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# Senate

The Senate met at 10:03 a.m. and was called to order by the Honorable BOB SMITH, a Senator from the State of New Hampshire.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Omnipresent Lord God, there is no place we can go where You have not been there waiting for us; there is no relationship in which You have not been seeking to bless the people with whom we are involved; there is no task You have given us to do that You are not present to help us accomplish. We need not ask to come into Your presence; Your presence with us creates the desire to pray. You delight in guiding us to pray for what You are more ready to give than we may be prepared to ask.

You are here. We do not need to convince You to bless this Senate. You have shown us how much You love and care for the United States of America. You want the very best for this beloved Nation and have chosen the Senators through whom you want to work to accomplish Your plans. Help them to see themselves as Your agents. Bless them with Your power. Keep them fit physically, secure emotionally, and alert spiritually. So much depends on their trust in You and pursuit of Your guidance. May awe and wonder capture them as they realize all You have put at their disposal to ensure that they succeed. Thank You for the biblical assurance that You work all things together for those who love You, who are called according to Your purpose. You are our Lord and Saviour. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable BOB SMITH lead the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The ACTING PRESIDENT pro tempore. The clerk will now read a communication to the Senate.

The legislative clerk read as follows:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, January 30, 2001.*

*To the Senate:*

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BOB SMITH, a Senator from the State of New Hampshire, to perform the duties of the Chair.

STROM THURMOND,
*President pro tempore.*

## RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

## EXECUTIVE SESSION

## NOMINATION OF CHRISTINE TODD WHITMAN TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to executive session to consider the nomination of Gov. Christine Todd Whitman.

The legislative clerk read the nomination of Christine Todd Whitman, of New Jersey, to be Administrator of the Environmental Protection Agency.

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be 30 minutes of debate on the Whitman nomination.

Who yields time?

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the prior order entered be changed to allow the chairman of the committee, Senator SMITH, 15 minutes, and the ranking member, Senator REID, 15 minutes.

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

(Mr. REID assumed the Chair.)

SCHEDULE

Mr. SMITH of New Hampshire. Mr. President, the Senate will now immediately begin consideration of the nomination of Governor Whitman's nomination to be Administrator of the Environmental Protection Agency. Under the previous order, there will be 30 minutes for debate on the nomination. Following that debate, the Senate will resume consideration of the nomination of Gale Norton to be Secretary of the Interior.

There will be approximately 2 hours for closing debate with two consecutive votes scheduled to occur at 2:45 p.m. on the Norton nomination for Secretary of the Interior and the Whitman nomination for EPA Administrator.

I now ask unanimous consent that immediately following the votes, the Senate proceed to a period of morning business with Senator LOTT or his designee in control of the time until 3:45 p.m. and Senator DASCHLE in control of the following 20 minutes, beginning at 3:45 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH of New Hampshire. Following morning business, it is expected the Senate will begin consideration of the Ashcroft nomination to be Attorney General of the United States.

I thank my colleagues for their attention.

NOMINATION

Mr. President, it is an honor for me to rise in strong support of the nomination of Governor Christine Todd Whitman to become the next Administrator of the Environmental Protection Agency. As chairman of the Environment and Public Works Committee, I have full confidence that she is the right person for this job and will be an outstanding leader. She has an incredible environmental record as the Governor

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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of New Jersey. New Jersey has cleaner air; the number of days that her State violated the Federal 1-hour standard for ozone dropped from 45 in 1988 to only 4 last year.

It is a remarkable accomplishment. The water is cleaner. The fish population is thriving. New Jersey beaches are once again clean and open for enjoyment, beaches that I enjoyed, I might add, as a young man growing up in New Jersey. There was a brief hiatus where it was not even safe to walk those beaches. Annual beach closings dropped from 800 in 1988 to just 11 last year. That is 11 too many, but still it is an incredible task in development.

The National Resources Defense Council has praised New Jersey for having the most comprehensive beach monitoring system in the entire Nation.

Under Governor Whitman, New Jersey has been a national leader in redeveloping brownfields, which has long been an issue for me as the chairman of this committee, and even prior to becoming the chairman—in reforming the brownfields legislation to clean up these blights on our society. That experience in dealing with brownfields will be invaluable as we develop Federal legislation.

Conservation has also been a top priority for this nominee. During her 7 years as Governor of New Jersey, more open space and farmland was preserved than in the previous 32 years. She has preserved more land than any previous administration in New Jersey, and under a conservation program that she established, and was overwhelmingly approved by the voters, nearly 1 million acres will be preserved by the year 2010.

The list of her environmental accomplishments goes on and on, from air quality to smart growth to species conservation. The bottom line is that New Jersey's air, water, and land are cleaner because of Governor Whitman.

It is remarkable and, some hate to say, unusual for a nominee to be this qualified for this position. This is all occurring when the economy is stronger than ever. We can have a clean environment and a strong economy, and Governor Whitman has proven that.

What is most impressive about Governor Whitman's record is how she achieved this environmental success. It is an approach that focuses on results, an approach with which I totally identify and agree, results achieved through cooperation and partnership as opposed to confrontation and not working together. You use the hammer of enforcement when it is necessary, but if you can lay the groundwork too so you do not need to use the hammer, that is even better. We address problems in a holistic manner—we look at the entire problem, all the sources of pollution air, land, or water. Governor Whitman has done that.

As we begin to tackle the environmental issues of the 21st century, we need that ability to think outside the box. We need to have someone in this agency saying: Just because we did it yesterday or last year does not mean we have to do it again this year. We may want to think about something new, something innovative, something flexible.

Governor Whitman, with her record and experience, is the right person to oversee the protection of our environment. President Bush is to be congratulated for choosing such a strong protector of the environment to head the EPA.

On a personal level, in the private meeting I had with Governor Whitman, we discussed the environmental agenda of President Bush. We also discussed her own environmental agenda. I found it very much in tune with mine. We were talking at great length about the utility emissions reduction, the so-called bubble bill, where we cap and trade and bring utilities and other sources of pollution under this bubble to bring down the emissions. This is a high priority for President Bush and for Governor Whitman. I look forward to working with her on that.

Brownfields, which I discussed a moment ago, is also one of her top priorities. I predict, working with Administrator Whitman, we will move out of the gate very quickly with good strong brownfields legislation which will allow us to get into these communities where these contaminated sites are. Some are asbestos-filled buildings or other messes that have been left by industrial development. We will clean it up. We will remove the unfair liability and allow the contractors to get on site and clean them up.

The spinoff is remarkable: A, you clean up the environment; B, you create jobs; C, you allow areas to be developed that were developed and you do not have to put more pressure on green space somewhere else because now you can clean up, you can build and put new industries on the old industrial site. It is a tremendous opportunity, and it is very exciting to think about working on this with Governor Whitman.

We must address the environmental infrastructure, the combined sewage overflow, storm and sewage overflow. There is much infrastructure that is necessary to look at. She, again, has experience in this area, and we can work together.

On conservation funding, we need to get dollars into the areas we can; with a willing seller and a willing buyer to perhaps set aside new land and, at the same time, protecting private property rights and encouraging dollars to help fish and wildlife and other areas of our environment.

Something the Governor and I really click on is the MTBE issue, which is a big issue in her State as well as it is in mine. We have to work together to try to remove that contamination that is such a problem all across the country, but especially in New Hampshire, California, New Jersey, and several other States where MTBE gets into the water supply. We have to do something about the leaking underground storage tanks that create this problem and, at the same time, begin to develop another source to replace MTBE to still keep the air clean with no backsliding and see to it that we keep this kind of chemical out of our water supply.

It is an ambitious agenda. She is up to that agenda. She is up to the task. I look forward to working with her, and I am very anxious to see her nomination move quickly through the Senate this afternoon.

Mr. President, I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Nevada.

Mr. REID. Mr. President, I came to this session of Congress as chairman of this committee, the committee of jurisdiction dealing with Christine Todd Whitman. For 17 days, I was chairman of the Environment and Public Works Committee. One of my first acts was to hold hearings regarding Gov. Christine Todd Whitman. Part of me said this is my chance to stand out. This is somebody who wants to be the Administrator of the Environmental Protection Agency, someone whose name has been submitted to us by President Bush, whom I did not support in the election. I thought it would be a time to set a real good record show, maybe not a lot, but a significant number of Senators, that they should vote against her.

I went into the hearing with that direction: What could we do to show that she would do a bad job. We had questions from all types of her enemies in the State of New Jersey, many of which we asked orally; the others we submitted to her in writing.

I say candidly, this woman did a great job before the committee answering these questions. We went through four different rounds of questions. Some Senators sat through the entire hearing. It was long. It started at 9:30 in the morning and ended around 1 o'clock, as I recall, or 1:30 p.m. that day. She, I repeat, answered every question we submitted to her. She did not appear to be evasive. When we submitted the questions to her in writing, the answers we got back, as far as I am concerned, especially on issues relating to the State of Nevada, were even stronger than her oral answers.

I do not proudly say there was a part of me when these hearings started that wanted to find things against her. I say to the Senate and those within the sound of my voice, that perhaps was a wrong attitude. Certainly she was able to alleviate any questions I had about whether or not she should be the Administrator of the Environmental Protection Agency.

This is an important agency. I have been on the committee since I came to the Senate. I have seen EPA Administrators come, and I have seen them go. I am confident—and I am very hopeful—that she will be a very good EPA Administrator.

Of all the testimony that she gave, the only concern I have —and I told her this at the hearing—is that I hope she does not depend too much on voluntary compliance. I have no problem if she wants to try it, but let's not push this envelope too far. My experience has been, in the environmental field, voluntary compliance simply does not work.

This agency is responsible for protecting both the health of our citizens and the health of our environment. The agency must ensure that Federal laws protecting human health and the environment are fairly and effectively enforced.

There are 10 comprehensive environmental protection laws that Governor Whitman must administer, including the Clean Air Act, the Safe Drinking Water Act, and the Superfund law. These are very important laws. She and the regional offices she directs throughout the country need to implement them. Leading this agency is a big job.

The Administrator of the EPA needs to ensure that these responsibilities are carried out, in addition to overseeing the Agency's environmental research and making recommendations to the President on environmental policy.

Given the importance of the mission of this agency and the role it must play in developing the future direction of environmental protection, I am joining with my colleague, Senator BARBARA BOXER, as a sponsor of a bill that would give the Environmental Protection Agency Cabinet level status. I have supported efforts in the past in this regard, and I certainly support the efforts today. I think it should be a Cabinet office.

As my friend, the chairman of the committee, has acknowledged, she has been the Governor of New Jersey since 1993. Her accomplishments as Governor are significant: Preserving open space and farmland in New Jersey; expanding the brownfields redevelopment program, and having one of the most comprehensive beach monitoring programs in the entire country. I can remember, it was not long ago, I was speaking to Senator Bradley. Being from Nevada, it was hard for me to comprehend, but syringes and needles were washing up on the shore. People were afraid to go to the beaches. That is no longer a problem in the State of New Jersey, or at least it is a very minor problem.

Governor Whitman has seen the importance of the partnership between the Federal Government and the States in accomplishing mutual goals, such as cleaning up Superfund sites. I think it is significant that rather than what happens in many States, where people and Governors and State entities go out of their way to prevent Superfund sites from being declared, she did just the opposite. She went around soliciting to help the Federal Government clean up these sites that needed to be cleaned up. Therefore, we have a significant number of Superfund sites there. I believe the State of New Jersey has more Superfund sites than any other State in the Union.

She testified before our committee that she would do what she could to make sure that Superfund became an effective law and continued being an important law.

I will hold her to the promise she gave to the committee to support, defend, and enforce the laws of this land. In particular, I am glad that she and the President intend to make sure Federal facilities will comply with the same environmental standards that apply to private facilities. I am glad she has recognized that the Environmental Protection Agency must fulfill its legal obligation to set radiation protection standards for Yucca Mountain in the State of Nevada. This is the facility that is being looked at to determine whether or not it can safely hold nuclear waste.

I think she recognizes the Federal Government's legal obligation to set radiation standards for Yucca Mountain that fully protect human health and the environment. To my mind, anything less stringent than the final rule would not satisfy that responsibility.

While she has not been fully briefed on all these issues, and some of the answers provided to the committee reflected that, the Governor did say at her hearing she is committed to working on these issues. It is my hope she will look carefully at the recent actions of the new administration that would halt some of the proposals, as well as the progress of the last administration.

I expect Governor Whitman to consult with us, the committee, before making any changes that would weaken our environmental protections. We have come too far to allow a single-minded or shortsighted action to set us back environmentally. There are too many problems out there. People want clean air. They want pure water. They want these sites that are so dangerous to be cleaned up.

We have, in the State of Nevada, regarding Superfund, some very good history. I can remember coming into Reno and there was a huge pit. We called it the Helms Pit. The State of Nevada's small environmental protection agency was fighting, working with the oil companies, to do something about the black stains that appeared on this huge gravel pit. In the bottom of it was water. Just a few feet away was the Truckee River—the source of water for the entire State.

I directed the EPA to take a look at it. Within 2 weeks, an emergency Superfund site was declared at the Helms Pit. Here it is now, 8 or 9 years later, and this is a beautiful area called the Sparks Marina, full of water, with motor boats on this little lake. It is just beautiful. And it is all as a result of the Federal Government. It is the Federal Government at its best. The government came in and determined that it was dangerous. There were millions of gallons of fuel that leaked out of pipelines the oil companies had brought into the area. They paid for it. The Federal Government didn't pay for it. The oil companies paid for it.

Now all of northern Nevada has benefited from this environmental law that we passed a number of years ago. So I think it is important we do not set back the progress we have made over the last decade.

I expect, as I have indicated, she will consult with us before making any changes that will weaken our environmental laws. She has a credible environmental record, certainly not perfect, but a credible environmental record, and a profound understanding of conservation issues from a New Jersey perspective. She now needs a perspective for the entire country.

As Administrator of EPA, she will have an opportunity to learn about the different regional environmental challenges that face Americans from coast to coast. For example, in Nevada we face a situation in which dozens of small communities, through no fault of their own, will be in violation of the new safe drinking water regulation standard for arsenic. The issue of naturally occurring arsenic contaminating drinking water may not have been a major issue in New Jersey, but in Nevada it is something that I am confident she can learn about and help communities address.

These challenges are significant. It will be an important task for Governor Whitman to ensure that, all through the western United States, the water standards that have been set can be met. We know from a health perspective they should be met. We need the Federal Government to step in and help us with some of these small communities.

The Environmental Protection Agency has a 30-year history to be proud of. I hope, by working together, we can continue to do just that—protect our environment for generations yet to come.

Mr. President, I support the nomination of Gov. Christine Todd Whitman to be the Administrator, and maybe soon the Secretary, of the Environmental Protection Agency and urge my colleagues to do the same.

Before vacating the floor, I want to say, early in this session, what a pleasure it has been to work with the chairman of the committee, BOB SMITH. He and I have a long history of working together. We were both on the Select Committee on MIA-POWs. It was a very difficult year we spent together. We also spent some difficult time together, and some pleasant time together, as the two party leaders on the Ethics Committee. I have found him to be fair and to always have an open door. I look forward to working with him as the ranking member of the Environment and Public Works Committee.

Mr. SMITH of New Hampshire. I appreciate the comments of my colleague very much. I also commend Senator REID for the expeditious and nonpartisan way in which he has handled the nomination during his tenure as chairman, which was ever so brief. It was a pleasure to work with the Senator. I look forward to working with the Senator in the future.

Mr. President, how much time is remaining on the Whitman nomination?

The PRESIDING OFFICER. The Senator from New Hampshire has 5½ minutes. The Senator from Nevada has 3½ minutes.

Mr. SMITH of New Hampshire. Mr. President, I am going to just take another 2 or 3 minutes to make some comments on the Norton nomination and then will not use all of the remaining time but will be happy to yield it back so we can move to the next nominee.

Again, let me just reiterate my strong support for Governor Whitman in this position as EPA Administrator.

She is extremely well qualified—one of the most qualified people ever to be recommended for the job. She has firsthand experience as a Governor dealing with these problems—some of them on the receiving end of the Federal Government and other times just working in cooperation with the Federal Government.

It is an exciting opportunity to work together on the agenda I talked about a few moments ago: clean air, clean water, infrastructure, many other issues that will be coming before us, including MTBE, which is a big issue in New Hampshire and New Jersey.

Mr. CORZINE. Mr. President, I rise in support of the nomination of Christine Todd Whitman to be Administrator of the Environmental Protection Agency.

Christine Todd Whitman has a long and distinguished record of public service, and has made many important contributions to my State of New Jersey. She is well qualified to head the EPA, and I urge my colleagues to support her nomination.

Governor Whitman is highly articulate and persuasive. She genuinely cares about the issues, and she knows how to make an impact.

Governor Whitman has been a leader in protecting New Jersey's 127-mile shoreline and in fighting for cleaner air, guarding against the kind of pollution that knows no state boundaries. As an individual and a Governor, she has demonstrated a strong commitment to preserving open space.

The Administrator of EPA has the primary responsibility for ensuring that our air and water is clean, our natural resources are preserved, and our public health protected. It is a difficult job. It often requires a careful evaluation of highly complex scientific data, and an ability to translate that data into detailed policies. It needs someone who will fight internal battles to make environmental protection a budget priority. It needs someone who will work with local communities and businesses to find mutually acceptable solutions to environmental problems. And it needs someone who, when necessary, will be tough on polluters and force them to do the right thing.

I believe that Governor Whitman has the background, the experience and the skills necessary to do the job, and to do it well. I know that we will not always agree on every policy issue. This became clear during the hearing on her nomination in the Environment and Public Works Committee. In fact, I was concerned by some of her answers with respect to the need for tough enforcement against polluters and the need to ensure that environmental decisions adequately respect the rights of minorities and other disadvantaged groups.

However, I remain hopeful that Governor Whitman will use her considerable skills to be a strong environmental advocate, and I look forward to working with her to ensure that EPA remains committed to strong and effective enforcement of our environmental laws.

With that, I want to conclude my remarks and wish Governor Whitman the best of luck as she undertakes this important new challenge.

Mr. KERRY. Mr. President, I would like to make a short statement on President Bush's nomination of New Jersey Governor Christine Todd Whitman to serve as Administer of the Environmental Protection Agency I have known Governor Whitman for many years. I admire her public service record and believe she comes to this job with a strong committment and sensitivity to its many responsibilities. I welcome the opportunity to vote for her.

President Bush's choice of New Jersey governor Christine Todd Whitman is positive signal regarding the environmental agenda that he will pursue over the next four years at EPA. Under her guidance, New Jersey has worked with other Northeastern states to strengthen local and national clean air protections. For example, Ms. Whitman recently supported the EPA's newly announced rule to reduce pollution from diesel fuel. Ms. Whitman has been a strong advocate of preserving open space. On the issue of coastal and marine protection, which is of particular concern to my state of Massachusetts, Ms. Whitman has advocated tougher controls on ocean pollution and enhanced protection of our seashores.

One area of concern how been expressed regarding Ms. Whitman's record. Conservation groups in New Jersey claim that during her time as New Jersey governor, Ms. Whitman took a somewhat lax approach to enforcement of environmental law. Needless to say I believe environmental law should be enforced as strenuously as any other law. I anticipated that Ms. Whitman will recognize her new responsibilities and leave no one doubting her willingness to enforce the law vigorously.

While I certainly do not share all of Ms. Whitman's views on environmental protection, I believe that she has shown balance and a willingness to listen to all sides throughout her career. I wish her well at the EPA, look forward to working with her and will vote for her nomination today.

Mr. TORRICELLI. Mr. President, I rise to support Christine Todd Whitman as President Bush's nominee for Administrator of the Environmental Protection Agency. During her years as Governor we have waged many fights together from open space preservation to ending ocean dumping.

President Bush has made a wise selection. The EPA and the country will be getting an Administrator who is qualified, battle-tested and ready to tackle the challenges that lie ahead for this Agency. With this nominee, there will be no learning curve.

There are few training grounds that could better prepare someone for this position than the Governor of New Jersey. As Chief Executive of the State, Governor Whitman has the managerial and administrative experience of running an agency as large as the EPA. But more importantly, no state has a better sampling of the issues facing the incoming Administrator of the EPA than New Jersey.

With 127 miles of shoreline, Governor Whitman has dealt extensively with issues of clean water and non-point source pollution. She knows first-hand the threats to the economy and the environment from ocean dumping. Governor Whitman has increased funding for beach cleanups, and under her watch, beach closings have dropped from 800 in 1989 to just 11 in 1999.

With more Superfund sites than any other state in the Union (111), she knows what works and what doesn't in the Superfund program. She has seen the value of a concerted effort to turn urban brownfields into productive industrial and commercial sites.

With the many dense urban centers in New Jersey, she has dealt with the complex funding and regulatory issues of upgrading dilapidated sewer systems and controlling combined sewer overflow.

As Governor of our Nation's most developed State, she initiated and passed a landmark $1 billion bond measure to preserve one million acres of farmland, forest, watersheds, and urban parkland. Few elected officials in this Nation, yet alone, this Cabinet, have a better understanding of what is needed to curb sprawl and protect our open spaces, than Christie Whitman.

But more than her record of environmental progress, what makes Governor Whitman uniquely qualified for this position is her understanding that economic and environmental progress are not mutually exclusive goals. For example, travel and tourism generates $28 billion in revenue and employs nearly 800,000 people in Central and

Southern New Jersey. No issue is more important to those jobs than ocean quality. Yet the Port of NY/NJ is a vital component of economic growth and employment in the northern part of NJ contributing $20 billion annually to the economy and supporting nearly 200,000 jobs. I have worked with Governor Whitman to balance these constituencies and develop a policy that ended ocean dumping while still allowing for the continuation of the dredging necessary for the Port's continued growth.

The job for which Governor Whitman seeks confirmation is by no means an easy one. The challenges faced by the next Administrator are both numerous and difficult. The Superfund and Clean Water and Clean Air Acts have not been re-authorized in a decade and there are new challenges on the horizon, especially in our urban areas. Our urban centers have sewer systems that were built at the turn of the 19th Century. They frequently back-up and endanger public health and water quality because they are incapable of handling overflow. Too often industries unwanted anywhere else find homes on city blocks because of the jobs they offer and the taxes they pay. The next Administrator must make a priority of closing the gap between available funds and infrastructure needs and ensuring that environmental justice is more than a think tank slogan.

I am confident that Governor Whitman will do this and more. The challenges ahead are many—protecting our drinking water and purifying our air, preserving open space and reforming Superfund. But President Bush could not have selected a nominee with more experience and commitment than Governor Whitman. I have the utmost confidence that she will do the Senate and her home State very proud, and I urge her confirmation.

Mr. WARNER. Mr. President, I join today in supporting the nomination of Christine Todd Whitman to be Administrator of the Environmental Protection Agency.

As a member of the Committee on Environment and Public Works, I have had the opportunity to discuss with the nominee the many challenging environmental and public health issues facing us today.

As the former, two-term governor of New Jersey, Ms. Whitman brings to this position on the ground experience in finding solutions and making progress on environmental problems. Today, New Jersey's beaches, once plagued with closures, have seen dramatic reductions in closures due a comprehensive beach monitoring system. New Jersey's brownfields redevelopment initiations are leading the nation in revitalizing urban centers.

Mr. President, Ms. Whitman brings to this important post a record of accomplishment. More importantly, she has a demonstrated ability to find common ground to make progress on complex problems. Her experience as a state executive will guide her as she works with our state partners to improve air and water quality, to restore abandoned industrial sites and to reinvigorate the Superfund program.

I have every confidence of her steadfast commitment to advancing the protection of public health and the environment. I look forward to working with her and urge my colleagues to support her nomination.

## NOMINATION OF GALE NORTON

Mr. SMITH of New Hampshire. Mr. President, I rise today to express my strong support for the President's nominee for the Secretary of the Interior, Gale Norton. I know there are some groups out there that have mischaracterized her record and have indicated some fears or concerns. I remember similar fears and concerns being expressed about me. It didn't seem to work out the way some thought it would. They have resorted to name calling, misrepresenting her record, making false accusations. We are probably going to hear some of those accusations repeated on the floor today, regretfully.

I begin by trying to set the record straight. I think this business of personal attacking and trying to destroy people personally is a mistake that is uncalled for. It is one thing to disagree on the issues. It is another thing to begin to get into name calling and making accusations about people's character that are not justified.

Let me stick to the record. Gale Norton has a strong environmental record. Certainly, if we look at the facts in Colorado at Rocky Flats and Rocky Mountain Arsenal, she has a strong record of enforcing Federal and State environmental laws vigorously and fairly. As attorney general of Colorado, she fought to make the Federal Government and private companies clean up hazardous and nuclear waste left behind at the Rocky Mountain Arsenal and Rocky Flats.

At the Rocky Mountain Arsenal, she fought all the way the U.S. Supreme Court for the State's right to hold the Federal Government to the same stringent cleanup standards that she applied to private companies. She sued not to try to weaken the cleanup standard but to strengthen it. Today the Rocky Mountain Arsenal is a national wildlife refuge. That is not an accident. That is strong leadership on the part of this nominee for Secretary of the Interior.

The extreme environmental groups also blame Ms. Norton for the Summitville mine disaster and suggest that she didn't do enough to enforce the law. Again, their facts are wrong completely. Ms. Norton did go after the mine operator shortly after she took office. Because of her actions, the mine operator was forced to operate a water treatment facility to prevent contamination from spreading. She also brought an enforcement action against the mine operator recovering millions of dollars to pay for the cleanup. She did not let the polluter off the hook. To the contrary, she made the polluter pay.

This ''let the polluter off the hook'' is a favorite expression of the left to somehow assume that if you try to work to get cleanup and you are not extracting every last dollar from every person who has it, somehow we are letting polluters off the hook. As we know, we have crossed this rubicon in the past. We have crossed that threshold, and it depends on which polluter we are talking about. What is a polluter? Is a polluter somebody who throws a ballpoint pen in a landfill? Under some definitions, yes. We have to be very careful how we throw that term around.

We are going to hear it a lot today in the debate, that somehow she let the polluters off the hook. The facts are, she did not.

These are just a few examples. Anyone who looks at her record—instead of the environmental groups' characterizations—will see that Ms. Norton enforced the law and she protected the environment at the same time.

She appreciates the value of preserving our land. She grew up in Colorado. She understands what wilderness means and what it means to live in a beautiful, pristine area such as central Colorado.

The extreme environmental groups have also suggested that Gale Norton cannot be trusted to protect our public lands, our national parks and refuges and wilderness areas. That is not true. Her record demonstrates that Ms. Norton values our public lands and she will protect them. Again, just look at the record.

As attorney general, she worked with Congress to craft the Colorado wilderness bill that established 19 new wilderness areas in the State. That doesn't sound like somebody who is opposed to cleaning up our environment and protecting our wilderness.

That bill was enacted in part because of Ms. Norton's efforts to build consensus for the preservation of those lands.

Her record at the Department of Interior, where she was Associate Solicitor for Conservation and Wildlife from 1985 to 1987, shows once again that she was an effective advocate for protecting our public lands and natural resources, including endangered species.

Let me name just a few of her accomplishments in the Solicitor's Office:

She represented the Fish and Wildlife Service in its successful effort to add 80,000–90,000 acres to the Big Cypress National Preserve.

She was involved in an effort to add 5,000 acres to complete the Florida Panther National Wildlife Reserve in Florida.

She fought to ensure the success of the captive breeding program that saved the California condor when environmental groups sued to try to stop

it. If they had succeeded, the condor would now be extinct.

She fought for the acquisition of land to extend the Appalachian Trail.

She worked on the regulations that banned lead shot for migratory birds, saving millions of birds.

She secured funds for the restoration of Ellis Island and the Statue of Liberty.

And she negotiated the original agreement with Senator MCCAIN to restrict overflights in the Grand Canyon.

Again, these are just a few of her accomplishments over the past 15 years, but they paint a clear picture.

They paint a picture of someone who has dedicated her life to public service, to preserving the environment and natural resources, and to enforcing the law.

They paint a picture of an individual who is highly qualified to be the next Secretary of Interior, and the first woman to serve in that position.

I urge my colleagues to consider the facts, not the distortions, in making their decisions about Gale Norton.

I strongly support Ms. Norton's nomination to be Secretary of the Interior, and look forward to working with her on the many challenges that lay ahead.

## NOMINATION OF GALE ANN NORTON TO BE SECRETARY OF THE INTERIOR—RESUMED

The PRESIDING OFFICER. The time of the Senator has expired. Under the previous order, the nomination of Governor Whitman is laid aside, and the Senate will now resume consideration of the nomination of Gale Ann Norton, which the clerk will report.

The legislative clerk read the nomination of Gale Ann Norton, of Colorado, to be Secretary of the Interior.

Who yields time? The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the time allotted to Senator FEINGOLD with respect to the Norton nomination be provided to Senator KERRY.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. Mr. President, I believe I have 15 minutes to speak on the Norton nomination.

The PRESIDING OFFICER. The Senator is correct.

Mr. WELLSTONE. Mr. President, I say to my colleague from New Hampshire, I think there is a distinction between what I hope will be substantive remarks on my part in opposition to Ms. Norton to be Secretary of the Interior and personal attack.

I am a Senator from Minnesota. I am from a State where we love our lakes and rivers and streams, the environment.

My opposition to Ms. Norton to be Secretary of the Interior does not mean ipso facto that what I say represents any kind of personal attack. It is simply a very different assessment of whether or not she should in fact be the Secretary of the Interior for the United States of America.

I have a lot of policy disagreements with Ms. Norton. I have a lot of policy is agreements with any number of the President's nominees to serve in our Cabinet, but almost all of them I will support because there is a presumption that the President should be able to nominate his or her people.

On the environmental front, as long as I have the floor of the Senate—and I hope I am wrong—I say today that I believe the record of this administration will amount to a rather direct assault on environmental protection. I think that would be wrong for the country. This is not a debate about ANWR, the Arctic National Wildlife Refuge, not today. My disagreement with Ms. Norton or the President is not the reason why I oppose her to be Secretary of the Interior.

Part of the debate we will have in this country has to do with this nexus between the way we consume, the way we produce energy, and the environment. I see an administration that is an oil interest administration, and the focus will be more and more on oil, barreling down a hard path energy policy, with fossil fuels, environmental degradation getting lipservice but not investments in clean technologies, renewables, safe energy.

The reason I oppose not Gale Norton as a person but Gale Norton to be Secretary of the Interior is because I have doubts about her ability to fairly enforce existing environmental and land use laws. That is why I oppose this nomination.

The Secretary of the Interior is the principal steward of nearly one-third of our Nation's land. The Secretary is the chief trustee of much of our Nation's energy and mineral wealth.

The Secretary of the Interior is the principal guardian of our national parks, our revered historic sites, and our fish and wildlife. It is the job of the Secretary of the Interior to protect this precious legacy and to pass it on to future generations. As Catholic bishops said 15 or 20 years ago in their wonderful pastoral statement, we are strangers in this land. We ought to make that better for our children and our grandchildren.

Ms. Norton has had significant positions—government positions and in the private sector. It is her record in these positions—both in government and private sector roles—that are the most troubling to me. In fact, her record indicates that she may not be able to enforce environmental protections and ensure the preservation of our public lands.

There is no doubt that Ms. Norton did a good job in the confirmation hearings. She pledged her past views, and she is certainly committed to enforcing the laws of the Interior Department. I commend her for her testimony. It is my sincere hope that she will live up to these commitments. However, I think the Senate and Senators are compelled to view her record not in terms of 2 days of testimony but the totality of her record.

The totality of her record is one that I believe points to her inability to strike the very difficult and the very delicate balance between conservation and development. As a private attorney, Ms. Norton has taken positions that indicate a strong opposition to the very environmental protections which, if confirmed, she would be asked to defend.

For instance, she has argued that all or parts of the Clean Air Act are unconstitutional—taking a State rights view. She has argued that the Surface Mining Act, which is all about protecting workers' coal dust level, which is all about occupational health and safety protection, which is all about the problems of strip-mining and the environmental degradation that it causes many communities in Appalachia, again, unconstitutional.

She has argued that provisions of the Superfund law that require polluting industries to pay for cleanup of waste sites should be eliminated.

Ms. Norton has testified that implementation of the National Environmental Policy Act—NEPA—is something that should be essentially devolved to the State level, that she would prefer not to conduct Federal land environmental reviews.

I am sorry; when it comes to this most precious heritage, when it comes to the land, when it comes to our environment, when it comes to something that is so precious for not just us but our children and grandchildren, it is not just a matter of State options.

We are a national community, and we have made a commitment to environmental protection. I believe the actions Ms. Norton has taken and the positions she has taken in the past would make it impossible for her not only to enforce these laws but to be a strong steward for the environment.

In 1997, Ms. Norton argued that the global warming problem didn't exist. That is, of course, in contradiction to the international science community. I know in her testimony she essentially said she now takes a different position—I appreciate that—as Colorado attorney general.

But I also have questions in my own mind given the position she has taken about what kind of steward for the environment she would be.

As Colorado attorney general, Ms. Norton argued against the Endangered Species Act, saying it was unconstitutional. As attorney general, Ms. Norton supported measures that would relax otherwise applicable environmental safeguards if businesses volunteered to regulate themselves. And regardless of the damage, regardless of the effect on the public, regardless of the effect on people, these companies would be shielded from any liability.

Her position is troubling to me because Ms. Norton might be willing to permit private companies that operate

on or near public lands to regulate themselves. As Colorado attorney general, in the case of one mining company acting under self-regulation, there were violations and massive contamination of the Alamos River. My colleague from New Hampshire said she took action, but it was only after the Federal Government was forced to step in and say you must take action. Indeed, the Federal Government was forced to step in and spend $150 million in emergency cleanup of the river.

In addition, there is a case of citizens living downwind from a mill that had been emitting pollution for months. Again, the Secretary of the Interior refused to take action, and again the Federal Government was forced to intervene—again resulting in a record $37 million in fines against the company.

Since leaving her job as AG in 1999, Ms. Norton has been lobbying Congress and the Colorado State Legislature on lead paint issues in behalf of the NL Industries, a Houston company formerly known as the National Lead Company. This company has been named as a defendant involving 75 Superfund or other toxic waste sites in addition to dozens of lawsuits involving children allegedly poisoned by lead paint. The only thing that I can say is I understand Ms. Norton's right to work for whatever company she wants to, but it does not give me very much confidence that she is the right person to be Secretary of the Interior—a major position of environmental leadership in the U.S. Government.

After reviewing her record of 20 years, I believe Ms. Norton has not demonstrated the required balance needed to be a guardian of our national heritage and a trustee of our national lands. Furthermore, she has shown a career pattern of opposing environmental protection, which I think speaks to her ability—or, I say to my colleague from Massachusetts, her inability to carry out the requirements of Secretary of the Interior.

I appreciate her testimony to the Energy Committee, and I take that in good faith. However, I cannot ignore her resistance to prosecute the industry in order to protect Colorado's land and people while serving as attorney general. As Secretary of the Interior, Ms. Norton would be charged with balancing the interests of industry against conservation. In my view, her record strongly indicates she will heavily tilt that balance away from conservation, away from preservation of the environment, away from environmental protection, away from being the trustee for the land, and away from understanding what a sacred duty we have.

It is a value question to make this Earth a better Earth and hand it on to our children and grandchildren. I find all of that unacceptable, and that is why I oppose this nomination. I hope other Senators will oppose this nomination as well.

Might I ask how much time I have remaining?

The PRESIDING OFFICER. Three minutes 43 seconds.

Mr. WELLSTONE. I yield the floor, and I also say to my colleague from Massachusetts that I would be pleased to yield the additional time to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the Senator from Minnesota not just for his graciously yielding me additional time but, most importantly, for the thoughtfulness and sensitivity expressed in his remarks. I associate my remarks very much with his thinking and his approach on this issue.

I think each and every one of us in the Senate feels an automatic pressure to want to support the nominee of the President of the United States. I think it is a national feeling that generally pretty good people, with honest records of taking a position for something they believe in in the course of a lifetime, have found their way to the top of their profession in a sense, and the President of the United States, for one reason or another, makes a decision to entrust them with significant responsibilities.

There is a lot of goodwill here in the initial days of the administration to want to give the President the person that the President chooses. I think through the 16 years I have been here, and the several Presidents I have had the privilege of giving advice and consent to with respect to their nominations, that there are precious few, a small percentage—very small—that I have chosen to cast my vote against the President's choice.

As the Senator from Minnesota said, I think what we are looking for in the person who comes to a job with that kind of responsibility, being a Cabinet Secretary in charge of major responsibilities, is somebody who brings not a series of denials, renunciations, conversions, if you will, from a lifetime of effort, but somebody who brings with them to the job their gut and their heart and their head all linked together in concert with the fundamentals of the job they are being asked to do.

In the case of the nominee Gale Norton, I don't find there is that kind of connection, that there is a continuity of a lifetime of effort that shows me with assurance where the stewardship of this department will go. I regret to say to the Chair and to my colleagues that in the course of the years I have been here and had the opportunity to provide advice and consent on other nominees, we have seen people who came without that connection, with that disconnect, and who subsequently fell short in the job because the gut instinct was not to strike the balance; it was to keep faith with who they were and what brought them to the job.

I don't cast this vote lightly because I know Ms. Norton has a long and even distinguished record of public and private service. I know her friends and others say she is a decent and a capable professional. Some have, in the course of this debate, labeled her an extremist or even caricatured her as James Watt in a skirt. I think that is unfortunate. I find those labels troubling and improper. They distract from honest differences over principle and policy that have made this nomination troubling for the Senator from Minnesota, for myself, and for others.

I oppose Gale Norton's nomination. For a Cabinet post that demands that its occupant strike a very difficult and a very delicate balance—the same word my colleague from Minnesota used—a balance between conservation and development, President Bush has selected this individual. I suppose one might ask the question, of all the people in the country who have records with respect to the environment and development and striking that balance, of all the attorneys general, of all the people involved in conservation itself, of all the people in the environmental movements of this country, of all the people who have built up records of activism in an effort to try to strike that balance, why is it that we are presented with an individual whose philosophy over the past two decades has been singularly unbalanced?

The Secretary of the Interior is responsible for protecting the almost 500 million acres of public land, including 383 parks, 530 wildlife refuges, and 138 wilderness areas. Among these are some of our Nation's most valued lands: Yosemite, with its waterfalls, meadows, the forests, and the giant Sequoias, the world's oldest living things; the Everglades National Park, with its sea of sawgrass, mangroves, hardwood hemlocks, stork, great blue heron, and egrets; Mount Rainier National Park at Mount Rainier—a 14,410-foot-tall active volcano encased in 35 square miles of snow and ice and flanked with old-growth forests and alpine meadows.

Some are sanguine to suggest, well, those areas will never be threatened. But I know from talking to people in various parts of the country I visit that there are huge movements where people are angry that so much of their State is protected by the Federal Government; where people believe more of these areas ought to be open to development, not less; where people have witnessed, indeed, efforts to try to stop finding that proper balance between mining and grazing, or a host of other interests, and who would rather open the forests and have the U.S. Government build more logging roads, without even commenting on whether our logging practices are good or bad, after fires that we had last year. Sure, we can improve, but these are different movements, these are movements which disagree with these setasides.

I remember what happened on the floor of the Senate just a very few years ago, in 1995, with the House of Representatives and the Senate first term in Republican control, and I remember standing here and by 1 vote

only we managed to stop major destruction to 25 years' of efforts to protect the environment of this country—by 1 vote only.

We happen to be a little stronger in the Senate today, but knowing how close it was and watching how critical the discretion of a Secretary is in what happens in terms of the regulations, what happens in terms of efforts they take to court or don't take to court, or seek to have protected or not protected, there is enormous discretion exercised on a daily basis.

I believe we need to remember the history we have traveled here. There was a period of time where some of the lands I just mentioned, the very ones that are protected today that we think of as national treasures, were not thought of in that way. In 1853, when the U.S. Army's topographical engineers returned from a trip to what we would later call the Grand Canyon, the party reported that it was ''the first, and will doubtless be the last, party to visit this profit-less locality.''

As each decade has passed since those early forays into the American continent, the country's appreciation for its land has grown—I believe it continues to grow among Americans today—the places to hike, canoe, camp, to play, to learn, and to leave nature, except for a harmless visit now and then. There were 273 million visits to our National Parks alone in 1993, a clear sign of their value to the Nation.

At the same time, the Interior Secretary manages the development of our public lands. Private companies, from multinational conglomerates to small family businesses, use our Nation's water, minerals, timber, oil, gas, and other public resources. Their industry, obviously, contributes to the national economic growth, and it provides thousands of jobs in regional communities. Our public lands have produced all of the needs of this Nation, and the Department of the Interior has managed hundreds of thousands of claims to mine gold, copper, and other valuable metals; 34 million acres of commercial timberland and 164 million acres of rangelands that are open to grazing.

It is the Secretary of the Interior's job to strike the proper balance between conservation and development. It is a tough job. The Secretary is under enormous pressure from those who hope to profit from these natural resources. Once a decision is made to develop land, the impacts are often permanent. You can't turn back the clock and recreate an old-growth forest. You can't return an extinct species of life. You can't return polluted land to absolutely pristine condition.

There are many steps we can take to avoid unnecessary damage and restore land, and nature has shown itself to be resilient, but the rate of destruction today and the levels and the kinds of destruction too often force us to lose natural resources forever. The numbers of brownfields in cities around this country, the numbers of Superfund sites that have been on the list for years and remain not cleaned up are testimony to that tragedy.

In considering this vote, I have reviewed Ms. Norton's record as a constitutional attorney, an activist, and as Colorado attorney general, and her testimony before the Energy and Natural Resources Committee. It is a record that in my view simply does not reflect the balance I talked about that is necessary to serve as Secretary of the Interior.

I know she will be confirmed. Perhaps in the end we will see a different exercise of that discretion. As a constitutional attorney, Ms. Norton argued that bedrock Federal environmental, public health, and other laws are unconstitutional.

The PRESIDING OFFICER (Mr. ENZI). The Senator has a minute and a half remaining.

Mr. KERRY. Mr. President, Senator BOXER said that she would yield me 5 minutes. I ask unanimous consent I be afforded that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KERRY. Mr. President, based on her legal views, which are, thankfully, outside the opinion of most legal scholars and reflected in decades of court decisions—the Clean Air Act, Endangered Species Act, and Clean Water Act—and many other laws not directly related to the job of Secretary of the Interior but certainly important to this country, such as the Americans With Disabilities Act, Fair Labor Standards Act, and the Violence Against Women Act—violate our Constitution in one way or another. Indeed, if her convictions were the basis for this new administration's actions, it would unravel most of our Nation's environmental safeguards.

In addition to these writings and comments, Ms. Norton has been an active participant in several lawsuits and other efforts to overturn environmental protections. For example, she serves as an attorney to an organization called the Defenders of Property Rights that has advocated against endangered species protections in more than two dozen lawsuits.

Ms. Norton's writing and activism on these issues reaches far beyond the few examples that I have outlined here. To her credit, she has been a capable and dedicated advocate for more than two decades. The problem, simply, is that she has advocated legal and policy positions entirely at odds with the job of Secretary of the Interior.

In her testimony before the Energy and Natural Resources Committee, Ms. Norton distanced herself from her legal and activist record. While I certainly appreciate Ms. Norton's willingness to rethink and revise here views, I remain greatly concerned. Too often absolutist views were cast aside with little or no explanation. Too often the answers were vague and incomplete. Do I expect Ms. Norton to have answers to every issue she may encounter as Secretary? No. But my standard is higher for a nominee who comes before us with a career's record of fighting the laws the administration has now asked her to enforce.

History warns us to be concerned and cautious.

In 1981, Mr. James Watt was nominated to be the Secretary of the Interior by President Ronald Reagan. Mr. Watt, like Ms. Norton, came to the Senate with a record of anti-environmental legal activism. And like Ms. Norton, Mr. Watt showed a willingness to rethink and revise his views. A passage from the CONGRESSIONAL RECORD from 1981 is enlightening. For example, Mr. Watt was asked how, in light of his record, would he

> carry out the Secretary's dual responsibility to permit resource development on the public lands while preserving natural values?

Mr. Watt offered the following answer:

> As Secretary of the Interior, I will fully and faithfully execute the public land policy adopted by Congress requiring such a balanced approach.

The record after this is clear. It was opposite to that very answer.

This year, Ms. Norton was asked a similar question in regard to her views on the takings clause of the Constitution and environmental enforcement. Ms. Norton answered that she:

> will protect the federal government's interests in its lands and enforce all environmental and land use laws that apply to the lands and interest managed by the Department of the Interior.

Sound familiar? My point is that we have been witness to ''confirmation conversions'' before, and the result—as in the case of Mr. Watt—is sometimes regrettable. When a nominee's record is overwhelmingly slanted in one direction and falls far outside of the mainstream on a set of issues central to the job they will perform, reversals and revision leave me concerned.

I looked to Ms. Norton's record as Colorado Attorney General to learn how she performed at a job that required her to enforce environmental laws—again she has argued are constitutionally flawed. I found that record to be decidedly mixed and worrisome.

While Ms. Norton pursued two high profile cases against the federal government, environmental organizations, environmental attorneys, and the Denver Post report that in several major cases she failed to enforce environmental law against private companies.

For example, in one case, neighbors of a Louisiana-Pacific mill were forced to abandon their homes because the stench of pollution from the facility was so great. Without assistance from the state of Colorado, they hired attorneys and won a $2.3 million court against the company. Although that civil trial uncovered criminal wrongdoing by the company, the state still failed to prosecute. Finally, the federal government interceded and assessed $37 million in fines for fraud and violating

the Clean Air Act against Louisiana-Pacific.

The attorney who represented the citizens in that case, Kevin Hannon, told the Denver Post.

I would have grave concerns about Gale Norton's aggressiveness in enforcing environmental compliance and protecting citizens from environmental damage.

And there are additional similar cases.

In her defense, Ms. Norton claims to have not acted because state agencies did not ask her to prosecute. That answer is inadequate in my view, Mr. President. In several instances Ms. Norton aggressively pursued her legal agenda as attorney general. For example, Ms. Norton proactively wrote state agencies declaring that a program to increase minority enrollment at state schools was unconstitutional. Ms. Norton refused to defend a state program to increase minority contracting from legal challenge because it was unconstitutional. As Colorado Attorney General, Ms. Norton filed a brief in an Endangered Species Act case in Oregon arguing a provision of the law was unconstitutional. Clearly, Ms. Norton was an aggressive and capable advocate when the legal agenda matched her policy agenda. But when it came to enforcing environmental law against polluting companies, she too often failed to act and seems to have been uncharacteristically passive.

Arguably Ms. Norton's performance enforcing environmental law as Colorado's attorney general is the most relevant portion of her resume as she becomes the next Secretary of the Interior. One of her primary responsibilities will be to protect the environment and public land by enforcing the law against private companies. Unfortunately that record is weak on environmental crime.

As I have said, Ms. Norton will not receive my vote today. I do not cast this vote lightly. I believe that President Bush should be given wide discretion in selecting a cabinet to advance his agenda. However, there is a reason that the Constitution calls for the Senate to advise and consent on nominations. I believe that policy, ideas and a nominee's professional record matter. In many ways they matter more than the personal issues that derailed other candidates. Each Senator has the right—indeed an obligation—to vote their concerns and hope and their consciences.

Ms. Norton will be entrusted with protecting our federal lands and finding that difficult balance between conservation and development. Not an easy job. I feel strongly that Ms. Norton can only do that job properly if she sticks with the legal and policy philosophy she set forth in the Energy Committee hearings and not the philosophy she has advocated for 20 years. I feel strongly that Ms. Norton can only do that job properly if she does a better job enforcing environment law than she did in Colorado.

I yield the floor.

Mr. SCHUMER. Mr. President, I ask unanimous consent that 3 minutes of the time allotted to Senator STABENOW with respect to the Norton nomination be provided to the senior Senator from New York.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Mr. President, first let me say I agree with many of my colleagues that Gale Norton is clearly an experienced, capable public servant with a distinguished record. I know the Senate confirmation process can be an arduous one. I think she has handled herself very well. She has made herself available to questions by those of us on the committee and conducted and presented herself in a very able way.

That said, I am afraid Ms. Norton has not been able to erase all my doubts and the doubts of many New Yorkers about her environmental record and whether or not she will be a strong enough guardian of our Nation's treasured public lands.

Although she is clearly an honorable person, I believe she does not have a balanced enough view on the question of conservation versus development to serve as Secretary of the Interior. To me, the key word is ''balance.'' I reject those on either side.

There are some who say the conservation movement, the conservation of our lands, is really not necessary, or, once you have one place preserved, you have had enough and conservation should hold little weight when we talk about the needs of development. I have always philosophically rejected that view.

I must also tell you that I reject the view of some of my friends in the environmental movement who believe in no development at all, particularly at a time of scarce resources. There has to be a balance, and that is what I think most Americans seek. Obviously, we all differ on where that balance should be. I am worried that Ms. Norton does not have enough of that balance.

She spoke very well at our committee. But if you look at her history in both the public and private sectors, it is not one of balance. It is one, rather, of almost instinctively saying that development should take precedence over conservation. I do not think that is the right person for the Secretary of the Interior, and therefore I must reluctantly—although I generally believe in supporting the President with his nominations and intend to support the President in all but two of his Cabinet level nominees—I must reluctantly vote no on the nomination of Gale Norton.

Mr. President, I yield.

The PRESIDING OFFICER. The Chair recognizes the Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding under the allotted time I have 15 minutes to speak on the nomination of Gale Norton as Secretary of the Interior.

The PRESIDING OFFICER. The Senator is correct.

Mr. DURBIN. Mr. President, today we are charged with the important decision of considering Gale Norton for our next Secretary of the Interior. This position is extremely important. As the Secretary of the Interior, Ms. Norton would be the principal steward of nearly a third of our Nation's land; the guardian for our national parks; and the protector of our wildlife refuges.

The process of appointing and approving cabinet members is a curious mix of politics and policy. I believe President Bush has every right to exercise the same prerogative as Presidents before him, of choosing members of his cabinet that share his point of view.

In proposing Ms. Norton, President Bush asks the Senate to entrust her with our environmental heritage.

In sending me to the Senate, the people of Illinois have entrusted me with the duty of deciding whether Ms. Norton will faithfully fulfill the job that she has been asked to do.

Although Ms. Norton conducted herself well throughout the confirmation hearings, I am left with many questions about her vision for the future of our Nation's environment. I have no doubt that Ms. Norton has the professional experience to be a capable Secretary of the Interior. The question is not about her ability to lead, but whether she will be a leader for the preservation of our public lands and natural resources.

This is why I rise in opposition to her nomination today. I am disturbed that not one respected conservation group in our Nation has announced its support for Ms. Norton. Her strongest supporters hail from the mining, drilling, logging, and grazing industries—industries better known for exploiting public land than for protecting it.

My concerns were not allayed during her confirmation hearings. Despite more than 20-years experience in dealing with environmental issues, she often gave vague, uncertain answers to questions on how she would enforce many of our significant environmental laws. Her answers gave me little to reassure Americans who support conserving our natural resources.

Let me be clear. I am not opposing her nomination based on her ideology alone. Her documented public record speaks louder than her words. Her career is filled with stands on environmental law and policy that are incompatible with the Secretary of the Interior's role as steward of our public lands. Her actions reflect her philosophy that property rights are pre-eminent and Federal intervention should be minimized. She has not addressed the concern that this approach will interfere with her duty as Secretary of the Interior to aggressively enforce compliance with Federal environmental laws.

By now, most of us know that Ms. Norton started her career at the Mountain States Legal Foundation under

the guidance of James Watt, the controversial former Secretary of the Interior. During her time with Mr. Watt, she pursued cases opposing the enforcement of the clean Air Act in Colorado and supported drilling and mining in wilderness areas. She followed Mr. Watt to the Department of the Interior in 1985 as an Assistant Solicitor where she worked to open up the Arctic National Wildlife Refuge to oil drilling. But it was in her capacity as attorney general for Colorado from 1991 to 1999 that we find egregious examples of her tendency to side with private, pro-development interests over those of preservation.

As attorney general of Colorado, Ms. Norton was an advocate of the policy of self-auditing: a policy that allows polluting companies to escape fines if they report the problem and correct it. Unfortunately, this policy allowed Summitville mine, a large gold mine, to continue operating even though it had serious environmental problems. It was only after the mine spilled a mixture of cyanide and acidic water into the Alamosa River, killing virtually every living thing for a 17-mile stretch, that her office became involved.

The Summitville mine was considered Colorado's worst environmental disaster and is now the poster child of bad mining practices. To her credit, Ms. Norton vigorously pursued the mining company for repayment to cover the cleanup. However, she sought no criminal charges, and her office was criticized for being slow to act. The Federal Government had to step in to prevent the disaster from worsening and later won felony convictions against many of the corporate owners of the mine. In fact, the Denver Post said: ''It's a shame that Colorado must rely on the feds to pursue the case.'' This happened under the watch of attorney general Gale Norton of Colorado.

As Secretary of the Interior, Ms. Norton will have enormous discretion to unilaterally alter environmental policy. She could block funding or enforcement of rules and regulations proposed by the previous administration. For example, she could prevent a recent proposal to limit snowmobile use in our national parks from taking effect, a proposal that was supported by literally thousands of citizens.

As a strong promoter of wilderness areas, I am concerned that Ms. Norton's pro-development leaning will make it more difficult to inventory areas for wilderness designation. I am concerned that she will open more land to mineral and mining development leaving less for wilderness areas. I am concerned that she won't stand strong and protect existing and proposed wild areas from off-road vehicle damage.

I am especially concerned that the Interior Department headed by Ms. Norton will parallel the Interior Department headed by her early mentor, James Watt. Mr. Watt tried to overturn environmental initiatives implemented by President Carter's administration. Ms. Norton says she wants to review many of President Clinton's environmental initiatives. Mr. Watt wanted to shift public land policy towards development and resource exploration. Ms. Norton has indicated she would like to do the same. Mr. Watt tried to make many of these changes out of the congressional limelight by using budgetary recommendations and administrative and regulatory actions. I am concerned that with strong public support for protecting the environment but an almost evenly divided Congress, Ms. Norton may be tempted to try the same tactics.

The Secretary of the Interior has a significant distinction from that of other Cabinet posts. That distinction is that no other Secretary's decisions have such a long-range impact. Once the earth is disturbed to start a mining operation, that land will never be the same. Once an animal goes extinct, there is no replacing it. Once land has been developed, it loses its character as a wilderness.

Mr. President, I believe that Ms. Norton's nomination sends the wrong signal to the country: a signal that we are moving away from conserving our natural resources and moving toward turning our public lands over to private interests.

As a great Republican President and the father of our Nation's conservation ethic, Theodore Roosevelt, said, ''It is not what we have that will make us a great nation; it is the way in which we use it.'' Mr. James Watt echoed this statement during his nomination process in 1981 when he testified that he would seek balance in managing our Nation's lands. Ms. Norton recently testified that she would also seek to find this balance between using and preserving our natural resources.

Unfortunately, Mr. Watt did not keep his word. If Ms. Norton should be confirmed today, I urge her to learn a lesson from Mr. Watt's experience and uphold her promise ''to enforce the laws as they are written.''

The Interior Department is responsible for many of our Nation's most valuable treasures—natural resources that belong not only to this generation but also to generations to come. Americans will be counting on Gale Norton, should she be confirmed, to protect these national treasures so they can be handed on as an enduring legacy—to keep them safe from those who would exploit and destroy them.

Mr. President, I ask unanimous consent that the remaining time under the control of Senator STABENOW be allocated to Senator BOXER.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, can you tell me how much time I consumed?

The PRESIDING OFFICER. The Senator has consumed 9½ of minutes of his 15 minutes.

Mr. DURBIN. I reserve the remainder of my time, Mr. President.

At this time, I see Senator BOXER has come to the floor.

Mr. President, I suggest the absence of a quorum until she is prepared to speak.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from California.

Mrs. BOXER. Mr. President, how much time do I have for my presentation this morning?

The PRESIDING OFFICER. Thirty-one minutes.

Mrs. BOXER. Thank you very much.

Mr. President, I rise to explain to my colleagues, and to my constituents, why I will vote no on the nomination of Gale Norton to be Secretary of the Interior.

It is very rare for me to oppose any Cabinet nominee because I approach the whole subject of advise and consent on Cabinet nominations with the presumption that the President has the right to pick his or her own Cabinet. Having said that, you cannot walk away from a constitutional responsibility to advise and consent if you feel that nomination is way outside the mainstream of American thought, and if you feel that nomination could harm our country in one way or another. And I have many questions about this nominee which lead me to the conclusion that it would be far better to have someone more mainstream in this position. I will be explaining it through a series of charts and through my comments.

I have supported all of President Bush's nominees but for two—this one, and John Ashcroft, which we will be speaking about later this week and perhaps into next week.

I will start by discussing why this position is so important. The Secretary of the Interior is the primary steward of our Nation's natural resources. One of the most incredible gifts that we have from God is our natural resources, the beauty of our Nation. It seems to me we have a God-given responsibility to protect those resources for future generations.

Into the hands of the Secretary of the Interior we place a vast amount of control over our parks, over our wildlife refuges, over grasslands, over ranges, and over endangered fish and wildlife.

I will just show you a beautiful photograph. I have a few. This particular one is Death Valley National Park. What you can see from this photograph is the magnificent environment the Secretary of the Interior will be protecting. If a decision is made, for example, to extract minerals from a park such as this, you could certainly endanger this beauty.

She will make decisions regarding grazing, mining, offshore oil and gas

development, habitat protection or habitat destruction, and American Indian tribal concerns that will have far-reaching and long-lasting consequences.

I asked her some questions about some of these areas in my State, and I have to tell you, as I will in greater detail, that I was very saddened; they were really no answers. There was no commitment that I wanted to hear to protect these magnificent areas. I will go into some of her comments that were put in writing.

We give the Secretary of the Interior the discretion, and we trust her to balance the economic development of our rich natural resources with the need to protect and conserve them. We are looking for a balance, and in my view, we have not seen that balance, either in Gale Norton's past or, frankly, in her answers, which I did not find to be terribly believable. And again, I will get into that.

After more than a century of untempered resource extraction, we have learned we must restore some equilibrium to the management of our public lands and wildlife resources. The American people understand this. Poll after poll shows they overwhelmingly support environmental protection and restoration. They understand we are living in the most beautiful place and we have a responsibility to protect it.

They are willing, for example, to conserve a little energy in order to spare pristine areas such as wildlife refuges. How people could say you can drill in a wildlife refuge, to me, just on its face, there is something that does not make sense about that. If it is a wildlife refuge, it is a refuge; it is not oil-drilling land. Why would it be called a refuge if it is not a refuge, a magnificent area where wildlife can live?

So I think in this appointment President Bush, who for the most part I think made good, moderate appointments, has gone off the reservation. I also understand Ms. Norton will be confirmed. I hope she proves me wrong. I hope she listens to this and proves me wrong. But I can say, I am worried. And there is precedent for me to worry.

If her nomination is approved, Ms. Norton will have authority to make decisions that determine the fate of some of California's treasures and America's treasures, places such as Yosemite National Park, the Presidio, Klamath National Wildlife Refuge, the San Diego National Wildlife Refuge, Death Valley National Park—you can see from the picture how beautiful this is—and the California Desert—and believe me, it is a precious environment; I have been there; I have seen—Point Reyes National Seashore—which is in my backyard; a magnificent area that needs to be protected—and the Santa Barbara coastline. I will get into that because there are 39 leases off the Santa Barbara coastline that are under threat of development.

Ms. Norton's answer to that question leaves me very worried about what will happen.

These unique ecological and cultural gems are fragile and vulnerable places. If they are mismanaged, the damage is likely to be irreparable. She will have responsibility for protection and recovery of California's most imperiled wildlife and fish species. Those endangered species, such as the California condor, will depend upon her for their continued survival.

Taken in total, it is an awesome responsibility and one of great importance to my constituents who treasure California's unique environment.

Let me say something about that. Oftentimes, people come to the floor and say: Well, you can't be an environmentalist because it means you don't want economic growth. You can't be an environmentalist because it means you will not have enough energy. We are going to hear this argument over and over and over, particularly about energy. I will talk a little bit about that. That is a false premise.

Our economy depends on our environment in California. People come to our State and spend money to stay there because of our unique environment. They come to our ocean not to look at offshore oil drilling but to enjoy the beauty and the serenity of standing on that shoreline and looking at the vastness God gave us. To say that being an environmentalist is somehow not for a strong economy is a fact that is wrong on its face.

The green industries that grow up around clean air and clean water, a clean environment, are industries we are not exporting across the world.

To the people of this country, take heart. There are many in this body who understand this.

After Ms. Norton's confirmation hearings, her responses to over 200 written questions and an in-depth look at her long and detailed history of work on these environmental issues—unfortunately, on the other side of most of them—it is clear to me that her record is remarkably consistent. One can say that about Ms. Norton; her record is remarkably consistent.

She has spent her lifetime over the past 20 years focused on fighting against our essential Federal environmental laws and fighting for increased resource extraction from our public lands. That is her history. That is her life. Indeed, it is striking how few examples there are where Ms. Norton worked for the protection of the environment, despite the fact that her positions as Associate Solicitor at Interior and attorney general in Colorado required it.

Let us look at some of her statements. On mining she said:

> The Surface Mining Control and Reclamation Act is not constitutional.

This is the act that tries to at least repair the damage that is done after there is mining.

On endangered species she said:

> The federal government has interpreted its habitat protection duties far too broadly.

In other words, she doesn't think the Federal Government should have much say in habitat protection.

On takings compensation:

> Compensation is desirable because it will have a chilling effect on federal environmental regulations.

A chilling effect on Federal environmental regulations?

We have a lot of important Federal environmental regulations: the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act—all Federal regulations—the Surface Mining Control and Reclamation Act, the Endangered Species Act; these are important advances that our country has made. They have strong support. She likes things that give a chilling effect to Federal Government regulation. It gives me the chills to think that someone who feels this way is in charge of a lot of our laws.

We see recurring themes, deeply held philosophies. These include vehement opposition to Federal environmental regulation, an unflagging commitment to the supremacy of property rights even if those rights lead to environmental destruction and harm everyone else.

Ms. Norton has argued that ''control of land use and of mining is a traditional State function outside the scope of the commerce power.'' Thus, they are not activities that should be regulated by Federal land managers. She went so far as to argue that the Surface Mining Control and Reclamation Act is unconstitutional, as I have stated. Given these beliefs, it is doubtful that she will apply this law and implement it and make sure these conservation standards are applied in a meaningful way.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mrs. BOXER. I thank the Chair.

She has raised strong complaints about the Endangered Species Act, another one of our bedrock laws that the Interior Secretary must implement. During her earlier tenure at the Department of the Interior, she complained the courts were providing an overly broad interpretation of the ESA's habitat provisions. She argued that the habitat protection standard should be extremely narrow so that only habitat that was immediately occupied by an endangered species would be protected. This interpretation would have ignored everything we know about the biological needs of species. It would have protected, for example, a bald eagle's nesting tree but allowed the rest of its surrounding habitat to be destroyed. With that kind of thinking, the bald eagle would never have been saved because you save the tree and then right around the tree you don't take any measures to protect the bald eagle.

Let us show a picture of some of our habitat. We are talking about God's creations that we have a responsibility

to protect. This is Mohave National Preserve Joshua trees. We have to move to protect them.

Let us show some other habitat. Let us show the beautiful habitat of Alaska.

Here we can see some of the magnificent caribou up in Alaska. We will be arguing a lot about that issue. We can see, if we are going to protect their habitat, we cannot just protect a small amount. It is as if saying that we are going to protect the air in one State and not in another one. We know the air moves; the animals move. We have to think about their whole habitat if we are going to protect them and not have this narrow view that Ms. Norton has articulated, which is that you should apply it very narrowly.

She submitted an amicus brief in the Babbit v. Sweet Home case and argued that the Department of the Interior's protection of habitat on private lands was unconstitutional and constituted a taking. She argued for such a restricted interpretation of the law that it would have severely hindered our ability to protect habitat necessary for the recovery of the Endangered Species Act. On that case, her side lost. She is out of the mainstream of thought.

Is it possible she could forget her lifetime of work against these things and suddenly become a fighter for the environment? I conclude no. Over and over again, Ms. Norton has advocated for ''the devolution of authority in the environmental area back to the States.'' In other words, she doesn't really see the need for Federal laws such as the National Environmental Policy Act, NEPA.

While working in Colorado, she wrote of having ''to do battle'' with the Federal Government to wrestle control away from Washington and spoke with pride of her challenges to the Environmental Protection Agency regarding its interference in Colorado's air pollution programs. Oddly, she lamented that the end of the Civil War meant that ''we lost the idea that states were to stand against the Federal Government gaining too much power over our lives.''

There are a lot of things you could bring up to drive home a point, but to raise the Civil War is odd. She said that the end of the Civil War meant that ''we lost the idea that states were to stand against the Federal Government gaining too much power over our lives.''

She is way out there, in my opinion, because the people whom I represent—I think the vast majority of people—want to have a Clean Water Act, want to have a Safe Drinking Water Act, want to protect the magnificent species from destruction, and believe we have a God-given responsibility to do that. But she is way outside the mainstream. President Bush, for the vast majority, in my opinion—all but a couple—has chosen from the middle ground this time and reached over so far that there isn't much room on the other side and put this individual in the position where she can do harm.

As a matter of fact, given her statements about the inappropriate role of the Federal Government in all of this protection, it is hard to understand how she would want to be a part of the Interior Department, much less be the head of it. It raises questions to me about her ability to adequately serve as an advocate from the Federal perspective in various environmental decision-making processes. Ms. Norton has a long history of association with organizations that promote ideas such as eliminating the Bureau of Land Management and selling off our national parks. Not surprisingly, these views have sparked strong opposition from the people of our country.

I want to show you some of the groups that have opposed her nomination: the Natural Resources Defense Council, The Wilderness Society, Sierra Club, League of Conservation Voters, Republicans for Environmental Protection, Physicians for Social Responsibility, NAACP, AFL-CIO, Childhood Lead Action Project—I understand why they oppose her—Community Energy Project, the Network for Environmental and Economic Responsibility for the United States Church of Christ.

This is a lightning rod nomination for people who care about protecting the environment. Why do we have to see their kind of nomination? We could have had a nomination for the President to ''unify us'' and not divide us.

That is the reason I am against this nomination. Her lobbying to dissuade States from holding the lead industry accountable for the continued use of lead-based paint has brought criticism. I showed you that. The Childhood Lead Action Project, why would they get involved in this? Guess what we know. Lead-based paint causes mental retardation in children. This isn't a theory; it is a fact, and she led the charge to get the Federal Government out of regulating lead.

You have to stand up at some point in your life and be held responsible and accountable. I think this is a moment when someone has to be held accountable.

Everyone knows what a strong environmentalist I am and everyone knows how strong I am for a woman's right to choose. They know I have dedicated my life to do these two things. Suppose the laws were changed and suddenly a woman's right to choose was outlawed and I was put up for a position where I had to say enforce that law—put a woman in jail, put a doctor in jail. If this were to happen, people should come down to the floor and say BARBARA BOXER is not the right person for that job; her whole life has been dedicated to making sure that a woman has a right to choose. Why would they give her this position? They would be right. I don't care if I said I will do it; I will enforce it. They know how strongly I feel.

We know how strongly she feels about the interference of the Federal Government, what she considers to be interference in States rights in terms of protecting the environment. Why is this a good appointment? Again, you have to wonder why someone who has dedicated their adult life to opposing the Federal Government's involvement would even take this job. But we saw that happen before. His name was James Watt. We will get down to when someone says they will fully enforce the Nation's laws. Fine. But then when you ask her how she interprets those laws, you have to wonder because it is not the same interpretation as most people have.

When I asked her how she felt about priority issues for California, if she would uphold the Bureau of Land Management's important decision to deny a permit to a gold mine, which everyone agreed would destroy Native American land and destroy the environment in California near the San Diego area, she basically passed on an answer. I asked her about how she felt about the much heralded new management plan for Yosemite National Park. She basically passed on an answer. The Klamath Wildlife Refuge, she passed on an answer. The Trinity River Restoration effort, she passed on an answer. She said she wasn't familiar with the issue; she had not taken a position. This troubles me since she worked at the Department of the Interior before. Yosemite should not be unfamiliar to someone who is to be head of the Department of the Interior and, yet, she passed on an answer on Yosemite.

I would like to submit these answers for the RECORD at this time. I ask unanimous consent to have them printed in the RECORD.

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

QUESTIONS FROM SENATOR DIANNE FEINSTEIN SUBMITTED ON BEHALF OF SENATOR BARBARA BOXER

*Question.* There are currently 36 undeveloped oil leases situated on the Outer Continental Shelf off the coast of California. Development of these leases has been strongly opposed by the state of California and the associated local coastal communities. This Administration has signaled its intent to prioritize the development of domestic oil and gas sources. Will you encourage development of offshore leases in states like California where there is strong and persistent opposition to the development of such leases? Past administrations have used their executive authority to place a moratorium on offshore oil and gas drilling in currently undeveloped areas. Would you recommend that such a moratorium be continued under this administration? Would you view such a moratorium, or any other environmental regulation that prevents development of a lease, to be a taking under the Fifth Amendment of the Constitution?

Answer. President Bush pledged to support the existing moratoria on OCS leases. He also committed to working with California and Florida leaders and local affected communities to determine on a case-by-case basis whether or not drilling should occur on existing, but undeveloped leases. If confirmed as Secretary of the Interior, I will

honor these commitments and promise to work with all parties to reach a consensus on how undeveloped leases should be handled and the extension of existing moratoria.

*Question*. The Interior Department recently announced its denial of a permit for the Glamis Imperial gold mine that was proposed for development in Imperial County, California. This mine was rejected on the grounds that it would have caused undue degradation to the site's environmental and cultural resources. Do you think it is appropriate under current mining law for the Secretary to reject mines like the proposed Glamis Imperial Mine on these grounds?

Answer. I am not familiar with the specifics of the Glamis mine proposal or the basis on which the mine was rejected. I look forward to learning more about the proposed Glamis project and working with Congress to ensure that all new mining projects maintain an appropriate balance between legitimate mineral development activities and preservation of important environmental and cultural resources.

*Question*. Recently, the National Park Service developed a detailed plan for the future management of Yosemite National Park. This plan was developed after considerable input from all of the affected stakeholders and over 10,000 members of the public submitted comments to the agency. Central to this plan is the notion that visitors to the park should be encouraged to leave their personal vehicles outside the park and travel through the park on a park transit system. As Secretary of Interior, will you actively support implementation of the new Yosemite Valley Management Plan? Will you be aggressive about developing similar management plans for the many other national parks that are suffering environmental degradation because their management practices have not kept pace with the growing numbers of visitors?

Answer. I am not familiar with the details of the Yosemite Valley Management Plan. As a general matter, I support the concept of management plans for our public lands and believe that they represent an important decision-making tool for land managers. For these plans to be successful, I believe it is important that they be developed in consultation with the affected States, local communities, affected stakeholders, and environmental groups.

