicaid plan which are referred by any Indian Health Service facility, whether operated by the IHS or by and Indian tribe or tribal organization are to be covered by the 100 percent FMAP amount. Any claims by CMS that requests the claims by CMS will be reviewed by the Department of Health and Human Services within 90 days of enactment of this legislation and payments adjusted accordingly if the claim meets the standards set forth in this bill.

The Senate Indian Affairs Committee, of which I am a member, will be considering the IHCIA this fall. It is my hope that this legislation will be considered within the broader context of the debate on IHCIA. Clearly the Federal government has an obligation to live up to the treaties and responsibilities to our tribes and all Native Americans. I see this legislation as an extension of the obligation.

By Ms. CANTWELL (for herself, Mr. BINGAMAN, Mr. ROCKEFELLER, Mrs. LINCOLN, Mrs. MURRAY, and Mr. CORZINE):

S. 1595. A bill to amend title VIII of the Social Security Act to provide for a minimum update for physicians' services for 2006 and 2007; to the Committee on Finance.
Ms. CANTWELL. Mr. President, I am proud to rise today with my colleagues Senators BINGAMAN, ROCKEFELLER, LINCOLN, MURRAY and CORZINE to introduce the “Affordable Access to Medicare Providers Act.”

Securing access to affordable healthcare, especially for our Nation’s seniors, is critical and it remains to be one of my top priorities. Access to healthcare is impacted by two key factors: we must have enough well qualified physicians to provide the care needed and able to accept Medicare patients, and the beneficiaries must be able to afford the premiums required to utilize their Medicare benefits. This bill addresses both of these issues—it will provide some stability in physician Medicare payment rates so that physicians can continue to offer high quality healthcare services while ensuring that the Medicare beneficiaries are not saddled with the cost and even higher premiums for physicians services.

Medicare was written to cover the most basic health care for seniors. When the original bill passed in 1965, the legislation’s conference report explicitly stated that the intent of the program was to provide adequate medical care . . . for needy people, and should “make the best of modern medicine more readily available to the aged.”

While the Medicare Modernization Act provided some improvements such as: It also had some unfortunate consequences on the Medicare beneficiaries in Washington State. Medicare payments per beneficiary will be further exacerbated and continue to penalize Washington state for our efficient health care system. Fifty-seven percent of Washington state physicians are limiting or dropping Medicare patients from their practices. Washington falling to 45th in the Nation on reimbursement, help the situation.

A survey conducted by the Medicare Payment Advisory Council, MedPAC, found that 22 percent of patients already have some problems finding a primary care physician and 27 percent report delays getting an appointment. Physicians are the foundation of our Nation’s health care system. Continual cuts, or even the threat of repeated cuts, put Medicare patient access to physicians’ services at risk. They also threaten to destabilize the Medicare program and create a ripple effect across other programs. Indeed, Medicare cuts jeopardize access to medical care for millions of our active duty military family members and military retirees because their TRICARE insurance ties its payment rates to Medicare.

Now we are told by the Medicare board of Trustees that if Congress does not act by the end of the year, the Medicare physician payment formula will likely produce a 4.3 percent decrease next year with similar reductions to follow in the years to come. The Medicare Board of Trustees also estimates that the cost of providing medical care will increase by an estimated 15 percent over the next six years, while current reimbursement levels are scheduled to drop by an estimated 26 percent over the same time period.

After adjusting for inflation, Medicare payments to physicians in 2013 will be less than half of what they were in 1991. That declining reimbursement rate would already mean a growing percentage of family physicians would decline to see new Medicare patients and, as a result, access to care would suffer. Washington stands to lose $39 billion in 2006 and 1.9 billion from 2006-2014 if these cuts go through. A survey of physicians in Washington, the cuts over this period will average $13,000 per year for each physician in the State.

The American Medical Association conducted a survey of physicians in February and March 2005 concerning significant Medicare pay cuts from 2006 through 2013 (as forecast in the 2004 Medicare Trustees report). Results from the survey indicate that if the proposed cuts go through, the Medicare payment rates begin in 2006: more than a third of physicians (38 percent) plan to decrease the number of new Medicare patients they accept; more than half of physicians (54 percent) plan to defer the purchase of information technology, which is necessary to make value-based purchasing work; a majority of physicians (53 percent) will be less likely to participate in a Medicare Advantage plan; about a quarter of physicians plan to close satellite offices (24 percent) and/or discontinue rural outreach services (29 percent) if payments are cut in 2006. If the pay cuts continue through 2013, close to half of physicians plan to close satellite offices (42 percent) and/or discontinue rural outreach (44 percent); and one-third of physicians (34 percent) plan to discontinue nursing home visits if payments are cut in 2006. By the time the cuts end, half (50 percent) of physicians who have discontinued nursing home visits.

Physicians can simply not absorb these cuts and still deliver high quality care. We must ensure our doctors have the resources they need to ensure that our seniors have access to their physicians.

There have been efforts made to address the physician payment issue however, they have not addressed the impact on Medicare beneficiaries and their premiums. I’m concerned some of the proposals would result in an additional burden being placed on the Medicare beneficiary by way of a $24 billion increase in part B premiums in 2006 and an additional $10 billion in 2007.

This happens because by law, the monthly Part B premium is set at 25 percent of the part B Trust Fund costs. Administrative or legal changes to increase physician payment rates that don’t include a hold-harmless clause, increase Medicare part B expenditures and ultimately, the Part B premiums paid by beneficiaries.

This is not a viable solution either as the beneficiaries are already being hit with premium increases and additional cost sharing due to implementation of the prescription drug benefit. For this reason, along with my colleagues, I have chosen to introduce legislation that provides the physicians reimbursement rates but also holds the part B premiums harmless.

I look forward to working with my colleagues to pass this legislation to ensure that access to care for our seniors is preserved and enhanced.

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. 1574

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 “Affordable Access to Medicare Providers Act of 2005”.


(a) MINIMUM UPDATE —

(1) IN GENERAL.—Section 1848(d) of the Social Security Act (42 U.S.C. 1395w–4(d)) is amended by adding at the end the following new paragraph:

“(6) UPDATE FOR 2006.—The update to the single conversion factor established in paragraph (1)(C) for 2006 shall not be less than 2.7 percent.

(7) UPDATE FOR 2007.—

“(A) IN GENERAL.—The update to the single conversion factor established in paragraph (1)(C) for 2007 shall not be less than the product of—

(i) 1 plus the Secretary’s estimate of the percentage change in the value of the input price index (as provided under subparagraph (B)(i)) for 2007 (divided by 100); and

(ii) 1 minus the Secretary’s estimate of the productivity adjustment factor under subparagraph (C) for 2007.

(8) INPUT PRICE INDEX.—

“(i) ESTABLISHMENT.—Taking into account the mix of goods and services included in computing the medicare economic index (referred to in the fourth sentence of section 1842(b)(3)), the Secretary shall establish an index that reflects the weighted-average input prices for physicians’ services for 2006. Such index shall only account for input prices and not changes in costs that may result from other factors (such as productivity).

“(ii) ANNUAL ESTIMATE OF CHANGE IN INDEX.—The Secretary shall estimate, before the beginning of 2007, the change in the value of the input price index under clause (i) from 2006 to 2007.

“(C) PRODUCTIVITY ADJUSTMENT FACTOR.—

The Secretary shall estimate, and cause to be published in the Federal Register not later than November 1, 2006, a productivity adjustment factor for 2007 that reflects the Secretary’s estimate of growth in multifactor productivity in the national economy, taking into account growth in productivity attributable to both labor and nonlabor factors. Such adjustment may be based on a multi-year moving average of productivity (based on data published by the Bureau of Labor Statistics).”.

(2) CONFORMING AMENDMENT.—Section 1848(d)(4)(B) of the Social Security Act (42 U.S.C. 1395w–4(d)(4)(B)) is amended, in the matter preceding clause (i), by striking “and
There is a well-known saying, “a problem clearly stated is a problem half solved.” In 2004-2005, over 30,000 qualified nursing school applicants were not accepted into nursing baccalaureate programs. Estimates from the National League for Nursing indicate that 123,000 qualified applications could not be accommodated in registered nurse educational programs in 2004. The primary reason students are not admitted is lack of trained faculty, funds, and program resources. The real nursing workforce challenge is that we need to address at the current time is lack of an adequate number of qualified nurse faculty members.

The Nurse Faculty Education Act will amend the Nurse Reinvestment Act, P.L. 107-205, to help alleviate the faculty shortage by providing funds to help nursing schools increase enrollment and graduation from nursing doctoral programs. The act will increase partnering opportunities, enhance cooperative education, help support marketing outreach, and strengthen mentoring programs. The bill will increase the number of nurses who complete nursing doctoral programs and seek employment as faculty members and nursing leaders in academic institutions. By addressing the faculty shortage, we are addressing the nursing shortage.

The provisions of the Nurse Faculty Education Act are vital to overcoming nursing workforce challenges. By addressing the nursing shortage, we will enhance both access to care and the quality of care. Our families and our Nation will be well-served by integration of the Nurse Faculty Education Act into the Nurse Reinvestment Act.

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

S. 1575

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 “Nurse Faculty Education Act of 2005.”

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Nurse Reinvestment Act (Public Law 107-205) has helped to support students preparing to become nurse educators. Yet, nursing schools nationwide are forced to deny admissions, and public health offices have decreased public health services. The number one priority listed in the state legislative agendas was to double the number of licensed nursing graduates in the State. And yet, this one simple priority is not so simple. With a doctoral nurse faculty of 53.4 years of age, we cannot and must not wait any longer to address nurse faculty shortages. Quite simply, we need to educate more doctoral level faculty, or we, as a Nation, will not have enough trained nurses to meet the needs of our aging society.

In a 2002 report, the Commission on Higher Education and the University of New Mexico Health Sciences Center assembled nursing educators, healthcare providers, organizations, professional associations, legislators, and New Mexico state agencies to develop a statewide strategic framework for addressing New Mexico’s nursing shortage. The initiative revealed that 72 percent of hospitals have curtailed services, 36 percent of home care agencies have refused referrals, 15 percent of long term care facilities have refused admissions, and public health offices have decreased public health services. The number one priority listed in the state legislative agendas was to double the number of licensed nursing graduates in the State. And yet, this one simple priority is not so simple. With a doctoral nurse faculty of 53.4 years of age, on average, and 46 vacant nurse faculty positions, in New Mexico, the necessary expansion of programs is not possible. New Mexico is not alone in facing nurse and faculty shortage. The nationwide nursing shortage is expected to more than triple, because the average age of the workforce is near the retirement age and has increasing healthcare needs, and the shortage is one that affects the entire nation.

(2) According to the February 2004 Monthly Labor Review of the Bureau of Labor Statistics, more than 1,000,000 new and replacement nurses will be needed by 2012. With a nursing faculty workforce that averages 53.5 years of age, we cannot and must not wait any longer to address nurse faculty shortages. Quite simply, we need to educate more doctoral level faculty, or we, as a Nation, will not have enough trained nurses to meet the needs of our aging society.

(3) According to the American Association of Colleges of Nursing, in the 2004-2005 academic year, 29,425 individuals, or 35 percent of the qualified applicants were not accepted into nursing baccalaureate programs. 2,748 potential nursing master’s students and over 200 nurses qualified for admission to doctoral programs were not accepted. Estimates from the National League for Nursing indicate that over 123,000 qualified applications could not be accommodated in associate degree, diploma, and baccalaureate registered nurse educational programs in 2004.

(4) Seventy-six percent of schools report insufficient faculty as the primary reason for not accepting qualified applicants. The primary reasons for lack of faculty are lack of funds to hire new faculty, inability to identify, recruit and hire faculty in the current competitive job market, and lack of nursing faculty available in different geographic areas.

(5) Despite the fact that 75 percent of graduates of doctoral nursing programs enter education roles (versus about 5 percent of graduates of nursing master’s programs), the 93 doctoral programs nationwide produce only 400 new graduates. This graduation rate is insufficient to meet current needs for nurse faculty. In keeping with other professional academic disciplines, nurse faculty at colleges and universities are typically doctoral-prepared.

(6) With the average age of nursing faculty at retirement at 62.5 years of age and the average age of doctoral-prepared faculty currently at 53.5 years, the health care system faces unprecedented workforce and health access challenges with current and future shortages of deans, nurse educators, and nurses.

SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

Part D of title VIII of the Public Health Service Act (42 U.S.C. 296p et seq.) is amended by adding at the end the following:

SEC. 832. NURSE FACULTY EDUCATION.

(a) Establishment.—The Secretary, acting through the Health Resources and Services Administration, shall establish a Nurse Faculty Education Program to ensure an adequate supply of nurse faculty educational resources, including information with respect to—

(1) provide support for the hiring of new faculty, the retaining of existing faculty, and the purchase of educational resources;

(2) provide for increasing enrollment and graduation rates for students from doctoral programs; and

(3) assist graduates from the entity in serving as nurse faculty in schools of nursing;

(b) Eligibility.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be a school of nursing that offers a doctoral degree in nursing in a State or territory;

(2) submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require;

(3) develop and implement a plan in accordance with subsection (c);

(4) agree to submit an annual report to the Secretary that includes updated information on the doctoral program involved, including information with respect to—

(A) student enrollment;

(B) student retention;

(C) graduation rates;

(D) the number of graduates employed part-time or full-time in a nursing faculty position; and

(E) retention in nursing faculty positions within 1 year and 2 years of employment;

(5) agree to permit the Secretary to make on-site inspections, and to comply with the requests of the Secretary for information, to determine the extent to which the school is complying with the requirements of this section;

(c) Use of Funds.—Not later than 1 year after the receipt of a grant under this section, an entity shall develop and implement a plan for using amounts received under this
grant in a manner that establishes not less than 2 of the following:

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(1) Partnering opportunities with practice and academic institutions to facilitate doctoral education and research experiences that are mutually beneficial.

(2) Partnering opportunities with educational institutions to facilitate the hiring of graduates into educational and research opportunities, prior to, and upon completion of the program.

(3) Partnering opportunities with nursing schools to place students into internship programs which provide hands-on opportunity to learn about the nurse faculty role.
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(4) Cooperatives among programs among schools of nursing to share use of technological resources and distance learning technologies that serve rural students and underserved areas.

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(5) Opportunities for minority and diverse student populations (including aging nurses in clinical roles) interested in pursuing doctoral education.
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(6) Pre-entry preparation opportunities including programs that assist returning students in standardized test preparation, use of technology, and the statistical tools necessary for program enrollment.

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(7) A nurse faculty mentoring program.
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(8) A Ph.D. program to expedite the completion of a doctoral degree and entry to nurse faculty role.

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(9) Career path opportunities for 2nd degree students to become nurse faculty.
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(10) Marketing outreach activities to attract students committed to becoming nurse faculty.

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(d) PRIORITY.—In awarding grants under this section, the Secretary shall give priority to entities from States and territories that have a number of employed nurses per 100,000 population.
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(e) NUMBER AND AMOUNT OF GRANTS.—Grants under this section shall be awarded as follows:
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(1) In fiscal year 2006, the Secretary shall award 10 grants of $100,000 each.
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(2) In fiscal year 2007, the Secretary shall award an additional 10 grants of $100,000 each and provide continuing funding for the existing grantees under paragraph (1) in the amount of $100,000 each.
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(3) In fiscal year 2008, the Secretary shall award an additional 10 grants of $100,000 each and provide continuing funding for the existing grantees under paragraphs (1) and (2) in the amount of $100,000 each.

(4) In fiscal year 2009, the Secretary shall provide continuing funding for each of the existing grantees under paragraphs (1) through (3) in the amount of $100,000 each.

(5) In fiscal year 2010, the Secretary shall provide continuing funding for each of the existing grantees under paragraphs (1) through (3) in the amount of $100,000 each.

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(f) LIMITATIONS.—
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(1) LIMITATION ON PAYMENTS.—Payments to an entity under a grant under this section shall be for a period of not to exceed 5 years.
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(2) IMPROPER USE OF FUNDS.—An entity that fails to use amounts received under a grant under this section as provided for in subsection (c) shall, at the discretion of the Secretary, be required to remit to the Federal Government not less than 80 percent of the amounts received under the grant.

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(g) REPORTS.—
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(1) EVALUATION.—The Secretary shall conduct an evaluation of the results of the activities carried out under grants under this section.
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(2) REPORT.—Not later than 3 years after the date of the enactment of this section, the Secretary shall submit to Congress an interim report on the results of the evaluation conducted under paragraph (1). Not later than 6 months after the end of the program under this section, the Secretary shall submit to Congress a final report on the results of such evaluation.
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(3) CONTENTS.—The report under paragraph (1) shall include the following:

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(A) An analysis of the capacity of the nursing schools to meet workforce needs on a nationwide basis.

(B) An analysis and discussion of sustainability options for continuing programs beyond the initial funding period.

(C) An examination and understanding of the doctoral degree programs that are successful in placing graduates as faculty in schools of nursing.

(D) An analysis of program design under this section and the impact of such design on nurse faculty retention and workforce shortages.

(E) An analysis of compensation disparities between nursing clinical practitioners and nurse faculty and between higher education nurse faculty and higher education faculty overall.

(F) Recommendations to enhance faculty retention.
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(i) AUTHORIZATION OF APPROPRIATIONS.—
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(1) IN GENERAL.—For the costs of carrying out this section, the Secretary shall submit to the Congress, there are authorized to be appropriated $1,000,000 for fiscal year 2006, $2,000,000 for fiscal year 2007, and $3,000,000 for each of fiscal years 2008 through 2010.
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(2) ADMINISTRATIVE COSTS.—For the costs of administering this section, including the costs of evaluating the results of grants and submitting reports to the Congress, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2006 through 2010.

By Mr. BURNS (for himself, Mr. DORGAN, Mr. JOHNSON, Mr. DAYTON, Mr. BAUCUS, and Mr. CONRAD)

S. 1579. A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit the distribution and sale of certain pesticides that are registered in both the United States and another country; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. BURNS. Mr. President, today I am introducing, along with my colleagues Senator DORGAN, a bill that addresses a persistent inequity in the agriculture industry.

The United States and Canada have been working for over a decade to streamline their registration processes, harmonize the requirements, and develop protocols for work sharing and joint reviews. A lot of groundwork has already been done between the U.S. and Canada, so we can move quickly towards development of a joint label between our two countries.

And there is no reason not to. Again, we are talking about the exact same product, being sold at two different prices to growers who have to compete against each other in the world market. NAFTA was supposed to tear down barriers between the U.S., Canada, and Mexico, and yet this barrier remains. It is an irritant to Montana growers who are farming along the border. It is also a problem for Canadian growers, and I look forward to working with Canada to resolve this issue in a mutually beneficial way. There are times when pesticides are cheaper in the U.S., and U.S. growers often have access to a wider variety of products. So there is a shared interest in tearing down this barrier to free trade.

A recent study done by Montana State University points to this point. For 13 pesticides widely used in Montana and Alberta, seven were less expensive in Canada, five were less expensive in the U.S., and one, glyphosate, showed little or no difference in price. False barriers that prevent pesticides from moving across the border are creating significant price distortions in the market, and those barriers need to come down.

Certainly, there are a number of factors that impact pricing, but there can be things that allow price differentiation, and that's not right. There will always be some price fluctuations—they exist now, between
This is not an anti-industry bill. Growers need the crop protection industry, and it is important that the research and innovation in that sector continue. This bill will help to streamline regulatory processes and reduce the obstacles to registration, by requiring only one label. It simplifies distribution systems, by allowing companies to have just one label for the same product, while it is being sold in both countries. So while this will address the sort of price distortions that farmers on the northern border find unfair, it also reduces costs to industry, and will ideally result in smoother and quicker processes.

In fact, representatives of the crop protection industry have said that the solution to trade barriers along the northern border is a joint label, and have testified in support of regulatory harmonization before the Senate Agriculture, Nutrition, and Forestry Committee. Since the passage of NAFTA, a technical working group on pesticide harmonization has worked diligently on the development of joint registration and labeling procedures, and has enjoyed the cooperation of the industry in those discussions. This bill accomplishes what both the industry and the producers have said is needed: regulatory harmonization between two nations, joint registration, and joint labeling.

This legislation is supported by the National Association of Wheat Growers, the National Barley Growers Association, the U.S. Durum Growers Association, the National Farmers Union, the Montana Grain Growers Association, and the North Dakota Grain Growers Association. It is time these barriers be eliminated. If we are going to have free trade in grain, then we need free trade in the input costs for production. This bill accomplishes that. I ask Members to take a close look at this bill, and consider it seriously. Our growers deserve an end to the practice of artificially inflating the price of pesticides simply to take advantage of false barriers.

Mr. DORGAN. Mr. President, today I am reintroducing bipartisan legislation to remedy a long-standing and glaring inequity in our so-called free-trade system. There are significant and costly differences in prices between agricultural products sold in Canada and the United States, and similar—and in some cases, identical—chemicals sold in the United States. This disparity in prices puts an extra burden on American farmers, and it puts them at a distinct disadvantage when it comes to competing in the world market.

Currently, American and Canadian farmers use many of the same products on their land. These products, in some cases, are chemicals, are made by the same company, and are sometimes even marketed under the same name; but they are often sold at a much lower cost north of the border.

For example, U.S. farmers use the pesticide Garlon, which is sold as Remedy in Canada. It is manufactured by the same company, with the same ingredients. But American farmers pay $8.02 more per acre than their Canadian counterparts. The pesticide Puma, which is widely used on wheat and barley, costs farmers in North Dakota $2.82 more per acre than Canadian farmers pay for Puma 120 Super, which is the same product, made by the same company. That means North Dakota farmers have wasted nearly $7.9 million more to treat their fields with Puma than they would have paid if they could have accessed it at prices paid by Canadian farmers.

This legislation would address that inequity by setting up a process that would allow American farmers to access these chemicals, which are lower priced, but identical to those already approved for use in the United States.

Data collected by the North Dakota Department of Agriculture show that farmers in just my home State of North Dakota alone would have saved nearly $11 million last year if they had been able to access agricultural chemicals at Canadian prices.

But this problem does not just affect farmers in North Dakota. Farmers all across the northern tier of the United States would benefit if they were able to access U.S.-approved pesticides at Canadian prices.

This legislation I am introducing today, along with the Senator from Montana, Mr. BURNS, authorizes the Environmental Protection Agency to require that certain agricultural chemicals which have been approved in the U.S. carry a joint label, which would allow them to cross the border freely.

The new labels would still be under the strict scrutiny of the Environmental Protection Agency, as would the use of the product. The EPA would continue to insure the health and safety standards that govern the products we use in our food supply. This bill keeps those priorities intact.

By Mr. AKAKA (for himself, Mr. REID, Mr. DURBIN, Mr. BINGAMAN, Mr. CORZINE, Mrs. MURRAY, Mr. KENNEDY, Ms. LANDRIEU, Mr. LUTENBERG, Mr. INOUYE, Mr. PRYOR, Ms. MIKULSKI, Mr. Obama, Mr. DODD, Mr. LIEBERMAN, and Mrs. CLINTON): S. 1580. A bill to improve the health of minority individuals; to the Committee on Finance.

Mr. AKAKA. Mr. President, I am proud to introduce the Healthcare Equality and Accountability Act, along with my colleagues Senators REID, DURBIN, BINGAMAN, CORZINE, MURRAY, KENNEDY, LANDRIEU, LUTENBERG, INOUYE, PRYOR, MIKULSKI, OBAMA, DODD, LIEBERMAN, and CLINTON. I want to thank these and all of my colleagues in the other body, for all of their contributions to this important legislation.

This bill will improve access to and the quality of health care for indigenous people and racial and ethnic minorities who often lack access and suffer disproportionately from certain diseases. It is essential that we expand and improve the health care safety net so that everyone can access the health care services that they need. This legislation will expand health coverage and includes provisions that will increase access to culturally-appropriate and relevant services for our communities.

In addition to improving treatments for the diseases that disproportionately affect indigenous people and racial and ethnic minorities, which disproportionately affect Pacific Islanders, including Native Hawaiians. Among populations in Hawaii, Native Hawaiians had the highest age-adjusted mortality rates due to diabetes for the years 2000 to 2002.

Statistics for U.S.-related Pacific Jurisdictions are difficult to obtain due to underdeveloped reporting and data collection systems. However, available data suggests that diabetes and its complications are growing problems that are creating a greater burden on the health care delivery systems of the Pacific Jurisdictions. For example, in the Republic of the Marshall Islands, mortality data for 1996-2000 reflects that complications from diabetes are the leading cause of death and accounted for 30 percent of all deaths during that period. In American Samoa, mortality data for 1998-2001 shows that diabetes is the third leading cause of death accounting for nine percent of all deaths for that period. In
Guam, diabetes has been identified as the fifth leading cause of death and the prevalence rate has been estimated to be seven times that of the United States. Local governments have had to focus on expensive off-island tertiary hospital services resulting in the reduction of funds available for community-based primary preventive care and public health services throughout the Pacific Jurisdictions. There is a need for more comprehensive diabetes awareness education efforts targeted at communities with Native Hawaiian and other Pacific Islander populations. Papa Ola Lokahi, a non-profit agency created in 1988 that functions as a consortium with private and state agencies in Hawaii to improve the health status of Native Hawaiians and other Pacific Islanders, has established the Pacific Diabetes Today Resource Center. Pacific Diabetes Today is designed to provide community members with basic knowledge and skills to plan and implement community-based diabetes prevention and control activities. Since 1998, the Pacific Diabetes Today program has provided training and technical assistance to 11 communities in Hawaii and the Pacific Islands. However, it can be done to ensure that the diabetic health needs of Native Hawaiians and other Pacific Islanders are being met.

Community-based diabetes programs need to be integrated into the larger infrastructure of diabetes prevention and control. Comprehensive, specific programs are needed to mobilize Native Hawaiian and other Pacific Islander communities and develop appropriate interventions for diabetes complications prevention and improve diabetes care. My bill, therefore, includes a provision that would authorize a comprehensive program to prevent and better manage the overlapping health problems that are often related to diabetes—obesity, hypertension, and cardiovascular disease.

I am also pleased that a provision has been included in this bill that would restore Medicaid eligibility for Freely Associated States, FAS, citizens in the United States. The political relationship between the United States and the FAS is based on mutual support. In exchange for the United States having strategic denial and a defense veto over the FAS, the United States provides military and economic assistance to the Republic of Marshall Islands, Federated States of Micronesia and Palau with the goal of assisting these countries in achieving economic self-sufficiency following the termination of their status as U.N. Trust Territories. Pursuant to the Compact, FAS citizens are allowed to freely enter the United States. They come to seek economic opportunity, education, and health care. Unfortunately, FAS citizens have lost many of their public benefits as a result of the effects of the 1996 Amendments to the Immigration Reform and Work Opportunity Act, PRWORA, of 1996, including Medicaid coverage. FAS citizens were previously eligible for Medicaid as aliens permanently residing under color of law in the United States.