*Question*. In 1998, the U.S. Fish and Wildlife Service adopted a policy for Tule Lake and Lower Klamath National Wildlife Refuges in California and Oregon that prevents irrigation on commercial farmland on the refuges unless sufficient water is available to sustain the refuges' marshes. Do you support this policy which gives priority to the refuges' ecological resources over commercial farming? The National Wildlife Refuge System Improvement Act of 1997 set new requirements for the management of refuges. In response, the U.S. Fish and Wildlife Service issued regulations establishing procedures for determining what uses are compatible with the mission of the refuge system and the mission of each individual refuge. Do you believe farming is compatible with the mission of the Tule Lake and Lower Klamath National Wildlife Refuges? What uses would you deem to be incompatible with the mission of the national wildlife refuge system?

Answer. I am not familiar with the details of the Department's 1998 policy.

I have not yet had an opportunity to review the Compatibility Policy, and am not in a position at this time to assess how it might affect the Tule Lake and Lower Klamath National Wildlife Refuges. I am also aware that the Fish and Wildlife Service recently issued a draft Appropriate Uses Policy that may impact activities on refuges such as Tule Lake or the Lower Klamath. I look forward to learning more about the Fish and Wildlife Service's policies implementing the National Wildlife Refuge Improvement Act and about the 530 Refuges in the National Wildlife Refuge System.

*Question*. The Department of the Interior, with the concurrence of the Hoopa Valley Tribe, announced on December 19, 2000, a plan to restore the Trinity River in California. The decision is based on 20 years of scientific research and public involvement. It completes a process supported by the Carter, Reagan, Bush and Clinton Administrations and has enjoyed bipartisan support in the Congress. Will you commit your Department to follow through on the decision and implement the Trinity River restoration program?

Answer. I am not familiar enough with this restoration plan to respond to this question at this time. I look forward to working with you to learn more about this plan and the Department of Interior's role in implementing it.

Mrs. BOXER. Mr. President, she had a good answer on the Outer Continental Self moratorium where she said she supported the States rights not to drill. When I pressed her on 36 existing leases off Santa Barbara, I didn't get the same answer. She said she would look at them on a case-by-case basis. That is not good enough because the State doesn't want any drilling there. Why wouldn't she just take it off the table? She couldn't do that.

I am very troubled, and we will have a lot of debate over those 36 existing leases. It is one of the most pressing environmental issues in California. We have unwavering opposition to the development of those leases. Since she says she is for States rights, now she can't suddenly say I'm for States rights on this one.

Finally, I want to address the Arctic National Wildlife Refuge. I am not going to spend a lot of time on that. That will come at a later date. I agree with President Bush. It is unfair to criticize her for not wanting to drill in the Arctic. He says, I do; of course, my Secretary would. I have no problem with that. However, Ms. Norton seems to have enthusiasm about drilling there.

If you look at her historical role in pushing to open up the refuge, and her links to the oil and gas industry through the Mountain States Legal Foundation, and the oil companies that hire her current lobbying firm, and the oil and gas interests that gave her significant contributions during her Senate race, I think there are valid questions we could raise about whether she can effectively serve the role that the Secretary must fill in this type of decision-making.

What do I mean by that? Let me show you a picture of the Arctic Wildlife Refuge. You already saw a picture of the caribou there. This is just an open view of the Coastal Plain. By the way, this came from, if Senator MURKOWSKI is listening, the State biologists in Alaska. They wanted us to show this Coastal Plain. Basically, we are going to have a huge debate over whether to open up this refuge to drilling. This is going to be a tough debate. I know that at best there is 6 months' worth of oil there. If you just change the mileage on SUVs a few miles you wouldn't have to do any of this. But we will have that debate. I look forward to it.

But Ms. Norton, in her position, is going to have to be objective about facts such as how much oil lies there, and what is the impact on the caribou and the rest of the environment. I question whether she would be objective given her strong stand in favor of oil drilling.

My State is suffering from energy problems. I want to put something right out here right now. Outside of California, the people are saying it is California's fault because it didn't build enough powerplants. I want to explain something. It was explained very well in the New York Times editorial. Our utilities did not want to build any powerplants because they want to control the supply. The fact is, no new plants were built in the 1990s because prices were low, supplies were plentiful, and producers wanted to wait until they better understood the new era of deregulation.

The State of California recognized back in the 1980s that generation needs might increase, and they tried to move forward with building for new generating plants. It was the utilities, not conservationists, who blocked the efforts. They said we didn't need any new capacity until 2005, and they took their appeal to the State administrative law judge in their efforts to stop the State's push for new generating plants.

The utilities lost that battle. The State said you have to build new generating plants. Do you know what the utilities did? They ran to the Federal Energy Regulatory Commission. And guess what the Federal Energy Regulatory Commission did. they sided with the utilities over the objections of the State, and therefore we did not have these plants go on line. Finally, now they are coming on line, and that, along with long-term contracts and energy conservation, will solve our needs.

I can assure you that rolling back environmental laws and making our air dirty is the last thing my constituents want or need.

In Ms. Norton's testimony before the Energy Committee, she backed away from her life's work. Call me simplistic—and you can, and I don't mind it because I know I am a tough debater in this way. Call me simplistic, but I do not believe that a lifetime commitment to repealing environmental laws can be dissipated by nice, warm, fuzzy statements made in front of a committee.

I was not born yesterday. I watched James Watt. He made nice, warm, fuzzy statements in front of the committee. He said: I will fully and faithfully execute the public land laws adopted by Congress. I believe in balance. He said in his answers: Gee, I am unfamiliar with the details.

That is what Ms. Norton said. As a matter of fact, I find the parallels chilling, looking at her answers and looking at his answers.

We remember Secretary Watt's tenure at the Department of the Interior: Catastrophic impacts on the environment, opening up millions of acres of protected Federal lands, blocking Federal land acquisitions, making substantial changes in strip mining regulations that weakened or directly repealed environmental law, new plans for oil and gas drilling in the Arctic, et cetera.

In closing, let me say I cannot vote for someone for this important position whose life record has been against every single law that she says she will now protect. There is too much at stake for my State. There is too much at stake for the Nation. I have laid out my reasons. I take the Senate's responsibility of advice and consent seriously.

I would like to submit for the RECORD some of Ms. Norton's writing which include the extreme statements I referred to in my comments. I ask unanimous consent they be printed in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
*Washington, DC, January 14, 1987.*

Hon. F. Henry Habicht, II,
*Assistant Attorney General, Division of Land and Natural Resources.*

Attention: DONALD A. CARR, Esquire,
*Chief, Wildlife and Marine Resources Section, Department of Justice, Washington, DC.*

DEAR MR. HABICHT: In *Palila v. Hawaii Department of Land and Natural Resources*, Civ. No. 78–0030 (D. Hawaii, Nov. 21, 1986), the United States District Court for the District of Hawaii recently issued an opinion that interprets the scope of the ''taking'' prohibition of Section 9 of the Endangered Species Act, 16 U.S.C. §1538 (1982). The Interior Department is concerned that the *Palila* court's discussion of the concept of taking, or ''harming,'' endangered species by habitat degradation is overbroad; therefore, should the *Palila* decision be appealed, the Department requests the opportunity to prepare or review an amicus curiae brief for submission to the Ninth Circuit Court of Appeals.

In determining that the State of Hawaii's maintenance of mouflon sheep on the Mauna Kea Game Management Area (which includes most of the Palila's critical habitat) ''harms'' the Palila, the district court held that: ''A finding of ''harm'' does not require death to individual members of the species, nor does it require a finding that habitat degredation is presently driving the species further toward extinction. Habitat destruction that prevents the recovery of the species by affecting essential behavioral patterns causes actual injury to the species and effects a taking under section 9 of the Act.'' *Palila, supra,* slip op. at 9. The district court's analysis appears to improperly blend Section 7 concepts (*i.e.*, the prohibitions against jeopardy and the destruction or adverse modification of critical habitat) into the definition of ''harm,'' and, therefore, needlessly expands that definition to include habitat destruction that does not actually result in death or physical injury to an endangered species, either directly or indirectly in the foreseeable future. In order to show ''harm,'' there must be proof of a causal connection between the habitat modifying activity and foreseeable death or injury to an endangered species.

The scope of the holding in *Palila* runs counter to the Interior Department's redefinition of the term ''harm'': Harm in the definition of ''take'' in the Act means an act which *actually kills or injures* wildlife * * * such act may include significant habitat modification or degradation where it *actually kills or injures* wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.'' 50 C.F.R. §17.3 (1985) (emphasis added). In short, the department's definition of ''harm'' quite clearly requires a showing of actual death or injury to wildlife, even in the case of taking by habitat modification.

For those who would develop real estate near or within endangered species habitat, the *Palila* decision could expand their Section 9 liability if essential behavioral patterns of the species are affected to the extent that recovery is prevented. No proof of mortalities or actual physical injury to endangered species would be required to sustain a prosecution or civil injunctive action under the *Palila* ruling. The *Palila* decision poses an equally serious concern to federal land managing agencies.

Please contact Michael Young of my staff at 343–2172 if we can be of assistance on this matter.

Sincerely,

GALE A. NORTON,
*Associate Solicitor, Conservation and Wildlife.*

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TAKINGS ANALYSIS OF REGULATIONS

(By Gale A. Norton)

Because the panel already has discussed why property is both an enemy and an ally of regulation, I will move immediately to a discussion of how to protect property from excessive regulation. How do we restore a regime of property rights? I would like to discuss a few things happening on that front.

This Symposium occurs at an appropriate time: March 15, 1989, is the first anniversary of the issuance of President Reagan's Executive Order 12,630 dealing with takings. It is surprising that the Executive Order has received so little publicity because it is a unique approach to the issue. It asks the federal agencies to move beyond their environmental and regulatory impact analyses, and to perform a takings impact analysis. The agencies are asked to examine their regulations and determine whether the regulations are likely to cause takings of property and, if so, to estimate what effect the regulations will have on the federal budget. As might be expected, the agencies are not wildly enthusiastic about performing takings impact analyses. The agencies tend to believe that they are not taking anything and that they should never have to pay compensation. Nevertheless, it appears that the agencies are beginning to develop plans for performing analyses in accordance with the Order.

Compensation is the key issue in any analysis under the Takings Clause. First, of course, compensation provides fairness to the person who is harmed by the regulation or other government action. The classic rationale for compensation is that, in fairness and justice, one individual should not be forced to bear the burden that ought properly to be borne by society as a whole. Second, compensation tends to limit government action. Even though bureaucrats enjoy the benefit of spending other people's money, their actions are constrained by their agency's budget. If the government must pay compensation when its actions interfere with private property rights, then its regulatory actions must be limited. This constraint also results in a limitation on transfer activity. If compensation is paid, the political system must take into account some financial costs. Therefore, some brakes are applied on political redistribution as compared with a system that puts everyone's property rights up for grabs.

Finally, the payment of compensation helps encourage the resolution of social problems by private, voluntary contractual arrangements rather than by regulation. It may appear cost-free to work out conflicts by regulation because the costs are off-budget. But when regulations impose burdens on private individuals, the costs are borne by the private sector and are not considered in the democratic decisionmaking process. As those costs are returned to the budget by payment of compensation, we will start looking at alternatives to regulations that may in the long run be more beneficial.

President Reagan's Executive Order on takings has generated significant disapproval from the environmental community, including criticism from Jerry Jackson, a former attorney for the National Wildlife Federation. He said the Executive Order mandates an impossibility because it requires the agencies to determine under the current takings law what actions might be unconstitutional takings. I agree with him on this point. The takings case law is currently such a mess that it is difficult to ascertain what is and is not a taking. The Supreme Court has provided clear guidance in this area.

I, however, disagree strongly with Mr. Jackson about the role of the Constitution in executive agency decisionmaking. He seems to believe that the only way the Constitution figures into an executive agency's decision is that, long after the fact, a court finally addresses the issue and decides that there was indeed a taking. Before a court's decision, the agency should be oblivious to the takings implications. Mr. Jackson says, ''Whether a permit denial might be construed by a court to effect a taking is not a relevant factor in an agency's decision to grant or deny the permit absent express legislative authority making it a factor.'' I would be very interested to see that legislative authority. It would have to say something like, ''In this case, the Constitution applies.'' Mr. Jackson also notes that the Executive Order on takings may have a chilling effect on regulation. I view that as something positive.

I consider next the formulations that might be used in deciding when an environmental regulation is a taking and ought to result in compensation. An exception to the compensation requirement has been recognized when the government acts pursuant to the police power or restrains public nuisances. The exact scope of this exception is not clear. Because we are looking at alternatives. I will act like a good bureaucrat and look at the extreme alternatives.

Let us first assume that there is absolutely no police power or nuisance exception to the takings rule. The government pays whenever it regulates in a way that interferes with private property rights. In a way, this regime would be easy to administer. One would simply look at the property values before and after the regulation is imposed to determine the amount of compensation. But under this regime, the government would have to pay for all types or regulations—even those that halt the worst criminal offenses. (One wonders what the compensation to criminals would be for closing down a crack house—probably mind-boggling.) In such a case, we have little justification for taking money from the taxpayers to pay someone not to engage in socially inappropriate or criminal behavior. Such cases also pose the danger of

someone coming back time and time again with, ''Well, last time you paid me to close down a crack house. Now it's time to pay me to close down the bordello, and next week you can pay me to close down whatever I dream up next time.'' The model is open to exploitation by repeat offenders.

At the other extreme, let us assume that the government does not have to pay at all unless it chooses to label its action condemnation. Again, such a regime would be easy to administer. In fact, it would be facile. The government never would have to worry about what it takes, but individual rights clearly would not be protected.

One formulation that actually has been adopted by the courts is a nuisance exception: No compensation is due if a taking is performed pursuant to the police power in regulating a nuisance. Unfortunately, this is often expressed as a broad police power exception: Compensation need not be paid for government actions undertaken pursuant to the police power. The problem with this approach is defining the police power. The police power may be interpreted very broadly, as it was, for example, in the License Cases of 1847: ''nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions.'' This definition covers far too much. No regulatory taking would ever be compensated. Furthermore, there is no textual support in the Constitution for an exception to the takings rule for police powers. A further problem with a broad police-power exception to the compensation requirement is that the public-use requirement in the Takings Clause has been interpreted as being ''coterminous'' with the police power. Combining a police-power exception to the compensation requirement with a police-power definition of what is a public use leaves an empty box as to when compensation would be awarded. A taking would be appropriate if performed pursuant to the police power and pursuant to public use, but no compensation would be necessary because it falls within the police-power exception.

A much better formulation focuses on the extent of the property rights involved, presumably, there is no actual property right in maintaining a nuisance. Thus, government is not involved in a taking when it halts a nuisance because there is no property right to take. The Keystone decision states this rule, but the analysis in the opinion proceeds to ignore it. There was clearly a property right under state law in that case, but the Supreme Court proceeded as if there were no such right.

Another crucial step in the analysis is defining a nuisance, including determining whether a nuisance is to be interpreted by the common law, and deciding whether nuisance is synonymous with a negative externality. If they are synonymous, then aesthetic harms are problematic. Let me give you an example. I am from Denver, I am a Broncos fan—at least I watch about half of every Super Bowl game in which they are involved. A few years ago, when we were in our fist Super Bowl, there was a craze to paint one's house Bronco orange. If I lived across the street from one of those houses, I would view the aesthetic harm to myself as an interference with my right to use my property, but I doubt that we want to regulate such aesthetic harm.

A different way of identifying a nuisance is to require a physical invasion of neighboring property. A physical invasion test eliminates the problem of aesthetic harm. But physical invasion standing alone is not necessarily a nuisance. There must be some additional element of harmfulness, undesirability, or inappropriateness.

Another alternative is to consider some kind of reasonable right to use our property. In the Nollan case, Justice Scalia, writing for the Court, noted that the right to build on one's property was an actual right and not a government-granted privilege. Regulation of this right may have very significant repercussions in future land-use litigation. Interestingly, we might even go so far as to recognize a homesteading right to pollute or to make noise in an area. This approach would eliminate some of the theoretical problems with defining a nuisance.

Moving beyond the question of defining the nuisance exception to the just compensation requirement. I would like to summarize a few other key components of current takings analysis. In evaluating regulatory takings, particularly in the land-use context, the Court often employs a diminution in value test. Under this test,if a regulation goes too far, it is a taking. The question, as phrased by the courts, is whether the regulation denies the owner all economically viable use of the property. Under this test, the courts have found that diminutions in value of seventy-five percent of almost ninety percent are not sufficiently severe to constitute takings.

Another question is whether a regulation substantially advances a legitimate state interest. This is similar to the requirement of having a public use for the taking under the Fifth Amendment, and therefore it does not provide us with a satisfactory test of what should and should not be compensated. It focuses on what the government is properly empowered to do, not at what it can do on the condition that it pay compensation. Although this test has been frequently reiterated by the Court, it has seldom been used to strike down an uncompensated taking.

One other approach is the bundle of rights test. An interference with a particularly important strand in the bundle of rights may constitute a taking. This test has not yielded particularly enlightening results. A right to exclude others and a right to pass to one's heirs are significant and denial of these rights will be deemed a taking. On the other hand, ownership of a support estate as part of a mineral interest or the right to sell property, are not considered significant and compensable.

An emerging way of looking at the question is the nexus requirement that is set forth in the Nollan decision and that is discussed extensively in Executive Order 12,630. This analysis requires that conditions put on permits have the same health and safety objectives, and substantially advance the same objectives, as the denial of a permit would serve. A good example of such an approach is the case of wetlands dredge and fill permits. The purpose of the wetlands regulatory program is to protect water quality. Its application has been judicially and administratively expanded to protect wetlands values. Frequently, conditions are placed on dredge and fill permits that have no relationship to the overall purpose of the regulatory program, such as providing recreational boat ramps and docks. It will be interesting to watch how these issues are treated as the Executive Order analysis develops.

In this discussion, I have not examined a number of other formulations in the takings context—compensating benefits and so forth—that further complicate the whole analysis. As the preceding discussion indicates, the analysis at this point is very confused and inconsistent. This confusion, however, creates an opportunity for a major shift in takings jurisprudence, toward a greater protection of property rights.

[Panel II]

ECONOMIC RIGHTS PROVISIONS OF THE CONSTITUTION

(By Gale Norton)

I would like to explore some of the means by which I believe the Constitution provides judges with standards for the protection of economic liberties. Throughout the history of the United States, the protection of economic rights has been attempted through a variety of provisions: the ex post facto clause, the contracts clause, the takings clause, the privileges and immunities clause, and through theories of natural rights and due process. While each of these approaches has been largely rejected by the courts, litigants are continually exploring new approaches for the protection of economic rights.

Economic rights are clearly not protected today. Land is owned subject to the whims of one's neighbors on the zoning commission. Prices of goods and services are controlled by a plethora of governmental and regulatory bodies. Selective taxation hampers the growth and innovation of industry, and subsidies enrich some sectors of society at the expense of others.

There are substantial similarities between the takings and contracts clauses. Both clauses limit the powers of government, chiefly the police and eminent domain powers. The eminent domain power is not explicitly provided in the Constitution, but it has been upheld for many years as a necessary and inherent power of government. The police power is exercised by state governments; the federal government exercises similar authority through the commerce power and other delegated powers. The contracts clause applies by its terms only to the states, the takings clause only to the federal government. The requirement of just compensation has, however, been applied to states through the fourteenth amendment. Ellen Frankel Paul has noted the inconsistencies between recognition of the eminent domain power and the Lockean natural rights approach to property rights. An extended discussion of these inconsistencies is beyond the scope of today's discussion; however, I believe it is instructive to explore briefly the character of these governmental powers as they highlight the role and importance of the takings and contracts clauses.

The police power is basically government regulation for the promotion and protection of health, safety, morals, and the general welfare. In a narrow sense, it is the government attempting to enforce the maxim that one should use one's property so as not to injure that of another. This narrow view of the police power firmly prevailed in the early days of the United States, but it has now been broadened to include not only the protection of public safety, health, and morals, but anything rationally related to these broad areas. Indeed, Justice Brennan stated in his dissent in *Nollan v. California Coastal Commission* that a review of the use of the police power ''demands only that the state could rationally have decided that the measure might achieve the state's objective.'' Thus, the only practical limitation on this power comes from specific constitutional provisions such as the contracts and takings clauses.

The contracts clause is one of those provisions that has been virtually written out of the Constitution in current times. Even though James Madison eloquently discussed the contracts clause in *Federalist No. 44* in fairly modern terms, modern jurisprudence has seemingly discarded the clause. Essentially, Madison viewed the contracts clause as discouraging transfer activities, keeping decisions out of the hands of lobbyists, and providing the predictability necessary for business planning.

Despite the soundness of the reasons behind the contracts clause, its erosion began discouragingly early in our history. In *Ogden v. Saunders,* the Supreme Court held that only existing contracts were protected by

the clause. The Court had previously held that the *ex post facto* clause applied only to criminal activities, thereby preventing its use for the protection of contracts. Thus, by 1827 the Court had already moved away from viewing the contracts clause as a broad freedom of contract provision that would protect contracts generally.

Today, the clause is so weakened that in the recent *Keystone Coal* decision the Court stated, ''Unlike other provisions in article 1, section 10, it is well settled that the prohibition against impairing the obligation of contracts is not to be read literally.'' The chief reason for this view of the contracts clause is that the courts have clearly stated that the clause does not supersede the police power. This puts us in a ''catch 22'' position because the police power (in the modern broad sense) is exactly what the contracts clause should be limiting. Therefore, we have a limitation that is superseded by the power it is intended to restrain.

The takings clause is somewhat more alive than the contracts clause, but it also suffers from some debilitating restrictions. An encouraging note is the widespread interest in Richard Epstein's analysis, which expands the takings clause beyond simply eminent domain activities to encompass limitations on the commerce power, taxing power, and so forth. The analysis takes a simple political science approach, i.e., that the takings clause was meant to operate as a check preventing the majority from raiding the assets of the other forty-nine percent of society. Compensation must be paid when the burdens of society fall too heavily on an individual or group, which presumably limits regulatory excesses. The compensation may be monetary or implicit in-kind compensation. Thus, those who are burdened or taxed for the benefit of society are compensated for their special sacrifices.

The current judicial interpretation of the takings clause, however, falls far short of the role discussed by Richard Epstein and intended by the Constitution. For instance, in the public use cases of Hawaii Housing Authority v. Midkiff and Ruckelshaus v. Monsanto the Supreme Court held that the public use justification is coterminous with the police powers. This interpretation can work to deprive individuals of their economic rights. The transfer of property from private party to private party, through the compulsion of the state, will now be upheld when any rational basis can be put forth. Moreover, the courts will only step in if the state's public use determination involves an impossibility and therefore has no rational justification.

In the case of a regulatory taking, the standard approach has been that when regulation goes too far, it is a taking. ''Too far'' generally means that a regulation, under the guise of the police power, does not advance a legitimate state interest or that an owner has been deprived of all economically viable use of his property. As stated earlier, the courts will uphold any state action that is supported in any fashion by some state interest. Moreover, the courts have held that the loss of only one or several attributes of the ''bundle of sticks'' of property ownership is not equal to a taking. The courts have often gone to ridiculous extremes to find some remaining viable use. The only relief the courts have granted property owners in this area in recent times has been to hold that a deprivation of property need not be permanent to bring into force the takings clause. This is a minimal breakthrough since the property owner still has the ominous burden of showing that a taking has occurred.

I believe that some changes are desperately needed in the jurisprudence of economic liberties. The preceding analysis suggests some specific overall changes. I think one important change should be in the level of scrutiny applied to statutes affecting economic liberties. An extreme proposal would be to place the burden of proof on the government to justify its regulations. Levels of scrutiny below this extreme, but higher than the current minimal scrutiny, are realistic.

I would like to note that there are some grounds for optimism in the recent Supreme Court decisions. Bernard Siegan, in his Economic Liberties and the Constitution, states: ''A change of one vote on the Supreme Court in Ogden v. Saunders would have, in 1827, brought economic due process into being through the contracts clause. One vote likewise separated the majority and minority position on the constitutional status of economic rights in the 1872 Slaughterhouse cases. * * * [E]conomic due process was unanimously accepted in 1897 and it fell by one vote in 1937.''

Hopefully in the future these close calls will be resolved in favor of freedom.

The PRESIDING OFFICER. The Chair recognizes the Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I yield myself such time as I may consume of Senator MURKOWSKI's time, I believe. I ask for 7 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, that is one of those remarkable things about this body. We can come to the floor and debate vigorously many different issues. In this case, we are making remarks about what I hope will soon be our secretary of the environment, our Secretary of the Department of the Interior, Gale Norton.

I come to the floor to give some words of support for her appointment and with just the greatest amount of respect to my colleague who just spoke, Senator BARBARA BOXER.

Mrs. BOXER. I thank the Senator.

Ms. LANDRIEU. Thank you very much.

With all due respect to my colleague from California—and I have the greatest respect for her as an environmental leader—I have carefully considered the nomination of Gale Norton, former attorney general of Colorado, to be our Secretary of the Interior and arrived at a different conclusion.

Let me begin by saying that since the announcement for this position, there has been much debate about positions she has taken throughout the course of her career. Whether the topic has been protection of private property rights, environmental self-audits, or certain provisions of the Endangered Species Act, she has advocated for limits on Federal power while arguing for more State and local authority.

In its core essence, that is not necessarily a bad thing. We need to be very sensitive to local and State governments as we craft and fashion and design environmental laws for this Nation. Frankly, I think in some instances the Federal Government has gone, you might say, overboard or has not had as much sensitivity to State and local governments as perhaps we should. We are still a work in progress here.

I find her position, actually, for State and local authority, refreshing and necessary, recognizing that one size does not fit all. But I do not question her commitment to clean air, to clean water, and to finding the right ways to pursue those goals.

As Secretary of the Interior, it would be her duty to manage public lands on behalf of the Federal Government and also to represent its interests in any dispute. So some legitimate concerns have been raised as to whether she would fall on the side of State and local government or Federal Government. I think she put those issues to rest clearly and squarely in her testimony before the committee as she said she would represent the interests of the Federal Government, using her sensitivity to State and local governments as an asset, but not as a barrier to fighting vigorously for and enforcing environmental laws that are on the books.

One such example I would like to point out that should be in her favor is her successful advocacy for the Rocky Mountain Arsenal cleanup. When the Federal Government itself was standing in the way of efficient and effective cleanup, Gale Norton challenged the Federal Government to clean up its own hazardous waste sites and led the fight successfully in that area, and that is a project that is still going forward.

In her 2 days of testimony before our committee as well as her answers to a few hundred written questions, I believe she has sufficiently indicated her honest intention to enforce the Federal laws as they are written and as the courts have interpreted them. Policy differences from time to time between Ms. Norton and the Members of this body are unavoidable. However, she has listened attentively to the concerns expressed by members of the committee, and her pledges to work with us seem genuine.

In addition, I am encouraged by her comments that she was willing to give appropriate consideration to the impact of Federal laws on State and local interests, which is something I mentioned before as very important to me and many Members, Democrats and Republicans, in our body. While there are certain instances where national policy on environmental issues is necessary, as I said earlier, sometimes one size does not fit all. We would be wise to recognize that and implement different strategies for different regions and different States.

In fact, Ms. Norton and I had the opportunity to discuss such a matter during her recent visit to my office—my favorite subject, actually—the Conservation and Reinvestment Act, which is a conservation program that will benefit all 50 States. She expressed an interest to learn more about this. She expressed a very keen understanding of the contribution made by coastal States, in terms of the amount of

money that is sent to the Federal Government from offshore oil and gas production, that could be used more wisely to replenish and restore some of our renewable resources while we are, in fact, depleting a nonrenewable resource.

Based on the crisis that we are facing in our Nation today, our energy crisis—as the chairman, Senator MURKOWSKI, from the State of Alaska, has so ably spoken about on this floor so many times—we can really now recognize the value of producing States. Let's make sure the billions of dollars we are sending to the Federal Treasury is used not just for general government purposes but used to invest in our environment to provide parks and recreation, wildlife and conservation, and, yes, to extend help to coastal impact assistance and coastal communities everywhere.

She says she understands it. Although she has not officially endorsed the bill, she will work very closely with us to carry out our work on CARA. Let me be quick to mention, though, that while she has not taken an official position and did not do so in the hearings, President Bush did in fact endorse, during the campaign, the CARA legislation. He did remind us all as Americans that you just can't keep taking; that sometimes you have to give back if you want your children and your grandchildren to enjoy the same benefits of open spaces, wildlife, and fisheries.

Mr. President, I ask unanimous consent for 2 more minutes to close.

Mr. MURKOWSKI. If I may, I dearly want to accommodate my good friend from Louisiana, but Senator LANDRIEU asked for 7 minutes, Senator HUTCHISON for 5, and Senator BAUCUS for a minute and a half. The two Senators from Colorado need time, and we have to finish at 12:30. I encourage colleagues to try to keep within their time limits.

Ms. LANDRIEU. I thank the Chair. I will take 1 minute to close.

President Bush endorsed this bill during the campaign, and I believe with Ms. Norton's leadership, with President Bush's leadership, and with bipartisan leadership in the Senate and House, it is an early bipartisan victory we can achieve for the environment and for our Nation. I look forward to working with her on that and many other issues. I am proud to support her nomination as our new Secretary of the Interior, and I look forward to working with her in the years ahead.

I thank the Chair, and I yield back whatever time I have remaining.

Mr. MURKOWSKI. I thank the Senator from Louisiana.

I believe the Senator from Texas seeks recognition as the next in order on the list, followed by Senator BAUCUS.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I thank the distinguished chairman of the Energy Committee.

Mr. President, I rise today to speak on behalf of my friend Gale Norton to be Secretary of the Interior.

I have watched Gale as the attorney general of Colorado. I worked with her very closely on the lawsuit that the attorneys general of our States filed against the tobacco companies. Gale was one of the key leaders of the States' attorneys general in that effort and successfully negotiated the lawsuit against the tobacco companies. We worked very hard to make sure that that money stayed in the States, that the Federal Government was not able to take part of the tobacco settlement money away from the States. That has certainly helped all of our States use that money mostly for the purpose of better health care for the indigent people in their States and for all citizens who need help with health care.

In my State of Texas, we added it to the CHIP program for children's health insurance. I know this has added to the quality of health care coverage in our country, and Gale Norton was one of those most responsible for it.

As a former State official, she has also shown that she wants to protect the environment, and she also wants balance in our environmental laws. She believes the Federal Government should have the same requirements to keep environmental standards high that our private industries do.

As Colorado attorney general, she was able to get involved in negotiations to make sure the Federal Government cleaned up hazardous waste in the Rocky Mountain arsenal.

She is going to be the person who will improve public health and the environment in an evenhanded and thoughtful way. I can think of no person who would be better for this job as Secretary of the Interior than Gale Norton.

Mr. President, we will also be voting on the nomination of Gov. Christine Todd Whitman to be EPA Administrator, a Cabinet post. I cannot think of a better person for EPA Administrator than this wonderful Governor of New Jersey who has a very strong environmental record and who also believes in balance to make sure that our economy stays strong and we keep the environment clean for future generations.

I am proud to speak for Governor Whitman and for my friend Gale Norton to join the Cabinet of President Bush, hopefully this afternoon, because I think they will add immense experience, quality, intelligence, and integrity to that Cabinet. I am pleased to support them.

I thank Senator MURKOWSKI for giving me this time.

Mr. MURKOWSKI. I thank Senator KAY BAILEY HUTCHISON.

Senator BAUCUS is seeking recognition.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, at the outset, I want to be clear that I have reservations about Ms. Norton's ability to reconcile her history of passionately battling Federal environmental and public health laws with her duties as Interior Secretary, the public's voice in protecting and managing the Nation's national parks, its endangered wildlife and one-third of the nation's public lands.

Ms. Norton has stated she endorses the goals of our nation's land and wildlife protection laws. She must do more. She must enforce and uphold the spirit of those laws, the very laws she has tried in the past to undermine. She must ensure balance in her and her Department's decisions, listening to the concerns of all interested parties.

Because so many lands in Montana belong to the Federal Government and will fall under Ms. Norton's jurisdiction, Ms. Norton's actions will have an enormous impact on our way of life. Her actions will also impact the many native American tribes in Montana. I hope we can work together to ensure that those impacts are positive, both for Montana and for the Nation. I know I will do my part, and I expect she will do her part.

Despite these reservations, I believe that Ms. Norton is qualified for this position, I believe that she is honest and that she has the utmost integrity and that she will do her best to carry out her many obligations. I believe that Ms. Norton should be confirmed as Secretary of the Interior.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I yield 10 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. CAMPBELL. Mr. President, I take this opportunity to offer my wholehearted support for Gale Norton's nomination.

After all the rhetoric about Ms. Norton for the last month, it only took two appearances before the Energy Committee to get an 18–2 vote. That may not be unanimous, but it is mighty close to it. It is certainly overwhelming. I believe it is evidence that an overwhelming majority of the committee knows she is an outstanding candidate for the job.

She has proven she is knowledgeable, articulate, and capable of enduring round after round of detailed questions while being the object of pretty outrageous charges and mean-spirited ads paid for by her extremist detractors. She handled it, as she does everything, by simply focusing on the job at hand. The more she sat in those hearings, the more she convinced our colleagues that she is the right person for the job.

My Democrat colleagues on the committee saw, as with several other Bush nominees, that getting through this nomination process is not easy. The environmental groups that focused on her simply were wrong. Her management direction and experience have been proven over and over, and I was pleased to hear some very enthusiastic and

commendable words from my colleagues on the other side of the aisle and other side of the dais in our Energy Committee before we voted to send her nomination to the floor.

My friend and colleague from California, Senator DIANNE FEINSTEIN, stated:

Some of the things said about her are simply not correct.

That is absolutely true. Some of the articles in paid-for ads in the Washington Post were simply distorted.

She certainly allayed, through her testimony and her answers to 227 written questions to the committee, the fears my colleagues had. Senator BAUCUS, Senator LANDRIEU, and Senator BINGAMAN, all valued Members of this body, questioned her at length and came away with the same opinion I have: That she is going to be a very good Secretary of the Interior. Directly after the vote, the same people who had attacked her before did so again, and also sent kind of a warning shot to the Senate Democrats on the committee. The President of the Friends of the Earth, a prominent environmental group, said after the vote that Norton is ''a wolf in sheep's clothing'' and that ''she pulled the wool over the eyes of the Senators.'' That paragraph was in the Washington Post on January 24. These are the types of fictional jabs that I believe led to the vote for her overwhelmingly.

Contrary to the Friends of the Earth, she did not pull the wool over anybody's eyes. In fact, if anything, she opened the eyes of many of the committee members who had some questions about her qualifications before she had a chance to be interviewed.

I have known Gale for many years both in a professional capacity and as a friend, too. Let me state for the RECORD, she has a long and distinguished career of doing the right thing—always. Her consensus-building ability might be best illustrated by her 8 years as Colorado's attorney general. There she served under a Democrat Governor and still accomplished much for the betterment of Colorado, not the least of which was the cleanup of Superfund sites.

For more than 20 years, she has provided leadership on environmental and public lands and has demonstrated a responsible commonsense approach to preserving our natural heritage.

I listened to some of the comments of her detractors on the floor this morning, and I will tell you that is not the Gale Norton I know. In fact, the Gale Norton I know represents a balanced approach to public lands.

Another significant fact to know about Ms. Norton is she is committed to enforcing the law as it is written. Throughout her questioning in front of the Energy Committee, she repeatedly stated she will enforce the letter of the law with which she is entrusted. I believed her. The majority of the committee also believed her.

I think that is a novel approach. I say to the Presiding Officer, coming from the West, you, as I, have seen a Secretary of the Interior the last number of years who believes laws are passed by Congress, and they are simply an extension of what the Secretary of the Interior wants to do by rulemaking authority. Ms. Norton will follow the rule of law.

She listens to common sense while she searches for common ground. Unlike many in Washington, she understands that real environmental solutions do not just come from beltway professionals or are driven by ideological purists but come by including people whose lives are going to be affected. They come from real people with honest concerns about the land and the water.

She relayed this to all of the Senators she testified before and visited around the time of her confirmation hearing. She proved to 18 of the 20 Senators of the committee that she is the right person for the job. She is up to the task. She will be a very fine Secretary of the Interior.

And probably above all, we have witnessed in the West in the last few years a process which certainly locks out any local input whatsoever. Ms. Norton is concerned about that. She knows that the people whose lives are affected at the local level must also be included when we talk about public lands policy.

Her record as a public servant demonstrates she will work with all parties to craft reasonable solutions. That kind of evenhanded approach to public land management has been missing, and the West is worse off for it. I know she will bring to this office of Interior Secretary decisive action in the land and resource issues where we have recently seen too much photo-op and not enough solid demonstrable decisions.

I believe she should be confirmed by the full Senate quickly, and by a large margin, and certainly would ask my colleagues to do so.

With that, I thank the Chair and yield the floor.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, might I ask, how much time is remaining for debate?

The PRESIDING OFFICER. Seventeen minutes 15 seconds.

Mr. MURKOWSKI. Seventeen minutes. I thank the Chair, and I thank my colleague from Colorado.

Mr. President, virtually every newspaper in Colorado has endorsed Ms. Norton. I cannot think of one that has not. The attorneys general throughout the United States have rallied behind her, those who have worked with her and know her. I cannot think of a greater tribute to her than hearing from those who have worked with her and have respected her over an extended period of time.

Mr. President, I ask unanimous consent that a letter from the International Brotherhood of Teamsters, dated January 29, 2001, signed by the general president, James P. Hoffa, be printed in the RECORD.

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

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
*January 29, 2001.*

DEAR SENATOR: On behalf of the 1.5 million members of the International Brotherhood of Teamsters, I urge you to support the nomination of Gale Norton for Secretary of Interior.

As you know, the United States finds itself facing an ever-growing crisis in meeting its energy needs. As skyrocketing gas prices hit the pocketbooks of working Americans and rolling blackouts bring to a grinding halt the economic engine of California, the citizens of this country look to the federal government to address this program now.

Our first step must be to increase the United States' energy independence. The Arctic National Wildlife Refuge (ANWR) offers a realistic and immediate opportunity for working toward this goal. Tapping the resources of ANWR in an environmentally sensitive manner will provide 10.3 billion gallons of oil, while at the same time creating an estimated 25,000 Teamster jobs and potentially 750,000 jobs nationwide.

Ms. Norton recognizes these facts. Her commitment to finding real solutions, particularly with regard to ANWR, demonstrates that she has the ability to balance the needs of the environment with the needs of working Americans.

Admittedly, during her tenure as Colorado Attorney General, Ms. Norton did oppose the labor community on some issues very important to our members. However, I believe that her commitment to energy independence and job creation portends a welcome shift in priorities at the Department of the Interior that will benefit Teamsters and other working families.

For these reasons, I ask you to vote to confirm Gale Norton as Secretary of Interior.

Sincerely,

JAMES P. HOFFA,
*General President.*

Mr. MURKOWSKI. Mr. President, I yield myself 7 minutes.

I will take the liberty of referring to the letter:

On behalf of the 1.5 million members of the International Brotherhood of Teamsters, I urge you to support the nomination of Gale Norton for Secretary of Interior.

The next paragraph reads as follows:

As you know, the United States finds itself facing an ever-growing crisis in meeting its energy needs. . . .

Our first step must be to increase the United States' energy independence. The Arctic National Wildlife Refuge (ANWR) offers a realistic and immediate opportunity for working toward this goal. Tapping the resources of ANWR in an environmentally sensitive manner will provide 10.3 billion gallons of oil, while at the same time creating an estimated 25,000 Teamster jobs and potentially 750,000 jobs nationwide. It would be the largest construction project in the history of North America.

Admittedly, during her tenure as Colorado Attorney General, Ms. Norton did oppose the labor community on some issues very important to our members. However, I believe that her commitment to energy independence and job creation portends a welcome shift in priorities at the Department of the Interior that will benefit . . . working families.

Mr. President, we disagree in this body on a daily basis, and that is

healthy, and it is a part of the process before us. But I think some in the environmental community could learn from that model associated with Ms. Norton's confirmation effort. She represents some of the western values and approaches toward public lands and the environment.

People are free to disagree with her values and approaches; however, in some cases, some have tried to portray her as an extremist. Representatives of some special interests said that she has spent her lifetime trying to undermine the mission of the agency she is nominated to lead; that is, the Department of the Interior.

The disagreeable rhetoric used was never born out in fact. In her entire testimony before the committee, of which I chair, the Energy and Natural Resources Committee, where we have held 2 days of hearings, we had her respond to about 224 questions. We voted her out with a mandate vote of 18–2.

In any event, that rhetoric is without reality and has led to questioning the goals of some in the environmental community. I do question the goals, and I do question the effort to basically character assassinate this nominee.

Let me quote from a January 19, 2001, guest editorial in the Chicago Sun Times:

> The Norton nomination exposes a growing schism within the national environmental movement. An increasingly radical left wing, funded by a small number of liberal foundations and tens of millions of dollars each year from government grants, will stop at nothing to shut down American manufacturing and to ban all public access to public lands. These are the same groups that rioted in Seattle in November 1999 and are burning down resorts and new homes to protest sprawl.

Mr. President, it goes without saying that the Colorado newspapers have supported Ms. Norton, but they go further than that. How about the Tacoma News Tribune:

> Norton has been described, even by some Democrats, as bright, hard-working, highly ethical and willing to at least listen to those with opposing views.

Washington State Attorney General Christine Gregoire said:

> The Sierra Club asked me not to say positive things about [Ms. Norton]. I told them to show me why she shouldn't be confirmed. I am still waiting for them to show me the evidence.

Like the Washington State attorney general, I am still waiting to see the evidence that Ms. Norton does not support the Endangered Species Act.

She led the fight to save the California condor. In her appearance before the committee, she repeatedly stated that she would enforce the Endangered Species Act. I have heard television ads run about Ms. Norton's, something they call, ''right to pollute.'' They did not clarify that Ms. Norton used this phrase only in discussing emissions trading, a concept later embodied in the Clean Air Act passed by the Congress. It was a Democratic Congress.

These are two of the egregious misrepresentations of her record made by special interest groups. I am almost ashamed of some of these groups. I don't think any person in this body should repeat any of the vicious personal attacks made in desperate attempts to derail this nomination. I view some of the attacks as despicable, unworthy of the space it took to print them. Such distortions and name calling really reflect badly on the authors, not on Ms. Norton. I am also ashamed that some of these D.C.-based groups use the word ''Alaska'' as part of their name. The reputation of several of these environmental interest groups is in tatters after this process. Ms. Norton's stature remains upright and in one piece.

I know we have heard from a number of Senators expressing their views today. The Senators who will close the debate—we have already heard from Senator CAMPBELL; Senator WAYNE ALLARD from Colorado is next—have worked under the tenure of the attorney general, and I commend their statements to the Senate as a true picture of the nominee before us, the nominee who will make an excellent Secretary of the Interior.

Finally, they try to rub out the messenger, but they can't rub out her message; that is, that she will uphold and enforce the law.

I yield the remainder of the time to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I thank the Senator from Alaska. I compliment him on a fine job on the floor and in committee on the nomination of Gale Norton to be Secretary of the Interior. I also recognize the diligent efforts of my colleague, Senator BEN CAMPBELL of Colorado, in carrying forward, making sure we get a confirmation.

I rise today in strong support of President Bush's nomination of Gale Norton to be the next Secretary of the Interior. I have known Gale Norton for years and know her to be an individual with strong personal convictions and the upmost professional integrity.

This past month, my colleagues in the Senate and our constituents have had a chance to get to know Gale Norton. During that time they learned that Gale was a member of the law school honor society at the University of Denver; after law school she joined her alma mater as the Interim Director of the Transportation Law program at the University of Denver law school. Gale also worked at the U.S. Departments of Agriculture and Interior serving as Associate Solicitor for Conservation and Wildlife. This diverse background gave her a solid foundation to run successfully for Colorado's Attorney General, a position she was overwhelmingly reelected to in 1994. During her 20 years working on environmental and natural resource issues, Gale Norton has gained a solid reputation defending the role of the State, advocating sensible environmental cleanup and solving problems.

Now, I know that most western Senators support Gale Norton for Secretary of the Interior. But for those of my Senate colleagues who still have doubts, let me tell them some more about Gale and her career and why she deserves their support.

I am a fifth generation Coloradan, and believe me, I know what it means to represent such a beautiful and diverse State. Gale also grew up in Colorado and she knows that Coloradans take environmental issues seriously. Whether it's a farmer or rancher, small businessman, high tech employee or new immigrant to the state, everyone recognizes and appreciates the connection between our economy and our environment. Colorado is not gaining a 7th congressional seat because our environment has been neglected. If anything, Colorado has demonstrated that there can be a balance between environmental protection and economic prosperity. This balanced approach was utilized during Gale's tenure as Attorney General.

Coloradans recognized Gale's ability and qualifications and entrusted her to represent them on complex and diverse issues. As Colorado Attorney General, Gale was committed to enforcing the law. She led efforts to ensure that the federal government cleaned up its hazardous and toxic wastes in Colorado and actively participated in the settlement of complex water rights cases. Gale also testified before Congress on implementation of the National Environmental Policy Act, Superfund and Colorado wilderness legislation. Gale's input on these issues was always based on the premise that we can improve the laws so they protect the environment without imposing unnecessary burdens on society. Contrary to some reports, commenting on the effectiveness of a law does not equate to advocating repeal of the law.

We need to set the record straight on some of the outlandish statements radical environmental groups have been generating. Radical environmental groups are trying to tie Gale Norton to the Summitville mine disaster, an event that didn't even happen on her watch. It happened under former Colorado Governor Roy Romer, a Democrat, his head of Department of Natural Resources Ken Salazar, and the attorney general, also a democrat. No one denies the environmental abuses at Summitville, but unfairly trying to link Gale to this is appalling. Even Ken Salazar, who now serves as Colorado's Attorney General believes she should have the opportunity to serve as Secretary of the Interior.

During Gale's 8 years as attorney general, she never allowed free reign for polluters to come in and destroy our environment.

At this point, I ask unanimous consent to print in the RECORD an editorial entitled ''Summitville Gold Mine Is Cast As A Political Boogeyman'' by Denver Post columnist and editorial writer Al Knight.

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

[From the Denver Post, Jan. 30, 2001]

SUMMITVILLE GOLD MINE IS CAST AS A POLITICAL BOOGEYMAN

(By Al Knight)

JANUARY 10, 2001.—The New York Times, for reasons that must be assumed to be political, has attempted to smear Gale Norton, President-elect George W. Bush's choice for Secretary of Interior.

In an article last Sunday, The Times essentially attempted to make Norton, a former Colorado attorney general, responsible for what is headlined as ''the death of a river.''

The article, which relied on a series of factual misrepresentations regarding the Summitville gold mine, also made a hash of explaining applicable environmental law.

The writer, Timothy Egan, clearly doesn't understand the history of Summitville, nor does he demonstrate any understanding of the ongoing dispute between the Environmental Protection Agency and various states, including Colorado, that have passed environmental self-audit laws.

Egan's thesis was simple. Summitville was an environmental disaster. Norton was attorney general when it happened, thus she was partially responsible for it. Because Norton has supported self-audit laws that allow companies to inventory and report on environmental problems, she therefore must somehow countenance the environmental damage at Summitville.

The problem with this thesis is that it is wrong on almost every count.

Egan misrepresents the so-called death of the Alamosa River. That river has for decades been anything but a prime fishery. The watershed has long been affected by acid mine drainage and by naturally occurring minerals and heavy metals in the soil. It is simply irresponsible of The Times to continue to repeat allegations that discharges from Summitville killed the river.

A high-level EPA memo written in 1995 summarizing ''ecological data and risks at Summitville'' said there were ''uniquely high and variable levels of natural background metals (in the Alamosa River) which can often exceed aquatic lethality benchmarks independently of site contamination.''

Translation: Summitville contamination alone cannot account for the absence of fish in the river.

That same memo, by the way, says that drainage from the Summitville site at certain times of the year ''could actually improve upstream Alamosa River water quality.''

Egan goes on to repeat the falsehood that cyanide releases from the Summitville mine killed fish. It makes for a nice scare story but it did not happen. No fish died of cyanide poisoning.

Norton was attorney general when the state and federal government filed suit in 1996 against financier Robert Friedland—a former owner of the company who ran the mine in the mid- and late 1980s—attempting to recover cleanup costs.

That suit was finally settled last month, with Friedland agreeing to pay $27.5 million. There is no allegation in The Times or elsewhere that Norton did less than quality work in connection with that case, which was mostly dictated by federal law. It's worth noting that Friedland paid much less than the government originally sought and won some important concessions as part of his settlement, which ends all U.S. claims against him.

For one thing, most of his money will stay in Colorado to help improve conditions in or near the Alamosa River. Normally, under the Superfund law, recovery of cleanup costs goes directly into the federal treasury. Friedland has long claimed that the federal government wasted millions at Summitville and said that he did not want his money to be used to effectively finance what he believes is EPA waste.

This concession was almost certainly won because the EPA had badly botched its legal case against Friedland. Friedland had a important case pending against the United States before the Canadian Supreme Court, and it is safe to assume the United States was anxious to avoid having that case go forward. Any mishandling of the Summitville litigation can be directly traced to the EPA and to the Justice Department. Norton was certainly not responsible.

Finally, there is the matter of the state's self-audit law. Colorado's law was passed after Summitville went out of business. The self-audit procedure has nothing whatsoever to do with Summitville. What happened under Norton's watch regarding self-audits was quite simple:

The EPA, in effect, declared war on the states that had such a statute, and North—as attorney general—defended the state law against what was clearly a federal overreach. Self-audits were never intended to trump or otherwise replace all other federal or state regulation. The truth is that the EPA didn't want to see its power diminished and decided to fight the use of self-audit laws even though there was clear and convincing proof they produced environmental benefits that otherwise would not have been achieved.

The New York Times seems incapable of keeping its clearly liberal political positions out of its news columns. It has achieved something of a temporary new journalistic low in trying to tie Norton to a mythical ''death'' of a river. The state of Colorado may have made a number of mistakes relative to Summitville, but they pale to insignificance compared with the mistakes made since by the EPA, its waste of millions in tax dollars and the federal government's mishandling of years of litigation. That's the truth, whether The New York Times knows it or not.

Mr. ALLARD. The Denver Post, which describes itself as a newspaper with an active environmentalist agenda says that ''Norton should not be slammed for other politicians' mistakes,'' also defends Norton as one who tried to fix Summitville under nearly impossible circumstances. I hope my colleagues read these editorials and help set the record straight to end these vicious rumors.

With Gale as the Secretary of the Interior, we can begin the healing process in our rural communities, of regaining their trust. You see, when I was elected to the Senate, I made a commitment to all the residents of Colorado, that I would visit their county every year for a town meeting. I've held more than 250 town meetings, and whether I was in the rural communities of Craig and Lamar or the larger communities of Grand Junction and Pueblo, the message was the same—they were tired of constant threats and assaults on their way of life, they don't trust government. And how can they? When in the waning days of the Clinton administration, some 2000 pages a day of new rules and regulations were added to the Federal Register. How can this be good for the environment and the economy?

Gale believes there is a role for local input in the public policy process. It's one thing to say that you believe in local involvement, but to actually use their input and listen is different. I know that Gale adheres to this philosophy. I also know that Gale recognizes the role of Congress in protecting our environment. I am confident that she will work with all of us, as elected officials and our constituents to address our complex environmental issues.

With Gale Norton and President Bush, we will restore the premise that the public and Congress have a role in the decision making process, especially as it relates to federal land management. Local input and congressional support ensures that sound public policy prevails. I know the new administration will work to protect the environment and restore integrity to the public process.

Now that you know who Gale Norton is and what she represents, I hope you too will give her your strong support and vote yes for her confirmation.

Again, I thank Senator MURKOWSKI and Senator BEN CAMPBELL for their efforts on Gale Norton's behalf.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank my two colleagues from Colorado for their statements in support of the nominee. I ask unanimous consent that I may be allowed to simply recognize a group of supporters who I believe should be entered into the RECORD at this time.

We have letters of support for Gale Norton from Indian tribes: the Navajo Nation, the Nez Perce Tribe, Oneida Indian Nation, United South and Eastern Tribes of Tennessee, Ute Mountain Tribe, the Southern Ute Indian Tribe, and United South and Eastern Tribes.

I ask unanimous consent to print letters of support from those tribes in the RECORD.

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

THE NAVAJO NATION,
*Window Rock, AZ, January 16, 2001.*

Hon. BEN NIGHTHORSE CAMPBELL,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATOR CAMPBELL: On behalf of the Navajo Nation, I convey our support for Ms. Gale Norton, nominee for Secretary of the Department of the Interior. The Navajo Nation, in its government-to-government relationships, works with the Department of the Interior on myriad issues affecting the Nation. Although there are times when we disagree with one another we continue to work together for the benefit of the Navajo People. We wish to continue the working relationship with the new administration and we look forward to working with Ms. Norton.

The Navajo Nation's past experience with Gale Norton involved issues with the Southern Ute Tribe during her term as Attorney General for the State of Colorado. During that time Ms. Norton approached the tribes and asked how she could help. She provided testimony to the House (Natural Resources) Committee on the Animas-LaPlata project which benefitted the tribes. Her willingness to support the tribes demonstrates her knowledge of Indian nations and their position within the federal system.

The Navajo Nation does have its concerns with regard to Indian country policies and initiatives. We advise the new administration to follow the basic goals and principles of affirmation of the commitment to tribal sovereignty and self-determination, protecting and sustaining treaty rights and the federal trust responsibilities, and supporting initiatives which promote sustainable economic development in Indian country.

The Navajo Nation supports the nomination of Gale Norton for Secretary of the Interior and we trust she will continue to work with Indian country as she has done in the past. We look forward to working with her in advancing Indian country policies and Indian initiative for the Bush/Cheney Administration.

Sincerely,

KELSEY A. BEGAYE,
*President.*

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RESOLUTION OF THE INTERGOVERNMENTAL RELATIONS COMMITTEE OF THE NAVAJO NATION COUNCIL

SUPPORTING PRESIDENT-ELECT GEORGE W. BUSH'S CABINET NOMINEE FOR UNITED STATES DEPARTMENT OF THE INTERIOR, GALE NORTON

Whereas:

1. Pursuant to 2 N.N.C. §821, the Intergovernmental Relations Committee of the Navajo Nation Council is established and continued as a Standing Committee of the Navajo Nation Council; and

2. Pursuant to 2 N.N.C. §822(B), the Intergovernmental Relations Committee of the Navajo Nation Council ensures the presence and voice of the Navajo Nation; and

3. Pursuant to 2 N.N.C. §824(A), the Intergovernmental Relations Committee of the Navajo Nation Council shall have all the powers necessary and proper to carry out said purposes; and

4. Pursuant to the Treaty of 1868, the Navajo Nation and the United States Government have a government-to-government relationship; and

5. The United States Department of the Interior is charged with maintaining the government-to-government relationship between the United States and the Navajo Nation; and

6. President-Elect George W. Bush has nominated Ms. Gale Norton as the Secretary of the Interior, United States Department of the Interior; and

7. The Navajo Nation previously interacted with Ms. Gale Norton, former Colorado State Attorney General, on issues, which benefited the Southern Ute Nation and the Navajo Nation. Now therefore be it *resolved*, that:

1. The Intergovernmental Relations Committee of the Navajo Nation Council supports President-Elect Bush's Cabinet nominee, Ms. Gale Norton, for Secretary of the Interior, United States Department of the Interior.

2. The Intergovernmental Relations Committee of the Navajo Nation Council authorizes and directs Navajo Nation President Kelsey A. Begaye to deliver a letter of support for Ms. Gale Norton to President-Elect George W. Bush, Senator Jeff Bingaman, Senator Pete Domenici, Senator John McCain, Senator John Kyl, Senator Daniel K. Inouye, Senator Ben Nighthorse Campbell, Senator Orrin G. Hatch, and Senator Robert F. Bennett, on behalf of the Navajo Nation.

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NEZ PERCE,
TRIBAL EXECUTIVE COMMITTEE,
*Lapwai, ID, January 18, 2001.*

Re: Secretary of the Interior Appointment

U.S. Senate:

With the recent George W. Bush election victory, a primary interest of the Nez Perce Tribe in the transition process is the appointment of Gale Norton as the Secretary of the Interior. As you know, this Secretary's agency, the Bureau of Indian Affairs, has the primary charge of maintaining the federal government's trust relationship with Indian Tribes.

President-Elect Bush, in a letter to the Nez Perce Tribe dated August 18, 2000, stated "I will strengthen Indian self-determination by respecting tribal sovereignty, which has improved the quality of life for many Native Americans. I recognize and reaffirm the unique government-to-government relationship between Native American tribes and the federal government. I will strengthen Indian self-determination by respecting tribal sovereignty, which has improved the quality of life for many Native Americans. I believe the federal government should allow tribes greater control over their lives, land, and destiny." He also stated that he would like to work with Indian tribes to chart a course which "recognizes the unique status of the tribes in our constitutional framework..." We urge you to ensure that when making your decision to support the President-Elects' appointee, Gale Norton, these principles underlie the process.

In addition, the Republican Platform states that "high taxes and unreasonable regulations stifle new and expanded businesses and thwart the creation of job opportunities and prosperity [for Native Americans]. The federal government has a special responsibility, ethical and legal, to make the American dream accessible to Native Americans. We will strengthen Native American self-determination by respecting tribal sovereignty, encouraging economic development on reservations. We uphold the unique government-to-government relationship between the tribes and the United States and honor our nation's trust obligations to them."

We sincerely hope that all the President-Elect's appointees, including Gale Norton, is not only aware of these basic tenets of tribal sovereignty, but that such tenets are upheld and enforced, rather than ignored or legislated out of existence. In upholding these significant maxims, it is essential that the Secretary of the Interior appointee support the rights of Indian people. To Indian Tribes, this position is extremely important so, again, we urge you to take great care in the confirmation process of the appointed Secretary of the Interior.

Thank you. Please give me a call if you have any questions.

Sincerely,

SAMUEL N. PENNEY,
*Chairman.*

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ONEIDA INDIAN NATION,
ONEIDA NATION HOMELANDS,
*Vernon, NY, January 19, 2001.*

Hon. FRANK MURKOWSKI,
*Chairman, Senate Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.*

DEAR CHAIRMAN MURKOWSKI: On behalf of the Oneida Indian Nation of New York, I am writing to express support for Gale Norton to be the next Secretary of Interior.

While our tribe does not have first hand experience with Secretary-designate Norton, I am encouraged that she has worked with Indian nations on a government-to-government basis during her tenure as the Attorney General of the State of Colorado. As Attorney General, Ms. Norton repeatedly demonstrated respect for tribal sovereignty. For example, in the wake of Colorado's settlement with the tobacco industry, Ms. Norton worked to ensure that the tribal share of the proceeds went directly to tribal governments rather than be administered through state agencies.

As Secretary of Interior, Ms. Norton would preside over the Bureau of Indian Affairs and help set the agenda for issues that are of vital importance to Native Americans. These issues, which include health care, education, sovereignty, economic development, gaming, and taxation, have been increasingly the subject of debate in Congress. Consequently, we believe that it is imperative that the next Secretary of Interior respect the role of tribal sovereignty, affirm a government-to-government relationship between the federal government and Indian nations, and provide the tools the tribes need to further the goal of tribal self-advancement and economic self-sufficiency.

Because of Ms. Norton's background and record on issues relating to Native Americans, we offer our endorsement of her nomination to become the next Secretary of Interior.

Na ki' wa,

RAY HALBRITTER,
*Nation Representative.*

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UNITED SOUTH AND
EASTERN TRIBES, INC.,
*Nashville, TN, January 19, 2001.*

Hon. FRANK MURKOWSKI,
*Chairman, Senate Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.*

DEAR CHAIRMAN MURKOWSKI: As President of the United South and Eastern Tribes, I am writing to express support for Gale Norton to be the next Secretary of the Interior. USET is an organization made up of 24 Federally recognized tribes that extend from the State of Maine to the tip of Florida and over to Texas.

In my role as President of USET, I have not had first hand experience with Secretary-designate Norton, however, I am encouraged that she has worked with Indian nations on a government-to-government basis during her tenure as the Attorney General of the State of Colorado. As attorney general, Ms. Norton repeatedly demonstrated respect for tribal sovereignty. For example, in the wake of Colorado's settlement with the tobacco industry, Ms. Norton worked to ensure that the tribal share of the proceeds went directly to tribal governments rather than be administered through state agencies.

As Secretary of the Interior, Ms. Norton would preside over the Bureau of Indian Affairs and help set the agenda for issues that are of vital importance to Native Americans. These issues, which include health care, education, sovereignty, economic development, gaming, and taxation, have been increasingly the subjects of debate in Congress. Consequently, we believe that it is imperative that the next Secretary of the Interior respect the role of tribal sovereignty, affirm a government-to-government relationship between the federal government and Indian nations, and provide the tools tribes need to further the goal of tribal self-advancement and economic self-sufficiency.

Because of Ms. Norton's background and record on issues relating to Native Americans, I offer my endorsement of her nomination to become the next Secretary of the Interior.

Sincerely,

KELLER GEORGE,
*President of USET.*

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UTE MOUNTAIN UTE TRIBE,
SOUTHERN UTE INDIAN TRIBE,
*January 8, 2001.*

Hon. FRANK MURKOWSKI,
*Senate Energy and Natural Resources Committee, Dirksen Senate Office Building, Washington, DC.*

DEAR CHAIRMAN MURKOWSKI, We are writing in support of the nomination of Gale

Norton to serve as Secretary of the Interior, and hope you will share our remarks with members of the Committee who will visit with her during her upcoming confirmation hearing.

Our Tribes have enjoyed a strong working relationship with the State of Colorado for many years. As Attorney General, Gale Norton furthered that relationship through her commitment to resolving issues in a fair and thoughtful way. She is an open-minded leader who listens and then works toward a resolution. We were able to agree to a gaming compact with the State of Colorado during her tenure as Attorney General. In addition, her strong and adamant support of the Colorado Ute Indian Water Rights Settlement Act was a major factor in what ultimately became successful legislation to modify the Animas-La Plata Project and still meet the obligation to the Ute people of Colorado.

Ms. Norton is a very capable individual whose public service is not based on a desire for accolade or credit, but on a commitment to resolve issues, no matter how controversial.

We proudly support her nomination and enthusiastically encourage the Senate to approve her nomination.

Sincerely,

ERNEST HOUSE,
*Chairman, Ute Mountain Ute Tribe.*
VIDA PEABODY,
*Acting Chairman, Southern Ute Indian Tribe.*

Mr. MURKOWSKI. I also have letters from the Fraternal Order of Police, United States Park Police Labor Committee endorsing Ms. Norton; the Governor of Guam endorsing Ms. Norton; the Commonwealth of the Northern Mariana Islands endorsing Ms. Norton, signed by Pedro Tenorio, Governor; and a letter of January 17th from 21 State attorneys general supporting the nomination of Ms. Norton.

I ask unanimous consent that these documents be printed in the RECORD.

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

FRATERNAL ORDER OF POLICE,
U.S. PARK POLICE LABOR COMMITTEE,
*Washington, DC, January 15, 2001.*

Hon. FRANK MURKOWSKI,
*Chairman, Senate Energy and Natural Resources Committee, Senate Dirksen Building, Washington, DC.*

DEAR CHAIRMAN MURKOWSKI: On behalf of the Fraternal Order of Police, United States Park Police Labor Committee, we are writing to strongly endorse President-elect Bush's nomination of Gale A. Norton for the office of Secretary of the Interior. We feel Ms. Norton is extremely well qualified for this position and possesses the knowledge, experience, and leadership necessary to be a highly successful Secretary. We urge the Committee to favorably report her nomination to the full Senate as quickly as possible.

The United States Park Police Labor Committee is deeply concerned with the current state of law enforcement within the Department of the Interior. For this reason, we are adding our voices to the many others who are supporting the nomination of Mr. Norton. Our Committee does not customarily write endorsements, but we feel that the importance of confirming Ms. Norton justifies our participation.

During the past two years, three separate studies have been conducted to examine law enforcement operations in the Department. Two of these studies were conducted by outside experts, namely Booz-Allen Hamilton and the International Association of Chiefs of Police, while a third was an Internal Departmental review mandated by the Senate. All three studies concluded that the effectiveness of law enforcement activities by the U.S. Park Police and the Law Enforcement Rangers has been consistently declining. While both organizations continue to successfully fulfill their mission of protecting our parks and their visitors, a lack of resources and emphasis on law enforcement in the Department threatens our future ability to keep public lands safe. Strong leadership and critical reforms are needed now.

From a law enforcement perspective, Ms. Norton is an outstanding candidate for Secretary. Her background in law enforcement as Attorney General of Colorado, coupled with her previous service within the Department, gives her a unique ability to understand and address the problems faced by its law enforcement agencies. Throughout her career in public service, she has consistently shown strong support for law enforcement officers. Furthermore, she has repeatedly proven her ability to work with diverse individuals and groups to forge consensus and accomplish important tasks. We are confident that Ms. Norton will exert this same vigorous leadership as Secretary of the Interior to enact the reforms necessary to strengthen agency law enforcement efforts and ensure the safety of the visitors to our parks and monuments.

Once again, we strongly urge the Committee to favorably report her nomination to the full Senate at the earliest possible opportunity.

Sincerely,

PETER J. WARD,
*Chair.*

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OFFICE OF THE GOVERNOR,
*Guam, January 18, 2001.*

Chairman JEFF BINGAMAN,
*Senate Committee on Energy and Natural Resources, Dirksen Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing in support of the nomination of the Honorable Gale Norton as Secretary of the Interior. The people of Guam look forward to Ms. Norton's leadership of the executive department that has direct responsibility for insular affairs. I am confident that as Secretary of the Interior, Ms. Norton will continue progress on the issues of great importance to Guam and that she will be instrumental in resolving the land issues that have been at the forefront of the Guam-United States relationship in the past few years.

Ms. Norton has substantial experience in the Department of the Interior, having previously served in the Solicitor's Office. We believe that she has the necessary familiarity with territorial issues to be an effective Secretary and that she brings a broad understanding of the unique federal land issues on Guam to her office.

Guam has had a contentious relationship with the Department of the Interior in large measure due to the Fish and Wildlife Service's acquisition of 370 acres of excess military lands in 1993 for a wildlife refuge. The 370 acres at Ritidian have become the focal point for Guam's dissatisfaction with federal land policy on our island. Due to the historical context of the military's acquisition of over one-third of Guam's lands after World War II for national security purposes, the Interior action has been harmful to the good relationship between the people of Guam and the United States. We hold the federal government to its commitment that military lands no longer needed for defense purposes should be returned to the people of Guam.

In an effort to resolve these issues, I have been engaged in discussions for the past year with the previous Secretary and his staff on possible solutions that would enhance the level of environmental protection on Guam while addressing the issue of Interior's acquisition of Ritidian. I was willing to make the necessary compromises that would restore the good relationship between the U.S. and Guam and that would meet the needs of the Interior Department and the Government of Guam. Regretfully, the Fish and Wildlife Service was not.

We believe that Ms. Norton will restore a balance to federal land policy on Guam that has been missing since 1993. There is now an imbalance where the bureaucrats at the Fish and Wildlife Service make policy without adequate regard for local concerns. Environmental policy should not be a zero sum game where the Fish and Wildlife Service wins and the people of Guam lose. Environmental policy should be collaborative process with respect for, and accommodation of, local needs. On Guam, the respect we seek would recognize the patriotism of the people of Guam and our support for the national security interest, even when the national interest requires the use of one-third of our island for military bases. And the accommodation we seek would balance environmental policy with the federal commitment to return excess military lands to our people. We believe that Ms. Norton appreciates our history and our culture, and that she will be fair in dealing with us on these land issues.

We are also encouraged by Ms. Norton's commitment to the devolution of federal power where local governments are more appropriate to formulating public policy in response to local needs. This is a bedrock principle of self-government that Guam supports and encourages. We are confident that Ms. Norton will appoint policy makers and senior staff at the Department of the Interior that will reflect this view. Any increase in local self-governance in the territories is welcome and long overdue. We find Ms. Norton's views on limiting the role of the federal government in our lives both refreshing and promising for the resolution of the Guam's political status issues.

Thank you for considering my support of Ms. Gale Norton as Secretary of the Interior. I hope that the Senate Committee on Energy and Natural Resources votes to recommend Ms. Norton to the full Senate and that she is confirmed quickly. We look forward to her new leadership and her initiatives for the territories.

Sincerely,

CARL T.C. GUTIERREZ,
*Governor of Guam.*

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COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,
*January 17, 2001.*

Hon. FRANK MURKOWSKI,
*Senate Committee on Energy and Natural Resources, Hart Senate Office Building, Washington, DC.*

DEAR SENATOR MURKOWSKI: This coming week Secretary Designate Gale Norton will proceed through the hearings in connection with consideration or her confirmation. I am writing, on behalf of the people of the Commonwealth of the Northern Mariana Islands, to express our support for her confirmation as Secretary of the Interior.

The Department of the Interior, in particular its Office of Insular Affairs, plays a central role in the relationship of the Commonwealth with the United States Federal Government. We were pleased by the announcement of her nomination to this position. We believe that we could establish a positive and fruitful working relationship with Secretary Designate Norton should she be confirmed and wish her the best of luck.

Respectfully,

PEDRO P. TENORIO.

JANUARY 17, 2001.

Re nomination of Gale Norton for Secretary of the United States Department of Interior.

Senator JEFF BINGAMAN,
*Energy and Natural Resources Committee, Washington DC.*

Senator FRANK MURKOWSKI,
*Energy and Natural Resources Committee, Washington, DC.*

DEAR SENATORS: We, the undersigned state Attorneys General, write to provide important information that will help you evaluate Gale Norton's nomination for Secretary of the Interior. These insights are based on our work with Gale during her eight years as Attorney General for the State of Colorado. While Gale provided numerous examples of her leadership and ability as Colorado's Attorney General, there are a few specific instances that truly demonstrate her skill and experience.

First, in the early 1990's, Gale worked with Attorneys General and Governors in an effort to force the United States Department of Energy to comply with federal environmental laws as its facilities around the nation. Gale helped lead the fight to ensure that Energy would be responsive to the states, comply with the law, and refocus on cleaning up Rocky Flats in Colorado and other sites around the nation.

Gale served as the Chair of the Energy and Environment Committee for the National Association of Attorneys General from 1992 to 1994. As Chair of the Committee, Gale worked with Attorneys General from both political parties to achieve results for all states. Gale had the instinctive ability to work for bipartisan solutions and she helped create consensus on a number of sensitive issues.

Finally, Gale's work on the tobacco settlement was significant. Gale was selected by her colleagues to be a member of the settlement negotiating team. Gale's selection was based on the fact that she is very bright, hard working, and has extremely high ethical standards and integrity. She was a valuable member of the team throughout the prolonged and complicated negotiations.

We know that you are receiving extensive comments about Gale's qualifications. We want to provide you with our views, based on our years of experience working with Gale on complex, sensitive issues. We know that Gale will do her best to build coalitions and develop solutions to hard problems in a way that creates broad-based support. It is our hope that this information will be helpful as you consider Gale Norton's nomination for Secretary of the Interior.