After the enactment of PRWORA, the State of Hawaii was informed that it could not claim Federal matching funds for FAS citizens. Since then, the State of Hawaii, and the territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, CNMI, have continued to incur substantial costs to meet the health care needs of FAS citizens that have immigrated to these areas.

The Federal Government must provide Federal resources to help States meet the healthcare needs of the FAS citizens that have been brought about by a Federal commitment. It is inequitable for a state or territory to be responsible for all of the financial burden of providing necessary social services to individuals that are residing there due to a Federal commitment. Mr. President, my bill must be restored. Furthermore, the State of Hawaii, and the territories of Guam, American Samoa, and the CNMI, should be reimbursed for all of the Medicaid expenses of FAS citizens, and the increased FMAP will be responsible for the costs of providing essential health care services for FAS citizens.

Finally, there is another provision in this bill that is of extreme importance to the State of Hawaii, taken from legislation that my colleague from Hawaii, Senator INOUYE, has introduced. The provision would provide a 100 percent Federal Medicaid Assistance Percentage, FMAP, of health care costs of Native Hawaiians who receive health care from Federally Qualified Health Centers or the Native Hawaiian Health Care System. This would provide similar treatment for Native Hawaiians as already granted to Native Alaskans by the Indian Health Service or tribal organizations. The increased FMAP will ensure that Native Hawaiians have access to the essential health services provided by community health centers and the Native Hawaiian Health Care System.

This bill would significantly improve the quality of life for indigenous people and ethnic and racial minorities, and I encourage all of my colleagues to support this legislation.

Mr. KENNEDY. Mr. President, it is a privilege to join Senator AKAKA and Senator Reid in introducing the Healthcare Equality and Accountability Act. Our goal is to eliminate racial and ethnic disparities in health care, so that all citizens, regardless of income or background, have the best possible health care our Nation can provide.

The Institute of Medicine has documented the severity of ethnic and racial disparities in health care. People of color face unequal treatment and unequal outcomes in heart disease, infant mortality, HIV/AIDS, diabetes, asthma, and other serious illnesses. The health care needs of communities of color are often more severe than those of white Americans. Minorities often face significant obstacles, including poverty and the lack of health insurance. We need to attack disparities in all their forms.

One important step is to see that health insurance and decent health care are available and affordable for all Americans. This bill strengthens the health care safety net by expanding access to Medicaid and the Children’s Health Insurance Program, and improving health care for Indian tribes, migrant workers, and farm workers.

The bill also contains essential measures for removing cultural and linguistic barriers to good care. The United States is a Nation of immigrants, and all Americans deserve to understand what their doctor is telling them. Interpreter and translator services save money in the long run by avoiding harm when patients do not understand their diagnosis or the advice they have been given.

Other important initiatives to reduce health disparities include diversifying the health care workforce, so that minority providers are more likely to serve low-income communities of color, and this bill addresses the shortage of these providers.

Federal agencies can do more in this battle. The bill requires all Federal health agencies to develop specific plans to eliminate disparities. The bill expands the Office of Civil Rights and the Office of Minority Health at the Department of Health and Human Services, and creates minority health offices within the Food and Drug Administration and the Centers for Medicare and Medicaid Services.

In addition, the bill strengthens investments in prevention and behavioral health and improves research and data collection. It strengthens health institutions that serve communities of color, provides grants for community initiatives, and funds programs on chronic disease. In each of these ways, we can reduce the gap in health care between people of color and whites, so that all Americans can benefit from the remarkable advances being made in modern health care.

It’s time for Congress, the administration, and the Nation to end the shameful inequality in health care that plagues the lives of so many people in our society. This bill contains numerous provisions intended to make that happen, and it can have a major impact on the lives of millions of Americans. I commend Senators REED, RICHARD, and BINGAMAN for their leadership on this important health issue. We intend to do all we can in this Congress to see that effective legislation to combat health disparities is enacted into law and funded adequately to do the job.

By Mr. BINGAMAN (for himself and Mr. BUNNING):
S. 1581. A bill to facilitate the development of science parks, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today with my colleague, Senator BUNNING, Chairman of the Senate Governmental Affairs Committee, and Senator VANDERHEDEN, to introduce the Science Park Administration Act of 2005.

This legislation is a result of my travels to Taiwan, China, Hong Kong, and India to learn more about their science and technology policies, as well as to discover how they have successfully encouraged similar industries and research entities to work so closely together in these research parks.

Let me discuss some findings from my fact finding trips regarding the role of science parks in economic development.

Last summer, I visited the Hong Kong Science and Technology Park which the Hong Kong Government is funding at $423 million. By 2006, this investment will construct 30 buildings, over 1 million square feet of office and laboratory space, that will cluster IC design, photonics, biotechnology and information technology.

This science park, like the others I visited in Asia, teams up with the local universities and creates collaborative research. The Hong Kong Government to overcome the “valley of death” challenges so many new technology companies frequently face.

One of the most impressive features of this park is the Integrated Circuit, IC, Design and Development Support Center. This is a user facility with shared state of the art equipment to support the entire IC product development cycle, from initiation design to production release. For example, as many as 16 vendors can combine their designs onto a single wafer, thus reducing initial prototype foundry costs by 94 percent.

I was also briefed on the Hong Kong Cyber Port, another science park devoted solely to information technology, IT, and multimedia companies that trains employees and conducts collaborative research. The Hong Kong Government is investing $2 billion between 2000 and 2007 to house 10,000 IT professionals and 100 IT companies in over 1 million square feet of work space.

The Hong Kong Government’s combined investment in developing the infrastructure to attract science-based companies to these two parks is about $900 million over a period of six years. On a comparable GDP scale, the United States would have to spend $31 billion annually for that same period for a total of $1.86 billion.

This past January, I spent 10 days in India, visiting their science and technology policies, and was particularly impressed with their development of Software Technology Parks. These parks were first developed in 1991 by the Ministry of Information Technology and Communications as a semi-autonomous entity to promote India’s developing IT industry. They provide the infrastructure in terms of space, internet access, tax breaks and one-stop clearances for government approvals. Generous tax considerations exempt companies until 2010 from corporate income tax and excise duties on purchased goods.

As my colleagues are aware, the growth rate of India’s IT industry has been phenomenal. There are now more than 1,000 companies in 44 such software parks in India, the largest located around Hyderabad and Bangalore considered to be India’s “Silicon Valleys.” Last year these parks had a combined net export value of $50 billion, up 37 percent from the prior year.

Companies such as Infosys, which maintains software for large firms overseas, are located in these parks, and the 2006 revenues jumped by 50 percent. Last year, they received 1.2 million online job applications; they gave a standardized test to 300,000, interviewed 30,000, and hired 10,000. Much of India’s success in the IT industry can be attributed to their universities, but to the government’s decision 1991 to establish these Software Technology Parks.

Building on that success, and with the government’s encouragement, these Software Technology Parks are now set to launch biotechnology parks.

Taiwan’s success in the global market place is a result of building the Hsinchu Science Park in the 1980s. Today, Hsinchu has over 100,000 technically trained people, 325 companies, 6 national labs and $22 billion in gross revenue. The government has duplicated these parks in two other locations of the island. The science parks being built throughout Asia are modeled after Taiwan’s Hsinchu Science Park.

Let me note that these Asian science parks have several common features:

First the Government commits to provide a first-class infrastructure to accommodate all levels of science-based companies, from small start-ups in incubators to large manufacturing plants.

Second, these parks align companies of similar interests to mutually reinforce each other along the supply and management chain.

Third, the Government provides virtually one-stop shopping for government approvals, even including loans.

Fourth, the Government provides tax incentives, usually in the form of waivers on the first several years of profit, and capital gains on acquired stock.

Fifth, and most importantly, the Government takes the long view of partnering with the local governments to ensure the trained workforce is readily available to support the parks’ growth, by teaming with universities and national laboratories.

If we fail to learn from these Asian success stories, we are in danger of losing the very high technology industries we first started, because the low cost manufacturing operations in Asia are now moving up the value chain to research intensive industries. The Government facilitates by building science parks.

That leads me to the legislation we are introducing today — the premise of the legislation is straightforward. It does not pick industry winners or losers. Rather, it simply provides a synergistic science-based infrastructure that companies may compete for and thrive in. Just like in Asia, the government acts as a facilitator not micromanager.

The legislation first proposes a series of competitively peer-reviewed science park planning grants to local governments.

A revolving loan fund in six regional centers is proposed to allow existing science parks to upgrade their infrastructure.

The legislation proposes a loan guarantee fund for the construction of new science parks.

Additionally, the legislation proposes a Science Park Venture Capital Fund similar to SBIC’s, that would guarantee debentures issued by the Fund to raise capital for start-up companies trying to bridge that valley of death, where ideas must move from the laboratory to working prototype.

Furthermore, the legislation proposes several tax incentives to locate in the park. The full cost of property placed in the park could be deducted in the year it was purchased without regard to the existing caps. Many times high tech equipment is expensive and loses its value quickly, and this provision would cover that loss. The legislation proposes a flat 20 percent R&D tax credit without regard to any expenditure cap. The hope is that, by spurring greater research investment on a broader range of projects, finally, the legislation ensures that the status of tax exempt bonds used to fund science park infrastructure remain tax exempt eliminating the uncertainty associated with its interpretation under the Bayh-Dole Act.

I believe this legislation combines many of the best ideas I have discovered on my Asian fact finding trips. I hope it attracts the support from both sides of the aisle as a truly bipartisan effort as we need this type of infrastructure investment more than ever before if we are to successfully compete in today’s global environment.

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. 1581
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 “Science Park Administration Act of 2005.”
SEC. 2. DEVELOPMENT OF SCIENCE PARKS.

(a) FINDING.—Section 2 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 370i) is amended by adding at the end the following new paragraphs:

"(12) It is in the best interests of the Nation to encourage the formation of science parks to promote the clustering of innovation through high technology activities.

(b) DEFINITION.—Section 4 of such Act (15 U.S.C. 370j) is amended by adding at the end the following new paragraph:

"(14) ‘Science park’ means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies and institutions, and does not mean a business or industrial park.

"(15) ‘Business or industrial park’ means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.

(c) PROMOTION OF DEVELOPMENT OF SCIENCE PARKS.—Section 4(c) of such Act (15 U.S.C. 370j(c)) is amended—

(1) in paragraph (14), by striking ‘‘and’’ at the end; and

(2) in paragraph (15), by striking the period at the end and inserting ‘‘; and’’; and

(3) by adding at the end the following new paragraph:

"(16) promote the formation of science parks.’’.

(d) SCIENCE PARKS.—Such Act is further amended by adding at the end the following new section:

"SEC. 24. SCIENCE PARKS.

‘‘(a) DEVELOPMENT OF PLANS FOR CONSTRUCTION OF SCIENCE PARKS.—‘‘(1) IN GENERAL.—The Secretary shall award grants for the development of feasibility studies and plans for the construction of new or expansion of existing science parks.

‘‘(2) LIMITATION ON AMOUNT OF GRANTS.—The amount of a grant awarded under this subsection may not exceed $750,000.

‘‘(b) COMPETITION REQUIRED.—The Secretary shall award any grant under this subsection pursuant to a full and open competition.

‘‘(c) ADVERTISING.—The Secretary shall advertise any competition under this paragraph in the Commerce Business Daily.

‘‘(d) SELECTION CRITERIA.—The Secretary shall publish the criteria to be utilized in any competition under this paragraph for the selection of recipients of grants under this subsection. Such criteria shall include requirements relating to—

‘‘(i) the number of jobs to be created at the science park each year for a period of 5 years;

‘‘(ii) the funding to be required to construct or expand the science park over the first 5 years;

‘‘(iii) the amount and type of cost matching by the applicant;

‘‘(iv) the types of businesses and research entities expected in the science park and surrounding community;

‘‘(v) letters of intent by businesses and research entities to locate in the science park;

‘‘(vi) the capacity of the science park for expansion within a period of 25 years;

‘‘(vii) the quality of life at the science park for employees at the science park;

‘‘(viii) the capability to attract a well trained workforce to the science park;

‘‘(ix) the management of the science park;

‘‘(x) expected risks in the construction and operation of the science park;

‘‘(xi) risk mitigation;

‘‘(xii) transportation and logistics;

‘‘(xiii) physical infrastructure, including telecommunications;

‘‘(xiv) ability to collaborate with other science parks throughout the world.

‘‘(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2006 through 2011, $7,500,000 to carry out this subsection.

‘‘(b) REVOLVING PROGRAM FOR DEVELOPMENT OF SCIENCE PARK INFRASTRUCTURE.—

‘‘(1) IN GENERAL.—The Secretary shall make grants to six regional centers for the development of existing science park infrastructure through the operation of revolving loan funds by such centers.

‘‘(2) SELECTION OF CENTERS.—The Secretary shall select the regional centers to be awarded grants under this subsection utilizing such criteria as the Secretary shall prescribe.

‘‘(3) AWARD.—

‘‘(A) COMPETITION REQUIRED.—The Secretary shall prescribe criteria to be utilized in the awarding of grants under this subsection and such criteria shall include criteria relating to revolving loan funds and revolving loan operators under paragraph (4), including—

‘‘(i) the qualifications of principal officers;

‘‘(ii) non-Federal cost matching requirements; and

‘‘(iii) conditions for the termination of loan funds.

‘‘(B) ADVERTISING.—The Secretary shall publish the criteria to be utilized in any competition under this paragraph in the Commerce Business Daily.

‘‘(C) SELECTION CRITERIA.—The Secretary shall prescribe criteria to be utilized in any competition under this paragraph for the selection of recipients of grants under this subsection. Such criteria shall include requirements relating to—

‘‘(i) the number of jobs to be created at the science park each year for a period of 5 years;

‘‘(ii) the funding to be required to construct or expand the science park over the first 5 years;

‘‘(iii) the amount and type of cost matching by the applicant;

‘‘(iv) the types of businesses and research entities expected in the science park and surrounding community;

‘‘(v) letters of intent by businesses and research entities to locate in the science park;

‘‘(vi) the capacity of the science park for expansion within a period of 25 years;

‘‘(vii) the quality of life at the science park for employees at the science park;

‘‘(viii) the capability to attract a well trained workforce to the science park;

‘‘(ix) the management of the science park;

‘‘(x) expected risks in the construction and operation of the science park;

‘‘(xi) risk mitigation;

‘‘(xii) transportation and logistics;

‘‘(xiii) physical infrastructure, including telecommunications;

‘‘(xiv) ability to collaborate with other science parks throughout the world.

‘‘(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2006 through 2011, $7,500,000 to carry out this subsection.

‘‘(b) REVOLVING PROGRAM FOR DEVELOPMENT OF SCIENCE PARK INFRASTRUCTURE.—

‘‘(1) IN GENERAL.—The Secretary shall guarantee up to 80 percent of the loan amount for loans exceeding $10,000,000 for projects for the construction of science park infrastructure.

‘‘(2) LIMITATIONS ON GUARANTEE AMOUNTS.—The maximum amount of loan principal guaranteed under this subsection may not exceed—

‘‘(A) $5,000,000 with respect to any single project; and

‘‘(B) $10,000,000 with respect to all projects.

‘‘(3) SELECTION OF GUARANTEE RECIPIENTS.—The Secretary shall select recipients of loan guarantees under this subsection upon the ability of the recipient to collateralize the loan amount through bonds, equity, and other such criteria as the Secretary may prescribe.

‘‘(4) TERMS AND CONDITIONS FOR GUARANTEES.—For purposes of this section, the loan guaranteed shall be subject to such terms and conditions as the Secretary may prescribe, except that—

‘‘(A) the final maturity of such loans made or guaranteed shall not exceed (as determined by the Secretary) the lesser of—

‘‘(i) 30 years and 32 days, or

‘‘(ii) 90 percent of the useful life of any property or facility to be financed by such loan;

‘‘(B) no loan made or guaranteed may be subordinated to any other debt incurred by the borrower or to any other claims against the borrowers in the case of default; and

‘‘(C) no loan may be guaranteed unless the Secretary determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States;

‘‘(D) no loan may be guaranteed if the income from such loan is excluded from gross income for purposes of chapter 1 of the Internal Revenue Code of 1986, or if the guarantee provides significant credit enhancement as determined by the Secretary, for other obligations the income from which is so excluded;

‘‘(E) any guarantee shall be conclusive evidence that said guarantee has been properly obtained, that the underlying loan qualified for such guarantee, and that, but for fraud or material misrepresentation by the borrower, such guarantee shall be presumed to be valid, legal, and enforceable;

‘‘(F) the Secretary shall prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans;

‘‘(G) the Secretary must find that there is a reasonable assurance of repayment before extending credit assistance; and

‘‘(H) new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover such losses are made in advance, as required in section 504 of the Federal Credit Reform Act of 1990.

‘‘(5) PAYMENT OF LOSSES.—For purposes of this section—

‘‘(A) IN GENERAL.—If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further enforcement action as the Secretary may require, the Secretary determines that...
the holder has suffered a loss, the Secretary shall pay to such holder the percentage of such loss (not more than 80 percent) specified in the guarantee contract. Upon making any such payment, the Secretary shall be subrogated to all the rights of the recipient of the payment. The Secretary shall be entitled to recover from the borrower the amount of any such payments made pursuant to a loan guarantee entered into under this section.

(2) ENFORCEMENT OF RIGHTS.—The Attorney General shall take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this section.

(3) PROCEDURES.—Nothing in this section shall be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Secretary, if budget authority for any resulting subsidy costs (as defined under the Federal Credit Reform Act of 1990) is available.

(4) MANAGEMENT OF PROPERTY.—Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the discretion to complete, recon- struct, renovate, repair, maintain, operate, or sell any property acquired by the Secretary pursuant to the provisions of this section.

(6) REVIEW.—The Comptroller General of the United States shall, within 2 years of the date of enactment of this section, conduct a review of the subsidy estimates for the loan guarantees under this subsection, and shall submit to Congress a report on the review conducted under this paragraph.

(7) TERMINATION.—No loan may be guaranteed under this subsection after September 30, 2011.

(8) APPROPRIATION OF APPROPRIATIONS.—There is authorized to be appropriated—

(A) such sums as may be necessary for the cost, as defined in section 502(b) of the Federal Credit Reform Act of 1990, of guaranteeing $500,000,000 of loans under this subsection, and

(B) $6,000,000 for administrative expenses for fiscal year 2006 and such sums as necessary thereafter for administrative expenses in subsequent years.

(9) NATIONAL ACADEMY OF SCIENCES EVALUATION.—

(1) IN GENERAL.—The Secretary shall enter into an agreement with the National Academy of Sciences under which the Academy shall evaluate, on a tri-annual basis, the activities under this section.

(2) TRI-ANNUAL REPORT.—Under the agreement under paragraph (1), the Academy shall submit to the Secretary a report on its evaluation of science park development under that paragraph. Each report may include such recommendations as the Academy considers appropriate to further promote and facilitate the development of science parks in the United States.

(e) REPORT.—Not later than March 31 of every third year, the Secretary shall submit to Congress a report on the activities under this section during the preceding 3 years, including any recommendations made by the National Academy of Sciences under subsection (d)(2) during such period. Each report may include such recommendations as the Secretary considers appropriate to further promote and facilitate the development of science parks in the United States.

(f) REGULATIONS.—

(1) REGULATIONS.—Consistent with Office of Management and Budget Circular A-11, Policies for Federal Credit Programs and Non-Tax Receivables, the Secretary shall prescribe regulations to carry out this section.

(2) DEADLINE.—The Secretary shall prescribe such regulations not later than one year after the date of enactment of this section.

SEC. 3. SCIENCE PARK VENTURE CAPITAL FUND PILOT PROGRAM

Title III of the Small Business Investment Act of 1958 (15 U.S.C. 631 et seq.) is amended by adding at the end the following:

"PART C—SCIENCE PARK VENTURE CAPITAL FUND PILOT PROGRAM

SEC. 1. DEFINITIONS.

"(a) As used in this part, the following definitions shall apply:

(1) BUSINESS OR INDUSTRIAL PARK.—The term ‘business or industrial park’ means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.

(2) EQUITY CAPITAL.—The term ‘equity capital’ means common or preferred stock or a similar instrument, including subordinated debt with equity features.

(3) HIGH-TECHNOLOGY.—The term ‘high-technology’ means any of the high-technology sectors of the North American Industrial Classification System, as listed in table 8-25 of the National Science Board publication entitled ‘Engineering Innovators 2004’, or as listed in any succeeding editions of such publication.

(4) LEVERAGE.—The term ‘leverage’ includes—

(A) debentures purchased or guaranteed by the Administrator;

(B) participating securities purchased or guaranteed by the Administrator; and

(C) preferred securities outstanding as of the date of enactment of this part.

(5) MEZZANINE FINANCING.—The term ‘mezzanine financing’ means a late-stage venture capital usually associated with the final round of financing prior to an initial public offering.

(6) OPERATIONAL ASSISTANCE.—The term ‘operational assistance’ means management, marketing, and other technical assistance that assists high-technology start-up companies with business development.

(7) PARTICIPATION AGREEMENT.—The term ‘participation agreement’ means an agreement, between the Administrator and a company, that—

(A) details the operating plan and investment criteria of the company; and

(B) requires the company to make investments in high-technology start-up companies within a science park.

(8) PRIVATE CAPITAL.—The term ‘private capital’—

(A) means the total of—

(i) the paid-in capital of a corporation;

(ii) the contributed capital of the partners of a partnership;

(iii) the equity investment of the members of a limited liability company;

(iv) any unfunded commitments from investors that meet criteria established by the Administrator to contribute capital to the science park venture capital company; and

(v) any unfunded commitments that may be counted as private capital for purposes of approval by the Administrator of any request for leverage;

and

(B) does not include—

(i) any funds borrowed by a science park venture capital company from any source; and

(ii) any funds obtained through the issuance of leverage; or

(iii) any funds obtained directly or indirectly from Federal, State, or local government, except for—

(I) funds obtained from the business revenues of any federally chartered or government-sponsored enterprise established before the date of enactment of this section;

(II) funds invested by an employee welfare benefit plan or pension plan; and

(III) any qualified nonprofit funds, if the investments of such fund or funds are not under direct or indirect control of the management, board of directors, general partners, or members of the science park venture capital company.

(9) PROGRAM.—The term ‘Program’ means the Science Park Venture Capital Program established under section 372.

(10) QUALIFIED NONPRIVATE FUNDS.—The term ‘qualified nonprofit funds’ means—

(A) any funds directly or indirectly invested in any applicant or science park venture capital company on or before the date of enactment of this part, by any Federal agency other than the Administration, under a law explicitly mandating the inclusion of those funds in the definition of the term private capital; and

(B) any funds invested in any applicant or science park venture capital company by 1 or more entities of any State, including any entity that to the extent that any aggregate amount not to exceed 33 percent of the private capital of the applicant or science park venture capital company.

(11) SCIENCE PARK.—The term ‘science park’ means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up and early-stage venture capital, and partnerships between such companies and institutions, and does not mean a business or industrial park.

(12) SCIENCE PARK VENTURE CAPITAL.—The term ‘science park venture capital’ means equity capital investments in high-technology start-up businesses located in science parks to foster economic development and technological innovation.

(13) SCIENCE PARK VENTURE CAPITAL COMPANY.—The term ‘science park venture capital company’ means a company that—

(A) meets the requirements under section 373;

(B) has been granted final approval by the Administrator under section 374(e); and

(C) has entered into a participation agreement with the Administrator.

(14) START-UP COMPANY.—The term ‘start-up company’ means a company that has developed intellectual property protection of research and development, but has not reached the stage associated with equity or mezzanine financing.

(15) STATE.—The term ‘State’ means each of the several States of the United States.

SEC. 2. ESTABLISHMENT.

"There is established a Science Park Venture Capital Program, under which the Administrator may—

(1) enter into participation agreements with companies granted final approval under section 374(e).

(2) guarantee the debentures issued by science park venture capital companies under section 376; and
“(3) award grants to science park venture capital companies under section 377.

**SEC. 3. REQUIREMENTS FOR SCIENCE PARK VENTURE CAPITAL COMPANIES.**

“(a) ORGANIZATION.—For purposes of this paragraph, a science park venture capital company—

“(1) shall be an incorporated body, a limited liability company, or a limited partnership organized and chartered, or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities authorized by this law;

“(2) if incorporated, shall have existence for a period not less than 20 years unless earlier dissolved by the shareholders of the company;

“(3) if a limited partnership or a limited liability company, shall have existence for a period of not less than 10 years; and

“(4) shall possess the powers reasonably necessary to perform the functions and conduct the activities.

“(b) ARTICLES.—The articles of any science park venture capital company—

“(1) shall specify in general terms—

“(A) the purposes for which the company is formed;

“(B) the name of the company;

“(C) the place in which the operations of the company are to be carried out; and

“(D) the place where the principal office of the company is to be located; and

“(2) may contain any other provisions consistent with this part that the science park venture capital company may determine to be appropriate to adopt for the regulation of the business of the company and the conduct of the affairs of the company; and

“(3) shall be subject to the approval of the Administrator.

“(c) CAPITAL REQUIREMENTS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the private capital of each science park venture capital company shall be not less than—

“(A) $5,000,000; or

“(B) $10,000,000, with respect to each science park venture capital company authorized or seeking authority to issue participating securities to be purchased or guaranteed by the Administrator.

“(2) EXCEPTION.—The Secretary may, in the discretion of the Administrator, and based on a showing of special circumstances and good cause, permit the private capital of any science park venture capital company described in paragraph (1)(B) to be less than $10,000,000, but not less than $5,000,000, if the Administrator determines that the action would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

“(3) ADEQUACY.—In addition to the requirements under paragraph (1), the Administrator shall—

“(A) determine whether the private capital of each science park venture capital company is adequate to ensure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with the articles of the company;

“(B) determine that the science park venture capital company is designed primarily to meet the needs of the businesses in which the company invests and not to compete with traditional financing by commercial lenders of high-technology startup businesses.

“(c) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure that the management of each science park venture capital company licensed after the date of enactment of this part is sufficiently diversified from, and unaffiliated with, the ownership of the company so as to ensure independence and objectivity in the financial management and oversight of the investments and operations of the company.