Alan G. Lance, Idaho Attorney General; Christine O. Gregoire, Washington Attorney General; Bill Pryor, Alabama Attorney General; Toetagata Albert Mailo, American Samoa Attorney General; Ken Salazar, Colorado Attorney General; Jane Brady, Delaware Attorney General; Jim Ryan, Illinois Attorney General; Steve Carter, Indiana Attorney General; Carla J. Stovall, Kansas Attorney General; Mike Moore, Mississippi Attorney General.

Don Stenberg, Nebraska Attorney General; Frankie Sue Del Papa, Nevada Attorney General; Philip T. McLaughlin, New Hampshire Attorney General; Betty D. Montgomery, Ohio Attorney General; Hardy Myers, Oregon Attorney General; Mike Fisher, Pennsylvania Attorney General; Charlie Condon, South Carolina Attorney General; Mark Barnett, South Dakota Attorney General; John Cornyn, Texas Attorney General; Mark Shurtleff, Utah Attorney General; Mark L. Earley, Virginia Attorney General; Gay Woodhouse, Wyoming Attorney General.

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Mr. MURKOWSKI. I thank all of my colleagues who have spoken on behalf of the nominee. The action out of the committee on a vote of 18–2 is certainly, in my opinion, a mandate for approval by this entire body. I think she will represent our new President in a manner that attempts to balance the delicate issue of concern over the environment and the ecology.

Since there has been a lot of comment about ANWR during this entire process and many pictures, for my colleagues, I show a picture of ANWR as it exists for about 9 months of the year. This is what it looks like. Do not be misinformed; it is a long, dark 9-month winter.

I thank the Chair for its indulgence.

It is my understanding that the vote will be scheduled for 2:45 on two nominations and there will be separate votes. I wonder if the Chair could identify those.

The PRESIDING OFFICER. There will be two separate votes occurring at 2:45. The first will be on the Norton nomination, and the second one will be on the Whitman nomination.

## RECESS

The PRESIDING OFFICER. The hour of 12:30 having arrived, the Senate will now stand in recess until the hour of 2:15.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:17 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CHAFEE).

## EXECUTIVE SESSION

### NOMINATION OF GALE ANN NORTON TO BE SECRETARY OF THE INTERIOR—Resumed

Mr. CRAIG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRAHAM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, I come before you today to offer my views on the nomination of Ms. Gale Norton to be Secretary of the Department of the Interior. I believe in some basic principles relative to Presidential nominees for the President's Cabinet. I believe they are reviewed for purposes of advise and consent of the Senate with the presumption that the President has a right to choose his or her closest advisers.

I believe our duty as Senators in discharging that constitutional responsibility of advise and consent is to assure those advisers are capable of and committed to doing the jobs for which they have been nominated.

In the past, Ms. Norton has made statements that raise questions in my mind, and in many others, about her appropriateness for the position of Secretary of the Interior. Ms. Norton's explanations of those statements suggested that her views have evolved over time.

Having listened to her responses and evaluated her truthfulness, I take her at her word and trust her sincerity. My own life experience tells me that it is possible—in fact, it is highly desirable—for individuals to evolve in their thinking over their adult years. If a person at 55 has the same views they had at 25, that would raise serious questions as to whether this was an individual who was sufficiently affected by life to be an appropriate holder of a position of major public trust.

I asked Ms. Norton a series of questions during the course of the hearings before the Energy and Natural Resources Committee. I asked Ms. Norton if she would support the current moratorium that exists on offshore oil and gas leases, particularly those in California and my home State of Florida. She answered yes. She echoed President Bush's support for those moratoriums. I take Ms. Norton at her word.

I asked Ms. Norton if she would work with our State and other States to assure that the wishes of the State, with regard to existing leases, are followed. Ms. Norton answered yes, and I take her at her word.

I asked Ms. Norton if she would enter into discussions toward the objective of developing a plan for the buyback of Outer Continental Shelf leases in those States which had expressed opposition to their development for oil and gas purposes. This is much in line with the plan which is currently in effect in Florida for buyback of leases in the area of the Florida Keys that was originally developed by President George Bush. Ms. Norton answered yes, and I look forward to the opportunity to commence that process.

I spoke to Ms. Norton in my office regarding the importance of the Department of the Interior in the restoration of America's Everglades. I consider the passage of that legislation last year to have been one of the signal events of that Congress and one of the most important environmental advances in recent years.

As a steward of four national park units and 16 national wildlife refuges, the Secretary of the Interior has a distinct role in assuring that the natural systems are protected in America's Everglades, particularly protected as we move forward with their restoration.

She clearly understood the importance of the Department of the Interior's role in Everglades restoration, and I take her at her word.

I asked Ms. Norton what her plans were for funding of the Land and Water

Conservation Fund. Ms. Norton answered that in accordance with President Bush's campaign position, she supported full funding of the Land and Water Conservation Fund, both those funds that flow to Federal agencies and those that go to State and local communities. I take Ms. Norton at her word.

Ms. Norton went further and recognized the important interrelationship between a balanced park and recreation policy, with the Federal Government having the primary responsibility for the protection of natural resources and with State and local governments having the responsibility for providing appropriate recreational activities for our people.

I asked Ms. Norton how she would balance the Secretary's responsibility to protect public lands with her desire to partner with private landholders and local governments in executing those responsibilities. Ms. Norton answered that these partnerships are not a substitute for enforcement actions, and that as Secretary of the Interior, she would remain committed to enforcing the law. And I take her at her word.

I could continue this list of questions and answers for some time. However, my conclusion is that Ms. Norton demonstrated during the Energy and Natural Resources Committee hearings that she will be open minded and will take the expertise of State and local governments on the issues that come before her very seriously.

I was particularly pleased she committed to respecting the moratoria on new leases off the coast of Florida and California; that she intends to look to the future relative to the buyback of those leases which are currently outstanding, and that she intends to uphold the Department of the Interior's responsibilities as a caretaker of public lands involved in America's Everglades restoration.

With these assurances, I offer my support for the nomination of Ms. Gale Norton to be Secretary of the Interior, and I look forward to working with her, the Department of the Interior, and State and local officials in my State and elsewhere to build upon the commitments that she made during her confirmation hearings.

I thank the Chair.

Mr. ROCKEFELLER. Mr. President, I rise today to discuss the pending nomination of Ms. Gale Norton to be Secretary of the U.S. Department of the Interior. I suspect that Ms. Norton's nomination will be approved by the Senate later today, without my support, and I want to share with my colleagues and the people of West Virginia why I have decided to oppose this nomination.

First and foremost, I should say that I do not oppose this or any other presidential nomination lightly or on personal or ideological grounds. President Bush should have a Cabinet of people whom he trusts and who will govern as he wishes. In the vast majority of cases, I have and will lend my firm support to the President's nominees, after considering their qualifications and determining that they will effectively represent our nation and share my commitment to tackling the challenges facing West Virginia.

I have no litmus test for nominees, and I do not expect or insist that they agree with me on how best to approach our challenges or solve our problems. But I do take seriously my duty under the Constitution to approve or disapprove presidential nominees. In these times of national division and discontent without government on so many issues, what I look for in a nominee is an overriding ability to follow through on the President's promise to bring our nation together, and a commitment to the values that West Virginians hold dear.

Let there be no doubt that Ms. Norton is a capable and experienced person whose willingness to serve her country is to be commended. But I do not believe that her life's work reflects the balance and inclusiveness we need to chart this new course, and I cannot abide by her fight against laws that I and my fellow West Virginians support and respect.

One prominent example is Ms. Norton's prior work to dismantle the Surface Mining and Reclamation Control Act, SMRCA.

SMRCA is a law that strikes a balance between critical economic and industrial development and adequate environmental protections. It is intended to ensure that after mining is complete, reclamation will happen and water quality will be protected. And it provides an important level playing field for states and companies that are committed to this kind of balance—with federal standards that prevent any competitive disadvantage for sound mine reclamation.

As a constitutional lawyer for the Mountain States Legal Foundation in 1980, Ms. Norton tried to convince the courts that SMRCA is unconstitutional, on grounds that it usurped state government in a way that ''threaten[ed] to destroy the structure of government in America. . . .'' First as Governor and then as Senator for a coal state, I have disagreed with Ms. Norton's assessment. I testified then in support of surface mining legislation that would ''equalize reclamation standards among the states and alleviate West Virginia's distinct competitive disadvantage in the marketplace.''

I remain proud of my work on the surface Mining Act and its initial implementation during my years as a Governor. I know that the law is not perfect, and that we need always to be vigilant about striking the intended balance. Yet also believe Ms. Norton's position on this law is indicative of her determination to limit or eliminate the federal role in this area—even when that role can help balance the needs of critical industries with the goal of preserving our environment and protecting the quality of our water and air.

Some will say that Ms. Norton's nomination should be approved because she has promised to uphold the law and has recently distanced herself from some of her more divisive past positions. I should be clear that I do not doubt Ms. Norton would respect the decisions of the courts, nor that she would uphold the law as it is written. But I also do not believe that one can so easily change course after a career dedicated to strong and passionate advocacy for limited environmental preservation and protection.

As Interior Secretary, Ms. Norton would have enormous discretion in implementing and enforcing federal law and policies. She would set priorities or the Department's resources and would develop and promote policy positions large and small. Ms. Norton's career and experience reflect neither balance nor moderation, and I simply do not think she can be expected to change her approach so dramatically at this point.

In addition, Ms. Norton's nomination has been questioned by leading public health organizations because of her policies and actions regarding lead paint and its link to public health, particularly the health of our children. I have a long history in promoting children's health, and I feel obligated to raise these matters as part of my duty to ''advise and consent'' on the president's nominees.

Let me close by saying that my opposition to Mr. Norton's nomination is intended primarily to register my grave concern. I stand ready and willing to work with her as the new Interior Secretary and hope we can find common ground in striking a balance on environmental policies and programs.

Mr. LEVIN. Mr. President, I will vote no on the nomination of Gale Norton as Interior Secretary because, based on her record, I do not have confidence that she will serve as an environmentally-sensitive steward of the nation's public lands. There is too much at stake to take a chance on someone who, throughout her career, has consistently chosen development over environmental protection. Her responses to questions at her confirmation hearing failed to relieve my concerns about her record of weak environmental enforcement as Colorado attorney general.

For instance, Ms. Norton wrote that ''we might even go so far as to recognize a homesteading right to pollute or to make noise in an area.'' Although she attempted to explain that statement by stating that she was referring to emissions trading, I see no indication in the article itself that she was referring to emissions trading. Rather it seems to be an extreme position on takings law.

As attorney general, Ms. Norton pursued government polluters while rarely

taking on corporate polluters. According to the Denver Post, Ms. Norton ''sat out fights when a corporate power plant broke air pollution laws 19,000 times, a refinery leaked toxins into a creek and a logging mill conducted illegal midnight burns.''

Further, when I asked Ms. Norton about her position on drilling for oil and natural gas in the Great Lakes, she responded that she had no position. This caused me concern because her philosophy could play a central role in decision- making on Great Lakes protections at the Department of Interior.

We have made substantial progress the past several years in improving the quality of the Great Lakes and its habitat. I hope that Ms. Norton proves my concerns unfounded and will work hard the next four years to protect our valuable natural resources and further the environmental progress that we have worked so hard to achieve.

Mr. REED. Mr. President, I rise to speak in opposition to the confirmation of Gale Norton as Secretary of the Interior. After thorough consideration of her record and her recent testimony before the Senate Energy and Natural Resources Committee, I have reluctantly concluded that Ms. Norton is not the right person to serve as the chief steward of our nation's public lands.

Ms. Norton stated at her confirmation hearings earlier this month that she would feel ''very comfortable'' enforcing federal environmental laws as they are written. Unfortunately, her record of two decades in private and public life strongly suggests that she will do so with little enthusiasm, and, where the law gives her discretion—which it often does—she will favor resource extraction over resource protection.

Ms. Norton's employment history and legal writings reflect a consistent record of supporting industry and developers over wildlife and public lands protection, even going so far as to argue to the U.S. Supreme Court that the Endangered Species Act and the Surface Mining and Reclamation Act—both of which she would administer if confirmed—are unconstitutional. She has repeatedly taken the position that the federal government lacks the constitutional power to address a wide range of environmental harms, a view that is diametrically opposed to a long line of Supreme Court rulings and is hard to reconcile with the Secretary of the Interior's role in managing our precious natural resources.

President Bush and Ms. Norton support opening the Arctic National Wildlife Refuge to oil and gas exploration. I oppose drilling in the ANWR, and I believe a bipartisan majority in the Senate feels the same way, but let me emphasize that my opposition to this nomination is not about a policy disagreement over ANWR. It is about whether we will have an Interior Secretary who will provide aggressive oversight of industries that have been granted the privilege to seek profits on federal land—whether in the ANWR (should Congress ever approve such activity) or in the hundreds of other magnificent places owned by the taxpayers of this country.

The President committed during his campaign to come to Washington to unite the nation and to work with Congress to protect America's environment. That makes his choice of Ms. Norton to head the Interior Department all the more disappointing. With so many outstanding public servants across this country to choose from, including both Republicans and Democrats with substantial experience managing public lands and a balanced view on the best use of those lands, it is regrettable that President Bush chose someone who has spent so much of her professional life working against the very mission of the Department she would oversee and, more importantly, the laws she would enforce.

I must, therefore, cast my vote against the confirmation of Ms. Norton. I urge my colleagues to do the same, and I hope that if she is confirmed Ms. Norton will set aside her long-held views and work with Congress to protect our public lands for generations to come.

Mr. CORZINE. Mr. President, I rise to oppose the nomination of Gale Norton to be the Secretary of the Department of Interior.

The Department of the Interior is charged with the protection of more than 500 million acres of public land that comprise an important part of our natural and cultural heritage. The Secretary of the Interior is the steward of this land and is responsible for protecting it for the generations that follow.

Unfortunately, based on her record, I am concerned that Gale Norton is the wrong person to handle this critically important responsibility. From all indications, she has a strong tendency to favor the interests of industry over the needs of the environment. That is not my preferred approach, nor does it represent the values of the people in New Jersey who I represent.

When Ms. Norton served as a State Attorney General, for example, she was very reluctant to prosecute industries that polluted Colorado's rivers and air. Perhaps the most disturbing example of this involved the Summitville Consolidated Mining Corporation, which spilled cyanide and acidic water into a 17-mile stretch of the Alamosa River, killing every living organism that was there. Notwithstanding this egregious conduct, Ms. Norton refused to prosecute. It took federal intervention to prosecute the polluters. I find this very troublesome.

In many other ways, Gale Norton has expressed views towards environmental protection that strongly conflict with my own. She has taken the states' rights argument to the extreme—arguing that the Surface Mining Act, an invaluable tool to protect the environment from problems associated with coal mining, was unconstitutional. She has supported restrictions to the Endangered Species Act that would have gutted the law. She has shown a readiness to accept an extremist view on what constitutes a taking under the Constitution, something that could jeopardize necessary environmental protections. She also has strongly supported drilling for oil in the Arctic National Wildlife Refuge, something I cannot support.

Ms. Norton also has argued against the ''polluter pays'' principle contained within the Superfund law. That is very troubling to me. Coming from a state that has the most Superfund sites in the country, I believe strongly that those who pollute the land should pay to restore it.

I recognize that during her confirmation hearings Ms. Norton seemed to moderate her approach, and promised to enforce laws such as the Endangered Species Act and the Surface Mining Act. Yet one statement before a congressional committee does not negate a lifetime opposition. For a position as important as this, we need someone whose commitment to the environment is clear and long-standing.

For all these reasons, regretfully, I must oppose the nomination of Gale Norton to be the Secretary of the Interior. However, I recognize that she probably will win confirmation. I only hope that my concerns are proven wrong.

Mr. LIEBERMAN. Mr. President, I rise today to cast my vote against Gale Norton for Secretary of the Interior. I do this with some reluctance, as I believe that the Senate owes the President significant deference in its review of his Cabinet nominees. The Senate's review, however, must be substantive and searching, and cannot amount to automatic approval of every nominee.

Over the years of my service here, I have given great thought to the extent of the Senate's advise and consent power. In all cases, I believe that our review must focus on a candidate's experience, judgment, and ethics. However, I also believe that a Senator may consider whether the nominee holds fundamental and potentially irreconcilable policy differences with the department she will head which put in doubt the nominee's capacity to credibly carry out the responsibilities of the department.

The Interior Secretary plays a critical role in determining our national natural resource policy, which will affect our nation for centuries to come. I have concluded that Ms. Norton's record reflects a philosophy that is so contrary to the mission of the Department of Interior that I have serious doubts about the manner in which she would administer the Department.

The Secretary of the Interior enjoys wide discretion in how to best carry out the Department's mission of preserving, ''the Nation's public lands and natural resources for use and enjoyment both now and in the future.'' I

have reviewed Ms. Norton's past writings, speeches and professional activities, and they reveal an ideological viewpoint at real variance with the legal requirements and responsibilities that she would have as Secretary of the Interior.

Many of my colleagues have stated that they were comforted by Ms. Norton's testimony in her confirmation hearing in which she seemed to back away from her more controversial positions and they therefore have decided to vote in favor of her nomination. I respect their decisions but I remain with too many doubts. Therefore, I will reluctantly and respectfully vote no.

Ms. MIKULSKI. Mr. President, I rise today to oppose the confirmation of Gale Norton to be Secretary of the Interior.

I have three criteria I use to evaluate nominees: (1) competence; (2) integrity, and (3) commitment to protecting the mission of the department he or she seeks to lead.

I do not question Ms. Norton's competence or integrity. But I am concerned that Ms. Norton's views and her record cast serious doubt on whether she is suitable to act as our chief land conservation official—safeguarding our Nation's parks, wilderness, and wildlife refuge areas.

The Interior Department's mission is ''to encourage and provide for the appropriate management, preservation, and operation of the Nation's public lands and natural resources for use and enjoyment both now and in the future.'' The Department of Interior is charged with ensuring that we preserve and protect our Nation's extraordinary public lands and natural resources. To do this, the Interior Secretary must implement critical parts of the Clean Water Act, Clean Air Act, Superfund, Endangered Species Act and other laws that protect our nation's natural heritage.

I am concerned about Ms. Norton's commitment to fulfilling this mission. She has fought against these very laws and regulations her entire career. We need an Interior Secretary who can balance economic interests with environmental protection. Yet Ms. Norton has shown an unfortunate bias toward those who profit from public lands.

For example, as the Attorney General of Colorado, Ms. Norton refused to vigorously enforce environmental compliance against corporate polluters. She didn't seek criminal penalties against a mining company that allowed cyanide to pollute a river or against a power plant that broke air pollution laws thousands of times. She supported a law to grant immunity to industrial polluters and weaken the government's ability to enforce environmental regulations. She has also sided with companies that are being sued for exposing children to lead paint. This record of siding with corporate polluters casts doubt on her commitment to pursuing polluters and holding them accountable.

In addition, Ms. Norton has sought to overturn the Endangered Species Act. This law is essential to maintaining our nation's fragile, diverse ecosystems. Yet Ms. Norton signed onto an amicus brief in a case before the Supreme Court in which the state of Arizona sought to weaken the Endangered Species Act. She argued that the Endangered Species Act was unconstitutional in the requirements it placed on landowners. How can she enforce laws that she claims are unconstitutional?

Finally, Ms. Norton strongly supports opening the Arctic National Wildlife Refuge to oil drilling. Drilling at ANWR would threaten this fragile and unique ecosystem. It is a short-term solution to the long-term problem of energy dependency. This policy could result in irreparable damage to one of our Nation's natural treasures.

Mr. President, Ms. Norton's record raises serious concerns about her appropriateness to serve as our highest ranking land conservation official. Her record indicates that her views are fundamentally incompatible with the mission of the Department she seeks to lead. I am deeply concerned that her confirmation may lead to a significant retreat from the gains made by former Secretary Babbitt.

Although I hope her actions prove me wrong, I must regretfully oppose Gale Norton's confirmation.

Mr. TORRICELLI. Mr. President, I rise to express my concerns regarding the nomination of Gale Norton as President Bush's Secretary of the Interior. I will vote against her confirmation today. I will do so with some reluctance because I believe that the President enjoys the privilege of selecting the people he wishes to join his administration. However, after much thought and reflection, I am afraid that the views that Gale Norton and I hold on a number of important environmental issues are irreconcilable.

Let me begin by saying that I do not believe Gale Norton is a bad person. However, her documented record as Attorney General of Colorado and positions she has taken for twenty years in opposition to a number of important federal environmental laws, such as the Endangered Species Act, the Clean Water and Clean Air Acts, and Superfund are of concern.

Gale Norton supports, as does President Bush, opening the Arctic National Wildlife Refuge to oil exploration. While the President is certainly entitled to nominate those who share his views, I am unable to support a nominee who would advocate for the opening of this pristine wilderness to oil drilling.

I am also concerned that Gale Norton will bring what I perceive as a solely Western orientation to resource management issues to the Interior Department. The Secretary of the Interior must represent all regions of our Nation with equal vigor. This means understanding the unique issues facing the Northeast. Our open spaces are being churned up by development at an alarming rate. New Jersey is losing its open space faster than any other State in the Union. Federal funding for the acquisition of this open space is not viewed as a ''land grab'' in New Jersey, it is a necessity. However, I am not convinced that these concerns will be addressed. Open space protection is perhaps the most important issue facing a state like New Jersey, and I am concerned that the same passivity in enforcing environmental laws and protecting natural resources in Colorado will occur in New Jersey.

Franklin Delano Roosevelt said, ''The throwing out of balance of the resources of nature throws out of balance also the lives of men.'' I strongly believe that this balance is critical to the success of the next Secretary of the Interior. I have attempted to find this balance in President Bush's nominee, but have not. I am concerned that her record does not reflect this balance that is so necessary. I see no real difference between her positions from 20 years ago, 10 years ago, and today. Therefore, I reluctantly oppose this nomination, not this person.

Mr. KENNEDY. Mr. President, I join in expressing my concern over the nomination of Gale Norton to be Secretary of the Interior.

The Secretary of the Interior is charged with being the caretaker of the Nation's public lands and public's waters, which are held in trust by the government for the benefit of the public.

Our Nation's public lands and public waters contain vast riches of minerals, oil, gas, timber, and grazing areas. The Secretary of the Interior has the responsibility of ensuring that these private uses of the public lands are compatible with the public's right to enjoy these lands as a priceless part of the Nation's environmental heritage.

I am concerned that Gale Norton's record has too often been hostile to many of our most fundamental environmental protection laws. The views she has often expressed in opposition to needed federal environmental regulation raises serious doubts about her commitment to the environment. Her partial, vague, and evasive answers to questions at the committee hearing were in sharp contrast to her past harsh criticisms of the important federal role in the protection of the Nation's natural resources.

The Clean Air Act, the Clean Water Act, and the National Environmental Policy Act—which calls for the government to '' . . . fulfill the responsibilities of each generation as trustee of the environment for succeeding generations''—are long settled and respected bodies of law. The American people are proud of the progress that we have made in recent years on the environment. The talented and committed officials in the Department of Interior deserve a great deal of credit for that achievement, and they and the American people deserve a Secretary of the Interior who shares that commitment.

Superfund and the Surface Mining Act have also been largely successful environmental laws. But it was environmental brinkmanship that made those laws necessary.

Energy crises in the 1970's and again during the Gulf war were not solved by putting our priceless environmental heritage at risk, and they cannot be solved by such a strategy today.

The position of Secretary of the Interior requires a vigilant leader who can resist the urge to exploit our natural resources at the expense of the environment.

The next Secretary will also face numerous challenges in the management and development of our National Parks. As recreation becomes more and more popular, our parks and wildlife refuges will continue to be under pressure, and sound management policies will be needed to protect them.

These, and many other environmental concerns, are widely shared by the vast majority of the American people, and the country needs a Secretary of Interior who shares that commitment.

Mr. FEINGOLD. Mr. President, today as the Senate begins the consideration of the nomination of Gale Norton to be Secretary of the Interior, we confront an enormous responsibility.

The individual charged with this responsibility will set the direction for our national policies for our natural resources. This person will have the power to decide whether to nurture and conserve, or to develop and destroy our Nation's great resources. As a member of this body, I have committed myself to a career of environmental stewardship. I have tried to cast votes and offer legislation that fully reflects the importance and lasting legacy of America's natural resource management decisions. I have done so because of the role of my own home state in this matter. America's conservation history is Wisconsin's conservation history. From John Muir's battles with Teddy Roosevelt over the Hetch Hetchy Dam, to Sigurd Olson's efforts to create the National Wilderness Preservation System, to former Senator Gaylord Nelson's efforts to create the Wild and Scenic Rivers System, to Aldo Leopold's struggles to move and mold the Forest Service, Wisconsin's role in conservation has been rich. I also have another tradition to defend and uphold. I have committed myself, to a constructive role in the Senate's duty to provide advice and consent with respect to the President's nominees for cabinet positions.

As the Secretary of the Interior, Ms. Norton will be charged with unique and historic responsibilities, which will be as important as they are far reaching. In varying ways, all Americans will be affected by her decisions. As the Nation's principal conservation agency, the Department of the Interior has responsibility for most of our nationally owned public lands and resources. During the nominations process, I have been disturbed to learn of the fears that Ms. Norton will not live up to this responsibility for stewardship of all our natural resources. I have been concerned that Ms. Norton's background might cloud her judgement and objectivity on a number of important issues and place her at odds with members of the conservation community and with this Senator. While I am concerned with Ms. Norton's professed unfamiliarity with many of the laws which I regard as critical for the promotion of balanced conservation policy, I am somewhat heartened by Ms. Norton's responses to questions by members of the Energy and Natural Resources Committee with regard to her responsibility to enforce federal environmental law. I am encouraged by this statement for two reasons: first, it is an acknowlegement that she is obliged to work hard to enforce the letter of the law; second, it is an admission that there is indeed an interest on the part of all Americans in preserving our environmental heritage.

I will take Ms. Norton at her word - that she will devote her time and energy to the proper enforcement of the Interior Department policies, rather than circumvent or repeal laws which preserve our dwindling resources, that she will attempt to address the pollution of public lands which ruins our enjoyment of them and makes our air unfit to breathe and our water unsafe to drink, and that she will protect our land and water resources. For this reason, I will vote for her today.

However, in doing so, I fully recognize that my responsibility involves nothing less than overseeing the institution with stewardship of our public lands and national resource wealth. The Senate does not, by confirming Ms. Norton, place the responsibility for the protection of public lands and resources in the hands of a single individual. I do not believe that the American people are ready to ignore the voices of the environmental community who remind us how fragile and vulnerable our resources can be. That is not the message of November 4, 2000. I am hopeful that these voices will be heard by Ms. Norton. I am placing my trust in her that she will embrace her duty to take into account the future and forseeable consequences of her actions, and that she will be guided by the knowledge that this Senator will raise those consequences at all appropriate opportunities.

Mr. ENZI. Mr. President, I rise in support of the nomination of Gale Norton as Secretary of Interior, and encourage my colleagues in the United States Senate to vote to approve her nomination as the first woman to ever hold this position as the premier land manager within the United States Government.

I don't know how I can impress upon this Senate the great impact that the Secretary of Interior can have on my home state of Wyoming, and on the rest of the Western United States. Between the National Park Service, the Bureau of Land Management, the Bureau of Indian Affairs, the Bureau of Reclamation, and the Fish and Wildlife Service, the Department of Interior is the single largest land owner within the State of Wyoming. This means that most of my state's rich natural resources and energy opportunities are dependent on the Interior to be able to find and develop those resources. I know from experience that with cooperation and open communication this process can be completed in a manner that not only benefits our nation's energy and mineral needs, but does so in a way that preserves the rich natural beauty and wildlife that calls Wyoming home.

In order to do this, however, both the Federal Government and local communities must be able to sit down together and talk through any potential conflicts and must do so in a way that lays the groundwork for the future. In her years as Attorney General for the State of Colorado, Ms. Norton was able to demonstrate the invaluable ability to talk to people, on all sides of the issues, to get to the heart of the matter, and to effect real change in the only place that really matters when it comes to environmental and community protection—directly on the ground.

As a Wyoming State legislator and member of the Wyoming State Senate, I watched Ms. Norton as she pioneered the development of Colorado's environmental self audit program. I was very interested in seeing what obstacles she faced and what hurdles she had to overcome in creating this incredible environmental protection opportunity, mainly because I wanted the same thing for my state. You see, I knew that if I could provide the people of Wyoming the same opportunity that Ms. Norton was giving the people of Colorado—the opportunity to find environmental hazards for themselves, and to provide a way for them to correct those hazards without being penalized for being responsible—then I knew that my friends and neighbors would jump at the chance to clean up their businesses and neighborhoods, and would make their homes safer, on their own, for their children to grow up in.

I also knew that without this program there would be no incentive for private business owners to find out what kind of conditions existed on their property. In fact, the over bearing bureaucratic penalties that exist to punish conscientious property owners work more as a deterrent to responsibility than as a motivation to accomplish the goals of environmental clean up.

Because of her efforts I am happy to say that she made my work much easier, and now both Colorado and Wyoming have responsible, environmental audit laws that encourage businesses to clean up their property without forcing the United States payers to foot the bill. I am also proud to say

that these statutes have made more of a difference on the health and environmental well-being of local communities than superfund. There is more proactive action on the part of property owners and there is a greater testing of unknown substances so we now have a much better understanding of what is out there in our communities. Most states have now followed this lead.

Ms. Norton is also aware of the fiscal responsibilities that many federal agencies have shirked over the past several years. In one discussion I had with Ms. Norton, she made the comment that as a state official she had a fixed budget and was responsible for every dollar, but in reviewing the budgets of the Federal Agencies that fall under the jurisdiction of the Department of Interior she was appalled to see the lack of accountability. I encouraged her then, and I will encourage her now, to do what she can as Secretary to see that this situation is reversed. Most policy is set by the President. Secretaries administer and manage huge work forces. Ms. Norton is a manager.

In closing Mr. President, when I spoke with Ms. Norton earlier this year I was encouraged by her sincerity and by her understanding of the responsibility and sense of duty that must accompany public servants like the Secretary of Interior. I am convinced that Ms. Norton will uphold the laws of this land and will hold not only private individuals responsible for their actions, but will ensure that the Federal Government does not shirk its duties as a major landowner, or its liabilities as a polluter.

Mr. REID. Mr. President, today I join a majority of my colleagues in the Senate to confirm President Bush's nomination of Gale Norton as the Secretary of Interior.

As you know the Secretary of Interior has tremendous responsibilities as the chief steward of America's public lands as well as the biological and mineral resources native to those lands.

The role of the Secretary of Interior is nowhere more important than in the great state of Nevada where nearly 90 percent of the land is owned by the federal government.

Through her oversight of the Bureau of Land Management, the Bureau of Reclamation, and the Fish and Wildlife Service, the Secretary of Interior impacts the lives of Nevadans every day.

The challenges of managing the Interior Department have evolved over the years. Today, some of the most important issues facing the Secretary are urban land management decisions that did not pose major problems decades ago.

For example, the Las Vegas Valley, which is the fastest growing region in the country, is completely encircled by federal lands. Much of this public land, including scattered parcels throughout the Valley, is managed by the Interior Department.

The tremendous growth in Southern Nevada places increasing pressure on our public land resources.

As an example, recreational sportsmen cannot safely shoot in many parts of the Southern Nevada desert any longer because of urban growth and competing recreational uses.

In an effort to remedy this problem, I am working with Clark County and the BLM to identify and dedicate public land for use as a recreational shooting complex. Recreation and access to public lands are of paramount importance in Nevada.

Conservation and protection of natural resources in the Silver State are important too.

It is my sincere hope that Secretary Norton and President Bush do not view confirmation of someone who once worked for the Mountain States Legal Foundation as a mandate for the rollback of environmental protections enacted over the past 8 years.

The recently enacted phase out of snowmobile use in Yellowstone National Park will provide a litmus test for whether President Bush will promote conservation or oversee the decline and degradation of our treasured national park system and our public lands generally.

Mrs. MURRAY. Mr. President, after carefully considering the record and statements of Gale Norton, nominee for Secretary of Interior, I am voting to confirm her nomination today. I have serious concerns about many of the land use and conservation policies Ms. Norton has promoted in the past, and my vote is in no way a confirmation of these policies. However, after a lengthy discussion with Ms. Norton, she has pledged to work closely with me on the issues that affect Washington state.

We discussed many of Washington's challenges, including the Hanford Ranch, Elwha dams, salmon recovery, habitat conservation plans, and funding for Interior programs. In our conversation, I assured Ms. Norton that if she threatens Washington's interests she will find in me a strong and persistent opponent. I will speak out from the Senate floor and use my position on the Appropriations Committee to challenge any initiatives or spending proposals that don't meet Washington's needs. If the Interior Secretary seeks to roll back important policy initiatives, I will defend my state with every authority available to me. President Bush wants Gale Norton to manage the Department of Interior. I will hold President Bush accountable for his policies and budget decisions.

I believe it's important to leave the door open for discussion, and I trust that Gale Norton will reach out to work with Senator CANTWELL and me on Northwest issues. Given her pledge to work with me and her promises during the confirmation process, I'm voting for Gale Norton with the understanding that we will have a seat at the table on the policies and budgets that will affect us.

Washington state has many environmental challenges. We have the responsibility for recovering endangered species, including salmon, bulltrout, sturgeon, the spotted owl, and the marbled murrelet. The Department of the Interior plays a crucial role in protecting these species on federal lands. If the department does a good job of protecting these species, less of a recovery burden will fall to private property owners. In addition, we must also fund land and forest conservation efforts.

The next Interior Secretary will need to develop innovative partnerships that include federal, state, local, and tribal governments, along with private property owners and businesses. It is particularly important in Washington state that the Interior Secretary works closely with tribal governments and treats them as equals. Further, I call on Ms. Norton to fill critical posts, including the Director of the U.S. Fish and wildlife Service, with appointees who are familiar with the unique environmental needs of the Pacific Northwest.

I do want to address President Bush's proposal to open the Arctic National Wildlife Refuge (ANWR) to drilling, a proposal Ms. Norton supports. During the past eight years, I've consistently opposed drilling in ANWR, which the Bush Administration considers a high priority. I remain very skeptical of our ability to drill without threatening or disrupting this pristine area, and I will continue to share my concerns with the Bush Administration.

Throughout the past eight years, we have made great progress in protecting the environment and preserving natural resources while maintaining resource-dependent industries. We need to continue our progress in this fragile balance. Now is not the time to undo the environmental progress made under previous Administrations. Now is the time to look ahead, to work together, and to find creative solutions to the many problems still facing our nation. I look forward to working together with Ms. Norton in the months ahead.

Mr. JEFFORDS. Mr. President, today I rise to comment on the nomination of Gale Norton to the position of Secretary of Interior, and to explain the reasons why I plan to support her nomination.

The founders of this nation gave the United States Senate an important responsibility when they granted it advice and consent authority over Presidential nominations. Throughout my career in the Senate I have taken this responsibility seriously and have established consistent standards for application of this power, regardless of which political party sits in the White House.

However, not all Presidential nominations are equal. I apply a very different standard to Supreme Court and federal judicial appointments than to political appointees.

Federal judges and Supreme Court Justices receive the highest standard

of scrutiny. They are confirmed for life and can only be removed through impeachment by Congress. Justices, by the nature of the job, should be nonpartisan. I subject Judicial nominees to intense review, examining their experience as well as their ideology.

Cabinet and subcabinet appointments receive a different standard of scrutiny. These appointees serve at the will of the President and can be removed from office with relative ease. Unless the nominee is shown, through the nomination and hearing process, to be unfit or unqualified to serve, I believe any President should be allowed to choose his or her cabinet and the Senate should confirm the nomination.

Mr. President, Gale Norton and I may disagree on many issues. However, after two days of hearings by the Senate Energy and Natural Resources Committee and answers to over 200 questions submitted in writing, she came across as a qualified nominee of integrity and intellect who is committed to upholding current environmental laws, whatever her past opinions. In fact, I have been encouraged by the fact that her nomination was reported to the full Senate by a bipartisan vote of 18–2.

My guess is that today she will receive the votes of a majority of Democrats who, like me, consider themselves devoted environmentalists. My good friend and the ranking member of the Energy Committee, Senator JEFF BINGAMAN, who had earlier expressed concern about the nomination, spoke yesterday on the floor of the Senate and said that Norton had stated her commitment to ''conserve our 'great wild places and unspoiled landscapes' '' and to enforce endangered species, surface mining and other laws. ''I take her at her word,'' he told the Senate.

I will also take her at her word, and will be watching her actions carefully on the natural resource issues that we Vermonters care so deeply about. In this regard, let me take a moment to lay out my positions and priorities for protecting the natural resources under the purview of the Interior Secretary.

I will not support drilling for oil or natural gas in the Arctic National Wildlife Refuge (ANWR). I continue to believe that the United States' dependence on oil and its byproducts cannot overshadow the importance of keeping ANWR free from the detrimental impacts of oil and natural gas drilling and exploration. Drilling and exploration in this pristine Arctic wilderness could have a lasting impact that would forever damage the environment of this region. Hopefully, we can secure permanent protection for this unique linkage of ecosystems upon which the local communities depend, and the American community as a whole should value as a national and natural treasure.

In order to reduce our dependence on nonrenewable resources like oil and coal, we must consider alternative energy resources, as well as increasing investments in energy efficient technologies and promotion of energy conservation. I have worked to increase our nation's investments in solar, wind and other alternative technologies since founding the Congressional Solar Coalition in 1976. We must make investing in alternative energy sources and energy efficiency a higher priority.

In the past and in the future, many environmental battles come down to funding questions. One of the new Secretary's first responsibilities will be to help draft a Bush Administration budget. She should know already that I am a strong supporter of full funding for the Land and Water Conservation Fund, and I will fight to achieve this goal in the next Congress.

Our National Parks and National Monuments must receive adequate funds to cope with greater use by the American public and to ensure that these treasures and the animals that inhabit them are not loved to death. The Fish and Wildlife Service and the Bureau of Land Management are not agencies we often hear about in the news, but they play a critical role in preserving our native species of plants and animals and they must be adequately funded.

Finally, I have been and continue to be a strong supporter of mining and grazing reform. It is outrageous that a 19th century statute continues to govern what the U.S. taxpayer is paid by companies extracting precious resources from public lands.

As a Senator from the party of President Theodore Roosevelt, and a Senator who represents the beautiful State of Vermont, I believe strongly that we all must be conservationists. I will vote for Gale Norton today because I am confident that she will stand by her promise to enforce the laws that are the responsibility of the Interior Secretary, and will consult with all interested parties in making regulatory decisions. Furthermore, I pledge to be a watchdog to ensure that environmental protection and conservation are not undermined at the Department of the Interior.

Mr. KOHL. Mr. President, I rise today to explain why I have decided to support Gale Norton as the Secretary of the Interior. It is not because I agree with her on every issue. In fact, on many issues we disagree. She supports expanding the extraction of resources on federal lands, including allowing drilling in the Arctic National Wildlife Refuge. I do not. In the past, she has supported greater exploitation and commercialization of our public lands, and that troubles me. While I agree that public lands can have mixed uses, I am concerned that Ms. Norton will swing the pendulum too far in favor of industry. Her attitudes, however, fairly represent those of the President, and President Bush has the right to appoint a Cabinet that is a reflection of his beliefs.

While I am concerned about her past writings and beliefs about the role of the Federal government in managing federal lands and conserving natural resources, she has pledged to the Senate to uphold the law as it is currently formulated by the Congress and interpreted by the courts. She has told the Senate that her thinking on issues like global warming has changed. She now says that she supports the Endangered Species Act, and the right of the Federal government to intervene on private lands to protect wildlife from extinction. I will take her at her word and give her the opportunity to serve as our nation's leading conservationist.

Ms. Norton's opponents have compared her to James Watt, for whom she once worked, but I hope she learned well from his term as the Secretary of the Interior. I hope she learned the lesson that the American people will not tolerate an extremist anti-environment agenda. Americans have embraced a moderate environmental agenda that protects, nurtures, and manages our lands in the public interest, and not for the private benefit of a few. This country will not allow an Administration to abuse that public trust.

Secretary Watt damaged not only the Department of the Interior and our public lands, but the Administration that he served. President Bush has spoken at length about bi-partisanship and bringing this country together. Nothing will evaporate the spirit of bipartisanship faster than vigorously pursuing an anti-environmental agenda.

So I believe that Ms. Norton should be given the opportunity to serve as Secretary of the Interior, but she will be watched carefully by Congress and private organizations. She needs to prove to many that she will be a faithful steward of our natural riches and properly balance development with conservation.

Mr. HATCH. Mr. President, I would like to take just a moment to give my full and heartfelt support to Ms. Gale Norton as our new Secretary of the Interior. It gives me great pleasure and some hope that our national land management policies will be more balanced and will take local views into account that she has been confirmed today.

I congratulate President George W. Bush for putting forward this outstanding nominee. Clearly, one of the first impressions our new president has made on the nation is that he is willing to seek out and surround himself with the most capable administrators our nation has to offer. If anyone wishes to know why Gale Norton is such a great nominee, just look at what her worst critics are not saying about her. No one has questioned her intelligence; no one has questioned her qualifications; and no one has questioned her ability to work with all sides on an issue. Some may question her views on the issues, but that is to be expected in a change of government.

Mr. President, Gale Norton understands what Utahns have always known, but what the last administration was unwilling to acknowledge:

that the environment and our public lands belong to the people, not to federal bureaucrats. Gale Norton seems to believe, like I do, that some power should be returned to our state and local communities who have the greatest interest and the greatest stake in protecting their environment.

There will always be a role for our federal government in protecting our environment and our federal lands. But our federal government cannot be effective when it fails to listen to the needs of the people it is supposed to serve. After the last eight years of increasing all viewpoints will be a breath of fresh air. I urge all of my colleagues, today, to join me in confirming Gale Norton as the Secretary of the Interior.

Mr. BIDEN. Mr. President, I rise today in opposition to the confirmation of Gale Norton as Secretary of the Interior. I do not reach this decision easily. However, I do not have the confidence that Ms. Norton will bring the necessary balanced approach that should be required for this position.

I have discussed the important and special role that the Secretary of the Interior performs in this country when the Senate has considered other nominees to this office. In 1983, I described the office of the Secretary of the Interior as:

> the chief environmental officer of the United States as well as the conservator, trustee and steward of the public lands and natural resources. At the same time, the Secretary is expected to promote and direct the reasonable and efficient use of those lands and natural resources, in ways which do not conflict with his primary environmental responsibilities. And the American people, those who wish to preserve those lands and resources as well as those who wish to develop them, expect that the Secretary will bring to bear an appropriate expertise, experience and balanced temperament on the wide variety of issues he is called upon to decide.

I do not question that Gale Norton has a great deal of experience and knowledge about the matters that will come before her. However, I am concerned that her record fails to indicate a ''balanced temperament on the wide variety of issues she will be called upon to decide.''

From her earlier attacks on the Surface Mining Act and Endangered Species Act to positions she has taken to undermine implementation of the Clean Air Act and Clean Water Act, her judgments evidence a pattern that calls into question exactly how she will view her responsibilities as the steward of our public lands when she is called upon to make decisions about their appropriate use. The position of Secretary of the Interior is too important to entrust to someone whose record does not convey a commitment to the preservation of our public lands and natural resources.

For these reasons, I will cast my vote against the confirmation of Ms. Norton.

Mr. LEAHY. Mr. President, I rise today to express my opposition to the nomination of Gale Norton to be Secretary of Interior. While I am not a member of the Energy Committee that held hearings on the nomination, I have closely reviewed her record and her testimony.

The Secretary of Interior is the steward of our country's natural resources and public lands. Any nominee for this position should be selected for their commitment to protecting our precious resources as well as their dedication to uphold and enforce our environmental laws.

After reviewing the record of Gale Norton there is little doubt that she is an intelligent and dedicated public servant who has strong convictions about issues that concern the Department of Interior. On the one hand, I commend her commitment to her strong ideological views. However, it is this unyielding commitment to those strongly held beliefs that makes me question whether she will be able to set those views aside and consider the views of all Americans as we debate important issues concerning the natural resources.

As our country continues to prosper, the Secretary of Interior will oversee a number of ongoing debates concerning public lands and the protection of endangered species. There is no single solution that can serve as an answer to land management issues in each region of our country. There are many stakeholders with a wide variety of views on how we protect, access and use our natural resources. We in Vermont and New England are deeply concerned about pressure being placed on our natural resources from rapid growth. We Vermonters also have concerns that environmental standards should be strictly enforced for our lands, air, water and threatened species.

The record of Gale Norton provides important insight on how she will interpret laws and weigh the views of stakeholders concerning our natural resources. These beliefs have been remarkably unwavering.

Based on the record I must vote against this nomination. However, if Gale Norton is confirmed, you can be sure that I will work closely with her on a variety of issues that are important to Vermonters. I will work with her to try and foster consensus not only in our region but also throughout the country.

Mr. DASCHLE. Mr. President, Gale Norton has a long public record and has written extensively on environmental issues over her career. I have reviewed that record and understand the concerns of those who have asked whether, as Secretary of the Interior, she would implement and defend environmental laws, many of which she has challenged or questioned in the past.

That is the core question surrounding this nomination. It was put to Ms. Norton in a number of ways by members of the Committee on Energy and Natural Resources.

Ms. Norton testified that she is a ''passionate conservationist'' who will enforce the law as interpreted by the courts. I will vote to confirm her nomination, but I don't discount the seriousness of the concerns raised by her opponents. I intend to monitor closely her stewardship of the Department of the Interior.

The duties of the Secretary of the Interior are profound, and have serious implications for the health of our nation's environment and the quality of life for millions of Americans. The Secretary is the primary guardian of the Endangered Species Act, our nation's flagship law for protecting plant and animal species threatened with extinction. The Secretary also is charged with administering most of our nation's public lands, including places of extraordinary beauty and fragility such as Yellowstone National Park.

As Ms. Norton undertakes these responsibilities, it is my hope and expectation that she will follow the pragmatic approach reflected in her testimony before the Committee on Energy and Natural Resources. Her success as Interior Secretary will be measured by the degree to which she maintains this balanced approach to environmental and natural resource issues.

Our nation's environmental laws, including the Endangered Species Act and the National Environmental Policy Act, must be enforced fully, as they have been interpreted by the courts.

In managing our natural resources, we should respect the views of local residents, but we must also recognize that the American people own these lands and that the Secretary must uphold the public interest as a whole.

Ms. Norton has expressed confidence in the efficacy of allowing industries to police themselves when it comes to protecting the environment. History has shown too often that this approach fails to protect the public interest. Summitville, Colorado, is only one example of how insufficient oversight has led to environmental disaster. The map of the United States is dotted with other examples. It is my hope that, through this confirmation process and through her experience in public office, Ms. Norton has gained a better appreciation of the fact that the Secretary of the Interior's trust includes active enforcement of the nation's environmental laws.

It is particularly important to me that Ms. Norton fully implement the biological opinion written by the U.S. Fish and Wildlife Service regarding the management of the Missouri River. The Fish and Wildlife Service has found that, unless the Corps of Engineers makes major changes in the operations of federal dams on the river, it will be in violation of the Endangered Species Act. Ensuring that the Corps makes the needed changes in the operations of the dams is a top priority for the upper Midwest, and for me personally. It is imperative that Secretary Norton follow through on the Fish and Wildlife Service recommendations so that they are adopted by the Corps.

I also hope to work with Secretary Norton to preserve small wetlands and native prairie in South Dakota, both of which provide important habitat for wildlife. Tallgrass prairie preservation has been a remarkable success in my state, and the number of farmers seeking to participate in the program has outpaced the amount of available funding.

Finally, I want to work with Secretary Norton to strengthen the Bureau of Reclamation. Vast areas of South Dakota lack potable drinking water. Federal projects funded by the Bureau of Reclamation such as the Mni Wiconi, Mid-Dakota and Lewis and Clark rural water systems are critical to the public health and economic vitality of our state. At current funding levels, however, it will be years before these projects can be completed. I urge the Secretary to give these projects the priority treatment they deserve.

Ms. Norton faces some significant policy challenges at the Department of the Interior. I expect we will have our differences, such as on President Bush's support for opening the Arctic National Wildlife Refuge for oil exploration and drilling. On those issues I anticipate a spirited debate. On many other issues, I am certain we will work closely together to protect and manage our nation's natural resources and honor our trust responsibilities to tribes.

Gale Norton has my congratulations on her nomination and confirmation as Secretary of the Interior.

Mr. LOTT. Mr. President, I rise today to speak in support of the nomination of Gale Norton to be the next Secretary of the Department of Interior. Clearly the Senate Energy and Natural Resources Committee hearings on Gale Norton's nomination have revealed that she is a vivacious lawyer who contemplates and explores ideas. Concepts matter to her, and more importantly she has the management ability to turn concepts into public policies which have both enhanced compliance with environmental laws and respected the responsible stewardship of citizens who live on the land. Gale Norton knows there must be a balance and this will make her invaluable for America's conservation programs and for all our communities.

Too often, some environmentalist groups only offer false choices. They only want a policy choice which pits the environment against citizens and industry. This is unacceptable. Some environmentalist groups also only want Washington ''experts'' making the decisions. Well, Gale Norton has repeatedly shown her commitment to a safe and clean environment through consensus building. For over 20 years, she has brought people together with different views to overcome problems dealing with environmental and Federal land issues.

I have little doubt that Americans will see for themselves that Gale Norton will serve with a steady, firm and fair hand as our Nation's next Secretary of Interior. I firmly believe our Nation's treasures will be both protected and improved.

Americans will quickly discover just how harshly inaccurate many special interest groups' characterizations of her have been. Gale Norton has shown the grace and resolve that will help her restore the unanimity at the Department of Interior.

Mr. THOMAS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Is there a couple minutes remaining before the vote?

The PRESIDING OFFICER. There are 3 minutes remaining.

Mr. THOMAS. I yield to my friend from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I have spoken at length about the Interior Secretary nominee and also about our other nominee today, but I have not had a chance to say anything about the Environmental Protection Agency and the nominee, Christine Todd Whitman. I am very proud to make a statement for the RECORD that expresses my views.

Mr. President, ''just as houses are made of stones, so is science made of facts; but a pile of stones is not a house and a collection of facts is not necessarily science.'' For the past 8 years I have questioned numerous collections of facts put out by the Environmental Protection Agency in the name of science. That is why I strongly support president Bush's nomination of Christine Todd Whitman as the new Administrator of the Environmental Protection Agency.

President Bush has endorsed Christie Whitman as a person who understands the importance of a clean and healthy environment and who will ensure that environmental regulations are based, not merely on assembled facts, but on solid, sound science. Sound science has been left out of the regulation equation too often over the past 8 years. A prime example is the new arsenic standards proposed last week. These standards were not based on sound science and they were not implemented to increase health benefits, they were put into effect because it was the politically expedient thing to do.

Arsenic is naturally occurring in my home state of New Mexico. I have not seen reasonable data in support of increased health benefits from these lower standards. I have only seen a collection of facts from studies conducted outside of the United States. New Mexicans will not see appreciable health benefits; they will see their water bills double and will be forced to endure financial hardship.

Ms. Whitman has been an advocate of clean water, clean air and clean shores and while I know that she will continue to promote these things for all Americans, I am excited about the way she will champion these causes. I believe that she will promote scientifically valid initiatives to ensure that we have clean water, clean air and clean shores.

In conjunction with sound scientific, Ms. Whitman also understands that better results can be achieved through a more cooperative, rather than a confrontational, approach with the regulated community. This too is consistent with the beliefs and philosophies of President Bush. President Bush has said that the federal model of mandate, regulate, and litigate needs to be modernized. Americans need to be rewarded for innovation and results when it comes to protecting the environment.

Christie Whitman has worked extensively on environmental issues during her service as the New Jersey Governor. She has demonstrated her commitment to a safe and clean environment and shows that she is willing to bring all parties together in an effort to find solutions to complex environmental issues. She exemplifies the qualities of a consensus builder, not a divider.

Environmental issues continue to be some of the most complex and contentious and require a leader who can balance various competing interests. Christie Whitman will bring this type of leadership into the Environmental Protection Agency.

It is time to base our regulations on more than just a collection of facts. It is time to work together and to search for solutions that are based on scientifically valid facts. I look forward to working with Ms. Whitman in doing just that.

As I have said, the Secretary of the Interior has important jobs besides just the Interior Department's functions. I say the same about Christine Todd Whitman. She will have a tough job because America is in an energy crisis. That means every Department of our Government is going to have to start looking not only at their policies but how do their policies affect America's energy future? She will have a difficult job because that has not been the case at EPA in the past. So I bid her well. I hope she has a very successful term because if she does, we will. If she adjusts some of her rulings to a bigger problem, and can make some cost-benefit assessments that are good for the environment, but also for energy, the energy supply, I think that will be a marvelous achievement.

Mr. President, I ask for the yeas and nays on the nominations.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The question is, Will the Senate advise and consent to the nomination of Gale Ann Norton to be Secretary of the Interior? The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Dakota (Mr. DORGAN) is necessarily absent.

The PRESIDING OFFICER (Mr. CRAPO). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 75, nays 24, as follows:

(Rollcall Vote No. 6 Ex.)

YEAS—75

| | | |
|---|---|---|
| Akaka | Domenici | Lott |
| Allard | Ensign | Lugar |
| Allen | Enzi | McCain |
| Baucus | Feingold | McConnell |
| Bennett | Feinstein | Miller |
| Bingaman | Fitzgerald | Murkowski |
| Bond | Frist | Murray |
| Breaux | Graham | Nelson (FL) |
| Brownback | Gramm | Nelson (NE) |
| Bunning | Grassley | Nickles |
| Burns | Gregg | Reid |
| Byrd | Hagel | Roberts |
| Campbell | Hatch | Santorum |
| Cantwell | Helms | Sessions |
| Carnahan | Hollings | Shelby |
| Carper | Hutchinson | Smith (NH) |
| Chafee | Hutchison | Smith (OR) |
| Cochran | Inhofe | Snowe |
| Collins | Inouye | Specter |
| Conrad | Jeffords | Stevens |
| Craig | Johnson | Thomas |
| Crapo | Kohl | Thompson |
| Daschle | Kyl | Thurmond |
| DeWine | Landrieu | Voinovich |
| Dodd | Lincoln | Warner |

NAYS—24

| | | |
|---|---|---|
| Bayh | Harkin | Sarbanes |
| Biden | Kennedy | Schumer |
| Boxer | Kerry | Stabenow |
| Cleland | Leahy | Torricelli |
| Clinton | Levin | Wellstone |
| Corzine | Lieberman | Wyden |
| Dayton | Mikulski | |
| Durbin | Reed | |
| Edwards | Rockefeller | |

NOT VOTING—1

Dorgan

The nomination was confirmed.

Mr. LOTT. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Let me make sure I understand. The vote was completed. The vote was announced, and has been dispensed with; is that correct?

The PRESIDING OFFICER. The Senator is correct and the nomination was confirmed.

Mr. LOTT. Have the yeas and nays been asked on the next vote?

Mr. BYRD. Mr. President, may we have order.

The PRESIDING OFFICER. The Senator is correct. The Senate will come to order. Those having conversations will take their seats or remove themselves from the floor.

Mr. LOTT. Mr. President, have the yeas and nays been ordered on the second vote on nominations?

The PRESIDING OFFICER. They have not.

Mr. LOTT. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, before we proceed, I ask unanimous consent that following the time allocated immediately following the back-to-back votes, the Senate proceed to a period of morning business in order to debate the nomination of Senator Ashcroft to be U.S. Attorney General and the time between then and 9 o'clock tonight be equally divided between the two leaders or their designees. Further, I ask unanimous consent the next vote be limited to 10 minutes in length.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. There was so much noise, I do thank the distinguished senior Senator from West Virginia for asking for order.

I did not hear the first part of the statement of my friend from Mississippi. We begin the debate on the Ashcroft nomination prior to even voting it out? Or was it in morning business?

Mr. LOTT. It was in morning business.

Mr. LEAHY. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

## NOMINATION OF CHRISTINE TODD WHITMAN TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY—Continued

The legislative clerk read the nomination of Christine Todd Whitman, of New Jersey, to be Administrator of the Environmental Protection Agency.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Christine Todd Whitman, of New Jersey, to be Administrator of the Environmental Protection Agency? On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Dakota (Mr. DORGAN) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 7 Ex.]

YEAS—99

| | | |
|---|---|---|
| Akaka | Conrad | Helms |
| Allard | Corzine | Hollings |
| Allen | Craig | Hutchinson |
| Baucus | Crapo | Hutchison |
| Bayh | Daschle | Inhofe |
| Bennett | Dayton | Inouye |
| Biden | DeWine | Jeffords |
| Bingaman | Dodd | Johnson |
| Bond | Domenici | Kennedy |
| Boxer | Durbin | Kerry |
| Breaux | Edwards | Kohl |
| Brownback | Ensign | Kyl |
| Bunning | Enzi | Landrieu |
| Burns | Feingold | Leahy |
| Byrd | Feinstein | Levin |
| Campbell | Fitzgerald | Lieberman |
| Cantwell | Frist | Lincoln |
| Carnahan | Graham | Lott |
| Carper | Gramm | Lugar |
| Chafee | Grassley | McCain |
| Cleland | Gregg | McConnell |
| Clinton | Hagel | Mikulski |
| Cochran | Harkin | Miller |
| Collins | Hatch | Murkowski |
| Murray | Sarbanes | Stevens |
| Nelson (FL) | Schumer | Thomas |
| Nelson (NE) | Sessions | Thompson |
| Nickles | Shelby | Thurmond |
| Reed | Smith (NH) | Torricelli |
| Reid | Smith (OR) | Voinovich |
| Roberts | Snowe | Warner |
| Rockefeller | Specter | Wellstone |
| Santorum | Stabenow | Wyden |

NOT VOTING—1

Dorgan

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be notified of the Senate's action on these nominations.

## LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

The Democratic leader.

Mr. DASCHLE. Mr. President, I will use my leader time under the agreement and under the rule of the day. It is my understanding the time now will be designated primarily for statements related to the Ashcroft nomination. There may be other comments and other remarks to be made about other issues, but it is my intention to make some remarks with regard to the Ashcroft nomination.

## NOMINATION OF JOHN ASHCROFT

Mr. DASCHLE. Mr. President, in 14 years in the Senate, I have voted on 36 Cabinet nominations: 24 by Republican Presidents and 12 by a Democratic President. Of all of them, this one is by far the most difficult. I have struggled with this decision, as have most of us.

I have spent many hours thinking about what I have heard and read. I have reviewed the words of our founders, and I have searched my memory and my conscience.

In his inaugural address, President Bush pledged to ''work to build a single nation of justice and opportunity'' for all Americans. I think most Americans share that desire.

That is why this vote is so important.

John Ashcroft is a man of considerable accomplishment. He is a graduate of Yale and the University of Chicago Law School, a former State auditor, State attorney general, and a former Governor.

Beyond that, he is a former Member of this Senate. Many of us have worked with him for a number of years.

The question facing us, however, is not: Does John Ashcroft have an impressive resume? Clearly, he does.

The question facing us is: Is John Ashcroft the right person to lead the United States Department of Justice?

The Attorney General is more than ''the President's lawyer.'' He is the guardian of the constitutional rights of all Americans—the protector of our fundamental freedoms.

The Attorney General of the United States has enormous power. He advises the President and every other Cabinet member—on whether their actions are

constitutional. He has enormous authority to decide which laws are enforced, and to what extent.

The Attorney General decides how—and whether—to intervene in court cases. He is responsible for screening and recommending nominees for the Federal bench, including the Supreme Court.

Because of his enormous authority and discretion, the Attorney General—more than any other Cabinet member—has the power to protect, or erode, decades of progress in civil rights in America.

I believe the President has the right to choose advisers with whom he is philosophically comfortable.

That is why—out of 36 Cabinet nominations, I voted so far on 35, ''yes.'' The only nominee I voted against was John Tower. I think we are all aware of the problems with that nomination.

My respect for the President's right to choose his own Cabinet is also a good part of the reason I have voted to confirm every other nominee this President has sent us.

At the same time, the Senate has a right—and a responsibility to evaluate the President's nominees; offer advice; and either grant—or withhold—its consent.

How do we decide whether to confirm—or reject—a Cabinet nominee? Our Founders, unfortunately, gave us no constitutional guidelines. The ''appointments clause'' of the Constitution says only that the Senate has the power of advice and consent. It does not specify how we should decide.

During his 6 years in this body, Senator Ashcroft had his own standard. He made it clear he believes Presidential appointees can—and should—be rejected for ideological reasons. That is the standard he used in blocking Bill Lann Lee's nomination to head the Justice Department's Civil Rights Division.

As Senator Ashcroft put it at the time: Mr. Lee ''obviously (has) a strong capacity to be an advocate. But his pursuit of objectives important to him limit his capacity to make a balanced judgment.''

Some might say it is fair to hold Senator Ashcroft to that same standard. And they might be right. But I choose a different standard.

In Federalist No. 76, Alexander Hamilton said there must be ''special and strong reasons'' for Senators to reject a Presidential nominee.

Rarely has that standard been met. Out of more than 900 Cabinet nominations that have reached this floor, the Senate has rejected only five.

Only one nominee for Attorney General has ever been rejected on the Senate floor; and that was 76 years ago.

Nearly 30 years ago, Archibald Cox was the special Watergate prosecutor—until President Nixon had him fired for doing his job too well. Before that, he was Solicitor General of the United States.

He has said that the best way to judge what sort of Attorney General a person will make is not by listening to the nominee's promises about the future. It is by examining his past.

In his words:

> Respect for the law—the fairness with which the law is administered—is the foundation of a free society. The individual who becomes Attorney General can do more by his past record . . . than by his conduct in office . . . to strengthen or erode confidence in the fairness, impartiality, integrity and freedom-from-taint-of-personal-influence, in the administration of law.

Is John Ashcroft the right person to lead the Justice Department? Or are there ''special and strong'' reasons that make his appointment as Attorney General unwise? The answer is not in his heart. It is in his long public record.

Senator Ashcroft has been a public official for nearly a quarter of a century.

Throughout his career, he has been a fierce advocate for his beliefs. Those beliefs—on civil rights, on women's rights, workers' rights, separation of church and State, and many other issues—put him far to the right of most Americans.

Senator Ashcroft and his supporters argue that his past activism does not matter. Legislators write laws, they say. Attorneys general simply enforce the laws that are on the books.

It is an interesting distinction. But in 8 years as Missouri's attorney general, it is not a distinction John Ashcroft made.

For 8 years as Missouri's attorney general and 8 years after that as Governor, John Ashcroft prevented efforts to end segregation of public schools in St. Louis and 23 surrounding communities.

The Federal court system found the State responsible for the segregation, and ordered it to correct its sad history. John Ashcroft fought nearly every one of those orders. Three times in 4 years, he appealed all the way to the U.S. Supreme Court. Each time, he lost.

When St. Louis and the surrounding communities agreed on their own to a voluntary desegregation plan, Attorney General Ashcroft used the power of his office to block it. His obstruction provoked one judge in the case to threaten him with contempt. Today, he insists that his opposition was just a matter of guarding the public till.

But in 1984, when he ran for Governor, John Ashcroft denounced the voluntary desegregation plan as ''an outrage against human decency.''

According to the St. Louis Post Dispatch, he and his opponent in the 1984 Republican Gubernatorial primary competed ''to see who could denounce desegregation most harshly . . . exploiting and encouraging the worst racist sentiments that exist in the state.''

His continued defiance as Governor caused another judge in the case—a Republican appointed by President Reagan—to conclude that ''the State is ignoring the real objectives of this case—a better education for city students—to personally embark on a litigious pursuit of righteousness.''

John Ashcroft's 16-year fight to prevent the voluntary desegregation cost Missouri taxpayers millions of dollars. Worse than that, it cost many children their right to a decent education.

So much for the distinction between writing laws, and merely enforcing them.

In addition, Attorney General Ashcroft vigorously opposed the Equal Rights Amendment.

When the National Organization for Women urged a boycott of Missouri and other States for failing to ratify the ERA, Attorney General Ashcroft ignored settled legal precedent and stretched antitrust laws to sue the organization. He used taxpayer dollars to take the case all the way to the U.S. Supreme Court. The Court ruled that NOW members were simply exercising their fundamental, constitutional right to free speech.

Governor Ashcroft also twice vetoed voting-rights bills that would have allowed trained volunteers to register voters in the city of St. Louis—just as they did in neighboring suburbs, where there were more white and Republican voters.

Earlier this month, in his opening remarks before the Judiciary Committee, Senator Ashcroft described himself as ''a man of common-sense conservative beliefs.'' The truth is, there is nothing common about his conservatism.

Here in this Senate, he demonstrated what the New York Times called ''a radical propensity for offering constitutional amendments that would bring that document into alignment with his religious views.''

In more than 200 years, our Constitution has been amended only 27 times—including the 10 amendments of the Bill of Rights. In his one term in this Senate, John Ashcroft introduced or cosponsored seven constitutional amendments. One of his amendments would have radically rewritten the rules to make it easier to amend the Constitution. Another would have made abortion a crime, even in cases of rape and incest, and even when continuing a pregnancy would result in serious and permanent injury to a woman. It also would have banned most common forms of birth control.

By his own account, Senator Ashcroft was ''probably more critical than any other individual in the Senate'' of Federal judges. He has vilified judges with whom he disagrees as ''renegade judges, a robed and contemptuous elite.''

He frequently opposed qualified Presidential nominees. He opposed both Dr. Henry Foster and Dr. David Satcher for Surgeon General because they supported President Clinton's position on a woman's right to choose. In Dr. Foster's case, he prevented the nomination from ever reaching the Senate floor.

In 1998, when James Hormel was nominated to serve as U.S. Ambassador to Luxembourg, Senator Ashcroft said

he opposed the nomination because Mr. Hormel ''has been a leader in promoting a lifestyle.''

While Senator Ashcroft never met with Mr. Hormel to discuss his qualifications, he now asserts vaguely that it was the ''totality'' of Mr. Hormel's record that prompted his opposition.

Then-Senator Al D'Amato—a member of Senator Ashcroft's own party—saw a different reason.

In a 1998 letter to Senator LOTT, Senator D'Amato wrote: ''I fear Mr. Hormel's nomination is being held up for one reason and one reason only: the fact that he is gay.''

Senator Ashcroft blocked Bill Lann Lee's nomination to head the Justice Department's Civil Rights Division because of Mr. Lee's views on affirmative action.

Just as Senator Ashcroft assures us that he will enforce laws with which he disagrees, Mr. Lee assured members of the Judiciary Committee that he would enforce Supreme Court rulings restricting affirmative action.

Senator Ashcroft refused to accept that assurance. Perhaps the most troubling for me personally is Senator Ashcroft's treatment of Judge Ronnie White, the first nominee to the Federal district court to be rejected on the Senate floor in 50 years.

Judge White grew up in a poor family and worked his way through college and law school. He is a former prosecutor, State legislator, circuit judge, and member of the Missouri State appeals court. He is the first African American ever appointed to the Missouri Supreme Court. In 1997, he was nominated to be a U.S. district court judge. For 2 years, Senator Ashcroft blocked Judge White's nomination from coming to the Senate floor. The wait lasted so long that the seat for which Judge White was nominated was officially declared a judicial emergency.

When Judge White's nomination finally did come to the floor, Senator Ashcroft misled the Senate and deliberately distorted his record. For me, that day was one of the saddest in all of my years in the Senate.

John Ashcroft smeared Judge White as ''pro-criminal and activist,'' a man with a ''tremendous bent toward criminal activity.'' Nothing could be further from the truth.

Stuart Taylor who writes for the conservative National Journal magazine writes that John Ashcroft's treatment of Judge White alone makes him ''unfit to be Attorney General.''

''The reason,'' Taylor writes, ''is (that) during an important debate on a sensitive matter, then-Senator Ashcroft abused the power of his office by descending to demagoguery, dishonesty and character assassination.''

I do not believe John Ashcroft's treatment of Judge White was motivated by racism. I believe it was plain political opportunism. In the heat of a tough reelection battle, John Ashcroft was willing to try to distort the record and destroy the reputation of a good man. To this day, Senator Ashcroft continues to misrepresent Judge White's record and insist that he himself did nothing wrong.

The job of Attorney General demands fairness, judgment, tolerance, and respect for opposing views. It demands commitment to equal rights for all Americans and a sensitivity to injustice. John Ashcroft has shown a pattern of insensitivity through his public career. Even now he refuses to disavow Southern Partisan Quarterly Review, a magazine that has defended slavery. He refuses to distance himself from Bob Jones University, a cauldron of intolerance that has described Mormons and Catholics as ''cults which call themselves Christian.''

Senator Ashcroft has said there are only ''two things you find in the middle of the road: a moderate and a dead skunk.'' I think he is wrong. The other thing you find in the middle of the road is the vast majority of the American people.

An article in the December 23 New York Times quoted an adviser to President Bush as saying:

> Attorney General was the one area where the right felt very strongly, a la Ed Meese. This is a message appointment.

The adviser described it as a signal to the conservatives that ''I hear your concerns.''

What message does making John Ashcroft Attorney General send to the rest of America? What message does it send to women or to minorities? What message does it send to judges and others who may not see the world exactly as John Ashcroft sees it? What message does making John Ashcroft Attorney General send to Americans who fear their votes don't count and aren't counted?

John Ashcroft has said:

> There are voices in the Republican Party today who preach pragmatism, who champion conciliation, who counsel compromise. I stand here today to reject those deceptions. If ever there was a time to unfurl the banner of unabashed conservatism, it is now.

I say, if ever there was a time to unfurl the banner of conciliation, it is now. Senator Ashcroft is a man of intellect and passionate beliefs. I am sure there are many ways he can serve the causes in which he believes so fiercely, but I do not believe it is fair or reasonable for us to expect him to fully enforce laws he finds unwise, unconstitutional, and, in some cases, morally repugnant.

How can John Ashcroft enforce laws he has spent his entire public career fighting? What would that say about him if he did?

I have turned this over in my head a hundred times. Every time the answer is sadly the same: I do not believe John Ashcroft is the right person to lead the U.S. Department of Justice. For that reason, I will vote no on this nomination.

In his inaugural address, President Bush spoke of the ''grand and enduring ideals'' that unite Americans across generations. ''The grandest of all these ideals,'' he said, ''is an unfolding American promise that everyone belongs, that everyone deserves a chance, that no insignificant person was ever born.''

I applaud the President's words, but I cannot reconcile them with this nomination. John Ashcroft spent 6 years in the Senate mocking bipartisanship. To require that we confirm him now as proof of our bipartisanship and good faith is asking too much.

I thank Senators LEAHY and HATCH and members of the staff of the Judiciary Committee for conducting a full and fair hearing. I thank the many witnesses and people all across our Nation who made their voices heard on this critical nomination.

In closing, regardless of what we decide, I hope we will all remember what this debate is about. It is not about partisan politics. It is not about whether we are willing to work with this President. It is about justice.

Nearly a century ago, another Republican, President Theodore Roosevelt, heard rumors that the district attorneys and marshals in a particular State would be ordered to replace their deputies for political reasons. Immediately President Roosevelt sent a letter to his Attorney General, a man named William Moody, demanding that the plan be stopped. As he put it:

> Of all the officers of the Government, those of the Department of Justice should be kept free from any suspicion of improper action on partisan or factional grounds.

He went on to say:

> I am particularly anxious that the federal courts . . . should win regard and respect for the people by an exhibition of scrupulous nonpartisanship, so that there shall be gradually a growth—even though a slow growth—in the knowledge that the Federal Court and the Federal Department of Justice insist on meting out even-handed justice to all.

That was in 1904.

Over the course of the 20th century, we made great strides in assuring that America's courts and Justice Department are indeed committed to even-handed justice for all. Now, as we begin the 21st century, is not the time to turn the clock back.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. REID. Will the Senator withhold for a unanimous consent request?

Mr. INHOFE. Yes.

Mr. REID. Mr. President, we are in a time for morning business. In an effort to have Senators know what is next, I ask unanimous consent that Senator INHOFE be recognized next for up to 15 minutes or whatever time.

Mr. INHOFE. Maybe a little bit longer.

Mr. REID. Senator INHOFE for 25 minutes. Following that, the Senator from Michigan, Ms. STABENOW, be recognized for 15 minutes; following that, Senator BUNNING be recognized for up to a half hour; following that, Senator HARKIN

be recognized; and following that, Senator MURRAY from Washington be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Oklahoma.

Mr. REID. Mr. President, I was just advised that I failed to mention Senator JACK REED in the mix, and we want him to follow Senator BUNNING in the same order, if there is a Republican who needs to speak in between Senator REED and Senator HARKIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. I was listening very carefully during the entire presentation of our very illustrious minority leader, immediate past majority leader. I had a hard time figuring out who he was talking about.

I am 66 years old, and I have been involved in virtually every kind of political job. I have been involved for 30 years in the private sector. I don't believe I can stand here and think of one person I have ever met in my entire life who is a more honorable person, who is totally incapable of telling a lie, than John Ashcroft.

I have watched him take courageous stands for things he believes in, yes, but he always tells it exactly the way he believes it. That is not the question here. We are talking about a law enforcement officer. We are talking about the chief, the guy at the top.

When I have heard people say that he will not uphold the rule of law, I am reminiscent of the last 8 years, certainly Janet Reno and the Clinton administration. We have been waiting for her to uphold the law, to prosecute people, and not to let people off just because they may be friends of the administration.

I have watched her refuse to go after campaign fundraising abuses, refuse to appoint an independent counsel where it is required by law, reject advice by Louis Freeh and Charles LaBella, refuse to prosecute Gore's White House phone calls, questionable plea bargains with John Huang, Charlie Trie. I have watched the theft of nuclear secrets, watched the botching of the investigation of Wen Ho Lee. I have watched this Attorney General refuse to vigorously enforce gun laws. Gun prosecutions went down under the Reno administration.

We could think of a lot of examples. One that comes to mind, I happen to be in a Bible study with a man named Chuck Colson, who occasionally comes by. I got to know him quite well. I think most Americans know who Chuck Colson is. Chuck Colson violated the law back during the Watergate era. He disclosed confidential information and leaked it to the media. As a result of that, he was found guilty and he served time, was prosecuted and went to prison in a Federal penitentiary.

Ken Bacon did exactly the same thing. I have stood on this floor on three different occasions and talked for about 40 minutes just on this particular case, that during the Linda Tripp case, Ken Bacon did in fact release confidential information to the media. And as a result of that, this person was taken out of consideration in terms of credibility.

There is no reason in the world. The law hasn't changed. If anything, it is stronger than it was at that time. But there is no reason in the world that if Chuck Colson was prosecuted 25 years ago and spent time in the Federal penitentiary, Ken Bacon should not have been prosecuted and sent to the penitentiary exactly as Chuck Colson was.

There is an accusation that John Ashcroft would not uphold the law. I am not saying he should be just a little bit better than our previous Attorney General, Janet Reno, has been. He has to be much, much better. But there is certainly no comparison.

As far as Ronnie White is concerned, I think it is important that we not try to paint John Ashcroft as being any kind of racist. During the time he was in the positions that he held in the State of Missouri, he supported 26 of the 27 black judges. It is my understanding that he supported more black judges during his administration than anyone had before him.

As far as Ronnie White is concerned, I listened to him testify before the committee, and I was wondering why certain things were not said that should have been said, because after going back and reading the case—I believe the name is James Johnson—where this individual had gone out and had violently murdered a sheriff, in the same night a deputy sheriff, in the same night another deputy sheriff, and then, if that weren't enough, went to a person's home where they were having a Christmas party and in the process of praying brutally murdering the wife of one of the sheriffs, White was the lone dissenter in the death penalty case involving that man who brutally murdered four people.

On the same day that the nomination came to the floor, I heard this story. I voted against Ronnie White mostly because of that case.

But I have to say this. I don't think many of us here who were not on the Judiciary Committee knew that Ronnie White was black. This is the thing that shocked everyone. One of the Senators said this: The first time I realized that he was black is when someone took the floor and said this was a result of racism. I know this isn't true.

There is one thing I want to clarify. I think it is important during the next few hours that each one of these allegations be responded to because there is an assumption out there that is true. I am going to respond to one in kind of an unusual way about James Hormel.

I almost 3 years ago on the floor of this Senate made a speech. It was on May 22, 1998. I heard some comments by one of my favorites in the Senate. I have to say this. When Patrick Moynihan was in the Senate, I always referred to him—he was my nextdoor neighbor—as my favorite liberal. Since he is gone, I think I will refer to PAUL WELLSTONE as my favorite liberal. He and I have found that we don't agree on too many things, but he made some comments concerning my opposition to James Hormel.

It has been stated several times on this Senate floor, and I think in the hearings also, that John Ashcroft was the one responsible for James Hormel not getting legitimately confirmed. I am here to say today that it was not John Ashcroft; it was I.

I am going to read the RECORD where I thanked the Senator from Minnesota, Mr. WELLSTONE, for some comments he made, and I also said what we might do since we are both sharing time was that I would speak first and he could respond afterwards.

Some statements were made on the floor yesterday concerning the hold I have on James Hormel to be Ambassador to Luxembourg. It is true I have a hold on James Hormel. This is I, myself, speaking almost 3 years ago. It was not John Ashcroft, it was I.

There very well may be a vote on this individual, but I will oppose his nomination, and I want to stand and tell you why.

Statements were made on the floor by the senior Senator from Minnesota, Mr. WELLSTONE. I will read excerpts from it.

> Now, one of my colleagues, and I think it is extremely unfortunate, one of my colleagues has compared Mr. Hormel, a highly qualified public servant and nominee, to Mr. David Duke, who, among other credentials, is a former grand wizard of the Ku Klux Klan.

He goes on to say:

> I want to say to my colleagues, that given this kind of statement made publicly by a United States Senator, this kind of character assassination, it is more important now than ever that this man, Mr. Hormel, be voted on.
>
> In defense, really, of the senior Senator from Minnesota, I say that if I had said what he thought I said, he was certainly entitled and justified to make the statements that were made. But I think it is important to know that I did not make those statements in the context that he believed I made them.
>
> Let me, first of all, say that there probably are not two Members of the U.S. Senate who are further apart philosophically than the senior Senator from Minnesota and myself, I would probably, in my own mind, believe him to be an extreme left-wing radical liberal and he believes me to be an extreme right-wing radical conservative. And I think maybe we are both right.
>
> But one thing I respect about Senator WELLSTONE is he is not a hypocrite. He is the same thing everywhere. He is the same everywhere. He honestly believes that government should have a more expanded role. He is a liberal. I am a conservative.

Having said that, let me go back and talk a little bit about what he had actually said. I made the statement when I was running for office—and I have been consistent with that—that if I get to the Senate where I have the opportunity to participate in the confirmation process, I will work to keep the nominee from being confirmed if that

individual has his own personal agenda and has made statements publicly to the effect that he believes strongly in his personal agenda and will use that office to advance the personal agenda more than he will the American agenda.

In the case of James Hormel, a gay activist, he made statements in the past, which I will read in a moment, that have led me to believe that his personal agenda is above the agenda of the United States. As I said, the same thing would be true if it were David Duke. If he were up for nomination, I would oppose him because I believe he would have his agenda above the agenda of America. Maybe with Patricia Ireland it would be the same thing, Ralph Reed, who started the Christian Coalition. Maybe if he were up for nomination and he made the statement that he would use that nomination, whether it be ambassadorial or anything else, to advance his own agenda, I would oppose it. Yet I agree with his agenda.

I would also like to quote someone who I think is familiar to all of us and whom we hold here in very high esteem, Faith Whittlesey, former U.S. Ambassador to Switzerland. She was talking about this trend of trying to put people with their own personal agendas in the various embassies. She said:

> Ambassadorial appointments should not be used for the purposes of social engineering in the countries to which the ambassadors are assigned.

One of the many statements I have made previously about James Hormel that led me to the conclusion he wanted to use his position to advance the agenda was the following statement he made June 16, 1996. He said:

> I specifically asked to be Ambassador to Norway because, at the time, they were about to pass legislation that would acknowledge same-sex relationships, and they had indicated their reception, their receptivity, to gay men and lesbians.

I believe he was implying and there is no question in anyone's mind that he was saying he was going to use that job to advance his own agenda. I think it is important that we understand that.

I would like to repeat what I just said. It was 3 years ago.

As we listen to the confirmation hearings and hearing the speeches on the floor, whoever it was who said that John Ashcroft was the one who blocked and attempted to block the confirmation of James Hormel, they are wrong. I am the one. It was not he.

I think there is a more serious thing here. I don't think it is the issue so much of James Hormel, or of abortion, or of discrimination. We are always shocked when we hear about repercussions in places such as Sudan and China. People are enslaved for their religious belief.

I look at this and I think John Ashcroft is guilty of one thing. He is guilty of having an inseparable walk with the Lord. And he has said that several times.

There is someone I dearly love by the name of Bill Bright who wrote the book ''Red Sky in the Morning.'' I think it should be required reading for all Americans. Let me read a couple of things from it.

> George Washington, ''Father of Our Country,'' 1st President of the U.S.: ''Bless O Lord the whole race of mankind, and let the world be filled with the knowledge of Thee and Thy Son, Jesus Christ.''
>
> ''It is impossible to rightly govern the world without God and the Bible.''
>
> Patrick Henry, American Revolutionary Leader: ''It cannot be emphasized too strongly or too often that this great nation was founded, not be religionists, but by Christians; not on religions, but on the Gospel of Jesus Christ.''
>
> Thomas Jefferson, 3rd President of the United States: ''Indeed I tremble for my country when I reflect that God is just, and that His justice cannot sleep forever.''

It goes on and on. You can read all of the founding fathers of this country.

What would John Adams, who said we have no government armed with power capable of contending with human passions, unbridled mortality, and religion—what would they say if they knew right now that a man from Missouri, after very carefully listening to all the comments, all the charges have been made about John Ashcroft?

I believe this is a case of religious persecution.

I have to conclude by saying what I started out by saying; that is, of all the people I have known and worked with in my entire life, I know no one of greater character or more highly moral than John Ashcroft.

The PRESIDING OFFICER (Mr. CHAFEE). Under the previous order, the Senator from Michigan is recognized.

Ms. STABENOW. Mr. President, I ask unanimous consent to speak for up to 15 minutes in morning business.

The PRESIDING OFFICER. The Senator has that right.

Ms. STABENOW. I thank the Chair.

(The remarks of Ms. STABENOW pertaining to the introduction of S. 215 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 30 minutes.

Mr. BUNNING. Mr. President, before I am recognized under the time allotted under the previous order, I ask unanimous consent that notwithstanding the previous order, Senator ALLARD be recognized for up to 15 minutes following the remarks of Senator REED of Rhode Island and that Senator THOMAS be recognized for up to 15 minutes following the remarks of Senator HARKIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUNNING. Mr. President, I rise in support of the nomination of John Ashcroft to be our next U.S. Attorney General. For weeks now, the media, Members of this body, and the liberal left have conducted nothing more than a smear campaign against John Ashcroft.

For the past 2 years in the 106th Congress, I served with John Ashcroft as a deputy whip, and I came to know him very well.

He is one of the most intelligent, fair, and compassionate men I have ever known. He is thoughtful and full of integrity and humility. He is going to make a fine Attorney General.

What is being done to John Ashcroft and his reputation is wrong and despicable. Today I want to help set things straight about John Ashcroft, and to separate the facts from the lies and distortions that are being carelessly tossed around about him and his record.

First of all, John Ashcroft is one of the most qualified nominees ever to be named to be Attorney General. He was twice elected to be Missouri's attorney general. He was twice elected to be Missouri's Governor. And the people of Missouri elected him in 1994 to be one of their U.S. Senators.

None of our previous Attorneys General has had such broad popular support from the people who knew them best.

In each of these posts, John Ashcroft served with distinction, being honored by his peers with leadership positions.

As Missouri's attorney general, John Ashcroft was elected president of the National Association of Attorneys General. In other words, the other 49 elected him to lead their group.

As Missouri's Governor, he was elected chairman of the National Governors' Association. The same thing: 49 others elected him to lead the Governors' organization.

Now many of the liberal special interests groups are trying to tar and feather him by attacking his long and distinguished record of public service.

But facts are stubborn things, and the facts prove them wrong.

The liberals claim that John's views are out of the mainstream. Some are even resorting to name-calling and calling him a racist and an extremist.

It is hard to see how he could be such a demon and still be five times elected to statewide office.

If John Ashcroft's execution of these earlier public trusts was as far ''out of the mainstream'' as his critics now claim, the people of Missouri would have ridden him out of town on a rail. His peers surely would not have honored him for his achievements.

The fact of the matter is that John Ashcroft's views are in line with those of most Missourians and most Americans.

If his ideas and beliefs are so far out of the mainstream, are John Ashcroft's critics really saying that the majority of citizens in Missouri who elected him to these posts are extremists? Are his critics ready to make this claim? I doubt it.

The rhetoric we have heard from these critics serves nothing more than to fatten up the fundraising of the left and to scare people into voting for liberals by continuing to try and label conservatives as mean-spirited.

We saw it with Robert Bork. We saw it with Clarence Thomas. Now we are seeing it with John Ashcroft.

It is just hot air, and I believe that the American people are going to reject these tactics and the politics of personal destruction.

Another one of the lies that is being told about John Ashcroft is that he is a racist. His critics point to his opposition to Missouri Judge Ronnie White for a position as a Federal judge as proof.

But, again, let's ignore the rhetoric and look at the facts. When he was Governor, John Ashcroft appointed the first black judge to one of Missouri's appellate courts. As a Senator, John Ashcroft voted to confirm 26 black judges out of 28 nominated to the Federal bench.

He led the fight to save Lincoln University which was founded by black soldiers. His wife, Janet, even teaches as a law professor at Howard University, one of our leading historically black colleges.

For his critics to now turn around and call John a racist is absurd and nothing more than dirty politics. When they're not calling John Ashcroft a racist, the liberals sneer that he can't be trusted to enforce the law. They don't have any real proof, just a lot of strong words. They say that John isn't fair-minded enough to enforce laws he might not agree with.

But John did a fine job enforcing Missouri's laws when he was attorney general there. And I believe that after he lays his hand on the Bible and swears to uphold the Constitution as our 68th Attorney General that he will do a fine job for our Nation.

Eight years ago when Janet Reno was nominated to be Attorney General, no one made the ridiculous charge that she wouldn't uphold laws she might not agree with.

No one can or should make the same claim about John Ashcroft.

John Ashcroft will enforce the law. He is a man of his word. He has an impeccable record of law enforcement. I know and I fully trust him to do the job which he will be sworn to do.

Let's face it. The real problem the critics on the left have is John Ashcroft's stance on the issues and his conservative philosophy. But they know they can't use this as a real reason to defeat his nomination, so they resort to calling him names and throwing mud at him, hoping that some will stick. They drag out the process as long as possible and dig around in the dirt for any scraps they can find.

They smear his good name. They make up bogus charges. They even sink as low as to question his religious beliefs. It is very sad, but it won't work.

The job of Attorney General is not to advocate policy. It is to enforce our laws. The question we have to ask about John Ashcroft is, will he enforce those laws? His record says he will. He has repeatedly said he will. There is no evidence to say otherwise, just false charges and name-calling.

John Ashcroft is going to be confirmed, and I believe his critics and the tactics they take will backfire.

Mr. President, I urge my colleagues to vote for John Ashcroft. We could not ask for a more qualified and fair-minded person for the job. John will make us all very proud.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, the Senator from Rhode Island came to the floor quickly. The Senator from Oklahoma has about a 4-minute statement he would like to make on Christine Todd Whitman. Would the Senator from Rhode Island allow him to proceed?

Mr. REED. Absolutely.

The PRESIDING OFFICER. The Senator from Oklahoma.

## NOMINATION OF CHRISTINE TODD WHITMAN

Mr. INHOFE. Mr. President, I thank the assistant minority leader.

Certainly in having the discussion on the floor about Christine Todd Whitman and her nomination to be the director of the EPA—I have served on the Environment and Public Works Committee since I have been in the Senate—I can say what a refreshing change it is going to be. I have watched her record and things for which she stands. She is someone who really believes in a commonsense approach to solving problems. She has experience as Governor and has the desire for cost-effective programs and environmental beliefs. I am very pleased that she is going to take on this job at a time when we really have serious problems.

For the last 8 years, we have not had a reliance upon science in the promulgation of our rules and regulations. We haven't had the cost-benefit analyses that I think most people realize we should have. I think there is a lot of work to be done.

I was very upset when we ended up with the so-called ''midnight regulations.'' I applaud President Bush for issuing a 60-day review of all of the Clinton administration's midnight regulations. For example, one of the regulations was the final rule, the sulfur diesel rule which spent 2 weeks at the OMB instead of the customary 90 days. This is something that will have a direct effect on the cost of fuel, something we were having hearings on, and we didn't need to rush into that. Or some of the regulations having to do with putting 60 million acres out of reach so that they cannot be developed or have roads built on them.

Right now, we have a crisis in this country. Some States have a greater crisis than we have. But certainly it is a crisis in terms of the price of fuel and the availability of fuel. By putting this 60 million acres in the category that it is in, it would keep us from developing about 21 trillion cubic feet of natural gas. That would be enough to run this country for a period of 1 year.

The EPA doesn't operate in a vacuum. Some of the things they have and the rules they promulgate affect other departments. I happen to be chairman of the Senate Armed Services Subcommittee on Readiness. And I can tell you right now that some of the EPA regulations on our training grounds have caused us to be less than adequate in our training activities. In fact, we have testimony from one of our commander trainers that they spend more money on compliance of EPA rules and regulations than they do actually on training.

In terms of the energy supply, we can't just act as though all of these new rules and regulations affecting our refiners don't have an effect on cost. They do have an effect on cost of gasoline that we burn in our cars. It is something that will have to be dealt with. Right now, we are at 100 percent of refining capacity in this country. Any new rules and regulations that would cause any of these refiners to drop down directly impacts and increases the cost of fuel.

If I could single out one thing that I am really thankful for in Christine Todd Whitman taking on this position, it is that she has been on the receiving end of abusive regulations. She has been the Governor of a State that had to comply with things without adequate time, without the resources, and I think it is time we had someone in that position who has been on the receiving end of these regulations. I am sure Christine Todd Whitman will be one of the best directors we have ever had for the EPA.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Thank you, Mr. President.

## NOMINATION OF JOHN ASHCROFT

Mr. REED. Mr. President, after listening to the testimony given before the United States Senate Judiciary Committee and after much reflection, I decided to oppose the nomination of John Ashcroft as Attorney General of the United States.

This has been a difficult decision; one that I take very seriously. Just as the Constitution gives the President the unfettered right to submit nominees to the Senate, the Constitution requires the Senate to give ''Advice and Consent'' on such nominations.

The Senate does not name a President's Cabinet, but it also does not merely rubber stamp his choices. Senatorial consent must rest on a careful review of a nominee's record and a thoughtful analysis of a nominee's

ability to serve not just the President, but the American people.

Unlike other cabinet positions, the Attorney General has a very special role—decisively poised at the juncture between the executive branch and the judicial branch. In addition to being a member of the President's Cabinet, the Attorney General is also an officer of the federal courts and the chief enforcer of laws enacted by Congress.

He is in effect the people's lawyer, responsible for fully, fairly and vigorously enforcing our nation's laws and Constitution for the good of all.

In addition to being intellectually gifted, legally skilled and of strong moral character, I believe that the position of Attorney General requires an outlook and temperament that will allow the American people to believe that he will champion their individual rights more than any particular and potentially divisive dogma.

During the past several weeks, I have listened to John Ashcroft's words in the context of his lifetime of public conduct. As a state attorney general, a governor and a United States Senator, he has established a pattern of activism that challenges important civil and individual rights.

Instead of being a positive force for reconciling the races, as Missouri's Attorney General John Ashcroft conducted a futile struggle to frustrate the voluntary integration of public schools.

He fought a voluntary desegregation plan for the city of St. Louis, showed defiance of the courts in those proceedings and used that highly charged issue for political advantage instead of for constructive action.

Instead of accepting commonsense approaches to limiting the damage done by guns in our society, he has rigidly worked against such solutions—such simple solutions as asking that guns be sold with safety locks

He also has aggressively worked to dismantle some of our country's most basic legal tenets, such as the separation between church and state.

On the nomination of Judge Ronnie White to the United States Federal court, he appears to have mischaracterized Judge White's record unfairly, and at the end of the process, raising issues that really did not go to the merits of Judge White's nomination. This raises serious concerns and questions about both his sense of fair play and his respect for judicial independence.

In sum, although he claims he will enforce the letter of the law, I fear he will not recognize the true spirit of the law.

I believe he will use the considerable power of the Attorney General in directing resources, initiating lawsuits, and interpreting the law to clearly and consciously impose his views as he has done in the past.

His views are not the views of a vast majority of Americans, regardless of political affiliation.

Given the extremely divisive nature of the last election, and the nature of some of the voting irregularities, our nation needs an Attorney General who can lead us on critical civil rights issues, unite us in the pursuit of justice, and help heal some of these wounds.

I believe that John Ashcroft lacks the temperament needed to serve as Attorney General of the United States and I cannot support his nomination as our next Attorney General.

I yield the floor. I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with and that I may proceed for 5 minutes.

The PRESIDING OFFICER. The Senator from Florida is recognized without objection.

## BUDGET PITFALLS

Mr. NELSON of Florida. Mr. President, I had the privilege of coming to Congress in 1978 and being assigned as a freshman in January of 1979 to the House Budget Committee. In 1979, I never thought I would live to see the day we would balance the budget, much less did I think I would live to see the day that, in fact, we would get into a surplus situation. Now, in this time of prosperity and budget surpluses, it is very much incumbent upon us to be fiscally wise and fiscally disciplined in how we use these budget surpluses so we do not go back into the boom-and-bust cycles that we have experienced in the past.

Mr. President, 22 years ago as a freshman member of the House Budget Committee—I am now a freshman member of the Senate Budget Committee—we had an annual deficit somewhere in the range of about $20 billion to $24 billion. Then, as we moved into the decade of the 1980s, that annual deficit crept higher and higher and higher. Toward the end of the decade of the 1980s, we exceeded $300 billion in annual deficit spending. That is not the kind of financial situation you want.

Indeed, we just had Mr. Greenspan before the Budget Committee and he continued the very severe lecture that he has given us for years, which is: Be very fiscally disciplined and wise, and don't return to that era of deficit spending.

I bring this up today—and this is, by the way, my maiden speech in the Senate, so what a privilege for me to be here, what a privilege to represent such a dynamic State as the State of Florida—but I rise on the occasion of my maiden speech to talk about the potential pitfalls that could take us back into deficit spending. In these times of prosperity and budget surpluses, it is important for us to be very wise and fiscally conservative in making these choices—and we are going to make some choices very soon.

One of the first choices we have to make is: Are we going to use all of the Social Security surplus and most of the Medicare trust fund surplus to be applied to reducing the national debt? I can tell you the people in Florida believe very firmly that we should use the surplus to reduce and ultimately pay off the national debt. I think most of us, almost unanimously in this Chamber, would be dedicated to that particular part of budgetary restraint. We have the surpluses. We need to do that.

The next question that is going to face us, then, is: What should be the size of the tax cut?

I am going to argue and articulate about what my people have educated me, and that is to craft a Federal budget that will be balanced so we can have a substantial tax cut and, at the same time, we can address a number of other very important needs facing this country, such as modernizing Medicare, a 35-year-old system, to provide a guaranteed prescription drug benefit.

I will give another example: a substantial investment in education that will help bring down class sizes and pay teachers more to give them the respect they need in their profession and who ought to have the very best to compete with the private sector, so that we have the very best teaching for our children; an investment in education that will also enable us to make the classrooms more safe and the schools safe.

In addition to lowering class sizes, paying teachers more, and making the schools safe, we should have our schools accountable for the product they produce. That is just another example.

Clearly, defense is another important priority: the new systems we are going to need, the research and development that will be needed. Indeed, what is one of the main reasons for having a National Government? It is to provide for the common defense, not even speaking about the question of pay for our men and women in our armed forces.

I have only listed three, and there are many more. I mentioned prescription drugs, education, and defense, all being needs in which, over the next decade, this Government is going to have to invest more.

The question is: With the available surplus, after we subtract the Social Security surplus and the Medicare trust fund surplus, with what is left, what is wise for us then to enact in a tax cut? Should it be the tax cut that is proposed by the administration which, after one considers the interest cost and the alternative minimum tax, is going to be in the range of a $2.2 trillion tax cut over a decade? What that would do is wipe out all of the available remaining surplus over the next decade so there would not be anything left for prescription drugs, education,

defense, strengthening Social Security, the environment, and I could go on and on.

What I argue in my maiden speech in this august body, of which I am so privileged to be a part, is that we approach our budget with balance, that we keep in mind primarily paying down the national debt with the surplus, and that as we make choices, we make them wisely on a substantial tax cut, but a tax cut that leaves enough of the surplus left to do these other things; plus one more thing, and that is, we need a rainy day fund.

We do not know that these budget projections are going to pan out over the course of the next 10 years. We ought to have a cushion. We ought to be conservative in our fiscal planning so that if those budget projections do not turn out to be accurate, then we have a cushion to fall back on so we never get back into the situation we were in during the decade of the eighties when, in 1981, we enacted a tax cut that was so large—and I voted for it; I admit I am gun shy on this because of the lessons I learned—we had to undo it not once but three times, in 1983, 1986, and again in 1990 when I had the privilege of serving in the Congress.

I argue for balance, I argue for fiscal restraint, I argue for fiscal discipline, I argue for fiscal conservatism as we make these choices in the budget that we will be adopting over the next several months.

I thank the Chair.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. NELSON of Florida. Indeed, I yield with pleasure.

Mr. BYRD. Mr. President, I was sitting at my desk poring over my mail, watching for grammatical errors, errors in sentence construction, and, lo and behold, I heard this voice coming to me. I heard the voice saying this was a maiden speech, so I just stopped everything, and I said to the other staff people in the office: That man says this is his maiden speech. I am going to go up and listen to him.

This is a reminder to me of the old days when Senators gathered around close to hear a new Senator's maiden speech. The word would go out, and we came. We did not have the public address system. We gathered close by so that we could clearly understand the words that were being spoken, and we looked the speaker eye in the eye and he looked us eye in the eye.

This reminds me of those days when Senators gathered together to listen to a new Senator. This Senator has greatly impressed me. He serves on the Budget Committee with me. We are both newcomers on that committee. I have had the chance to talk on very few occasions with Senator NELSON. I have been impressed by his straightforwardness, his high sense of purpose in service. He comes to us from Florida. My wife and I lived in Florida for 7 months during the last days of the war—the Second World War, that is, not the Civil War.

I was a welder in the shipyard at the McClosky shipyard in Tampa. Spessard Holland was the Governor of the State of Florida. I later came to this body, and, lo and behold, here was Spessard Holland in this body. I went right over there, about the second or third seat in the front row, and I sat down and talked with Spessard Holland the day I was sworn in. I said: Well, Governor, I lived in your State. I was a welder down in your State while you were Governor. I am proud to be here serving with you.

Spessard Holland was a very fine Senator. He was always courteous to a fault and made up his own mind. I think this Senator from Florida will be one who will make up his own mind. That is something we need to be very careful of here. I do not count myself being in a particular ideological group of Senators. I am an independent Senator—not an Independent but an independent Democrat. Sometimes I differ with my other Democratic friends.

That is not the point here. I think we have a fine Senator in Senator NELSON who will be his own man, who will make up his own mind. He will study things carefully, and he will try to reach a reasoned, balanced—I use his word ''balanced'' there—disciplined—he used that word, too—judgment. I am proud we have such a man coming into the Senate. I predict he will be a power in the Senate, and I consider myself very fortunate in having the opportunity to serve with Senator NELSON.

I was trying to think of a bit of poetry that I wanted to recall for this particular occasion. But aside from that—I may get back to it later—I like what the Senator said. He intends to weigh very carefully this proposed tax cut which is in the nature of $1.6 trillion. That is $1,600 for every minute since Jesus Christ was born. That is a good way to gauge the size of this tax cut: $1,600 for every 60 seconds since the birth of our Lord Jesus Christ.

That is a lot of money, and I am going to weigh it very carefully with him. Yes, we need to think carefully about education. We also must remember that the 7 percent contribution we make to the education budgets in the States is not a great deal. And I am not sure how much good what we contribute really does. Probably, we will never be really sure.

But education is at the local level. We need good teachers, teachers who know the subjects, teachers who are dedicated. We need parents who will back up the teachers. And we need students who want to learn.

I was fortunate, coming up in the Great Depression, to have good teachers. They didn't make much money, and many times they had to give 20 to 25 percent of their check in order to get it cashed in the days of the Great Depression. But they were dedicated teachers.

I started out in a two-room schoolhouse; I am proud of it. I thank God for it. I thank God for the fact that I came through the Great Depression. It left some very vivid memories with me.

I was born in 1917, and so my recollections of the Great Depression are as they were only of yesterday. I remember that little two-room schoolhouse at Algonquin in Mercer County. And I remember a little two-room schoolhouse up on Nubbins Ridge where I attended. There were two teachers in that little school. One was a man; one was a lady. The man walked, I expect, 4 miles every morning to school. He came from far down the creek, and he came up, walked by my house, and I fell in line when he came by the house, and I walked on to school with him.

I learned in those days. My heroes were the great patriots of the American Revolution. And they were men such as George Washington, Benjamin Franklin, Francis Marion, the ''Swamp Fox,'' Daniel Morgan, and men who lived during the formation of this Republic.

Now, I wanted to learn. And the man who raised me never told me he would ever go up and whip the teacher if I came home with a bad report card. He wouldn't go up. And if the teacher gave me a whipping—which he didn't—I was told that I would get another one when I got home. And I knew that was the case.

I wanted to please the two old people who raised me. They were not my father and mother, but I wanted to please them. I wanted to please the teacher, just to get a pat on the back, just to get a little pat on the top of my head from the teacher.

I remember I took violin lessons beginning in the seventh grade. And at this particular school—it was in a coal mining camp—the principal was a tough disciplinarian, the kind we need in our schools, if they would let teachers discipline children. I don't think they will let them do that anymore. Too bad.

But the principal's wife was a music teacher, and an excellent one. She talked me into asking the people who raised me if they would buy a violin for me so I could take music lessons. She thought I might grow up to be a violinist.

So I remember one Saturday night when we all piled into the back of a big truck and went to Beckley 10 or 12 miles away. And there—I always called him my dad; he was the only dad I ever knew—he bought a violin and a case and a fiddle bow. Now I am talking about a fiddle, but it is all the same thing. But this whole kit and caboodle cost about $26 or $28. That was big money in a coal camp.

Anyhow, I went home that night carrying that fiddle case under my arm and with visions—old men dream dreams, and young men have visions—of myself being a Fritz Chrysler or a great violinist. Well, I took lessons. And in this high school orchestra, I was the first violinist. It so happens, I was the first violinist. I was the first one. I

got to the point where I thought I had all the lessons down pat, that I didn't have to practice as hard anymore.

So one day I went to school, and the teacher had a little tryout. And lo and behold, she demoted me to the second chair. I went home a crushed lad, crushed because I had been demoted. I liked that music teacher. In all my years of 83, I have lost I think four teeth. It was on one of those occasions when I had an abscessed tooth that this music teacher said to her husband: Now, you take this boy to Sophia. That was 3 miles away. This was in the wintertime. It was up a steep mountain. She said: You take him up to the dentist. And he took me.

I was crushed that night because I had been demoted. But it was my fault. I got just a little too overly confident. So that night I practiced and I practiced and I practiced and I practiced; and the next day I recovered my first chair in that orchestra. Those are the kinds of teachers we had.

We can put all the money we want into education, but the teachers have to be dedicated teachers. I had dedicated. They didn't make much money. As I say, they had to give a fourth or a fifth of it away in order to get a check cashed in the days of the Depression. But we can't pay enough money to a good teacher. And it is very disappointing to me when I see athletes draw down millions of dollars every year. Of course, I admire good athletes, but I think this country has gone all wild over athletes, and it is standing its values on its head. A lot of these athletes go out here and they commit crimes. They are not very good models. Of course, there are people outside athletics who are not good models, too. There have been a few in politics, especially in recent years, perhaps not altogether recent years.

Look at some of the anchors on the TV from the networks. They are drawing down $5 million, $6 million, $7 million, $8 million a year. They aren't worth it. They aren't worth it.

But we need to stimulate a love and a search for excellence in this country. Most of that can be done, most of the stimulation of that, the motivation of that; some of it will come from within; some of it starts in here. But it also comes from a good teacher, a good parent, who sets the example for that young person and encourages them to study, and study, and make something out of themselves—to use the words of my own people who raised me, try to make something out of themselves, try to continue learning.

I try to continue learning. I am always trying to learn. Solon, one of the seven wise men of Greece, said: ''I grow old in the pursuit of learning.''

We can pour out all the money from the Treasury, but it can be poured down a rat hole. The motivation has to be there. The good teacher has to be there. We ought to pay those good teachers. After all, they are dealing with our most precious resource. They ought to be paid well. But they ought to be held accountable for the work they do. And the parents, as I say, ought to strive to stimulate in the child a motivation, a desire to learn, learn, learn.

I have gone a long way in my desultory ramblings here, but this matter of education is one that is overly, overly, overly important. As I often say to young people, no ball game ever changed the course of history, not one. And when you have seen one, you have seen them all. When you have seen one ball game, you have seen them all.

I can play every position on the team. I can go through all the motions. I don't say this now in derogation of athletics. I don't do that at all. But we have our values standing on their heads. We have a job to do. We do need to think about education, as we think about the so-called surpluses. These surpluses, I have seen them on paper. I haven't seen one yet that really glitters because we don't have them in hand, and we may never have them in hand. If we go for this big tax cut, $1.6 trillion, once we write that law and the President signs it, that money goes out. It is gone. The surpluses won't be in hand, if ever, for some years. It will take a while. So we need to proceed with great caution.

I hope the Senator will forgive me for imposing on his time. I felt so proud to see Senator NELSON come to the floor. I have lived more than 83 years. I have been fooled by a few people in my lifetime.

My mom used to keep boarders, and I would go to her when we had a new boarder, and I would say: Mom, that man is going to cheat you out of your board payment.

I didn't do that often, but I think I was about right in every one I selected. That man will cheat you out of your board bill; there is something about him.

I think there is something about this man. In any case, he is going to be a good Senator, a hard-working one. I am proud to listen to him in his maiden speech, and I am delighted to work with him. I thank him for what he has said today.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Colorado is recognized.

Mr. REID. Will the Senator yield for a brief comment?

Mr. ALLARD. I am glad to yield.

Mr. REID. I also appreciate having had the opportunity to listen to the Senator from Florida. We served in the House together. He is just as good as the Senator from West Virginia expects him to be.

It is a rare occasion that we have on the Senate floor two doctors: the doctor from Colorado and the Presiding Officer who is a doctor. They are both doctors of veterinary medicine. I think we should recognize the fact that they are and recognize that their talents are far beyond their medical training. It is unusual to have two doctors on the floor at the same time.

I yield the floor to the Senator from Colorado and recognize that my friend, the Presiding Officer, is also a doctor of veterinary medicine.

Mr. BYRD. Will the distinguished Senator yield to me briefly?

Mr. ALLARD. I am glad to yield to the Senator from West Virginia.

Mr. BYRD. I did not know that Senator ALLARD was a doctor. He has gone up in stature with me since I have learned that. I have a little dog, a little Maltese dog, Billy Byrd. He is approaching his 14th birthday. If I ever saw in this world anything that was made by the Creator's hand that is more dedicated, more true, more undeviant, more faithful than this little dog, I am at a loss to state what it is. I take my hat off. My wife and I pay some pretty high bills to some of these veterinarians, but we gladly pay them. We love that little dog. I take my hat off. I wish I could say that I had been a veterinarian. It must be a joy to work with animals, especially with dogs. I believe it was Truman who said: If you want a friend in Washington, buy a dog. Well, I have a friend in McLean, and I take my hat off to the veterinarians, the two of them, the one in the Chair as well. I am glad we have two here. I did not know this about Senator ALLARD. I have served with him a while. I am pleased to hear this.

Thank you for the services you perform on creatures that make us happy and that show us God's love and show us how to be honest and true and faithful and guileless.

Mr. NELSON of Florida. Will the Senator further yield?

Mr. ALLARD. I thank the Senator from West Virginia, as well as the Senator from Nevada, and in a moment I will recognize the Senator from Florida to comment, too.

I want to invite all of you to join the veterinary caucus with all the favorable comments we are getting here. Before I yield to the Senator from Florida, I want to respond that Senator GREGG has a dog by the name of Wags, and Wags comes down the hallway and frequently comes into my office to say hello. We visit with him a little bit. If your dog is ever visiting you in your office, bring him down. We love dogs and would like to have an opportunity to get to know Senator BYRD's dog.

I yield to the Senator from Florida.

Mr. NELSON of Florida. I thank the distinguished Senator for yielding for me to make the comment that it is not only a great privilege to serve here and to represent my State, but it is doubly a pleasure to serve with the quality of Members of this body as exemplified by the senior Senator from West Virginia. He is someone I have naturally gravitated to in these first few weeks as someone from whom I can learn a lot. Of course, I knew of his tremendous talents as one of the best orators who has ever been produced in the Senate. His reputation precedes him as one of the best fiddlers the Nation has ever produced, and now I am delighted to

know how he got started as an expert fiddler by virtue of the story he told us of receiving the gift of a violin as a child.

I thank the Senator for his comments, and I thank the Senator for yielding.

Mr. ALLARD. I would also like to join with the Senator in commending Senator BYRD for his distinguished service in the Senate. We all respect him. Whether we agree with him or not, he is one of the more honorable Members here, somebody I appreciate. He has joined on the Budget Committee; I am new on the Budget Committee. I am looking forward to visiting with him about those issues as they come up before the Budget Committee. I think it is going to be a challenging year, and it is an important committee. It is an important start for the Congress.

Hopefully, we will get some legislation quickly reported out of there, as we get the process moving forward.

Again, I am glad we have all these animal lovers here in the Senate. I talked to Senator ENSIGN, who is in the Chair, about facetiously setting up a veterinary caucus. With all these comments, I begin to take it more seriously. We would like to perhaps extend an invitation to all the dog lovers here in the Senate, to see if they would like to join us.

Mr. BYRD. I thank the Senator.

## NOMINATION OF JOHN ASHCROFT

Mr. ALLARD. Mr. President, I come to the floor this evening to lend my support to President Bush's nomination of John Ashcroft to be the next United States Attorney General. He is another individual in the Senate whom I have always viewed as quite honorable.

It is the constitutional right and duty of each President to appoint Cabinet Members who will help serve the citizens of this great country during their tenure. I believe President Bush has made a wise choice in John Ashcroft as a member of his Cabinet.

John Ashcroft is a man of great honor and high personal integrity. He will bring these much needed characteristics to the office of the U.S. Attorney General. I have no doubt about that. He has had a long and distinguished career serving the people of Missouri and the people of the United States. I am confident he has the experience to fulfill the duties of this position.

Those who defended President Clinton to the death are now attacking one of the most honorable individuals of the Senate as less than honorable. This was most evident by Senator Ashcroft's gracious concession to his opponent in his Senate race in Missouri.

John Ashcroft served as Missouri's attorney general from 1976 to 1985, where he worked tirelessly to enforce Missouri State laws and chaired the National Association of Attorneys General; having been supported in that position, I might add, by both Democrats and Republicans. After serving his home State as their top law enforcement agent, he was elected as Missouri's 50th Governor in 1984. He was reelected in 1988 to a second term, where he received 64 percent of the vote.

It was during his second term that he was recognized as a leader among his colleagues and was named chairman of the National Governors' Association. Again, he was supported by both Democrats and Republicans.

In 1994, John Ashcroft was elected by the people of Missouri, this time to serve his State in the U.S. Senate. While serving in the Senate, Senator John Ashcroft was a member of the Judiciary Committee as well as chairman of the Judiciary Subcommittee on the Constitution. His record has shown a strong commitment to upholding the Constitution and the rule of law equally and fairly.

Throughout this grueling nomination process, Members on the other side of the aisle have questioned John Ashcroft and, in some cases, even accused him of allowing race to affect his decision on judicial nominees.

There is absolutely no evidence that backs up these absurd allegations.

Let me remind Members of this body that as a United States Senator John Ashcroft supported 26 of 28 African American Judicial nominees sent to the Senate for confirmation by the President.

As the Governor of Missouri, John Ashcroft nominated eight African American judges, including the first ever to the court of appeals in the state. He appointed three African American members to his cabinet while he was the chief executive of the state of Missouri. He supported and signed into law Missouri's Martin Luther King, Jr. holiday. He supported and signed the law that established Scott Joplin's house as the first and only historic site honoring an African American citizen. He led the fight to save independent Lincoln University, founded by African American soldiers.

He established an award, emphasizing academic excellence, in the name of George Washington Carver. I believe John Ashcroft wants equal opportunity extended to all.

Over the last few weeks we have heard from a number of people who have questioned the nomination of John Ashcroft. I would like to take a few moments to mention some of the groups who have endorsed the nominee for Attorney General:

National District Attorney's Association, Fraternal Order of Police, International Brotherhood of Police Officers, Law Enforcement Alliance of America, National Sheriffs Association, Missouri Police Chiefs of Police, National Victims Constitutional Amendment Network, Victims of Crime United, Citizens for Law and Order, Justice for Homicide Victims, Justice for Murder Victims, National Organization of Parents of Murdered Children, National Association of Manufacturers, United States of Commerce, Associated Builders and Contractors, American Farm Bureau Federation, and the American Insurance Association.

I could go on and on and continue to name a total of some 263 groups that have voiced their support for John Ashcroft to be the next Attorney General.

John Ashcroft is clearly qualified for the job of U.S. Attorney General.

He understands what is expected of the office. During his hearings he summed up his duties in one statement:

> My responsibility is to uphold the acts of the legislative branch of this government and I would do so and continue to do so in regard to the cases that now exist and further enactments of the Congress.

John Ashcroft is a man of unquestionably high character and morals who has the knowledge and experience to serve our Nation with justice and excellence as our Nation's next Attorney General.

Thank you Mr. President, I yield the floor.

Mr. HUTCHINSON. Mr. President, I want to take just 1 minute to say a word of commendation for my colleague, John Ashcroft. As the Judiciary Committee, at this very hour, prepares to meet for a vote on his confirmation, I say that this man of honor and integrity has gone through an unprecedented ordeal in his desire to serve this country as Attorney General.

I cannot imagine any person who comes to that position with greater qualifications or a greater sense of integrity. I do not believe my colleagues on either side of the aisle would question this man's commitment nor his faith. In fact, I suggest no one would argue but that he is the man of deepest faith in this body, and yet that very faith commitment has been turned on its head to make it an issue against his confirmation. I find that astounding and very disappointing.

The fact that people would ask, can John Ashcroft enforce the laws because of his religion and his faith—John had the best answer to it when he said before the Judiciary Committee: I will enforce the laws of this land because of my faith. As someone who shares much of the same faith as John Ashcroft, I can relate to and understand exactly what John is saying.

Though he may hold deep convictions—and he may or may not agree with all the laws of this land—it is because of his deep faith that he knows he must enforce the laws of this land—and will.

Who in this body would question his sincerity or his honesty? And as he stood before the Judiciary Committee, and sat before that Judiciary Committee, and took that oath to tell the

truth, and said he would enforce the laws of this land—whether he agreed with them or not—who would we be and which of my colleagues would dare question his sincerity or his honesty?

It was interesting to me, as you look back historically at how we have previously confirmed Democrat nominees for the Cabinet, overwhelming votes, without filibusters, and without delay, here is a quote about the nomination process worth repeating:

> We must always take our advice and consent responsibilities seriously because they are among the most sacred. But, I think most senators will agree that the standard we apply in the case of executive branch appointments is not as stringent as that for judicial nominees. The president should get to pick his own team. Unless the nominee is incompetent or some other major ethical or investigative problem arises in the course of our carrying out our duties, then the president gets the benefit of the doubt.

That statement was made by Senator LEAHY. He laid down the right standard. He is right. The President should be able to pick his own team. I hope my colleagues recognize that and will support the confirmation of our distinguished colleague from Missouri, Senator John Ashcroft.

Mr. President, I thank you and yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. MURRAY. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY. Mr. President, I rise this evening to speak about the nomination of Senator John Ashcroft to serve as Attorney General. I want to be very clear. I did not seek this debate. I think it is unfortunate that this new Senate has to address such a difficult and contentious nomination that opens up old history and old wounds and old debates, rather than moving forward on issues that unite our country.

I do not relish the role of opposing a new President's nominee for Attorney General. In fact, quite to the contrary. I believe a new President should be able to fill his Cabinet with the people he wants. Unfortunately, this is not something over which I have control. President Bush picked Senator Ashcroft and in doing so he brought this conflict upon himself and he must accept responsibility for that decision.

Senator Ashcroft, too, must accept responsibility for his actions, especially those that have raised doubts about his ability to serve as Attorney General. I did not seek this conflict, but under the U.S. Constitution the Senate is called upon to provide advice and consent on Cabinet appointments, and I take that responsibility seriously.

I do want to point out that I and all of my colleagues took great care to treat John Ashcroft carefully. In fact, throughout the debate over Senator John Ashcroft's nomination I have said that I would only make a decision after Senator Ashcroft had a full and fair hearing. That is what fairness requires.

Senator Ashcroft had an opportunity to respond to questions before the Senate Judiciary Committee. I reviewed the testimony thoroughly and then I reached my decision. I want to share with my colleagues and the people I represent how I reached the conclusion that Senator Ashcroft should not serve as Attorney General.

First, I considered the unique responsibility and trust placed in an Attorney General. Far more than any other Cabinet officer, the Attorney General of the United States has the power to affect the rights and the lives of all Americans. For that reason, this nominee must be chosen with great care.

I can tell you I spent many days and several long nights thinking about qualities I would want to see in an Attorney General. In addition to being honest and independent, that person must actively enforce the laws and ensure the public's confidence in our legal system. The Attorney General must also display the highest standards of fairness, trust, and respect for the law. I developed those standards and then I looked at Senator Ashcroft's statements in the RECORD.

As I have looked at the facts, it seems clear that, in his hearing, he obscured his record and did not prove to me that he is qualified to be Attorney General.

As I said, I have taken great care to ensure that John Ashcroft had a fair opportunity to respond to the questions raised about his nomination. Unfortunately, Senator Ashcroft did not extend that same standard of fairness to Judge Ronnie White, and fairness is one of the critical qualities needed in an Attorney General.

In the case of Ronnie White, Senator Ashcroft leveled serious charges against a respected jurist. Through Senator Ashcroft's timing and maneuvering, Judge White was never asked about those charges. Judge White was never even given an opportunity to defend himself, and that is fundamentally unfair.

In any Senator, such behavior is inappropriate and regrettable. In an Attorney General, such behavior can be dangerous.

Unfortunately, Ronnie White was not the only nominee that Senator Ashcroft, in his long tenure, has treated questionably. Senator Ashcroft's treatment of Ambassador James Hormel is also very troubling to me. At the time Senator Ashcroft said he opposed Mr. Hormel's selection to be Ambassador to Luxembourg because he actively promoted the gay lifestyle. More recently, however, we heard a different answer from John Ashcroft. He told the Senate Judiciary Committee that he voted against Mr. Hormel because he knew him personally. But Mr. Hormel has said that he never met Senator Ashcroft, and, further, that Senator Ashcroft had refused to even meet with him. In fact, John Ashcroft would not even attend the nomination hearing in the Foreign Relations Committee of which he was a member. His treatment of Mr. Hormel, and his varying and contradicted claims about the reason for his decision, give me great pause.

It would be easy to give Senator Ashcroft the benefit of the doubt if this were an isolated incident, but in addition to Ronnie White and James Hormel, Senator Ashcroft also treated Bill Lann Lee unfairly. As my colleagues will recall, Bill Lann Lee was nominated to be head of the Justice Department Civil Rights Division. In opposing Lee, Ashcroft said Lee had an intensity that belongs to advocacy, not the balance that belongs to administration.

It seems to me that Senator Ashcroft would not even pass his own test. Senator Ashcroft's treatment of Judge White, Ambassador James Hormel, Bill Lann Lee, and others does not show the level of fairness that an Attorney General must display. This is not how the U.S. attorney general should treat people.

Let me turn to the second standard I considered—trust. The Attorney General must be someone the American people can trust to vigorously protect their rights.

Citizens of this country should feel comfortable that the highest law enforcement officer of the land will ensure their basic liberties. Unfortunately, for far too many Americans, Senator Ashcroft's record creates fear, not trust. His appointment sends the wrong message to Americans who already face discrimination and unfair treatment in their daily lives.

Next I want to turn to integrity because Senator Ashcroft is often said to be a man of integrity, and I do not challenge his integrity, but I do ask this: If he is true to his beliefs, how can he vigorously enforce the laws he has vehemently opposed and sought to overturn throughout his public service?

His past history shows he does not believe in and has fought against the laws that strengthen gun safety, protect a woman's right to choose, and civil rights. I can only assume that a man who prides himself on his integrity would continue to advocate those views.

John Ashcroft is a man of uncommonly strong beliefs. Based on what I know of Senator Ashcroft, he has not convinced me that he can set aside those beliefs to execute fully the laws with which he disagrees.

I also considered Senator Ashcroft's willingness to enforce the law, especially those with which he disagreed. Because we are a nation of laws, the Attorney General must actively enforce our laws. This is an area where Senator Ashcroft has an extensive record.

Unfortunately, as Missouri's attorney general, John Ashcroft was selective in his application of the law. Often

he acted outside the scope of his office. For example, Senator Ashcroft refused several court orders to implement desegregation of public schools in St. Louis. In fact, one judge said of Senator Ashcroft's efforts representing Missouri:

> The State has, as a matter of deliberate policy, decided to defy the authority of this court.

The St. Louis desegregation case is the most troubling example of Senator Ashcroft's refusal to enforce the laws with which he disagreed.

Senator Ashcroft has also failed to convince me that he would actively enforce the laws that protect a woman's right to choose.

Finally, the Attorney General must be someone to whom all Americans can look as their advocate. President Bush has said he wants to unite our country, not divide it. This nomination, more than any I have ever seen, has divided our country and left many Americans wondering if their rights will be protected in the Bush administration.

I have received literally thousands of calls from a wide variety of citizens in my State asking me to oppose Senator Ashcroft's nomination, and they are not just saying oppose Ashcroft and hanging up. These are people who are telling me they have been following the debate and are really concerned that their rights will not be protected if John Ashcroft becomes Attorney General.

I want to say one more thing about the high level of public comment we have heard in recent weeks. Some claim that interest groups are to blame for John Ashcroft's problems. I disagree. No interest group made John Ashcroft mistreat Ronnie White or James Hormel or Bill Lann Lee. John Ashcroft did that himself, and he has to accept responsibility for his actions.

Those are the factors I considered: fairness, trust, ability to enforce the law, and ability to represent all Americans and to safeguard their rights.

I asked myself: Is John Ashcroft someone whom all Americans can trust to treat them fairly and to protect their rights? I have concluded he is not.

I will vote against John Ashcroft because he has not shown the fairness, the trust, or the respect of the law required in America's highest law enforcement officer.

Given the likelihood of his confirmation, I hope that John Ashcroft's actions in office will prove me wrong. Either way, I will hold President Bush accountable for his decision.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Alabama.

Mr. SESSIONS. Mr. President, President Bush's Cabinet nominees are the finest group of Cabinet nominees I believe we have seen in the last 100 years. They are extraordinary men and women of accomplishment and achievement. They are grownups. They are people who have a proven record of achievement, and I am proud of them.

John Ashcroft is a quality nominee. He is 59 years old. He served twice as attorney general of Missouri, twice as Governor, and he was elected to the Senate. He was five times elected to public office in the State of Missouri, a heartland State, a State that is always a bellwether for who will win the Presidency.

This is not a man who is an extremist. This is one of the finest, most decent men I have ever known. This is a man who tells the truth to a degree unusual in this Capital, and to have John Ashcroft accused of not telling the truth by the very same people who on this floor defended the former President of the United States, Bill Clinton, for bald-faced misrepresentations and lies he has finally admitted to making is stunning.

John Ashcroft is not that kind of person. John Ashcroft is a better person than that. He tells the truth. He does what is right. I have seen that aspect of his character exhibited time and time again on this floor. He is one of the most principled and decent Senators I have ever known.

As I told some friends of mine back home, I have not met a finer person in my church, in my State, or in Washington than John Ashcroft.

It is really disturbing to me to have Members of this body be encouraged and pushed by a group of hard-left activists to make statements that are demonstrably untrue. This is especially true when the people parroting these irresponsible statements were not present to observe the hearings that we had on this nomination. In fact, some who have announced their intentions to vote against John Ashcroft did not even wait for the Judiciary Committee hearings to begin before making their rush to judgment.

I am a member of the Judiciary Committee, and I was there when we had the hearings concerning this nomination. The committee gave everybody their say. We had representatives of Planned Parenthood, who oppose virtually any kind of control on abortion. We had representatives of the National Abortion Rights Action League as well. We also had a representative from Handgun Control who admitted to me that his organization never criticized the Clinton administration when they allowed prosecutions of gun crimes to drop 46 percent over the past eight years.

He never criticized the Clinton administration, not even one single time. Yet he has no problem launching attacks on Republicans who would not agree to support more and more regulation of innocent law-abiding citizens who want to possess guns. That is what the gun debate had become. Whatever bill you agree to pass, these groups want to put something more extreme out there so that it implicates the second amendment to a degree that is arguably unconstitutional, thereby giving them ammunition with which to attack the person who will not vote for it.

They never criticized the Clinton administration for not prosecuting gun cases even though Attorney General Reno allowed prosecutions to plummet 46 percent over the past eight years. Why was this group silent? If their agenda is truly one of concern about the criminal misuse of firearms, why were they willing to turn a blind eye to the Democratic administrations lax enforcement efforts?

The truth is that many of these activist groups are fundamentally arms of the Democratic National Committee, and they are leaders of the hard left in America. They think they can come in and dictate to the President of the United States that he cannot appoint a decent, exceptionally skilled, and fine individual as Attorney General of the United States.

John Ashcroft went to Yale. He graduated from the University of Chicago Law School.

He is a scholar. I have heard him make speeches that are extraordinarily fine in their analytical thought. He follows his principles to a degree that I think is unsurpassed here. So it is really surprising to me to hear these complaints raised about him.

Let's talk about one matter his opponents keep raising. I would like to stand here all night debunking the myths that the far left has attempted to construct, but for the moment I am just going to talk about a couple of them tonight. The Ronnie White matter is one of the first myths that the hard left is perpetuating.

Let's look at the facts. John Ashcroft voted for every single African American judicial nominee who came up for a vote on this floor except Ronnie White—26 out of 27. Ronnie White was opposed not only from his home State of Missouri by John Ashcroft, he was also opposed by KIT BOND, the senior Senator from Missouri. Both of the home State Senators opposed this nominee. Was this some sort of an extremist position? I mean, confirmation is a fact and we need to deal with the cases that come before us.

John made a speech on this floor indicating his opposition to that nomination. He voted against it in committee. I think it came up in committee on two different occasions and on both occasions he voted against it and expressed his opposition to the nominee. But, to his credit, he did let the nominee come to the floor for a final vote. He agreed to allow that to happen.

So now he has been accused of intentionally mistreating Ronnie White because he allowed the full Senate to consider the nomination, rather than attempting to quietly defeat the nomination in committee. Let me tell you, if you hold a nominee in committee—and I suppose Senator BOND and Senator Ashcroft could have kept that nominee in committee—the left would

have been attacking him now for not letting the White nomination come to a vote. I am telling you, that is what he would be accused of. I have been here on the floor, and I have seen that.

John made a speech delineating some of the reasons—which I am going to mention in a moment—that he opposed him. And 54 of the 100 Senators in this body voted no.

How is that an extreme matter? Why would they vote no? There were several reasons. Out of the 114 sheriffs in Missouri, 77 of them wrote in opposition to the White nomination. Incidentally, many of these sheriffs are Democrats. Additionally, the Mercer County District Attorney wrote a letter to John Ashcroft stating:

> Judge White's record is unmistakably anti-law enforcement, and we believe his nomination should be defeated. His rulings and dissenting opinions on capital cases and on fourth amendment issues should be disqualifying factors when considering his nomination.

You have heard another far left myth if you listened to the debate to date in that some opponents of John Ashcroft's nomination claim that John Ashcroft's members of the Supreme Court voted to dissent on criminal cases more frequently than Judge White. That is a very inaccurate statement. Let me tell you why. It is because apples are being compared to oranges. While the Ashcroft judge Mr. White replaced did vote against the imposition of the death penalty in a number of cases that Ashcroft nominee was voting on a series of cases that were not the same cases Judge White was ruling on when he was on the Supreme Court. He was ruling on a different group, with different facts and different legal questions involved. It is apples and oranges.

In order to place Judge White's death penalty dissents in proper perspective, it is necessary to compare Judge White's rulings to all the members of the court during the time Judge White sat on the court. When apples are compared to apples, it is clear that Judge White dissented four times more frequently than any other judge on that court.

That is a record that should be examined. That is a cause of concern. Some of Judge White's opinions that I have read cause me great concern because I was a Federal prosecutor for 15 years, and an attorney general for 2. I know some of the issues that come up with judges. I have spent by far the largest portion of my career in Federal court before Federal judges.

You have to understand something about Federal judges. They are appointed for life. They have absolute power in many instances in a trial, power that is unreviewable by any court. The most dramatic of these powers is the ability to grant a judgment of acquittal at the end of the prosecution's case.

For example, if you present a case against a defendant for murder, or some other fraud or crime, and the prosecution stands up at the end of its case and says, ''The prosecution rests,'' immediately now, these days, no matter what the evidence, the defense lawyer will stand up and make a motion for a judgment of acquittal.

Usually they are denied. Usually these motions are just hot air. They are just saying stuff for the record, frankly. Most prosecutors bring good, strong cases. So defense attorneys as a matter of routine move for a judgment of acquittal. If the judge grants that judgment of acquittal, it is the same as if a jury had acquitted that defendant. Jeopardy attaches. Under the Constitution of the United States, you cannot twice be held in jeopardy under the law. That defendant is acquitted, and he can never be tried again, no matter how guilty he or she may have been of the offenses charged.

So a Federal judge with a lifetime appointment in many ways is much more problematic for the system than one member of a seven-member supreme court. John Ashcroft, as a former State attorney general, understood that.

Federal judges also routinely overrule the entire criminal justice system of a State. You may say that is not routine. I suggest to you it is very frequent, and they are often asked to do so.

For example, if a case is appealed all the way to the Missouri Supreme Court, and the Missouri Supreme Court rules, then the defendant can file post-conviction relief in Federal court and ask the Federal court to review the State case to see if the Federal Constitution has been implicated and violated in some way that the defendant was tried.

So if you have a Federal judge on the bench who wants to let criminals go or is undisciplined in the responsibilities of his office in applying the law, or has demonstrated a bias against law enforcement officers, you can have a real problem.

In Alabama, people knew who the judges were who were always letting criminals go. It was not a secret. I am telling you, if you have a nominee come up from my State for a lifetime Federal judgeship, I am going to ensure—because I was an attorney general also—that they are going to give law enforcement a fair day in court, too. They are going give the prosecutor a fair chance to put on his or her case.

That is the way John Ashcroft felt about it. So imagine his concern when he realized that he had prosecutors in his State opposing the White nomination. He had a majority of the sheriffs in his state oppose this judge. He even received written opposition from national law enforcement organizations, such as the National Sheriffs Association, that wrote in and opposed this judicial nomination.

So, keeping these facts in mind, John looked at the record, and thoroughly examined a number of the opinions Judge White had issued which concerned these groups. And what he discovered, as he expressed in his floor speech at the time of the vote, is that Judge White had made a series of ''procriminal rulings''. The far left analyzes this as some sort of unwarranted attack upon Judge White's character, but it was not. It was simply a description of the opinions involved.

This is clear if one bothers to read the statement John made here on this floor. He was referring to his opinions. You can call them liberal opinions; you can call them bleeding heart opinions; you can call them anti-law-enforcement opinions. You can call them whatever you want to characterize them. But it is not disqualifying, in my opinion, to be Attorney General if you refer to a justice's opinions as procriminal when they continually rule in favor of criminal defendants.

One of the cases that caused the greatest disturbance was the Johnson case. In this case the defendant, Mr. Johnson, was involved in a domestic disturbance. The call went out to the sheriff's department. As so often happens, sheriff's deputies go out to those houses in response to a domestic call. These missions are considered to be perhaps the most risky and dangerous thing they do. In this case a deputy knocked on the door, and Johnson appears with a gun. As the deputy tried to get away, Johnson shot him in the back. The deputy fell to the ground, and Johnson walks over and puts a bullet through his forehead, execution style.

That is not enough to satisfy Johnson's blood lust, however. What does he do next? After murdering, in cold blood, a deputy doing his duty, Johnson goes out and tries to track down the sheriff. The sheriff isn't home. But the sheriff's wife is in the home, having a social gathering there—and with her own children about—and he shoots the wife five times through the window, killing her.

Then Johnson continues his rampage by tracking down two other deputy sheriffs and killing them.

This is one of the most horrible crimes I have seen.

At his trial, Johnson's defense lawyers suggest that because he served in Vietnam, the murders were the result of posttraumatic stress syndrome. The trial had all kinds of expert testimony and things of that nature to deal with this issue.

The defendant was caught, surrounded in a building, and surrendered. He made a detailed confession. I would say, as a prosecutor, it was a powerful demonstration of guilt beyond virtually any doubt that this defendant committed this crime.

The defense tried to say this guy thought he was in Vietnam. These were good defense lawyers, they had been award-winning criminal defense lawyers. All of them were highly skilled. So, on behalf of their client they claimed he had posttraumatic stress

syndrome. In light of the overwhelming evidence what else could they do? The murders were plain and simple. During the course of the trial, these lawyers made some representations that were not factually accurate, but which were not sufficiently egregious for the majority of the Missouri Supreme Court to find any error in their actions.

But Judge White felt differently. He concluded that the defense attorneys were incompetent, and that Johnson didn't get a fair trial. He also suggested that he wanted to apply an insanity theory that was different from established Missouri law. In fact, what White said was that if Johnson didn't meet the legal definition of insanity, he had something ''akin to madness.''

Two of the most significant criminal justice issues in America are the question of insanity and incompetent counsel. That is true because so many cases in our criminal justice system are like this case—the guilt is clear and overwhelming. So when they go and appoint a paid State attorney, a court-appointed attorney—by the way, in this case these attorneys were retained counsel, hired by this defendant or his family; he hired them; he wanted good attorneys—normally, the appeal goes forward dutifully after conviction because that is what a lawyer is expected to do. The State will pay for it. So they make an appeal and raise these issues on appeal.

When the guilt is overwhelming and the defendant did something violent such as this, what are the two issues you can raise? Ineffective assistance of counsel and insanity. And in this one opinion, Judge White showed clearly that he lacked judicial discipline. He lacked a comprehensive and clear understanding of the importance of a judge maintaining clear rules on insanity and incompetence of counsel. His dissent, if applied, would have completely destabilized the law in both of those areas for the State of Missouri.

Another big factor in cases is, even if the lawyer made a mistake and could in one sense be held to be incompetent, the judge must ask himself, on appeal, would that have had any likelihood of changing the outcome of the case. Certainly it would not have in this case, as the majority opinion clearly held.

There were a series of other cases such as this one that caused the former attorney general of the State of Missouri to wrestle with his conscience about whether or not he could approve this judge. He concluded he could not, that he ought to oppose him. By giving him a lifetime-appointed Federal judicial position, the danger would be great, and he should not be promoted with this kind of anti-law-enforcement record. So he made a statement to that effect on the floor, and 54 Senators agreed with him.

That is not disqualifying. That shows to me a man of courage, because he knew it would be a difficult matter, that many would disagree with him and he would probably be attacked. It showed the kind of courage that prosecutors have to have. It is not always a pleasant task to take on these cases. You have to do your duty, and John did in this case.

He did the right thing. Judge White's opinions are, in my opinion, outside the mainstream, and he should not have been confirmed—54 Senators agreed with this conclusion.

The far left has also made allegations about the Bill Lann Lee nomination, and they have been attacking Senator Ashcroft for his small role—they don't say small role—in the Bill Lann Lee matter.

Bill Lann Lee was nominated by the President for chief of the Civil Rights Division of the Department of Justice. He had been a career civil rights attorney, a good one, who had filed lawsuits all over the country. That had been his goal throughout life. He came at the office from that perspective.

That is not disqualifying. As a matter of fact, it could be a good quality. In fact, I consider it a good quality that he had litigated and had been active in the areas of law which he would be called upon to enforce.

Many of his cases, however, had obtained rulings or forced agencies he was suing into consent decrees that went beyond what I believe is justified under current Supreme Court law. In fact, in recent years the U.S. Supreme Court rendered an opinion called the Adarand opinion. It was a very important case. It clarified in many ways the issue concerning quotas and affirmative action programs in terms of what is legitimate and what is not. Basically, the Supreme Court held that the Government can't have quotas. It cannot say that you get this contract for highway work because of the color of your skin and you don't get it because of the color of your skin. The Government can have affirmative action programs; it can have action to encourage small businesses. It can do a lot of different things to encourage minorities to have the opportunity to compete. But it cannot, as a matter of American law and fundamental justice, say to one group or another: You can't get this contract because of the color of your skin.

We had a hearing on that in the Judiciary Committee. We had Mrs. Adarand, the wife of Mr. Adarand, testify how their business had been damaged by a quota system in Federal highway funding. She described that in some detail.

We had a lady, a Chinese American from San Francisco, who testified about her daughter who had studied very hard to get into a special advanced quality school in San Francisco for math and science, I believe. She met the test scores, and they were so excited. Then she got a letter saying they were not accepted.

This woman went down to the school's office and said: My daughter made this test score. I thought she would be accepted. Why wasn't she?

She said the man to whom she was speaking looked at her and said: She was rejected because there are too many Chinese enrolled already.

Even though her child qualified in every way, she was rejected because of her ethnic, racial background.

That is the kind of thing that is happening in America today. It is not a healthy thing. Adarand made clear that those kinds of things are not justified. Adarand holds that there is a presumption in the law that programs based on race, that favor one group or another based on their race, are unconstitutional and that they fail and cannot be enforced unless they pass a strict scrutiny test, which is a very high test.

Isn't that true? Isn't that what America is about? Equal opportunity for all, regardless of their race and background, color or creed or religion? Yes, that is what America is about. So this is a seminal case.

So Mr. Lee came up. It became a really important question as to whether or not he would follow this because his background, particularly in a lot of cases before Adarand was ruled on, was contrary to that. He said he thought Adarand was fine, he would follow it. But we questioned him in some detail about how he interpreted Adarand, and that was a matter that did not go well for Mr. Lee, in my opinion. It troubled the entire committee.

The precise questions dealt with the enforcement of Adarand. When asked to state the holding of Adarand—we asked him what he thought the holding of Adarand was—he testified that racial preference programs are permissible ''if conducted in a limited and measured manner.'' Racial preferences are permissible in America, he said, if conducted in a limited and measured manner.

But Adarand doesn't say that. That was the problem. Adarand says they are presumptively unconstitutional unless they pass strict scrutiny, some specific reason—normally, a clear bias that is being fixed by a post-adjudication order. But even when this was pointed out to Mr. Lee, he stayed with his expressed position. That was very troubling.

I liked Mr. Lee. I told him I liked him. But I was troubled that he was going to be chief of the Civil Rights Division in the Department of Justice, and he wasn't prepared to enforce plain rule, as I saw it, in the Adarand case.

Chairman HATCH, who is a constitutional scholar, was also troubled. He came and made a speech on this floor which had the quality of a Law Review article dissecting this important seminal case and Mr. Lee's responses to it. He voted no, the chairman of the Judiciary Committee, as did eight other members of the Judiciary Committee, of which I was a member. He failed in committee 9–9.

They blamed John Ashcroft as being a man who personally blocked this person from that high office. I don't think

that is right. I think that is wrong. That is deliberate distortion of what happened. Members of the committee who were there ought to have known better than to criticize John Ashcroft with regards to the Bill Lann Lee nomination. They should not repeat a false allegation, and they should correct their colleagues who may not know otherwise.

It was an honest, professional discussion of the law. It was an honest discussion of what ought to be done for Bill Lann Lee, and we concluded that his understanding of Adarand was different than what we understood Adarand to be and that he could not fulfill the very heart of his office's responsibility if he didn't understand the seminal case on preferences and quotas in America law, the Adarand case.

There are hundreds of Federal programs based on race in America. When asked if any of them would fall because of Adarand, Lee suggested maybe one. I think that is unlikely to be so as the law continues to develop in this area. I think we had a real problem there. That is why that matter was decided the way it was.

It certainly is unfair to say that this brilliant lawyer, this principled Senator, this public servant of over 25 years was somehow anti-Chinese-Americans because he voted against Bill Lann Lee. He voted for 26 out of 27 African American judges that the Clinton administration sent forward, objecting only to the one in his State where his sheriffs and police chiefs opposed him. Does that mean that he is anti-black? They are wrong. This is going too far. What is happening here is not right.

I was talking to a group, and I acknowledged that John was different from the rest of us. He doesn't drink, dance or smoke because of his dedication to his religious beliefs. He has been married to one wife, and he has a fine family. His personal life is conducted on the highest standard of decency and fairness. In many important ways, John Ashcroft is different from the rest of us. In many important ways, John Ashcroft is better than the rest of us.

He has appointed numerous African Americans to the bench in Missouri. He signed into law and supported the Martin Luther King birthday law in Missouri at a time when some didn't want to do that. His wife, a law professor herself, is teaching at the Howard University, a majority black college here in D.C. John has a clear record of fairness and justice.