**SEC. 4. SELECTION OF SCIENCE PARK VENTURE CAPITAL COMPANIES.**

“(a) ELIGIBILITY.—A company is eligible to participate as a science park venture capital company in the Program if the company—

“(1) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing such entity;

“(2) has a management team in the science park with experience in development financing or relevant venture capital financing; and

“(3) has a primary objective of economic development of the science park and its surrounding geographic area; and

“(b) DIVERSIFICATION OF OWNERSHIP.—The Administrator may approve an application to operate as a science park venture capital company under this part and license the applicant as a science park venture capital company, if—

“(1) the Administrator determines that the applicant satisfies the requirements under subsection (b); and

“(2) the Administrator approves—

“(A) the area in which the science park venture capital company is to conduct its operations; and

“(B) the establishment of branch offices or agencies (if authorized by the articles); and

“(c) STATUS.—The Administrator may require, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

“(d) APPROVAL; LICENSE.—The Administrator may—

“(1) guarantee the debentures issued by a science park venture capital company only to the extent that the total face amount of outstanding guaranteed debentures of such company does not exceed the lesser of—

“(A) 300 percent of the private capital of the company; or

“(B) $100,000,000; and

“(d) provide for the use of discretion of the Administrator.

**SEC. 5. DEBENTURES.**

“(a) GUARANTEES.—The Administrator may guarantee the timely payment of principal and interest, as specified in the guarantees issued by any science park venture capital company.

“(b) TERMS AND CONDITIONS.—The terms and conditions of the guarantees made by the Administrator under this section shall include—

“(1) a business plan describing how the company intends to use the proceeds of the debentures for the promotion of the functions and objectives of this part;

“(2) a description of the qualifications and general reputation of the management of the company;

“(3) an estimate of the ratio of cash to in-kind contributions of binding commitments to be made to the company under the Program;

“(4) a description of the criteria to be used to evaluate whether, and to what extent, the company meets the objectives of the Program.

“(c) STATUS.—Not later than 90 days after the initial receipt by the Administrator of an application under this section, the Administrator shall provide to the applicant a written report that describes the status of the application and the remaining time for completion of the application.

“(d) MATTERS CONSIDERED.—In reviewing and processing any application under this section, the Administrator—

“(1) shall determine if—

“(A) the applicant meets the requirements under subsection (e); and

“(B) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this part;

“(2) shall take into consideration—

“(A) the need for and availability of financing for high-technology start-up companies in the science park, and whether the applicant is to commence business;

“(B) the general business reputation of the owners and management of the applicant; and

“(C) the probability of successful operations of the applicant, including adequate profitability and financial soundness;

“(d) may consider any projected shortage or unavailability of grant funds or leverage; and

“(e) shall consider the promotion of regional science park venture capital companies to serve multiple research parks in order to avoid geographic dilution of management assistance.

“(f) APPROVAL LICENSE.—The Administrator may approve an application to operate...
trust certificate issued by the Administrator or its agents under this section.

(4) SUBROGATION AND OWNERSHIP RIGHTS—If the Administrator pays a claim under a guarantee issued under this section, it shall be subrogated fully to the rights satisfied by such payment.

(5) FIDELITY BOND OR INSURANCE REQUIREMENT—Any agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines necessary to fully protect the interests of the United States.

(6) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(7) ELECTRONIC REGISTRATION.—Nothing in this subsection may be construed to prohibit the use of a book entry or other electronic form of registration for trust certificates issued under this section.

SEC. 7. OPERATIONAL ASSISTANCE GRANTS.

(a) GRANTS AUTHORIZED.—The Administrator may award grants to science park venture capital companies and other entities to promote the growth of high-technology start-up companies financed, or expected to be financed, by such companies.

(b) TERMS.—Grants under this subsection shall be made in such amounts and for such periods not to exceed 10 years, under such other terms as the Administrator may require.

(c) GRANT AMOUNT.—Each grant awarded under this subsection shall be equal to the lesser of—

(1) 10 percent of the private capital raised by the science park venture capital company; or

(2) $1,000,000.

(d) OTHER ENTITIES.—The amount of a grant made under this subsection to any entity other than a science park venture capital company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to science park venture capital companies under this part.

(e) SUPPLEMENTAL GRANTS.—(1) IN GENERAL.—The Administrator may award supplemental grants to science park venture capital companies and other entities, under such terms as the Administrator may require, to provide additional operations and services to start-up companies financed, or expected to be financed, by such companies or entities.

(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide a matching contribution equal to 50 percent of the amount of the supplemental grant from non-Federal cash or in-kind resources.

(3) LESSON REQUIREMENT.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a science park venture capital company or any other entity.

SEC. 8. REPORTING REQUIREMENTS.

(a) SCIENCE PARK VENTURE CAPITAL COMPANIES.—Each science park venture capital company shall provide the Administrator with such information as the Administrator may require, including information relating to the criteria described in section 37(k)(b)(4).

(b) PUBLIC REPORTS.—(1) IN GENERAL.—The Administrator shall prepare and make available to the public an annual report on the Program, which shall include detailed information on—

(A) the number of science park venture capital companies licensed by the Administrator during the previous fiscal year;

(B) the aggregate amount of leverage that science park venture capital companies have received from the Federal Government during the previous fiscal year;

(C) the number and type of each type of leveraged instruments used by science park venture capital companies during the previous fiscal year, and how each such number compares to the number in previous fiscal years;

(D) for the previous fiscal year, the number of—

(i) science park venture capital company licenses surrendered; and

(ii) the number of science park venture capital companies placed in liquidation;

(E) the amount and type of leverage each such company has received from the Federal Government;

(F) the amount of losses sustained by the Federal Government as a result of the operations during the current fiscal year; and

(G) actions taken by the Administrator to maximize recoupment of funds of the Federal Government and administer the Program during the previous fiscal year and to ensure compliance with the requirements of this part, including implementing regulations.

(b) PURCHASE OF GUARANTEED OBLIGATIONS.—(1) IN GENERAL.—The Administrator may leverage that each licensee received in the previous fiscal year and the types of leverage instruments used by each licensee; and

(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of any supplemental grant made under this subsection, that the company or entity receiving the grant provide a matching contribution equal to 50 percent of the amount of the supplemental grant from non-Federal cash or in-kind resources.

SEC. 9. EXAMINATIONS.

(a) IN GENERAL.—Each science park venture capital company that participates in the Program shall be subject to examination made at the direction of the Administrator, in accordance with this section.

(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under this section may be conducted with the assistance of a private sector entity that has the qualifications and expertise necessary to conduct such an examination.

(c) COSTS.—(1) IN GENERAL.—The Administrator may assess the cost of an examination under this section, including compensation of the examiner, against the science park venture capital company examined.

(2) PAYMENT.—Any science park venture capital company against which the Administrator assesses costs under this subsection shall pay the costs assessed.

(d) DEPOSIT OF FUNDS.—Funds collected under this section—

(1) shall be deposited in the account that incurred the costs for carrying out this section;

(2) shall be made available to the Administrator to carry out this section, without further appropriation; and

(3) shall remain available until expended.

SEC. 10. BANK PARTICIPATION.

(a) IN GENERAL.—Except as provided under subsection (b), any national bank, any member bank of the Federal Reserve System, and to the extent permitted under applicable State law, any insured bank that is not a member of such system, may invest in—

(1) any science park venture capital company; or

(2) any entity established to invest solely in science park venture capital companies.

(b) LIMITATION.—No bank described in subsection (a) may make investments described in that subsection that are greater than 5 percent of the capital and surplus of the bank.

SEC. 11. FEES.

(a) IN GENERAL.—Except as provided under subsection (b), the Administrator may charge such fees as it determines to be appropriate with respect to any guarantee or grant issued under this part.

(b) EXCEPTION.—The Administrator shall not collect a fee for any guarantee or trust certificate under this section. Any agent of the Administrator may collect a fee, upon the approval of the Administrator, for the functions described in section 37(e)(2).

SEC. 12. APPLICABLE LAW.

(a) IN GENERAL.—The provisions relating to New Market Venture Capital companies under sections 361 through section 366 shall apply to science park venture capital companies.

(b) PURCHASE OF GUARANTEED OBLIGATIONS.—Section 318 shall not apply to any debenture issued by a science park venture capital company under this part.

SEC. 13. REGULATIONS.

Not later than 12 months after the date of enactment of this part, the Administrator shall issue such regulations as it determines necessary to carry out this part.

SEC. 14. AUTHORIZATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—Amounts designated to be appropriated to the Administration for each of the fiscal years 2006 through 2011, to remain available until expended—

(1) such sums as may be necessary for the cost, as defined in section 502(5) of the Federal Credit Reform Act of 1990, of guaranteeing $500,000,000 of debentures under this part; and

(2) $50,000,000 to make grants under this part.
"(b) Funds Collected for Examinations.—Funds deposited pursuant to section 362(d) may only be used for—

(1) examinations under section 362; and

(2) other oversight activities of the Program.

SEC. 4. TAX INCENTIVES FOR INVESTMENT IN SCIENCE PARKS.

(a) Expensing.—

(1) IN GENERAL.—Section 179 of the Internal Revenue Code of 1986 (relating to definitions for purposes of section 179) is amended by adding at the end the following new paragraph:

"(11) Application of section to property placed in service in any science park, this section shall be applied without regard to paragraphs (1) and (2) of subsection (b).

(b) Science Park.—

(1) IN GENERAL.—The term 'science park' means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies, institutions, and does not mean a business or industrial park.

(2) Business or industrial park.—The term 'business or industrial park' means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.

(c) Effective date.—The amendment made by this subsection shall apply with respect to property placed in service after the date of the enactment of this Act.

(b) Tax Credit for Research Activities.—

(a) Expensing.—

(1) In General.—Section 41(a) of the Internal Revenue Code of 1986 (relating to tax credits for research activities) is amended by striking "and" at the end of paragraph (1)(B), and by striking the period at the end of paragraph (2) and inserting ", and'', and by adding at the end the following new paragraph:

"(3) Twenty percent of the qualified research expenses paid or incurred by the taxpayer during the taxable year in carrying on any trade or business in a science park.

(2) Science Park.—Section 41(f) of such Code (relating to special rules) is amended by adding at the end the following new paragraph:

"(6) Science park.—

"(A) In general.—The term 'science park' means a group of interrelated companies and institutions, including suppliers, service providers, institutions of higher education, start-up incubators, and trade associations that cooperate and compete and are located in a specific area whose administration promotes real estate development, technology transfer, and partnerships between such companies and institutions, and does not mean a business or industrial park.

"(B) Business or industrial park.—The term 'business or industrial park' means primarily a for-profit real estate venture of businesses or industries which do not necessarily reinforce each other through supply chain or technology transfer mechanisms.

(d) Effective date.—The amendment made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

(c) Private Business Use of a Bond-Financed Facility Does Not Include Performance of Research Using Federally Financed Facilit.

(a) In general.—The amendment made by this subsection shall apply to any use on or after the date of the enactment of this Act.

(b) Effective date.—

(1) In General.—The amendment made by this subsection shall apply to any use on or after the date of the enactment of this Act.

By Mr. Chambliss (for himself and Mr. Roberts):

S. 1582. A bill to reauthorize the United States Grain Standards Act, to facilitate the official inspection at export port locations of grain required or authorized to be inspected under such Act, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. Chambliss, Mr. President, today I introduce legislation to reauthorize the U.S. Grain Standards Act, which expires September 30, 2005.

The Secretary of Agriculture was granted authority by Congress to establish grain standards in 1916. Sixty years later, the 1976 National Defense Authorization Act established the Federal Grain Inspection Service in order to ensure the development and maintenance of uniform U.S. standards, to develop inspection and weighing procedures for grain in domestic and international trade, and to facilitate grain marketing. The U.S. grain inspection system is recognized worldwide for its accuracy and reliability.

On May 25, 2005, the Agriculture Committee held a hearing to review the reauthorization of the Act during which the industry expressed its desire to provide authority to the United States Department of Agriculture, USDA, to utilize third-party entities at export terminals. Inspections at these terminals are currently conducted by Federal inspectors or employees of State Departments of Agriculture. Industry proposes, and commodity groups support, granting USDA the authority to utilize third-party entities at U.S. export terminals in order to improve competitiveness of U.S. agriculture worldwide.

Congress has a unique opportunity to provide this authority to USDA, and I have included the industry's proposal in this bill. That by 2009, 75 percent of Federal grain inspectors will be eligible for retirement. The short-term staffing situation facing USDA should ease the Department's transition in delivering inspection and weighing services at export terminals.

In addition to providing USDA the authority to use third-party entities at export terminal locations, this 5-year reauthorization bill that I am introducing contains measures to ensure the integrity of the Federal grain inspection system. The bill clearly states that official inspections continue to be the direct responsibility of USDA-USDA will also have the ability to issue rules and regulations to further enhance the work and supervision of these entities. The ability of the U.S. to increase long-term competitiveness coupled with a system that can maintain its strong reputation worldwide certainly holds great potential for success.

This bill is identical to the reauthorization bill recently considered and approved unanimously by the Committee on Agriculture in the House of Representatives. If this measure will garner equivalent support in this body as reauthorization of the U.S. Grain Standards Act moves forward.

By Mr. Smith (for himself, Mr. Dorgan, and Mr. Pryor):

S. 1583. A bill to amend the Communications Act of 1934 to expand the contribution base for universal service, establish a separate account within the universal service fund to support the deployment of broadband service in unserved areas of the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. Smith, Mr. President, I rise today with Senators Dorgan and Pryor to introduce the "Universal Service for the 21st Century Act." For more than 70 years, the preservation and advancement of universal service has been a fundamental goal of our telecommunications laws. In order to ensure the long term sustainability of the fund and to add support for broadband services that are increasingly important to our Nation's economic development, our bill reforms the system of payments into the universal service fund and creates a $500 million account to bring broadband to unserved areas of the country.

The achievements of the universal service fund are undeniable. Affordable telephone services are available in many remote and high cost areas of the country, including Oregon, because of the fund. Large and small telecommunications carriers serve sparsely populated rural communities and schools and libraries receive affordable Internet services because of the fund. The need for a robust and sustainable universal service system certainly remains, but it has become increasingly clear that major reform is needed if the fund is to meet the evolving communications needs of the American people.

In Section 706 of the Telecommunications Act of 1996, Congress directed the Federal Communications Commission, FCC, and the States to encourage deployment of advanced telecommunications services, including broadband, on a reasonable and timely basis. Earlier this month, the FCC released data on broadband connections that shows it slow. According to the report, there were nearly 29 million broadband connections throughout the country in 2004.
SEC. 5. ESTABLISHMENT OF BROADBAND ACCOUNT WITHIN UNIVERSAL SERVICE FUND.

Part I of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by inserting after section 254 the following:

"SEC. 254A. BROADBAND FOR UNSERVED AREAS ACCOUNT.

"(a) ACCOUNT ESTABLISHED.—

"(1) IN GENERAL.—There shall be, within the universal service fund established pursuant to section 254, a separate account to be known as the 'Broadband for Unserved Areas Account'.

"(2) PURPOSE.—The purpose of the account is to provide financial assistance for the deployment of broadband communications services to unserved areas throughout the United States.

"(b) IMPLEMENTATION.—

"(1) IN GENERAL.—The Commission shall by rule establish:

"(A) guidelines for determining which areas may be considered to be unserved areas for purposes of this section;

"(B) criteria for determining which facilities-based providers of broadband communications service, and which projects, are eligible for support from the account;

"(C) procedures for awarding assistance from the account on a merit-based and competitive basis;

"(D) guidelines for application procedures, application and reporting requirements, and other appropriate fiscal controls for assistance made available from the account; and

"(2) PROCEDURAL GUIDELINES.—The Commission shall establish and publish procedural guidelines for awarding assistance from the account on a merit-based and competitive basis; and

"(3) DURATION.—This section shall remain in effect until the date 5 years after the date of enactment of this Act."
"(e) a procedure for making funds in the account available among the several States on an equitable basis.

(2) STUDY AND ANNUAL REPORTS ON UNSERVED AREAS

(A) IN GENERAL.—Within 6 months after the date of enactment of the Universal Service Act for the 21st Century Act, the Commission shall study and determine which areas of the United States may be considered to be ‘unserved areas’ for purposes of this section.

For purposes of the study and for purposes of determining which areas of the United States may be considered to be ‘unserved areas’ for purposes of this section, the Commission shall:

(i) determine the definition of broadband no less frequently than once each calendar year and revise that definition as appropriate.

(ii) determine the data rates for broadband communications services generally available to the public on the date of enactment of that Act.

(C) ANNUAL REVIEW OF DEFINITION.—The Commission shall update the definition of broadband no less frequently than once each year and revise that definition as appropriate.

(2) BROADBAND COMMUNICATIONS SERVICE DEFINED.—The term ‘broadband communications service’ means a high-speed communications capability that enables users to originate and receive high-quality voice, data, graphics, and video communications using any technology.

SEC. 6. IMPLEMENTATION OF SECTION 254A.

The Federal Communications Commission shall complete a proceeding and issue a final rule to implement section 254A of the Universal Service Act of 1994 not more than 6 months after the date of enactment of this Act.

Mr. DORGAN. Mr. President, today my colleagues Senators SMITH, Pryor and I are introducing legislation to ensure the sustainability and longevity of the Universal Service Fund and to support the deployment of broadband to unserved areas.

Section 254 of the 1996 Telecommunications Act sets forth the principles of universal service. Section 254 states that all citizens, including rural consumers, deserve access to telecommunications services that are reasonably comparable to those services provided in urban areas, at reasonably comparable rates.

This goal to ensure that rural consumers are not left behind continues to be critical, particularly as technology advances in leaps and bounds in this 21st century. Access to a robust communications infrastructure is a necessity for all Americans.

Our bill will further that goal in two ways. First, it directs the FCC to take such action needed to establish minimum data rates for broadband communications service.

Second, it requires the FCC to address the need for added funding to support deployment of broadband to the lowest income areas.

Mr. President, today, in order to achieve comprehensive universal service reform, I invite my colleagues to join me in this dialogue and in cosponsoring this bill.

Mr. President, I ask unanimous consent that a summary of this bill be printed in the RECORD following my statement.

By Mr. BINGAMAN (for himself and Mr. INOUYE):

S. 1585. A bill to amend title XIX of the Social Security Act to reduce the costs of prescription drugs for enrollees of Medicaid managed care organizations by extending the discounts offered under fee-for-service Medicaid to such organizations, to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I am introducing legislation today with Senator INOUYE entitled the Medicaid Health Plan Rebate Act of 2005.

I ask unanimous consent that a summary of the legislation developed by the Association for Community Affiliated Plans, a policy statement by the American Public Human Services Association on the issue, and a letter of support from the Medicaid Health Plans of America be printed in the RECORD.

I further ask for unanimous consent that the text of the legislation be printed in the RECORD.

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

ASSOCIATION FOR COMMUNITY AFFILIATED PLANS—REDUCING MEDICAID COSTS WITHOUT CUTTING BENEFITS OR BENEFICIARIES: CONGRESS SHOULD EQUALIZE DRUG COSTS FOR BENEFICIARIES IN MEDICAID MANAGED CARE

REQUEST

As Congress and the States struggle to control the skyrocketing costs of Medicaid, the Association for Community Affiliated Plans (ACAP) supports a solution that will save Federal, State governments and Medicaid recipients billions of dollars.

Created by the Omnibus Budget Reconciliation Act (OBRA) of 1990, the Medicaid Drug Rebate Program requires drug manufacturers to have a rebate agreement with the Secretary of the Department of Health and Human Services for States to receive federal funding for outpatient drugs dispensed to Medicaid patients. At the time the law was enacted, managed care organizations were excluded from access to the drug rebate program. In offering Medicaid managed care plans access to the Medicaid drug rebate, Congress will provide relief for federal and state budgets, thereby mitigating the need for added cuts to Medicaid benefits or populations.

BACKGROUND

As Congress and the States struggle to control the skyrocketing costs of Medicaid, the Association for Community Affiliated Plans (ACAP) supports a solution that will save Federal, State governments and Medicaid recipients billions of dollars.

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name drug prices and between 10 and 11 percent for generic drug prices. At the time the rebate was enacted, many of the plans in Medicaid were large commercial plans who believed that they could get better discounts than the federal rebate. Today, Medicaid-focused plans are the fastest growing sector in Medicaid managed care. According to a study published in 1999, Medicaid-focused MCOs do not have the capacity to negotiate deeper discounts with drug companies, Medicaid is overpaying for prescription drugs for enrollment in health plans.

OPPORTUNITY OR MEDICAID SAVINGS

The Lewin Group estimates that this proposal could save up to $2 billion over 10 years. This legislation has been endorsed by organizations representing both state government and the managed care industry, including the National Association of State Medicaid Directors, and the Association for Community Affiliated Plans. As Congress is forced to make tough choices to control the costs of the Medicaid program, this proposal offers a “no-harm” option that will ensure that the care is not a prima facie pharmacy cost disadvantage states using managed care as a cost effective alternative to Medicaid fee-for-service.

AMERICAN PUBLIC HUMAN SERVICES ASSOCIATION

NATIONAL ASSOCIATION OF STATE MEDICAID DIRECTORS

POLICY STATEMENT: MCO ACCESS TO THE MEDICAID DRUG REBATE PROGRAM

Background

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) established a Medicaid drug rebate program that requires pharmaceutical manufacturers to provide a rebate to participating state Medicaid agencies. In return, states must cover all prescription drugs manufactured by a company that participates in the rebate program. At the time of OBRA '90, only a small percentage of Medicaid beneficiaries were enrolled in capitated managed care plans and were primarily served by plans that also had commercial businesses. These plans are not required to be excluded from the drug rebate program as it was assumed that they would be able to secure a better rebate on their own. Though regulations have not yet been promulgated, federal interpretation to date has excluded Medicaid managed care organizations from participating in the federal rebate program. Today, the situation is quite different. 58% of all Medicaid beneficiaries are enrolled in some type of managed care delivery system, many in capitated health plans. Some managed care plans, especially Medicaid-dominated plans that make up a growing percentage of the Medicaid marketplace, are looking at the feasibility of gaining access to the Medicaid pharmacy rebate. However, a number of commercial plans remain content to negotiate their own pharmacy rates and are not interested in pursuing the Medicaid rebate.

Policy Statement

The National Association of State Medicaid Directors is supportive of Medicaid managed care organizations (MCOs), in their capacity as an agent of the state, being able to participate fully in the federal Medicaid rebate program. To do so, the MCO must adhere to several federal rebate reset forth in OBRA '90 and follow essentially the same ingredient cost payment methodology.
And for the first time in four decades, infant mortality rates in this nation have increased. The infant mortality rate for African Americans is more than twice as high than for whites; and is 70 percent higher for American Indian and Alaska Native infants.

The legislation we are introducing today will help to: expand the health care safety net, diversify the health care work force, combat diseases that disproportionately affect racial and ethnic minorities, emphasize prevention and behavioral health, promote the collection and dissemination of data and enhance medical research, and provide interpreters and translation services in the delivery of health care.

Everyone deserves equal treatment in health care. I hope that all of my colleagues will support the Healthcare Equality and Accountability Act so we may begin to close the health care divide.

By Mr. BINGAMAN (for himself, Mr. DOMENICI, Mrs. MURRAY, Mr. JEFFORDS, Mr. ALEXANDER, Mr. AKAKA, Mr. REED, Mr. CHAFEE, Mr. LEAHY, Mr. DODD, and Mr. DAYTON):

S. 1587. A bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their allotments under the State Children's health insurance program for any fiscal year for certain Medicaid expenditures; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, today with Senators DOMENICI, MURRAY, JEFFORDS, ALEXANDER, AKAKA, REED, CHAFEE, LEAHY, DODD, and DAYTON we introduce legislation entitled the “Children’s Health Equity Act of 2005.”

This legislation would extend provisions that were included in Public Laws #108-74 and 108-127 that amended the State Children’s Health Insurance Program, or SCHIP, to permit the states of Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin to apply some of their enhanced SCHIP matching funds toward the coverage of certain children enrolling in Medicaid that were part of expansions of coverage to children through Medicaid in those 11 states prior to the enactment of SCHIP.

As a article in the September/October 2004 issue of Health Affairs by Genevieve Kenney and Debbie Chang points out, when SCHIP was created, inequities were . . . introduced across states because those that had already expanded Medicaid coverage to children could not receive the higher SCHIP matching rate for these children . . . [and this] meant that states that had been in expanding Medicaid eligibility for children were penalized financially relative to states that expanded coverage after SCHIP.”

The article adds that “additional cross-state inequities were introduced” during the creation of SCHIP because three states had their prior expansions grandfathered in during the bill’s consideration. Left behind were the aforementioned 11 states.

Fortunately, with the passage of Public Laws #108-74 and 108-127 in 2003, the inequity was recognized and the 11 states, including New Mexico, were allowed to use up to 20 percent of our state’s enhanced SCHIP allotments to pay for Medicaid eligible children above 150 percent of poverty that were part of Medicaid expansions prior to the enactment of SCHIP. As the Congressional Research Service notes, “The primary purpose of the 20 percent allowance was to enable qualifying states to receive the enhanced FMAP [Federal Medical Assistance Percentage] for certain children who likely would have been covered under SCHIP had the state not expanded their regular Medicaid coverage before SCHIP’s enactment in August 1997.”

Unfortunately, one major problem with the compromise was that it only allowed the 11 states flexibility with the SCHIP funds for allotments between 1998 and 2001 and not in the future. Therefore, the inequity continues with SCHIP allotments from 2002 and on. In fact, with the expiration of SCHIP funds from FY 1998-2000 as of September 2004, four of the 11 states with the ability to spend FY 2001 SCHIP allotments on expansion children. For those states, such as Vermont and Rhode Island, that have already spent their 2001 SCHIP allotments, they no longer benefit from the passage of this provision. Furthermore, the FY 2001 funds will also expire at the end of September 2005. Thus, under current law, no spending under these provisions will be permitted in fiscal year 2006 or thereafter.

Therefore, the legislation today prevents the full expiration of this provision for our 11 states and ensures that the compromise language is extended in the future. It is important to states such as New Mexico that have been severely penalized for having expanded coverage to children through Medicaid prior to the enactment of SCHIP. In fact, due to the SCHIP inequity, New Mexico has been allocated $266 million from SCHIP between fiscal years 1998 and 2002. Yet, has only been able to spend slightly over $26 million as of the end of last fiscal year. In other words, New Mexico has been allowed to spend less than 10 percent of its federal SCHIP allocations because the expansion children have been previously ineligible for the enhanced SCHIP matching funds.

As the health policy statement by the National Governors’ Association reads, “The Governors believe that it is critical that innovative states not be penalized for having expanded coverage to children before the enactment of SCHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already significantly expanded coverage to the majority of uninsured children in their states.”

It is important to note the bill does not take money from other states’ CHIP allotments to allow our states to spend our States’ specific CHIP allotments from the federal government on our uninsured children—just as other states across the country are doing.