It is wrong to allow a series of groups that are not answerable to the American people, that have hard-left agendas, to come in here and caricature his decisions as being somehow anti-civil rights because he voted against Bill Lann Lee; that he is somehow anti-black because he voted against this one judge. To make that kind of caricature of this good man and then ask us to vote against him based on that caricature is fundamentally wrong.

If you had heard the testimony and heard him answer and explain how he did this and other things in the hearing, you would agree, I believe, that he made a wonderful case for what he did. It was plausible and reasonable and principled and is not in any way extreme or outside the mainstream of American law.

Another far left myth is that John is against integration because he resisted massive Federal Court intervention in the State of Missouri's school systems.

Many of you have probably heard of the Kansas City case where a Federal judge imposed a tax and ordered a county commission to impose a tax to pay for the court's plan for education. John was the attorney general of the State of Missouri, the sovereign State of Missouri, that has a constitution that says what State school boards do, what State superintendents of education do, and how the system is set up. This Federal judge came in and ripped it all apart doing what he thought was just.

I am telling you, if the attorney general wants to defend his State, what is the matter with that? Who is in charge? Is he supposed to stand idly by and allow the court to do that?

Senator Danforth, one of the most respected Senators who has served in this body, is an Episcopal priest, and was attorney general before John. He opposed these court orders. His successor opposed these orders. The second successor to John Ashcroft, Jay Nixon—I was attorney general, and I knew Jay. Jay opposed those orders exceedingly vigorously. But that didn't stop a few of the Members of this body, Senators KENNEDY and HARKIN, from going to Missouri and having a fundraiser for Jay Nixon in his race for the Senate.

Let me repeat that. Senators KENNEDY and HARKIN held a political fundraiser for Jay Nixon after he opposed these court orders vigorously, yet somehow it was improper for then Attorney General Ashcroft to have opposed them as well.

This example is illustrative. Like the integration charge, all the charges made against John are trumped up. This is not fair. John Ashcroft was doing his duty as an attorney general. He favored school integration, and he has stated that unequivocally. He believes in integration, but he did not agree with the actions taken by the federal courts.

This is what was in one of the court orders that John Ashcroft resisted as attorney general of Missouri. It ordered the school system to have an 8-lane, 50-meter swimming pool, the biggest in the State, bigger than any of the universities' swimming pools; a 300-seat Greek amphitheater with a stage framed with white columns; a planetarium; greenhouses; a dust-free diesel mechanic shop—I worked in my dad's mechanic shop. It wasn't dust free. It didn't hurt me, I don't think—broadcast cable radio and TV studios; school animal rooms, including an indoor petting zoo; private nature trails; overseas trips for students; and a model United Nations with language translation.

The attorney general is supposed to sit by and let a Federal judge take over the whole State and issue these kinds of orders? Who is going to pay this $1.7 billion? The people of Missouri.

Who is this judge? How do judges get to do this? They have to be careful about this. You can't issue orders to remedy a past discrimination. You can't do that, but judges do it regularly. But many judges over reach. Many court rulings have over reached.

As attorney general, John Ashcroft thought it was his duty to defend Missouri as his predecessor and as his two successors did. That is not an extreme position.

This is second-guessing somebody and twisting it to make it sound as if he opposed integration, which he absolutely did not.

There are many more matters that have been charged. The responses to them are just as compelling. In fact, it is clear to me that the case against John Ashcroft totally collapsed in the hearings that we held. We gave everybody a chance to testify. John responded to all of them. He answered 400 questions propounded to him.

There is no case here that shows that he wouldn't be the finest kind of Attorney General. I am convinced that he will. I am convinced that he will be a great Attorney General.

As one who spent 15 years in the Department of Justice, I dearly love and I respect it from my deepest being. It has not been run well in the last 8 years. It really has not. Morale is not where it needs to be. They have not pursued cases effectively, in my view. For long, long periods of time, chief positions such as Criminal Division Chief have been left vacant. There has not been a focus and a leadership there, and it is desperately needed. More than anybody I know, John Ashcroft can fill that role with integrity, with fairness, and with justice to restore the concept of equal justice under the law, even if it means denying pardons to millionaire fugitives who won't come back to face the medicine.

He would never have approved a pardon for that kind of case. That kind of stuff is rotten to the core. The same people in this body who have defended, excused, and apologized for lies, for unprincipled operation of the Department of Justice, or for former President Clinton's subversion of the law, now see fit to attack a man of character and decency. This is tragic, and it speaks volumes about John's opponents.

He is going to be confirmed, because my colleagues know the truth about John Ashcroft. He will be a good Attorney General. Members of this Senate in opposition to this nomination ought to reevaluate their conscience about how they have handled this case. I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

## ELIMINATING FEDERAL BARRIERS

Mr. HUTCHINSON. Mr. President, I rise to enthusiastically applaud George W. Bush's community and faith-based initiative which he announced yesterday and is emphasizing and talking about this week. It is a very exciting prospect that we have a President who recognizes the vast untapped potential of the charitable and faith-based sector and who wants to rally what he calls the ''armies of compassion'' to solve the deeper social problems and the deeper social challenges we face in this Nation.

The government can do many things. Some of those things it does well, but there are many things government cannot do. It cannot put hope in our hearts or a sense of purpose in our lives. This is done by churches, synagogues, mosques, and charities that warm the cold of life. It is done by the faith-based sector in our society.

I am pleased the President has established the Office of Faith-Based and Community Initiatives. By creating this office, we now will have a clearinghouse in the executive branch to point up where we have legislative and administrative barriers that have been erected to make it more difficult for people to encourage and support these faith-based initiatives. It will identify such problems in Federal rules, practices, and regulatory and statutory barriers in order that we might find relief and coordinate new Federal initiatives to empower and partner with faith-based and community problem solvers.

As he rolled out this plan—some of it, I am sure, is going to be controversial, and that is where the media would like to focus—much of what the President has rolled out makes common sense if we go beyond welfare reform, passed a few years ago and signed by President Clinton. Welfare reform has had a dramatic impact. We have seen the welfare roles decline by half across the Nation. All of us involved in the effort understood that was but the first step, and if we were ultimately to get to the deeper problems in a welfare culture, if we were going to deal with the problems of drug dependency, if we were going to deal with the high rate of recidivism in our prisons that we had to embrace, we had to involve the faith-based sector.

The President has suggested we should expand private giving, we should grant a charitable deduction for nonitemizers. The Federal charitable deduction, under the President's plan, will be expanded to 80 million taxpayers. Seventy percent of all filers do not itemize, and thus currently cannot claim this benefit. This initiative will spark billions of dollars in new donations to charitable organizations. He has suggested that we should promote corporate in-kind donations. The administration seeks to limit the liability of corporations that in good faith donate equipment, facilities, vehicles, or aircraft to charitable organizations, thus enhancing the ability of these organizations to serve neighborhoods and families. That, I say to my colleagues, is common sense. It should not be controversial. He suggested that we permit charitable contributions from IRAs without penalty. Under current law, withdrawals from IRAs are subject to income tax. This creates a disincentive for retirees to contribute some or all of their IRA funds to charity.

President Bush supports legislation that would permit individuals, over the age of 59, to contribute IRA funds to charities without having to pay income tax on their gifts. He promotes a charitable State tax credit. He supports raising the cap on corporate charitable deductions and creating a compassion capital fund.

All of these are a simple means in which we can use the Tax Code to encourage donations to the faith-based and charitable sector and unleash this vast source of energy to help solve these very deep-rooted problems that we have in our society.

Among the new approaches, he suggests action that would help the children of prisoners, improving inmate rehabilitation, providing second chance maternity group homes, and more afterschool opportunities.

I want to tell one such story from the State of Arkansas that I believe the President's initiatives will assist. We had a wonderful organization started in Little Rock, AR, called PARK. It stands for Positive Atmosphere Reaches Kids. It was established by someone whose name will be familiar to football fans across this country. It was established by Keith Jackson. Keith was raised in a single parent household in a low-income neighborhood of Little Rock. He held steadfast to his course of finishing high school, playing football, and ultimately graduating from college. Unfortunately for us, he played football for the University of Oklahoma. But he went on to the NFL where he had a stellar career. He returned to Little Rock with this burden to help underprivileged children in Little Rock.

This is what he said in 1989. He said, while watching an evening newscast, he was struck by the number of stories involving teenagers and violent crime. He said: It seemed like every story was about a kid getting shot or robbing a liquor store or being in a gang fight. It really hit me for the first time that somebody had to do something to stop this. What we are doing now isn't working.

He said the Government programs, as many and as well motivated as they were, were not doing the job. He established PARK. It is a wonderful program. It is an afterschool program. From September through May, the program operates 4 days a week. Kids ride schoolbuses to PARK. When they arrive, they eat a nutritious snack. They participate in the required academic program which requires homework, tutoring, reading or research in the library, working in the computer lab that is equipped with software designed to enhance skills in reading, math, and language arts.

Volunteer tutors and mentors come in. After they spend the hour doing the academics, they then get to enjoy the recreation. They have a skating rink, a weight room, basketball courts, racquetball courts, and an arcade. Some kids may go so they can be involved in the recreation, but they first have to do the academic work. They have a summer program. They have a community service program. They emphasize parental involvement.

When school is over, the buses take the kids to PARK, where they enjoy an extra hour of academic emphasis. Then they have the recreation. They have a nutritious snack. They have parental involvement. They have mentors and tutors. And they have a college prep program. All of this is done without one red cent of Government money. It is all from donations. It is all from foundations; not any Government assistance.

Why shouldn't we make it easier for people who believe in programs such as PARK to be able to give and contribute and have a tax incentive to do that? I simply applaud President Bush for seeing this need and for stepping forward and being willing to take some of the barbed attacks he has faced, and will continue to face, for this initiative because it is sorely needed.

I want to tell one more example. Here in Washington, DC, a group of Hill staffers, a few years ago, saw the need of children in disadvantaged homes in the District of Columbia, where many of them did not have the same educational opportunities as children from more affluent homes. They went out and they started a school called Cornerstone. They started it on a shoestring. They had no great resources. They had no great endowment. They had no great foundation. All they had was a vision and a dream. They are Hill staffers. They have started a school that is now serving scores of young people here in the District of Columbia. While we may argue about vouchers, we surely should not argue about making it easier for people to support faith-based initiatives such as Cornerstone.

## DEMOCRATIC COMMITTEE MEMBERS

Mr. DASCHLE. Mr. President, the following is our completed list of Democratic members of the Energy Committee: Senators BINGAMAN, AKAKA, DORGAN, GRAHAM, WYDEN, JOHNSON, LANDRIEU, BAYH, FEINSTEIN, SCHUMER, and CANTWELL.

## NOMINATIONS

### TOMMY G. THOMPSON TO BE SECRETARY OF HEALTH AND HUMAN SERVICES

Mr. CONRAD. Mr. President, I supported Governor Tommy G. Thompson's nomination to be Secretary of Health and Human Services (HHS) because he is a proven leader in reforming welfare, health care, and other important social policies.

As the steward of the Department of Health and Human Services, he will be involved in managing more than 300 separate programs and the largest budget of any cabinet agency, more than $400 billion per year. In this position, it is my hope that he will make providing affordable, universal prescription drug coverage to every Medicare beneficiary, and reforming the Medicare program to ensure its long-term fiscal solvency at the top of his agenda.

Also, I would hope that under his leadership, HHS will take an active role in working to address continued funding and access shortfalls in the rural health care system, particularly as they relate to Medicare reform. This is especially important in my state of North Dakota, where health care providers are struggling to offer quality services to seniors living in rural areas. In addition, we know that Governor Thompson has fought hard to expand health care coverage for low-income parents and children in the state of Wisconsin. It is my hope that he will continue this effort at the federal level, with a firm commitment to retaining a strong federal role in important programs such as Medicaid and the State-Children's Health Insurance Program.

I look forward to working with Governor Thompson in the coming years to improve health care and income security for all Americans.

### CONFIRMATION OF MEL MARTINEZ

Mr. CONRAD. Mr. President, I supported Mel Martinez as Secretary of the Department of Housing and Urban Development. I believe that Mr. Martinez will contribute both his knowledge of housing policy and personal experience toward increasing home ownership among all Americans. During his confirmation hearing, Mr. Martinez said that he knows the value of home ownership, because he has witnessed its great power throughout his entire life. It is true that the foundation of community involvement and prosperity is built upon home ownership, which is a critical element of the American Dream.

I am pleased that Mr. Martinez has voiced his support for the President's proposal to provide $1.7 billion in tax credits over five years to build and renovate single-family homes in poor communities and to allocate another $1 billion in tax credits to assist up to 650,000 families attain their dreams of becoming homeowners.

Having emigrated to the United States at the age of 15 and successfully risen to the post of Chairman of Orange County, Florida, Mr. Martinez has proved his mettle and displayed his commitment to public service. I look forward to working with Mr. Martinez in his capacity as our nation's newest Secretary of Housing and Urban Development.

### NORMAN MINETA TO BE SECRETARY OF TRANSPORTATION

Mr. CONRAD. Mr. President, I was very pleased to support the nomination of Norman Mineta to be Secretary of Transportation.

Mr. Mineta has had a long and distinguished career in public service. Most recently, he served with distinction as Secretary of Commerce. Before that, he served for many years in the House of Representatives, where he rose to become Chairman of the Transportation Committee. With that background, Mr. Mineta could not be better prepared for the challenges he will face.

One of this country's great competitive advantages in the global economy has been our transportation infrastructure, which allows us to move raw materials to processing plants and finished products to markets around the world with great efficiency. However, our infrastructure is starting to show its age. Our roads and airports, in particular, are increasingly congested, and delays are costing our economy tens of billions of dollars annually. In recent years, the Congress has dramatically increased our national commitment to highway and airport funding to make sure our infrastructure is up to the standards and challenges of the twenty-first century. Our next Secretary of Transportation will have the important task of implementing these legislative initiatives as well as helping to negotiate the next highway bill.

As he takes on these challenges, I hope Secretary Mineta will keep in mind some of the concerns of primarily rural states like North Dakota. In my state, Essential Air Service is critically important to preserving air service to mid-size communities and helping to foster economic development in those communities. More generally, federal funding is essential to maintaining the hundreds of miles of highways that bridge the distances between population centers. Finally, I had the opportunity to talk with Mr. Mineta the other day about the unique situation in the Devils Lake region in my state and the need to come up with an innovative solution that will maintain the road network in the face of continued flooding of Devils Lake.

I look forward to working with Secretary Mineta on these many issues and wish him well in his new position.

## FH CHARITABLE CONTRIBUTIONS

Mrs. HUTCHISON. Mr. President, later today I plan to introduce legislation that will be a very important part of our tax bill and also part of the effort to encourage people to give more to charitable institutions. This bill was passed by Congress last session, and it was vetoed by the President. Senator DURBIN and I are going to reintroduce it. It is the IRA charity rollover bill.

It will allow simply anyone 59½ or older to take money from their IRA that they find they do not need for the lifestyle in which they wish to live in retirement and give it directly to charity without having to pay taxes on it. This will give more money to the charity, it will allow that person to choose where his or her money will go, and it will certainly continue to encourage people to save for their retirement security. It will also give them flexibility, an option, if they have saved in good faith and find they now can be more generous and would like to help the charity of their choice.

The charity IRA rollover bill will be introduced by Senator DURBIN and myself this afternoon. I am very pleased it also is going to be part of President Bush's tax package. Now I know that when we pass this bill, it will be signed by the President.

## TRIBUTE TO ALAN CRANSTON

Mr. CLELAND. Mr. President, for the information of all Senators, I am being joined by former Senator Alan Simpson and my distinguished colleagues, Senators BOXER, FEINSTEIN, KENNEDY and ROCKEFELLER, in sponsoring a Memorial Tribute to our former colleague and my dear friend, Alan Cranston, who passed away on New Year's Eve 2000. The tribute will be held on Tuesday, February 6, 2001, at 2 p.m. in Room 902 of the Hart Building. I invite and encourage all Senators to join us for this celebration of Alan's life of service to the people of our country.

## BUDGET SCOREKEEPING REPORT

Mr. DOMENICI. Mr. President, I hereby submit to the Senate the budget scorekeeping report prepared by the Congressional Budget Office under Section 308(b) and in aid of Section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the First Concurrent Resolution on the Budget for 1986.

This report shows the effects of congressional action on the 2001 budget through January 24, 2001. The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of the 2001 Concurrent Resolution on the Budget (H. Con. Res. 290).

The estimates show that current level spending is above the budget resolution by $33.9 billion in budget authority and by $21.8 billion in outlays. Current level is $14.1 billion above the revenue floor in 2001.

This is my first report for fiscal year 2001, and my first report for the first session of the 107th Congress.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, January 25, 2001.*

Hon. PETE V. DOMENICI,
*Chairman, Committee on the Budget,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The enclosed tables show the effects of Congressional action on the 2001 budget and are current through January 24, 2001. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of H. Con. Res. 290, the Concurrent Resolution on the Budget for Fiscal Year 2001.

This is my first report for the fiscal year.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosures.

TABLE 1.—FISCAL YEAR 2001 SENATE CURRENT LEVEL REPORT, AS OF JANUARY 24, 2001

[In billions of dollars]

| | Budget resolution | Current level [1] | Current level over/under resolution |
|---|---|---|---|
| ON-BUDGET | | | |
| Budget Authority | 1,534.5 | 1,568.4 | 33.9 |
| Outlays | 1,495.9 | 1,517.7 | 21.8 |
| Revenues: | | | |
| 2001 | 1,498.2 | 1,512.3 | 14.1 |
| 2001–2005 | 8,022.4 | 8.155.9 | 133.5 |
| Debt Subject to Limit | 5,663.5 | 5,646.0 | −17.5 |
| OFF-BUDGET | | | |
| Social Security Outlays: | | | |
| 2001 | 336.5 | 337.2 | 0.7 |
| 2001–2005 | 1,765.0 | 1,767.3 | 2.3 |
| Social Security Revenues: | | | |
| 2001 | 501.5 | 501.5 | (2) |
| 2001–2005 | 2,740.8 | 2,740.8 | (2) |

[1] Current level is the estimated revenue and direct spending effects of all legislation that the Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest information from the U.S. Treasury.

[2] Less than $50 million.

Source: Congressional Budget Office.

TABLE 2.—SUPPORTING DETAIL FOR THE FISCAL YEAR 2001 SENATE CURRENT LEVEL REPORT FOR ON-BUDGET SPENDING AND REVENUES, AS OF JANUARY 24, 2001

[In millions of dollars]

| | Budget authority | Outlays | Revenues |
|---|---|---|---|
| Enacted in sessions prior to 2000: | | | |
| Revenues | n.a. | n.a. | 1,514,820 |
| Permanents and other spending legislation | 961,237 | 916,844 | n.a. |
| Appropriation legislation | 0 | 266,010 | n.a. |
| Offsetting receipts | −297,807 | −297,807 | n.a. |
| Total, enacted in previous sessions | 663,430 | 885,047 | 1,514,820 |
| Enacted in 2000: | | | |
| Authorizing Legislation: | | | |
| Act to amend the Food Stamp Act of 1977 (P.L. 106–171) | 1 | 1 | 0 |
| Omnibus Parks Technical Corrections Act of 1999 (P.L. 106–176) | 8 | 6 | 0 |
| Wendell H. Ford Aviation Investment and Reform Act (P.L. 106–181) | 3,200 | 0 | −2 |
| Civil Asset Forfeiture Reform Act of 2000 (P.L. 106–185) | −114 | −75 | −115 |
| Trade and Development Act of 2000 (P.L. 106–200) | −47 | −47 | −442 |
| Agricultural Risk Protection Act of 2000 (P.L. 106–224) | 3,060 | 2,165 | 0 |
| Valles Caldera Preservation Act (P.L. 106–248) | −1 | −1 | 0 |
| Griffith Project Prepayment and Conveyance Act (P.L. 106–249) | −103 | −103 | 0 |
| Semipostal Authorization Act (P.L. 106–253) | −2 | −2 | 0 |
| Long-term Care Security Act (P.L. 106–265) | 3 | 3 | 0 |
| Security Assistance Act of 2000 (P.L. 106–280) | 6 | 6 | 0 |
| Lincoln County Land Act of 2000 (P.L. 106–298) | −3 | −3 | 0 |
| Act to provide personnel flexibilities for GAO (P.L. 106–303) | 0 | 0 | 0 |
| Children's Health Act of 2000 (P.L. 106–310) | 2 | 2 | 0 |
| Act to increase fees for employers who are petitioners (P.L. 106–311) | 0 | −64 | 0 |
| American Competitiveness in the 21st Century Act (P.L. 106–313) | 0 | −126 | 0 |
| Black Hills National Forest and Rocky Mountain Research Station Improvement Act of 2000 (P.L. 106–329) | −1 | −1 | 0 |
| Breast and Cervical Cancer Prevention and Treatment Act of 2000 (P.L. 106–354) | 15 | 15 | 0 |
| Act to amend Title 5, United States Code, on Thrift Savings Plans (P.L. 106–361) | −3 | −3 | −6 |
| Act to direct the Secretary of the Interior to convey property (P.L. 106–366) | −5 | −5 | 0 |
| National Museum of the American Indian Commemorative Coin Act (P.L. 106–375) | −3 | −3 | 0 |
| Act to direct the Secretary of the Interior to convey facilities (P.L. 106–376) | −2 | −2 | 0 |
| Victims of Trafficking and Violence Protections Act of 2000 (P.L. 106–386) | 342 | 342 | 0 |
| Act to authorize the Bureau of Reclamation to provide cost sharing (P.L. 106–392) | 23 | 8 | 0 |
| County Schools Funding Revitalization Act of 2000 (P.L. 106–393) | 21 | 21 | 0 |
| Federal Employees Health Benefits Children's Equity Act of 2000 (P.L. 106–394) | −1 | −1 | 0 |
| Floyd D. Spence National Defense Authorization Act for 2001 (P.L. 106–398) | −22 | −22 | 0 |
| Alaska Native and American Indian Direct Reimbursement Act (P.L. 106–417) | 9 | 9 | 0 |
| Veterans Benefits and Health Care Improvements Act of 2000 (P.L. 106–419) | 154 | 154 | 0 |
| National Transportation Safety Board Amendments Act of 2000 (P.L. 106–424) | 12 | 12 | 0 |
| Santo Domingo Pueblo Claims Settlement Act of 2000 (P.L. 106–425) | 8 | 8 | 0 |
| Arizona National Forest Improvement Act of 1999 (P.L. 106–458) | −5 | −5 | 0 |
| Grain Standards and Warehouse Improvement Act of 2000 (P.L. 106–472) | 1 | 1 | 0 |
| Act to amend the Harmonized Tariff Schedule to modify rates of duty (P.L. 106–476) | 0 | 0 | −26 |
| Palmetto Bend Conveyance Act (P.L. 106–512) | −42 | −42 | 0 |
| Act to amend the Internal Revenue Code of 1986 to repeal the provisions relating to foreign sales corporations (P.L. 106–519) | 0 | 0 | −153 |
| Water Resources Development Act of 2000 (P.L. 106–541) | 2 | 2 | 0 |
| Act to direct the Secretary of Interior to conduct a study (P.L. 106–566) | 5 | 5 | 0 |
| Omnibus Indian Advancement Act (P.L. 106–568) | 8 | 8 | 0 |
| American Homeownership and Economic Opportunity Act of 2000 (P.L. 106–569) | −13 | −13 | −68 |
| Federal Physicians Comparability Allowance Amendments of 2000 (P.L. 106–571) | −3 | −3 | 1 |
| Installment Tax Correction Act of 2000 (P.L. 106–573) | 0 | 0 | −1,120 |
| Consolidated Appropriations Act (P.L. 106–554) | 4,568 | 4,480 | −139 |
| Total, authorizing legislation | 11,078 | 6,727 | −2,070 |
| Appropriation Acts: | | | |
| Agriculture Appropriations (P.L. 106–387) | 77,830 | 42,663 | 0 |
| Commerce, Justice, State Appropriations (P.L. 106–553) | 37,812 | 25,437 | 0 |
| Defense Appropriations (P.L. 106–259) | 287,806 | 188,945 | 0 |
| District of Columbia Appropriations (P.L. 106–522) | 440 | 408 | 0 |
| Energy and Water Development Appropriations (P.L. 106–377) | 23,598 | 15,129 | 0 |
| Foreign Operations Appropriations (P.L. 106–431) | 14,945 | 5,457 | 0 |
| Interior Appropriations (P.L. 106–291) | 18,905 | 11,912 | 0 |
| Labor, HHS, Education Appropriations (P.L. 106–554) | 289,432 | 227,557 | 0 |
| Legislative Branch Appropriations (P.L. 106–554) | 2,577 | 2,207 | 3 |
| Military Construction Appropriations (P.L. 106–246) | 4,932 | −3,982 | 0 |
| Transportation Appropriations (P.L. 106–346) | 18,834 | 20,509 | −460 |
| Treasury, PS, General Appropriations (P.L. 106–554) | 29,964 | 26,342 | 0 |
| Veterans, HUD Appropriations (P.L. 106–377) | 103,577 | 62,961 | 0 |
| Act making further continuing appropriations for the fiscal year 2001 (P.L. 106–426) | 7 | 7 | 0 |
| Act making further continuing appropriations for the fiscal year 2001 (P.L. 106–520) | 7 | 7 | 0 |
| Consolidated Appropriations (P.L. 106–554) | 15 | −115 | 0 |
| Total, appropriation acts | 910,681 | 625,444 | −457 |
| Total, enacted in 2000 | 921,759 | 632,171 | −2,527 |
| Entitlements and mandatories: Adjustments to appropriated mandatories to reflect baseline estimates | −16,743 | 519 | n.a. |
| Total Current Level | 1,568,446 | 1,517,737 | 1,512,293 |
| Total Budget Resolution | 1,534,546 | 1,495,924 | 1,498,200 |
| Current Level Over Budget Resolution | 33,900 | 21,813 | 14,093 |
| Current Level Under Budget Resolution | n.a. | n.a. | n.a. |
| Memorandum: Emergency designations for bills enacted this session | 8,744 | 11,225 | 0 |

Source: Congressional Budget Office.
Notes: P.L. = Public Law. n.a. = not applicable.

ADDITIONAL STATEMENTS

## TRIBUTE TO JERE W. GLOVER

• Mr. KERRY. Mr. President, I speak today to praise Jere Glover, former Chief Counsel for Advocacy at the U.S. Small Business Administration, for almost seven years of outstanding work in that position.

The United States Senate confirmed President Clinton's appointment of Mr. Glover as Chief Counsel for Advocacy on May 4, 1994. Mr. Glover served as Chief Counsel until January 20, 2001. The following briefly highlights some of the Office of Advocacy's achievements during Mr. Glover's leadership.

Mr. Glover was instrumental in making the third national White House Conference on Small Business a success. Held in June of 1995 in Washington, DC, it was attended by nearly 2,000 delegates. Some 20,000 small businesses participated in 59 state conferences and six regional conferences leading to the national conference. In the legislation authorizing the conference, the Congress mandated that SBA monitor and report to the delegates on the progress made to implement their recommendations. Under Mr. Glover, the Office of Advocacy established networks of delegates and provided information through ''regional issue chairs.'' In the month of September in 1996, 1997, and, finally, 2000, the Office of Advocacy sent annual implementation reports to Congress, the President and the delegates. These reports indicated the unprecedented progress, compared with previous conferences, in implementing the recommendations of the 1995 White House Conference on Small Business.

Following up on the recommendations of the 1995 White House Conference on Small Business, the Office of Advocacy provided research and testimony in support of a number of laws designed to reduce small business tax, regulatory, and paperwork burdens. In addition to the Small Business Regulatory Enforcement Fairness Act of 1996, the Office of Advocacy supported provisions in the Taxpayer Relief Act of 1997, the Small Business Job Protection Act of 1996, the Health Insurance Portability and Accountability Act of 1996, the American Inventors Protection Act, the Federal Activities Inventory Reform Act and others, all of which incorporated the Conference recommendations.

Since the enactment of the Regulatory Flexibility Act (RFA) in 1980, the Office of Advocacy has had an oversight role in monitoring compliance with the law. The RFA requires federal agencies to determine whether a proposed rule will have a disproportionate effect on small firms and other small entities and, if so, to explore equally effective alternative regulatory solutions. In 1996, Congress expanded the Office of Advocacy's role by passing the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). This law provides new avenues for small businesses to participate in and have access to the federal regulatory arena.

The Office of Advocacy held briefings for more than 600 federal officials on the requirements and procedures mandated by this amendment to the Regulatory Flexibility Act. The Office of Advocacy held a special conference for the economic analysts in each agency on how to analyze the economic impact of agency regulations on small business and was successful in challenging violations of the RFA and SBREFA in court.

Under Jere Glover, the Office of Advocacy pursued the mandates of SBREFA in over 20 EPA and OSHA small business advocacy review panels. The panels reviewed proposals that would impose burdens on small business and recommended changes. The work of these panels helped craft stronger, more equitable regulations. Even in cases where agreement wasn't reached, small businesses were better informed of regulatory burdens and requirements.

At the beginning of this year, the Office of Advocacy published its 20th Anniversary Regulatory Flexibility Act Report. Chief among the report's findings is the estimate that in the 1998–2000 period, regulatory changes supported by the Office of Advocacy saved small businesses about $20 billion in annual and one-time compliance costs.

In addition to the Regulatory Flexibility Report, the Office of Advocacy has completed its fourth annual report focusing on small business lending activities of the nation's commercial bank lenders. This study analyzes information in the ''call'' reports filed by all federally regulated banks. The national and state-by-state analyses of the data show which banks, large and small, are most likely to lend to small businesses. The Office of Advocacy reports also categorize the banks by the percentage and dollar volume of their lending to small businesses.

Additionally, under Mr. Glover's tenure, the Office of Advocacy has developed, or assisted in the development of a number of databases to address the critical gap in equity capital financing, aide public and private contracting officers seeking small business contractors, subcontractors and partnership opportunities and, measure job creation by small business. Using this data, the Office of Advocacy estimates that small businesses created more than 12 million net new jobs between 1992 and 1996.

Mr. President, as the Ranking Democratic Member of the Senate Committee on Small Business, I would like to extend my congratulations to Mr. Glover for his successes while Chief Counsel for Advocacy and wish him well in his future endeavors.

I ask that a letter from business groups around the country, thanking Mr. Glover for his hard work and support of America's small businesses, be printed in the RECORD.

The letter follows:

A TRIBUTE TO JERE W. GLOVER

Jere W. Glover is a great American.

Each of us, the undersigned, has had an opportunity to work closely with Jere Glover over the last six years, and we would like to share with America some of our unique experiences and accomplishments with him as the Chief Counsel for Advocacy of the U.S. Small Business Administration. On January 20, he will leave behind a significant legacy in the regulatory arena.

Jere Glover advanced the cause of small business by decades, by being one of the driving forces behind one of the most significant changes to the Regulatory Flexibility Act (RFA): the Small Business Advocacy Review Panel process. The Panel process enables the Chief Counsel, with the advice of the small business community, to review and evaluate the basis for certain regulations at an early stage of the process. These are regulations that could have a significant economic impact on a substantial number of small businesses, small nonprofit organizations, and/or small governments. The Panel process led to a number of significant improvements to regulations of the U.S. Environmental Protection Agency (EPA) and the U.S. Occupational Safety and Health Administration (OSHA) in recent years.

Perhaps the largest part of his legacy, the work Jere Glover has done with EPA rules affecting the petroleum refining industry, has been most effective. Thanks to Jere Glover, there will continue to be a significant small business presence in this industry.

For example, EPA was planning to propose a significantly more stringent regulation of sulfur in gasoline, but Jere helped to persuade EPA that such a decision would be unnecessary and unduly costly to the consumer. EPA eventually signed a rule that would delay the final standards for four to six years for small businesses, allowing them to make more manageable reductions in sulfur over a longer period of time.

The same is true about EPA's recent rule to control hazardous air pollutants from mobile sources. Due largely to Jere's counsel, EPA backed away from initial plans for a more stringent rule to commit to a no-cost approach at proposal. His continued interest and advocacy led to further changes to the final rule, which helped the Agency to ensure that it would meet its twin goals of a no-cost rule that, at the same time, maintains the significant air quality improvements over the last several years.

Jere Glover was also successful in persuading EPA to build some flexibility into the rule for the control of sulfur in highway diesel fuel, so that small refiners could stage significant investments in the diesel and gasoline sulfur rules.

In the safety arena, Jere Glover has been a real watchdog for the rights of small business under the RFA. While there have been only three SBREFA panels at OSHA, Jere Glover was closely involved with each one, ensuring that the concerns of small business were heard. Without the input of Jere and that of small employers, OSHA would not have revised its economic impact analysis of the Ergonomics rule, nor added provisions such as the Quick Fix option, which gave flexibility to small entities.

Jere Glover has been a true advocate for the millions of small employers affected by

both the Ergonomics rule and the Safety and Health proposed rule. He insisted that OSHA take into consideration not only how differently small employers operate their workplaces, but also how burdensome and costly government regulations are on those employers. With Jere's constant commitment to small business, he was able to argue convincingly that OSHA's cost estimates in both the Ergonomics rule and the Safety and Health program standard were significantly underestimated.

And Jere Glover did not stop there. He was instrumental in persuading the EPA not to finalize national wastewater discharge standards for the textile supply and service industry (industrial launderers). By pointing to existing local regulations, Jere was able to convince the EPA that the industry's voluntary pollution prevention and resource conservation program was a more appropriate course of action.

He also managed to persuade EPA to provide significant flexibility in the Transportation Equipment Cleaning Industry wastewater regulation.

And last, when did EPA learn that the public already knew that there was actually gasoline at gas stations? When Jere Glover pointed it out. The Agency had been insisting that gas station owner/operators should annually complete more paperwork on gasoline to serve the public's right-to-know about environmental hazards. But Jere Glover helped them to see that EPA could use existing paperwork, the underground storage tank forms, to accomplish the same goal at less cost and less burden.

The small business community salutes you, Jere Glover. We will miss you, Jere, and your invaluable contributions to our cause. Good luck to you in your future endeavors. We will never forget you.

Ad Hoc Coalition of Small Refiners; American Association of Airport Executives; American Electroplaters and Surface Finishers Society; American Foundry Society; Consumer Specialty Products Association; Council of Industrial Boilers; Lead Industries Association, Inc.; Metal Finishing Suppliers Association; National Association of Metal Finishers; National Marine Manufacturers Association; National Tank Truck Carriers, Inc.; North American Die Casting Association; Petroleum Marketers Association of America; Porcelain Enameling Institute; Society of American Florists; Stormwater Reform Coalition; Synthetic Organic Chemical Manufacturers Association; Textile Rental Services Association of America; Uniform Textile & Service Association; and United Motorcoach Association.●

## TRIBUTE TO ELDER E.E. CLEVELAND

● Mr. SHELBY. Mr. President, I rise today to recognize Elder E.E. Cleveland, a civic and religious leader for over 50 years with the Seventh-day Adventist Church. A graduate and an eventual professor at Oakwood College in Huntsville, Alabama, Elder Cleveland is a shining example of a man whose devotion to principle and belief can serve to inspire and influence others. In honor of the new Bradford Cleveland Institute for Continuing Education located at Oakwood College, I wanted to take this opportunity to recognize a man who has been a pioneer in religious and community involvement.

After graduating from Oakwood College in 1941, and being ordained in 1946, Elder Cleveland embarked on a remarkable path which has taken him all over the United States, across 6 continents, and 67 countries. He has conducted over 60 public Evangelism campaigns, trained over 1,100 pastors world-wide, and held scores of church revivals. In fact, Elder Cleveland was the first black church leader sent to Asia, Europe, South America and Australia, and has preached to integrated audiences in Cape Town and South Africa. He has authored sixteen published books and two Sabbath School Lesson Quarterlies, and served as a Contributing and Associate Editor to numerous religious journals and publications. In fact, Elder Cleveland was presented with an award by Governor Guy Hunt in 1989, for being the most distinguished Black Clergyman in the State of Alabama.

It can truly be said that Elder Cleveland has touched the lives of many throughout the world. This broad sense of community is demonstrated in his involvement in many areas. Elder Cleveland participated in the First March on Washington in 1957 with Dr. Martin Luther King, and organized the NAACP Chapter for students on the Oakwood College Campus. He also was a member of the Washington, D.C. Branch of the Organizing Committee of the Southern Christian Leadership Conference's ''Poor People's March'' on Washington in 1968. In addition, he has conducted ''Feed the Hungry'' programs in over 20 cities in the U.S. and helped to establish a feeding depot in Washington, DC.

Elder Cleveland remains a great Evangelist, teacher, author, and leader. He has received over 100 awards, honors and citations for his various achievements. Currently, Elder Cleveland lives with his wife, Celia Abney Cleveland, in semi-retirement in Huntsville, Alabama. I would like to take this opportunity to commend Elder Cleveland for his commitment to his moral principles and his unwavering dedication to helping those less fortunate.●

## REPORT OF THE PROGRAM ENTITLED ''RALLY THE ARMIES OF COMPASSION''—MESSAGE FROM THE PRESIDENT—PM 2

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance.

*To the Congress of the United States:*

Enclosed please find the blueprint for my program to ''Rally the Armies of Compassion.'' I look forward to working with the Congress to pass reforms to support the heroic works of faith-based and community groups across America.

GEORGE BUSH.

THE WHITE HOUSE, *January 30, 2001.*

## MESSAGE FROM THE HOUSE

At 2:34 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that pursuant to section 2(b) of Public Law 98–183, the Speaker appoints the following member to the Commission on Civil Rights on the part of the House to fill the existing vacancy thereon: Dr. Abigail M. Thernstrom of Lexington, Massachusetts.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–513. A communication from the Attorney General and the Secretary of the Department of Health and Human Services, jointly transmitting, pursuant to the Social Security Act, a report relating to health care fraud and abuse control programs for fiscal year 2000; to the Committee on Finance.

EC–514. A communication from the Administrator of the General Service Administration, transmitting, pursuant to law, a report of an interim lease prospectus for the Bureau of Alcohol, Tobacco, and Firearms; to the Committee on Environment and Public Works.

EC–515. A communication from the General Counsel of the Architectural and Transportation Barriers Compliance Board, transmitting, pursuant to law, the report of a rule entitled ''Electronic and Information Technology Accessibility Standards'' (RIN–AA25) received on December 19, 2000; to the Committee on Environment and Public Works.

EC–516. A communication from the Regulations Officer of the Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Mitigation of Impacts to Wetlands and Natural Habitat'' (RIN2125–AD78) received on January 8, 2001; to the Committee on Environment and Public Works.

EC–517. A communication from the Acting Assistant Secretary for Fish, Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Boating Infrastructure Grant Program'' (RIN1018–AF38) received on January 9, 2001; to the Committee on Environment and Public Works.

EC–518. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relating investments on the National Highway System connectors serving, seaports, airports, and other intermodal freight transportation facilities; to the Committee on Environment and Public Works.

EC–519. A communication from the Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, a report relating to the status and trends of wetlands from 1986 to 1997; to the Committee on Environment and Public Works.

EC–520. A communication from the Assistant Secretary for Fish, Wildlife, and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Spectacled Eider'' (RIN1018–AF92) received on

January 11, 2001; to the Committee on Environment and Public Works.

EC–521. A communication from the Deputy Assistant Secretary for Fish Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Alaska-Breeding Population of the Steller's Eider'' (RIN1018–AF95) received on January 11, 2001; to the Committee on Environment and Public Works.

EC–522. A communication from the Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Oil Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities'' (RIN2050–AC62) received on January 12, 2001; to the Committee on Environment and Public Works.

EC–523. A communication from the Director of the Office of Congressional Affairs, Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''List of Approved Spent Fuel Storage Casks: Fuel Solutions Addition'' (RIN3150–AG54) received on January 12, 2001; to the Committee on Environment and Public Works.

EC–524. A communication from the Director of the Office of Congressional Affairs, Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Termination of Section 274i Agreement Between the State of Louisiana and the Nuclear Regulatory Commission'' (RIN3150–AG60) received on January 12, 2001; to the Committee on Environment and Public Works.

EC–525. A communication from the Regulations Officer of the Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Intelligent Transportation System Architecture and Standards'' (RIN2125–AE65) received on January 12, 2001; to the Committee on Environment and Public Works.

EC–526. A communication from the Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval of the Clean Air Act, Section 112(1), Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of Washington; Puget Sound Clean Air Agency'' (FRL6882–2) received on January 16, 2001 ; to the Committee on Environment and Public Works.

EC–527. A communication from the Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habit for the Mexican Spotted Owl'' (RIN1018–AG29) received on January 17, 2001; to the Committee on Environment and Public Works.

EC–528. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report relating to regulatory programs; to the Committee on Environment and Public Works.

EC–529. A communication from the Secretary of the Army and the Secretary of Agriculture, transmitting jointly, pursuant to law, a report relating to the interchange of jurisdiction of Army civil works and National Forest lands lying within and adjacent to the San Bernardino National Forest and the Santa Ana River Project; to the Committee on Environment and Public Works.

EC–530. A communication from the Secretary of the Department of Agriculture, transmitting, pursuant to law, a report concerning environmental assessment, restoration, and cleanup activities for the years 1997 through 1999; to the Committee on Environment and Public Works.

EC–531. A communication from the Director of the Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for Peninsular Bighorn Sheep'' (RIN1018–AG17) received on January 17, 2001; to the Committee on Environment and Public Works.

EC–532. A communication from the Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Illinois'' (FRL6935–4) received on January 17, 2001; to the Committee on Environment and Public Works.

EC–533. A communication from the Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''State and Federal Operating Permits Programs: Amendments to Compliance Certification Requirements'' (FRL6934–5) received on January 17, 2001; to the Committee on Environment and Public Works.

EC–534. A communication from the Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality State Implementation Plans; Texas; Approval of Clean Fuel Fleet Substitution Program Revision'' (FRL6935–3) received on January 17, 2001; to the Committee on Environment and Public Works.

EC–535. A communication from the Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''OMB Approvals Under the Paperwork Reduction Act; Technical Amendment'' (FRL6935–8) received on January 17 , 2001; to the Committee on Environment and Public Works.

EC–536. A communication from the Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring'' (FRL6934–9) received on January 17, 2001; to the Committee on Environment and Public Works.

EC–537. A communication from the Deputy Associate Administrator of the Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Clean Air Act Reclassification; Wallula , Washington Particulate Matter (PM–10) Nonattainment Area'' (FRL6937–5) received on January 23, 2001; to the Committee on Environment and Public Works.

EC–538. A communication from the Director of the Office of Congressional Affairs, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Change 10 CFR 50.47 Relating to the Use of Potassium Iodide (KI) for the General Public'' (RIN3150–AG11) received on January 23, 2001; to the Committee on Environment and Public Works.

## EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

Mr. HATCH. Mr. President, for the Committee on the Judiciary.

John Ashcroft, of Missouri, to be Attorney General.

(The above nomination was reported with the recommendation that it be confirmed.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Ms. COLLINS (for herself, Mr. KYL, and Ms. LANDRIEU):

S. 203. A bill to amend the Internal Revenue Code of 1986 to provide an above-the-line deduction for qualified professional development expenses of elementary and secondary school teachers and to allow a credit against income tax to elementary and secondary school teachers who provide classroom materials; to the Committee on Finance.

By Mr. CRAIG:

S. 204. A bill for the relief of Benjamin M. Banfro; to the Committee on the Judiciary.

By Mrs. HUTCHISON (for herself, Mr. DURBIN, and Mr. LEVIN):

S. 205. A bill to amend the Internal Revenue Code of 1986 to waive the income inclusion on a distribution from an individual retirement account to the extent that the distribution is contributed for charitable purposes; to the Committee on Finance.

By Mr. SHELBY (for himself, Mr. MURKOWSKI, Mr. SARBANES, Mr. GRAMM, Mr. DODD, Mr. LOTT, Mr. CRAIG, and Mr. CRAPO):

S. 206. A bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 2001, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SMITH of New Hampshire (for himself, Mrs. FEINSTEIN, Ms. SNOWE, Ms. COLLINS, Mr. KERRY, Mr. HELMS, and Mr. LEAHY):

S. 207. A bill to amend the Internal Revenue Code of 1986 to provide incentives to introduce new technologies to reduce energy consumption in buildings; to the Committee on Finance.

By Mr. FRIST (for himself, Mr. HARKIN, Mr. JEFFORDS, Mr. KENNEDY, Mr. HUTCHINSON, Ms. MIKULSKI, Mr. BINGAMAN, Mrs. MURRAY, and Mr. REED):

S. 208. A bill to reduce health care costs and promote improved health care by providing supplemental grants for additional preventive health services for women; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INOUYE:

S. 209. A bill for the relief of Sung Jun Oh; to the Committee on the Judiciary.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 210. A bill to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, and for other purposes; to the Committee on Indian Affairs.

By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 211. A bill to amend the Education Amendments of 1978 and the Tribally Controlled Schools Act of 1988 to improve education for Indians, Native Hawaiians, and Alaskan Natives; to the Committee on Indian Affairs.

By Mr. CAMPBELL (for himself, Mr. INOUYE, and Mr. MCCAIN):

S. 212. A bill to amend the Indian Health Care Improvement Act to revise and extend

such Act; to the Committee on Indian Affairs.

By Mr. HATCH (for himself and Mr. BENNETT):

S. 213. A bill to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails; to the Committee on Energy and Natural Resources.

By Mr. MCCAIN (for himself, Mr. INOUYE, Mr. CONRAD, Mr. DASCHLE, and Mr. CAMPBELL):

S. 214. A bill to elevate the position of Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health, and for other purposes; to the Committee on Indian Affairs.

By Ms. STABENOW:

S. 215. A bill to amend the Federal Food, Drug, and Cosmetic Act to permit importation in personal baggage and by mail of certain covered products for personal use from certain foreign countries and to correct impediments in implementation of the Medicine Equity and Drug Safety Act of 2000; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SPECTER (for himself, Mr. HARKIN, Mr. BIDEN, Mr. JEFFORDS, and Mr. CHAFEE):

S. 216. A bill to establish a Commission for the comprehensive study of voting procedures in Federal, State, and local elections, and for other purposes; to the Committee on Rules and Administration.

By Mr. SCHUMER (for himself, Mr. WARNER, Mr. DURBIN, Mr. SANTORUM, Mr. SARBANES, Mr. CHAFEE, Mr. VOINOVICH, Mr. KERRY, Mr. DODD, and Ms. MIKULSKI):

S. 217. A bill to amend the Internal Revenue Code of 1986 to provide a uniform dollar limitation for all types of transportation fringe benefits excludable from gross income, and for other purposes; to the Committee on Finance.

By Mr. MCCONNELL (for himself, Mr. TORRICELLI, Mrs. FEINSTEIN, Mr. ALLARD, Mr. SMITH of Oregon, Ms. LANDRIEU, Mr. BURNS, Mr. BENNETT, Mr. BREAUX, Mr. HUTCHINSON, Mr. SANTORUM, Mr. WARNER, Mr. REID, and Mr. ROBERTS):

S. 218. A bill to establish an Election Administration Commission to study Federal, State, and local voting procedures and election administration and provide grants to modernize voting procedures and election administration, and for other purposes; to the Committee on Rules and Administration.

By Mr. DODD (for himself, Mr. MCCAIN, Mr. HOLLINGS, and Mr. HAGEL):

S. 219. A bill to suspend for two years the certification procedures under section 490(b) of the Foreign Assistance Act of 1961 in order to foster greater multilateral cooperation in international counternarcotics programs, and for other purposes; to the Committee on Foreign Relations.

By Mr. GRASSLEY (for himself, Mr. SESSIONS, and Mr. HATCH):

S. 220. A bill to amend title 11, United States Code, and for other purposes; read the first time.

By Mrs. BOXER:

S. 221. A bill to authorize the Secretary of Energy to make loans through a revolving loan fund for States to construct electricity generation facilities for use in electricity supply emergencies; to the Committee on Energy and Natural Resources.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SARBANES (for himself and Ms. MIKULSKI):

S. Res. 15. A resolution congratulating the Baltimore Ravens for winning the Super Bowl XXXV; considered and agreed to.

By Mr. INOUYE:

S. Con. Res. 5. A concurrent resolution commemorating the 100th Anniversary of the United States Army Nurse Corps; to the Committee on the Judiciary.

By Mr. TORRICELLI (for himself and Mr. BROWNBACK):

S. Con. Res. 6. A concurrent resolution expressing the sympathy for the victims of the devastating earthquake that struck India on January 26, 2001, and support for ongoing aid efforts; to the Committee on Foreign Relations.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. COLLINS (for herself, Mr. KYL, and Ms. LANDRIEU):

S. 203. A bill to amend the Internal Revenue Code of 1986 to provide an above-the-line deduction for qualified professional development expenses of elementary and secondary school teachers and to allow a credit against income tax to elementary and secondary school teachers who provide classroom materials; to the Committee on Finance.

Ms. COLLINS. Mr. President, I rise today with my friend and colleague from Arizona, Senator KYL, to introduce the Teacher Support Act of 2001. We are very pleased to be joined by our good friend and colleague, Senator LANDRIEU, in proposing this legislation.

Senator KYL and I crafted this bill to help our teachers when they pursue professional development or pay for supplies for their classrooms.

Our legislation has two major provisions.

First, it will allow teachers and teacher aides to take an above-the-line deduction for their professional development expenses. Thus, educators who don't itemize their deductions will still be able to benefit from tax-favored treatment for their professional development.

Second, the legislation will grant educators a tax credit of up to $100 for books, supplies, and other materials that they purchase for their classrooms. According to a study by the National Education Association, the average public school teacher spends more than $400 annually on classroom supplies. This sacrifice, I think, is typical of the dedication of many of our schoolteachers toward their students.

While our legislation provides some financial assistance to educators, its ultimate beneficiaries will be their students. Other than involved parents, a well-qualified teacher is the most important prerequisite for students' success. Educational researchers have demonstrated over and over again the close relationship between qualified educators and successful students. Moreover, educators themselves understand how important professional development is to maintaining and extending their level of competence.

Mr. President, when I meet with teachers from my State of Maine, they repeatedly tell me of their need for more professional development and the scarcity of financial support for this worthy pursuit. As President Bush has put it, ''Teachers sometimes lead with their hearts and pay with their wallets.''

The willingness of Maine's teachers to fund their own professional development activities has deeply impressed me. For example, an English teacher, who serves on my education advisory committee, told me of spending her own money to attend a curriculum conference. She then came back and shared her new knowledge with all of the teachers in her department at Bangor High School. She is typical of the many educators who generously reach into their own pockets to pay for professional development and to purchase materials to enhance their teaching.

Let me explain how our legislation works in terms of real dollars. In my home State, the average yearly starting salary of a public school teacher is about $23,300. Under the current law, even a teacher who is earning this modest salary cannot deduct the first $466 in professional development expenses that he or she paid for out-of-pocket. That is because of the requirement in the current law that sets a floor of 2 percent that has to be reached before the cost of the course or other professional development is deductible. Moreover, under current law, professional development expenses above $466 can be deducted only if the teacher itemizes his or her deductions. Only about one-third of our Nation's schoolteachers do itemize their tax deductions.

Our legislation would enable all educators, regardless of whether or not they itemize deductions, to receive tax relief for professional development expenses.

I greatly admire the many educators who have voluntarily financed additional education to improve their skills so that they may better serve their students. I admire those teachers who purchase books, supplies, equipment, and other materials for their students in order to enhance their teaching.

I hope this change in our Tax Code will encourage educators to continue their formal course work in the subject matter they teach and to attend conferences to give them new ideas for presenting course work in a challenging manner. This bill will reimburse educators for a small part of what they invest in our children's future. This money would be well spent. Investing in education helps us to build one of the most important assets for our country's future—a well educated population. We need to ensure that our

public schools have the very best educators possible in order to bring out the very best in our students.

Last year, Senator KYL and I offered a similar version of this legislation as an amendment to the Affordable Education Act of 2000. Our amendment enjoyed overwhelming support and passed the Senate by a vote of 98–0. Unfortunately, the underlying bill was not taken up by the House of Representatives.

This year, we are very pleased that President Bush has made the classroom supplies portion of our bill part of his education platform, and that our legislation has received the support of the National Education Association. Our hope is that the bill will become law before the end of the year. We urge our colleagues to join us in supporting this legislation.

Mr. President, I ask unanimous consent to print the bill in the RECORD.

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

S. 203

*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 ''Teacher Support Act of 2001''.

**SEC. 2. ABOVE-THE-LINE DEDUCTION FOR QUALIFIED PROFESSIONAL DEVELOPMENT EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.**

(a) DEDUCTION ALLOWED.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 222 as section 223 and by inserting after section 221 the following new section:

**''SEC. 222. QUALIFIED PROFESSIONAL DEVELOPMENT EXPENSES.**

''(a) ALLOWANCE OF DEDUCTION.—In the case of an eligible teacher, there shall be allowed as a deduction an amount equal to the qualified professional development expenses paid or incurred by the taxpayer during the taxable year.

''(b) QUALIFIED PROFESSIONAL DEVELOPMENT EXPENSES OF ELIGIBLE TEACHERS.—For purposes of this section—

''(1) QUALIFIED PROFESSIONAL DEVELOPMENT EXPENSES.—

''(A) IN GENERAL.—The term 'qualified professional development expenses' means expenses for tuition, fees, books, supplies, equipment, and transportation required for the enrollment or attendance of an individual in a qualified course of instruction.

''(B) QUALIFIED COURSE OF INSTRUCTION.—The term 'qualified course of instruction' means a course of instruction which—

''(i) is—

''(I) directly related to the curriculum and academic subjects in which an eligible teacher provides instruction, or

''(II) designed to enhance the ability of an eligible teacher to understand and use State standards for the academic subjects in which such teacher provides instruction,

''(ii) may—

''(I) provide instruction in how to teach children with different learning styles, particularly children with disabilities and children with special learning needs (including children who are gifted and talented), or

''(II) provide instruction in how best to discipline children in the classroom and identify early and appropriate interventions to help children described in subclause (I) to learn,

''(iii) is tied to challenging State or local content standards and student performance standards,

''(iv) is tied to strategies and programs that demonstrate effectiveness in increasing student academic achievement and student performance, or substantially increasing the knowledge and teaching skills of an eligible teacher,

''(v) is of sufficient intensity and duration to have a positive and lasting impact on the performance of an eligible teacher in the classroom (which shall not include 1-day or short-term workshops and conferences), except that this clause shall not apply to an activity if such activity is 1 component described in a long-term comprehensive professional development plan established by an eligible teacher and the teacher's supervisor based upon an assessment of the needs of the teacher, the students of the teacher, and the local educational agency involved, and

''(vi) is part of a program of professional development which is approved and certified by the appropriate local educational agency as furthering the goals of the preceding clauses.

''(C) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given such term by section 14101 of the Elementary and Secondary Education Act of 1965, as in effect on the date of the enactment of this section.

''(2) ELIGIBLE TEACHER.—

''(A) IN GENERAL.—The term 'eligible teacher' means an individual who is a kindergarten through grade 12 classroom teacher or aide in an elementary or secondary school for at least 720 hours during a school year.

''(B) ELEMENTARY OR SECONDARY SCHOOL.—The terms 'elementary school' and 'secondary school' have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as so in effect.

''(c) DENIAL OF DOUBLE BENEFIT.—

''(1) IN GENERAL.—No other deduction or credit shall be allowed under this chapter for any amount taken into account for which a deduction is allowed under this section.

''(2) COORDINATION WITH EXCLUSIONS.—A deduction shall be allowed under subsection (a) for qualified professional development expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529(c)(1), or 530(d)(2) for the taxable year.''.

(b) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—Section 62(a) of the Internal Revenue Code of 1986 is amended by inserting after paragraph (17) the following new paragraph:

''(18) QUALIFIED PROFESSIONAL DEVELOPMENT EXPENSES.—The deduction allowed by section 222.''.

(c) CONFORMING AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 222 and inserting the following new items:

''Sec. 222. Qualified professional development expenses.

''Sec. 223. Cross reference.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

**SEC. 3. CREDIT TO ELEMENTARY AND SECONDARY SCHOOL TEACHERS WHO PROVIDE CLASSROOM MATERIALS.**

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to other credits) is amended by adding at the end the following new section:

**''SEC. 30B. CREDIT TO ELEMENTARY AND SECONDARY SCHOOL TEACHERS WHO PROVIDE CLASSROOM MATERIALS.**

''(a) ALLOWANCE OF CREDIT.—In the case of an eligible teacher, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the qualified elementary and secondary education expenses which are paid or incurred by the taxpayer during such taxable year.

''(b) MAXIMUM CREDIT.—The credit allowed by subsection (a) for any taxable year shall not exceed $100.

''(c) DEFINITIONS.—

''(1) ELIGIBLE TEACHER.—The term 'eligible teacher' means an individual who is a kindergarten through grade 12 classroom teacher, instructor, counselor, aide, or principal in an elementary or secondary school on a full-time basis for an academic year ending during a taxable year.

''(2) QUALIFIED ELEMENTARY AND SECONDARY EDUCATION EXPENSES.—The term 'qualified elementary and secondary education expenses' means expenses for books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by an eligible teacher in the classroom.

''(3) ELEMENTARY OR SECONDARY SCHOOL.—The term 'elementary or secondary school' means any school which provides elementary education or secondary education (through grade 12), as determined under State law.

''(d) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter for any expense for which credit is allowed under this section.

''(2) APPLICATION WITH OTHER CREDITS.—The credit allowable under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year, reduced by the sum of the credits allowable under subpart A and the preceding sections of this subpart, over

''(B) the tentative minimum tax for the taxable year.

''(e) ELECTION TO HAVE CREDIT NOT APPLY.—A taxpayer may elect to have this section not apply for any taxable year.''.

(b) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

''Sec. 30B. Credit to elementary and secondary school teachers who provide classroom materials.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

Mr. KYL. Mr. President, I was an original cosponsor of the Teacher Support Act of 2001. Working together last year, Senator COLLINS and I, with invaluable assistance from our departed colleague Paul Coverdell, persuaded the Senate to pass almost identical legislation by a vote of 98–0.

Like the amendment approved by the Senate last year, the Teacher Support Act would provide an annual tax credit of up to $100 for teachers' un-reimbursed classroom expenditures that are qualified under the Internal Revenue Code. For amounts over $100, teachers would continue to use the deductions allowed for such expenses under current law.

We know the need this legislation addresses is real. According to a recent

study by the NEA, the average K–12 teacher spent $408 every year on classroom materials needed for education but not supplied by the schools. These materials include everything from books, workbooks, erasers, paper, pens, equipment related to classroom instruction, and professional enrichment programs.

In my discussions with teachers—public and private—I have been amazed to learn that many use their own money to cover the cost of classroom materials that are not supplied by their school or school district.

I have attended intense meetings in which Arizona teachers have related to me, in confidence, that they have used money from the family budget, without telling their spouses, for needed classroom supplies, and that though they feel wracked with guilt, they would do it again for their students. The Teacher Support Act stands for the idea that teachers should not feel compelled to make such sacrifices.

Though there is no absolute linkage between personal contributions for school supplies and the quality of the teaching, there likely is some correlation, given the degree of commitment evidenced by these teachers who are spending their own money. To the extent this is true, the proposal will have the effect of encouraging instruction of the highest quality.

I am pleased that President Bush campaigned on a similar proposal last year, and that he has included it in the education package he announced last week. This legislation, sends a much-needed message to the hard-working teachers of this country that they have our support, and that, working together, we can improve education for America's children.

Ms. LANDRIEU. Mr. President, as you well know, the need for reform in the American education system is a priority for many members of Congress, as well as for President Bush and his newly assembled administration. While there still is some debate over a few remaining issues such as annual testing and private school vouchers, it is clear that there is much that we agree must be addressed if our children are to receive the type of education necessary to be competitive in the 21st century. Almost no one disagrees that focused efforts to recruit and retain qualified teachers are the key to increasing student achievement. Today, research is confirming what common sense has suggested all along. A skilled and knowledgeable teacher can make enormous difference in how well students learn. One Tennessee study found that the students who had good teachers three years in a row scored significantly higher on state tests and made far greater gains than students with a series of ineffective teachers. Another study conducted at Stanford found that the strongest indicator of how a state's students performed on National assessments was the percentage of well qualified teachers.

The Department of Education estimates that 2,000,000 new teachers will have to be hired in the next decade. Yet, each year, only 60,000 college graduates enter into teaching. In my home state of Louisiana, almost one in five of our teachers has not completed the standard regimen for teaching. One of the main detractors for qualified professionals to choose to enter the profession of teaching is simply that the salaries cover little more than life's daily expenses. While the amount of salary a teacher makes is not determined by the federal government, that does not preclude us from putting forth innovative strategies to address the gaps left by these salaries. In fact, I think it is our responsibility to do all that we can to assist states in their efforts to bring the best and the brightest teachers into our nation's classrooms. The federal tax code provides us with several opportunities to acknowledge and reward teachers for the work that they do for our children everyday.

I am proud to join Senator COLLINS in introducing the ''Teacher Support Act of 2001''. This bill allows educators to receive a tax credit for some of the costs associated with furthering their professional development. Specifically, it will allow educators to deduct professional development expenses, without requiring the deduction to be subject to the existing two percent floor. In addition, this legislation creates an above the line deduction, allowing for teachers who do not itemize their taxes to take advantage of these helpful benefits. And finally, it allows educators to claim a tax credit of up to $100 for books, supplies, and equipment that they purchase for their students.

This is the first of the many steps we as a body must take toward building a system of supports for our teachers. This small investment will have an inordinate impact on their ability to provide effective instruction to our nation's school children. Henry B. Adams once said ''A teacher affects eternity; he can never tell, where his influence stops.'' With this in mind, I ask you to support this bill and others like it, so that we can truly affect the future of education in America.

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By Mrs. HUTCHISON (for himself, Mr. DURBIN, and Mr. LEVIN):

S. 205. A bill to amend the Internal Revenue Code of 1986 to waive the income inclusion on a distribution from an individual retirement account to the extent that the distribution is contributed for charitable purposes; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, today I rise to introduce legislation that will enhance and encourage charitable contributions in the United States.

As many know, this week, the President is set to unveil a number of initiatives to promote charitable giving and to expand the role that charities and faith-based institutions play in attacking social problems in the United States.

Government alone is incapable of solving society's most vexing problems. In fact, government programs often fail in their missions. The old welfare system is a perfect example of what often goes wrong. Under the old system, we encouraged people to stay on welfare. We encouraged out-of-wedlock births. We encouraged fathers to live out of the home. We ended this with our welfare reform bill. Welfare rolls have now dropped by half across the United States.

The track record of charitable organizations have been far superior than the government's in tackling social ills. America's top charities cover a broad range of problems, from the Salvation Army to the YMCA, and the American Cancer Society to the Red Cross. Each is playing a role in improving America's health, education and welfare. How successful can they be? It has been known that mentors in the Big Brothers/Big Sisters program can cut drug abuse by 50 percent.

Americans appreciate the role of these groups. They are actively involved in charitable causes. Nearly half of all Americans volunteer in some capacity on a regular basis.

Nearly 25 percent of all Americans are active in their religion on a volunteer basis. This is why it is so logical to use faith-based organizations as means of accomplishing objectives at which the government has failed. The Chicago Tribune recently noted that ''churches, temples and prayer halls cannot replace the mammoth task of helping the needy. But, they do a better and more efficient job of understanding their communities and meeting the need of their citizens.''

The legislation I am introducing today will make it easier for charitable contributions to the made and for charitable organizations to pursue their missions. Under this bill, individuals age 59½ and older will be able to move assets penalty-free from an IRA directly to a charity or into a qualifying deferred charitable gift plan, such as a charitable remainder trust, pooled income fund or gift annuity. Current law requires taxpayers to first withdraw the IRA proceeds, pay the taxes due and then contribute the funds to a charity. Taxes can be offset by the current charitable deduction, but only to an extent.

Americans currently hold well over $1 trillion in assets in IRAs, and nearly half of America's families have IRAs. This bill will allow senior citizens who have provided for their retirement—but find that they do not need their entire IRA for living expenses—to transfer IRA funds to charity without dilution. This will cut bureaucratic obstacles to charitable giving and unlock a substantial amount of new funds that could flow to America's charitable organizations.

I first introduced this legislation in 1998, and it was folded into our tax bill

in 1999. Regrettably, it was vetoed by the President. But, given our new leadership in the White House, this is an idea whose times has come. In fact, President Bush made this part of his tax plan when it was unveiled in 1999.

This is also not a partisan proposal. Senator DURBIN was an original cosponsor of this legislation. I look forward to working with him, and the White House on this bill. It also has the support of numerous universities and charitable groups, including the Charitable Accord and the Council of Foundations, two umbrella organizations representing more than 2,000 organizations and associations.

Mr. DURBIN. Mr. President, I am pleased to introduce, along with Senator KAY BAILEY HUTCHISON, the charitable IRA Rollover Act of 2001. We introduced this legislation in the last Congress. While it was included in last year's year-end tax bill, our provision was unfortunately stripped out at the last minute Senator HUTCHISON and I sincerely hope that this legislation will become law this year.

The IRA Charitable Rollover Act has the support of numerous charitable organizations across the United States. The effect of this bill would be to unlock billions of dollars in savings Americans hold and make them available to charities. Our legislation will allow individuals to roll assets from an Individual Retirement Account (IRA) into a charity or a deferred charitable gift plan without incurring any income tax consequences. Thus, the donation would be made to charity without every withdrawing it as income and paying tax on it.

Americans currently hold well over $1 trillion in assets in IRAs. Nearly half of America's families have IRAs. Recent studies show that assets of qualified retirement plans comprise a substantial part of the net worth of many persons. Many of these individuals would like to give a portion of these assets to charity.

Under our current law, if an IRA is transferred into a charitable remainder trust, donors are required to recognize that as income. Therefore, absent the changes called for in the legislation, the donor will have taxable income in the year the gift is funded. This is a huge disincentive contained in our complicated and burdensome tax code. This legislation will unleash a critical source of funding for our nation's charities. This legislation will provide millions of Americans with a common sense way to remove obstacles to private charitable giving.

Under the Hutchison-Durbin plan, an individual, upon reaching age 59½, could move assets penalty-free from an IRA directly to charity or into a qualifying deferred charitable gift plan—e.g. charitable remainder trusts, pooled income funds and gift annuities. In the latter case the donor would be able to receive an income stream from the retirement plan assets, which would be taxed according to normal rules. Upon the death of the individual, the remainder would be transferred to charity.

There are numerous supporters of this legislation including Georgetown University, the Art Institute of Chicago, the University of Chicago, the Field Museum, the Catholic Diocese of Peoria, Northwestern University, the Chicago Symphony Orchestra, and others. There are over 100 groups in Illinois alone that support this sensible legislation.

I hope the Senate will join in this bipartisan effort to provide a valuable new source of philanthropy for our nation's charities. I hope that our colleagues will co-sponsor this important piece of legislation and that it will be enacted into law this year. I thank the Senator from Texas, Senator HUTCHISON, for working with me and my staff in this effort.

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By Mr. SHELBY (for himself, Mr. MURKOWSKI, Mr. SARBANES, Mr. GRAMM, Mr. DODD, Mr. LOTT, Mr. CRAIG, and Mr. CRAPO):

S. 206. A bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 2001, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. SHELBY. Mr. President, I rise today to introduce the Public Utility Holding Company Act of 2001. This bipartisan bill is designed to help America's energy consumers by repealing an antiquated law that is keeping the benefits of competition from reaching our citizens. I am pleased to be joined by Senators GRAMM and SARBANES, chairman and ranking member of the Committee on Banking, Housing, and Urban Affairs, Senator MURKOWSKI, chairman of the Energy and Natural Resources Committee, Majority Leader LOTT, and Senators DODD, CRAIG, and CRAPO in introducing this important legislation. Our bill, which closely tracks legislation voted out of the Senate Banking Committee with bipartisan support in the 106th Congress, repeals the Public Utility Holding Company Act of 1935, PUHCA.

The original PUHCA legislation passed over 60 years ago in 1935. At that time, a few large holding companies controlled a great majority of the electric utilities and gas pipelines. However, such a limited number of providers no longer offer a majority of the utility service. In fact, over 80 percent of the utility holding companies are currently exempt from PUHCA.

This legislation implements the recommendations that the Securities and Exchange Commission, SEC made first in 1981 and then again in 1995 following an extensive study of the effects of this antiquated law on our energy markets. In the 1995 report entitled. ''The Regulation of Public-Utility Holding Companies,'' the Division of Investment Management recommended that Congress conditionally repeal the Act since ''the current regulatory system imposes significant costs, indirect administrative charges and foregone economies of scale and scope . . .'' In the end, the report serves to highlight the fact that the regulatory restraints imposed by PUHCA on our electric and gas industries are counterproductive in today's competitive environment and are based on historical assumptions and industry models that are no longer valid.

In order to ensure that ratepayers are protected, this bill provides the Federal Energy Regulatory Commission and the States access to the books and records of holding company systems that are relevant to the costs incurred by jurisdictional public utility companies. As a result, the regulatory framework to protect consumers is not only protected in this bill, but enhanced.

Let me be clear about the effect of PUHCA repeal: it eliminates redundant and burdensome regulation while enhancing existing consumer protections.

Mr. President, we are at a time in our nation's history when we are going to have to make some critical choices regarding our national energy policy. The fact is, future technological innovation and economic growth is contingent upon this country's ability to meet its ever increasing demand for energy. In order to do this, we need to modernize production systems, increase market competition, and strip away unnecessary regulations. Achieving these goals is going to be a difficult and time consuming process. However, repeal of this law would be the first step in the right direction.

Mr. President, it has been a very long time since it first became clear that this out dated, Depression-era law had become an unnecessary constraint on the ability of American gas and electric utilities to compete. Unfortunately, the many bipartisan efforts to repeal PUHCA have not been successful. However, strong support still exists for its elimination. I believe that it is imperative that we achieve this goal in the 107th Congress.

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

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

S. 206

*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 ''Public Utility Holding Company Act of 2001''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) the Public Utility Holding Company Act of 1935 was intended to facilitate the work of Federal and State regulators by placing certain constraints on the activities of holding company systems;

(2) developments since 1935, including changes in other regulation and in the electric and gas industries, have called into question the continued relevance of the model of regulation established by that Act;

(3) there is a continuing need for State regulation in order to ensure the rate protection of utility customers; and

(4) limited Federal regulation is necessary to supplement the work of State commissions for the continued rate protection of electric and gas utility customers.

(b) PURPOSES.—The purposes of this Act are—

(1) to eliminate unnecessary regulation, yet continue to provide for consumer protection by facilitating existing rate regulatory authority through improved Federal and State commission access to books and records of all companies in a holding company system, to the extent that such information is relevant to rates paid by utility customers, while affording companies the flexibility required to compete in the energy markets; and

(2) to address protection of electric and gas utility customers by providing for Federal and State access to books and records of all companies in a holding company system that are relevant to utility rates.