According to an analysis by the Congressional Research Service, thus far eight states have benefited financially from the passage of the legislation. In the fourth quarter of 2003 and for all four quarters in 2004, Hawaii reported federal SCHIP expenditures using the 20 percent allowance in the amount of $380,000, Maryland received $106,000, New Hampshire received $2.1 million, New Mexico received $2.3 million, Rhode Island received $485,000, Tennessee received $4.5 million, Vermont received $475,000, and Washington received $22.2 million.

I urge that this very important provision for our states be included in the budget reconciliation package the Congress is preparing to consider in September and 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. 1587

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 “Children’s Health Equity Technical Amendment Act of 2005”.

SEC. 2. AUTHORITY FOR QUALIFYING STATES TO USE PORTION OF SCHIP ALLOTMENT FOR ANY FISCAL YEAR FOR CERTAIN MEDICAID EXPENDITURES.

(a) IN GENERAL.—Section 2105(g)(1)(A) of the Social Security Act (42 U.S.C. 1396d(g)(1)(A)) is amended by striking “fiscal year 1998, 1999, 2000, or 2001” and inserting “a fiscal year”; and

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if enacted on October 1, 2004.

By Mr. BINGAMAN (for himself, Mr. ROCKEFELLER, Mr. FINKEL, MS. MIKULSKI, MR. DURBin, and Mr. HARKIN):

S. 1589. A bill to amend title XVIII of the Social Security Act to provide for reductions in the Medicare part B premium through elimination of certain overpayments to Medicare Advantage organizations; to the Committee on Finance.

S. 1589

Mr. BINGAMAN. Mr. President, I am introducing legislation today with Senators ROCKEFELLER and FINKEL that is similar to S. 2966 in the 108th Congress and will have more to say about this legislation when we return in September.
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. 4. APPLICATION OF RISK ADJUSTMENT REFLECTING CHARACTERISTICS FOR THE ENTIRE MEDICARE POPULATION APPLICABLE TO MEDICARE ADVANTAGE ORGANIZATIONS.

Effective January 1, 2006, in applying risk adjustments for that is, the Secretary of Health and Human Services shall ensure that payments to certain that the Secretary estimates will result from the Federal Supplementary Medicare Insurance Trust Fund in the year after the application of subparagraph (5), the Secretary; and

(a) IN GENERAL.—Subsection (e) of section 1858 of the Social Security Act (42 U.S.C. 1395w–27a) is amended by striking "subject to the Secretary") and inserting "subject to paragraph (5), the Secretary); and

(b) CONFORMING AMENDMENT.—Section 1858(f)(1) of the Social Security Act (42 U.S.C. 1395w–27a(f)(1)) is amended by striking "subject to paragraph (5), the Secretary") and inserting "subject to paragraph (5), the Secretary.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

By Mr. BAUCUS (for himself and Mr. GRASSLEY): S. 1591. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the suspension of interest and certain penalties where the taxpayer is not contacted by the Commissioner of Internal Revenue as to whether or not a tax return was filed; to provide that the Secretary of Health and Human Services shall ensure that payments to certain organizations that are estimated to result from the Federal Supplementary Medicare Insurance Trust Fund in the year after the application of subparagraph (5)(A), the Secretary; and inserting "subject to paragraph (5), the Secretary; and

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

By Mr. BAUCUS (for himself and Mr. GRASSLEY): S. 1591. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the suspension of interest and certain penalties where the taxpayer is not contacted by the Commissioner of Internal Revenue as to whether or not a tax return was filed; to provide that the Secretary of Health and Human Services shall ensure that payments to certain organizations that are estimated to result from the Federal Supplementary Medicare Insurance Trust Fund in the year after the application of subparagraph (5)(A), the Secretary; and inserting "subject to paragraph (5), the Secretary; and

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

By Mr. BAUCUS (for himself and Mr. GRASSLEY): S. 1591. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the suspension of interest and certain penalties where the taxpayer is not contacted by the Commissioner of Internal Revenue as to whether or not a tax return was filed; to provide that the Secretary of Health and Human Services shall ensure that payments to certain organizations that are estimated to result from the Federal Supplementary Medicare Insurance Trust Fund in the year after the application of subparagraph (5)(A), the Secretary; and inserting "subject to paragraph (5), the Secretary; and

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

By Mr. BAUCUS (for himself and Mr. GRASSLEY): S. 1591. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the suspension of interest and certain penalties where the taxpayer is not contacted by the Commissioner of Internal Revenue as to whether or not a tax return was filed; to provide that the Secretary of Health and Human Services shall ensure that payments to certain organizations that are estimated to result from the Federal Supplementary Medicare Insurance Trust Fund in the year after the application of subparagraph (5)(A), the Secretary; and inserting "subject to paragraph (5), the Secretary; and

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

By Mr. BAUCUS (for himself and Mr. GRASSLEY): S. 1591. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the suspension of interest and certain penalties where the taxpayer is not contacted by the Commissioner of Internal Revenue as to whether or not a tax return was filed; to provide that the Secretary of Health and Human Services shall ensure that payments to certain organizations that are estimated to result from the Federal Supplementary Medicare Insurance Trust Fund in the year after the application of subparagraph (5)(A), the Secretary; and inserting "subject to paragraph (5), the Secretary; and

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.

By Mr. BAUCUS (for himself and Mr. GRASSLEY): S. 1591. A bill to amend the Internal Revenue Code of 1986 to modify the rules relating to the suspension of interest and certain penalties where the taxpayer is not contacted by the Commissioner of Internal Revenue as to whether or not a tax return was filed; to provide that the Secretary of Health and Human Services shall ensure that payments to certain organizations that are estimated to result from the Federal Supplementary Medicare Insurance Trust Fund in the year after the application of subparagraph (5)(A), the Secretary; and inserting "subject to paragraph (5), the Secretary; and

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2006.
S. 1592

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

SECTION 1. MODIFICATIONS OF SUSPENSION OF INTEREST AND PENALTIES WHERE INTERNAL REVENUE SERVICE FAILS TO ISSUE Timely Notice to Taxpayer.

(a) EFFECTIVE DATE OF EXCEPTION FROM SUSPENSION RULES FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

(1) IN GENERAL.—The amendments made by this subsection shall apply to docu-

ment or notice required to be provided under subsection (b) of section 903(d) of the American Jobs Creation Act of 2004 is amended to read as follows:

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—

(A) IN GENERAL.—The amendments made by subsection (c) shall apply to any cerc or reportable transaction if, as of July 9, 2005 (May 9, 2005 in the case of a listed transaction),

(B) SPECIAL RULE FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

(i) IN GENERAL.—Except as provided in clause (ii) or (iii), the amendments made by subsection (c) shall apply with respect to interest accruing on or before October 3, 2004.

(ii) PARTICIPANTS IN SETTLEMENT INITIATIVES.—Clause (i) shall not apply to any transaction if, pursuant to a published set-

tlement initiative which is offered by the Secretary and entered into by a group of similarity situated taxpayers claiming benefits from the transaction, the taxpayer has en-

tered into a settlement agreement with respect to the tax liability arising in connection with the transaction.

(iii) CLOSED TRANSACTIONS.—Clause (i) shall not apply to a transaction if, as of July 9, 2005 (May 9, 2005 in the case of a listed transaction),

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect as if included in the provisions of the American Jobs Creation Act of 2004 to which it relates.

S. 1593

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

SECTION 1. MODIFICATIONS OF SUSPENSION OF INTEREST AND PENALTIES WHERE INTERNAL REVENUE SERVICE FAILS TO ISSUE Timely Notice to Taxpayer.

(a) EFFECTIVE DATE OF EXCEPTION FROM SUSPENSION RULES FOR CERTAIN LISTED AND REPORTABLE TRANSACTIONS.—

(1) IN GENERAL.—Section 6404(g)(1) of the Internal Revenue Code of 1986 (relating to suspension) is amended by adding at the end the following new sentence: "If, after the return is filed for a taxable year is filed, the taxpayer provides to the Secretary 1 or more signed written documents showing that the tax-

payer owes an additional amount of tax for the taxable year, clause (1) shall be applied by substituting the date the last of the doc-

uments was provided for the date on which the return is filed."

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply to docu-

ments provided on or after July 9, 2005.

By Ms. SNOWE (for herself, Mr. CONRAD, Mrs. LINCOLN, and Ms. COLLINS):

S. 1592. A bill to amend title XIX of the Social Security Act to permit States to obtain reimbursement under the Medicaid program for care of servic-

es required under the Emergency Medical Treatment and Active Labor Act that are provided in a nonpublicly owned or operated institution for men-

tal disease; to the Committee on Fi-

nance.

Ms. SNOWE. Mr. President, I rise today to introduce the Medicaid Emer-
freestanding psychiatric hospitals to receive reimbursement for Medicaid psychiatric patients on the same basis as general hospitals and help preserve the viability of these hospitals.

We have received strong support from a number of national mental health and medical associations who confirm the critical need for this legislation, including NAMI, the National Association of County Behavioral Health Directors, the American Psychiatric Association, the American College of Emergency Physicians, the American Hospital Association, and the National Association of Psychiatric Health Systems. I am especially pleased to have also received endorsements from a number of Maine organizations, including the Maine Hospital Association, Spring Harbor Hospital, and NAMI Maine.

This legislative change is vitally important to ensure that Medicaid patients receive timely and appropriate care at the right time in the right setting, instead of prolonged stays in emergency rooms and in hospital settings without psychiatric specialty care. The cost of achieving a more efficient, effective, and clinically appropriate care system for psychiatric emergencies is small and well worth it. I urge my colleagues to join us in cosponsoring the bill.

I ask unanimous consent that these letters of support be printed in the Record.

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


Hon. OLYMPIA SNOWE, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Senator Snowe: On behalf of the 210,000 members and 1,200 affiliates of the National Alliance for the Mentally Ill (NAMI), I am writing to express support for your legislation, the Medicaid Emergency Psychiatric Care Act of 2005. NAMI strongly supports your efforts to address this growing crisis in access to acute care services for non-elderly adults living with severe mental illness. As the nation’s largest organization representing individuals with severe mental illness and their families, NAMI is pleased to support this important measure.

As NAMI’s consumer and family membership knows first-hand, the acute care crisis for inpatient psychiatric care is growing in this country. This disturbing trend was identified in the released Bush Administration New Freedom Initiative Mental Health Commission report. Over the past 15-20 years, states have closed inpatient units and drastically reduced the number of acute care beds. Also, general hospitals, due to severe budget constraints, have had to close psychiatric units or reduce the number of beds. This has resulted in a growing shortage of acute inpatient psychiatric beds in many communities.

The Medicaid Emergency Psychiatric Care Act will address this critical shortage by providing Medicaid reimbursement for psychiatric hospitals from receiving Medicaid reimbursement for psychiatric hospitals from receiving Medicaid reimbursement for Medicare beneficiaries between the ages of 21-64 in these circumstances. This important measure will allow Medicaid patients access to non-publicly owned and operated psychiatric hospitals (IMDs) for Medicaid beneficiaries between the ages of 21-64 who meet stabilization standards as defined by EMTALA. Today, these hospitals are denied payment for care required under the EMTALA rules. The result is that psychiatric hospitals are forced to absorb the costs of care to their already growing un-reimbursed care even though these patients have insurance through Medicaid.

This legislation will go a long way in addressing the growing psychiatric acute inpatient crisis, while creating fairness in the reimbursement structure for psychiatric hospitals under the limited circumstances required by the EMTALA law. Your leadership in carefully crafting and introducing this legislation addressing a critical problem for persons with serious mental illnesses is much appreciated. NAMI looks forward to working with you and your colleagues to ensure passage of this important legislation.

Sincerely,

Michael J. Fitzpatrick, M.S.W.,
Executive Director,

Hon. OLYMPIA SNOWE, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Senator Snowe: The National Association of County Behavioral Health and Developmental Disability Directors (NACBHDD) and the National Association of Counties (NACo) are writing to strongly support The Medicaid Emergency Psychiatric Care Act—legislation you are introducing to alleviate the crisis in access to acute hospital inpatient psychiatric services. A lack of acute inpatient services was recently highlighted in President Bush’s New Freedom Commission on Mental Health report and is a problem in many counties. In twenty of the most populous states, counties have the designated responsibility to plan and implement mental health services.

Over the past 20 years most states have closed their state hospitals and returned individuals to the community for care. General hospitals have over the past 10-15 years have also begun to close psychiatric inpatient units. Freestanding psychiatric hospitals have been significantly reduced due to the reimbursers rates brought about with the advent of managed care. Overall, the availability of acute psychiatric beds, in many states, has decreased dramatically in the last 10 years. Given the shortage of inpatient acute beds, many individuals with psychiatric disorders end up in county jails or homeless rather than receiving basic psychiatric services in hospital.

Your legislation specifically addresses the conflict in federal law between the Emergency Medical Treatment and Labor Act (EMTALA) and the Mental Health and Developmental Disability Amendments of 1983 (IMD Exclusion Act). This legislation will go a long way in addressing the growing psychiatric acute inpatient crisis, while creating fairness in the reimbursement structure for psychiatric hospitals under the limited circumstances required by the EMTALA law. Your leadership in carefully crafting and introducing this legislation addressing a critical problem for persons with serious mental illnesses is much appreciated. NAMI looks forward to working with you and your colleagues to ensure passage of this important legislation.

Sincerely,

LARRY E. NAAKE,
Executive Director, National Association of Counties,

HON. OLYMPIA SNOWE, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Senator Snowe: On behalf of the American Hospital Association (AHA) members—4,800 hospitals, health systems and other health care organizations, and 33,000 individuals—I am writing to express our support for your leadership on the Medicaid Emergency Psychiatric Care Act of 2005. As you know, the Emergency Medical and Labor Treatment Act (EMTALA) requires all hospitals, including psychiatric hospitals, to stabilize patients who come in with an emergency medical condition. But Medicaid’s Institution for Mental Diseases (IMD) exclusion does not allow Medicaid reimbursement to non-public psychiatric hospitals for stabilizing care delivered to Medicaid patients between the ages of 21-64. This exclusion burdens the states with a mandate in fulfilling their EMTALA obligations for this patient population.

Your legislation would eliminate the IMD exclusion and allow non-public psychiatric hospitals to receive appropriate reimbursement for care provided under EMTALA to Medicaid beneficiaries between the ages of 21-64. This will relieve overcrowding in emergency departments and provide the appropriate care these patients deserve in a more timely manner.

Thank you for addressing this important issue. We support the Medicaid Emergency Psychiatric Care Act of 2005 and look forward to working with you and your colleagues to ensure swift passage of this legislation. If you have further questions, please contact the AHA’s Curtis Rooney at (202) 626-2676, or crooney@aha.org.

Sincerely,

RICK POLLACK,
Executive Vice President,
between the ages of 21–64 that have required stabilization as a result of EMTALA regulations.

Your legislation will allow non-public psychiatric hospitals to receive appropriate reimbursement for Medicaid beneficiaries between the ages of 21–64 who require emergency treatment and stabilization as required by EMTALA.

Thank you for your foresight and leadership in your lead sponsorship of the Medicaid Emergency Psychiatric Care Act. The links are also due to the outstanding work by Sue Walden, who ably represents you. The APA looks forward to continue working with you to progress this important legislation for Medicaid psychiatric patients and providers. Sincerely,

Steven S. Sharfstein, M.D.
President, American Psychiatric Association.

American College of Emergency Physicians

U.S. Senate, Russell Senate Office Building,
Washington, DC

Dear Senator Snowe:

On behalf of the 23,000 members and 33 chapters of the American College of Emergency Physicians (ACEP), I am writing to express support for your legislation, the Medicaid Emergency Psychiatric Care Act of 2005. ACEP strongly support this important effort to address the growing crisis in access to acute care services for patients with severe mental illness. As the nation’s largest emergency medicine organization, we believe your legislation will provide needed attention and support to an area inadequately addressed to date.

The Medicaid Emergency Psychiatric Care Act will address an important conflict in federal policy that has contributed to restricted access to needed inpatient services—the Medicaid Institution for Mental Diseases (IMD) Exclusion and the Emergency Medical and Labor Treatment Act (EMTALA). EMTALA requires hospitals to stabilize patients in an emergency medical condition, while the IMD exclusion prevents certain hospitals (psychiatric hospitals) from receiving Medicaid reimbursement for Medicaid beneficiaries between the ages of 21–64 in these settings as required by EMTALA.

We commend you and the many colleagues who will support this important measure and we stand prepared to do what we can to ensure its enactment.

Sincerely yours,

Robert E. Suter, DO, MHA, FACEP
President

National Association of Psychiatric Health Systems

Washington, DC
July 22, 2005

Hon. Olympia Snowe,
U.S. Senate, Russell Senate Office Building,
Washington, DC

Dear Senator Snowe:

On behalf of the members of the National Association of Psychiatric Health Systems (NAPHS) and the individuals and families that our members serve, we strongly endorse the Medicaid Emergency Psychiatric Care Act of 2005. This legislation, if approved by Congress, will result in patients receiving appropriate care for psychiatric emergencies instead of prolonged stays in emergency rooms.

We want to recognize your leadership in developing this legislation, which provides a targeted and cost-effective solution to the problem of overcrowding in emergency rooms for all, but particularly for those with mental illness. The measure has won bipartisan support from members of Congress as well as from a broad coalition of organizations for its thoughtful approach.

Every day patients with serious mental illness are being “boarded” in hospital emergency rooms throughout the country. Patients have worked with other hospitals by ambulance because of a lack of appropriate care.

Emergency Psychiatric Care Act. This would enable psychiatric hospitals to receive reimbursement on the same basis as general hospitals for Medicaid patients who are in a crisis and present a danger to themselves or others. This general hospitals to address part of their overflow issues and ensure that patients receive appropriate treatment. It will resolve a current conflict in federal law between the Emergency Medical Treatment and Labor Act (EMTALA) and the Medicaid Institution for Mental Disease (IMD) exclusion.

Payment of the Medicaid Emergency Psychiatric Care Act is an investment that will pay off in more appropriate care for patients and more effective use of Medicaid dollars.

Sincerely,

Mark Covall, Executive Director
Maine Hospital Association
Augusta, ME
July 29, 2005

Hon. Olympia Snowe,
U.S. Senate, Russell Senate Office Building,
Washington, DC

Dear Senator Snowe:

On behalf of the Maine Hospital Association’s 39 acute-care and specialty hospitals, I am writing in support of your bill, the Medicaid Emergency Psychiatric Care Act of 2005.

As you know, the Medicaid program, through the Institution for Mental Disease (IMD) exclusion, prevents non-public psychiatric hospitals from receiving Medicaid reimbursement for Medicaid patients between the ages of 21–64 who require stabilization. When the Federal Government created Medicaid, they prohibited Medicaid funding for services at IMDs because Washington viewed mental health services to be the responsibility of the State—particularly since at that time most psychiatric hospitals were State-owned hospitals. The Federal Government did provide funding through the DSH-IMD (Disproportionate Share Hospital Fund for Institutes for Mental Disease). Initially those funds were used solely by the private IMDs. The decision was made with a severe budget shortfall, begun to shift costs associated with Augusta Mental Health Institute (AMHI) and Bangor Mental Health Institute (RMHH) into the Federal DSH-IMD pool rather than funding those costs with all general fund dollars.

In the meantime, the State passed a rule that entitled AMHI and RMHH to be paid first out of the DSH-IMD pool leaving the remainder for the two private hospitals. With a declining patient census and increased fixed and variable costs associated with providing care to Medicaid patients, the State institutes. The inability of these two hospitals to absorb the cost of treating Medicaid-eligible adult clients under the Emergency Medical Treatment and Labor Act (EMTALA) as it currently exists.

As you know, it is becoming increasingly difficult for freestanding private psychiatric hospitals to absorb the cost of treating Medicaid-eligible adult clients under the Emergency Medical Treatment and Labor Act (EMTALA) at Spring Harbor alone, the cost of serving this population last year was close to $6 million.

Faced with both diminishing reimbursement streams and a concurrent rise in demand for inpatient stabilization services from overcrowding emergency rooms across the country, private freestanding psychiatric facilities are quite literally caught between a rock and a hard place and in many other places, freestanding private psychiatric hospitals are protecting their financial health by offering fewer and fewer adult psychiatric services in the inpatient setting. This tactic simply skirts the issue and creates a further void of services for individuals with acute mental illness, precisely at a time when it is widely accepted that the availability of mental health services in this country is substandard.

When all is said and done, these financial figures are in comparison to the $50 billion in economic cost to our society when these adults fail to receive the treatment they deserve. It has been estimated that the lifetime cost of providing care to a single individual with acute serious mental illness is $10 million. Though this figure includes the financial impact of

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lost work days and the cost of providing Social Security disability benefits, it does not even begin to speak to the emotional toll of mental illness on friends or the scars mental illness can leave on loved ones when treatments come to an end. If we could quantify these numbers adequately, I am certain that I would be writing to you today.

In closing, I would like to acknowledge the receptiveness of your office and that of Senator Collins to issues concerning the plight of the mentally ill. I am both pleased and proud that the receptiveness of your office and that of Senator Collins to issues concerning the plight of the mentally ill would not need to be writing to you today.

I am certain that I would not need to be writing to you today. If we could quantify these numbers adequately, I am certain that I would not need to be writing to you today. It is not unusual for a person in jail who requires psychiatric hospitalization to be taken to the jail, to be given medication, and then be released. Sometimes it means that patients are discharged too soon, as a cost savings measure, only to return to their families in a similar condition to when they were admitted.

This legislation will go a long way in addressing the growing psychiatric acute inpatient crisis, while creating fairness in the reimbursement structure for psychiatric hospitals under the limited circumstances required by the EMTALA rules. The result is that psychiatric hospitals are forced to absorb these added costs of care to their already growing un-reimbursed care even though those patients have insurance through Medicaid. Sometimes it means that patients are discharged too soon, as a cost savings measure, only to return to their families in a similar condition to when they were admitted.

This legislation will go a long way in addressing the growing psychiatric acute inpatient crisis, while creating fairness in the reimbursement structure for psychiatric hospitals under the limited circumstances required by the EMTALA rules. The result is that psychiatric hospitals are forced to absorb these added costs of care to their already growing un-reimbursed care even though those patients have insurance through Medicaid. Sometimes it means that patients are discharged too soon, as a cost savings measure, only to return to their families in a similar condition to when they were admitted.

Sincerely,

CAROL CAROTHERS,
Executive Director,

By Ms. SNOWE (for herself and Mr. BINGAMAN):

S. 1593. A bill to amend title XVIII of the Social Security Act to enhance the availability of comprehensive health care services to the mentally ill. (S. 1593)

Mr. SNOWE. Mr. President, I rise today to introduce the Medicare Payment Adjustment To Community Health Centers, PATCH, Act of 2005. I am particularly pleased to introduce this bill with my good friend and colleague, Senator BINGAMAN. Two years ago we introduced a more comprehensive version of this legislation. S. 654. I am happy to report that many of the provisions of S. 654 were included in the Medicare Modernization Act of 2003. The bill I am introducing today reflects two key provisions which remain the priorities of our community health centers.

This legislation will improve Medicare beneficiaries’ access to primary care services and preventive treatments by increasing access to community health centers. Local, non-profit, comprehensive primary care services to seniors—as well as providers of on-site dental, pharmaceutical, and mental health services. In short, community health centers provide the ease of “one-stop health care shopping,” meaning that seniors, instead of moving from location to location to receive comprehensive primary health care services, can usually receive all of their essential primary care in one place.

The PATCH Act will ensure that community health centers can fully participate in the Medicare program and provide seniors with these vital services. Ensuring that Medicare pays its fair share is important to the stability of community health centers. While 17 percent of health center patients in Maine are Medicare beneficiaries, the Medicare program pays only 78 cents on the dollar for the health center costs incurred in delivering Medicare services to seniors. Because Medicaid reimbursement for services provided to seniors is significantly lower than Medicare reimbursement, it is necessary that community health centers receive adequate Medicaid reimbursement to cover the additional costs of serving Medicare beneficiaries.

Over the last 15 years, Congress has made many improvements to the Medicare program through the addition of new primary and preventive benefits, including screening mammograms, pap smears, colorectal and prostate cancer screenings, flu and pneumococcal vacci- nations, care for diabetes including medication therapy for diabetes. However, Congress has not updated the Medicare law to add these crucial services to the health center reimbursement package, so health centers are denied payment for these services when provided to Medicare beneficiaries. This lack of reimbursement has caused significant losses for health centers every time they deliver these crucial health services to Medicare patients. Our bill will add these essential services to the health center package of benefits so that they can receive payment for these services.

The Medicare law has also neglected to include health care for the homeless as Federally Qualified Health Centers. The bill would also restore these centers for recognition within the Medicare statute. Our legislation is strongly supported by the National Association of Community Health Centers, and I ask unanimous consent that their letter of support be printed in the RECORD at the conclusion of my remarks.
The PATCH Act makes these two technical and straightforward changes to the Medicare program to ensure that Community Health Centers can fully participate in Medicare and provide seniors with these vital primary and preventive services. These changes are vitally important in my state of Maine and also to health centers throughout our nation. By making these two straightforward changes, we will be able to enhance the care that all Medicare beneficiaries receive, especially those living in rural and medically underserved communities. I urge my colleagues to cosponsor the bill.

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

NATIONAL ASSOCIATION OF COMMUNITY HEALTH CENTERS, INC.,
Washington, DC, July 29, 2005.

Hon. OLYMPIA SNOWE,
Russell Senate Office Building,
Washington, DC.

Dear Senator Snowe:
On behalf of the National Association of Community Health Centers (NACHC), I am writing to express our support for your bill, the Medicare Payment Adjustment to Community Health Centers (PATCH) Act of 2005. We sincerely appreciate your continued commitment to improve the Medicare program for all health centers.

Community health centers are local, nonprofit, community-oriented health care providers serving low income and medically underserved communities. For nearly 40 years, the network of health centers has provided high-quality, affordable primary care and preventive services, and often provide comprehensive pharmaceutical, mental health and substance abuse services. America’s health centers provide care to nearly one million Medicare beneficiaries; furnishing essential primary and preventive care services in underserved areas of the country. Health centers provide “one-stop health care,” allowing seniors to receive all of their essential primary care in one convenient location.

Over the last 15 years, Congress has made many improvements to the Medicare program, especially in the provision of new primary and preventive benefits, including: screening mammograms, pap smears, colorectal & prostate cancer screenings, flu/pneumococcal vaccinations, monitoring and self-management training for diabetics, bone mass measurement, and medical nutrition therapy for diabetics. Unfortunately, Congress did not update the Medicare law to add these vital services to the health center reimbursement package, thus denying health centers an important revenue source when they provided to Medicare beneficiaries. This lack of reimbursement has caused significant losses for health centers every time they deliver these services, even when the number of Medicare patients was increasing. Even though it was the clear intent of Congress to cover these services for all beneficiaries.

Health Centers are pleased that your bill remedies this issue by updating the Medicare law to add these essential services to the health center package of benefits. We strongly believe that this will allow health centers to reduce the worst record of providing quality care to seniors.

We also are appreciative that your legislation would address the longstanding oversight relating to Health Care for the Homeless grantees. Your legislation would ensure that the original intent of Congress was reflected in the law.

Thank you for your leadership in addressing these critical issues and we stand ready to assist you in your efforts to enact this important legislation.

Sincerely,

DANIEL R. HAWKINS, Jr.
Vice President for Federal, State, and Public Affairs.

By Mr. CORZINE:
S. 1594. A bill to require financial services providers to maintain customer information security systems and to notify customers of unauthorized access to personal information, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. CORZINE. Mr. President, identity theft is a serious and growing concern facing our Nation’s consumers. According to the Federal Trade Commission, nearly 10 million Americans were the victims of identity theft in 2003, which represents a tripling of the number of victims from just 3 years earlier. Research shows that there are more than 13 identity thefts every minute.

According to the Identity Theft Resource Center, identity theft victims spend on average nearly 600 hours recovering from the crime. Additional research indicates the costs of lost wages and income to the crime can soar as high as $16,000 per incident. No one wants to suffer this kind of hardship.

Technological innovation has delivered tremendous benefits to our economy in the form of increased efficiency, expanded access, and lower costs. And it has spurred the creation of an entire industry of data collectors and brokers who profit from the packaging and commoditization of one’s personal and financial information. But, regrettably, this technology has also provided identity thieves with an attractive target, and relative anonymity, with which to ply their sinister trade.

While many sectors of our economy are affected, financial institutions face a particularly difficult challenge. By definition, the information they use to conduct their daily business is sensitive, because it is tied so closely to their customers’ finances. A breach of this data has the potential to cause large and damaging losses in a very short amount of time.

Events over the past several months have further served to highlight how serious this issue has become. The announcement not long ago by Citigroup that a box of computer tapes containing information on 3.9 million customers was lost by United Parcel Service in my own state of New Jersey while in transit to a credit reporting agency is the latest in a line of recent, high profile incidents. In fact, I myself was a victim of a similar loss of computer tapes by Bank of America earlier this year.

In both of these cases, Citigroup and Bank of America acted responsibly and notified possible victims in a prompt and timely manner. But this is not always the case. And both of these cases involved accidental loss—not even active attempts to steal personal financial information.

At the very least, consumers deserve to be made aware when their personal information has been compromised. As a result, they must hope that the laws of a few individual states, such as California, apply to their case, or that victimized institutions will act responsibly on their own.

In the event that an information breach does occur, the legislation I am introducing today, the “Financial Privacy Protection Act of 2005,” would require prompt notification of all victims in all cases, subject, of course, to the constraints of law enforcement agencies. Based on this notification, victims could then take immediate action to include an extended fraud alert in their credit files to minimize the damage done.

But on top of notification, customers need to know that if they trust a bank with their sensitive personal information—which they must do in order to engage in a financial transaction—that the bank will be doing everything in its power to protect their information.

For that purpose, the “Financial Privacy Protection Act of 2005” would also direct financial regulators, in concert with the Federal Trade Commission, to establish strong and meaningful standards for the protection of information maintained by financial institutions on behalf of their customers. Because these measures are so important, the chief executive officer or the chief compliance officer of every institution must personally attest as to the effectiveness of these safeguards.

It is imperative that we take action to combat the growing threat of identity theft. This crime harms individuals and families, and drags down our economy in the form of lost productivity and capital. We can do more and we must do more.

Therefore, 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. 1594
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 “Financial Privacy Protection Act of 2005”.

SEC. 2. PREVENTION OF IDENTITY THEFT; NOTIFICATION OF UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION.
(1) by striking section 525;
(2) by redesignating sections 522 through 524 as sections 523 through 525, respectively; and
(3) by striking “section 522” and inserting “section 523”;
and
(4) by inserting after section 521 the following:

“SEC. 522. PREVENTION OF IDENTITY THEFT; NOTIFICATION OF UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION.
“(a) CUSTOMER INFORMATION SECURITY SYSTEM REQUIRED—

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‘(1) IN GENERAL.—In accordance with regulations issued under paragraph (2), each financial institution shall develop and maintain a customer information security system, including controls designed to prevent any breach with respect to the customer information of the financial institution.

‘(2) REGULATIONS.—

‘(A) IN GENERAL.—Each of the Federal functional regulators shall issue regulations regarding the policies, procedures, and controls described in paragraph (1) applicable to the financial institutions that are subject to their respective enforcement authority under section 527.

‘(B) SPECIFIC REQUIREMENTS.—The regulations required by subparagraph (A) shall—

‘(i) require the chief compliance officer or chief executive officer of a financial institution to personally attest that the customer information security system of the financial institution is in compliance with Federal and corporate notification procedures that are consistent with the provisions relating to privacy of financial information to third parties;

‘(ii) require audits by the issuing agency (or submitted to the issuing agency by an independent auditor paid for by the financial institution to audit the financial institution on behalf of the issuing agency) of the customer information security system of a financial institution that is not less frequent than once every 5 years;

‘(iii) require the imposition by the issuing agency of appropriate monetary penalties for failure to comply with applicable customer information security standards; and

‘(iv) include such other requirements or restrictions as the issuing agency considers appropriate to carry out this section.

‘(3) EFFECTIVE DATE.—Regulations issued under this paragraph shall become effective 6 months after the effective date of the Financial Privacy Protection Act of 2005.

‘(b) NOTIFICATION TO CUSTOMERS OF UNAUTHORIZED ACCESS TO CUSTOMER INFORMATION.—

‘(1) FINANCIAL INSTITUTION REQUIREMENT.—In any case in which there has been a breach at a financial institution, or such a breach is reasonably believed to have occurred, the financial institution shall promptly notify—

‘(A) each customer whose customer information was or is reasonably believed to have been accessed in connection with the breach or suspected breach;

‘(B) the appropriate Federal functional regulator with respect to the financial institutions that are subject to their respective enforcement authority;

‘(C) each consumer reporting agency described in section 606(p) of the Fair Credit Reporting Act; and

‘(D) appropriate law enforcement agencies, in any case in which the financial institution has reason to believe that the breach or suspected breach affects a large number of customers, including as described in paragraph (5)(A)(iii), subject to regulations of the Federal Trade Commission.

‘(2) OTHER ENTITIES.—For purposes of paragraphs (1), any person that maintains customer information for or on behalf of a financial institution shall promptly notify the financial institution of any case in which such customer information has been, or is reasonably believed to have been, breached.

‘(3) NOTIFICATION.—If the notification required by this subsection shall be made—

‘(A) promptly and without unreasonable delay upon discovery of the breach or suspected breach; and

‘(B) consistent with—

‘(i) the legitimate needs of law enforcement, if the notification would seriously impede a criminal investigation, and in any such case, notification shall be delayed by the financial institution to the extent necessary to prevent the notification from seriously impeding the investigation; and

‘(ii) any measures necessary to determine the scope of the breach or restore the reasonable integrity of the customer information security system of the financial institution.

‘(4) DELAYS FOR LAW ENFORCEMENT PURPOSES.—Notification required by this subsection may be delayed if a law enforcement agency determines that the notification would seriously impede a criminal investigation, and in any such case, notification shall be delayed by the financial institution to the extent necessary to prevent the notification from seriously impeding the investigation.

‘(5) FORM OF NOTICE.—Notification required by this subsection may be provided—

‘(A) to a customer—

‘(i) in writing; and

‘(ii) in electronic form, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in section 101 of the Electronic Signatures in Global and National Commerce Act; or

‘(B) if the number of people affected by the breach exceeds 500,000 or the cost of notification exceeds $500,000, or a higher number or numbers determined by the Federal Trade Commission, such that the cost of providing notifications relating to a single breach or suspected breach would make other forms of notification prohibitive, or in any case in which the financial institution certifies in writing to the Federal Trade Commission that it does not have sufficient customer information to satisfy other forms of notification with respect to some customers, then for those customers, in the form of—

‘(A) a conspicuous posting on the Internet website of the financial institution, if the financial institution maintains such a website; and

‘(B) notification through major media in all major cities and regions in which the customers whose customer information is suspected to have been or is suspected, that a breach has occurred, or is suspected, that compromises the security, confidentiality, or integrity of customer information of the financial institution; or

‘(C) such internal security policies incorporated into the customer information security system of the financial institution.

‘(B) SPECIFIC REQUIREMENTS .—The regulations issued under this paragraph shall become effective 6 months after the effective date of the Financial Privacy Protection Act of 2005.

‘(ii) obsolete or suspected breach affects a large number of customers, including as described in paragraph (1), anything in this section shall be construed to be a violation of any provision of subtitle A, or any other provision of Federal or State law prohibiting the disclosure of financial information to third parties.

‘(C) LIMITATION.—Except as specifically provided in this subsection, nothing in this subsection requires or authorizes a financial institution to disclose such information if it is otherwise prohibited from disclosing under subtitle A or any other applicable provision of Federal or State law.

‘(B) INJUNCTIONS.—Actions of a financial institution in violation or potential violation of this section may be enjoined.

‘(A) the rights and remedies available under this section are in addition to any other rights and remedies available under any other provision of applicable State or Federal law.

‘(C) CIVIL ACTIONS BY STATE ATTORNEYS GENERAL.—

‘(1) AUTHORITY OF STATE ATTORNEYS 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 an act or practice that violates this section, the State may bring a civil action on behalf of the residents of that State in a district court of the United States of appropriate jurisdiction or any other court of competent jurisdiction—

‘(i) to enjoin that act or practice;

‘(ii) to recover damages arising from that violation.

‘(2) RULE OF CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1) in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State—

‘(A) to conduct investigations;

‘(B) to administer oaths and affirmations;

‘(C) to compel the attendance of witnesses or the production of documentary and other evidence.

‘(3) VENUE.—Any action brought under this subsection 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.

‘(C) SERVICE OF PROCESS.—In an action brought under this subsection, process may be served in any district in which the defendant—

‘(A) is an inhabitant; or

‘(B) may be found.”

SEC. 3. DEFINITIONS.

Section 527 of the Gramm-Leach-Bliley Act (15 U.S.C. 6806) is amended—

(1) by redesignating paragraph (4) as paragraph (6);
(2) by redesignating paragraphs (1) through (3) as paragraphs (2) through (4), respectively;
(3) by inserting before paragraph (2), as redesignated—
"(1) BREACH.—The term ‘breach’—
(A) means the unauthorized acquisition, disclosure, or loss of computerized data or paper records which compromises the security, confidentiality, or integrity of customer information, including activities prohibited under section 521; and
(B) does the following: ‘‘(i) Social security number.
(ii) Driver’s license number or State identification number.
(iii) Account number, credit or debit card number, or any required security code, access code, or password that would permit access to a financial account of the individual.
(iv) Such other information as the Federal functional regulators determine is appropriate with respect to the financial institutions that are subject to their respective enforcement authority.
(b) REPORT TO CONGRESS.—The Comptroller General shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than 6 months after the date of enactment of this Act.
(b) TRANSPORTATION OF CUSTOMER INFORMATION.—
(1) STUDY.—The Comptroller General of the United States, in consultation with the Federal functional regulators and other appropriate law enforcement agencies, shall conduct a study of the cross country transport of the customer information of financial institutions and other sensitive personal information by or on behalf of financial institutions and other businesses.
(2) REPORT TO CONGRESS.—The Comptroller General shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than 6 months after the date of enactment of this Act.

SEC. 6. EFFECTIVE DATE.
This Act and the amendments made by this Act shall take effect 6 months after the date of enactment of this Act.

By Mr. ENZI:
S. 1597. A bill to award posthumously a Congressional gold medal to Constantino Brumidi; to the Committee on Banking, Commerce, and Urban Affairs.
Mr. ENZI. Mr. President, it is a special pleasure for me, as an Italian American, to introduce legislation to the Senate that will mark the 200th anniversary of the birth of Constantino Brumidi.
As I introduce this legislation, I do so to recognize not only Constantino Brumidi, but all those who have come to our shores to pursue a dream and share in the blessings of liberty and freedom that is our birthright as American citizens.
For Constantino Brumidi, there was no higher honor or greater calling than to be an American citizen. It was a title he sought and then signed with pride on some of his best work.
That experience is by no means unique to Constantino Brumidi. The same can be said for painting that revealed itself at an early age, and it was already beginning to earn him a reputation as one of Europe’s great artists when he heard a different call—a call to make beautiful the home of democracy and liberty—the United States of America.
One day, after completing a commission, Constantino Brumidi stopped in Washington, DC, to visit the Capitol on his way home. Looking at its tall, blank walls and empty corridors, he must have felt the excitement and inspiration only an artist facing an empty canvas can know. On that day he began what was more than an assignment for him—it was a labor of love. He brought to life the great moments in American history for all to see on the walls and ceiling of this great building. His efforts were destined to earn him the title of America’s Michelangelo.
There aren’t many quotes that are attributed to Constantino Brumidi, but one that appears on the marker where he is buried is a beautiful expression of his love for our country:
“My one ambition and my daily prayer is that I may live long enough to make beautiful the Capitol of the one country on earth in which there is liberty.”
That is the philosophy that guided Constantino Brumidi’s hand as he fired his imagination and inspired his creations in the Capitol. Imagine what he would think if he could walk these corridors today. He would see that his beautiful work has stood the test of time and gained the appreciation and admiration of countless visitors to our shores and our Capitol hallways. He would see that it continues to thrill the millions who flock here every year. I believe he would be both proud and
humbled to be the center of such attention.

It is only fitting that over the years Constantino Brumidi has become a symbol of all those who came to the United States in pursuit of a dream that they too often take for granted. It was freedom and liberty that drew Constantino Brumidi to our land and it is what continues to draw us together, American, Italian, Greek, Irish and every other nationality you can name to make this world a better place for us all to live.

Throughout the Capitol, each carefully planned stroke of Brumidi’s brush will continue to remind us that we are blessed and truly fortunate to live in a land of promise and opportunity where we are all called to greatness. Constantino Brumidi dared to be great and he will be forever remembered for the gifts and talents he shared with us.

The legislation I am introducing today will ensure that the legacy he left us all with continues to be remembered. Constantino Brumidi wanted one thing—to be forever remembered as an Artist Citizen of the United States—the home of liberty that he loved. We must all ensure his story continues to be told. This legislation is a way to continue to serve as a source of inspiration and encouragement to all those who come to our shores that any one of them can make a difference in the world by making the most of the opportunities that are available to them here in America.

By Mr. HATCH (for himself, Mr. CRAIG, Mr. BURNS, Mr. SMITH, Mrs. LINCOLN, and Mr. SCHUMER).

S. 1598. A bill to amend the Internal Revenue Code of 1986 to provide for a nonrefundable tax credit against income tax for individuals who purchase a residential safe storage device for the safe storage of firearms; to the Committee on Finance.

Mr. HATCH, Mr. President, if I may, I would like to speak very briefly on another topic. I am an unqualified supporter of the “Protection of Lawful Commerce in Arms Act,” on which we will be voting later today.

My colleague, Senator Craig, should be commended for his hard work on this important legislation, which will protect gun manufacturers and distributors from unwarranted lawsuits. While we must always be vigilant in protecting our rights—including our Second Amendment rights—it is also critical that we encourage responsible exercise of those rights. For that reason, I want to say a few words in support of the “Child Protection and Home Safety Act of 2005,” which I am introducing today. This Act would promote the safe storage of firearms by providing a 25 percent tax credit toward the purchase of a gun safe, up to a maximum of $250. I am pleased that my colleague from Utah, Senator Smith, and my colleagues, Senators CRAIG, BURNS, LINCOLN, and SMITH, are cosponsoring this important bipartisan legislation. Our bill will encourage gun owners to purchase gun safes for the safe storage of firearms, thereby preventing the mishandling of guns and keeping our families and communities safer.

This bill has widespread support from numerous organizations, including the National Association of Police Organizations, the American Association of Suicidology, the American Ethical Union, the National Black Police Officers Association, and SAVE, the Suicide Awareness Voice of Education. In my home State of Utah, law enforcement has given this bill unqualified support. In addition to the Utah Sheriff’s Association and the Utah Police Corps, the Utah Highway Patrol Association has enthusiastically endorsed this legislation.

Mr. President, I will ask unanimous consent to include a copy of their letter of support in the RECORD.

Many of the guns used in violent acts are acquired in the black market, having been stolen from the homes of law-abiding Americans. Nearly 10 percent of state prison inmates incarcerated on gun crimes say the weapons they used were stolen. Safely securing a firearm within a person’s home is a fundamental responsibility that firearms do not fall into the wrong hands. One important step that can be taken in this regard is for families to lock firearms within a theft-resistant safe. This bill, by encouraging the purchase and use of gun safes, significantly reduce the rate of stolen guns, thereby reducing the incidents of homicides and violent crimes.

Another problem plaguing America today is that of children gaining access to their parents’ firearms and using those firearms to commit homicide or suicide. The school shootings in Columbine, Santee, Lake Worth, Florida, Fort Gibson, Oklahoma and Deming, New Mexico, are a sad legacy we hope to leave behind us. It is the responsibility of gun owners to ensure that our children cannot gain access to firearms and unintentionally or intentionally use those firearms to harm themselves or someone else. This bill, by encouraging gun owners to lock up their firearms in gun safes, will make it more difficult for children to access their parents’ guns.

Utah is home to several fine manufacturers of gun safes. The employees of local companies like Liberty, Fort Knox, and others know that while there are many ways to attempt to secure a firearm, gun safes are the best way to reliably secure firearms and keep them out of the hands of those who should not have access to them. Other methods of securing firearms may only give the purchaser a false sense of security.

Trigger locks do not prevent loading and can easily be opened by a child with a screwdriver. Cable locks can easily be cut open with a simple wirecutter. Locked case boxes are small and light and can easily be picked up and carried away by a thief.

Quality gun safes can provide the security our children and our communities deserve. And through the vehicle of a tax credit, this bill encourages gun safety while preserving Second Amendment liberties.

I want to thank everyone who has worked with us to craft this bill. By encouraging gun owners to purchase residential gun safes for the safe storage of firearms we move a little bit closer to creating a safer America.

Mr. President, I urge all of my colleagues to support the “Child Protection and Home Safety Act of 2005,” and I ask unanimous consent that the text of the bill and the letter to which I referred be printed in the RECORD.

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

S. 1598

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

SEC. 1. SHORT TITLE.

This Act may be cited as the “Child Protection and Home Safety Act of 2005”.

SEC. 2. CREDIT FOR RESIDENTIAL GUN SAFE PURCHASES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 26 the following new section:

SEC. 25. PURCHASE OF RESIDENTIAL GUN SAFES.

“(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 25 percent of the amount paid or incurred by the taxpayer during such taxable year for the purchase of a qualified residential gun safe.

“(b) LIMITATIONS.—

“(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) with respect to any qualified residential gun safe shall not exceed $250.

“(2) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) for any taxable year exceeds the credit imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 26) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the third taxable year after the taxable year in which the purchase or purchases are made. For purposes of the preceding sentence, the term “succeeding taxable year” shall be treated as used on a first-in-first-out basis.

“(c) QUALIFIED RESIDENTIAL GUN SAFE.—For purposes of this section, the term ‘qualified residential gun safe’ means a container not intended for the display of firearms which is specifically designed to store or safeguard firearms from unauthorized access and which meets a performance standard for an adequate security level established by objective testing.

“(d) SPECIAL RULES.—

“(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter with respect to any expense which is taken into account in determining the credit under this section.

“(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 subsection (a) only if the taxpayer and taxpayer’s spouse file a joint return for the taxable year.

(3) Marital status.—Marital status shall be determined in accordance with section 7703.

(e) Election to have credit not apply.—A taxpayer may elect to have this section not apply for any taxable year.

(1) Regulations.—The Secretary shall prescribe such regulations as may be necessary to ensure that residential gun safes qualifying for the credit meet design and performance standards sufficient to ensure the provision of this section are carried out.

(2) Statutory construction; evidence; use of information.—

(1) Statutory construction.—Nothing in this section shall be construed—

(A) as creating a cause of action against any firearms dealer or any other person for any civil liability, or

(B) as establishing any standard of care.

(2) Evidence.—Notwithstanding any other provision of law, evidence regarding the use or nonuse by a taxpayer of the tax credit under this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity for the purpose of establishing liability based on a civil cause of action or any theory for harm caused by a product or by negligence, or for purposes of drawing an inference that the taxpayer is a firearm user.

(3) Use of information.—No database identifying gun owners may be created using information from tax returns on which the credit under this section is claimed.

(b) Conforming amendment.—Section 6501(m) of the Internal Revenue Code of 1986 is amended by inserting ‘‘(26c),’’ before ‘‘(26d),’’

(c) Clerical amendment.—The table of sections for part A of part IV of subpart A of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 26b the following new item:

‘‘Sec. 26c. Purchase of residential gun safes.’’

(d) Effective date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

H EBER CITY POLICE DEPARTMENT,
Heber City, UT.

HON. ORIN G. HATCH,
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: The Utah Chiefs of Police Association enthusiastically endorses legislation which would provide a 25% tax credit toward the purchase of a gun safe, up to a maximum of $250.

This legislation would encourage gun owners to purchase gun safes for the safe storage of firearms. An increase in the use of gun safes will help prevent the theft of firearms, reduce incidents of suicide, homicide and violent crimes.

Senator Hatch, we urge you to introduce this legislation in the Senate, support it and use your best efforts to see that it gets passed. The passage of this vital legislation will prevent the mishandling of guns and keep our families and communities safer.

This legislation will advance for all your work and your support of this matter.

Sincerely,

Chief Ed Rhoades, President,
Utah Chiefs of Police Association.

BY MR. MCCAIN (for himself, Mr. ENsign, and Mr. KYL):

S. 1599. A bill to repeal the perimeter rule for Ronald Reagan Washington National Airport, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, I am pleased to be joined by Senators Ensign and Kyl in introducing the Abolishing Aviation Barriers Act of 2005. This bill would remove the arbitrary restrictions that prevent Americans from having an array of options for nonstop air travel between airports in western States and LaGuardia International Airport, ‘‘LaGuardia’’, and Ronald Reagan Washington National Airport, ‘‘Washington National’’.

LaGuardia restricts the departure or arrival of nonstop flights to or from airports that are farther than 1,500 miles from LaGuardia. Washington National has a similar restriction for nonstop flights to or from airports 1,250 miles from Washington National. These restrictions are commonly referred to as the ‘‘perimeter rule.’’ This bill would abolish these archaic limitations that reduce options for convenient flights and competitive fares.

The original purpose of the perimeter rule was to promote LaGuardia and Washington National airports for business travelers flying to and from East Coast and Midwest cities and to promote traffic to other airports by diverting long haul flights to Newark and Kennedy airports in the New York area and the Dulles airport in the Washington area. However, over the years, Congress has rightly granted numerous exceptions to the perimeter rule because the air traveling public is eager for travel options. Today, there are nonstop flights between LaGuardia and Denver and between Washington National and Denver, Las Vegas, Los Angeles, Phoenix, Salt Lake City and Seattle. Rather than continuing to take a piecemeal approach to promoting consumer choice, I urge Congress to take this opportunity once and for all to do away with this outdated rule.

As many in this body know, I have been fighting against the perimeter rule for years. I continue to believe that Americans should have access to air travel at the lowest possible cost and with the most convenience for their schedule. Therefore, I have always advocated for the removal of any artificial barrier that prevents free market competition. Last I co-sponsored the amendment which prohibits flights from Dallas’ Love Field airport to 43 States. This week I am proud to come together with colleagues once again to eliminate another unnecessary restraint through the Abolishing Aviation Barriers Act of 2005.

Some opponents, mainly those with parochial interests, have criticized me over the years for my efforts to remove the perimeter rule for Washington National, particularly because such removal would lose flights between Phoenix and Tucson and Washington National. Due to such criticism, I made a pledge in 1998 that I would not take such flights if they were made available. Shortly thereafter, the Federal Aviation Administration granted an exemption for two nonstop flights per day between Washington National and Phoenix. I have never taken these flights and instead I have used connecting flights or flown out of Dulles International Airport. Being a frequent flyer and having flown from both Dulles and Kennedy in the past few months, I can assure my colleagues, that both airports have tremendous business and no longer need to be ‘‘fed’’ long haul traffic to promote airport usage.

In fact, a 1999 study by the Transportation Research Board stated that perimeter rules ‘‘no longer serve their original purpose and have produced too many adverse side effects, including barriers to competition . . . . The rules arbitrarily prevent some airlines from extending their networks to these airports; they discourage competition among the airports in the region and among the airlines that use these airports; and they are subject to chronic attempts by special interest groups to obtain exemptions.”

Similarly, the Government Accountability Office, GAO, stated that the ‘‘practical effect’’ of the perimeter rule ‘‘has been to limit entry’’ of other carriers. The GAO found that airfares at LaGuardia and Washington National are approximately 50 percent higher on average than fares at similar airports unconstrained by the perimeter rule. Such an anticompetitive rule should not remain in effect, particularly where its anticompetitive impact has long been recognized. For this reason, I will continue the struggle to try to remove the perimeter rule and other anticompetitive restrictions that increase consumer costs and decrease convenience for no apparent benefit.

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. 1599

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

SECTION 1. SHORT TITLE. The Act may be cited as the ‘‘Abolishing Aviation Barriers Act of 2005’’.

SEC. 2. RONALD REAGAN WASHINGTON NATIONAL AIRPORT. (a) IN GENERAL.—Chapter 449 of title 49, United States Code, is amended by striking section 49109.

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 449 of title 49, United States Code, is amended by striking the item relating to section 49109 and inserting the following:

‘‘49101. Repealed.’’

SEC. 3. TERMINATION OF FEDERAL SUPPORT FOR PERIMETER RULE AT NEW YORK LAGUARDIA AIRPORT.

Notwithstanding any other provision of law, no Federal funds may be obligated or expended after the date of enactment of this Act to enforce the Port Authority of New York and New Jersey rule banning flights beyond 1,500 miles (or any other flight distance...
related restriction), from arrival or departure at New York LaGuardia Airport.