**SEC. 3. DEFINITIONS.**

For purposes of this Act—

(1) the term ''affiliate'' of a company means any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company;

(2) the term ''associate company'' of a company means any company in the same holding company system with such company;

(3) the term ''Commission'' means the Federal Energy Regulatory Commission;

(4) the term ''company'' means a corporation, partnership, association, joint stock company, business trust, or any organized group of persons, whether incorporated or not, or a receiver, trustee, or other liquidating agent of any of the foregoing;

(5) the term ''electric utility company'' means any company that owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale;

(6) the terms ''exempt wholesale generator'' and ''foreign utility company'' have the same meanings as in sections 32 and 33, respectively, of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–5a, 79z–5b), as those sections existed on the day before the effective date of this Act;

(7) the term ''gas utility company'' means any company that owns or operates facilities used for distribution at retail (other than the distribution only in enclosed portable containers or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power;

(8) the term ''holding company'' means—

(A) any company that directly or indirectly owns, controls, or holds, with power to vote, 10 percent or more of the outstanding voting securities of a public utility company or of a holding company of any public utility company; and

(B) any person, determined by the Commission, after notice and opportunity for hearing, to exercise directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more persons) such a controlling influence over the management or policies of any public utility company or holding company as to make it necessary or appropriate for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon holding companies;

(9) the term ''holding company system'' means a holding company, together with its subsidiary companies;

(10) the term ''jurisdictional rates'' means rates established by the Commission for the transmission of electric energy in interstate commerce, the sale of electric energy at wholesale in interstate commerce, the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use;

(11) the term ''natural gas company'' means a person engaged in the transportation of natural gas in interstate commerce or the sale of such gas in interstate commerce for resale;

(12) the term ''person'' means an individual or company;

(13) the term ''public utility'' means any person who owns or operates facilities used for transmission of electric energy in interstate commerce or sales of electric energy at wholesale in interstate commerce;

(14) the term ''public utility company'' means an electric utility company or a gas utility company;

(15) the term ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State that, under the laws of such State, has jurisdiction to regulate public utility companies;

(16) the term ''subsidiary company'' of a holding company means—

(A) any company, 10 percent or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company; and

(B) any person, the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary for the rate protection of utility customers with respect to rates that such person be subject to the obligations, duties, and liabilities imposed by this Act upon subsidiary companies of holding companies; and

(17) the term ''voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company.

**SEC. 4. REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.**

The Public Utility Holding Company Act of 1935 (15 U.S.C. 79 et seq.) is repealed.

**SEC. 5. FEDERAL ACCESS TO BOOKS AND RECORDS.**

(a) IN GENERAL.—Each holding company and each associate company thereof shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(b) AFFILIATE COMPANIES.—Each affiliate of a holding company or of any subsidiary company of a holding company shall maintain, and shall make available to the Commission, such books, accounts, memoranda, and other records with respect to any transaction with another affiliate, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company that is an associate company of such holding company and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(c) HOLDING COMPANY SYSTEMS.—The Commission may examine the books, accounts, memoranda, and other records of any company in a holding company system, or any affiliate thereof, as the Commission deems to be relevant to costs incurred by a public utility or natural gas company within such holding company system and necessary or appropriate for the protection of utility customers with respect to jurisdictional rates.

(d) CONFIDENTIALITY.—No member, officer, or employee of the Commission shall divulge any fact or information that may come to his or her knowledge during the course of examination of books, accounts, memoranda, or other records as provided in this section, except as may be directed by the Commission or by a court of competent jurisdiction.

**SEC. 6. STATE ACCESS TO BOOKS AND RECORDS.**

(a) IN GENERAL.—Upon the written request of a State commission having jurisdiction to regulate a public utility company in a holding company system, the holding company or any associate company or affiliate thereof, other than such public utility company, wherever located, shall produce for inspection books, accounts, memoranda, and other records that—

(1) have been identified in reasonable detail in a proceeding before the State commission;

(2) the State commission deems are relevant to costs incurred by such public utility company; and

(3) are necessary for the effective discharge of the responsibilities of the State commission with respect to such proceeding.

(b) LIMITATION.—Subsection (a) does not apply to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act of 1978.

(c) CONFIDENTIALITY OF INFORMATION.—The production of books, accounts, memoranda, and other records under subsection (a) shall be subject to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of any trade secrets or sensitive commercial information.

(d) EFFECT ON STATE LAW.—Nothing in this section shall preempt applicable State law concerning the provision of books, records, or any other information, or in any way limit the rights of any State to obtain books, records, or any other information under any other Federal law, contract, or otherwise.

(e) COURT JURISDICTION.—Any United States district court located in the State in which the State commission referred to in subsection (a) is located shall have jurisdiction to enforce compliance with this section.

**SEC. 7. EXEMPTION AUTHORITY.**

(a) RULEMAKING.—Not later than 90 days after the effective date of this Act, the Commission shall promulgate a final rule to exempt from the requirements of section 5 any person that is a holding company, solely with respect to one or more—

(1) qualifying facilities under the Public Utility Regulatory Policies Act of 1978;

(2) exempt wholesale generators; or

(3) foreign utility companies.

(b) OTHER AUTHORITY.—The Commission shall exempt a person or transaction from the requirements of section 5, if, upon application or upon the motion of the Commission—

(1) the Commission finds that the books, records, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or

(2) the Commission finds that any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company.

**SEC. 8. AFFILIATE TRANSACTIONS.**

Nothing in this Act shall preclude the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company, public utility, or natural gas company may recover in rates any costs of an activity performed by an associate company, or any costs of goods or services acquired by such public utility company from an associate company.

**SEC. 9. APPLICABILITY.**

No provision of this Act shall apply to, or be deemed to include—

(1) the United States;

(2) a State or any political subdivision of a State;

(3) any foreign governmental authority not operating in the United States;

(4) any agency, authority, or instrumentality of any entity referred to in paragraph (1), (2), or (3); or

(5) any officer, agent, or employee of any entity referred to in paragraph (1), (2), or (3) acting as such in the course of his or her official duty.

**SEC. 10. EFFECT ON OTHER REGULATIONS.**

Nothing in this Act precludes the Commission or a State commission from exercising its jurisdiction under otherwise applicable law to protect utility customers.

**SEC. 11. ENFORCEMENT.**

The Commission shall have the same powers as set forth in sections 306 through 317 of the Federal Power Act (16 U.S.C. 825e–825p) to enforce the provisions of this Act.

**SEC. 12. SAVINGS PROVISIONS.**

(a) IN GENERAL.—Nothing in this Act prohibits a person from engaging in or continuing to engage in activities or transactions in which it is legally engaged or authorized to engage on the effective date of this Act.

(b) EFFECT ON OTHER COMMISSION AUTHORITY.—Nothing in this Act limits the authority of the Commission under the Federal Power Act (16 U.S.C. 791a et seq.) (including section 301 of that Act) or the Natural Gas Act (15 U.S.C. 717 et seq.) (including section 8 of that Act).

**SEC. 13. IMPLEMENTATION.**

Not later than 18 months after the date of enactment of this Act, the Commission shall—

(1) promulgate such regulations as may be necessary or appropriate to implement this Act (other than section 6); and

(2) submit to the Congress detailed recommendations on technical and conforming amendments to Federal law necessary to carry out this Act and the amendments made by this Act.

**SEC. 14. TRANSFER OF RESOURCES.**

All books and records that relate primarily to the functions transferred to the Commission under this Act shall be transferred from the Securities and Exchange Commission to the Commission.

**SEC. 15. EFFECTIVE DATE.**

This Act shall take effect 18 months after the date of enactment of this Act.

**SEC. 16. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such funds as may be necessary to carry out this Act.

**SEC. 17. CONFORMING AMENDMENT TO THE FEDERAL POWER ACT.**

Section 318 of the Federal Power Act (16 U.S.C. 825q) is repealed.

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By Mr. FRIST (for himself, Mr. HARKIN, Mr. JEFFORDS, Mr. KENNEDY, Mr. HUTCHINSON, Ms. MIKULSKI, Mr. BINGAMAN, and Mrs. MURRAY):

S. 208. A bill to reduce health care costs and promote improved health care by providing supplemental grants for additional preventive health services for women; to the Committee on Health, Education, Labor, and Pensions.

Mr. FRIST. Mr. President, although we often think of cardiovascular disease as a men's health issue, the American Heart Association estimates that nearly one in two women will die of heart disease or stroke. However, because of its historically male stereotype, most women do not realize that they are at such high risk for cardiovascular disease even though cardiovascular diseases kills nearly 50,000 more women each year than men. Even more alarming is data reported by the Society for Women's Health Research which revealed that not all physicians know that cardiovascular diseases are the leading cause of death among American women.

Each year nearly half a million women lose their lives as a result of heart disease and stroke. Fortunately, men have experienced a decline in deaths due to cardiovascular diseases since 1984; but women have not, and many of these tragic deaths could have been prevented had these women known they were at risk. For instance, they could have taken preventive measures by not smoking, lowering their cholesterol or blood pressure, or by eating more nutritiously, and perhaps avoided becoming a victim of heart disease or stroke. For many women, prevention is truly the only cure, since it has been reported that as many as two-thirds of women who die from heart attacks have no warning symptoms of any kind.

Cardiovascular diseases kill more American females each year than the next 14 causes of death combined, including all forms of cancers. Over half of all cardiovascular deaths each year are women, and in 1997 alone heart diseases claimed the lives of more than half a million women. My own home state of Tennessee has the second highest death rate from heart disease, stroke, and other cardiovascular diseases in the nation and the 13th highest ranking state in women's heart deaths. In 1997, 10,884 Tennessee women died from these two cardiovascular diseases alone. Moreover, the Centers for Disease Control and Prevention (CDC) reports that women in the rural South are more likely to die of heart disease than those in other parts of the country.

Fortunately, some preventive measures, such as physical activity and better nutrition, can be taken by women to reduce their risk for cardiovascular diseases, as well as other preventable diseases, such as osteoporosis—a disease that affects one out of every two women over 50 and threatens roughly 28 million Americans, 80 percent of whom are women.

To continue to draw greater awareness to health issues among American women, particularly cardiovascular diseases, I am very pleased to reintroduce legislation which I introduced last Congress, the ''WISEWOMAN Expansion Act of 2001,'' with Senator HARKIN. Our goal in expanding this program is to reduce the risk of cardiovascular diseases, and other preventable diseases, and to increase access to screening and other preventive measures for low-income and underinsured women. In addition to making cardiovascular diseases screening accessible to underserved women, this program will also educate them about their risk for cardiovascular diseases and how to make lifestyle changes—thereby giving them the power to prevent these diseases.

The CDC's National Breast and Cervical Cancer Early Detection Program (NBCCEDP) is an example of a successful program that has provided critical services to help prevent major diseases affecting American women. The NBCCEDP has done an outstanding job of reaching out to low-income underinsured women—women who are generally too young for Medicare and unable to qualify for Medicaid or other state programs—and providing them with preventive screenings for breast and cervical cancers. These women would likely otherwise fall through the cracks in our health system.

Our bill provides for the expansion of the WISEWOMAN (Well-Integrated Screening and Evaluation for Women in Massachusetts, Arizona, and North Carolina) demonstration project, which is run by the CDC in conjunction with the NBCCEDP, to additional states. The WISEWOMAN program capitalizes on the highly successful infrastructure of the NBCCEDP to offer ''one-stop shopping'' screening and preventive services for uninsured and low-income women. In addition to these very important breast and cervical cancer screenings, WISEWOMAN screens for cardiovascular disease risk factors and provides health counseling and lifestyle interventions to help women reduce behavioral risk factors. The program addresses risk factors such as elevated cholesterol, high blood pressure, obesity and smoking and provides important additional intervention and educational services to women who would not otherwise have access to cardiovascular disease screening or prevention. This bill also adds flexibility to the program language that would allow screenings and other preventive measures for diseases in addition to cardiovascular diseases, such as osteoporosis, as more preventive technology is developed.

I would like to thank Judy Womack and Dr. Joy Cox of the Tennessee Department of Health for their counsel and assistance on this legislation and for their efforts in helping Tennesseans.

I ask unanimous consent that three letters supporting the WISEWOMAN Expansion Act of 2001 be printed in the RECORD.

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

AMERICAN HEART ASSOCIATION,
OFFICE OF PUBLIC ADVOCACY,
*Washington, DC, January 26, 2001.*

Hon. BILL FRIST, M.D.,
Hon. TOM HARKIN,
*United States Senate,*
*Washington, DC.*

DEAR SENATORS FRIST AND HARKIN: Heart attack, stroke and other cardiovascular diseases remain the leading cause of death of women in the United States. Heart disease, alone, is the number one killer of American women and stroke is the number three killer. In fact, low-income women are at an even higher risk of heart disease and stroke than other women, and they have a higher prevalence of risk factors contributing to these diseases. The American Heart Association is very grateful for the support you and other members of the United States Congress have given to the WISEWOMAN demonstration program which uses the National Breast and Cervical Cancer Early Detection Program network to provide heart disease and stroke screening services, as well as diet and physical activity interventions and appropriate referrals.

The American Heart Association applauds the WISEWOMAN program and we are anticipating even greater results in the battle against heart disease and stroke as the program expands to serve more women throughout the United States. The Frist-Harkin ''WISEWOMAN Expansion Act of 2001'' will expand WISEWOMAN's heart disease and stroke screenings beyond its current limit, which we believe will have a tremendous positive impact to the cardiovascular health of women who live in states served by the program.

The American Heart Association recommends increased funding and expansion of the WISEWOMAN program during fiscal year 2002. Also, because of the solid scientific evidence that cardiovascular screenings can help prevent heart disease and stroke in women, we believe cardiovascular screenings provided by WISEWOMAN should be expanded before using the demonstration program to provide screenings for other diseases affecting women.

We thank you for your commitment to fighting heart disease and stroke, and look forward to your continued support in the future.

Sincerely,
ROSE MARIE ROBERTSON, M.D.,
*President.*

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SOCIETY FOR
WOMEN'S HEALTH RESEARCH,
*Washington, DC, January 25, 2001.*

Hon. BILL FRIST,
*Chair, Subcommittee on Public Health, Committee on Health, Education, Labor, and Pensions, Dirksen Senate Office Building, Washington, DC.*
Hon. TOM HARKIN,
*Ranking Member, Subcommittee on Public Health, Committee on Health, Education, Labor, and Pensions, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATORS FRIST AND HARKIN: On behalf of the Society for Women's Health Research, we express our appreciation for your leadership on the introduction of the ''WISEWOMAN Expansion Act of 2001.'' In addition to a strong national research program, disease prevention is vital to our nation's health. Chronic diseases, such as heart disease, cancer, diabetes, and osteoporosis are among the most prevalent, costly, and preventable of all health problems.

As you know, women tend to live longer but not necessarily better than men. They have more chronic health conditions and are more economically insecure. Safety net programs often are the difference between life and death. The WISEWOMAN Expansion Act is building on a foundation that has provided positive feedback and will allow additional states to provide prevention services to those women in need. We applaud the flexibility of the legislation. With the passage of time, as new technologies develop, as disease burdens shift, and as lifestyles change, the program can address women's most critical health needs.

We thank you for your commitment to improving the nation's health through prevention. By focusing on the health of women, you ultimately will be improving the health of the nation's families.

Sincerely,
PHYLISS GREENBERGER,
*President and CEO.*
ROBERTA BIEGEL,
*Director of Government Relations.*

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NATIONAL OSTEOPOROSIS FOUNDATION,
*January 29, 2001.*

Hon. TOM HARKIN,
Hon. BILL FRIST,
*U.S. Senate, Washington, DC.*

DEAR SENATORS HARKIN AND FRIST: On behalf of the National Osteoporosis Foundation (NOF), I commend you on the introduction of the bipartisan WISEWOMAN Expansion Act of 2001 that supports your effort to provide additional preventive health services, including osteoporosis screening, to low-income and uninsured women.

As you know, osteoporosis is a major health threat for more than 28 million Americans, 80 percent of whom are women. In the United States today, 10 million individuals already have the disease and 18 million more have low bone mass, placing them at increased risk for osteoporosis. Also, one out of every two women over 50 will have an osteoporosis-related fracture in their lifetime. It is estimated that the direct hospital and nursing home costs of osteoporosis are over $13.8 billion annually, with much of that attributed to the more than 1.5 million osteoporosis-related fractures that occur annually.

The health care services included in the WISEWOMAN program have provided positive results for many women who have participated and ultimately cost-savings for the states that have participated. Expansion of the WISEWOMAN model to additional states and for additional preventive services, such as screening for osteoporosis, should enhance positive results for both the women and states participating in the program.

The National Osteoporosis Foundation is most appreciative of your efforts to promote improved both health and endorse the WISEWOMAN Expansion Act of 2001.

Sincerely,
SANDRA C. RAYMOND,
*Executive Director.*

Mr. HARKIN. Mr. President, I am pleased to join Senator FRIST today to introduce the ''WISEWOMAN Expansion Act.'' This bill will help thousands of women have access to basic preventive health care they may otherwise not receive. The legislation builds on a successful demonstration program and expands screening services and preventive care for uninsured and low-income women across the nation.

Beginning in 1990, I worked as Chairman of the Labor, Health and Human Services and Education Appropriation Subcommittee to provide the funding for the National Breast and Cervical Cancer Early Detection Program, NBCCEDP, run through the Centers for Disease Control and Prevention. In Iowa alone, the program has successfully served close to 9000 women through 618 provider-based breast and cervical cancer screening sites.

Today, the Centers for Disease Control and Prevention currently run the WISEWOMAN program through the NBCCEDP as a demonstration project. The program has successfully built upon the framework of the NBCCEDP to target other chronic diseases among women, including heart disease, the leading cause of death among women, and osteoporosis. The programs address risk factors such as elevated cholesterol, high blood pressure, obesity and smoking and provide important intervention services.

This demonstration project has been successful. It is now time to expand the program to additional states, and eventually make it nationwide. As the brother of two sisters lost to breast cancer and the father of two daughters, I know first hand the importance of making women's health initiatives a top priority. The first step to fighting a chronic disease like cancer, heart disease or osteoporosis is early detection. All women deserve to benefit from the early detection and prevention made possible by the latest advances in medicine. This bill ensures a place for lower income woman at the health care table.

The majority of Americans associate cardiovascular disease with men, but the American Heart Association estimates that nearly one in two women will die of heart disease or stroke. In fact, cardiovascular diseases kills nearly 50,000 more women each year than men. In my own state of Iowa, cardiovascular disease accounts for 44 percent of all deaths in Iowa. Close to 7,000 women die annually in Iowa from cardiovascular disease. Each year, nearly half a million women lose their lives as a result of heart disease and stroke. Sadly, with appropriate screening and interventions, many of these deaths could have been prevented.

Osteoporosis is also a preventable disease and affects one out of every two women over the age of 50. Fortunately, some of the preventive measures women can take to reduce their risk for cardiovascular diseases, such as eating more nutritious foods and exercising, can also reduce their risk for osteoporosis.

Our bill would do the following:

Expand the current WISEWOMAN demonstration project to additional states;

Add flexibility to program language that would allow screenings and other preventive measures for diseases in addition to cardiovascular diseases;

Allow flexibility for the WISEWOMAN program to grow and adapt with the changing needs of individual states and our better understanding of new preventive strategies; and

Ensure continued full collaboration of the WISEWOMAN program with the NBCCEDP; Authorize the CDC to make competitive grants to states to carry out additional preventive health services to the breast and cervical cancer screenings at NBCCEDP programs, such as: screenings for blood pressure, cholesterol, and osteoporosis; health education and counseling; lifestyle interventions to change behavioral risk factors such as smoking, lack of exercise, poor nutrition, and sedentary lifestyle; and appropriate referrals for medical treatment and follow-up services.

In order to be eligible for this program, states are required to already participate in the NBCCEDP and to agree to operate their WISEWOMAN program in collaboration with the NBCCEDP.

This bipartisan legislation has the support of the National Osteoporosis Foundation, the American Heart Association, the American Cancer Society and the Komen Foundation, among others. I urge my colleagues to join us in supporting this critical legislation.

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By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 210. A bill to authorize the integration and consolidation of alcohol and substance abuse programs and services provided by Indian tribal governments, and for other purposes; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, I am pleased to be joined today by the Vice Chairman of the Committee on Indian Affairs Senator DANIEL K. INOUYE in introducing the Native American Alcohol and Substance Abuse Program Consolidation Act of 2001. This important legislation will authorize Indian Tribes to consolidate and integrate alcohol, substance abuse prevention and treatment and mental health programs to provide more comprehensive treatment and services to Native Americans across the country.

More often than not, individuals with alcohol and substance abuse problems are also hobbled with mental health problems, and this bill authorizes tribes to make mental health services available as well.

Native Americans have higher rates of alcohol and drug use than any other racial or ethnic group in the United States. Despite previous treatment and preventive efforts, alcoholism and substance abuse continue to be prevalent among Native youth: 82 percent of Native adolescents admitted to having used alcohol, compared with 66 percent of non-Native youth.

Alcohol continues to be an important risk factor associated with the top three killers of Native youngsters—accidents, suicide, and homicide.

Based on 1993 data, the rate of mortality due to alcoholism among Native youth ages 15 to 24 was 5.2 per 100,000, which is 17 times the rate for whites in the same age group.

In a 1994 school-based study, 39 percent of Native high school seniors reported having ''gotten drunk'' and 39 percent of Native kids admitted to using marijuana.

Alcohol and substance abuse also contribute to other social problems including sexually transmitted diseases, child and spousal abuse, poor school achievement and dropout, unemployment, drunk-driving and vehicular deaths, mental health problems, hopelessness and suicide.

Alcohol, substance abuse, and mental health program funds are available to tribes from virtually every agency in the federal government including the Departments of Education, Health and Human Services, Housing and Urban Development, Interior, Justice, and Transportation.

To help Tribes slice through the bureaucracy, this bill authorizes Tribal governments and inter-Tribal organizations to: 1, consolidate these programs through a single federal office in the Department of Health and Human Services—Indian Health Services, IHS; and 2, use a single plan to reduce the administrative and bureaucratic processes, resulting in better services to Native Americans.

This bill tries to replicate the success of the widely-hailed ''477 model'' that Tribes have used to effectively coordinate employment training and related services through the Indian Employment Training and Related Services Demonstration Act of 1992, Pub. Law 102–477.

Under the ''477 model,'' and applicant Tribe files a single plan to draw and coordinate resources from the spectrum of federal agencies and administer them through one office. I am hopeful that armed with this creative tool, Tribes can begin to bring an end to the devastation of alcohol and drug abuse in their communities.

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

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

S. 210

*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 ''Native American Alcohol and Substance Abuse Program Consolidation Act of 2001''.

**SEC. 2. STATEMENT OF PURPOSE.**

The purposes of this Act are—

(1) to enable Indian tribes to consolidate and integrate alcohol and other substance abuse prevention, diagnosis and treatment programs, and mental health and related programs, to provide unified and more effective and efficient services to Native Americans afflicted with alcohol and other substance abuse problems; and

(2) to recognize that Indian tribes can best determine the goals and methods for establishing and implementing prevention, diagnosis and treatment programs for their communities, consistent with the policy of self-determination.

**SEC. 3. DEFINITIONS.**

(a) IN GENERAL.—In this Act:

(1) FEDERAL AGENCY.—The term ''Federal agency'' has the meaning given the term ''agency'' in section 551(1) of title 5, United States Code.

(2) INDIAN.—The term ''Indian'' has the meaning given that term in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).

(3) INDIAN TRIBE.—The terms ''Indian tribe'' and ''tribe'' have the meaning given the term ''Indian tribe'' in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) and shall include entities as provided for in subsection (b)(2).

(4) SECRETARY.—Except where otherwise provided, the term ''Secretary'' means the Secretary of Health and Human Services.

(5) SUBSTANCE ABUSE.—The term ''substance abuse'' includes the illegal use or abuse of a drug, the abuse of an inhalant, or the abuse of tobacco or related products.

(b) INDIAN TRIBE.—

(1) IN GENERAL.—In any case in which an Indian tribe has authorized another Indian tribe, an inter-tribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this Act, the authorized Indian tribe, inter-tribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this Act).

(2) INCLUSION OF OTHER ENTITIES.—In a case described in paragraph (1), the term ''Indian tribe'', as defined in subsection (a)(2), shall include the additional authorized Indian tribe, inter-tribal consortium, or tribal organization.

**SEC. 4. INTEGRATION OF SERVICES AUTHORIZED.**

The Secretary, in cooperation with the Secretary of Labor, the Secretary of the Interior, the Secretary of Education, the Secretary of Housing and Urban Development, the United States Attorney General, and the Secretary of Transportation, as appropriate, shall, upon the receipt of a plan acceptable to the Secretary that is submitted by an Indian tribe, authorize the tribe to coordinate, in accordance with such plan, its federally funded alcohol and substance abuse and mental health programs in a manner that integrates the program services involved into a single, coordinated, comprehensive program and reduces administrative costs by consolidating administrative functions.

**SEC. 5. PROGRAMS AFFECTED.**

The programs that may be integrated in a demonstration project under any plan referred to in section 4 shall include—

(1) any program under which an Indian tribe is eligible for the receipt of funds under a statutory or administrative formula for the purposes of prevention, diagnosis, or treatment of alcohol and other substance abuse problems and disorders, or mental health problems and disorders, or any program designed to enhance the ability to treat, diagnose, or prevent alcohol and other substance abuse and related problems and disorders, or mental health problems or disorders;

(2) any program under which an Indian tribe is eligible for receipt of funds though a competitive or other grant program for the purposes of prevention, diagnosis, or treatment of alcohol and other substance abuse problems and disorders, or mental health problems and disorders, or treatment, diagnosis, or prevention of related problems and disorders, or any program designed to enhance the ability to treat, diagnose, or prevent alcohol and other substance abuse and related problems and disorders, or mental health problems or disorders, if—

(A) the Indian tribe has provided notice to the appropriate agency regarding the intentions of the tribe to include the grant program in the plan it submits to the Secretary, and the affected agency has consented to the inclusion of the grant in the plan; or

(B) the Indian tribe has elected to include the grant program in its plan, and the administrative requirements contained in the plan are essentially the same as the administrative requirements under the grant program; and

(3) any program under which an Indian tribe is eligible for receipt of funds under any other funding scheme for the purposes of prevention, diagnosis, or treatment of alcohol and other substance abuse problems and disorders, or mental health problems and disorders, or treatment, diagnosis, or prevention of related problems and disorders, or any program designed to enhance the ability to treat, diagnose, or prevent alcohol and other substance abuse and related problems and disorders, or mental health problems or disorders.

**SEC. 6. PLAN REQUIREMENTS.**

For a plan to be acceptable under section 4, the plan shall—

(1) identify the programs to be integrated;

(2) be consistent with the purposes of this Act authorizing the services to be integrated into the project;

(3) describe a comprehensive strategy that identifies the full range of existing and potential alcohol and substance abuse and mental health treatment and prevention programs available on and near the tribe's service area;

(4) describe the manner in which services are to be integrated and delivered and the results expected under the plan;

(5) identify the projected expenditures under the plan in a single budget;

(6) identify the agency or agencies in the tribe to be involved in the delivery of the services integrated under the plan;

(7) identify any statutory provisions, regulations, policies, or procedures that the tribe believes need to be waived in order to implement its plan; and

(8) be approved by the governing body of the tribe.

**SEC. 7. PLAN REVIEW.**

(a) CONSULTATION.—Upon receipt of a plan from an Indian tribe under section 4, the Secretary shall consult with the head of each Federal agency providing funds to be used to implement the plan, and with the tribe submitting the plan.

(b) IDENTIFICATION OF WAIVERS.—The parties consulting on the implementation of the plan under subsection (a) shall identify any waivers of statutory requirements or of Federal agency regulations, policies, or procedures necessary to enable the tribal government to implement its plan.

(c) WAIVERS.—Notwithstanding any other provision of law, the head of the affected Federal agency shall have the authority to waive any statutory requirement, regulation, policy, or procedure promulgated by the Federal agency that has been identified by the tribe or the Federal agency under subsection (b) unless the head of the affected Federal agency determines that such a waiver is inconsistent with the purposes of this Act or with those provisions of the Act that authorizes the program involved which are specifically applicable to Indian programs.

**SEC. 8. PLAN APPROVAL.**

(a) IN GENERAL.—Not later than 90 days after the receipt by the Secretary of a tribe's plan under section 4, the Secretary shall inform the tribe, in writing, of the Secretary's approval or disapproval of the plan, including any request for a waiver that is made as part of the plan.

(b) DISAPPROVAL.—If a plan is disapproved under subsection (a), the Secretary shall inform the tribal government, in writing, of the reasons for the disapproval and shall give the tribe an opportunity to amend its plan or to petition the Secretary to reconsider such disapproval, including reconsidering the disapproval of any waiver requested by the Indian tribe.

**SEC. 9. FEDERAL RESPONSIBILITIES.**

(a) RESPONSIBILITIES OF THE INDIAN HEALTH SERVICE.—

(1) MEMORANDUM OF UNDERSTANDING.—Not later than 180 days after the date of enactment of this Act, the Secretary, the Secretary of the Interior, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the United States Attorney General, and the Secretary of Transportation shall enter into an interdepartmental memorandum of agreement providing for the implementation of the plans authorized under this Act.

(2) LEAD AGENCY.—The lead agency under this Act shall be the Indian Health Service.

(3) RESPONSIBILITIES.—The responsibilities of the lead agency under this Act shall include—

(A) the development of a single reporting format related to the plan for the individual project which shall be used by a tribe to report on the activities carried out under the plan;

(B) the development of a single reporting format related to the projected expenditures for the individual plan which shall be used by a tribe to report on all plan expenditures;

(C) the development of a single system of Federal oversight for the plan, which shall be implemented by the lead agency;

(D) the provision of technical assistance to a tribe appropriate to the plan, delivered under an arrangement subject to the approval of the tribe participating in the project, except that a tribe shall have the authority to accept or reject the plan for providing the technical assistance and the technical assistance provider; and

(E) the convening by an appropriate official of the lead agency (whose appointment is subject to the confirmation of the Senate) and a representative of the Indian tribes that carry out projects under this Act, in consultation with each of the Indian tribes that participate in projects under this Act, of a meeting not less than 2 times during each fiscal year for the purpose of providing an opportunity for all Indian tribes that carry out projects under this Act to discuss issues relating to the implementation of this Act with officials of each agency specified in paragraph (1).

(b) REPORT REQUIREMENTS.—The single reporting format shall be developed by the Secretary under subsection (a)(3), consistent with the requirements of this Act. Such reporting format, together with records maintained on the consolidated program at the tribal level shall contain such information as will—

(1) allow a determination that the tribe has complied with the requirements incorporated in its approved plan; and

(2) provide assurances to the Secretary that the tribe has complied with all directly applicable statutory requirements and with those directly applicable regulatory requirements which have not been waived.

**SEC. 10. NO REDUCTION IN AMOUNTS.**

In no case shall the amount of Federal funds available to a participating tribe involved in any project be reduced as a result of the enactment of this Act.

**SEC. 11. INTERAGENCY FUND TRANSFERS AUTHORIZED.**

The Secretary, the Secretary of the Interior, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the United States Attorney General, or the Secretary of Transportation, as appropriate, is authorized to take such action as may be necessary to provide for the interagency transfer of funds otherwise available to a tribe in order to further the purposes of this Act.

**SEC. 12. ADMINISTRATION OF FUNDS AND OVERAGE.**

(a) ADMINISTRATION OF FUNDS.—

(1) IN GENERAL.—Program funds shall be administered under this Act in such a manner as to allow for a determination that funds from specific programs (or an amount equal to the amount utilized from each program) are expended on activities authorized under such program.

(2) SEPARATE RECORDS NOT REQUIRED.—Nothing in this section shall be construed as requiring a tribe to maintain separate records tracing any services or activities conducted under its approved plan under section 4 to the individual programs under which funds were authorized, nor shall the tribe be required to allocate expenditures among individual programs.

(b) OVERAGE.—All administrative costs under a plan under this Act may be commingled, and participating Indian tribes shall be entitled to the full amount of such costs (under each program or department's regulations), and no overage shall be counted for Federal audit purposes so long as the overage is used for the purposes provided for under this Act.

**SEC. 13. FISCAL ACCOUNTABILITY.**

Nothing in this Act shall be construed to interfere with the ability of the Secretary or the lead agency to fulfill the responsibilities for the safeguarding of Federal funds pursuant to chapter 75 of title 31, United States Code.

**SEC. 14. REPORT ON STATUTORY AND OTHER BARRIERS TO INTEGRATION.**

(a) PRELIMINARY REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives on the implementation of the program authorized under this Act.

(b) FINAL REPORT.—Not later than 5 years after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Indian Affairs of the Senate and the Committee on Resources of the House of Representatives on the results of the implementation of the program authorized under this Act. The report shall identify statutory barriers to the ability of tribes to integrate more effectively their alcohol and substance abuse services in a manner consistent with the purposes of this Act.

**SEC. 15. ASSIGNMENT OF FEDERAL PERSONNEL TO STATE INDIAN ALCOHOL AND DRUG TREATMENT OR MENTAL HEALTH PROGRAMS.**

Any State with an alcohol and substance abuse or mental health program targeted to Indian tribes shall be eligible to receive, at no cost to the State, such Federal personnel assignments as the Secretary, in accordance with the applicable provisions of subchapter IV of chapter 33 of title 5, United States Code, may deem appropriate to help insure the success of such program.

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By Mr. CAMPBELL (for himself and Mr. INOUYE):

S. 211. A bill to amend the Education Amendments of 1978 and the Tribally Controlled Schools Act of 1988 to improve education for Indians, Native Hawaiians, and Alaskan Natives; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, I am pleased today to be joined by the Vice Chairman of the Committee on Indian Affairs, Senator DANIEL K. INOUYE, in introducing legislation to improve the education delivery systems in Indian schools so that the President's goal that ''no child be left behind'' is as true for Native youngsters as for all Americans.

Grounded in the Constitution, treaties, federal statutes and court decisions, the United States has a unique role in the education of Native people. This is especially true for the Bureau of Indian Affairs school system for schools on or near reservations built and designed by the federal government. The only other school system in which the federal role is so significant is with Department of Defense schools for the children of those serving our nation in the armed forces.

As a youngster from a troubled background and a former teacher myself, I firmly believe that more than ever a quality education holds the key to a brighter and more hopeful future. I also know that the life-blood of Native people and the best chance they have for improving the lives of all their members lies in a well-educated community. In short, I believe community development starts with individual development and education is the key.

Like President Bush, I believe that education reform stands at the top of our national agenda. Education reform in Indian country is critical if this nation's Native people are to make the kind of advancement that is so clearly needed.

The geography of much of Indian country is difficult: from wintry Alaska, to the windswept Plains, to the searing heat of the Southwest, the terrain often makes it hard to get to school, let alone do well in school. I believe this reality must be acknowledged as we work to improve Native school systems.

Members of the Committee on Indian Affairs know all too well that the conditions in many, if not most, Indian schools is appalling: crumbling facilities, asbestos and PCBs, lead paint, lack of heat and other problems combine to make the schools nearly uninhabitable. Most members, indeed most Americans, would probably pull their children from school if they were subjected to these conditions.

We made a solid start at facilities replacement and repair with the Fiscal Year 2001 Interior appropriations bill which provided nearly $300 million in funds for these purposes.

Nevertheless, the backlog in school construction needs is still in the $800 to 900 million range.

I am very encouraged by President Bush's plan to establish an Indian tribal school capital improvement fund of more than $900 million to rectify the facilities crisis.

The bill I am introducing today, the Native American Educational Improvement Act of 2001, will improve education for Native people in a variety of ways.

Title I of the bill will amend the Education Amendments of 1978 in several respects. This legislation was enacted to provide a comprehensive structure for the BIA funded schools system including grant, contract and BIA operated schools.

The bill addresses most aspects of the BIA school system including standards and accreditation, facilities and various funding issues. It also provides guidance for how funding should be allocated by establishing a formula to effect a more equitable distribution of funds. The formula is based on weighted student units with extra weight given for such things as disabilities of gifted and talented abilities.

In keeping with the policy of Indian Self Determination, the bill carves out a key role for Indian Tribes by requiring that actions undertaken pursuant to the Act be done in consultation with the Tribes. This emphasis on maximizing local, Indian involvement is witnessed in the bill in several respects including the use of negotiated rulemaking in proposing and developing regulations to carry out the Act.

There is no single federal policy more successful than the contracting and compacting opportunities provided by the Indian Self Determination and Education Assistance Act of 1975, as amended.

Tribes and Tribal consortia have demonstrated that when they are provided the resources and flexibility to design and implement programs and services formerly provided by the Federal government, good things happen: 1, the quality of those services is refined; 2, the Tribe or consortium enhances its administrative and managerial abilities; and 3, federal resources are used more efficiently and effectively.

In keeping with this pattern, the bill authorizes Tribal contractors to perform all functions that are not inherently federal.

The bill will unshackle local authorities from the constraints of centralized management by authorizing Tribes to waive BIA school standards and design and implement standards that will better meet the needs of that Tribe's students.

Standards, flexibility and accreditation are important aspects of any good school system, but so is a sufficient pool of resources.

This bill will help evaluate whether funding levels for BIA schools are sufficient and seeks a review by the General Accounting Office to that effect.

While the core purpose of the Act is to provide a blueprint for the BIA school system, the bill I introduce today incorporates Tribal departments of education as well as early childhood development programs that provide services to meet the needs of parents and children under age six.

Title II of the bill amends the Tribally Controlled Schools Act of 1988, TCSA, by expanding the opportunities for Tribal operation of schools that would otherwise be run by the BIA.

Passage of the TCSA in 1988 grew out of dissatisfaction with the method of contracting educational services under the Indian Self Determination and Education Assistance Act, P.L. 93–638, ISDEAA.

While many services were being successfully contracted by Tribes under ISDEAA, education continued to be plagued with problems and Tribes were looking for an alternative to contracts.

The bill I am introducing today is grounded in the concept of ''lump-sum'' financing to Indian Tribes. This approach is intended to address some of the problems faced by ISDEAA contractors. That is, if a Tribe wants to operate a school pursuant to contract, it would be forced to negotiate a separate contract for each of the various school functions. A separate contract was required for transportation, for programs, for operations and maintenance, and other functions. This bill will consolidate these and other functions into one contract.

The grant schools operated by Tribes are provided considerable latitude in managing their finances provided that four specific requirements are met: As long as a grant school 1, submits an annual program report; 2, submits an evaluation report; 3, is accredited; and 4, adheres to the federal Single Audit Act, then that school may continue to enjoy the flexibility afforded it under P.L. 100–297.

Last, to ensure that Tribal initiative and creativity are not thwarted unnecessarily, this bill prohibits regulations from being established unless specifically authorized.

I have highlighted but a few of the major provisions included in this bill and I urge my colleagues to join me in supporting this important initiative. I ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 211

*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 ''Native American Education Improvement Act of 2001''.

**TITLE I—AMENDMENTS TO THE EDUCATION AMENDMENTS OF 1978**

**SEC. 101. AMENDMENTS TO THE EDUCATION AMENDMENTS OF 1978.**

Part B of title XI of the Education Amendments of 1978 (25 U.S.C. 2001 et seq.) is amended to read as follows:

**''PART B—BUREAU OF INDIAN AFFAIRS PROGRAMS**

**''SEC. 1120. FINDING AND POLICY.**

''(a) FINDING.—Congress finds and recognizes that—

''(1) the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people includes the education of Indian children; and

''(2) the Federal Government has the responsibility for the operation and financial support of the Bureau of Indian Affairs funded school system that the Federal Government has established on or near reservations and Indian trust lands throughout the Nation for Indian children.

''(b) POLICY.—It is the policy of the United States to work in full cooperation with tribes toward the goal of assuring that the programs of the Bureau of Indian Affairs funded school system are of the highest quality and provide for the basic elementary and secondary educational needs of Indian children, including meeting the unique educational and cultural needs of these children.

**''SEC. 1121. ACCREDITATION AND STANDARDS FOR THE BASIC EDUCATION OF INDIAN CHILDREN IN BUREAU OF INDIAN AFFAIRS SCHOOLS.**

''(a) PURPOSE; DECLARATIONS OF PURPOSE.—

''(1) PURPOSE.—The purpose of the standards implemented under this section shall be to ensure that Indian students being served by a school funded by the Bureau of Indian Affairs are provided with educational opportunities that equal or exceed those for all other students in the United States.

''(2) DECLARATIONS OF PURPOSE.—

''(A) IN GENERAL.—Local school boards for schools operated by the Bureau of Indian Affairs, in cooperation and consultation with the appropriate tribal governing bodies and their communities, are encouraged to adopt declarations of purpose for education for their communities, taking into account the implications of such declarations on education in their communities and for their schools. In adopting such declarations of purpose, the school boards shall consider the effect the declarations may have on the motivation of students and faculties.

''(B) CONTENTS.—A declaration of purpose for a community shall—

''(i) represent the aspirations of the community for the kinds of people the community would like the community's children to become; and

''(ii) contain an expression of the community's desires that all students in the community shall—

''(I) become accomplished in things and ways important to the students and respected by their parents and community;

''(II) shape worthwhile and satisfying lives for themselves;

''(III) exemplify the best values of the community and humankind; and

''(IV) become increasingly effective in shaping the character and quality of the world all students share.

''(C) STANDARDS.—The declarations of purpose shall influence the standards for accreditation to be accepted by the schools.

''(b) STUDIES AND SURVEYS RELATING TO STANDARDS.—Not later than 1 year after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary, in consultation with the Secretary of Education, consortia of education organizations, and Indian organizations and tribes, and making the fullest use possible of other existing studies, surveys, and plans, shall carry out, by contract with an Indian organization, studies and surveys to establish and revise standards for the basic education of Indian children attending Bureau funded schools. Such studies and surveys shall take into account factors such as academic needs, local cultural differences, type and level of language skills, geographic isolation, and appropriate teacher-student ratios for such children, and shall be directed toward the attainment of equal educational opportunity for such children.

''(c) REVISION OF MINIMUM ACADEMIC STANDARDS.—

''(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary shall—

''(A) propose revisions to the minimum academic standards contained in part 36 of title 25, Code of Federal Regulations (on the date of enactment of the Native American Education Improvement Act of 2001) for the basic education of Indian children attending Bureau funded schools, in accordance with the purpose described in subsection (a) and the findings of the studies and surveys carried out under subsection (b);

''(B) publish such proposed revisions to such standards in the Federal Register for the purpose of receiving comments from the tribes, local school boards, Bureau funded schools, and other interested parties; and

''(C) consistent with the provisions of this section and section 1130, take such actions as are necessary to coordinate standards implemented under this section with—

''(i) the Comprehensive School Reform Plan developed by the Bureau; and

''(ii)(I) the standards of the State in which any Bureau funded school is located; or

''(II) in a case where schools operated by the Bureau are within the boundaries of the reservation land of 1 tribe but within the boundaries of more than 1 State, the standards of the State selected by the tribe.

''(2) FINAL STANDARDS.—Not later than 6 months after the close of the comment period for comments described in paragraph (1)(B), the Secretary shall establish final standards under this subsection, distribute such standards to all tribes, and publish such standards in the Federal Register.

''(3) FURTHER REVISIONS.—The Secretary shall revise standards under this subsection periodically as necessary. Prior to making any revisions of such standards, the Secretary shall distribute proposed revisions of the standards to all the tribes, and publish such proposed revisions in the Federal Register, for the purpose of receiving comments from the tribes and other interested parties.

''(4) APPLICABILITY OF STANDARDS.—Except as provided in subsection (e), the final standards published under this subsection shall apply to all Bureau funded schools not accredited under subsection (f), and may also serve as model standards for educational programs for Indian children in public schools.

''(5) CONSIDERATIONS WHEN ESTABLISHING AND REVISING STANDARDS.—In establishing and revising standards under this subsection, the Secretary shall take into account the unique needs of Indian students and support and reinforce the specific cultural heritage of each tribe.

''(d) ALTERNATIVE OR MODIFIED STANDARDS.—With respect to a school that is located in a State or region with standards that are in conflict with the standards established under subsection (c), the Secretary shall provide alternative or modified standards in lieu of the standards established under such subsection so that the programs of such school are in compliance with the minimum accreditation standards required for schools in the State or region where the school is located.

''(e) WAIVER OF STANDARDS; ALTERNATIVE STANDARDS.—

''(1) WAIVER.—A tribal governing body, or the local school board so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsection (c) and (d) if such standards are determined by such body or board to be inappropriate for the needs of students from that tribe.

''(2) ALTERNATIVE STANDARDS.—The tribal governing body or school board involved shall, not later than 60 days after providing a waiver under paragraph (1) for a school, submit to the Director a proposal for alternative standards that take into account the specific needs of the tribe's children. Such alternative standards shall be established by the Director for the school involved unless specifically rejected by the Director for good cause and in writing provided to the affected tribes or local school board.

''(f) ACCREDITATION AND IMPLEMENTATION OF STANDARDS.—

''(1) DEADLINE.—Not later than the second academic year after publication of final standards established under subsection (c) or (d), or after the approval of alternative standards under subsection (e), to the extent necessary funding is provided, each Bureau funded school to which such standards would apply shall meet the applicable standards or be accredited—

''(A) by a tribal accrediting body that has been accepted by formal action of the appropriate tribal governing body;

''(B) by a regional accreditation agency;

''(C) in accordance with State accreditation standards for the State in which the school is located; or

''(D) in the case of a school that is located on a reservation that is located in more than 1 State, in accordance with the State accreditation standards of 1 State as selected by the tribal government.

''(2) DETERMINATION OF STANDARDS TO BE APPLIED.—The accreditation type or standards applied for each school shall be determined by the school board of the school, in consultation with the Administrator of the school, provided that in the case where the School Board and the Administrator fail to agree on the type of accreditation and standards to apply, the decision of the school board with the approval of the tribal governing body shall be final.

''(3) ASSISTANCE TO SCHOOL BOARDS.—The Secretary, through contracts and grants, shall assist school boards of contract or grant schools in implementing standards established under subsections (c), (d), and (e), if the school boards request that such standards, in part or in whole, be implemented.

''(4) FISCAL CONTROL AND FUND ACCOUNTING STANDARDS.—The Bureau shall, either directly or through a contract with an Indian organization, establish a consistent system of reporting standards for fiscal control and fund accounting for all contract and grant schools. Such standards shall yield data results comparable to the data provided by Bureau schools.

''(g) ANNUAL PLAN FOR MEETING OF STANDARDS.—

''(1) IN GENERAL.—Except as provided in subsections (e) and (f), the Secretary shall begin to implement the standards established under this section on the date of their establishment.

''(2) PLAN.—On an annual basis, the Secretary shall submit to the appropriate committees of Congress, all Bureau funded schools, and the tribal governing bodies of such schools a detailed plan to bring all Bureau funded schools up to the level required by the applicable standards established under this section. Such plan shall include detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific timelines for bringing each school up to the level required by such standards.

''(h) CLOSURE OR CONSOLIDATION OF SCHOOLS.—

''(1) IN GENERAL.—Except as specifically required by law, no Bureau funded school or dormitory operated on or after January 1, 1992, may be closed, consolidated, or transferred to another authority and no program of such a school may be substantially curtailed except in accordance with the requirements of this subsection.

''(2) EXCEPTIONS.—This subsection (other than this paragraph) shall not apply—

''(A) in those cases in which the tribal governing body for a school, or the local school board concerned (if designated by the tribal governing body to act under this paragraph), requests the closure, consolidation, or substantial curtailment; or

''(B) if a temporary closure, consolidation, or substantial curtailment is required by facility conditions that constitute an immediate hazard to health and safety.

''(3) REGULATIONS.—The Secretary shall, by regulation, promulgate standards and procedures for the closure, transfer to another authority, consolidation, or substantial curtailment of school programs of Bureau schools, in accordance with the requirements of this subsection.

''(4) NOTIFICATION.—

''(A) CONSIDERATION.—Whenever closure, transfer to another authority, consolidation, or substantial curtailment of a school program of a Bureau school is under active consideration or review by any division of the Bureau or the Department of the Interior, the head of the division or the Secretary shall ensure that the affected tribe, tribal governing body, and local school board, are notified (in writing) immediately, kept fully and currently informed, and afforded an opportunity to comment with respect to such consideration or review.

''(B) FORMAL DECISION.—When the head of any division of the Bureau or the Secretary makes a formal decision to close, transfer to another authority, consolidate, or substantially curtail a school program of a Bureau school, the head of the division or the Secretary shall notify (in writing) the affected tribes, tribal governing body, and local school board at least 6 months prior to the end of the academic year preceding the date of the proposed action.

''(C) COPIES OF NOTIFICATIONS AND INFORMATION.—The Secretary shall transmit copies of the notifications described in this paragraph promptly to the appropriate committees of Congress and publish such notifications copies in the Federal Register.

''(5) REPORT.—

''(A) IN GENERAL.—The Secretary shall submit a report to the appropriate committees of Congress, the affected tribal governing body and the designated local school board, describing the process of the active consideration or review referred to in paragraph (4).

''(B) CONTENTS.—The report shall include the results of a study of the impact of the action under consideration or review on the student population of the school involved, identify those students at the school with particular educational and social needs, and ensure that alternative services are available to such students. Such report shall include a description of consultation conducted between the potential service provider and current service provider of such services, parents, tribal representatives, the tribe involved, and the Director of the Office regarding such students.

''(6) LIMITATION ON CERTAIN ACTIONS.—No irreversible action may be taken to further any proposed school closure, transfer to another authority, consolidation, or substantial curtailment described in this subsection concerning a school (including any action that would prejudice the personnel or programs of such school) prior to the end of the first full academic year after the report described in paragraph (5) is submitted.

''(7) TRIBAL GOVERNING BODY APPROVAL REQUIRED FOR CERTAIN ACTIONS.—The Secretary may terminate, contract, transfer to any other authority, consolidate, or substantially curtail the operation or facilities of—

''(A) any Bureau funded school that is operated on or after January 1, 1999;

''(B) any program of such a school that is operated on or after January 1, 1999; or

''(C) any school board of a school operated under a grant under the Tribally Controlled Schools Act of 1988,

only if the tribal governing body for the school involved approves such action.

''(i) APPLICATION FOR CONTRACTS OR GRANTS FOR NON-BUREAU FUNDED SCHOOLS OR EXPANSION OF BUREAU FUNDED SCHOOLS.—

''(1) IN GENERAL.—

''(A) APPLICATIONS.—

''(i) TRIBES; SCHOOL BOARDS.—The Secretary shall only consider the factors described in subparagraph (B) in reviewing—

''(I) applications from any tribe for the awarding of a contract or grant for a school that is not a Bureau funded school; and

''(II) applications from any tribe or school board associated with any Bureau funded school for the awarding of a contract or grant for the expansion of a Bureau funded school that would increase the amount of funds received by the tribe or school board under section 1126.

''(ii) LIMITATION.—With respect to applications described in this subparagraph, the Secretary shall give consideration to all the factors described in subparagraph (B), but no such application shall be denied based primarily upon the geographic proximity of comparable public education.

''(B) FACTORS.—With respect to applications described in subparagraph (A) the Secretary shall consider the following factors relating to the program and services that are the subject of the application:

''(i) The adequacy of existing facilities to support the proposed program and services or the applicant's ability to obtain or provide adequate facilities.

''(ii) Geographic and demographic factors in the affected areas.

''(iii) The adequacy of the applicant's program plans or, in the case of a Bureau funded school, of a projected needs analysis conducted either by the tribe or the Bureau.

''(iv) Geographic proximity of comparable public education.

''(v) The stated needs of all affected parties, including students, families, tribal governing bodies at both the central and local levels, and school organizations.

''(vi) Adequacy and comparability of programs and services already available.

''(vii) Consistency of the proposed program and services with tribal educational codes or tribal legislation on education.

''(viii) The history and success of these services for the proposed population to be served, as determined from all factors, including standardized examination performance.

''(2) DETERMINATION ON APPLICATION.—

''(A) PERIOD.—The Secretary shall make a determination concerning whether to approve any application described in paragraph (1)(A) not later than 180 days after the date such application is submitted to the Secretary.

''(B) FAILURE TO MAKE DETERMINATION.—If the Secretary fails to make the determination with respect to an application by the date described in subparagraph (A), the application shall be treated as having been approved by the Secretary.

''(3) REQUIREMENTS FOR APPLICATIONS.—

''(A) APPROVAL.—Notwithstanding paragraph (2)(B), an application described in paragraph (1)(A) may be approved by the Secretary only if—

''(i) the application has been approved by the tribal governing body of the students served by (or to be served by) the school or program that is the subject of the application; and

''(ii) the tribe or designated school board involved submits written evidence of such approval with the application.

''(B) INFORMATION.—Each application described in paragraph (1)(A) shall contain information discussing each of the factors described in paragraph (1)(B).

''(4) DENIAL OF APPLICATIONS.—If the Secretary denies an application described in paragraph (1)(A), the Secretary shall—

''(A) state the objections to the application in writing to the applicant not later than 180 days after the date the application is submitted to the Secretary;

''(B) provide assistance to the applicant to overcome the stated objections;

''(C) provide to the applicant a hearing on the record regarding the denial, under the same rules and regulations as apply under the Indian Self-Determination and Education Assistance Act; and

''(D) provide to the applicant a notice of the applicant's appeals rights and an opportunity to appeal the decision resulting from the hearing under subparagraph (D).

''(5) EFFECTIVE DATE OF A SUBJECT APPLICATION.—

''(A) IN GENERAL.—Except as otherwise provided in this paragraph, the action that is the subject of any application described in paragraph (1)(A) that is approved by the Secretary shall become effective—

''(i) on the first day of the academic year following the fiscal year in which the application is approved; or

''(ii) on an earlier date determined by the Secretary.

''(B) APPLICATION TREATED AS APPROVED.—If an application is treated as having been approved by the Secretary under paragraph (2)(B), the action that is the subject of the application shall become effective?—

''(i) on the date that is 18 months after the date on which the application is submitted to the Secretary; or

''(ii) on an earlier date determined by the Secretary.

''(6) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to preclude the expansion of grades and related facilities at a Bureau funded school, if such expansion is paid for with non-Bureau funds.

''(j) JOINT ADMINISTRATION.—Funds received by Bureau funded schools from the Bureau of Indian Affairs and under any program from the Department of Education or any other Federal agency for the purpose of providing education or related services, and other funds received for such education and related services from non-Federally funded programs, may apportion joint administrative, transportation, and program costs between such programs and the funds shall be retained at the school.

''(k) GENERAL USE OF FUNDS.—Funds received by Bureau funded schools from the Bureau of Indian Affairs and under any program from the Department of Education or any other Federal agency for the purpose of providing education or related services may be used for schoolwide projects to improve the educational program of the schools for all Indian students.

''(l) STUDY ON ADEQUACY OF FUNDS AND FORMULAS.—

''(1) STUDY.—The Comptroller General of the United States shall conduct a study, in consultation with tribes and local school boards, to determine the adequacy of funding, and formulas used by the Bureau to determine funding, for programs operated by Bureau funded schools, taking into account unique circumstances applicable to Bureau funded schools, including isolation, limited English proficiency of Indian students, the costs of educating disabled Indian students in isolated settings, and other factors that may disproportionately increase per-pupil

costs, as well as expenditures for comparable purposes in public schools nationally.

''(2) FINDINGS.—On completion of the study under paragraph (1), the Secretary shall take such action as may be necessary to ensure distribution of the findings of the study to the appropriate authorizing and appropriating committees of Congress, all affected tribes, local school boards, and associations of local school boards.

**''SEC. 1122. NATIONAL STANDARDS FOR HOME LIVING SITUATIONS.**

''(a) IN GENERAL.—The Secretary, in accordance with section 1137, shall revise the national standards for home-living (dormitory) situations to include such factors as heating, lighting, cooling, adult-child ratios, need for counselors (including special needs related to off-reservation home-living (dormitory) situations), therapeutic programs, space, and privacy. Such standards shall be implemented in Bureau schools. Any subsequent revisions shall also be in accordance with such section 1137.

''(b) IMPLEMENTATION.—The Secretary shall implement the revised standards established under this section immediately upon their issuance.

''(c) PLAN.—

''(1) IN GENERAL.—Upon the submission of each annual budget request for Bureau educational services (as contained in the President's annual budget request under section 1105 of title 31, United States Code), the Secretary shall submit to the appropriate committees of Congress, the tribes, and the affected schools, and publish in the Federal Register, a detailed plan to bring all Bureau funded schools that have dormitories or provide home-living (dormitory) situations into compliance with the standards established under this section.

''(2) CONTENTS.—Each plan under paragraph (1) shall include—

''(A) a statement of the relative needs of each of the home-living schools and projected future needs of each of the home-living schools;

''(B) detailed information on the status of each of the schools in relation to the standards established under this section;

''(C) specific cost estimates for meeting each standard for each such school;

''(D) aggregate cost estimates for bringing all such schools into compliance with the standards established under this section; and

''(E) specific timelines for bringing each school into compliance with such standards.

''(d) WAIVER.—A tribal governing body or local school board may, in accordance with section 1121(e), waive the standards established under this section for a school described in subsection (a) in the same manner as the governing body or school board may waive the standards provided under section 1121(c) for a Bureau funded school.

''(e) CLOSURE FOR FAILURE TO MEET STANDARDS PROHIBITED.—No school in operation on or before July 1, 1999 (regardless of compliance or noncompliance with the standards established under this section), may be closed, transferred to another authority, or consolidated, and no program of such a school may be substantially curtailed, because the school failed to meet such standards.

**''SEC. 1123. SCHOOL BOUNDARIES.**

''(a) ESTABLISHMENT BY SECRETARY.—Except as described in subsection (b), the Secretary shall establish, by regulation, separate geographical attendance areas for each Bureau funded school.

''(b) ESTABLISHMENT BY TRIBAL BODY.—In any case in which there is more than 1 Bureau funded school located on a reservation of a tribe, at the direction of the tribal governing body, the relevant school boards of the Bureau funded schools on the reservation may, by mutual consent, establish the boundaries of the relevant geographical attendance areas for such schools, subject to the approval of the tribal governing body. Any such boundaries so established shall be accepted by the Secretary.

''(c) BOUNDARY REVISIONS.—

''(1) IN GENERAL.—Effective on July 1, 1999, the Secretary may not establish or revise boundaries of a geographical attendance area with respect to any Bureau funded school unless the tribal governing body concerned or the school board concerned (if designated by the tribal governing body to act under this paragraph) has been afforded—

''(A) at least 6 months notice of the intention of the Secretary to establish or revise such boundaries; and

''(B) the opportunity to propose alternative boundaries.

''(2) PETITIONS.—Any tribe may submit a petition to the Secretary requesting a revision of the geographical attendance area boundaries referred to in paragraph (1).

''(3) BOUNDARIES.—The Secretary shall accept proposed alternative boundaries described in paragraph (1)(B) or revised boundaries described in a petition submitted under paragraph (2) unless the Secretary finds, after consultation with the affected tribe, that such alternative or revised boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the affected programs. On accepting the boundaries, the Secretary shall publish information describing the boundaries in the Federal Register.

''(4) TRIBAL RESOLUTION DETERMINATION.—Nothing in this section shall be interpreted as denying a tribal governing body the authority, on a continuing basis, to adopt a tribal resolution allowing parents a choice of the Bureau funded school their child may attend, regardless of the geographical attendance area boundaries established under this section.

''(d) FUNDING RESTRICTIONS.—The Secretary shall not deny funding to a Bureau funded school for any eligible Indian student attending the school solely because that student's home or domicile is outside of the boundaries of the geographical attendance area established for that school under this section. No funding shall be made available for transportation without tribal authorization to enable the school to provide transportation for any student to or from the school and a location outside the approved attendance area of the school.

''(e) RESERVATION AS BOUNDARY.—In any case in which there is only 1 Bureau funded school located on a reservation, the boundaries of the geographical attendance area for the school shall be the boundaries (as established by treaty, agreement, legislation, court decision, or executive decision and as accepted by the tribe involved) of the reservation served, and those students residing near the reservation shall also receive services from such school.

''(f) OFF-RESERVATION HOME-LIVING SCHOOLS.—Notwithstanding the boundaries of the geographical attendance areas established under this section, each Bureau funded school that is an off-reservation home-living school shall implement special emphasis programs and permit the attendance of students requiring the programs. The programs provided for such students shall be coordinated among education line officers, the families of the students, the schools, and the entities operating programs that referred the students to the schools.

**''SEC. 1124. FACILITIES CONSTRUCTION.**

''(a) NATIONAL SURVEY OF FACILITIES CONDITIONS.—

''(1) IN GENERAL.—Not later than 12 months after the date of enactment of the Native American Education Improvement Act of 2001, the General Accounting Office shall compile, collect, and secure the data that is needed to prepare a national survey of the physical conditions of all Bureau funded school facilities.

''(2) DATA AND METHODOLOGIES.—In preparing the national survey required under paragraph (1), the General Accounting Office shall use the following data and methodologies:

''(A) The existing Department of Defense formula for determining the condition and adequacy of Department of Defense facilities.

''(B) Data related to conditions of Bureau funded schools that has previously been compiled, collected, or secured from whatever source derived so long as the data is relevant, timely, and necessary to the survey.

''(C) The methodologies of the American Institute of Architects, or other accredited and reputable architecture or engineering associations.

''(3) CONSULTATIONS.—

''(A) IN GENERAL.—In carrying out the survey required under paragraph (1), the General Accounting Office shall, to the maximum extent practicable, consult (and if necessary contract) with national, regional, and tribal Indian education organizations to ensure that a complete and accurate national survey is achieved.

''(B) REQUESTS FOR INFORMATION.—All Bureau funded schools shall comply with reasonable requests for information by the General Accounting Office and shall respond to such requests in a timely fashion.

''(4) SUBMISSION TO CONGRESS.—Not later than 24 months after the date of enactment of the Native American Education Improvement Act of 2001, the General Accounting Office shall submit the results of the national survey conducted under paragraph (1) to the Committee on Indian Affairs and Committee on Appropriations of the Senate, and the Committee on Resources and Committee on Appropriations of the House.

''(5) NEGOTIATED RULEMAKING COMMITTEE.—

''(A) IN GENERAL.—Not later than 6 months after the date on which the submission is made under paragraph (4), the Secretary shall establish a negotiated rule making committee pursuant to section 1137(c). The negotiated rulemaking committee shall prepare and submit to the Secretary the following:

''(i) A catalogue of the condition of school facilities at all Bureau funded schools that—

''(I) rates such facilities with respect to the rate of deterioration and useful life structures and major systems;

''(II) establishes a routine maintenance schedule for each facility; and

''(III) makes projections on the amount of funds needed to keep each school viable, consistent with the standards of this Act.

''(ii) A school replacement and new construction report that determines replacement and new construction need, and a formula for the equitable distribution of funds to address such need, for Bureau funded schools. Such formula shall utilize necessary factors in determining an equitable distribution of funds, including—

''(I) the size of school;

''(II) school enrollment;

''(III) the age of the school;

''(IV) the condition of the school;

''(V) environmental factors at the school; and

''(VI) school isolation.

''(iii) A renovation repairs report that determines renovation need (major and minor), and a formula for the equitable distribution of funds to address such need, for Bureau

funded schools. Such report shall identify needed repairs or renovations with respect to a facility, or a part of a facility, or the grounds of the facility, to remedy a need based on disabilities access or health and safety changes to a facility. The formula developed shall utilize necessary factors in determining an equitable distribution of funds, including the factors described in subparagraph (B).

''(B) Not later 24 months after the negotiated rulemaking committee is established under subparagraph (A), the reports described in clauses (ii) and (iii) of subparagraph (A) shall be submitted to the committees of Congress referred to in paragraph (4), the national and regional Indian education organizations, and to all Indian tribes.

''(6) FACILITIES INFORMATION SYSTEMS SUPPORT DATABASE.—The Secretary shall develop a Facilities Information Systems Support Database to maintain and update the information contained in the reports under clauses (ii) and (iii) of paragraph (5)(A) and the information contained in the survey conducted under paragraph (1). The system shall be updated every 3 years by the Bureau of Indian Affairs and monitored by General Accounting Office, and shall be made available to Indian tribes, Bureau funded schools, and Congress.

''(b) COMPLIANCE WITH HEALTH AND SAFETY STANDARDS.—The Secretary shall immediately begin to bring all schools, dormitories, and other Indian education-related facilities operated by the Bureau or under contract or grant with the Bureau into compliance with all applicable tribal, Federal, or State health and safety standards, whichever provides greater protection (except that the tribal standards to be applied shall be no greater than any otherwise applicable Federal or State standards), with section 504 of the Rehabilitation Act of 1973, and with the Americans with Disabilities Act of 1990. Nothing in this section shall require termination of the operations of any facility which does not comply with such provisions and which is in use on the date of the enactment of the Native American Education Improvement Act of 2001.

''(c) COMPLIANCE PLAN.—At the time that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all facilities covered under subsection (b) of this section into compliance with the standards referred to in subsection (b). Such plan shall include detailed information on the status of each facility's compliance with such standards, specific cost estimates for meeting such standards at each school, and specific timelines for bringing each school into compliance with such standards.

''(d) CONSTRUCTION PRIORITIES.—

''(1) SYSTEM TO ESTABLISH PRIORITIES.—The Secretary shall annually prepare and submit to the appropriate committees of Congress, and publish in the Federal Register, information describing the system used by the Secretary to establish priorities for replacement and construction projects for Bureau funded schools and home-living schools, including boarding schools, and dormitories. On making each budget request described in subsection (c), the Secretary shall publish in the Federal Register and submit with the budget request a list of all of the Bureau funded school construction priorities, as described in paragraph (2).

''(2) LONG-TERM CONSTRUCTION AND REPLACEMENT LIST.—In addition to submitting the plan described in subsection (c), the Secretary shall—

''(A) not later than 18 months after the date of enactment of the Native American Education Improvement Act of 2001, establish a long-term construction and replacement priority list for all Bureau funded schools;

''(B) using the list prepared under subparagraph (A), propose a list for the orderly replacement of all Bureau funded education-related facilities over a period of 40 years to facilitate planning and scheduling of budget requests;

''(C) publish the list prepared under subparagraph (B) in the Federal Register and allow a period of not less than 120 days for public comment;

''(D) make such revisions to the list prepared under subparagraph (B) as are appropriate based on the comments received; and

''(E) publish a final list in the Federal Register.

''(3) EFFECT ON OTHER LIST.—Nothing in this section shall be construed as interfering with or changing in any way the construction and replacement priority list established by the Secretary, as the list exists on the date of enactment of the Native American Education Improvement Act of 2001.

''(e) HAZARDOUS CONDITION AT BUREAU FUNDED SCHOOL.—

''(1) CLOSURE, CONSOLIDATION, OR CURTAILMENT.—

''(A) IN GENERAL.—A Bureau funded school may be closed or consolidated, and the programs of a Bureau funded school may be substantially curtailed by reason of facility conditions that constitute an immediate hazard to health and safety only if a health and safety officer of the Bureau and an individual designated by the tribe involved under subparagraph (B), determine that such conditions exist at a facility of the Bureau funded school.

''(B) DESIGNATION OF INDIVIDUAL BY TRIBE.—To be designated by a tribe for purposes of subparagraph (A), an individual shall—

''(i) be a licensed or certified facilities safety inspector;

''(ii) have demonstrated experience in the inspection of facilities for health and safety purposes with respect to occupancy; or

''(iii) have a significant educational background in the health and safety of facilities with respect to occupancy.

''(C) INSPECTION.—In making a determination described in subparagraph (A), the Bureau health and safety officer and the individual designated by the tribe shall conduct an inspection of the conditions of such facility in order to determine whether conditions at such facility constitute an immediate hazard to health and safety.

''(D) FAILURE TO CONCUR.—If the Bureau health and safety officer, and the individual designated by the tribe, conducting the inspection of a facility required under subparagraph (A) do not concur that conditions at the facility constitute an immediate hazard to health and safety, such officer and individual shall immediately notify the tribal governing body and provide written information related to their determinations.

''(E) CONSIDERATION BY TRIBAL GOVERNING BODY.—Not later than 10 days after a tribal governing body received notice under subparagraph (D), the tribal governing body shall consider all information related to the determinations of the Bureau health and safety officer and the individual designated by the tribe and make a determination regarding the closure, consolidation, or curtailment involved.

''(F) CESSATION OF CLOSURE, CONSOLIDATION, OR CURTAILMENT.—If the Bureau health and safety officer, and the individual designated by the tribe, conducting the inspection of a facility required under subparagraph (A), concur that conditions at the facility constitute an immediate hazard to health and safety, or if the tribal governing body makes such a determination under subparagraph (E) the facility involved shall be closed immediately.

''(G) GENERAL CLOSURE REPORT.—If a Bureau funded school is temporarily closed or consolidated or the programs of a Bureau funded school are temporarily substantially curtailed under this subsection and the Secretary determines that the closure, consolidation, or curtailment will exceed 1 year, the Secretary shall submit to the appropriate committees of Congress, the affected tribe, and the local school board, not later than 3 months after the date on which the closure, consolidation, or curtailment was initiated, a report that specifies—

''(i) the reasons for such temporary action;

''(ii) the actions the Secretary is taking to eliminate the conditions that constitute the hazard;

''(iii) an estimated date by which the actions described in clause (ii) will be concluded; and

''(iv) a plan for providing alternate education services for students enrolled at the school that is to be closed.

''(2) NONAPPLICATION OF CERTAIN STANDARDS FOR TEMPORARY FACILITY USE.—

''(A) CLASSROOM ACTIVITIES.—The Secretary shall permit the local school board to temporarily utilize facilities adjacent to the school, or satellite facilities, if such facilities are suitable for conducting classroom activities. In permitting the use of facilities under the preceding sentence, the Secretary may waive applicable minor standards under section 1121 relating to such facilities (such as the required number of exit lights or configuration of restrooms) so long as such waivers do not result in the creation of an environment that constitutes an immediate and substantial threat to the health, safety, and life of students and staff.

''(B) ADMINISTRATIVE ACTIVITIES.—The provisions of subparagraph (A) shall apply with respect to administrative personnel if the facilities involved are suitable for activities performed by such personnel.

''(C) TEMPORARY.—In this paragraph, the term 'temporary' means—

''(i) with respect to a school that is to be closed for not more than 1 year, 3 months or less; and

''(ii) with respect to a school that is to be closed for not less than 1 year, a time period determined appropriate by the Bureau.

''(3) TREATMENT OF CLOSURE.—Any closure of a Bureau funded school under this subsection for a period that exceeds 1 month but is less than 1 year, shall be treated by the Bureau as an emergency facility improvement and repair project.

''(4) USE OF FUNDS.—With respect to a Bureau funded school that is closed under this subsection, the tribal governing body, or the designated local school board of each Bureau funded school, involved may authorize the use of school operations funds, which have otherwise been allocated for such school, to abate the hazardous conditions without further action by Congress.

''(f) FUNDING REQUIREMENT.—

''(1) DISTRIBUTION OF FUNDS.—Beginning with the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001, all funds appropriated to the budget accounts for the operations and maintenance of Bureau funded schools shall be distributed by formula to the schools. No funds from these accounts may be retained or segregated by the Bureau to pay for administrative or other costs of any facilities branch or office, at any level of the Bureau.

''(2) REQUIREMENTS FOR CERTAIN USES.—

''(A) AGREEMENT.—The Secretary shall not withhold funds that would be distributed under paragraph (1) to any grant or contract

school, in order to use the funds for maintenance or any other facilities or road-related purposes, unless such school—

''(i) has consented to the withholding of such funds, including the amount of the funds, the purpose for which the funds will be used, and the timeline for the services to be provided with the funds; and

''(ii) has provided the consent by entering into an agreement that is—

''(I) a modification to the contract; and

''(II) in writing (in the case of a school that receives a grant).

''(B) CANCELLATION.—The school may, at the end of any fiscal year, cancel an agreement entered into under this paragraph, on giving the Bureau 30 days notice of the intent of the school to cancel the agreement.

''(g) NO REDUCTION IN FEDERAL FUNDING.—Nothing in this section shall be construed to reduce any Federal funding for a school because the school received funding for facilities improvement or construction from a State or any other source.

**''SEC. 1125. BUREAU OF INDIAN AFFAIRS EDUCATION FUNCTIONS.**

''(a) FORMULATION AND ESTABLISHMENT OF POLICY AND PROCEDURE; SUPERVISION OF PROGRAMS AND EXPENDITURES.—The Secretary shall vest in the Assistant Secretary for Indian Affairs all functions with respect to formulation and establishment of policy and procedure, and supervision of programs and expenditures of Federal funds for the purpose of Indian education administered by the Bureau. The Assistant Secretary shall carry out such functions through the Director of the Office of Indian Education Programs.

''(b) DIRECTION AND SUPERVISION OF PERSONNEL OPERATIONS.—

''(1) IN GENERAL.—Not later than 6 months after the date of the enactment of the Native American Education Improvement Act of 2001, the Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved in the provision of education services by the Bureau, including school or institution custodial or maintenance personnel, and facilities management, contracting, procurement, and finance personnel.

''(2) TRANSFERS.—The Assistant Secretary for Indian Affairs shall coordinate the transfer of functions relating to procurements for, contracts of, operation of, and maintenance of schools and other support functions to the Director.

''(c) INHERENT FEDERAL FUNCTION.—For purposes of this Act, all functions relating to education that are located at the Area or Agency level and performed by an education line officer shall be subject to contract under the Indian Self-Determination and Education Assistance Act, unless determined by the Secretary to be inherently Federal functions.

''(d) EVALUATION OF PROGRAMS; SERVICES AND SUPPORT FUNCTIONS; TECHNICAL AND COORDINATION ASSISTANCE.—Education personnel who are under the direction and supervision of the Director of the Office in accordance with subsection (b)(1) shall—

''(1) monitor and evaluate Bureau education programs;

''(2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions; and

''(3) provide technical and coordination assistance in areas such as procurement, contracting, budgeting, personnel, curricula, and operation and maintenance of school facilities.

''(e) CONSTRUCTION, IMPROVEMENT, OPERATION, AND MAINTENANCE OF FACILITIES.—

''(1) PLAN FOR CONSTRUCTION.—The Assistant Secretary for Indian Affairs shall submit as part of the annual budget request for educational services (as contained in the President's annual budget request under section 1105 of title 31, United States Code) a plan—

''(A) for the construction of school facilities in accordance with section 1124(d);

''(B) for the improvement and repair of education facilities and for establishing priorities among the improvement and repair projects involved, which together shall form the basis for the distribution of appropriated funds; and

''(C) for capital improvements to education facilities to be made over the 5 years succeeding the year covered by the plan.

''(2) PROGRAM FOR OPERATION AND MAINTENANCE.—

''(A) IN GENERAL.—

''(i) PROGRAM.—The Assistant Secretary shall establish a program, including a program for the distribution of funds appropriated under this part, for the operation and maintenance of education facilities. Such program shall include—

''(I) a method of computing the amount necessary for the operation and maintenance of each education facility;

''(II) a requirement of similar treatment of all Bureau funded schools;

''(III) a notice of an allocation of the appropriated funds from the Director of the Office directly to the appropriate education line officers and school officials;

''(IV) a method for determining the need for, and priority of, facilities improvement and repair projects, both major and minor; and

''(V) a system for conducting routine preventive maintenance.

''(ii) MEETINGS.—In making the determination referred to in clause (i)(IV), the Assistant Secretary shall cause a series of meetings to be conducted at the area and agency level with representatives of the Bureau funded schools in the corresponding areas and served by corresponding agencies, to receive comment on the projects described in clause (i)(IV) and prioritization of such projects.

''(B) MAINTENANCE.—The appropriate education line officers shall make arrangements for the maintenance of the education facilities with the local supervisors of the Bureau maintenance personnel. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made by the appropriate education line officers. No funds made available under this part may be authorized for expenditure for maintenance of such an education facility unless the appropriate education line officer is assured that the necessary maintenance has been, or will be, provided in a reasonable manner.

''(3) IMPLEMENTATION.—The requirements of this subsection shall be implemented as soon as practicable after the date of enactment of the Native American Education Improvement Act of 2001.

''(f) ACCEPTANCE OF GIFTS AND BEQUESTS.—

''(1) GUIDELINES.—Notwithstanding any other provision of law, the Director of the Office shall promulgate guidelines for the establishment and administration of mechanisms for the acceptance of gifts and bequests for the use and benefit of particular schools or designated Bureau operated education programs, including, in appropriate cases, the establishment and administration of trust funds.

''(2) MONITORING AND REPORTS.—Except as provided in paragraph (3), in a case in which a Bureau operated education program is the beneficiary of such a gift or bequest, the Director shall—

''(A) make provisions for monitoring use of the gift or bequest; and

''(B) submit a report to the appropriate committees of Congress that describes the amount and terms of such gift or bequest, the manner in which such gift or bequest shall be used, and any results achieved by such use.

''(3) EXCEPTION.—The requirements of paragraph (2) shall not apply in the case of a gift or bequest that is valued at $5,000 or less.

''(g) FUNCTIONS CLARIFIED.—In this section, the term 'functions' includes powers and duties.

**''SEC. 1126. ALLOTMENT FORMULA.**

''(a) FACTORS CONSIDERED; REVISION TO REFLECT STANDARDS.—

''(1) FORMULA.—The Secretary shall establish, by regulation adopted in accordance with section 1137, a formula for determining the minimum annual amount of funds necessary to operate each Bureau funded school. In establishing such formula, the Secretary shall consider—

''(A) the number of eligible Indian students served by the school and the total student population of the school;

''(B) special cost factors, such as—

''(i) the isolation of the school;

''(ii) the need for special staffing, transportation, or educational programs;

''(iii) food and housing costs;

''(iv) maintenance and repair costs associated with the physical condition of the educational facilities;

''(v) special transportation and other costs of an isolated or small school;

''(vi) the costs of home-living (dormitory) arrangements, where determined necessary by a tribal governing body or designated school board;

''(vii) costs associated with greater lengths of service by education personnel;

''(viii) the costs of therapeutic programs for students requiring such programs; and

''(ix) special costs for gifted and talented students;

''(C) the costs of providing academic services that are at least equivalent to the services provided by public schools in the State in which the school is located;

''(D) whether the available funding will enable the school involved to comply with the accreditation standards applicable to the school under section 1121; and

''(E) such other relevant factors as the Secretary determines are appropriate.

''(2) REVISION OF FORMULA.—On the establishment of the standards required in sections 1121 and 1122, the Secretary shall—

''(A) revise the formula established under paragraph (1) to reflect the cost of compliance with such standards; and

''(B)(i) by not later than January 1, 2002, review the formula established under paragraph (1) and take such action as may be necessary to increase the availability of counseling and therapeutic programs for students in off-reservation home-living schools and other Bureau operated residential facilities; and

''(ii) concurrently with any actions taken under clause (i), review the standards established under section 1121 to be certain that the standards adequately provide for parental notification regarding, and consent for, such counseling and therapeutic programs.

''(b) PRO RATA ALLOTMENT.—Notwithstanding any other provision of law, Federal funds appropriated for the general local operation of Bureau funded schools shall be allotted on a pro rata basis in accordance with the formula established under subsection (a).

''(c) ANNUAL ADJUSTMENT; RESERVATION OF AMOUNT FOR SCHOOL BOARD ACTIVITIES.—

''(1) ANNUAL ADJUSTMENT.—

''(A) IN GENERAL.—For fiscal year 2002, and for each subsequent fiscal year, the Secretary shall adjust the formula established under subsection (a) to—

''(i) use a weighted factor of 1.2 for each eligible Indian student enrolled in the seventh

and eighth grades of the school in considering the number of eligible Indian students served by the school;

''(ii) consider a school with an enrollment of fewer than 50 eligible Indian students as having an average daily attendance of 50 eligible Indian students for purposes of implementing the adjustment factor for small schools;

''(iii) take into account the provision of residential services on less than a 9-month basis at a school in a case in which the school board and supervisor of the school determine that the school will provide the services for fewer than 9 months for the academic year involved;

''(iv) use a weighted factor of 2.0 for each eligible Indian student that—

''(I) is gifted and talented; and

''(II) is enrolled in the school on a full-time basis,

in considering the number of eligible Indian students served by the school; and

''(v) use a weighted factor of 0.25 for each eligible Indian student who is enrolled in a year long credit course in an Indian or Native language as part of the regular curriculum of a school, in considering the number of eligible Indian students served by such school.

''(B) TIMING.—The Secretary shall make the adjustment required under subparagraph (A)(v) for such school after—

''(i) the school board of such school provides a certification of the Indian or Native language curriculum of the school to the Secretary, together with an estimate of the number of full-time students expected to be enrolled in the curriculum in the second academic year after the academic year for which the certification is made; and

''(ii) the funds appropriated for allotments under this section are designated, in the appropriations Act appropriating such funds, as the funds necessary to implement such adjustment at such school without reducing an allotment made under this section to any school by virtue of such adjustment.

''(2) RESERVATION OF AMOUNT.—

''(A) IN GENERAL.—From the funds allotted in accordance with the formula established under subsection (a) for each Bureau school, the local school board of such school may reserve an amount which does not exceed the greater of—

''(i) $8,000; or

''(ii) the lesser of—

''(I) $15,000; or

''(II) 1 percent of such allotted funds,

for school board activities for such school, including (notwithstanding any other provision of law) meeting expenses and the cost of membership in, and support of, organizations engaged in activities on behalf of Indian education.

''(B) TRAINING.—Each local school board, and any agency school board that serves as a local school board for any grant or contract school, shall ensure that each individual who is a new member of the school board receives, within 12 months after the individual becomes a member of the school board, 40 hours of training relevant to that individual's service on the board. Such training may include training concerning legal issues pertaining to Bureau funded schools, legal issues pertaining to school boards, ethics, and other topics determined to be appropriate by the school board.

''(d) RESERVATION OF AMOUNT FOR EMERGENCIES.—

''(1) IN GENERAL.—The Secretary shall reserve from the funds available for allotment for each fiscal year under this section an amount that, in the aggregate, equals 1 percent of the funds available for allotment for that fiscal year.

''(2) USE OF FUNDS.—Amounts reserved under paragraph (1) shall be used, at the discretion of the Director of the Office, to meet emergencies and unforeseen contingencies affecting the education programs funded under this section. Funds reserved under this subsection may only be expended for education services or programs, including emergency repairs of education facilities, at a school site (as defined in section 5204(c)(2) of the Tribally Controlled Schools Act of 1988).

''(3) FUNDS REMAINING AVAILABLE.—Funds reserved under this subsection shall remain available without fiscal year limitation until expended. The aggregate amount of such funds, from all fiscal years, that is available for expenditure in a fiscal year may not exceed an amount equal to 1 percent of the funds available for allotment under this section for that fiscal year.

''(4) REPORTS.—If the Secretary makes funds available under this subsection, the Secretary shall submit a report describing such action to the appropriate committees of Congress as part of the President's next annual budget request under section 1105 of title 31, United States Code).

''(e) SUPPLEMENTAL APPROPRIATIONS.—Any funds provided in a supplemental appropriations Act to meet increased pay costs attributable to school level personnel of Bureau funded schools shall be allotted under this section.

''(f) ELIGIBLE INDIAN STUDENT DEFINED.—In this section, the term 'eligible Indian student' means a student who—

''(1) is a member of, or is at least ¼ degree Indian blood descendant of a member of, a tribe that is eligible for the special programs and services provided by the United States through the Bureau to Indians because of their status as Indians;

''(2) resides on or near a reservation or meets the criteria for attendance at a Bureau off-reservation home-living school; and

''(3) is enrolled in a Bureau funded school.

''(g) TUITION.—

''(1) IN GENERAL.—A Bureau school or contract or grant school may not charge an eligible Indian student tuition for attendance at the school. A Bureau school may not charge a student attending the school under the circumstances described in paragraph (2)(C) tuition for attendance at the school.

''(2) ATTENDANCE OF NON-INDIAN STUDENTS AT BUREAU SCHOOLS.—The Secretary may permit the attendance at a Bureau school of a student who is not an eligible Indian student if—

''(A)(i) the Secretary determines that the student's attendance will not adversely affect the school's program for eligible Indian students because of cost, overcrowding, or violation of standards or accreditation requirements; and

''(ii) the local school board consents; and

''(B)(i) the student is a dependent of a Bureau, Indian Health Service, or tribal government employee who lives on or near the school site; or

''(ii) tuition is paid for the student in an amount that is not more than the amount of tuition charged by the nearest public school district for out-of-district students, and is paid in addition to the school's allotment under this section.

''(3) ATTENDANCE OF NON-INDIAN STUDENTS AT CONTRACT AND GRANT SCHOOLS.—The school board of a contract or grant school may permit students who are not eligible Indian students to attend the contract or grant school. Any tuition collected for those students shall be in addition to the amount the school received under this section.

''(h) FUNDS AVAILABLE WITHOUT FISCAL YEAR LIMITATION.—Notwithstanding any other provision of law, at the election of the local school board of a Bureau school made at any time during a fiscal year, a portion equal to not more than 15 percent of the funds allotted for the school under this section for the fiscal year shall remain available to the school for expenditure without fiscal year limitation. The Assistant Secretary for Indian Affairs shall take such steps as may be necessary to implement this subsection.

''(i) STUDENTS AT RICHFIELD DORMITORY, RICHFIELD, UTAH.—Tuition for the instruction of each out-of-State Indian student in a home-living situation at the Richfield dormitory in Richfield, Utah, who attends Sevier County high schools in Richfield, Utah, for an academic year, shall be paid from Indian school equalization program funds authorized in this section and section 1129, at a rate not to exceed the weighted amount provided for under subsection (b) for a student for that year. No additional administrative cost funds shall be provided under this part to pay for administrative costs relating to the instruction of the students.

**"SEC. 1127. ADMINISTRATIVE COST GRANTS.**

''(a) DEFINITIONS.—In this section:

''(1) ADMINISTRATIVE COST.—

''(A) IN GENERAL.—The term 'administrative cost' means the cost of necessary administrative functions which—

''(i) the tribe or tribal organization incurs as a result of operating a tribal elementary or secondary educational program;

''(ii) are not customarily paid by comparable Bureau operated programs out of direct program funds; and

''(iii) are either—

''(I) normally provided for comparable Bureau programs by Federal officials using resources other than Bureau direct program funds; or

''(II) are otherwise required of tribal self-determination program operators by law or prudent management practice.

''(B) INCLUSIONS.—The term 'administrative cost' may include—

''(i) contract or grant (or other agreement) administration;

''(ii) executive, policy, and corporate leadership and decisionmaking;

''(iii) program planning, development, and management;

''(iv) fiscal, personnel, property, and procurement management;

''(v) related office services and record keeping; and

''(vi) costs of necessary insurance, auditing, legal, safety and security services.

''(2) BUREAU ELEMENTARY AND SECONDARY FUNCTIONS.—The term 'Bureau elementary and secondary functions' means—

''(A) all functions funded at Bureau schools by the Office;

''(B) all programs—

''(i) funds for which are appropriated to other agencies of the Federal Government; and

''(ii) which are administered for the benefit of Indians through Bureau schools; and

''(C) all operation, maintenance, and repair funds for facilities and government quarters used in the operation or support of elementary and secondary education functions for the benefit of Indians, from whatever source derived.

''(3) DIRECT COST BASE.—

''(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the direct cost base of a tribe or tribal organization for the fiscal year is the aggregate direct cost program funding for all tribal elementary or secondary educational programs operated by the tribe or tribal organization during—

''(i) the second fiscal year preceding such fiscal year; or

''(ii) if such programs have not been operated by the tribe or tribal organization during the two preceding fiscal years, the first fiscal year preceding such fiscal year.

''(B) FUNCTIONS NOT PREVIOUSLY OPERATED.—In the case of Bureau elementary or secondary education functions which have not previously been operated by a tribe or tribal organization under contract, grant, or agreement with the Bureau, the direct cost base for the initial year shall be the projected aggregate direct cost program funding for all Bureau elementary and secondary functions to be operated by the tribe or tribal organization during that fiscal year.

''(4) MAXIMUM BASE RATE.—The term 'maximum base rate' means 50 percent.

''(5) MINIMUM BASE RATE.—The term 'minimum base rate' means 11 percent.

''(6) STANDARD DIRECT COST BASE.—The term 'standard direct cost base' means $600,000.

''(7) TRIBAL ELEMENTARY OR SECONDARY EDUCATIONAL PROGRAMS.—The term 'tribal elementary or secondary educational programs' means all Bureau elementary and secondary functions, together with any other Bureau programs or portions of programs (excluding funds for social services that are appropriated to agencies other than the Bureau and are expended through the Bureau, funds for major subcontracts, construction, and other major capital expenditures, and unexpended funds carried over from prior years) which share common administrative cost functions, that are operated directly by a tribe or tribal organization under a contract, grant, or agreement with the Bureau.

''(b) GRANTS; EFFECT UPON APPROPRIATED AMOUNTS.—

''(1) GRANTS.—

''(A) IN GENERAL.—Subject to the availability of appropriated funds, the Secretary shall provide a grant to each tribe or tribal organization operating a contract or grant school, in an amount determined under this section, for the purpose of paying the administrative and indirect costs incurred in operating the contract or grant school, in order to—

''(i) enable the tribe or tribal organization operating the school, without reducing direct program services to the beneficiaries of the program, to provide all related administrative overhead services and operations necessary to meet the requirements of law and prudent management practice; and

''(ii) carry out other necessary support functions that would otherwise be provided by the Secretary or other Federal officers or employees, from resources other than direct program funds, in support of comparable Bureau operated programs.

''(B) AMOUNT.—No school operated as a stand-alone institution shall receive less than $200,000 per year under this paragraph.

''(2) EFFECT UPON APPROPRIATED AMOUNTS.—Amounts appropriated to fund the grants provided for under this section shall be in addition to, and shall not reduce, the amounts appropriated for the program being administered by the contract or grant school.

''(c) DETERMINATION OF GRANT AMOUNT.—

''(1) IN GENERAL.—The amount of the grant provided to each tribe or tribal organization under this section for each fiscal year shall be determined by applying the administrative cost percentage rate determined under subsection (d) of the tribe or tribal organization to the aggregate cost of the Bureau elementary and secondary functions operated by the tribe or tribal organization for which funds are received from or through the Bureau. The administrative cost percentage rate does not apply to programs not relating to such functions that are operated by the tribe or tribal organization.

''(2) DIRECT COST BASE FUNDS.—The Secretary shall—

''(A) reduce the amount of the grant determined under paragraph (1) to the extent that payments for administrative costs are actually received by a tribe or tribal organization under any Federal education program that is included in the direct cost base of the tribe or tribal organization; and

''(B) take such actions as may be necessary to be reimbursed by any other department or agency of the Federal Government (other than the Department of the Interior) for the portion of grants made under this section for the costs of administering any program for Indians that is funded by appropriations made to such other department or agency.

''(3) REDUCTIONS.—If the total amount of funds necessary to provide grants to tribes and tribal organizations in the amounts determined under paragraph (1) and (2) for a fiscal year exceeds the amount of funds appropriated to carry out this section for such fiscal year, the Secretary shall reduce the amount of each grant determined under this subsection for such fiscal year by an amount that bears the same relationship to such excess as the amount of such grants determined under this subsection bears to the total of all grants determined under this subsection for all tribes and tribal organizations for such fiscal year.

''(d) ADMINISTRATIVE COST PERCENTAGE RATE.—

''(1) IN GENERAL.—For purposes of this section, the administrative cost percentage rate for a contract or grant school for a fiscal year is equal to the percentage determined by dividing—

''(A) the sum of—

''(i) the amount equal to—

''(I) the direct cost base of the tribe or tribal organization for the fiscal year; multiplied by

''(II) the minimum base rate; plus

''(ii) the amount equal to—

''(I) the standard direct cost base; multiplied by

''(II) the maximum base rate; by

''(B) the sum of—

''(i) the direct cost base of the tribe or tribal organization for the fiscal year; and

''(ii) the standard direct cost base.

''(2) ROUNDING.—The administrative cost percentage rate shall be determined to 1/100 of a percent.

''(e) COMBINING FUNDS.—

''(1) IN GENERAL.—Funds received by a tribe, tribal organization, or contract or grant school through grants made under this section for tribal elementary or secondary educational programs may be combined by the tribe, tribal organization, or contract or grant school and placed into a single administrative cost account without the necessity of maintaining separate funding source accounting.

''(2) INDIRECT COST FUNDS.—Indirect cost funds for programs at the school that share common administrative services with the tribal elementary or secondary educational programs may be included in the administrative cost account described in paragraph (1).

''(f) AVAILABILITY OF FUNDS.—Funds received through a grant made under this section with respect to tribal elementary or secondary educational programs at a contract or grant school shall remain available to the contract or grant school—

''(1) without fiscal year limitation; and

''(2) without reducing the amount of any grants otherwise payable to the school under this section for any fiscal year after the fiscal year for which the grant is provided.

''(g) TREATMENT OF FUNDS.—Funds received through a grant made under this section for Bureau funded programs operated by a tribe or tribal organization under a contract or grant shall not be taken into consideration for purposes of indirect cost underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived.

''(h) TREATMENT OF ENTITY OPERATING OTHER PROGRAMS.—In applying this section and section 106 of the Indian Self-Determination and Education Assistance Act with respect to an Indian tribe or tribal organization that—

''(1) receives funds under this section for administrative costs incurred in operating a contract or grant school or a school operated under the Tribally Controlled Schools Act of 1988; and

''(2) operates one or more other programs under a contract or grant provided under the Indian Self-Determination and Education Assistance Act,

the Secretary shall ensure that the Indian tribe or tribal organization is provided with the full amount of the administrative costs that are associated with operating the contract or grant school, and of the indirect costs, that are associated with all of such other programs, except that funds appropriated for implementation of this section shall be used only to supply the amount of the grant required to be provided by this section.

''(i) APPLICABILITY TO SCHOOLS OPERATING UNDER TRIBALLY CONTROLLED SCHOOLS ACT OF 1988.—The provisions of this section that apply to contract or grant schools shall also apply to those schools receiving assistance under the Tribally Controlled Schools Act of 1988.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

**''SEC. 1128. DIVISION OF BUDGET ANALYSIS.**

''(a) ESTABLISHMENT.—Not later than 12 months after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary shall establish within the Office of Indian Education Programs a Division of Budget Analysis (referred to in this section as the 'Division'). Such Division shall be under the direct supervision and control of the Director of the Office.

''(b) FUNCTIONS.—In consultation with the tribal governing bodies and local school boards the Director of the Office, through the head of the Division, shall conduct studies, surveys, or other activities to gather demographic information on Bureau funded schools and project the amounts necessary to provide to Indian students in such schools the educational program set forth in this part.

''(c) ANNUAL REPORTS.—Not later than the date that the Assistant Secretary for Indian Affairs submits the annual budget request as part of the President's annual budget request under section 1105 of title 31, United States Code for each fiscal year after the date of enactment of the Native American Education Improvement Act of 2001, the Director of the Office shall submit to the appropriate committees of Congress (including the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate), all Bureau funded schools, and the tribal governing bodies relating to such schools, a report that shall contain—

''(1) projections, based on the information gathered pursuant to subsection (b) and any other relevant information, of amounts necessary to provide to Indian students in Bureau funded schools the educational program set forth in this part;

''(2) a description of the methods and formulas used to calculate the amounts projected pursuant to paragraph (1); and

''(3) such other information as the Director of the Office considers to be appropriate.

''(d) USE OF REPORTS.—The Director of the Office and the Assistant Secretary for Indian Affairs shall use the information contained in the annual report required by subsection (c) in preparing their annual budget requests.

**''SEC. 1129. UNIFORM DIRECT FUNDING AND SUPPORT.**

''(a) ESTABLISHMENT OF SYSTEM AND FORWARD FUNDING.—

''(1) IN GENERAL.—The Secretary shall establish, by regulation adopted in accordance with section 1137, a system for the direct funding and support of all Bureau funded schools. Such system shall allot funds in accordance with section 1126. All amounts appropriated for distribution in accordance with this section may be made available in accordance with paragraph (2).

''(2) TIMING FOR USE OF FUNDS.—

''(A) AVAILABILITY.—With regard to funds for affected schools under this part that become available for obligation on October 1 of the fiscal year for which such funds are appropriated, the Secretary shall make payments to such affected schools not later than December 1 of the fiscal year, except that operations and maintenance funds shall be forward funded and shall be available for obligation not later than July 15 and December 1 of each fiscal year, and shall remain available for obligation through the succeeding fiscal year.

''(B) PUBLICATIONS.—The Secretary shall, on the basis of the amounts appropriated as described in this paragraph—

''(i) publish, not later than July 1 of the fiscal year for which the amounts are appropriated, information indicating the amount of the allotments to be made to each affected school under section 1126, of 85 percent of such appropriated amounts; and

''(ii) publish, not later than September 30 of such fiscal year, information indicating the amount of the allotments to be made under section 1126, from the remaining 15 percent of such appropriated amounts, adjusted to reflect the actual student attendance.

''(3) LIMITATION.—

''(A) EXPENDITURES.—Notwithstanding any other provision of law (including a regulation), the supervisor of a Bureau school may expend an aggregate of not more than $50,000 of the amount allotted to the school under section 1126 to acquire materials, supplies, equipment, operation services, maintenance services, and other services for the school, and amounts received as operations and maintenance funds, funds received from the Department of Education, or funds received from other Federal sources, without competitive bidding if—

''(i) the cost for any single item acquired does not exceed $15,000;

''(ii) the school board approves the acquisition;

''(iii) the supervisor certifies that the cost is fair and reasonable;

''(iv) the documents relating to the acquisition executed by the supervisor of the school or other school staff cite this paragraph as authority for the acquisition; and

''(v) the acquisition transaction is documented in a journal maintained at the school that clearly identifies when the transaction occurred, the item that was acquired and from whom, the price paid, the quantities acquired, and any other information the supervisor or the school board considers to be relevant.

''(B) NOTICE.—Not later than 6 months after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary shall send notice of the provisions of this paragraph to each supervisor of a Bureau school and associated school board chairperson, the education line officer of each agency and area, and the Bureau division in charge of procurement, at both the local and national levels.

''(C) APPLICATION AND GUIDELINES.—The Director of the Office shall be responsible for—

''(i) determining the application of this paragraph, including the authorization of specific individuals to carry out this paragraph;

''(ii) ensuring that there is at least 1 such individual at each Bureau facility; and

''(iii) the provision of guidelines on the use of this paragraph and adequate training on such guidelines.

''(b) LOCAL FINANCIAL PLANS FOR EXPENDITURE OF FUNDS.—

''(1) PLAN REQUIRED.—

''(A) IN GENERAL.—Each Bureau school that receives an allotment under section 1126 shall prepare a local financial plan that specifies the manner in which the school will expend the funds made available under the allotment and ensures that the school will meet the accreditation requirements or standards for the school established pursuant to section 1121.

''(B) REQUIREMENT.—A local financial plan under subparagraph (A) shall comply with all applicable Federal and tribal laws.

''(C) PREPARATION AND REVISION.—The financial plan for a school under subparagraph (A) shall be prepared by the supervisor of the school in active consultation with the local school board for the school. The local school board for each school shall have the authority to ratify, reject, or amend such financial plan and, at the initiative of the local school board or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan.

''(D) ROLE OF SUPERVISOR.—The supervisor of the school—

''(i) shall put into effect the decisions of the school board relating to the financial plan under subparagraph (A); and

''(ii) shall provide the appropriate local union representative of the education employees of the school with copies of proposed financial plans relating to the school and all modifications and proposed modifications to the plans, and at the same time submit such copies to the local school board.

''(iii) may appeal any such action of the local school board to the appropriate education line officer of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned.

A copy of statement under clause (iii) shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the appropriate education line officer may, for good cause, overturn the action of the local school board. The appropriate education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

''(2) REQUIREMENT.—A Bureau school shall expend amounts received under an allotment under section 1126 in accordance with the local financial plan prepared under paragraph (1).

''(c) TRIBAL DIVISION OF EDUCATION, SELF-DETERMINATION GRANT AND CONTRACT FUNDS.—The Secretary may approve applications for funding tribal divisions of education and developing tribal codes of education, from funds made available pursuant to section 103(a) of the Indian Self-Determination and Education Assistance Act.

''(d) TECHNICAL ASSISTANCE AND TRAINING.—A local school board may, in the exercise of the authority of the school board under this section, request technical assistance and training from the Secretary. The Secretary shall, to the greatest extent possible, provide such assistance and training, and make appropriate provision in the budget of the Office for such assistance and training.

''(e) SUMMER PROGRAM OF ACADEMIC AND SUPPORT SERVICES.—

''(1) IN GENERAL.—A financial plan prepared under subsection (b) for a school may include, at the discretion of the supervisor and the local school board of such school, a provision for funding a summer program of academic and support services for students of the school. Any such program may include activities related to the prevention of alcohol and substance abuse. The Assistant Secretary for Indian Affairs shall provide for the utilization of facilities of the school for such program during any summer in which such utilization is requested.

''(2) USE OF OTHER FUNDS.—Notwithstanding any other provision of law, funds authorized under the Act of April 16, 1934 (commonly known as the 'Johnson-O'Malley Act'; 48 Stat. 596, chapter 147) and this Act may be used to augment the services provided in each summer program referred to in paragraph (1) at the option of the tribe or school receiving such funds. The augmented services shall be under the control of the tribe or school.

''(3) TECHNICAL ASSISTANCE AND PROGRAM COORDINATION.—The Assistant Secretary for Indian Affairs, acting through the Director of the Office, shall provide technical assistance and coordination of activities for any program described in paragraph (1) and shall, to the extent possible, encourage the coordination of such programs with any other summer programs that might benefit Indian youth, regardless of the funding source or administrative entity of such programs.

''(f) COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—From funds allotted to a Bureau school under section 1126, the Secretary shall, if specifically requested by the appropriate tribal governing body, implement a cooperative agreement that is entered into between the tribe, the Bureau, the local school board, and a local public school district that meets the requirements of paragraph (2) and involves the school. The tribe, the Bureau, the school board, and the local public school district shall determine the terms of the agreement.

''(2) COORDINATION PROVISIONS.—An agreement under paragraph (1) may, with respect to the Bureau school and schools in the school district involved, encompass coordination of all or any part of the following:

''(A) The academic program and curriculum, unless the Bureau school is accredited by a State or regional accrediting entity and would not continue to be so accredited if the agreement encompassed the program and curriculum.

''(B) Support services, including procurement and facilities maintenance.

''(C) Transportation.

''(3) EQUAL BENEFIT AND BURDEN.—

''(A) IN GENERAL.—Each agreement entered into pursuant to the authority provided in paragraph (1) shall confer a benefit upon the Bureau school commensurate with the burden assumed by the school.

''(B) LIMITATION.—Subparagraph (A) shall not be construed to require equal expenditures, or an exchange of similar services, by the Bureau school and schools in the school district.

''(g) PRODUCT OR RESULT OF STUDENT PROJECTS.—Notwithstanding any other provision of law, where there is agreement on

action between the superintendent and the school board of a Bureau funded school, the product or result of a project conducted in whole or in major part by a student may be given to that student upon the completion of such project.

''(h) MATCHING FUND REQUIREMENTS.—

''(1) NOT CONSIDERED FEDERAL FUNDS.—Notwithstanding any other provision of law, funds received by a Bureau funded school under this title for education-related activities (not including funds for construction, maintenance and facilities, improvement or repair) shall not be considered to be Federal funds for the purposes of meeting a matching funds requirement for any Federal program.

''(2) NONAPPLICATION OF REQUIREMENTS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, no requirement relating to the provision of matching funds or the provision of services or in-kind activity as a condition of participation in a program or project or receipt of a grant, shall apply to a Bureau funded school unless the provision of law authorizing such requirement specifies that such requirement applies to such a school.

''(B) LIMITATION.—In considering an application from a Bureau funded school for participation in a program or project that has a requirement described in subparagraph (A), the entity administering such program or project or receiving such grant shall not give positive or negative weight to such application based solely on the provisions of this paragraph. Such an application shall be considered as if it fully met any matching requirement.

**''SEC. 1130. POLICY FOR INDIAN CONTROL OF INDIAN EDUCATION.**

''(a) FACILITATION OF INDIAN CONTROL.—It shall be the policy of the Secretary and the Bureau, in carrying out the functions of the Bureau, to facilitate Indian control of Indian affairs in all matters relating to education.

''(b) CONSULTATION WITH TRIBES.—

''(1) IN GENERAL.—All actions under this Act shall be done with active consultation with tribes. The Bureau and tribes shall work in a government-to-government relationship to ensure quality education for all tribal members.

''(2) REQUIREMENTS.—The consultation required under paragraph (1) means a process involving the open discussion and joint deliberation of all options with respect to potential issues or changes between the Bureau and all interested parties. During such discussions and joint deliberations, interested parties (including tribes and school officials) shall be given an opportunity to present issues including proposals regarding changes in current practices or programs which will be considered for future action by the Bureau. All interested parties shall be given an opportunity to participate and discuss the options presented or to present alternatives, with the views and concerns of the interested parties given effect unless the Secretary determines, from information available from or presented by the interested parties during one or more of the discussions and deliberations, that there is a substantial reason for another course of action. The Secretary shall submit to any Member of Congress, within 18 days of the receipt of a written request by such Member, a written explanation of any decision made by the Secretary which is not consistent with the views of the interested parties.

**''SEC. 1131. INDIAN EDUCATION PERSONNEL.**

''(a) DEFINITIONS.—In this section:

''(1) EDUCATION POSITION.—The term 'education position' means a position in the Bureau the duties and responsibilities of which—

''(A) are performed on a school-year basis principally in a Bureau school and involve—

''(i) classroom or other instruction or the supervision or direction of classroom or other instruction;

''(ii) any activity (other than teaching) that requires academic credits in educational theory and practice equal to the academic credits in educational theory and practice required for a bachelor's degree in education from an accredited institution of higher education;

''(iii) any activity in or related to the field of education, whether or not academic credits in educational theory and practice are a formal requirement for the conduct of such activity; or

''(iv) provision of support services at, or associated with, the site of the school; or

''(B) are performed at the agency level of the Bureau and involve the implementation of education-related programs, other than the position of agency superintendent for education.

''(2) EDUCATOR.—The term 'educator' means an individual whose services are required, or who is employed, in an education position.

''(b) CIVIL SERVICE AUTHORITIES INAPPLICABLE.—Chapter 51, subchapter III of chapter 53, and chapter 63 of title 5, United States Code, relating to classification, pay, and leave, respectively, and the sections of such title relating to the appointment, promotion, hours of work, and removal of civil service employees, shall not apply to educators or to education positions.

''(c) REGULATIONS.—Not later than 60 days after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary shall prescribe regulations to carry out this section. Such regulations shall include provisions relating to—

''(1) the establishment of education positions;

''(2) the establishment of qualifications for educators and education personnel;

''(3) the fixing of basic compensation for educators and education positions;

''(4) the appointment of educators;

''(5) the discharge of educators;

''(6) the entitlement of educators to compensation;

''(7) the payment of compensation to educators;

''(8) the conditions of employment of educators;

''(9) the leave system for educators;

''(10) the length of the school year applicable to education positions described in subsection (a)(1)(A); and

''(11) such matters as may be appropriate.

''(d) QUALIFICATIONS OF EDUCATORS.—

''(1) REQUIREMENTS.—In prescribing regulations to govern the qualifications of educators, the Secretary shall require—

''(A) that lists of qualified and interviewed applicants for education positions be maintained in the appropriate agency or area office of the Bureau or, in the case of individuals applying at the national level, the Office;

''(B)(i) that a local school board have the authority to waive, on a case-by-case basis, any formal education or degree qualification established by regulation, in order for a tribal member to be hired in an education position to teach courses on tribal culture and language; and

''(ii) that a determination by a local school board that such a tribal member be hired shall be instituted by the supervisor of the school involved; and

''(C) that it shall not be a prerequisite to the employment of an individual in an education position at the local level—

''(i) that such individual's name appear on a list maintained pursuant to subparagraph (A); or

''(ii) that such individual have applied at the national level for an education position.

''(2) EXCEPTION FOR CERTAIN TEMPORARY EMPLOYMENT.—The Secretary may authorize the temporary employment in an education position of an individual who has not met the certification standards established pursuant to regulations, if the Secretary determines that failure to authorize the employment would result in that position remaining vacant.

''(e) HIRING OF EDUCATORS.—

''(1) REQUIREMENTS.—In prescribing regulations to govern the appointment of educators, the Secretary shall require—

''(A)(i)(I) that educators employed in a Bureau school (other than the supervisor of the school) shall be hired by the supervisor of the school; and

''(II) that, in a case in which there are no qualified applicants available to fill a vacancy at a Bureau school, the supervisor may consult a list maintained pursuant to subsection (d)(1)(A);

''(ii) each supervisor of a Bureau school shall be hired by the education line officer of the agency office of the Bureau for the jurisdiction in which the school is located;

''(iii) each educator employed in an agency office of the Bureau shall be hired by the superintendent for education of the agency office; and

''(iv) each education line officer and educator employed in the office of the Director of the Office shall be hired by the Director;

''(B)(i) that, before an individual is employed in an education position in a Bureau school by the supervisor of the school (or, with respect to the position of supervisor, by the appropriate agency education line officer), the local school board for the school shall be consulted; and

''(ii) that a determination by such school board, as evidenced by school board records, that such individual should or should not be so employed shall be instituted by the supervisor (or with respect to the position of supervisor, by the superintendent for education of the agency office);

''(C)(i) that, before an individual is employed in an education position in an agency office of the Bureau, the appropriate agency school board shall be consulted; and

''(ii) that a determination by such school board, as evidenced by school board records, that such individual should or should not be employed shall be instituted by the superintendent for education of the agency office;

''(D) that before an individual is employed in an education position (as described in subsection (a)(1)(B)) in the office of the Director of the Office (other than the position of Director), the school boards representing all Bureau schools shall be consulted; and

''(E) that all employment decisions or actions be in compliance with all applicable Federal, State and tribal laws.

''(2) INFORMATION REGARDING APPLICATION AT NATIONAL LEVEL.—

''(A) IN GENERAL.—Any individual who applies at the local level for an education position shall state on such individual's application whether or not such individual has applied at the national level for an education position.

''(B) EFFECT OF INACCURATE STATEMENT.—If an individual described in subparagraph (A) is employed at the local level, such individual's name shall be immediately forwarded to the Secretary by the local employer. The Secretary shall, as soon as practicable but in no event later than 30 days after the receipt of the name, ascertain the accuracy of the statement made by such individual pursuant

to subparagraph (A). Notwithstanding subsection (g), if the Secretary finds that the individual's statement was false, such individual, at the Secretary's discretion, may be disciplined or discharged.

''(C) EFFECT OF APPLICATION AT NATIONAL LEVEL.—If an individual described in subparagraph (A) has applied at the national level for an education position, the appointment of such individual at the local level shall be conditional for a period of 90 days. During that period, the Secretary may appoint a more qualified individual (as determined by the Secretary) from a list maintained pursuant to subsection (e)(1)(A) to the position to which such individual was appointed.

''(3) STATUTORY CONSTRUCTION.—Except as expressly provided, nothing in this section shall be construed as conferring upon local school boards authority over, or control of, educators at Bureau funded schools or the authority to issue management decisions.

''(4) APPEALS.—

''(A) BY SUPERVISOR.—The supervisor of a school may appeal to the appropriate agency education line officer any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, overturn the determination of the local school board. The education line officer shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

''(B) BY EDUCATION LINE OFFICER.—The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded. an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

''(5) OTHER APPEALS.—The education line officer of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such education line officer identifying the reasons for overturning such determination.

''(f) DISCHARGE AND CONDITIONS OF EMPLOYMENT OF EDUCATORS.—

''(1) REGULATIONS.—In prescribing regulations to govern the discharge and conditions of employment of educators, the Secretary shall require—

''(A) that procedures shall be established for the rapid and equitable resolution of grievances of educators;

''(B) that no educator may be discharged without notice of the reasons for the discharge and an opportunity for a hearing under procedures that comport with the requirements of due process; and

''(C) that each educator employed in a Bureau school shall be notified 30 days prior to the end of an academic year whether the employment contract of the individual will be renewed for the following year.

''(2) PROCEDURES FOR DISCHARGE.—

''(A) DETERMINATIONS.—The supervisor of a Bureau school may discharge (subject to procedures established under paragraph (1)(B)) for cause (as determined under regulations prescribed by the Secretary) any educator employed in such school. On giving notice to an educator of the supervisor's intention to discharge the educator, the supervisor shall immediately notify the local school board of the proposed discharge. A determination by the local school board that such educator shall not be discharged shall be followed by the supervisor.

''(B) APPEALS.—The supervisor shall have the right to appeal a determination by a local school board under subparagraph (A), as evidenced by school board records, not to discharge an educator to the education line officer of the appropriate agency office of the Bureau. Upon hearing such an appeal, the agency education line officer may, for good cause, issue a decision overturning the determination of the local school board with respect to the employment of such individual. The education line officer shall make the decision in writing and submit the decision to the local school board.

''(3) RECOMMENDATIONS OF SCHOOL BOARDS FOR DISCHARGE.—Each local school board for a Bureau school shall have the right—

''(A) to recommend to the supervisor that an educator employed in the school be discharged; and

''(B) to recommend to the education line officer of the appropriate agency office of the Bureau and to the Director of the Office, that the supervisor of the school be discharged.

''(g) APPLICABILITY OF INDIAN PREFERENCE LAWS.—

''(1) IN GENERAL.—Notwithstanding any provision of the Indian preference laws, such laws shall not apply in the case of any personnel action carried out under this section with respect to an applicant or employee not entitled to an Indian preference if each tribal organization concerned grants a written waiver of the application of such laws with respect to such personnel action and states that such waiver is necessary. This paragraph shall not be construed to relieve the Bureau's responsibility to issue timely and adequate announcements and advertisements concerning any such personnel action if such action is intended to fill a vacancy (no matter how such vacancy is created).

''(2) DEFINITIONS.—In this subsection:

''(A) INDIAN PREFERENCE LAWS.—The term 'Indian preference laws' means section 12 of the Act of June 18, 1934 (48 Stat. 986, chapter 576) or any other provision of law granting a preference to Indians in promotions and other personnel actions. Such term shall not include section 7(b) of the Indian Self-Determination and Education Assistance Act.

''(B) TRIBAL ORGANIZATION.—The term 'tribal organization' means—

''(i) the recognized governing body of any Indian tribe, band, nation, pueblo, or other organized community, including a Native village (as defined in section 3(c) of the Alaska Native Claims Settlement Act); or

''(ii) in connection with any personnel action referred to in this subsection, any local school board to which the governing body has delegated the authority to grant a waiver under this subsection with respect to a personnel action.

''(h) COMPENSATION OR ANNUAL SALARY.—

''(1) IN GENERAL.—

''(A) COMPENSATION FOR EDUCATORS AND EDUCATION POSITIONS.—Except as otherwise provided in this section, the Secretary shall fix the basic compensation for educators and education positions—

''(i) at rates in effect under the General Schedule for individuals with comparable qualifications, and holding comparable positions, to whom chapter 51 of title 5, United States Code, is applicable; or

''(ii) on the basis of the Federal Wage System schedule in effect for the locality involved, and for the comparable positions, at the rates of compensation in effect for the senior executive service.

''(B) COMPENSATION OR SALARY FOR TEACHERS AND COUNSELORS.—The Secretary shall establish the rate of basic compensation, or annual salary rate, for the positions of teachers and counselors (including dormitory counselors and home-living counselors) at the rate of basic compensation applicable (on the date of enactment of the Native American Education Improvement Act of 2001 and thereafter) for comparable positions in the overseas schools under the Defense Department Overseas Teachers Pay and Personnel Practices Act. The Secretary shall allow the local school boards involved authority to implement only the aspects of the Defense Department Overseas Teachers Pay and Personnel Practices Act pay provisions that are considered essential for recruitment and retention of teachers and counselors. Implementation of such provisions shall not be construed to require the implementation of that entire Act.

''(C) RATES FOR NEW HIRES.—

''(i) IN GENERAL.—Beginning with the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001, each local school board of a Bureau school may establish a rate of compensation or annual salary rate described in clause (ii) for teachers and counselors (including academic counselors) who are new hires at the school and who had not worked at the school, as of the first day of such fiscal year.

''(ii) CONSISTENT RATES.—The rates established under clause (i) shall be consistent with the rates paid for individuals in the same positions, with the same tenure and training, as the teachers and counselors, in any other school within whose boundaries the Bureau school is located.

''(iii) DECREASES.—In an instance in which the establishment of rates under clause (i) causes a reduction in compensation at a school from the rate of compensation that was in effect for the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001, the new rates of compensation may be applied to the compensation of employees of the school who worked at the school as of such date of enactment by applying those rates at each contract renewal for the employees so that the reduction takes effect in 3 equal installments.

''(iv) INCREASES.—In an instance in which the establishment of such rates at a school causes an increase in compensation from the

rate of compensation that was in effect for the first fiscal year following the date of enactment of the Native American Education Improvement Act of 2001, the school board may apply the new rates at the next contract renewal so that either—

''(I) the entire increase occurs on 1 date; or

''(II) the increase takes effect in 3 equal installments.

''(D) ESTABLISHED REGULATIONS, PROCEDURES, AND ARRANGEMENTS.—

''(i) PROMOTIONS AND ADVANCEMENTS.—The establishment of rates of basic compensation and annual salary rates under subparagraphs (B) and (C) shall not preclude the use of regulations and procedures used by the Bureau prior to April 28, 1988, in making determinations regarding promotions and advancements through levels of pay that are based on the merit, education, experience, or tenure of an educator.

''(ii) CONTINUED EMPLOYMENT OR COMPENSATION.—The establishment of rates of basic compensation and annual salary rates under subparagraphs (B) and (C) shall not affect the continued employment or compensation of an educator who was employed in an education position on October 31, 1979, and who did not make an election under subsection (o), as in effect on January 1, 1990.

''(2) POST DIFFERENTIAL RATES.—

''(A) IN GENERAL.—The Secretary may pay a post differential rate not to exceed 25 percent of the rate of basic compensation, for educators or education positions, on the basis of conditions of environment or work that warrant additional pay, as a recruitment and retention incentive.

''(B) SUPERVISOR'S AUTHORITY.—

''(i) IN GENERAL.—Except as provided in clause (ii) on the request of the supervisor and the local school board of a Bureau school, the Secretary shall grant the supervisor of the school authorization to provide 1 or more post differential rates under subparagraph (A).

''(ii) EXCEPTION.—The Secretary shall disapprove, or approve with a modification, a request for authorization to provide a post differential rate if the Secretary determines for clear and convincing reasons (and advises the board in writing of those reasons) that the rate should be disapproved or decreased because the disparity of compensation between the appropriate educators or positions in the Bureau school, and the comparable educators or positions at the nearest public school, is—

''(I)(aa) at least 5 percent; or

''(bb) less than 5 percent; and

''(II) does not affect the recruitment or retention of employees at the school.

''(iii) APPROVAL OF REQUESTS.—A request made under clause (i) shall be considered to be approved at the end of the 60th day after the request is received in the Central Office of the Bureau unless before that time the request is approved, approved with a modification, or disapproved by the Secretary.

''(iv) DISCONTINUATION OF OR DECREASE IN RATES.—The Secretary or the supervisor of a Bureau school may discontinue or decrease a post differential rate provided for under this paragraph at the beginning of an academic year if—

''(I) the local school board requests that such differential be discontinued or decreased; or

''(II) the Secretary or the supervisor, respectively, determines for clear and convincing reasons (and advises the board in writing of those reasons) that there is no disparity of compensation that would affect the recruitment or retention of employees at the school after the differential is discontinued or decreased.

''(v) REPORTS.—On or before February 1 of each year, the Secretary shall submit to Congress a report describing the requests and approvals of authorization made under this paragraph during the previous year and listing the positions receiving post differential rates under contracts entered into under those authorizations.

''(i) LIQUIDATION OF REMAINING LEAVE UPON TERMINATION.—Upon termination of employment with the Bureau, any annual leave remaining to the credit of an individual within the purview of this section shall be liquidated in accordance with sections 5551(a) and 6306 of title 5, United States Code, except that leave earned or accrued under regulations prescribed pursuant to subsection (c)(9) shall not be so liquidated.

''(j) TRANSFER OF REMAINING LEAVE UPON TRANSFER, PROMOTION, OR REEMPLOYMENT.—In the case of any educator who—

''(1) is transferred, promoted, or reappointed, without a break in service, to a position in the Federal Government under a different leave system than the system for leave described in subsection (c)(9); and

''(2) earned or was credited with leave under the regulations prescribed under subsection (c)(9) and has such leave remaining to the credit of such educator;

such leave shall be transferred to such educator's credit in the employing agency for the position on an adjusted basis in accordance with regulations that shall be prescribed by the Director of the Office of Personnel Management.

''(k) INELIGIBILITY FOR EMPLOYMENT OF VOLUNTARILY TERMINATED EDUCATORS.—An educator who voluntarily terminates employment under an employment contract with the Bureau before the expiration of the employment contract shall not be eligible to be employed in another education position in the Bureau during the remainder of the term of such contract.

''(l) DUAL COMPENSATION.—In the case of any educator employed in an education position described in subsection (a)(1)(A) who—

''(1) is employed at the end of an academic year;

''(2) agrees in writing to serve in such position for the next academic year; and

''(3) is employed in another position during the recess period immediately preceding such next academic year, or during such recess period receives additional compensation referred to in section 5533 of title 5, United States Code, relating to dual compensation;

such section 5533 shall not apply to such educator by reason of any such employment during the recess period with respect to any receipt of additional compensation.

''(m) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary may, subject to the approval of the local school boards concerned, accept voluntary services on behalf of Bureau schools. Nothing in this part shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees. An individual providing volunteer services under this section shall be considered to be a Federal employee only for purposes of chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

''(n) PRORATION OF PAY.—

''(1) ELECTION OF EMPLOYEE.—Notwithstanding any other provision of law, including laws relating to dual compensation, the Secretary, at the election of an educator, shall prorate the salary of the educator for an academic year over a 12-month period. Each educator employed for the academic year shall annually elect to be paid on a 12-month basis or for those months while school is in session. No educator shall suffer a loss of pay or benefits, including benefits under unemployment or other Federal or federally assisted programs, because of such election.

''(2) CHANGE OF ELECTION.—During the course of such academic year, the employee may change the election made under paragraph (1) once.

''(3) LUMP-SUM PAYMENT.—That portion of the employee's pay that would be paid between academic years may be paid in a lump sum at the election of the employee.

''(4) APPLICATION.—This subsection applies to educators, whether employed under this section or title 5, United States Code.

''(o) EXTRACURRICULAR ACTIVITIES.—

''(1) STIPEND.—Notwithstanding any other provision of law, the Secretary may provide, for Bureau employees in each Bureau area, a stipend in lieu of overtime premium pay or compensatory time off for overtime work. Any employee of the Bureau who performs overtime work that consists of additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend. Such stipend shall be paid as a supplement to the employee's base pay.

''(2) ELECTION NOT TO RECEIVE STIPEND.—If an employee elects not to be compensated through the stipend established by this subsection, the appropriate provisions of title 5, United States Code, shall apply with respect to the work involved.

''(3) APPLICATION.—This subsection applies to Bureau employees, whether employed under this section or title 5, United States Code.

''(p) COVERED INDIVIDUALS; ELECTION.—This section shall apply with respect to any educator hired after November 1, 1979 (and to any educator who elected to be covered under this section or a corresponding provision after November 1, 1979) and to the position in which such educator is employed. The enactment of this section shall not affect the continued employment of an individual employed on October 31, 1979 in an education position, or such person's right to receive the compensation attached to such position.

''(q) FURLOUGH WITHOUT CONSENT.—

''(1) IN GENERAL.—An educator who was employed in an education position on October 31, 1979, who was eligible to make an election under subsection (p) at that time, and who did not make the election under paragraph such subsection, may not be placed on furlough (within the meaning of section 7511(a)(5) of title 5, United States Code, without the consent of such educator for an aggregate of more than 4 weeks within the same calendar year, unless—

''(A) the supervisor, with the approval of the local school board (or of the education line officer upon appeal under paragraph (2)), of the Bureau school at which such educator provides services determines that a longer period of furlough is necessary due to an insufficient amount of funds available for personnel compensation at such school, as determined under the financial plan process as determined under section 1129(b); and

''(B) all educators (other than principals and clerical employees) providing services at such Bureau school are placed on furloughs of equal length, except that the supervisor, with the approval of the local school board (or of the agency education line officer upon appeal under paragraph (2)), may continue 1 or more educators in pay status if—

''(i) such educators are needed to operate summer programs, attend summer training sessions, or participate in special activities including curriculum development committees; and

''(ii) such educators are selected based upon such educator's qualifications after public notice of the minimum qualifications

reasonably necessary and without discrimination as to supervisory, nonsupervisory, or other status of the educators who apply.

''(2) APPEALS.—The supervisor of a Bureau school may appeal to the appropriate agency education line officer any refusal by the local school board to approve any determination of the supervisor that is described in paragraph (1)(A) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be approved. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the education line officer may, for good cause, approve the determination of the supervisor. The educational line officer shall transmit the determination of such appeal in the form of a written opinion to such local school board and to the supervisor identifying the reasons for approving such determination.

**''SEC. 1132. COMPUTERIZED MANAGEMENT INFORMATION SYSTEM.**

''(a) ESTABLISHMENT OF SYSTEM.—Not later than July 1, 2002, the Secretary shall establish within the Office a computerized management information system, which shall provide processing and information to the Office. The information provided shall include information regarding—

''(1) student enrollment;

''(2) curricula;

''(3) staffing;

''(4) facilities;

''(5) community demographics;

''(6) student assessment information;

''(7) information on the administrative and program costs attributable to each Bureau program, divided into discrete elements;

''(8) relevant reports;

''(9) personnel records;

''(10) finance and payroll; and

''(11) such other items as the Secretary determines to be appropriate.

''(b) IMPLEMENTATION OF SYSTEM.—Not later than July 1, 2003, the Secretary shall complete implementation of such a system at each Bureau field office and Bureau funded school.

**''SEC. 1133. UNIFORM EDUCATION PROCEDURES AND PRACTICES.**

''Not later than 90 days after the date of enactment of the Native American Education Improvement Act of 2001, the Secretary shall cause the various divisions of the Bureau to formulate uniform procedures and practices with respect to such concerns of those divisions as relate to education, and shall submit a report on the procedures and practices to Congress.

**''SEC. 1134. RECRUITMENT OF INDIAN EDUCATORS.**

''The Secretary shall institute a policy for the recruitment of qualified Indian educators and a detailed plan to promote employees from within the Bureau. Such plan shall include provisions for opportunities for acquiring work experience prior to receiving an actual work assignment.

**''SEC. 1135. ANNUAL REPORT; AUDITS.**

''(a) ANNUAL REPORTS.—The Secretary shall submit to each appropriate committee of Congress, all Bureau funded schools, and the tribal governing bodies of such schools, a detailed annual report on the state of education within the Bureau and any problems encountered in Indian education during the period covered by the report. Such report shall contain suggestions for the improvement of the Bureau educational system and for increasing tribal or local Indian control of such system. Such report shall also include information on the status of tribally controlled community colleges.

''(b) BUDGET REQUEST.—The annual budget request for the Bureau's education programs, as submitted as part of the President's next annual budget request under section 1105 of title 31, United States Code) shall include the plans required by sections 1121(g), 1122(c), and 1124(c).

''(c) FINANCIAL AND COMPLIANCE AUDITS.—The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits are conducted for each Bureau school at least once in every 3 years. Such an audit of a Bureau school shall examine the extent to which such school has complied with the local financial plan prepared by the school under section 1129(b).

''(d) ADMINISTRATIVE EVALUATION OF SCHOOLS.—The Director shall, at least once every 3 to 5 years, conduct a comprehensive evaluation of Bureau operated schools. Such evaluation shall be in addition to any other program review or evaluation that may be required under Federal law.

**''SEC. 1136. RIGHTS OF INDIAN STUDENTS.**

''The Secretary shall prescribe such rules and regulations as may be necessary to ensure the protection of the constitutional and civil rights of Indian students attending Bureau funded schools, including such students' right to privacy under the laws of the United States, such students' right to freedom of religion and expression, and such students' right to due process in connection with disciplinary actions, suspensions, and expulsions.

**''SEC. 1137. REGULATIONS.**

''(a) IN GENERAL.—The Secretary may issue only such regulations as may be necessary to ensure compliance with the specific provisions of this part. In issuing the regulations, the Secretary shall publish proposed regulations in the Federal Register, and shall provide a period of not less than 120 days for public comment and consultation on the regulations. The regulations shall contain, immediately following each regulatory section, a citation to any statutory provision providing authority to issue such regulatory section.

''(b) REGIONAL MEETINGS.—Prior to publishing any proposed regulations under subsection (a) and prior to establishing the negotiated rulemaking committee under subsection (c), the Secretary shall convene regional meetings to consult with personnel of the Office of Indian Education Programs, educators at Bureau schools, representatives of Bureau employees, and tribal officials, parents, teachers and school board members of tribes served by Bureau funded schools to provide guidance to the Secretary on the content of regulations authorized to be issued under this part and the Tribally Controlled Schools Act of 1988.

''(c) NEGOTIATED RULEMAKING.—

''(1) IN GENERAL.—Notwithstanding sections 563(a) and 565(a) of title 5, United States Code, the Secretary shall promulgate regulations authorized under subsection (a) and under the Tribally Controlled Schools Act of 1988, in accordance with the negotiated rulemaking procedures provided for under subchapter III of chapter 5 of title 5, United States Code, and shall publish final regulations in the Federal Register.

''(2) EXPIRATION OF AUTHORITY.—The authority of the Secretary to promulgate regulations under this part and under the Tribally Controlled Schools Act of 1988, shall expire on the date than is 18 months after the date of enactment of this part. If the Secretary determines that an extension of the deadline under this paragraph is appropriate, the Secretary may submit proposed legislation to Congress for an extension of such deadline.

''(3) RULEMAKING COMMITTEE.—The Secretary shall establish a negotiated rulemaking committee to carry out this subsection. In establishing such committee, the Secretary shall—

''(A) apply the procedures provided for under subchapter III of chapter 5 of title 5, United States Code, in a manner that reflects the unique government-to-government relationship between Indian tribes and the United States;

''(B) ensure that the membership of the committee includes only representatives of the Federal Government and of tribes served by Bureau-funded schools;

''(C) select the tribal representatives of the committee from among individuals nominated by the representatives of the tribal and tribally-operated schools;

''(D) ensure, to the maximum extent possible, that the tribal representative membership on the committee reflects the proportionate share of students from tribes served by the Bureau funded school system; and

''(E) comply with the Federal Advisory Committee Act (5 U.S.C. App. 2).

''(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as necessary to carry out the negotiated rulemaking provided for under this section. In the absence of a specific appropriation to carry out this subsection, the Secretary shall pay the costs of the negotiated rulemaking proceedings from the general administrative funds of the Department of the Interior.

''(d) APPLICATION OF SECTION.—

''(1) SUPREMACY OF PROVISIONS.—The provisions of this section shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before the date of enactment of this part, and the Secretary may repeal any regulation that is inconsistent with the provisions of this part.

''(2) MODIFICATIONS.—The Secretary may modify regulations promulgated under this section or the Tribally Controlled Schools Act of 1988, only in accordance with this section.

**''SEC. 1138. EARLY CHILDHOOD DEVELOPMENT PROGRAM.**

''(a) GRANTS.—The Secretary shall make grants to tribes, tribal organizations, and consortia of tribes and tribal organizations to fund early childhood development programs that are operated by such tribes, organizations, or consortia.

''(b) AMOUNT OF GRANTS.—

''(1) IN GENERAL.—The amount of the grant made under subsection (a) to each eligible tribe, tribal organization, or consortium of tribes or tribal organizations for each fiscal year shall be equal to the amount that bears the same relationship to the total amount appropriated under subsection (g) for such fiscal year (other than amounts reserved under subsection (f)) as—

''(A) the total number of children under age 6 who are members of—

''(i) such tribe;

''(ii) the tribe that authorized such tribal organization; or

''(iii) any tribe that—

''(I) is a member of such consortium; or

''(II) so authorizes any tribal organization that is a member of such consortium; bears to

''(B) the total number of all children under age 6 who are members of any tribe that—

''(i) is eligible to receive funds under subsection (a);

''(ii) is a member of a consortium that is eligible to receive such funds; or

''(iii) is authorized by any tribal organization that is eligible to receive such funds.

''(2) LIMITATION.—No grant may be made under subsection (a)—

''(A) to any tribe that has fewer than 500 members;

''(B) to any tribal organization that is authorized to act—

''(i) on behalf of only 1 tribe that has fewer than 500 members; or

''(ii) on behalf of 1 or more tribes that have a combined total membership of fewer than 500 members; or

''(C) to any consortium composed of tribes, or tribal organizations authorized by tribes to act on behalf of the tribes, that have a combined total tribal membership of fewer than 500 members.

''(c) APPLICATIONS.—

''(1) IN GENERAL.—To be eligible to receive a grant under subsection (a), a tribe, tribal organization, or consortium shall submit to the Secretary an application for the grant at such time, in such manner, and containing such information as the Secretary shall prescribe.

''(2) CONTENTS.—An application submitted under paragraph (1) shall describe the early childhood development program that the applicant desires to operate.

''(d) REQUIREMENT OF PROGRAMS FUNDED.—In operating an early childhood development program that is funded through a grant made under subsection (a), a tribe, tribal organization, or consortium—

''(1) shall coordinate the program with other childhood development programs and may provide services that meet identified needs of parents, and children under age 6, that are not being met by the programs, including needs for—

''(A) prenatal care;

''(B) nutrition education;

''(C) health education and screening;

''(D) family literacy services;

''(E) educational testing; and

''(F) other educational services;

''(2) may include, in the early childhood development program funded through the grant, instruction in the language, art, and culture of the tribe served by the program; and

''(3) shall provide for periodic assessments of the program.

''(e) COORDINATION OF FAMILY LITERACY PROGRAMS.—An entity that operates a family literacy program under this section or another similar program funded by the Bureau shall coordinate the program involved with family literacy programs for Indian children carried out under part B of title I of the Elementary and Secondary Education Act of 1965 in order to avoid duplication and to encourage the dissemination of information on quality family literacy programs serving Indians.

''(f) ADMINISTRATIVE COSTS.—The Secretary shall reserve funds appropriated under subsection (g) to include in each grant made under subsection (a) an amount for administrative costs incurred by the tribe, tribal organization, or consortium involved in establishing and maintaining the early childhood development program.

''(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2002, 2003, 2004, 2005, and 2006.

**''SEC. 1139. TRIBAL DEPARTMENTS OR DIVISIONS OF EDUCATION.**

''(a) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall make grants and provide technical assistance to tribes for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe.

''(b) APPLICATIONS.—For a tribe to be eligible to receive a grant under this section, the governing body of the tribe shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(c) DIVERSITY.—The Secretary shall award grants under this section in a manner that fosters geographic and population diversity.

''(d) USE.—Tribes that receive grants under this section shall use the funds made available through the grants—

''(1) to facilitate tribal control in all matters relating to the education of Indian children on reservations (and on former Indian reservations in Oklahoma);

''(2) to provide for the development of coordinated educational programs (including all preschool, elementary, secondary, and higher or vocational educational programs funded by tribal, Federal, or other sources) on reservations (and on former Indian reservations in Oklahoma) by encouraging tribal administrative support of all Bureau funded educational programs as well as encouraging tribal cooperation and coordination with entities carrying out all educational programs receiving financial support from other Federal agencies, State agencies, or private entities; and

''(3) to provide for the development and enforcement of tribal educational codes, including tribal educational policies and tribal standards applicable to curriculum, personnel, students, facilities, and support programs.

''(e) PRIORITIES.—In making grants under this section, the Secretary shall give priority to any application that—

''(1) includes—

''(A) assurances that the applicant serves 3 or more separate Bureau funded schools; and

''(B) assurances from the applicant that the tribal department of education to be funded under this section will provide coordinating services and technical assistance to all of such schools; and

''(2) includes assurances that all education programs for which funds are provided by such a contract or grant will be monitored and audited, by or through the tribal department of education, to ensure that the programs meet the requirements of law; and

''(3) provides a plan and schedule that—

''(A) provides for—

''(i) the assumption, by the tribal department of education, of all assets and functions of the Bureau agency office associated with the tribe, to the extent the assets and functions relate to education; and

''(ii) the termination by the Bureau of such functions and office at the time of such assumption; and

''(B) provides that the assumption shall occur over the term of the grant made under this section, except that, when mutually agreeable to the tribal governing body and the Assistant Secretary, the period in which such assumption is to occur may be modified, reduced, or extended after the initial year of the grant.

''(e) TIME PERIOD OF GRANT.—Subject to the availability of appropriated funds, a grant provided under this section shall be provided for a period of 3 years. If the performance of the grant recipient is satisfactory to the Secretary, the grant may be renewed for additional 3-year terms.

''(f) TERMS, CONDITIONS, OR REQUIREMENTS.—A tribe that receives a grant under this section shall comply with regulations relating to grants made under section 103(a) of the Indian Self-Determination and Education Assistance Act that are in effect on the date that the tribal governing body submits the application for the grant under subsection (c). The Secretary shall not impose any terms, conditions, or requirements on the provision of grants under this section that are not specified in this section.

''(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2002 and such sums as may be necessary for each of fiscal years 2003, 2004, 2005, and 2006.

**''SEC. 1140. DEFINITIONS.**

''In this part, unless otherwise specified:

''(1) AGENCY SCHOOL BOARD.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'agency school board' means a body, for which—

''(i) the members are appointed by all of the school boards of the schools located within an agency, including schools operated under contracts or grants; and

''(ii) the number of such members shall be determined by the Secretary in consultation with the affected tribes.

''(B) EXCEPTIONS.—In the case of an agency serving a single school, the school board of such school shall be considered to be the agency school board. In the case of an agency serving a school or schools operated under a contract or grant, at least 1 member of the body described in subparagraph (A) shall be from such a school.

''(2) BUREAU.—The term 'Bureau' means the Bureau of Indian Affairs of the Department of the Interior.

''(3) BUREAU FUNDED SCHOOL.—The term 'Bureau funded school' means—

''(A) a Bureau school;

''(B) a contract or grant school; or

''(C) a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

''(4) BUREAU SCHOOL.—The term 'Bureau school' means—

''(A) a Bureau operated elementary school or secondary school that is a day or boarding school; or

''(B) a Bureau operated dormitory for students attending a school other than a Bureau school.

''(5) CONTRACT OR GRANT SCHOOL.—The term 'contract or grant school' means an elementary school, secondary school, or dormitory that receives financial assistance for its operation under a contract, grant, or agreement with the Bureau under section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act, or under the Tribally Controlled Schools Act of 1988.

''(6) EDUCATION LINE OFFICER.—The term 'education line officer' means a member of the education personnel under the supervision of the Director of the Office, whether located in a central, area, or agency office.

''(7) FINANCIAL PLAN.—The term 'financial plan' means a plan of services provided by each Bureau school.

''(8) INDIAN ORGANIZATION.—The term 'Indian organization' means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized tribes.

''(9) INHERENTLY FEDERAL FUNCTIONS.—The term 'inherently Federal functions' means functions and responsibilities which, under section 1125(c), are non-contractible, including—

''(A) the allocation and obligation of Federal funds and determinations as to the amounts of expenditures;

''(B) the administration of Federal personnel laws for Federal employees;

''(C) the administration of Federal contracting and grant laws, including the monitoring and auditing of contracts and grants in order to maintain the continuing trust, programmatic, and fiscal responsibilities of the Secretary;

''(D) the conducting of administrative hearings and deciding of administrative appeals;

''(E) the determination of the Secretary's views and recommendations concerning administrative appeals or litigation and the representation of the Secretary in administrative appeals and litigation;

''(F) the issuance of Federal regulations and policies as well as any documents published in the Federal Register;

''(G) reporting to Congress and the President;

''(H) the formulation of the Secretary's and the President's policies and their budgetary and legislative recommendations and views; and

''(I) the non-delegable statutory duties of the Secretary relating to trust resources.

''(10) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' means a board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, or independent or other school district located within a State, and includes any State agency that directly operates and maintains facilities for providing free public education.

''(11) LOCAL SCHOOL BOARD.—The term 'local school board', when used with respect to a Bureau school, means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school, except that, for a school serving a substantial number of students from different tribes—

''(A) the members of the body shall be appointed by the tribal governing bodies of the tribes affected; and

''(B) the number of such members shall be determined by the Secretary in consultation with the affected tribes.

''(12) OFFICE.—The term 'Office' means the Office of Indian Education Programs within the Bureau.

''(13) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(14) SUPERVISOR.—The term 'supervisor' means the individual in the position of ultimate authority at a Bureau school.

''(15) TRIBAL GOVERNING BODY.—The term 'tribal governing body' means, with respect to any school, the tribal governing body, or tribal governing bodies, that represent at least 90 percent of the students served by such school.

''(16) TRIBE.—The term 'tribe' means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Regional Corporation or Village Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''.

## TITLE II—TRIBALLY CONTROLLED SCHOOLS ACT OF 1988

**SEC. 201. TRIBALLY CONTROLLED SCHOOLS.**

Sections 5202 through 5213 of the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) are amended to read as follows:

**''SEC. 5202. FINDINGS.**

''Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, Indians, finds that—

''(1) the Indian Self-Determination and Education Assistance Act, which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step towards tribal and community control;

''(2) because of the Bureau of Indian Affairs' administration and domination of the contracting process under such Act, Indians have not been provided with the full opportunity to develop leadership skills crucial to the realization of self-government and have been denied an effective voice in the planning and implementation of programs for the benefit of Indians that are responsive to the true needs of Indian communities;

''(3) Indians will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons;

''(4) true self-determination in any society of people is dependent upon an educational process that will ensure the development of qualified people to fulfill meaningful leadership roles;

''(5) the Federal administration of education for Indian children have not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction that education can and should provide;

''(6) true local control requires the least possible Federal interference; and

''(7) the time has come to enhance the concepts made manifest in the Indian Self-Determination and Education Assistance Act.