By Ms. SNOWE (for herself and Mr. HATCH): S. 1600. A bill to amend the Communications Act of 1934 to ensure full access to digital television in areas served by low-power television, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I have the support of many of my colleagues on the Senate Committee on Commerce, Science and Transportation to introduce legislation to help rural America transition to an age of digital television. Television is an important media outlet for local news, weather and information. Years ago, it was decided that the United States should transition to a higher standard of television service. Digital television is much more than simply a sharper picture; it allows for an increase in the number of channels, more efficient use of spectrum and many new features for consumers. As the Senate considers broader digital television transition legislation, it is important not to leave rural America behind.

The bill I introduce today is aimed to assist translator stations and low power analog stations. Translator stations are small stations that repeat a signal from full power stations so that the signal may be reached in remote areas. Low power analog TV stations are television stations that typically serve smaller, rural communities. While translators and low power analog TV stations are located in many parts of the country, most are concentrated in rural areas, including many parts of Maine.

There has been a long time understanding that low power stations would not be part of the full power digital television transition. This understanding, however, does not mean that Congress can simply look away. We must ensure that low power stations have the necessary time and adequate funds to move into the digital age. The Digital Low Power Television Transition Act aims to address these needs.

First, the bill I am introducing today puts a deadline for the low power digital television transition four years out from whatever the hard date is that Congress ultimately decides for the full power digital television transition. Full power stations have had years to transition to digital. Low power stations have yet to even receive their digital allocations, and therefore need additional time to upgrade equipment. This delay will also allow consumers in rural areas to continue to use analog television sets to receive over-the-air signals until digital television equipment becomes more prevalent in small town consumer electronics stores.

Second, the Digital Translator and Low Power Television Transition bill establishes a grant program within the National Telecommunications and Information Agency, NTIA, to help defray the cost of upgrading translators and low power television stations from analog to digital. This money for the grant program would come from a trust fund set up with proceeds of the spectrum auctions that will take place because of the full power digital television transition. The Federal Communications Commission, FCC, estimates that approximately $100 million will be needed for the 4474 translators and 2071 low power analog and to upgrade. The trust fund’s size reflects the FCC’s estimate.

The goal of this Act is to assist the rural, low power stations without interrupting the greater digital television transition. Because of the secondary status of translators and low power stations, the auction of full power analog spectrum will remain unaffected. These stations do play an important role in rural communities, therefore this bill calls upon the FCC to report to Congress on the status of translators and low power analog.

This bill is not meant to be a comprehensive approach to the digital television transition. It is merely a solution to one of the many questions Congress will face on the digital television transition. Because of the secondary nature of translators, the FCC estimates that about $32 million will be available for digital. This money for the digital transition will bring that will be available in urban areas. This Act gives translators, low power analog and Class A stations the assistance they need to smoothly transition to digital.

By Mr. GRASSLEY (for himself, Mr. BAYH, and Mrs. CLINTON): S. 1602. A bill to amend title XIX of the Social Security Act to require States to disregard benefits paid under long-term care insurance for purposes of determining Medicaid eligibility, to expand long-term care insurance partnership programs between States and insurers, to establish a tax credit for the purchase of long-term care insurance for purposes of determining medicaid eligibility, to exempt long-term care insurance premiums, the use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs, to establish home and community based services as an optional medicaid benefit, and for other purposes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I am pleased to join my colleagues Senator BAYH and Senator CLINTON in introducing the Improving Long-Term Care Choices Act. This legislation sets forth a series of proposals aimed at improving the accessibility of long-term care insurance and promoting awareness about the protection that long-term care insurance can offer. It also seeks to broaden the availability of the types of long-term care services such as home- and community-based care, which many folks prefer to institutional care.

Before I begin my discussion of the merits of the legislation that I am introducing today, I want to take this opportunity to once again emphasize my commitment to enacting the Family Opportunity Act. I have worked to get the Family Opportunity Act enacted for many years now.

I have been motivated to work so hard because I have learned from a number of stories from families, both from my State of Iowa and elsewhere, who have had to turn down promotions, or even put their child with a disability up for adoption in order to secure for these children the medical services they so desperately need.

The Family Opportunity Act would provide a State option to allow families with disabled children to “buy in” to the Medicaid program; establish mental health parity in Medicaid Home and Community Based Waiver programs; establish Family to Family Health Information Centers and restore Medicaid eligibility for certain SSI beneficiaries.

As part of the on-going negotiations relative to the FOA, many stakeholders have agreed that a modification of a feature of the President’s New Freedom Initiative, a demonstration program known as “Money Follows the Person” should be enacted along with the FOA. Money Follows the Person allows the Secretary to provide grants to states to increase the use of home and community based care and provides States a financial incentive for the first year to do so.

I want stakeholders in the disability community as well as the many organizations who support the Family Opportunity Act to understand that the legislation I am introducing today compliments rather than supplants my efforts to enact FOA and Money Follows the Person. I believe that we should provide a wide array of options to the states to encourage them to identify and eliminate barriers to community living including access to consumer directed and person centered care.

Long-term care services can be prohibitively expensive. Just one year in a nursing home can cost well over $50,000. In many cases, individuals deplete their savings and resources paying for long-term and ultimately qualify for Medicaid coverage. Right now, Medicaid pays for the bulk of long-term care services in this country. In 2002 alone, we spent nearly $33 billion on long-term care services under Medicaid. With our aging population, one thing is clear: spending will only increase.

When most people think about purchasing long-term care insurance, they think, “that’s something I can put off until tomorrow.” We need to change that perception because the older you are when you first buy coverage, the more expensive the premiums are.

Our legislation calls for the Secretary to educate folks about the protection that long-term care insurance offers and having the opportunity to compare policies available in their States. Among other means, this could be accomplished
through an internet website for example.

Making people aware of long-term care insurance won’t go very far though, unless we make some other changes to enhance the value and protection of the long-term care insurance that is offered.

First, the legislation would require that States disregard benefits paid under a long-term care insurance policy when determining eligibility for Medicaid. Second, it incorporates a series of consumer protections recommended by the National Association of Insurance Commissioners, NAIC, into the definition of ‘qualified long-term care services.’ Individuals who purchase a policy that has these consumer protections will be eligible for an above the line tax deduction and a tax credit for out-of-pocket expenses made by caregivers. Third, the bill would expand the long-term care partnership program currently operating as a demonstration in four states.

The long-term care partnerships combine private long-term care insurance with Medicaid coverage once individuals exhaust their insurance benefits. Several States would like to pursue their own long-term care partnerships and this legislation will enable them to do that.

The Improving Long-Term Care Choices Act also builds on the President’s New Freedom Initiative by taking further steps toward removing the “institutional bias” in Medicaid, giving States the option of providing home- and community-based services as part of their Medicaid Plan.

In doing so, the bill gives States the flexibility to design long-term care benefits that will reduce the reliance on costly institutional settings and meet the needs of elderly and disabled individuals who overwhelmingly wish to remain in their homes and communities.

In his New Freedom Initiative announced shortly after taking office, President George W. Bush outlined a plan to tear down barriers preventing people with disabilities from fully participating in American society.

The President also endorses the idea of shifting Medicaid’s delivery system towards one that promotes cost-effective, community-based care instead of one weighted so heavily towards institutional replacement.

This legislation also challenges us to think beyond funding and program silos and directs the Secretary to address administrative barriers that impede the integration of acute and long-term care services. The Secretary also must develop recommendations for statutory changes that will make it easier for States to offer better coordinated acute and long-term care services.

The Improving Long-Term Care Choices Act is consistent with our ideals about families, individual choices in health care and financial responsibility. This bill aims high. But it is sorely evident that we need to think creatively and comprehensively, even boldly, if we hope to make the type of inroads in promoting the availability of good long-term care insurance policies and in rebalancing the institutional quality of long-term care services that no longer reflects the needs and preferences of many stakeholders.

The Improving Long-Term Care Choices Act is a good bill. The American Network of Community Optns Nis and Resource, the Arc & United Cerebral Palsy Disability Policy Collaboration, and the National Disability Rights Network, the United Spinal Association, and the Association of University Centers on Disabilities support the bill. I urge my colleagues to do the same.

I ask unanimous consent that a section-by-section summary of the legislation and letters of support be printed in the Record.

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

**IMPROVING LONG-TERM CARE CHOICES ACT—SUMMARY**

**TITLE I: LONG-TERM CARE INSURANCE CONSUMER PROTECTIONS**

**Subtitle A**

Section 101: State Medicaid Plan requirements regarding Medicaid eligibility determination, long-term care insurance reciprocity, and consumer education

Requires each state in its Medicaid plan to exclude benefits, including assigned benefits, paid under a qualified long-term care policy in determining income for purposes of determining eligibility for medical assistance.

Requires that states with a long-term care insurance partnership program to meet requirements for reciprocity to with other long-term care insurance partnership states. Reciprocity rules to be developed as specified in section 103.

Requires the Secretary to educate consumers on the advisability of obtaining long-term care insurance that meets federal standards and the potential interaction between coverage under a policy and federal and state health insurance programs.

Section 102: Additional consumer protections for long-term care insurance

Establishes additional consumer protections with respect to long-term care insurance policies based on the October 2000 National Association of Insurance Commissioners (NAIC) model regulations including non-cancellable, prohibitions on limitations and exclusions, extension of benefits, continuation of conversion coverage, disallowance of pre-existing conditions, on post-claim underwriting, inflation protection, and prohibitions on prior-year conditions and pre-existing conditions.

Issuers of long-term care insurance policies must also comply with NAIC model provisions related to disclosure of rating practices, application forms and replacement coverage, reporting, filing requirements for marketing, suitiability, standard format out-of-state coverage, and delivery of shopper’s guide.

Issuers must comply with model act policies related to right to return, outline of benefits, pre-insurance plans, monthly reports on accelerated death benefits, and incontestability period.

**Subtitle B**

Section 121: Treatment of premiums on qualified long-term care insurance contracts

Provides for: (1) development of a national clearinghouse on long-term care insurance policies issued to consumers on the importance of purchasing long-term care insurance and, where appropriate, to assist consumers in comparing long-term care insurance policies offered in their states, including information on benefits, pricing (including historic increases in premiums) as well as other options for financing long-term care and (2) establishment of a website to facilitate comparison of long-term care policies.

Authorizes such sums as necessary for the clearinghouse in fiscal year 2006 and each year thereafter.

Section 122: Credit for taxpayers with long-term care needs

Provides for: (1) development of a national clearinghouse on long-term care insurance policies as defined by HIPAA, section 2711, and the Internal Revenue Service, section 7702(b). Phases in the applicable percentage of the deduction based on the number of years of continuous coverage under a qualified LTC policy.

Section 123: Credit for taxpayers with long-term care needs

Provides for application for individuals with long-term care needs or their eligible caregivers a $3000 tax credit to help cover LTC expenses. An applicable individual is one who has been certified by a physician as needing help with at least 3 activities of daily living, such as eating, bathing, dressing. LTC tax credit would be phased-in over 4 years as follows: $1000 in 2005, $1500 in 2006, $2000 in 2007, $2500 in 2008, and $3000 in 2009 or thereafter. The credit phases out by $100 for each $1000 (or fraction thereof) by which the taxpayer’s modified adjusted gross income exceeds the threshold amount set at $150,000 for a joint return and $75,000 for an individual return.

Applies to policies issued more than 1 year after enactment.

**Section 103: Expansion of State Long-Term Care Partnerships**

Permits the expansion of long-term care partnership insurance policies to all States.

Section 104: National Clearinghouse for Long-Term Care Information

Provides for: (1) development of a national clearinghouse on long-term care insurance policies as defined by HIPAA, section 2711, and the Internal Revenue Service, section 7702(b) to assist consumers in comparing long-term care insurance policies offered in their states, including information on benefits, pricing (including historic increases in premiums) as well as other options for financing long-term care and (2) establishment of a website to facilitate comparison of long-term care insurance policies.

Provides such sums as necessary for the clearinghouse in fiscal year 2006 and each year thereafter.
Section 123: Treatment of exchanges of long-term care insurance contracts
Includes a waiver of limitations, allowing individuals to make claims if there are changes to law.

TITLE II: MEDICAID HOME AND COMMUNITY-BASED SERVICES OPTIONAL BENEFIT
Section 201: Medicaid Home and Community-Based Services Optional Benefit
Provides states with a new option to offer home and community-based services to Medi-
caid-eligible individuals without obtaining a federal waiver. Under this option states may include one or more home and community-
based services that are not currently available or are restricted by existing waiver authority. States would also be permitted to allow individuals to choose to self-direct services. Under this option, states must establish a more stringent eligibility standard for placement of individuals in institutions, than for placement in a home and community-based setting. States would be permitted to offer a limited benefit con-
sisting of home and community-based serv-
ices only, to certain populations not other-
wise eligible for Medicaid, but not to exceed individuals whose income exceeds 300% of SSI income and resource standards. At states option, provides presumptive eligi-
bility for aged, blind and disabled for home and community-based services. If enrollment under the state plan exceeds state projec-
tions, the state would be permitted to change eligibility standards to limit enrol-
ment. Offers states option, provides presumptive eligi-

Diabetes Policy Collaboration.

The Improving Long Term Care Choices Act of 2005. United Spinal applauds your leader-
ship and ongoing commitment to peo-
ple with disabilities and those who provide
them with daily supports.

Sincerely,
Paul Marchand,
Staff Director, Disability Policy Collaboration.
offer community services and supports as a state plan option under Medicaid. The proposal would also encourage individuals to purchase private long-term care insurance, which would help elevate some of the financial pressures off of state Medicaid programs. In addition, this bill will help states in their efforts to comply with the Supreme Court Olmstead decision. Thank you again for your vision, courage and ongoing leadership to create public policy that promotes independence, productivity and integration of people with disabilities in their communities. United Spinal would like to appreciate the assistance you need in moving the Improving Long Term Care Choices Act through this session of Congress. Please contact me at (202) 331-1002 for assistance.

Sincerely,

KIMBERLY RUFF-WILBERT, Policy Analyst, United Spinal Association.

ASSOCIATION OF UNIVERSITY CENTERS ON DISABILITIES, Silver Spring, MD, July 29, 2005.

Hon. CHARLES GRASSLEY, Hon. AN BAYH, U.S. Senate,

Washington, DC.

DEAR SENATORS GRASSLEY AND BAYH: On behalf of the Association of University Centers on Disabilities (AUCD), a national network that provides education, training and service in developmental disabilities, we want to thank you for introducing the Improving Long Term Care Choices Act of 2005. The Association of University Centers on Disabilities (AUCD) applauds your leadership in bringing to the forefront such an important measure, which will assist thousands of Americans with disabilities to be more fully integrated and participating members of their communities.

The Improving Long Term Care Choices Act would help states rebalance their long-term care support systems away from an institutional bias by giving states the flexibility to offer community services and supports as a state plan option under Medicaid. The proposal would encourage individuals to purchase private long-term care insurance which will help take some of the financial pressure off the Medicaid program. It will also expand long-term care insurance, consumer protections, provide tax deductions for the cost of long-term care insurance, and allow tax credits for individuals and their caregivers to help cover long-term care expenses not covered by insurance. Finally, this legislation would establish a national clearinghouse on long-term care information.

This legislation takes some important steps to assist individuals and families in gathering the resources necessary to prepare for their long-term care needs and gain access to services in their preferred choice of setting.

I look forward to continuing to work with Senators GRASSLEY and BAYH and all of my colleagues to ensure that all Americans have access to the resources and information regarding long-term care in their homes and communities. It will also expand long-term care insurance, consumer protections, provide tax deductions for the cost of long-term care insurance, and allow tax credits for individuals and their caregivers to help cover long-term care expenses not covered by insurance. Finally, this legislation would establish a national clearinghouse on long-term care information.

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By Ms. SNOWE:

S. 1603. A bill to establish a National Preferred Lender Program, facilitate the delivery of financial assistance to small business concerns for purposes; to the Committee on Small Business and Entrepreneurship.

Ms. SNOWE. Mr. President, I rise today to discuss a bill, the Small Business Lending Improvement Act of 2005, which I have introduced today to provide small businesses with easier access to loans and to increase efficiency in the Small Business Administration's largest loan program, the 7(a) program, which provided $12.7 billion in small business loans in 2004.

As Chair of the Senate Committee on Small Business and Entrepreneurship, I am committed to supporting our Nation's Main Street small business community by increasing its access to capital. This legislation will reform a cumbersome SBA lender licensing process that does not provide our small businesses with the most efficient means of accessing the capital they must have to start and sustain their flight. The bill would increase the SBA's 7(a) loan program to better capitalize on the demonstrated potential small business have to create jobs and economic growth.

As our Nation continues to prosper from economic growth, low inflation, and low unemployment, we should not forget the critical role played by our small businesses. Without strong and successful small businesses, our prosperity would not be what it is today.

Under current law, the most prolific lenders in the SBA's 7(a) loan program can participate in the “Preferred Lender Program” (PLP Program), which allows them to use their own processing facilities and therefore both increases long-term care insurance. Finally, this legislation would increase long-term care insurance consumer protections, provide tax deductions for the cost of long-term care insurance, and allow tax credits for individuals and their caregivers to help cover long-term care expenses not covered by insurance. Finally, this legislation would establish a national clearinghouse on long-term care information.

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guarantee to $2.5 million, from the current $1.5 million. This would maintain the maximum 75 percent guarantee. Small businesses’ financing needs are increasing and, especially with the high cost of real estate and new equipment, it is appropriate to respond to those needs by offering larger loans.

In the SBA’s 504 Loan Program, loans may now be as large as $10 million, with $4 million guaranteed, for manufacturing projects, $5 million (with $2 million guaranteed) for loans that serve an enumerated public policy goal (such as rural development), and $3.75 million (with $1.5 million guaranteed) for all other “regular” 504 Program loans. Thus, this increase in 7(a) Program loans to $3 million would bring 7(a) loans closer in size to 504 Program loans, while still leaving 7(a) loans smaller than 504 Program loans.

Section 4 of the bill increases the program’s authorization level to $18 billion for fiscal year 2006, instead of the $17 billion authorized for fiscal year 2006 in the Omnibus Appropriations Act, enacted in December 2004. The program is on pace to achieve loan volume of between $14 and $15 billion in fiscal year 2005, and this provision would allow the program adequate ability to grow unimpeded in fiscal year 2006, especially if the maximum loan size is increased.

Section 5 of the bill requires the SBA to implement an alternative size standard, in addition to the program’s current standard, for the 7(a) program. The SBA would create an alternative size standard for the 7(a) program, as it has already done for the 504 program, that considers a business’s net worth and income. This provision would bring the 7(a) program into conformity with the 504 Program. This provision was also in S. 1375 in the 108th Congress, and was passed unanimously by the Senate in 2003.

Currently, in the 7(a) program a small business’s eligibility to receive a loan is determined by reference to a multipage chart that has different size standards for every industry that can be very confusing, especially for small lenders that do not make many 7(a) loans. In the 504 Program, however, lenders can use either the industry-specific standards or an “alternative size standard” that the SBA created, which simply says a small business is eligible for a loan if it has gross income of less than $7 million or net worth of less than $2 million.

This would simplify the 7(a) lending process and provide small businesses with a streamlined procedure for determining if they are eligible for 7(a) loans, and it would conform the standards used by the 7(a) and 504 programs. It would make the program far more accessible to small businesses and small lenders.

All of these improvements to the SBA’s largest loan program will support our national goal of building a vibrant and growing economy. Small businesses are the heart of our economy, and this bill will help to improve small businesses’ economic prospects. 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. 1603

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 Lending Improvement Act of 2005”.

SEC. 2. NATIONAL PREFERRED LENDERS PROGRAM.

Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended by adding at the end the following:

“(E) NATIONAL PREFERRED LENDERS PROGRAM.—

“(1) ESTABLISHMENT.—There is established the National Preferred Lenders Program in the Preferred Lenders Program under this section. The Administrator shall establish an alternative size standard for the 7(a) program established under this subparagraph. For purposes of this subparagraph, the Administrator shall establish an alternative size standard for the 7(a) program in section 206 of this Act.

“(2) ALTERNATIVE SIZE STANDARD.—

“(A) IN GENERAL.—When establishing an alternative size standard, the Administrator shall establish an alternative size standard for 7(a) and 504 program loans that considers a business’s net worth and income. This provision would bring the 7(a) program into conformity with the 504 Program.

“(B) ALTERNATIVE SIZE STANDARD.—

“(i) IN GENERAL.—Not later than 180 days after the date of enactment of this subparagraph, the Administrator shall establish an alternative size standard for the 7(a) program established under this subparagraph.

“(ii) CRITERIA.—The alternative size standard established under clause (i) shall utilize the maximum net income of the prospective borrower as an alternative to the use of industry standards.

“(III) INTERIM RULE.—Until the Administrator establishes an alternative size standard under clause (i), the Administrator shall use the alternative size standard in section 206.310(b) of title 13, Code of Federal Regulations, for loan applications under section 7(a) or under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.).”

By Mr. KYL, for himself, Mr. PRYOR, Mr. CORNYN, Mr. GRAHAM, Mr. BROWNBACK, and Mr. CHAMBLISS:

S. 1603. A bill to amend title 18, United States Code, to protect public safety officers, judges, witnesses, victims, and their family members, and for other purposes; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce the Law Enforcement Officers’ Protection Act of 2005. This act will guarantee tough, mandatory punishment for criminals who murder or assault police officers, firefighters, judges, court employees, parole officers, prison employees, and other public-safety officers in the course of their duties. Attacks on police officers and judges are serious crimes. They merit the toughest penalties. LEOPA imposes the following terms of imprisonment for attacks on public-safety officers: (1) second degree murder, 30 years to life; (2) voluntary manslaughter, 15 to 40 years; (3) assault resulting in bodily injury, 15 to 40 years; (4) assault with a deadly weapon, 15 to 40 years; and (5) assault resulting in bodily injury, 5 to 20 years.

LEOPA includes additional provisions that will deter attacks upon police officers. The act expedites Federal-court review of state convictions for murder of a public-safety officer; it limits the damages that can be recovered by criminals for any injuries experienced during their arrest; it removes arbitrary barriers to retired officers’ right to carry concealed weapons under Federal law; it makes it a crime to publicize a public-safety officer’s identity in order to threaten or intimidate him; and it increases existing penalties for obstruction of justice and interference with court proceedings.

Retired as well as active police officers are a serious national problem. According to the most recent F.R.I. report on the subject, 52 law-enforcement officers were feloniously killed in the United States in 2003. In the 10 year period from 1994 through 2003, a total of 616 law-enforcement officers were feloniously killed in the line of duty in the United States.
These officers’ assailants unquestionably are among the worst criminals. Of those individuals responsible for unlawful killings of police officers between 1994 and 2003, 521 had a prior criminal arrest, including 153 who had a prior conviction. Virtually all of these officers were victims of assault, robbery, burglary, or resisting arrest. The individuals who commit these types of offenses are among the most dangerous members of the criminal class. Tough sentences for these criminals not only protect the officers who risk their lives to protect us; they also directly protect the public at large by removing a dangerous class of criminals from society.

Ordinary assaults against police officers have become a widespread problem. More than 57,000 law enforcement officers were assaulted in the course of their duties in 2003, and more than a quarter of these assaults resulted in injury to the officer. These numbers represent more than one of every 10 officers serving in the United States. Our society has reached a point where criminals feel entitled to assault a police officer when they are being arrested. LEOPA is designed to change that understanding, to show criminals that assaults against police officers are unacceptable.

It bears mention that because of improvements in technology, recent years’ numbers of officers killed in the line of duty even understate the extent of the violence that officers face. As the Los Angeles Times noted in 1999, “the number of officers killed—an average of 60 to 70 a year since the late 1980s—would have broken records, too, if not for the advent of bulletproof vests, police experts say; about 400 officers have survived shootings over the last decade because they were wearing protective armor.” (Faye Fiore & Miles Corwin, Toll of Violence Haunts Families of Police Officers, N.Y. Times, Feb. 21, 1994, at 1). As the executive director of the Police Officers’ Fraternal Order noted recently, “there’s less respect for authority in general and police officers specifically. The predisposition of criminals to use firearms is probably at the highest point in our history.” (Jerry Nachtigal, Crime Down, but Number of Police Officers Killed Holds Steady, Associated Press Newswires, Apr. 11, 1999).

Violence against police officers also hinders robust investigation. LEOPA is designed to restore balance to the law. It is designed to ensure that police officers do not fear for their safety when enforcing the law, but instead, that criminals fear the consequences of breaking the law.

Finally, aside from their broader effects on law enforcement and society, aggravated assaults and murders of police officers simply are terrible crimes. The victims often are young and in the prime of life, leaving behind young children, spouses, and grieving parents. A few recent incidents in the news serve to illustrate the horrific toll that these homicides take on the surviving victims:

Los Angeles County Deputy Sheriff Shayne York, 26 years old, was murdered during an invasion robbery while waiting for his fiancée at a hair salon on August 18, 1996. He was killed solely because of his status as a police officer. The Los Angeles Times gave the following account of the crime from the testimony at the killer’s trial:

The robbers yelled racial slurs and ordered customers to hand over snatching valuables from everyone inside. When one of the bandits found a law enforcement badge in York’s wallet, he kicked York as he lay on the ground. According to testimony from [York’s fiancée], also a Los Angeles County sheriff’s deputy, the gunman asked York if he ever mistreated blacks and Crips gang members at Los Angeles County’s Pitchess Detention Center, where York worked. York responded, “No, sir.” (The killer, an alleged Crips gang member, then pointed a pistol at the back of York’s head and squeezed the trigger, prosecutors said. [York’s fiancée] testified that she saw York’s body go limp as she felt his blood flowing onto her. In her own words, she claimed, “I always wanted to kill a pig.” (Jack Leonard & Monte Morin, Man Guilty of Killing Officer Shot in Head, L.A. Times, Aug. 23, 2000, at B1.)

Deputy York’s killer never expressed any remorse over this senseless crime. When jurors read their verdict at his trial, he shouted at them, “May Allah kill you all, pagans, infidels.” (Stuart Pfeifer & Richard Marosi, Jury Recommends Death for Man Who Killed Deputy, L.A. Times, Sept. 8, 2000, at B7.)

California Highway Patrol Officer Don Burt, 25 years old, was shot seven times by a member of a street gang during a traffic stop on July 13, 1996. As Officer Burt lay wounded on the ground, the killer shot him in the head. The Los Angeles Times, covering the officer’s trial, gave the following account of the testimony describing the devastating impact of Officer Burt’s death on his family:

[Don Burt’s father] relived some of his happiest memories with his son—the wedding of his son and [daughter-in-law] Kristin, and the day he was told he was going to be a grandfather. But the proudest moment for both father and son was when the younger Burt joined the Highway Patrol. “I pinned on his badge and slipped Don’s wedding ring into my hand, and squeezed the trigger, prosecutors said. (Jodi Wigenren, Killer of 2 Compton Police Officers Sentenced to Death, L.A. Times, Aug. 16, 1995, at 1.)

Burt is survived by his fiancé and his son, Cameron, who was born two months after he was killed.

One after another, the mothers and fathers of Officers James Wayne MacDonald and Kevin Michael Burrell took the stand to cry out their losses. Three could not complete their testimony without so badly that court recessed. Burrell’s mother told how she had heard the shots that killed her son a few blocks from her home. MacDonald’s father fainted as he lay on the ground, according to testimony: “The officers were execution-style. (Jodi Wigenren, Killer of 2 Compton Police Officers Sentenced to Death, L.A. Times, Aug. 16, 1995, at 1.)

Officers Burrell and MacDonald were both young men, with all of their parents still living, at the time of their deaths. At the killer’s trial, their families described the deep trauma that the crime created. The Los Angeles Times gave the following account:

“Both sets of parents said the deaths of their sons left them feeling empty, lost and angry. ‘The whole time I was praying, just wishing I could have lived him again,’ Tonia MacDonald sobbed, remembering the hours before she was told about the
shooting. "And then I was so mad at God. All I wanted was to see him one more time.").

All four parents said old friends have fallen away as grief consumed their lives. Mother's Day, Father's Day, and the birthday of their beloved daughter have been irrevocably scarred. "This year, when I got up, I didn't tell her [his wife] 'Happy Mother's Day' because it's a tough day," he said. "I could see her tears, hear her voice in my head." (Dr. Jamison's killer ultimately was executed in 2000—18 years after the crime was committed all other death sentences for capital offenses, and will be subject to the federal appeals court of appeals for the Ninth Circuit's jurisdiction, 34 criminals have been sentenced to death for killing police officers. In the nine States under the Ninth Circuit's review of death sentences, 31 death sentences by federal courts on collateral review must be completed within 15 months of the completion of briefings. The man then reached into his gun and persuaded the man to lay down the shotgun, but the man began shooting at Wrede with an 8-foot tree spike. Wrede could have shot the man, but instead attempted to defuse the situation. The man then reached into Wrede's car and ripped the shotgun and ran away from the death penalty in 1978, they made killing an acceptable response to murder in the heart of a would-be cop-killer. Because of the advent of capital punishment for all murderers— including those who kill police officers—is well documented. A recent committee report for the U.S. Senate, for example, notes that: "Data for the last ten years show that outside of the Ninth Circuit, usually 70 to 80 percent of death sentences are affirmed by a federal Court of Appeals on collateral review. However, in the last three years, the Ninth Circuit has reversed the majority of death sentences that it reviews. Moreover, this percentage has climbed sharply in recent years. . . . In the last three years, the Ninth Circuit has reversed 85 percent, 80 percent, and 86 percent of the death sentences that it has reviewed." (S. Rep. No. 107–315 (2002), at 72–73) The Senate report also notes that a core group of Ninth Circuit judges vote to reverse virtually every death sentence on collateral review. Judge Stephen Reinhardt, for example, had reviewed 31 death sentences by 2002, and voted to reverse every single one. Other Ninth Circuit judges have similar records. As Ninth Circuit Judge Alex Kozinski has noted, "there are those of my colleagues who have never voted to uphold a death sentence and doubtless never will." He continued: "Refusing to enforce a valid law is a violation of the judicial oath—something that most judges consider a shameful breach of duty. . . . But to slow down the pace of executions by finding fault with every death sentence is considered by some to be highly honorable." (Alex Kozinski, Tinkering with Death, The New Yorker, Feb. 10, 1997, at 48–53)

This pattern of behavior extends to the Ninth Circuit's review of death sentences impeded for the murder of police officers. In the nine States under the Ninth Circuit's jurisdiction, 31 criminals have been sentenced to death for murdering police officers since the late 1970's. Only one—the man who killed Dr. Jamison—has ever been executed. The Ninth Circuit consistently has obstructed all sentences for criminals convicted of murdering police officers in the western States. As one Orange County newspaper columnist notes, these numbers reflect poorly on our society's commitment to ensuring justice for slain police officers and their families:

When California voters reinstated the death penalty in 1978, they made killing an on-duty peace officer one of the "special circumstances" that entitled the killer to execution. The idea behind that was simple enough. If you made killing a cop a death penalty offense, maybe it would make criminals think twice about doing it. But it's doubtful that the special circumstance concerning peace officers strikes any fear into the heart of a would-be cop-killer. Because in the 2 years since the death penalty law was passed, not one cop-killer has been executed in California. During that time, more than 200 California peace officers have been murdered, including eight in Orange County, and dozens of cop-killers have been sent to death row. But not one has died for his crime. True, California hasn't been in any hurry to execute other murderers, either. Since 1978, more than 700 killers have been sent to death row, but only one has been executed. The system seems particularly reluctant to actually enforce the death penalty against cop-killers. "That sends a terrible message," says Dr. Dillow, State Balks at Executing Cop-Killers, The Orange County Reg., Dec. 5, 2002) These unconscionable delays have greatly increased the suffering experienced by the surviving families of murdered police officers. Again, a few examples from recent news stories illustrate the nature of the problems created by the current system of decades-long post-conviction review:

On August 31, 1983, West Covina Police Officer Kenneth Wrede, 26 years old, responded to a call about a man behaving strangely in a residential neighborhood. Wrede confronted the man, who became seized with anger and tried to hit Wrede with an 8-foot tree spike. Wrede could have shot the man, but instead attempted to defuse the situation. The man then reached into Wrede's car and ripped the shotgun and ran away from the scene. Wrede was affirmed by the California Supreme Court in 1989. Then in 2000—17 years later, Wrede's parents described the terrible impact of this crime on their family. Marianne Wrede told of how "a half hour before local television newscasts would broadcast the\n
years after the crime occurred, and 15 years after federal habeas-corpus proceedings began. Section 6 is designed to prevent these kinds of delays in Federal review of cases involving state convictions for the murder of a public-safety officer. In the district court, parties will be required to file identifying papers within 90 days of the completion of briefings, the court must act on the motion within 30 days, and the hearing must begin 60 days later and last no longer than 3 months. All district-court review must be completed within 15 months of the completion of briefings. In the court of appeals, the court must complete review within 120 days of the completion of briefings. In most cases, these limits will ensure that federal review of an individual defendant's case is completed within less than 2 years. This section also makes these deadlines practical and enforceable by limiting federal review to those claims presenting meaningful evidence that the defendant did not commit the crimes for which he was convicted. Federal courts will be barred from re-litigating claims unrelated to the defendant did not commit the crimes for which he was convicted. Federal courts will be barred from re-litigating claims unrelated to the
The Riverside assistant police chief noted that the decision was particularly unfortunate for the officers' families: "They lived this 20 years ago, and not to have closure on the trial process is particularly difficult." (Mike Kataoka, Court Annuls Death Decree, The Press-Enterprise, May 31, 2002, at B1)

Los Angeles Police Detective Tom Williams was shot and killed by a man against whom he had testified several hours before his trial in October 31, 1985. Detective Williams was killed while picking up his son at a day-care center. A local newspaper gave the following account of the crime: "With [his son] Ryan sitting beside him in the front seat of his truck, Williams, 42, saw the man in the ski mask, saw the automatic weapon pointing out of the driver's side window of the passing car. But he was helpless to do anything to protect himself. All he had time to do was scream, "He's got my Ryan."" (Richard Winslow, Death Penalty Case Ends, The Los Angeles Times, Aug. 24, 1993, at N1)

The Los Angeles Times gave the following account of testimony from the killer's trial:

A seventh-grade pupil at a Canoga Park church school testified Wednesday that he saw 6-year-old Ryan Williams sitting on the ground crying moments after the boy's father, Los Angeles police detective, had been gunned down in the street on Oct. 31, 1985. Thomas C. Williams, 42, was picked up Ryan from school at 5:40 p.m. when he was struck by eight bullets from an automatic weapon. The detective died, slumped against the driver's side of his orange pickup truck. . . . [The pupil] said he looked toward Williams' truck, parked in front of the Faith Baptist Church school, and saw the windshield shattered. "It split into pieces," [he] said. "Then I ducked. I couldn't see anything. I got up because I heard some little boy cry. I walked over. He was sitting on the ground and he was crying and he had a bloody lip." (Lynn Steinberg, Boy Tells of Fatal Attack on Detective, L.A. Times, Feb. 11, 1998, at D2)

Detective Williams's killer remains on death row today, 20 years after committing this crime.

Garden Grove police officer Donald Reed was shot and killed while arresting a man at a bar on June 7, 1980. The killer appeared at first to cooperate with police, but then pulled a pistol from his jacket and began firing. One of the first shots killed the officer, who had been lying on the ground, and then he could know his father's death, and then he could know his father's death, and then he could know his father's death, and then he could know his father's death.

(Ronald) has only vague memories of his father's death, and then he could know his father only through various police memorials, plaques and family pictures. He has learned most of the details of the death from three weeks of testimony during the penalty retrial, and his killer's image won't disappear. "My father didn't deserve to die in that man's arms," Reed's widow stated. (Id.) Of her husband, she simply noted, "He was taken unnecessarily." (John McDonald, Officer's Widow Details Trauma, The Orange County Reg., Feb. 9, 2000, at B1)

Our society must do everything that it can to deter these types of crimes to ensure that punishment for those who commit them is swift and certain. For
all of these reasons, I urge my colleagues to support the Law-Enforcement Officers’ Protection Act.

Mr. KYL. Mr. President, I rise today with my colleague, Senator CORNYN of Texas, to introduce the “DNA Fingerprint Act.” This act will allow State and Federal law enforcement to catch rapists, murderers, and other violent criminals whom it otherwise would be impossible to identify and arrest.

The principal provisions of the DNA Fingerprint Act make it easier to include and keep the DNA profiles of criminal arrestees in the National DNA Index System, where that profile can be compared to crime-scene evidence. By removing current barriers to maintaining data from criminal arrestees, the act will allow the creation of a comprehensive, robust database that will make it possible to catch serial killers as murderers before they commit more crimes.

The impact this act will have on preventing rape and other violent crimes is not merely speculative. We know from studies that arrestee DNA databases can prevent many future offenses. In March of this year, the city of Chicago produced a case study of eight serial killers in that city who would have been caught after their first offense—rather than after their fourth or tenth—if an arrestee database had been in place. This study is included in the record at the conclusion of my remarks.

The first example that the Chicago study involves serial rapist and murderer Andre Crawford. In March 1993, Crawford was arrested for felony theft. Under the DNA Fingerprint Act, the state of Illinois would have been able to take a DNA sample from Crawford at that time and upload and keep that sample in NDIS, the national DNA database. But at that time—and still today—Federal law makes it difficult to upload an arrestee’s profiles to NDIS, and bars States from keeping those if the arrestee has not been convicted of a criminal offense. As a result, Crawford’s DNA profile was not collected and it was not added to NDIS. And as a result, when Crawford murdered a 37-year-old woman on September 21, 1993, although DNA evidence was recovered from the crime scene, Crawford could not be identified as the perpetrator. And as a result, Crawford went on to commit more crimes.

On December 21, 1994, a 24-year-old woman was found murdered in an abandoned building on the 800 block of West 50th Street in Chicago. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford’s profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the five earlier murders and one rape that he had committed, and this December 1994 murder could have been prevented.

On April 3, 1995, a 36-year-old woman was found murdered in a building on the 5000 block of South Carpenter Street in Chicago. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford’s profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the two earlier murders that he had committed, and this April 1995 murderer could have been prevented.

On July 23, 1997, a 27-year-old woman was found murdered in a closet of an abandoned house on the 900 block of West 51st Street in Chicago. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford’s profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the three earlier murders that he had committed, and this July 1997 murder could have been prevented.

On December 27, 1997, a 42-year-old woman was raped in Chicago. As she walked down the street, a man approached her from behind, put a knife to her neck, dragged her into an abandoned building on the 300 block of South Peoria Street, and beat and raped her. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford’s profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the four earlier murders that he had committed, and this December 1997 rape could have been prevented.

In June 1998, a 31-year-old woman was found murdered in an abandoned building on the 5000 block of South May Street in Chicago. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford’s profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the four earlier murders that he had committed, and this December 1997 rape could have been prevented.

On August 13, 1998, a 44-year-old woman was found murdered in an abandoned house on the 900 block of West 52nd Street. Her clothes were found in the alley. DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford’s profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the five earlier murders and one rape that he had committed, and this August 1998 murder could have been prevented.

Also on August 13, 1998, a 32-year-old woman was found murdered in the attic of a house on the 1300 block of South Marshfield. Her body was decomposed, but DNA evidence was recovered. That DNA evidence identifies Crawford as the perpetrator. If the DNA Fingerprint Act had been law, and Crawford’s profile had been collected after his March 1993 arrest, he would have been identified as the perpetrator of the six earlier murders and one rape that he had committed, and this additional murder could have been prevented.

As the city of Chicago case study concludes: In January 2000, Andre Crawford was charged with 11 murders and 1 Aggravated Criminal Sexual Assault. If the 550 DNA sample had been taken on March 6, 1993, the subsequent 10 murders and 1 rape would not have happened. The city of Chicago study goes on to discuss the cases of 7 other serial rapists and murderers from that city. Collectively, together with Andre Crawford, these 8 serial rapists and
killers represent 22 murders and 30 rapes that could have been prevented had an all-arrestee database been in place. The DNA Fingerprint Act eliminates current federal statutory restrictions that ban collection of DNA profiles from arrestees. First, under current Federal law, a DNA profile from an arrestee cannot be uploaded to NDIS until the arrestee is charged in an indictment or information. Thus today, even an arrestee charged in a pleading cannot have his DNA uploaded to the national index. The act eliminates this restriction, allowing arrestees to be included as soon as they are arrested. It also eliminates a statutory restriction that bars inclusion of profiles from suspects who provide so-called “exonerating” samples. These samples, according to their DNA, have no legitimate interest in evading identification for crimes that they have committed. Second, the act requires an arrestee to take the initiative to opt out of NDIS. The act provides a mechanism to allow arrestees to opt out of the DNA database. This also effectively precludes the creation of a genuine national all-arrestee database. In effect, only convicts’ DNA profiles can be kept in the database over the long term. The act would allow arrestee profiles to be kept in the database as well.

Third, the DNA Fingerprint Act would allow expanded use of CODIS grants. Congress currently appropriates funds for use by states to expand their DNA databases. Current law restricts the use of these grants, however, to only building databases of convicted felons. This bill expands this authorization to allow use of these funds to build a database of all DNA samples collected under lawful authority—including samples taken from arrestees.

Fourth, the DNA Fingerprint Act allows the Federal Government to take and keep DNA samples from arrestees. The act gives the Attorney-General the authority to develop regulations allowing collection of DNA profiles from federal arrestees or detainees. The authority to issue such regulations would give the Attorney General the flexibility needed to respond to new legal developments and changes in technology. And finally, the act tolls the statute of limitations for felony cases in which the perpetrator is implicated in the offense through DNA testing. The one exception to this tolling is the sexual abuse offense in chapter 109A of title 18. When Congress adopted general tolling, it left out chapter 109A, apparently because those crimes already are subject to the use of “John Doe” indictments to charge unidentified perpetrators. The Justice Department has made clear, however, that John Doe indictments are insufficient, hence the need for the applicability of [tolling].” The Department has criticized the exception in current law as “work[ing] against the effective prosecution of rapes and other serious sexual assaults under chapter 109A,” noting that it makes “the statute of limitation rules for such offenses more restrictive than those for all other Federal offenses in cases involving DNA identification.” The DNA Fingerprint Act corrects this anomaly by allowing tolling for chapter 109A offenses.

Further evidence of the potential effectiveness of a comprehensive, robust DNA database is available from the recent experience of Great Britain. The British have used DNA to solve crimes, creating a database that now includes 2,000,000 profiles. Their database has now reached the critical mass where it is big enough to serve as a highly effective tool for solving crimes. In the U.K., DNA from crime scenes produces a match to the DNA database in 40 percent of all cases. This amounted to 58,176 cold hits in the United Kingdom 2001. (See generally “The Application of DNA Technology in England and Wales,” a study commissioned by the National Institute of Justice.) A broad DNA database works. The same tool should be made available in the United States.

Some critics of DNA databasing argue that a comprehensive database would violate criminal suspects’ privacy rights. This is simply untrue. The sample of DNA that is kept in NDIS is what is called “junk DNA”—it is impossible to determine anything medically sensitive or personally identifying DNA. For example, this DNA does not allow the tester to determine if the donor is susceptible to particular diseases. The Justice Department addressed this issue in its statement of views on S. 1700, a DNA bill that was introduced in the 108th Congress:

“There are no legitimate privacy concerns that require the retention or expansion of these [burdensome expungement provisions]. The DNA system is already subject to strict privacy rules, which generally limit the use of DNA samples and DNA profiles in the system to law enforcement purposes. See 42 U.S.C. 14132(b)-(c). Moreover, the DNA profiles that are maintained in the national index relate to 13 DNA sites that do not control any additional information about the individual. Hence, the database information cannot be used to discern, for example, anything about an individual’s genetic illnesses, disorders, traits or characteristics of individuals. The database information solely remains in a secure databased that now includes 2,000,000 profiles, but the person whose DNA it is does not have the right to privacy. I urge the Congress to enact the DNA Fingerprint Act—before another preventable sex crime occurs.

I ask unanimous consent that the text of the Chicago study be printed in the RECORD.
S9530

CONGRESSIONAL RECORD — SENATE
July 29, 2005

Timeline of Events: On March 6, 1993, Andre Crawford was arrested for Felony Theft.

On September 21, 1993, a 37-year-old woman was found murdered. Her body was discovered in a vacant factory lot on the 700 block of West 50th Street. She had blunt trauma to her head, and the subsequent eight murders, one rape and one attempted rape would have been prevented.

Brandon Harris was convicted of five aggravated criminal sexual assaults and one aggravated kidnapping.

In August 2000, Brandon Harris was arrested with 11 murders and 1 aggravated criminal sexual assault. If his DNA sample had been taken on March 6, 1993, the subsequent 10 murders and 1 rape would not have happened.

Offender Brandon Harris, 18 years old: 4 preventable rapes and 1 preventable kidnapping

In June 1993, Andre Crawford was arrested for Felony Theft. Another missed opportunity to have his DNA sample entered into the system would have prevented further violence.

On April 21, 1999, a 44-year-old woman was recovered.

On December 27, 1997, a 42-year-old woman was murdered. Her body was discovered in an abandoned building on the 5000 block of South Carpenter. DNA evidence was recovered.

On May 3, 1995, Andre Crawford was arrested for Attempted Criminal Sexual Abuse (Felony). Another missed opportunity to have his DNA sample entered into the system would have prevented further violence.

On July 25, 1997, a 27-year-old woman was found murdered. Her body was discovered in a closet of an abandoned house on the 900 block of West 51st Street. DNA evidence was recovered.

On December 27, 1997, a 42-year-old woman was murdered. Her body was discovered in an abandoned building on the 5000 block of South Carpenter. DNA evidence was recovered.

On May 3, 1995, Andre Crawford was arrested for Attempted Criminal Sexual Abuse (Felony). Another missed opportunity to have his DNA sample entered into the system would have prevented further violence.

On January 9, 1998, a 31-year-old woman was found murdered. Her body was discovered in an abandoned building on the 5000 block of South May Street.

On August 13, 1998, a 44-year-old woman was found murdered. A rehabber discovered her body in the kitchen of an abandoned house on the 900 block of West 52nd Street. Her clothes were removed in the alley. DNA evidence was recovered.

On August 13, 1998, a 32-year-old woman was found murdered. A real estate agent discovered her body in the attic on the 5000 block of South Marshall. DNA evidence was recovered.

On December 8, 1998, a 35-year-old woman was found murdered. Her body was discovered in an abandoned building on the 5000 block of South Park. She was found naked. DNA evidence was recovered from the victim’s fingernail clippings.

On December 21, 1994, a 24-year-old woman was found murdered. She was found in the rear yard on the 7400 block of South Halsted, naked from the waist down. She suffered blunt trauma to the face and head. DNA evidence was recovered from the sexual assault kit.

On May 17, 2000, a 32-year-old woman was found murdered. She was found in an abandoned building on the 11900 block of South LaSalle. The murderer’s jacket had the victim’s blood stains on it. DNA evidence was recovered.

On June 13, 2000, a 21-year-old woman was attacked. As she was in an abandoned building on the 11900 block of South Wallace, an offender knocked her to the ground. She was struck with a knife, but escaped.

On June 16, 2000, a 29-year-old woman was found murdered. Her body was discovered in an abandoned building on the 10700 block of South Michigan. DNA of the assailant was recovered from the victim’s fingernails. Later matched.

On June 19, 2000, a 47-year-old woman was found murdered. Her body was found naked from her waist down and the cause of death was strangulation on the 20 block of East 113th Place (occurrence May 25, 2000). DNA of the assailant was recovered from the victim’s fingernails.

On September 21, 1993, a 37-year-old woman was found murdered. Her body was discovered in a vacant factory lot on the 700 block of West 50th Street. She had blunt trauma to her head, and the subsequent eight murders, one rape and one attempted rape would have been prevented.

Brandon Harris was convicted of five aggravated criminal sexual assaults and one aggravated kidnapping.

In August 2000, Brandon Harris was arrested with 11 murders and 1 aggravated criminal sexual assault. If his DNA sample had been taken on March 6, 1993, the subsequent 10 murders and 1 rape would not have happened.

Offender Brandon Harris, 18 years old: 4 preventable rapes and 1 preventable kidnapping

Geoffrey Griffin was arrested on June 17, 2000, and was subsequently charged with eight murders and 1 aggravated criminal sexual assault. If his DNA sample had been recovered.

On September 29, 2005.
taken on August 26, 1995, the 8 murders, 1 rape and 1 attempted rape would not have happened.

**Offender Mario Villa, 37 years old: 8 preventable rapes or attempted rapes**

Mario Villa was arrested charged with four rapes, linked by DNA to two other rapes, and a main suspect in an additional rape and two attempted rapes.

On February 6, 1999, Mario Villa was arrested for felony burglary. If Illinois required him to give a DNA sample after that arrest, a DNA match could have been obtained with the DNA evidence from his first rape, thereby identifying him as the offender and the subsequent six rapes and two attempted rapes would have been prevented.

**Timeline of Events: On February 6, 1999, Mario Villa was arrested for burglary (felony).**

On July 5, 1999, a 16-year-old girl was raped. As she slept in her apartment on the 1300 block of North Dean Street, an offender entered her apartment and raped her. He ordered her to take a shower after raping her. DNA evidence was recovered from the criminal sexual assault kit.

The following are 8 preventable rapes or attempted rapes which would not have occurred had Villa's DNA sample been taken on February 6, 1999.

On May 26, 2002, a 32-year-old woman was raped. As she slept in her apartment on the 1300 block of South Greenview Ave, an offender entered her residence, raped her and then ordered her to take a shower. DNA evidence of the assailant was recovered from the criminal sexual assault kit. Linked by DNA.

On March 17, 2003, a 47-year-old woman was raped. As she slept in her apartment on the 1800 block of North Halsted St, an offender entered her residence and attempted to rape her. The victim yelled, “Fire, fire” and the offender fled.

On August 22, 2003, a woman was raped in Kenosha, Wisconsin. DNA evidence of the assailant was recovered from the criminal sexual assault kit. Linked by DNA.

On October 4, 2003, a 29-year-old woman was raped on the 1300 block of West Byron St at 3 a.m. in the morning, an offender entered her apartment and attempted to rape her.

On October 15, 2003, a 24-year-old woman was raped. As she slept in her apartment on the 3500 block of West Greenview, the offender entered her residence, placed a pillow over her face and raped her. Offender ordered her to take a shower after raping her.

On December 20, 2003, a 40-year-old woman was raped. As she slept in her apartment at 1300 East Ohio St, an offender entered her residence, talked to her not to say anything, placed a pillow over her mouth and raped her. Offender ordered her to take a shower after raping her.

On February 7, 2004, a 23-year-old woman was raped. As she slept in her apartment, an offender entered her residence on the 200 block of South Damen Ave and raped her. Offender ordered her to take a shower after raping her.

On March 19, 2004, police officers obtained a search warrant and swabbed a DNA sample from Mario Villa as he appeared in court on an unrelated criminal trespassing charge. Subsequently, Mario Villa was charged with 4 aggravated criminal sexual assaults, linked by DNA or similarities in the other crimes. If his DNA sample had been taken on February 6, 1999, the subsequent 6 rapes and 2 attempted rapes would not have happened.

**Offender Bernard Middleton, 55 years old: 1 preventable murder and 2 preventable rapes**

Bernard Middleton has been charged with one murder and three aggravated criminal sexual assaults.

Bernard Middleton was arrested for felony burglary in 1967 and 1969, if Illinois required him to give a DNA sample after either arrest, a DNA match could have been obtained with the DNA evidence recovered from his first rape, thereby identifying him as the offender and the subsequent murder and two rapes would have been prevented.

**Timeline of Events: On January 17, 1987, Bernard Middleton was arrested for aggravated battery.**

On May 6, 1993, Bernard Middleton was arrested for felony theft.

On September 25, 1995, a 22-year-old woman was raped. As she waited for a bus, an offender placed a knife to her head, led her to an isolated area, beat and raped her on the for 1 block of West Garfield. DNA evidence was recovered.

The following is 1 preventable murder and 2 preventable rapes which would not have occurred had Middleton’s DNA sample been taken on May 6, 1993.

On October 16, 1995, a 32-year-old woman was found murdered. Her body was found in a stairwell at Hope Academy on the 5500 block of South Lowe, raped, and then murdered. DNA evidence was recovered.

On May 28, 1997, an offender was arrested for felony theft. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On July 25, 1997, a 34-year-old woman was raped. The offender placed a knife against her head, told that she would be killed and then raped her on the 5500 block of South Calumet. DNA evidence was recovered.

On September 14, 1998, Bernard Middleton was arrested for felony theft. Convinced on October 9, 1998 and sentenced to probation and sentence to 20 months. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On October 16, 1998, a 55-year-old woman was raped. As she walked down the street, an offender grabbed her from behind, placed a knife against her, forced her to the alley and raped her on the 5500 block of North Claremont Avenue. DNA evidence was recovered.

On November 12, 2001, Bernard Middleton was arrested for possession of a controlled substance. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On August 8, 2002, Bernard Middleton was arrested for felony theft. Convicted and sentenced to 20 months. Another missed opportunity to have his DNA sample entered into the system and to prevent further violence.

On May 1, 2003, Bernard Middleton was charged with the aforementioned murder and three rapes. When he was in prison for a retail theft conviction in 2002, his DNA sample was entered into the DNA database and his sample matched the evidence recovered from the three unresolved cases. If his DNA sample had been taken on May 6, 1993, the murder and 2 rapes would not have happened.

**Offender Ronald Macon, 35 years old: 2 preventable murders and 1 preventable criminal sexual assault**

In 2003, Ronald Macon was convicted of three murders and one criminal sexual assault.

Ronald Macon was arrested for a felony charge on three separate occasions in 1998. If Illinois required him to give a DNA sample after his first felony arrest in 1998, a DNA match could have been obtained with the DNA evidence recovered from his first murder, thereby identifying an offender and the subsequent two murders and one criminal sexual assault would have been prevented.

**Timeline of Events: On January 13, 1998, Ronald Macon was arrested for retail theft (felony).**

On July 20, 1998, Ronald Macon was arrested for defacing property (felony). On September 8, 1998, Ronald Macon was arrested for retail theft (felony).

On February 16, 1999, a 43-year-old woman was found murdered. Her body was discovered on the 100 block of East 45th Street. DNA evidence was recovered.

The following are 2 preventable murders and 1 preventable criminal sexual assault which would not have occurred had Macon’s DNA sample been taken on January 13, 1998.

On April 4, 1999, a 35-year-old woman was found murdered. She was choked and beaten to death with an electrical box on the 5000 block of South Damen Ave. DNA evidence was recovered.

On June 21, 1999, a woman was found murdered. She was choked, raped; her hands and feet were bound with shoelaces, and then stabbed through the mouth with a strap from a bag. Her body was discovered on the 1000 block of East 69th Street. DNA evidence was recovered.

On August 9, 1999, Ronald Macon was arrested for criminal sexual assault of a 65-year-old woman. Ronald Macon placed a to the victim’s neck and demanded her jewelry and money. Ronald Macon then wrapped a cord around her hands, led her into the bedroom and raped her.

On September 11, 2003, Ronald Macon was sentenced for life in prison for raping the three women and sentenced to 30 years for raping a 65-year-old woman. If his DNA sample had been taken on January 13, 1998, 2 murders and 1 rape would not have happened.

[The remainder of the study describes 11 preventable rapes committed by offenders Ronald Harris and Arto Jones, and 5 preventable rapes committed by offender Nolan Watson, all of which could have been prevented if Chicago had collected DNA from all felony arrestees.]

By Mr. LAUTENBERG (for himself and Mr. CORZINE):

The Federal railroad law in question was enacted most recently in the Interstate Commerce Commission Termination Act of 1995 to protect the operation of interstate rail service. The law gives 'exclusive' jurisdiction over rail transportation—and activities incident to such transportation—to the Federal Surface Transportation Board.

I realize it is necessary for the efficient operation of commerce in our modern economy. I serve on the Committee on Commerce, Science and Transportation, as well as the Subcommittee on Merchant Marine and Surface Transportation, which oversees the Surface Transportation Board and considers nominations of its members. The board's reputation and expertise in rail regulation is second to none.

However, the board is limited to only a passive role in ensuring that rail facilities are regulated with minimal deferment to the public health and safety. These sites require active environmental regulation, just like other solid waste handling facilities. The recent proliferation of solid waste rail transfer facilities has affected the ability of State and local governments to engage in long-term waste management planning. These agencies are also responsible for responding to accidents and incidents occurring at these facilities. Although transporting solid waste by rail can reduce the number of trucks hauling solid waste on public roads, handling this waste without careful planning and management presents a danger to human health and the environment.

These transfer operations create thick dust, which is potentially hazardous and is breathed in by local residents and business owners. Some facilities don't have proper drainage on site, leading to the potential contamination of surface and groundwater and nearby wetlands.

In addition, these facilities raise serious concerns about the safety of their workers and the exemptions they claim from strong State worker protection laws.

As a result of these chilling reports, I asked state agencies in New Jersey, railroads, and other interested groups to provide possible legislation to address this problem.

Many experts in New Jersey, including the Department of Environmental Protection, the Meadowlands Commission, the Pinelands Commission, and the Rutgers Environmental Law Clinic, provided excellent suggestions. I looked forward to working with them through the process to find a solution to this problem.

I have also met with railroad interests, who are concerned about their ability to continue hauling solid waste. Some operators of these rail facilities have voluntarily complied with State environmental laws, even though they could claim that Federal railroad law preempts any enforcement action States could take. I would like to thank members of the solid waste handling industry for their concern and input as well.

On this issue, this legislation is needed is that the Surface Transportation Board has never clarified whether it even has jurisdiction over the processing and sorting of solid waste at a rail facility.

This bill would make it clear that Congress' intent was not to subvert the policies of the Solid Waste Disposal Act and other environmental laws covering the handling of garbage.

The bill will clarify the intent of Congress in passing these two important laws, and ensure that they work together to provide for a robust, environmentally responsible rail system.

Some have suggested that perhaps this clarification should not be limited to the processing and sorting of solid waste facilities, but that would require the greatest environmental oversight, because they pose the greatest environmental risk.

Many towns across the country are beginning to understand the problem of having unregulated pollution facilities in their neighbor and having nowhere to turn for help. Many influential organizations support this effort, including: United States Conference of Mayors, National Governors Association, Solid Waste Association of North America, Mass Municipal Association, National Solid Wastes Management Association, Integrated Waste Services Association, and Construction Material Recyclers Association.

These garbage transfer facilities should not be able to circumvent and ignore our environmental and safety laws. I realize that the Surface Transportation Board must have broader jurisdiction over rail transportation, but that jurisdiction should not be interpreted in a way that puts our environment at risk.

Railroading has a bright future in New Jersey and throughout our country, as freight loads have increased to levels we have not seen in some time. I have fought for many years to ensure that, with the construction of rail transportation, the backbone of our national economy, continues to flourish. But we need this legislation to ensure that these solid waste rail transfer facilities are run in the same environmentally responsible manner as other solid waste sites.

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. 2. AMENDMENTS TO EXCLUDE SOLID WASTE DISPOSAL FROM THE JURISDICTION OF THE BOARD.

Section 9591 of title 49, United States Code, is amended—

(A) by striking "over mass" and inserting "over—"

and

(B) by striking the period at the end and inserting the following: "over—", and

Mr. CORZINE. Mr. President, I rise in support of legislation being introduced today by my colleague from New Jersey, Senator Lautenberg. This legislation, the Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005, would deal with a growing problem in my state: the problem of railroads avoiding environmental standards by constructing waste transfer facilities next to rail lines. I am proud to cosponsor this important legislation.

I first became aware of this problem when constituents contacted me about a proposed facility to be built by a railroad in Mullica Township, New Jersey. There could not be a worse place for such a facility. Mullica Township is located in the Pinelands National Reserve, which encompasses more than 1.1 million acres of ecologically sensitive land. The Pinelands was designated as our nation's first national reserve in order to protect its streams, bogs, and cedar and hardwood swamps, as well as the many species that live there. Yet many of these protections could be circumvented if this proposed facility is built. The railroad argues that federal statute provides a shield from all environmental standards for any trash facility built adjacent to a rail line. This argument has been used by railroads in the case of 5 similar facilities that are already in operation in North Bergen. These facilities lie near New Jersey's Meadowlands, another environmental treasure.

The statute being used by the railroads establishes the Surface Transportation Board, STB, as the regulatory agency for the nation's railroads, title 49 of the United States Code. Under section 10501, the STB has exclusive jurisdiction over the "construction, acquisition, or operation" of "facilities" located adjacent to a rail line. The railroads argue that facility means any facility, including a trash transfer station. They argue that because of this statute, federal law preempts all other state and local protections.

I cannot believe that Congress intended these types of facilities to be exempt from State and local environmental standards. The risk to the surrounding communities from the air pollution and groundwater contamination that could occur when open rail cars carrying solid waste are allowed
to load and off-load is too great. However, I believe that we must take steps to clarify the law’s intent. The “Solid Waste Environmental Regulation Clarification Affecting Railroads Act of 2005” will do this. The Act makes it clear that all state and local environmental laws and restrictions apply to these facilities.

This is a commonsense measure that insures that the public remains fully involved in decisions relating to these facilities, regardless of where they are built. I urge its enactment.

By Mr. SMITH (for himself, Mr. MCCAIN, Mr. INOUYE, and Mr. NELSON of Florida):

S. 1608. A bill to enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. SMITH. Mr. President, I rise today with Senators MCCAIN, INOUYE, and NELSON of Florida to introduce the “Undertaking Spam, Spyware, and Fraud Enforcement With Enforcers Beyond Our Borders Act of 2005” or the “U.S. SAFE WEB Act of 2005”.

The Federal Trade Commission has a constitutionally mandated responsibility to protect the American consumer from all types of fraud and deception. Today, the American consumer is increasingly falling prey to a new type of fraud unknown just a few years ago. The US SAFE WEB Act of 2005 will take the important steps necessary to help combat this disturbing and growing trend.

The rise in the use of the internet has provided the American consumer with innumerable benefits. The global market place in which we live knows no borders, and the FTC must be provided with all the tools necessary to fulfill its duty in this type of environment.

Using internet and long-distance telephone technology, unsavory businesses are increasingly able to victimize consumers in ways not previously imagined. Deceptive spammers can easily hide their identities, forge the electronic path of their email messages, and send messages from anywhere in the world to anyone in the world. These businesses can strike quickly on a global scale, victimize thousands of consumers, and disappear nearly without a trace—along with their ill-gotten gains.

There are dangers that come into U.S. homes through some of the harmful online networks, including some peer-to-peer networks which purposefully locate outside the United States to avoid our Federal laws and put American families at risk.

Cross-Border fraud, as it is known, is becoming an increasingly common problem for American consumers and the FTC. In 1995, fewer than 1 percent of all consumer fraud complaints received by the FTC were directed at foreign entities. In less than a decade, the percentage had grown to 16 percent. In 2004 alone, the FTC received more than 47,000 complaints by U.S. consumers against foreign companies complaining about transactions involving more than $92 million. In the past three years, complainants logged cross-border fraud complaints with the FTC.

Remarkably, these high numbers likely underestimate the problem. Consumers who reported instances of cross-border fraud only did so when they knew that they were complaining about foreign entities. In many more instances, consumers do not know that their complaints are against foreign entities. Fully one-third of all complaints to the FTC do not reveal the location of the entity being complained about.

The Federal Trade Commission also testified at a recent Aging Committee hearing on elder fraud that many sweepstakes and lottery scams originate in Canada, and consumer fraud has become increasingly cross-border in nature.

The US SAFE WEB Act helps to address the challenges posed by globalization of fraudulent, deceptive, and unfair practices.

Our bill draws on established models for international cooperation pioneered by agencies such as the Securities and Exchange Commission and the Commodities Futures Trading Commission. The FTC faces significant challenges in battling sophisticated cross-border schemes. Just as improved authority to act in cross-border cases gave the SEC and CFTC important new tools to fulfill their missions, enactment of the US SAFE WEB Act would help the FTC fulfill its mission of protecting and assisting U.S. consumers. The Act will substantially improve the FTC’s ability to meet the challenges posed by international investigations and litigation.

The US SAFE WEB Act will provide the FTC with important new tools in many important areas. The provisions contained within the Act are needed to help the FTC to protect consumers from cross-border fraud and deception, and particularly to fight spam, spyware, and Internet fraud and deception.

Among key provisions within the bill are those that broaden reciprocal information sharing and investigative cooperation between U.S. and foreign law enforcement agencies, increase information from foreign sources, and enhance the confidentiality of FTC investigations.

These provisions are needed to allow the FTC to share important information with foreign agencies so that they can halt fraud, deception, spam, and spyware targeting U.S. citizens, and for the FTC to obtain, reciprocally, foreign information needed to halt these crimes.

Furthermore, this legislation enhances the FTC’s ability to obtain consumer redress in cross-border cases. The US SAFE WEB Act would allow the FTC to target more resources toward foreign litigation to facilitate recovery of offshore assets to redress U.S. consumers.

In the 108th Congress, Senator MCCAIN and I introduced this legislation and it quickly passed the Senate by unanimous consent. Unfortunately, the bill was not signed into law before Congress adjourned. I urge my colleagues to support quick passage of this very important legislation this year.

The American consumer is far too vulnerable to this growing type of fraud and deception. Enactment of the US SAFE WEB Act would help the FTC fulfill its mission of protecting and assisting U.S. consumers.

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

By unanimous consent. Unfortunately, the bill was not signed into law before Congress adjourned. I urge my colleagues to support quick passage of this very important legislation this year.

The American consumer is far too vulnerable to this growing type of fraud and deception. Enactment of the US SAFE WEB Act would help the FTC fulfill its mission of protecting and assisting U.S. consumers.

I ask unanimous consent that the text of the bill be printed in the RECORD.
(c) PURPOSE.—The purpose of this Act is to enhance the ability of the Federal Trade Commission to protect consumers from illegal spam, spyware, and cross-border fraud and to deter and redress other consumer protection law violations.

SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.

Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by adding at the end the following:

‘‘Foreign law enforcement agency’’ means—

(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization, constituted by and comprised of foreign states, that is vested with law enforcement or investigatory authority in civil, criminal, or administrative matters;

(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).

SEC. 3. AVAILABILITY OF REMEDIES.

Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) is amended by adding at the end the following:

‘‘(4) of subsection (a), the term ‘unfair or deceptive acts or practices’ includes such acts or practices involving foreign commerce that—

(i) cause a likelihood of reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(b) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices occurring in the United States, including restitution to domestic or foreign victims.’’.

SEC. 4. POWERS OF THE COMMISSION.

(a) PUBLICATION OF INFORMATION; REPORTING.—Section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)) is amended—

(1) by inserting ‘‘(1)’’ after ‘‘such information’’ the first place it appears; and

(2) by striking ‘‘purposes’’ and inserting ‘‘purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 21(b).’’.

(b) OTHER POWERS OF THE COMMISSION.—Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is further amended by inserting after subsection (i) and before the proviso following—

‘‘(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW ENFORCEMENT AGENCIES.—

(1) IN GENERAL.—Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement activities against practices prohibited by any provision of the laws prohibiting fraudulent or deceptive commercial practices or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(j) of the International Antitrust Enforcement Assistance Act of 1984 (15 U.S.C. 621(j))), to provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the United States law.

(2) TYPE OF ASSISTANCE.—In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this Act; and

(B) when the request is from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals before which such tribunals on behalf of a foreign law enforcement agency pursuant to section 1762 of title 28, United States Code.

(3) CRITERIA FOR DETERMINATION.—In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

(B) whether compliance with the request would prejudice the public interest of the United States; and

(C) whether the requesting agency’s investigation or proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

(4) INTERNATIONAL AGREEMENTS.—If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement in furtherance of the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement—

(A) provide assistance using the powers set forth in this subsection;

(B) disclose materials and information in accordance with subsection (f) and section 21(b); and

(C) engage in further cooperation, and protect materials and information received from the requesting party, in accordance with this Act.

(5) ADDITIONAL AUTHORITY.—The authority provided by this section is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

(6) LIMITATION.—The authority granted by this section shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 18(k)(3) (15 U.S.C. 657(k)(3)) or a foreign bank, a foreign credit union described in section 18(k)(4) (15 U.S.C. 657(u)(4)), or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of section 6 (15 U.S.C. 46).

(7) ASSISTANCE TO CERTAIN COUNTRIES.—The Commission may not provide investigative assistance hereunder to a foreign law enforcement agency from a foreign state that the Secretary of State has determined in accordance with section 16(g) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(g)), has repeatedly provided support for international terrorism, or is otherwise designated to be targeted for additional international criminal enforcement. The Commission may not provide such assistance with respect to a request from a foreign country if such request is disingenuous pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2406(j)(4)).

(k) REFERRAL OF EVIDENCE FOR CRIMINAL PROSECUTIONS.—Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

SEC. 5. REPRESENTATION IN FOREIGN LITIGATION OR INVESTIGATION.

Section 6 of the Federal Trade Commission Act (15 U.S.C. 46) is amended by adding at the end the following:

‘‘(c) FOREIGN LITIGATION.—With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in any way with litigation in foreign courts on particular matters in which the Commission has an interest.’’
(2) Reimbursement for Foreign Counsel.—The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention and indemnification of appropriate counsel for litigation in foreign courts and for expenses related to litigation in foreign courts in which the Commission has an interest.

(3) Limitation on Use of Funds.—Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.

(4) General Limitation.—The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.

SEC. 6. SHARING INFORMATION WITH FOREIGN LAW ENFORCEMENT AGENCIES.

(a) Material Obtained Pursuant to Compulsory Process.—Section 21(b)(6) of the Federal Trade Commission Act (15 U.S.C. 57b-2(b)(6)) is amended by adding at the end "the custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement of understanding between the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes.

(b) The materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) foreign laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign laws are offenses defined in foreign criminal laws are offenses defined in section 57a(f)(4)); and

(c) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior approval if the materials to be provided under subparagraph (B) are requested by a foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of laws of a bank, a saving and loan association, an institution described in section 18(b)(3) of the Federal Deposit Insurance Act (15 U.S.C. 57a(r)(3)), or a Federal credit union described in section 18(k)(4) of the Federal Deposit Insurance Act (15 U.S.C. 57a(k)(4)); and

(d) The foreign law enforcement agency is not from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

Nothing in this subsection authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1988 (15 U.S.C. 6358a) or of employee of a foreign law enforcement agency.

(b) Information Supplied by and About Foreign Sources.—Section 21(f) of the Federal Trade Commission Act (15 U.S.C. 57b-2(f)) is amended to read as follows:

"(1) General.—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether the United States or any other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material; or

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material is not the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code, except as provided in paragraph (2)(B) of this section.

(2) Material Obtained from a Foreign Source.—

(A) General.—Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law, information obtained in the case of a Federal credit union, the National Credit Union Administration, or a savings and loan institution described in section 18(f)(4) of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or chapter 21 of title 18, United States Code, the recipient of compulsory process from disclosing to a Federal agency that the recipient of such compulsory process shall not be required to be disclosed under section 552 of title 5, United States Code, or any other provision of law, except as provided in paragraph (2)(B) of this section.

(3) Limitation on Use of Funds .—Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.

(1) In General.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 21 of title 18, United States Code, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the proceeding, that the investigation or proceeding at the time such process is issued.

(2) Application.—This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

(3) Limitation.—No order issued under this subsection shall prohibit any recipient from disclosing to the attorney agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material; or

(ii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

(B) Savings Provision.—Nothing in this subsection shall be construed to prevent the Commission from complying with an order of a court of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or under the constitution, or any other person the existence of the process is issued.

(2) Limited to Specific Cases.—The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not exceeding 60 days unless the presiding judge or magistrate judge finds that—

(i) the material has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material; or

(ii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

(c) Ex Parte Application by Commission.—

(1) In General.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 21 of title 18, United States Code, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the proceeding, that the investigation or proceeding at the time such process is issued.

(2) Application.—This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

(3) Limitation.—No order issued under this subsection shall prohibit any recipient from disclosing to the attorney agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material; or

(ii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

(4) No Liability for Failure To Notify.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 21 of title 18, United States Code, the recipient of compulsory process issued by the Commission under this Act shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

(1) the underlying conduct reported; or

(2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.)

(3) any failure to comply with any obligation the recipient may have to disclose to a...
Federal agency that the recipient has received compelled process from the Commission or intends to provide or has provided information to the Commission in response to such process.

“(e) VENUE AND PROCEDURE.—

“(1) IN GENERAL.—All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3601 et seq.), chapter 121 of title 18, United States Code, or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

“(2) In camera proceedings.—Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

“(f) SECTION NOT TO APPLY TO ANTI TRUST INVESTIGATIONS OR PROCEEDINGS.—This section shall not apply to an investigation or proceeding conducted by the administrative or Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (6) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)).

“(g) ADVERSE RESULT DEFINED.—For purposes of this section the term ‘adverse result’ includes—

“(1) endangering the life or physical safety of an individual;

“(2) flight from prosecution;

“(3) the destruction of, or tampering with, evidence;

“(4) the intimidation of potential witnesses;

“(5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or not unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

“(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

“(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices; or

“(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission;

“(D) a disclosure regarding assets, including assets located in foreign jurisdictions, in connection with fraudulent or deceptive commercial practices;

“(E) related to persons involved in such practices; or

“(F) otherwise subject to recovery by the Commission; or

“(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices;

“(3) otherwise subject to recovery by the Commission, including assets located in foreign jurisdictions, to the Commission, its members, or employees; or

“(4) otherwise subject to recovery by the Commission.

“(h) LIMITATIONS.—Nothing in this subsection shall be construed to exempt any such entity from liability—

“(A) for the underlying conduct reported; or

“(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material, or to the constitution, or any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or of notice of such provision of material or of intention to so provide material.

“(i) LIMITATIONS.—Nothing in this subsection shall apply to any person, or any failure to comply with any obligation, to—

“(A) a provider of alternative dispute resolution services, to the Commission, its members, or employees; or

“(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material, or to the constitution, or any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or of notice of such provision of material or of intention to so provide material.

“(j) CONSUMER COMPLAINTS.—Any entity described in paragraph (1) of subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or of notice of such provision of material or of intention to so provide material.

“(k) APPLICATION.—This section applies to the following entities, whether foreign or domestic:

“(1) a financial institution as defined in section 5312 of title 31, United States Code.

“(2) To the extent not included in paragraph (1), a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an issuer, a depository institution, a credit card issuer, an issuer, a Federal employee for purposes of—

“(A) the Federal Employee Retirement System Act of 1986 (45 U.S.C. 301 et seq.), or any other law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or of notice of such provision of material or of intention to so provide material.

“(B) the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.’’.

SEC. 10. INFORMATION SHARING WITH FINANCIAL REGULATORS.


“(1) by redesignating section 26 as section 28;

“(2) by inserting after section 25A, as added by section 9 of this Act, the following:

“SEC. 26. REIMBURSEMENT OF EXPENSES.

“The Commission may accept payment or reimbursement, in cash or in kind, from a domestic or foreign law enforcement agency, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, or employees in carrying out any activity pursuant to a statute administered by the Commission without regard to any other provision of law. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Commission.

“SEC. 27. GIFTS AND VOLUNTARY AND UNCONDITIONAL SERVICES.

“The Commission may accept voluntary and uncompensated services.

“(1) LIMITATIONS.—

“(A) The Commission may accept voluntary and uncompensated services from a Federal employee for purposes of—

“(B) the provision of law relating to ethics, conflicts of interest, corruption, and any

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by adding after section 25 the following new section:

“SECTION 25A. STAFF EXCHANGES.

“(1) By the Commission may—

“(a) in General.—The Commission may—

“(A) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 2 of this Act or section 3101 of title 5, United States Code; and

“(B) detail staff members or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

“(b) RECIPROCITY AND REIMBURSEMENT.—The standards for arrangements described in subsection (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

“(c) STANDARDS OF CONDUCT.—A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.”.
other criminal or civil statute or regulation governing the standards of conduct for Federal employees.

(3) TORT LIABILITY OF VOLUNTEERS.—A person who provides voluntary and uncompensated service under subsection (a), while assigned to duty, shall be deemed a volunteer of a nonprofit organization or governmental entity for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 1501 et seq.). Subsection (d) of section 4 of such Act (42 U.S.C. 1500d) shall not apply for purposes of paragraph (1) against such volunteer.

SEC. 12. PRESERVATION OF EXISTING AUTHORITY.

The authority provided by this Act, and by the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as such Acts are amended by this Act, is in addition to, and not in lieu of, any other authority vested in the Federal Trade Commission or any other officer of the United States.

SEC. 13. REPORT.

Not later than 3 years after the date of enactment of this Act, the Federal Trade Commission shall transmit to Congress a report describing its use of and experience with the authority granted by this Act, along with any recommendations for additional legislation. The report shall include—

(1) the number of cross-border complaints received by the Commission;
(2) identification of the foreign agencies to which the Commission has provided nonpublic investigative information under this Act;
(3) the number of times the Commission has used compulsory process on behalf of foreign law enforcement agencies pursuant to section 21A of the Federal Trade Commission Act (15 U.S.C. 46), as amended by section 4 of this Act;
(4) a list of international agreements and memos of understanding executed by the Commission that relate to this Act;
(5) the number of times the Commission has sought delay of notice pursuant to section 21A of the Federal Trade Commission Act, as added by section 7 of this Act, and the number of times a court has granted a delay;
(6) a description of the types of information private entities have provided voluntarily pursuant to section 21B of the Federal Trade Commission Act, as added by section 8 of this Act;
(7) a description of the results of cooperation with foreign law enforcement agencies under section 21 of the Federal Trade Commission Act (15 U.S.C. 57–2) as amended by section 6 of this Act;
(8) an analysis of whether the lack of an exemption from the disclosure requirements of section 552 of title 5, United States Code, with regard to information or material voluntarily provided relevant to possible unfair or deceptive acts or practices, has hindered the Commission in investigating or engaging in enforcement proceedings against such practices; and
(9) a description of Commission litigation brought in foreign courts.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 224—TO EXPRESS THE SENSE OF THE SENATE SUPPORTING THE ESTABLISHMENT OF SEPTEMBER AS CAMPUS FIRE SAFETY MONTH, AND FOR OTHER PURPOSES

Mr. DEWINE (for himself and Mr. BIDEN) submitted the following resolution:

Whereas child survival must be addressed on a global scale;
Whereas increasing child survival rates is critical to population growth in countries around the world;
Whereas child survival depends on access to key nutrients that can avert millions of unnecessary deaths in third world countries from preventable diseases;
Whereas 5 simple interventions, if delivered to children before the age of 5, may significantly increase their chances of survival; these interventions are antibiotics, Vitamin A and micronutrients, oral rehydration therapy, and insecticide-treated bednets—can be provided to third world countries that prosper, and suffer with those that do not. The Month of Global Health is a great opportunity to increase awareness of the pressing global health crisis that threatens our own public health and that of all nations around the world.

I believe this resolution is important and draws attention to the needs of a growing population of children in the developing world that are living without proper health care and the essential nutrients that help them reach their full potential. The resolution also highlights the necessary steps that must be taken to increase child survival rates in developing countries.

Child survival is one of the key elements in addressing global health. As a nation, there is much more we can do to assist developing nations in their effort to increase child survival rates. We must work on a global scale to avert the millions of unnecessary deaths among children caused each year from preventable diseases.

This resolution reaffirms our commitment to the children of the world and sends a message that child survival is a fundamental component in our efforts to improve global health.

Mr. SMITH, Mr. President, today I am pleased to join my colleague Senator MURRAY in introducing an important resolution that will recognize November as the ‘Global Health Month.’

Today, 10 million children die each year from preventable diseases in Third World countries. As many as 6 million of these deaths can be prevented by...