**''SEC. 5203. DECLARATION OF POLICY.**

''(a) RECOGNITION.—Congress recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities.

''(b) COMMITMENT.—Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy for education that will deter further perpetuation of Federal bureaucratic domination of programs.

''(c) NATIONAL GOAL.—Congress declares that a major national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children—

''(1) to compete and excel in the life areas of their choice; and

''(2) to achieve the measure of self-determination essential to their social and economic well-being.

''(d) EDUCATIONAL NEEDS.—Congress affirms—

''(1) the reality of the special and unique educational needs of Indian people, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and

''(2) that the needs may best be met through a grant process.

''(e) FEDERAL RELATIONS.—Congress declares a commitment to the policies described in this section and support, to the full extent of congressional responsibility, for Federal relations with the Indian nations.

''(f) TERMINATION.—Congress repudiates and rejects House Concurrent Resolution 108 of the 83d Congress and any policy of unilateral termination of Federal relations with any Indian Nation.

**''SEC. 5204. GRANTS AUTHORIZED.**

''(a) IN GENERAL.—

''(1) ELIGIBILITY.—The Secretary shall provide grants to Indian tribes and tribal organizations that—

''(A) operate contract schools under title XI of the Education Amendments of 1978 and notify the Secretary of their election to operate the schools with assistance under this part rather than continuing to operate such schools as contract schools under such title;

''(B) operate other tribally controlled schools eligible for assistance under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants; or

''(C) elect to assume operation of Bureau funded schools with the assistance provided under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants.

''(2) DEPOSIT OF FUNDS.—Funds made available through a grant provided under this part shall be deposited into the general operating fund of the tribally controlled school with respect to which the grant is made.

''(3) USE OF FUNDS.—

''(A) EDUCATION RELATED ACTIVITIES.—Except as otherwise provided in this paragraph, funds made available through a grant provided under this part shall be used to defray, at the discretion of the school board of the tribally controlled school with respect to which the grant is provided, any expenditures for education related activities for which the grant may be used under the laws described in section 5205(a), or any similar activities, including expenditures for—

''(i) school operations, and academic, educational, residential, guidance and counseling, and administrative purposes; and

''(ii) support services for the school, including transportation.

''(B) OPERATIONS AND MAINTENANCE EXPENDITURES.—Funds made available through a grant provided under this part may, at the discretion of the school board of the tribally controlled school with respect to which such grant is provided, be used to defray operations and maintenance expenditures for the school if any funds for the operation and maintenance of the school are allocated to the school under the provisions of any of the laws described in section 5205(a).

''(4) WAIVER OF FEDERAL TORT CLAIMS ACT.—Notwithstanding section 314 of the Department of Interior and Related Agencies Appropriations Act, 1991 (Public Law 101-512), the Federal Tort Claims Act shall not apply to a program operated by a tribally controlled school if the program is not funded by the Federal agency. Nothing in the preceding sentence shall be construed to apply to—

''(A) the employees of the school involved; and

''(B) any entity that enters into a contract with a grantee under this section.

''(b) LIMITATIONS.—

''(1) 1 GRANT PER TRIBE OR ORGANIZATION PER FISCAL YEAR.—Not more than 1 grant may be provided under this part with respect to any Indian tribe or tribal organization for any fiscal year.

''(2) NONSECTARIAN USE.—Funds made available through any grant provided under this part may not be used in connection with religious worship or sectarian instruction.

''(3) ADMINISTRATIVE COSTS LIMITATION.—Funds made available through any grant provided under this part may not be expended for administrative cost (as defined in section 1127(a) of the Education Amendments of 1978) in excess of the amount generated for such cost under section 1127 of such Act.

''(c) LIMITATION ON TRANSFER OF FUNDS AMONG SCHOOL SITES.—

''(1) IN GENERAL.—In the case of a recipient of a grant under this part that operates schools at more than 1 school site, the grant recipient may expend not more than the lesser of—

''(A) 10 percent of the funds allocated for such school site, under section 1127 of the Education Amendments of 1978; or

''(B) $400,000 of such funds;

at any other school site.

''(2) DEFINITION OF SCHOOL SITE.—In this subsection, the term 'school site' means the physical location and the facilities of an elementary or secondary educational or residential program operated by, or under contract or grant with, the Bureau for which a discrete student count is identified under the funding formula established under section 1126 of the Education Amendments of 1978.

''(d) NO REQUIREMENT TO ACCEPT GRANTS.—Nothing in this part may be construed—

''(1) to require a tribe or tribal organization to apply for or accept; or

''(2) to allow any person to coerce any tribe or tribal organization to apply for, or accept, a grant under this part to plan, conduct, and administer all of, or any portion of, any Bureau program. The submission of such applications and the timing of such applications shall be strictly voluntary. Nothing in this part may be construed as allowing or requiring the grant recipient to make any grant under this part to any other entity.

''(e) NO EFFECT ON FEDERAL RESPONSIBILITY.—Grants provided under this part shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide an educational program.

''(f) RETROCESSION.—

''(1) IN GENERAL.—Whenever a tribal governing body requests retrocession of any program for which assistance is provided under this part, such retrocession shall become effective on a date specified by the Secretary that is not later than 120 days after the date on which the tribal governing body requests the retrocession. A later date may be specified if mutually agreed upon by the Secretary and the tribal governing body. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this part prior to the retrocession.

''(2) STATUS AFTER RETROCESSION.—The tribe requesting retrocession shall specify whether the retrocession relates to status as a Bureau operated school or as a school operated under a contract under the Indian Self-Determination Act.

''(3) TRANSFER OF EQUIPMENT AND MATERIALS.—Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded shall transfer to the Secretary (or to the tribe or tribal organization that will operate the program as a contract school) the existing equipment and materials that were acquired—

''(A) with assistance under this part; or

''(B) upon assumption of operation of the program under this part if the school was a Bureau funded school under title XI of the Education Amendments of 1978 before receiving assistance under this part.

''(g) PROHIBITION OF TERMINATION FOR ADMINISTRATIVE CONVENIENCE.—Grants provided under this part may not be terminated, modified, suspended, or reduced solely for the convenience of the administering agency.

**''SEC. 5205. COMPOSITION OF GRANTS.**

''(a) IN GENERAL.—The funds made available through a grant provided under this part to an Indian tribe or tribal organization for any fiscal year shall consist of—

''(1) the total amount of funds allocated for such fiscal year under sections 1126 and 1127 of the Education Amendments of 1978 with respect to the tribally controlled school eligible for assistance under this part that is operated by such Indian tribe or tribal organization, including funds provided under such sections, or under any other provision of law, for transportation costs for such school;

''(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 105 of the Indian Self-Determination and Education Assistance Act or any other provision of law, other facilities accounts for such school for such fiscal year (including accounts for facilities referred to in section 1125(d) of the Education Amendments of 1978 or any other law); and

''(3) the total amount of funds that are allocated to such school for such fiscal year under—

''(A) title I of the Elementary and Secondary Education Act of 1965;

''(B) the Individuals with Disabilities Education Act; and

''(C) any other Federal education law.

''(b) SPECIAL RULES.—

''(1) IN GENERAL.—

''(A) APPLICABLE PROVISIONS.—Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) of subsection (a) shall be subject to the provisions of this part and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—

''(i) title I of the Elementary and Secondary Education Act of 1965;

''(ii) the Individuals with Disabilities Education Act; or

''(iii) any Federal education law other than title XI of the Education Amendments of 1978.

''(B) OTHER BUREAU REQUIREMENTS.—Indian tribes and tribal organizations to which grants are provided under this part, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii) or (iii) of subparagraph (A).

''(2) SCHOOLS CONSIDERED CONTRACT SCHOOLS.—Tribally controlled schools for which grants are provided under this part shall be treated as contract schools for the purposes of allocation of funds under sections 1125(d), 1126, and 1127 of the Education Amendments of 1978.

''(3) SCHOOLS CONSIDERED BUREAU SCHOOLS.—Tribally controlled schools for which grants are provided under this part shall be treated as Bureau schools for the purposes of allocation of funds provided under—

''(A) title I of the Elementary and Secondary Education Act of 1965;

''(B) the Individuals with Disabilities Education Act; and

''(C) any other Federal education law, that are distributed through the Bureau.

''(4) ACCOUNTS; USE OF CERTAIN FUNDS.—

''(A) SEPARATE ACCOUNT.—Notwithstanding section 5204(a)(2), with respect to funds from facilities improvement and repair, alteration and renovation (major or minor), health and safety, or new construction accounts included in the grant provided under section 5204(a), the grant recipient shall maintain a separate account for such funds. At the end of the period designated for the work covered by the funds received, the grant recipient shall submit to the Secretary a separate accounting of the work done and the funds expended. Funds received from those accounts may only be used for the purpose for which the funds were appropriated and for the work encompassed by the application or submission for which the funds were received.

''(B) REQUIREMENTS FOR PROJECTS.—

''(i) REGULATORY REQUIREMENTS.—With respect to a grant to a tribally controlled school under this part for new construction or facilities improvements and repair in excess of $100,000, such grant shall be subject to the Administrative and Audit Requirements and Cost Principles for Assistance Programs contained in part 12 of title 43, Code of Federal Regulations.

''(ii) EXCEPTION.—Notwithstanding clause (i), grants described in such clause shall not be subject to section 12.61 of title 43, Code of Federal Regulations. The Secretary and the grantee shall negotiate and determine a schedule of payments for the work to be performed.

''(iii) APPLICATIONS.—In considering applications for a grant described in clause (i), the Secretary shall consider whether the Indian tribe or tribal organization involved would be deficient in assuring that the construction projects under the proposed grant conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required under section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a)) with respect to organizational and financial management capabilities.

''(iv) DISPUTES.—Any disputes between the Secretary and any grantee concerning a grant described in clause (i) shall be subject to the dispute provisions contained in section 5209(e).

''(C) NEW CONSTRUCTION.—Notwithstanding subparagraph (A), a school receiving a grant under this part for facilities improvement and repair may use such grant funds for new construction if the tribal governing body or tribal organization that submits the application for the grant provides funding for the new construction equal to at least 25 percent of the total cost of such new construction.

''(D) PERIOD.—Where the appropriations measure under which the funds described in subparagraph (A) are made available or the application submitted for the funds does not stipulate a period for the work covered by the funds, the Secretary and the grant recipient shall consult and determine such a period prior to the transfer of the funds. A period so determined may be extended upon mutual agreement of the Secretary and the grant recipient.

''(5) ENFORCEMENT OF REQUEST TO INCLUDE FUNDS.—

''(A) IN GENERAL.—If the Secretary fails to carry out a request filed by an Indian tribe or tribal organization to include in such tribe or organization's grant under this part the funds described in subsection (a)(2) within 180 days after the filing of the request, the Secretary shall—

''(i) be deemed to have approved such request; and

''(ii) immediately upon the expiration of such 180-day period amend the grant accordingly.

''(B) RIGHTS.—A tribe or organization described in subparagraph (A) may enforce its rights under subsection (a)(2) and this paragraph, including rights relating to any denial or failure to act on such tribe's or organization's request, pursuant to the dispute authority described in section 5209(e).

**''SEC. 5206. ELIGIBILITY FOR GRANTS.**

''(a) RULES.—

''(1) IN GENERAL.—A tribally controlled school is eligible for assistance under this part if the school—

''(A) on April 28, 1988, was a contract school under title XI of the Education Amendments of 1978 and the tribe or tribal organization operating the school submits to the Secretary a written notice of election to receive a grant under this part;

''(B) was a Bureau operated school under title XI of the Education Amendments of 1978 and has met the requirements of subsection (b);

''(C) is not a Bureau funded school, but has met the requirements of subsection (c); or

''(D) is a school with respect to which an election has been made under paragraph (2) and that has met the requirements of subsection (b).

''(2) NEW SCHOOLS.—Notwithstanding paragraph (1), for purposes of determining eligibility for assistance under this part, any application that has been submitted under the Indian Self-Determination and Education Assistance Act by an Indian tribe or tribal organization for a school that is not in operation on the date of enactment of the Native American Education Improvement Act of 2001 shall be reviewed under the guidelines and regulations for applications submitted under the Indian Self-Determination and Education Assistance Act that were in effect at the time the application was submitted, unless the Indian tribe or tribal organization elects to have the application reviewed under the provisions of subsection (b).

''(b) ADDITIONAL REQUIREMENTS FOR BUREAU FUNDED SCHOOLS AND CERTAIN ELECTING SCHOOLS.—

''(1) BUREAU FUNDED SCHOOLS.—A school that was a Bureau funded school under title XI of the Education Amendments of 1978 on the date of enactment of the Native American Education Improvement Act of 2001, and any school with respect to which an election is made under subsection (a)(2), meets the requirements of this subsection if—

''(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting that the Secretary—

''(i) transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school; and

''(ii) make a determination as to whether the school is eligible for assistance under this part; and

''(B) the Secretary makes a determination that the school is eligible for assistance under this part.

''(2) CERTAIN ELECTING SCHOOLS.—

''(A) DETERMINATION.—By not later than 120 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine—

''(i) in the case of a school that is not being operated by the Indian tribe or tribal organization, whether to transfer operation of the school to the Indian tribe or tribal organization; and

''(ii) whether the school is eligible for assistance under this part.

''(B) CONSIDERATION; TRANSFERS AND ELIGIBILITY.—In considering applications submitted under paragraph (1)(A), the Secretary—

''(i) shall transfer operation of the school to the Indian tribe or tribal organization, if the tribe or tribal organization is not already operating the school; and

''(ii) shall determine that the school is eligible for assistance under this part, unless the Secretary finds by clear and convincing evidence that the services to be provided by the Indian tribe or tribal organization will be deleterious to the welfare of the Indians served by the school and will not carry out the purposes of this Act.

''(C) CONSIDERATION; POSSIBLE DEFICIENCIES.—In considering applications submitted under paragraph (1)(A), the Secretary shall only consider whether the Indian tribe or tribal organization would be deficient in operating the school with respect to—

''(i) equipment;

''(ii) bookkeeping and accounting procedures;

''(iii) ability to adequately manage a school; or

''(iv) adequately trained personnel.

''(c) ADDITIONAL REQUIREMENTS FOR A SCHOOL THAT IS NOT A BUREAU FUNDED SCHOOL.—

''(1) IN GENERAL.—A school that is not a Bureau funded school under title XI of the Education Amendments of 1978 meets the requirements of this subsection if—

''(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting a determination by the Secretary as to whether the school is eligible for assistance under this part; and

''(B) the Secretary makes a determination that the school is eligible for assistance under this part.

''(2) DEADLINE FOR DETERMINATION BY SECRETARY.—

''(A) DETERMINATION.—By not later than 180 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine whether the school is eligible for assistance under this part.

''(B) FACTORS.—In making the determination under subparagraph (A), the Secretary shall give equal consideration to each of the following factors:

''(i) With respect to the applicant's proposal—

''(I) the adequacy of facilities or the potential to obtain or provide adequate facilities;

''(II) geographic and demographic factors in the affected areas;

''(III) adequacy of the applicant's program plans;

''(IV) geographic proximity of comparable public education; and

''(V) the needs to be met by the school, as expressed by all affected parties, including but not limited to students, families, tribal governments at both the central and local levels, and school organizations.

''(ii) With respect to all education services already available—

''(I) geographic and demographic factors in the affected areas;

''(II) adequacy and comparability of programs already available;

''(III) consistency of available programs with tribal education codes or tribal legislation on education; and

''(IV) the history and success of those services for the proposed population to be served, as determined from all factors including, if relevant, standardized examination performance.

''(C) EXCEPTION REGARDING PROXIMITY.—The Secretary may not make a determination under this paragraph that is primarily based upon the geographic proximity of comparable public education.

''(D) INFORMATION ON FACTORS.—An application submitted under paragraph (1)(A) shall include information on the factors described in subparagraph (B)(i), but the applicant may also provide the Secretary such information relative to the factors described in subparagraph (B)(ii) as the applicant considers to be appropriate.

''(E) TREATMENT OF LACK OF DETERMINATION.—If the Secretary fails to make a determination under subparagraph (A) with respect to an application within 180 days after the date on which the Secretary received the application—

''(i) the Secretary shall be deemed to have made a determination that the tribally controlled school is eligible for assistance under this part; and

''(ii) the grant shall become effective 18 months after the date on which the Secretary received the application, or on an earlier date, at the Secretary's discretion.

''(d) FILING OF APPLICATIONS AND REPORTS.—

''(1) IN GENERAL.—Each application or report submitted to the Secretary under this part, and any amendment to such application or report, shall be filed with the education line officer designated by the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs. The date on which the filing occurs shall, for purposes of this part, be treated as the date on which the application, report, or amendment was submitted to the Secretary.

''(2) SUPPORTING DOCUMENTATION.—

''(A) IN GENERAL.—Any application that is submitted under this part shall be accompanied by a document indicating the action taken by the appropriate tribal governing body concerning authorizing such application.

''(B) AUTHORIZATION ACTION.—The Secretary shall administer the requirement of subparagraph (A) in a manner so as to ensure that the tribe involved, through the official action of the tribal governing body, has approved of the application for the grant.

''(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as making a tribal governing body (or tribe) that takes an action described in subparagraph (A) a party to the grant (unless the tribal governing body or the tribe is the grantee) or as making the tribal governing body or tribe financially or programmatically responsible for the actions of the grantee.

''(3) RULES OF CONSTRUCTION.—Nothing in this subsection shall be construed as making a tribe act as a surety for the performance of a grantee under a grant under this part.

''(4) CLARIFICATION.—The provisions of paragraphs (2) and (3) shall be construed as a clarification of policy in existence on the date of enactment of the Native American Education Improvement Act of 2001 with respect to grants under this part and shall not be construed as altering such policy or as a new policy.

''(e) EFFECTIVE DATE FOR APPROVED APPLICATIONS.—Except as provided in subsection (c)(2)(E), a grant provided under this part shall be made, and any transfer of the operation of a Bureau school made under subsection (b) shall become effective, beginning on the first day of the academic year succeeding the fiscal year in which the application for the grant or transfer is made, or on an earlier date determined by the Secretary.

''(f) DENIAL OF APPLICATIONS.—

''(1) IN GENERAL.—If the Secretary disapproves a grant under this part, disapproves the transfer of operations of a Bureau school under subsection (b), or determines that a school is not eligible for assistance under this part, the Secretary shall—

''(A) state the objections in writing to the tribe or tribal organization involved within the allotted time;

''(B) provide assistance to the tribe or tribal organization to cure all stated objections;

''(C) at the request of the tribe or tribal organization, provide to the tribe or tribal organization a hearing on the record regarding the refusal or determination involved, under the same rules and regulations as apply under the Indian Self-Determination and Education Assistance Act; and

''(D) provide to the tribe or tribal organization an opportunity to appeal the decision resulting from the hearing.

''(2) TIMELINE FOR RECONSIDERATION OF AMENDED APPLICATIONS.—The Secretary shall reconsider any amended application submitted under this part within 60 days after the amended application is submitted to the Secretary and shall submit the determinations of the Secretary with respect to such reconsideration to the tribe or the tribal organization.

''(g) REPORT.—The Bureau shall prepare and submit to Congress an annual report on

all applications received, and actions taken (including the costs associated with such actions), under this section on the same date as the date on which the President is required to submit to Congress a budget of the United States Government under section 1105 of title 31, United States Code.

**"SEC. 5207. DURATION OF ELIGIBILITY DETERMINATION.**

''(a) IN GENERAL.—If the Secretary determines that a tribally controlled school is eligible for assistance under this part, the eligibility determination shall remain in effect until the determination is revoked by the Secretary, and the requirements of subsection (b) or (c) of section 5206, if applicable, shall be considered to have been met with respect to such school until the eligibility determination is revoked by the Secretary.

''(b) ANNUAL REPORTS.—

''(1) IN GENERAL.—Each recipient of a grant provided under this part for a school shall prepare an annual report concerning the school involved, the contents of which shall be limited to—

''(A) an annual financial statement reporting revenue and expenditures as defined by the cost accounting standards established by the grant recipient;

''(B) a biannual financial audit conducted pursuant to the standards of chapter 71 of title 31, United States Code;

''(C) a biannual compliance audit of the procurement of personal property during the period for which the report is being prepared that shall be in compliance with written procurement standards that are developed by the local school board;

''(D) an annual submission to the Secretary containing information on the number of students served and a brief description of programs offered through the grant; and

''(E) a program evaluation conducted by an impartial evaluation review team, to be based on the standards established for purposes of subsection (c)(1)(A)(ii).

''(2) EVALUATION REVIEW TEAMS.—In appropriate cases, representatives of other tribally controlled schools and representatives of tribally controlled community colleges shall be members of the evaluation review teams.

''(3) EVALUATIONS.—In the case of a school that is accredited, the evaluations required under this subsection shall be conducted at intervals under the terms of the accreditation.

''(4) SUBMISSION OF REPORT.—

''(A) TO TRIBAL GOVERNING BODY.—Upon completion of the annual report required under paragraph (1), the recipient of the grant shall send (via first class mail, return receipt requested) a copy of such annual report to the tribal governing body.

''(B) TO SECRETARY.—Not later than 30 days after receiving written confirmation that the tribal governing body has received the report sent pursuant to subparagraph (A), the recipient of the grant shall send a copy of the report to the Secretary.

''(c) REVOCATION OF ELIGIBILITY.—

''(1) IN GENERAL.—

''(A) NONREVOCATION CONDITIONS.—The Secretary shall not revoke a determination that a school is eligible for assistance under this part if—

''(i) the Indian tribe or tribal organization submits the reports required under subsection (b) with respect to the school; and

''(ii) at least 1 of the following conditions applies with respect to the school:

''(I) The school is certified or accredited by a State certification or regional accrediting association or is a candidate in good standing for such certification or accreditation under the rules of the State certification or regional accrediting association, showing that credits achieved by the students within the education programs of the school are, or will be, accepted at grade level by a State certified or regionally accredited institution.

''(II) The Secretary determines that there is a reasonable expectation that the certification or accreditation described in subclause (I), or candidacy in good standing for such certification or accreditation, will be achieved by the school within 3 years and that the program offered by the school is beneficial to Indian students.

''(III) The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized State certification or regional accrediting agency.

''(IV) The school accepts the standards issued under section 1121 of the Education Amendments of 1978 and an impartial evaluator chosen by the grant recipient conducts a program evaluation for the school under this section in conformance with the regulations pertaining to Bureau operated schools, but no grant recipient shall be required to comply with the standards to a greater degree than a comparable Bureau operated school.

''(V)(aa) Every 3 years, an impartial evaluator agreed upon by the Secretary and the grant recipient conducts evaluations of the school, and the school receives a positive assessment under such evaluations. The evaluations are conducted under standards adopted by a contractor under a contract for the school entered into under the Indian Self-Determination and Education Assistance Act (or revisions of such standards agreed to by the Secretary and the grant recipient) prior to the date of enactment of the Native American Education Improvement Act of 2001.

''(bb) If the Secretary and a grant recipient other than a tribal governing body fail to agree on such an evaluator, the tribal governing body shall choose the evaluator or perform the evaluation. If the Secretary and a grant recipient that is a tribal governing body fail to agree on such an evaluator, item (aa) shall not apply.

''(B) STANDARDS.—The choice of standards employed for the purposes of subparagraph (A)(ii) shall be consistent with section 1121(e) of the Education Amendments of 1978.

''(2) NOTICE REQUIREMENTS FOR REVOCATION.—The Secretary shall not revoke a determination that a school is eligible for assistance under this part, or reassume control of a school that was a Bureau school prior to approval of an application submitted under section 5206(b)(1)(A), until the Secretary—

''(A) provides notice, to the tribally controlled school involved and the appropriate tribal governing body (within the meaning of section 1140 of the Education Amendments of 1978) for the tribally controlled school, which states—

''(i) the specific deficiencies that led to the revocation or reassumption determination; and

''(ii) the actions that are needed to remedy such deficiencies; and

''(B) affords such school and governing body an opportunity to carry out the remedial actions.

''(3) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical assistance to enable the school and governing body to carry out such remedial actions.

''(4) HEARING AND APPEAL.—In addition to notice and technical assistance under this subsection, the Secretary shall provide to the school and governing body—

''(A) at the request of the school or governing body, a hearing on the record regarding the revocation or reassumption determination, to be conducted under the rules and regulations described in section 5206(f)(1)(C); and

''(B) an opportunity to appeal the decision resulting from the hearing.

''(d) APPLICABILITY OF SECTION PURSUANT TO ELECTION UNDER SECTION 5209(b).—With respect to a tribally controlled school that receives assistance under this part pursuant to an election made under section 5209(b)—

''(1) subsection (b) shall apply; and

''(2) the Secretary may not revoke eligibility for assistance under this part except in conformance with subsection (c).

**"SEC. 5208. PAYMENT OF GRANTS; INVESTMENT OF FUNDS; STATE PAYMENTS TO SCHOOLS.**

''(a) PAYMENTS.—

''(1) MANNER OF PAYMENTS.—

''(A) IN GENERAL.—Except as otherwise provided in this subsection, the Secretary shall make payments to grant recipients under this part in 2 payments, of which—

''(i) the first payment shall be made not later than July 15 of each year in an amount equal to 80 percent of the amount that the grant recipient was entitled to receive during the preceding academic year; and

''(ii) the second payment, consisting of the remainder to which the grant recipient was entitled for the academic year, shall be made not later than December 1 of each year.

''(B) EXCESS FUNDING.—In a case in which the amount provided to a grant recipient under subparagraph (A)(i) is in excess of the amount that the recipient is entitled to receive for the academic year involved, the recipient shall return to the Secretary such excess amount. The amount returned to the Secretary under this subparagraph shall be distributed equally to all schools in the system.

''(2) NEWLY FUNDED SCHOOLS.—For any school for which no payment under this part was made from Bureau funds in the academic year preceding the year for which the payments are being made, full payment of the amount computed for the school for the first academic year of eligibility under this part shall be made not later than December 1 of the academic year.

''(3) LATE FUNDING.—With regard to funds for grant recipients under this part that become available for obligation on October 1 of the fiscal year for which such funds are appropriated, the Secretary shall make payments to the grant recipients not later than December 1 of the fiscal year, except that operations and maintenance funds shall be forward funded and shall be available for obligation not later than July 15 and December 1 of each fiscal year.

''(4) APPLICABILITY OF CERTAIN TITLE 31 PROVISIONS.—The provisions of chapter 39 of title 31, United States Code, shall apply to the payments required to be made under paragraphs (1), (2), and (3).

''(5) RESTRICTIONS.—Payments made under paragraphs (1), (2), and (3) shall be subject to any restriction on amounts of payments under this part that is imposed by a continuing resolution or other Act appropriating the funds involved.

''(b) INVESTMENT OF FUNDS.—

''(1) TREATMENT OF INTEREST AND INVESTMENT INCOME.—Notwithstanding any other provision of law, any interest or investment income that accrues on or is derived from any funds provided under this part for a school after such funds are paid to an Indian tribe or tribal organization and before such funds are expended for the purpose for which such funds were provided under this part shall be the property of the Indian tribe or tribal organization. The interest or income shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance to be provided, under any provision of Federal law.

''(2) PERMISSIBLE INVESTMENTS.—Funds provided under this part may be invested by an Indian tribe or tribal organization, as approved by the grantee, before such funds are expended for the objectives of this part if such funds are—

''(A) invested by the Indian tribe or tribal organization only—

''(i) in obligations of the United States;

''(ii) in obligations or securities that are guaranteed or insured by the United States; or

''(iii) in mutual (or other) funds that are registered with the Securities and Exchange Commission and that only invest in obligations of the United States, or securities that are guaranteed or insured by the United States; or

''(B) deposited only into accounts that are insured by an agency or instrumentality of the United States, or are fully supported by collateral to ensure protection of the funds, even in the event of a bank failure.

''(c) RECOVERIES.—Funds received under this part shall not be taken into consideration by any Federal agency for the purposes of making underrecovery and overrecovery determinations for any other funds, from whatever source derived.

''(d) PAYMENTS BY STATES.—

''(1) IN GENERAL.—With respect to a school that receives assistance under this part, a State shall not—

''(A) take into account the amount of such assistance in determining the amount of funds that such school is eligible to receive under applicable State law; or

''(B) reduce any State payments that such school is eligible to receive under applicable State law because of the assistance received by the school under this part.

''(2) VIOLATIONS.—

''(A) IN GENERAL.—Upon receipt of any information from any source that a State is in violation of paragraph (1), the Secretary shall immediately, but in no case later than 90 days after the receipt of such information, conduct an investigation and make a determination of whether such violation has occurred.

''(B) DETERMINATION.—If the Secretary makes a determination under subparagraph (A) that a State has violated paragraph (1), the Secretary shall inform the Secretary of Education of such determination and the basis for the determination. The Secretary of Education shall, in an expedient manner, pursue penalties under paragraph (3) with respect to the State.

''(3) PENALTIES.—A State determined to have violated paragraph (1) shall be subject to penalties similar to the penalties described in section 8809(e) of the Elementary and Secondary Education Act of 1965 for a violation of title VIII of such Act.

**''SEC. 5209. APPLICATION WITH RESPECT TO INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.**

''(a) CERTAIN PROVISIONS TO APPLY TO GRANTS.—The following provisions of the Indian Self-Determination and Education Assistance Act (and any subsequent revisions thereto or renumbering thereof), shall apply to grants provided under this part and the schools funded under such grants:

''(1) Section 5(f) (relating to single agency audits).

''(2) Section 6 (relating to criminal activities; penalties).

''(3) Section 7 (relating to wage and labor standards).

''(4) Section 104 (relating to retention of Federal employee coverage).

''(5) Section 105(f) (relating to Federal property).

''(6) Section 105(k) (relating to access to Federal sources of supply).

''(7) Section 105(l) (relating to lease of facility used for administration and delivery of services).

''(8) Section 106(e) (relating to limitation on remedies relating to cost allowances).

''(9) Section 106(i) (relating to use of funds for matching or cost participation requirements).

''(10) Section 106(j) (relating to allowable uses of funds).

''(11) The portions of section 108(c) that consist of model agreements provisions 1(b)(5) (relating to limitations of costs), 1(b)(7) (relating to records and monitoring), 1(b)(8) (relating to property), and 1(b)(9) (relating to availability of funds).

''(12) Section 109 (relating to reassumption).

''(13) Section 111 (relating to sovereign immunity and trusteeship rights unaffected).

''(b) ELECTION FOR GRANT IN LIEU OF CONTRACT.—

''(1) IN GENERAL.—A contractor that carries out an activity to which this part applies and who has entered into a contract under the Indian Self-Determination and Education Assistance Act that is in effect on the date of enactment of the Native American Education Improvement Act of 2001 may, by giving notice to the Secretary, elect to receive a grant under this part in lieu of such contract and to have the provisions of this part apply to such activity.

''(2) EFFECTIVE DATE OF ELECTION.—Any election made under paragraph (1) shall take effect on the first day of July immediately following the date of such election.

''(3) EXCEPTION.—In any case in which the first day of July immediately following the date of an election under paragraph (1) is less than 60 days after such election, such election shall not take effect until the first day of July of year following the year in which the election is made.

''(c) NO DUPLICATION.—No funds may be provided under any contract entered into under the Indian Self-Determination and Education Assistance Act to pay any expenses incurred in providing any program or services if a grant has been made under this part to pay such expenses.

''(d) TRANSFERS AND CARRYOVERS.—

''(1) BUILDINGS, EQUIPMENT, SUPPLIES, MATERIALS.—A tribe or tribal organization assuming the operation of—

''(A) a Bureau school with assistance under this part shall be entitled to the transfer or use of buildings, equipment, supplies, and materials to the same extent as if the tribe or tribal organization were contracting under the Indian Self-Determination and Education Assistance Act; or

''(B) a contract school with assistance under this part shall be entitled to funding for improvements, alterations, replacement and code compliance in facilities where programs approved under this part were used in the operation of the contract school to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act and to the transfer or use of buildings, equipment, supplies, and materials that were used in the operation of the contract school to the same extent as if the tribe or tribal organization were contracting under such Act.

''(2) FUNDS.—Any tribe or tribal organization that assumes operation of a Bureau school with assistance under this part and any tribe or tribal organization that elects to operate a school with assistance under this part rather than to continue to operate the school as a contract school shall be entitled to any funds that would remain available from the previous fiscal year if such school remained a Bureau school or was operated as a contract school, respectively.

''(e) EXCEPTIONS, PROBLEMS, AND DISPUTES.—

''(1) IN GENERAL.—Any exception or problem cited in an audit conducted pursuant to section 5207(b)(1)(B), any dispute regarding a grant authorized to be made pursuant to this part or any modification of such grant, and any dispute involving an administrative cost grant under section 1127 of the Education Amendments of 1978, shall be administered under the provisions governing such exceptions, problems, or disputes described in this paragraph in the case of contracts under the Indian Self-Determination and Education Assistance Act.

''(2) ADMINISTRATIVE APPEALS.—The Equal Access to Justice Act (as amended) and the amendments made by such Act shall apply to an administrative appeal filed after September 8, 1988, by a grant recipient regarding a grant provided under this part, including an administrative cost grant.

**''SEC. 5210. ROLE OF THE DIRECTOR.**

''Applications for grants under this part, and all modifications to the applications, shall be reviewed and approved by personnel under the direction and control of the Director of the Office of Indian Education Programs. Reports required under this part shall be submitted to education personnel under the direction and control of the Director of such Office.

**''SEC. 5211. REGULATIONS.**

''The Secretary is authorized to issue regulations relating to the discharge of duties specifically assigned to the Secretary in this part. For all other matters relating to the details of planning, developing, implementing, and evaluating grants under this part, the Secretary shall not issue regulations. Regulations issued pursuant to this part shall not have the standing of a Federal statute for purposes of judicial review.

**''SEC. 5212. THE TRIBALLY CONTROLLED GRANT SCHOOL ENDOWMENT PROGRAM.**

''(a) IN GENERAL.—

''(1) ESTABLISHMENT.—Each school receiving a grant under this part may establish, at a federally insured financial institution, a trust fund for the purposes of this section.

''(2) DEPOSITS AND USE.—The school may provide—

''(A) for deposit into the trust fund, only funds from non-Federal sources, except that the interest on funds received from grants provided under this part may be used for that purpose;

''(B) for deposit into the trust fund, any earnings on funds deposited in the fund; and

''(C) for the sole use of the school any noncash, in-kind contributions of real or personal property, which may at any time be used, sold, or otherwise disposed of.

''(b) INTEREST.—Interest from the fund established under subsection (a) may periodically be withdrawn and used, at the discretion of the school, to defray any expenses associated with the operation of the school consistent with the purposes of this Act.

**''SEC. 5213. DEFINITIONS.**

''In this part:

''(1) BUREAU.—The term 'Bureau' means the Bureau of Indian Affairs of the Department of the Interior.

''(2) ELIGIBLE INDIAN STUDENT.—The term 'eligible Indian student' has the meaning given such term in section 1126(a) of the Education Amendments of 1978.

''(3) INDIAN.—The term 'Indian' means a member of an Indian tribe, and includes individuals who are eligible for membership in a tribe, and the child or grandchild of such an individual.

''(4) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Village Corporation or

Regional Corporation (as defined in or established pursuant to the Alaskan Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(5) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State or such combination of school districts or counties as are recognized in a State as an administrative agency for the State's public elementary schools or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

''(6) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(7) TRIBAL GOVERNING BODY.—The term 'tribal governing body' means, with respect to any school that receives assistance under this Act, the recognized governing body of the Indian tribe involved.

''(8) TRIBAL ORGANIZATION.—

''(A) IN GENERAL.—The term 'tribal organization' means—

''(i) the recognized governing body of any Indian tribe; or

''(ii) any legally established organization of Indians that—

''(I) is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization; and

''(II) includes the maximum participation of Indians in all phases of the organization's activities.

''(B) AUTHORIZATION.—In any case in which a grant is provided under this part to an organization to provide services through a tribally controlled school benefiting more than 1 Indian tribe, the approval of the governing bodies of Indian tribes representing 80 percent of the students attending the tribally controlled school shall be considered a sufficient tribal authorization for such grant.

''(9) TRIBALLY CONTROLLED SCHOOL.—The term 'tribally controlled school' means a school that—

''(A) is operated by an Indian tribe or a tribal organization, enrolling students in kindergarten through grade 12, including a preschool;

''(B) is not a local educational agency; and

''(C) is not directly administered by the Bureau of Indian Affairs.''.

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By Mr. CAMPBELL (for himself, Mr. INOUYE, and Mr. MCCAIN):

S. 212. A bill to amend the Indian Health Care Improvement Act to revise and extend such Act; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, I am pleased to be joined today by the Vice Chairman of the Committee on Indian Affairs, Senator DANIEL K. INOUYE, and former Chairman, Senator JOHN MCCAIN in introducing important legislation to reauthorize the Indian Health Care Improvement Act of 1976, the ''IHCIA'' or the ''Act''.

The United States first provided health services to Indians in 1824 as part of the War Department's handling of Indian affairs. In 1849 this responsibility went to the newly-created Department of the Interior where it rested until 1955 when it was transferred to the Public Health Service's Indian Health Agency.

The evolution of the Indian Health Service from an ad hoc service provided to Indians by the BIA to a specialized agency within the Department of Health and Human Services was completed with the passage of the Indian Health Care Improvement Act of 1976.

In 1970, President Nixon issued his now-famous ''Special Message to Congress on Indian Affairs'' laying out the rationale for a more enlightened Federal Indian Policy: Indian Self-Determination.

Self-Determination is the core principle embodied in the IHCIA the main purposes of which are to improve the health status of Indian people and to increase the number of Indians involved in the health professions.

The Indian Self-Determination and Education Assistance Act of 1975, the IHCIA, and the amendments to each over the years can all be traced directly to the fundamental changes first proposed in 1970.

I am proud to say that legislation I proposed in the 106th Congress, the Indian Tribal Self-Governance Amendments of 2000, were enacted into law as Public Law 106–260. The bill we introduce today builds on this new law in important respects.

By introducing the IHCIA reauthorization bill, we re-affirm Indian Self-Determination and the principles of the IHCIA (1) that the provision of Federal health services is consistent with the federal-tribal relationship; (2) that a goal of the U.S. is to provide the quantity and quality of services to raise the health status of Indians; (3) that Indian participation in the planning and management of health services should be maximized; and (4) that the numbers of American Indians and Alaska Natives trained in health professions be maximized.

Before the passage of the Act in 1976 the mortality rate for Indian infants was 25 percent higher than that of non-Indian babies. The death rates for mothers was 82 percent higher and the mortality rates from infectious disease-causing diarrhea and dehydration was 138 percent greater.

Today we can see marked improvements. Infant mortality rates have been reduced by 54 percent, maternal mortality rates have been reduced by 65 percent, tuberculosis mortality by 80 percent and overall mortality rates have been reduced by 42 percent.

While encouraging, these statistics mask the fact that the health status of Native people in America is still poor and below that of all other racial and ethnic groups.

While we will continue to push forward on all fronts in seeking to improve Indian health services, I believe that there are three emergent issues that we need to address; urban Indian health care; Indian health facilities construction needs; and the booming problem of diabetes.

Undoubtedly the 2000 decennial census will likely show what past counts have shown—that more than one-half of the 2.3 million American Indians and Alaska Natives reside off-reservation and are referred to as ''urban Indians.'' Though the health services framework that now exists has slowly begun to acknowledge this trend, I am concerned that urban Indian health care needs require a more focused and vigorous approach.

Another problem that must be addressed is the growing backlog in health care facilities construction. Recent estimates show that there is some $900 million in unmet facilities needs. The dogged approach to eliminating this backlog by relying on federal appropriations will not work, and I strongly believe that innovative proposals need to be made, refined and perfected in order to accomplish our common goal.

I am heartened by the cooperative federal-tribal efforts in making the Joint Venture Program a success and look forward to building on this success in the coming years.

Ailments of affluence continue to seep into Native communities and erode the quality of life and very social fabric that holds these communities together. Alcohol and substance abuse continue to take a heavy toll and diabetes is reaching alarmingly high rates. Most troubling is the increasing obesity and diabetes that is occurring with alarming frequency in Native youngsters.

It is now time to make the extra effort to look at the positive things we have accomplished and build upon them.

This bill is a step in the right direction on these and other health matters. The bill we introduced last year was the product of months-long consultations by a group of very dedicated individuals consisting of Indian Tribal leaders, health and legal professionals, and representatives of the private and public health care sectors. The group reviewed existing law and has proposed changes to improve the current system by stressing local flexibility and choice, and making it more responsive to the health needs of Indian people.

I am hopeful that in moving forward this year we can draw from the hearing record built after no fewer than five hearings on the bill that was introduced in the 106th Congress, S. 2526.

I urge my colleagues to join me in supporting this key measure. I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 212

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Indian Health Care Improvement Act Reauthorization of 2001''.

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

Sec. 1. Short title.
TITLE I—REAUTHORIZATION AND REVISIONS OF THE INDIAN HEALTH CARE IMPROVEMENT ACT
Sec. 101. Amendment to the Indian Health Care Improvement Act.
TITLE II—CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT
Subtitle A—Medicare
Sec. 201. Limitations on charges.
Sec. 202. Qualified Indian health program.
Subtitle B—Medicaid
Sec. 211. State consultation with Indian health programs.
Sec. 212. Fmap for services provided by Indian health programs.
Sec. 213. Indian Health Service programs.
Subtitle C—State Children's Health Insurance Program
Sec. 221. Enhanced fmap for State children's health insurance program.
Sec. 222. Direct funding of State children's health insurance program.
Subtitle D—Authorization of Appropriations
Sec. 231. Authorization of appropriations.
TITLE III—MISCELLANEOUS PROVISIONS
Sec. 301. Repeals.
Sec. 302. Severability provisions.
Sec. 303. Effective date.

**TITLE I—REAUTHORIZATION AND REVISIONS OF THE INDIAN HEALTH CARE IMPROVEMENT ACT**

**SEC. 101. AMENDMENT TO THE INDIAN HEALTH CARE IMPROVEMENT ACT.**

The Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) is amended to read as follows:

**"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

''(a) SHORT TITLE.—This Act may be cited as the 'Indian Health Care Improvement Act'.

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

''Sec. 1. Short title; table of contents.
''Sec. 2. Findings.
''Sec. 3. Declaration of health objectives.
''Sec. 4. Definitions.
''TITLE I—INDIAN HEALTH, HUMAN RESOURCES AND DEVELOPMENT
''Sec. 101. Purpose.
''Sec. 102. General requirements.
''Sec. 103. Health professions recruitment program for Indians.
''Sec. 104. Health professions preparatory scholarship program for Indians.
''Sec. 105. Indian health professions scholarships.
''Sec. 106. American Indians into psychology program.
''Sec. 107. Indian Health Service extern programs.
''Sec. 108. Continuing education allowances.
''Sec. 109. Community health representative program.
''Sec. 110. Indian Health Service loan repayment program.
''Sec. 111. Scholarship and loan repayment recovery fund.
''Sec. 112. Recruitment activities.
''Sec. 113. Tribal recruitment and retention program.
''Sec. 114. Advanced training and research.
''Sec. 115. Nursing programs; Quentin N. Burdick American Indians into Nursing Program.
''Sec. 116. Tribal culture and history.
''Sec. 117. INMED program.
''Sec. 118. Health training programs of community colleges.
''Sec. 119. Retention bonus.
''Sec. 120. Nursing residency program.
''Sec. 121. Community health aide program for Alaska.
''Sec. 122. Tribal health program administration.
''Sec. 123. Health professional chronic shortage demonstration project.
''Sec. 124. Scholarships.
''Sec. 125. National Health Service Corps.
''Sec. 126. Substance abuse counselor education demonstration project.
''Sec. 127. Mental health training and community education.
''Sec. 128. Authorization of appropriations.
''TITLE II—HEALTH SERVICES
''Sec. 201. Indian Health Care Improvement Fund.
''Sec. 202. Catastrophic Health Emergency Fund.
''Sec. 203. Health promotion and disease prevention services.
''Sec. 204. Diabetes prevention, treatment, and control.
''Sec. 205. Shared services.
''Sec. 206. Health services research.
''Sec. 207. Mammography and other cancer screening.
''Sec. 208. Patient travel costs.
''Sec. 209. Epidemiology centers.
''Sec. 210. Comprehensive school health education programs.
''Sec. 211. Indian youth program.
''Sec. 212. Prevention, control, and elimination of communicable and infectious diseases.
''Sec. 213. Authority for provision of other services.
''Sec. 214. Indian women's health care.
''Sec. 215. Environmental and nuclear health hazards.
''Sec. 216. Arizona as a contract health service delivery area.
''Sec. 216A. North Dakota as a contract health service delivery area.
''Sec. 216B. South Dakota as a contract health service delivery area.
''Sec. 217. California contract health services demonstration program.
''Sec. 218. California as a contract health service delivery area.
''Sec. 219. Contract health services for the Trenton service area.
''Sec. 220. Programs operated by Indian tribes and tribal organizations.
''Sec. 221. Licensing.
''Sec. 222. Authorization for emergency contract health services.
''Sec. 223. Prompt action on payment of claims.
''Sec. 224. Liability for payment.
''Sec. 225. Authorization of appropriations.
''TITLE III—FACILITIES
''Sec. 301. Consultation, construction and renovation of facilities; reports.
''Sec. 302. Safe water and sanitary waste disposal facilities.
''Sec. 303. Preference to Indians and Indian firms.
''Sec. 304. Soboba sanitation facilities.
''Sec. 305. Expenditure of nonservice funds for renovation.
''Sec. 306. Funding for the construction, expansion, and modernization of small ambulatory care facilities.
''Sec. 307. Indian health care delivery demonstration project.
''Sec. 308. Land transfer.
''Sec. 309. Leases.
''Sec. 310. Loans, loan guarantees and loan repayment.
''Sec. 311. Tribal leasing.
''Sec. 312. Indian Health Service/tribal facilities joint venture program.
''Sec. 313. Location of facilities.
''Sec. 314. Maintenance and improvement of health care facilities.
''Sec. 315. Tribal management of Federally-owned quarters.
''Sec. 316. Applicability of buy American requirement.
''Sec. 317. Other funding for facilities.
''Sec. 318. Authorization of appropriations.
''TITLE IV—ACCESS TO HEALTH SERVICES
''Sec. 401. Treatment of payments under medicare program.
''Sec. 402. Treatment of payments under medicaid program.
''Sec. 403. Report.
''Sec. 404. Grants to and funding agreements with the service, Indian tribes or tribal organizations, and urban Indian organizations.
''Sec. 405. Direct billing and reimbursement of medicare, medicaid, and other third party payors.
''Sec. 406. Reimbursement from certain third parties of costs of health services.
''Sec. 407. Crediting of reimbursements.
''Sec. 408. Purchasing health care coverage.
''Sec. 409. Indian Health Service, Department of Veteran's Affairs, and other Federal agency health facilities and services sharing.
''Sec. 410. Payor of last resort.
''Sec. 411. Right to recover from Federal health care programs.
''Sec. 412. Tuba City demonstration project.
''Sec. 413. Access to Federal insurance.
''Sec. 414. Consultation and rulemaking.
''Sec. 415. Limitations on charges.
''Sec. 416. Limitation on Secretary's waiver authority.
''Sec. 417. Waiver of medicare and medicaid sanctions.
''Sec. 418. Meaning of 'remuneration' for purposes of safe harbor provisions; antitrust immunity.
''Sec. 419. Co-insurance, co-payments, deductibles and premiums.
''Sec. 420. Inclusion of income and resources for purposes of medically needy medicaid eligibility.
''Sec. 421. Estate recovery provisions.
''Sec. 422. Medical child support.
''Sec. 423. Provisions relating to managed care.
''Sec. 424. Navajo Nation medicaid agency.
''Sec. 425. Indian advisory committees.
''Sec. 426. Authorization of appropriations.
''TITLE V—HEALTH SERVICES FOR URBAN INDIANS
''Sec. 501. Purpose.
''Sec. 502. Contracts with, and grants to, urban Indian organizations.
''Sec. 503. Contracts and grants for the provision of health care and referral services.
''Sec. 504. Contracts and grants for the determination of unmet health care needs.
''Sec. 505. Evaluations; renewals.
''Sec. 506. Other contract and grant requirements.

''Sec. 507. Reports and records.
''Sec. 508. Limitation on contract authority.
''Sec. 509. Facilities.
''Sec. 510. Office of Urban Indian Health.
''Sec. 511. Grants for alcohol and substance abuse related services.
''Sec. 512. Treatment of certain demonstration projects.
''Sec. 513. Urban NIAAA transferred programs.
''Sec. 514. Consultation with urban Indian organizations.
''Sec. 515. Federal Tort Claims Act coverage.
''Sec. 516. Urban youth treatment center demonstration.
''Sec. 517. Use of Federal government facilities and sources of supply.
''Sec. 518. Grants for diabetes prevention, treatment and control.
''Sec. 519. Community health representatives.
''Sec. 520. Regulations.
''Sec. 521. Authorization of appropriations.

''TITLE VI—ORGANIZATIONAL IMPROVEMENTS

''Sec. 601. Establishment of the Indian Health Service as an agency of the Public Health Service.
''Sec. 602. Automated management information system.
''Sec. 603. Authorization of appropriations.

''TITLE VII—BEHAVIORAL HEALTH PROGRAMS

''Sec. 701. Behavioral health prevention and treatment services.
''Sec. 702. Memorandum of agreement with the Department of the Interior.
''Sec. 703. Comprehensive behavioral health prevention and treatment program.
''Sec. 704. Mental health technician program.
''Sec. 705. Licensing requirement for mental health care workers.
''Sec. 706. Indian women treatment programs.
''Sec. 707. Indian youth program.
''Sec. 708. Inpatient and community-based mental health facilities design, construction and staffing assessment.
''Sec. 709. Training and community education.
''Sec. 710. Behavioral health program.
''Sec. 711. Fetal alcohol disorder funding.
''Sec. 712. Child sexual abuse and prevention treatment programs.
''Sec. 713. Behavioral mental health research.
''Sec. 714. Definitions.
''Sec. 715. Authorization of appropriations.

''TITLE VIII—MISCELLANEOUS

''Sec. 801. Reports.
''Sec. 802. Regulations.
''Sec. 803. Plan of implementation.
''Sec. 804. Availability of funds.
''Sec. 805. Limitation on use of funds appropriated to the Indian Health Service.
''Sec. 806. Eligibility of California Indians.
''Sec. 807. Health services for ineligible persons.
''Sec. 808. Reallocation of base resources.
''Sec. 809. Results of demonstration projects.
''Sec. 810. Provision of services in Montana.
''Sec. 811. Moratorium.
''Sec. 812. Tribal employment.
''Sec. 813. Prime vendor.
''Sec. 814. National Bi-Partisan Commission on Indian Health Care Entitlement.
''Sec. 815. Appropriations; availability.
''Sec. 816. Authorization of appropriations.

**''SEC. 2. FINDINGS.**

''Congress makes the following findings:

''(1) Federal delivery of health services and funding of tribal and urban Indian health programs to maintain and improve the health of the Indians are consonant with and required by the Federal Government's historical and unique legal relationship with the American Indian people, as reflected in the Constitution, treaties, Federal laws, and the course of dealings of the United States with Indian Tribes, and the United States' resulting government to government and trust responsibility and obligations to the American Indian people.

''(2) From the time of European occupation and colonization through the 20th century, the policies and practices of the United States caused or contributed to the severe health conditions of Indians.

''(3) Indian Tribes have, through the cession of over 400,000,000 acres of land to the United States in exchange for promises, often reflected in treaties, of health care secured a de facto contract that entitles Indians to health care in perpetuity, based on the moral, legal, and historic obligation of the United States.

''(4) The population growth of the Indian people that began in the later part of the 20th century increases the need for Federal health care services.

''(5) A major national goal of the United States is to provide the quantity and quality of health services which will permit the health status of Indians, regardless of where they live, to be raised to the highest possible level, a level that is not less than that of the general population, and to provide for the maximum participation of Indian Tribes, tribal organizations, and urban Indian organizations in the planning, delivery, and management of those services.

''(6) Federal health services to Indians have resulted in a reduction in the prevalence and incidence of illnesses among, and unnecessary and premature deaths of, Indians.

''(7) Despite such services, the unmet health needs of the American Indian people remain alarmingly severe, and even continue to increase, and the health status of the Indians is far below the health status of the general population of the United States.

''(8) The disparity in health status that is to be addresses is formidable. In death rates for example, Indian people suffer a death rate for diabetes mellitus that is 249 percent higher than the death rate for all races in the United States, a pneumonia and influenza death rate that is 71 percent higher, a tuberculosis death rate that is 533 percent higher, and a death rate from alcoholism that is 627 percent higher.

**''SEC. 3. DECLARATION OF HEALTH OBJECTIVES.**

''Congress hereby declares that it is the policy of the United States, in fulfillment of its special trust responsibilities and legal obligations to the American Indian people—

''(1) to assure the highest possible health status for Indians and to provide all resources necessary to effect that policy;

''(2) to raise the health status of Indians by the year 2010 to at least the levels set forth in the goals contained within the Healthy People 2010, or any successor standards thereto;

''(3) in order to raise the health status of Indian people to at least the levels set forth in the goals contained within the Healthy People 2010, or any successor standards thereto, to permit Indian Tribes and tribal organizations to set their own health care priorities and establish goals that reflect their unmet needs;

''(4) to increase the proportion of all degrees in the health professions and allied and associated health professions awarded to Indians so that the proportion of Indian health professionals in each geographic service area is raised to at least the level of that of the general population;

''(5) to require meaningful, active consultation with Indian Tribes, Indian organizations, and urban Indian organizations to implement this Act and the national policy of Indian self-determination; and

''(6) that funds for health care programs and facilities operated by Tribes and tribal organizations be provided in amounts that are not less than the funds that are provided to programs and facilities operated directly by the Service.

**''SEC. 4. DEFINITIONS.**

''In this Act:

''(1) ACCREDITED AND ACCESSIBLE.—The term 'accredited and accessible', with respect to an entity, means a community college or other appropriate entity that is on or near a reservation and accredited by a national or regional organization with accrediting authority.

''(2) AREA OFFICE.—The term 'area office' mean an administrative entity including a program office, within the Indian Health Service through which services and funds are provided to the service units within a defined geographic area.

''(3) ASSISTANT SECRETARY.—The term 'Assistant Secretary' means the Assistant Secretary of the Indian Health as established under section 601.

''(4) CONTRACT HEALTH SERVICE.—The term 'contract health service' means a health service that is provided at the expense of the Service, Indian Tribe, or tribal organization by a public or private medical provider or hospital, other than a service funded under the Indian Self-Determination and Education Assistance Act or under this Act.

''(5) DEPARTMENT.—The term 'Department', unless specifically provided otherwise, means the Department of Health and Human Services.

''(6) FUND.—The terms 'fund' or 'funding' mean the transfer of monies from the Department to any eligible entity or individual under this Act by any legal means, including funding agreements, contracts, memoranda of understanding, Buy Indian Act contracts, or otherwise.

''(7) FUNDING AGREEMENT.—The term 'funding agreement' means any agreement to transfer funds for the planning, conduct, and administration of programs, functions, services and activities to Tribes and tribal organizations from the Secretary under the authority of the Indian Self-Determination and Education Assistance Act.

''(8) HEALTH PROFESSION.—The term 'health profession' means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, and allied health professions, or any other health profession.

''(9) HEALTH PROMOTION; DISEASE PREVENTION.—The terms 'health promotion' and 'disease prevention' shall have the meanings given such terms in paragraphs (1) and (2) of section 203(c).

''(10) INDIAN.—The term 'Indian' and 'Indians' shall have meanings given such terms for purposes of the Indian Self-Determination and Education Assistance Act.

''(11) INDIAN HEALTH PROGRAM.—The term 'Indian health program' shall have the meaning given such term in section 110(a)(2)(A).

''(12) INDIAN TRIBE.—The term 'Indian tribe' shall have the meaning given such term in section 4(e) of the Indian Self Determination and Education Assistance Act.

''(13) RESERVATION.—The term 'reservation' means any Federally recognized Indian tribe's reservation, Pueblo or colony, including former reservations in Oklahoma, Alaska Native Regions established pursuant to the Alaska Native Claims Settlement Act, and Indian allotments.

''(14) SECRETARY.—The term 'Secretary', unless specifically provided otherwise, means the Secretary of Health and Human Services.

''(15) SERVICE.—The term 'Service' means the Indian Health Service.

''(16) SERVICE AREA.—The term 'service area' means the geographical area served by each area office.

''(17) SERVICE UNIT.—The term 'service unit' means—

''(A) an administrative entity within the Indian Health Service; or

''(B) a tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination and Education Assistance Act, through which services are provided, directly or by contract, to the eligible Indian population within a defined geographic area.

''(18) TRADITIONAL HEALTH CARE PRACTICES.—The term 'traditional health care practices' means the application by Native healing practitioners of the Native healing sciences (as opposed or in contradistinction to western healing sciences) which embodies the influences or forces of innate tribal discovery, history, description, explanation and knowledge of the states of wellness and illness and which calls upon these influences or forces, including physical, mental, and spiritual forces in the promotion, restoration, preservation and maintenance of health, well-being, and life's harmony.

''(19) TRIBAL ORGANIZATION.—The term 'tribal organization' shall have the meaning given such term in section 4(l) of the Indian Self Determination and Education Assistance Act.

''(20) TRIBALLY CONTROLLED COMMUNITY COLLEGE.—The term 'tribally controlled community college' shall have the meaning given such term in section 126 (g)(2).

''(21) URBAN CENTER.—The term 'urban center' means any community that has a sufficient urban Indian population with unmet health needs to warrant assistance under title V, as determined by the Secretary.

''(22) URBAN INDIAN.—The term 'urban Indian' means any individual who resides in an urban center and who—

''(A) for purposes of title V and regardless of whether such individual lives on or near a reservation, is a member of a tribe, band or other organized group of Indians, including those tribes, bands or groups terminated since 1940 and those tribes, bands or groups that are recognized by the States in which they reside, or who is a descendant in the first or second degree of any such member;

''(B) is an Eskimo or Aleut or other Alaskan Native;

''(C) is considered by the Secretary of the Interior to be an Indian for any purpose; or

''(D) is determined to be an Indian under regulations promulgated by the Secretary.

''(23) URBAN INDIAN ORGANIZATION.—The term 'urban Indian organization' means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the participation of all interested Indian groups and individuals, and which is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 503(a).

## ''TITLE I—INDIAN HEALTH, HUMAN RESOURCES AND DEVELOPMENT

### ''SEC. 101. PURPOSE.

''The purpose of this title is to increase, to the maximum extent feasible, the number of Indians entering the health professions and providing health services, and to assure an optimum supply of health professionals to the Service, Indian tribes, tribal organizations, and urban Indian organizations involved in the provision of health services to Indian people.

### ''SEC. 102. GENERAL REQUIREMENTS.

''(a) SERVICE AREA PRIORITIES.—Unless specifically provided otherwise, amounts appropriated for each fiscal year to carry out each program authorized under this title shall be allocated by the Secretary to the area office of each service area using a formula—

''(1) to be developed in consultation with Indian Tribes, tribal organizations and urban Indian organizations;

''(2) that takes into account the human resource and development needs in each such service area; and

''(3) that weighs the allocation of amounts appropriated in favor of those service areas where the health status of Indians within the area, as measured by life expectancy based upon the most recent data available, is significantly lower than the average health status for Indians in all service areas, except that amounts allocated to each such area using such a weighted allocation formula shall not be less than the amounts allocated to each such area in the previous fiscal year.

''(b) CONSULTATION.—Each area office receiving funds under this title shall actively and continuously consult with representatives of Indian tribes, tribal organizations, and urban Indian organizations to prioritize the utilization of funds provided under this title within the service area.

''(c) REALLOCATION.—Unless specifically prohibited, an area office may reallocate funds provided to the office under this title among the programs authorized by this title, except that scholarship and loan repayment funds shall not be used for administrative functions or expenses.

''(d) LIMITATION.—This section shall not apply with respect to individual recipients of scholarships, loans or other funds provided under this title (as this title existed 1 day prior to the date of enactment of this Act) until such time as the individual completes the course of study that is supported through the use of such funds.

### ''SEC. 103. HEALTH PROFESSIONS RECRUITMENT PROGRAM FOR INDIANS.

''(a) IN GENERAL.—The Secretary, acting through the Service, shall make funds available through the area office to public or nonprofit private health entities, or Indian tribes or tribal organizations to assist such entities in meeting the costs of—

''(1) identifying Indians with a potential for education or training in the health professions and encouraging and assisting them—

''(A) to enroll in courses of study in such health professions; or

''(B) if they are not qualified to enroll in any such courses of study, to undertake such postsecondary education or training as may be required to qualify them for enrollment;

''(2) publicizing existing sources of financial aid available to Indians enrolled in any course of study referred to in paragraph (1) or who are undertaking training necessary to qualify them to enroll in any such course of study; or

''(3) establishing other programs which the area office determines will enhance and facilitate the enrollment of Indians in, and the subsequent pursuit and completion by them of, courses of study referred to in paragraph (1).

''(b) ADMINISTRATIVE PROVISIONS.—

''(1) APPLICATION.—To be eligible to receive funds under this section an entity described in subsection (a) shall submit to the Secretary, through the appropriate area office, and have approved, an application in such form, submitted in such manner, and containing such information as the Secretary shall by regulation prescribe.

''(2) PREFERENCE.—In awarding funds under this section, the area office shall give a preference to applications submitted by Indian tribes, tribal organizations, or urban Indian organizations.

''(3) AMOUNT.—The amount of funds to be provided to an eligible entity under this section shall be determined by the area office. Payments under this section may be made in advance or by way of reimbursement, and at such intervals and on such conditions as provided for in regulations promulgated pursuant to this Act.

''(4) TERMS.—A funding commitment under this section shall, to the extent not otherwise prohibited by law, be for a term of 3 years, as provided for in regulations promulgated pursuant to this Act.

''(c) DEFINITION.—For purposes of this section and sections 104 and 105, the terms 'Indian' and 'Indians' shall, in addition to the definition provided for in section 4, mean any individual who—

''(1) irrespective of whether such individual lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those Tribes, bands, or groups terminated since 1940;

''(2) is an Eskimo or Aleut or other Alaska Native;

''(3) is considered by the Secretary of the Interior to be an Indian for any purpose; or

''(4) is determined to be an Indian under regulations promulgated by the Secretary.

### ''SEC. 104. HEALTH PROFESSIONS PREPARATORY SCHOLARSHIP PROGRAM FOR INDIANS.

''(a) IN GENERAL.—The Secretary, acting through the Service, shall provide scholarships through the area offices to Indians who—

''(1) have successfully completed their high school education or high school equivalency; and

''(2) have demonstrated the capability to successfully complete courses of study in the health professions.

''(b) PURPOSE.—Scholarships provided under this section shall be for the following purposes:

''(1) Compensatory preprofessional education of any recipient. Such scholarship shall not exceed 2 years on a full-time basis (or the part-time equivalent thereof, as determined by the area office pursuant to regulations promulgated under this Act).

''(2) Pregraduate education of any recipient leading to a baccalaureate degree in an approved course of study preparatory to a field of study in a health profession, such scholarship not to exceed 4 years (or the part-time equivalent thereof, as determined by the area office pursuant to regulations promulgated under this Act) except that an extension of up to 2 years may be approved by the Secretary.

''(c) USE OF SCHOLARSHIP.—Scholarships made under this section may be used to cover costs of tuition, books, transportation, board, and other necessary related expenses of a recipient while attending school.

''(d) LIMITATIONS.—Scholarship assistance to an eligible applicant under this section shall not be denied solely on the basis of—

''(1) the applicant's scholastic achievement if such applicant has been admitted to, or maintained good standing at, an accredited institution; or

''(2) the applicant's eligibility for assistance or benefits under any other Federal program.

**''SEC. 105. INDIAN HEALTH PROFESSIONS SCHOLARSHIPS.**

''(a) SCHOLARSHIPS.—

''(1) IN GENERAL.—In order to meet the needs of Indians, Indian tribes, tribal organizations, and urban Indian organizations for health professionals, the Secretary, acting through the Service and in accordance with this section, shall provide scholarships through the area offices to Indians who are enrolled full or part time in accredited schools and pursuing courses of study in the health professions. Such scholarships shall be designated Indian Health Scholarships and shall, except as provided in subsection (b), be made in accordance with section 338A of the Public Health Service Act (42 U.S.C. 254l).

''(2) NO DELEGATION.—The Director of the Service shall administer this section and shall not delegate any administrative functions under a funding agreement pursuant to the Indian Self-Determination and Education Assistance Act.

''(b) ELIGIBILITY.—

''(1) ENROLLMENT.—An Indian shall be eligible for a scholarship under subsection (a) in any year in which such individual is enrolled full or part time in a course of study referred to in subsection (a)(1).

''(2) SERVICE OBLIGATION.—

''(A) PUBLIC HEALTH SERVICE ACT.—The active duty service obligation under a written contract with the Secretary under section 338A of the Public Health Service Act (42 U.S.C. 254l) that an Indian has entered into under that section shall, if that individual is a recipient of an Indian Health Scholarship, be met in full-time practice on an equivalent year for year obligation, by service—

''(i) in the Indian Health Service;

''(ii) in a program conducted under a funding agreement entered into under the Indian Self-Determination and Education Assistance Act;

''(iii) in a program assisted under title V; or

''(iv) in the private practice of the applicable profession if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

''(B) DEFERRING ACTIVE SERVICE.—At the request of any Indian who has entered into a contract referred to in subparagraph (A) and who receives a degree in medicine (including osteopathic or allopathic medicine), dentistry, optometry, podiatry, or pharmacy, the Secretary shall defer the active duty service obligation of that individual under that contract, in order that such individual may complete any internship, residency, or other advanced clinical training that is required for the practice of that health profession, for an appropriate period (in years, as determined by the Secretary), subject to the following conditions:

''(i) No period of internship, residency, or other advanced clinical training shall be counted as satisfying any period of obligated service that is required under this section.

''(ii) The active duty service obligation of that individual shall commence not later than 90 days after the completion of that advanced clinical training (or by a date specified by the Secretary).

''(iii) The active duty service obligation will be served in the health profession of that individual, in a manner consistent with clauses (i) through (iv) of subparagraph (A).

''(C) NEW SCHOLARSHIP RECIPIENTS.—A recipient of an Indian Health Scholarship that is awarded after December 31, 2001, shall meet the active duty service obligation under such scholarship by providing service within the service area from which the scholarship was awarded. In placing the recipient for active duty the area office shall give priority to the program that funded the recipient, except that in cases of special circumstances, a recipient may be placed in a different service area pursuant to an agreement between the areas or programs involved.

''(D) PRIORITY IN ASSIGNMENT.—Subject to subparagraph (C), the area office, in making assignments of Indian Health Scholarship recipients required to meet the active duty service obligation described in subparagraph (A), shall give priority to assigning individuals to service in those programs specified in subparagraph (A) that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

''(3) PART-TIME ENROLLMENT.—In the case of an Indian receiving a scholarship under this section who is enrolled part time in an approved course of study—

''(A) such scholarship shall be for a period of years not to exceed the part-time equivalent of 4 years, as determined by the appropriate area office;

''(B) the period of obligated service described in paragraph (2)(A) shall be equal to the greater of—

''(i) the part-time equivalent of 1 year for each year for which the individual was provided a scholarship (as determined by the area office); or

''(ii) two years; and

''(C) the amount of the monthly stipend specified in section 338A(g)(1)(B) of the Public Health Service Act (42 U.S.C. 254l(g)(1)(B)) shall be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled.

''(4) BREACH OF CONTRACT.—

''(A) IN GENERAL.—An Indian who has, on or after the date of the enactment of this paragraph, entered into a written contract with the area office pursuant to a scholarship under this section and who—

''(i) fails to maintain an acceptable level of academic standing in the educational institution in which he or she is enrolled (such level determined by the educational institution under regulations of the Secretary);

''(ii) is dismissed from such educational institution for disciplinary reasons;

''(iii) voluntarily terminates the training in such an educational institution for which he or she is provided a scholarship under such contract before the completion of such training; or

''(iv) fails to accept payment, or instructs the educational institution in which he or she is enrolled not to accept payment, in whole or in part, of a scholarship under such contract;

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him or her, or on his or her behalf, under the contract.

''(B) FAILURE TO PERFORM SERVICE OBLIGATION.—If for any reason not specified in subparagraph (A) an individual breaches his or her written contract by failing either to begin such individual's service obligation under this section or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (l) of section 110 in the manner provided for in such subsection.

''(C) DEATH.—Upon the death of an individual who receives an Indian Health Scholarship, any obligation of that individual for service or payment that relates to that scholarship shall be canceled.

''(D) WAIVER.—The Secretary shall provide for the partial or total waiver or suspension of any obligation of service or payment of a recipient of an Indian Health Scholarship if the Secretary, in consultation with the appropriate area office, Indian tribe, tribal organization, and urban Indian organization, determines that—

''(i) it is not possible for the recipient to meet that obligation or make that payment;

''(ii) requiring that recipient to meet that obligation or make that payment would result in extreme hardship to the recipient; or

''(iii) the enforcement of the requirement to meet the obligation or make the payment would be unconscionable.

''(E) HARDSHIP OR GOOD CAUSE.—Notwithstanding any other provision of law, in any case of extreme hardship or for other good cause shown, the Secretary may waive, in whole or in part, the right of the United States to recover funds made available under this section.

''(F) BANKRUPTCY.—Notwithstanding any other provision of law, with respect to a recipient of an Indian Health Scholarship, no obligation for payment may be released by a discharge in bankruptcy under title 11, United States Code, unless that discharge is granted after the expiration of the 5-year period beginning on the initial date on which that payment is due, and only if the bankruptcy court finds that the nondischarge of the obligation would be unconscionable.

''(c) FUNDING FOR TRIBES FOR SCHOLARSHIP PROGRAMS.—

''(1) PROVISION OF FUNDS.—

''(A) IN GENERAL.—The Secretary shall make funds available, through area offices, to Indian Tribes and tribal organizations for the purpose of assisting such Tribes and tribal organizations in educating Indians to serve as health professionals in Indian communities.

''(B) LIMITATION.—The Secretary shall ensure that amounts available for grants under subparagraph (A) for any fiscal year shall not exceed an amount equal to 5 percent of the amount available for each fiscal year for Indian Health Scholarships under this section.

''(C) APPLICATION.—An application for funds under subparagraph (A) shall be in such form and contain such agreements, assurances and information as consistent with this section.

''(2) REQUIREMENTS.—

''(A) IN GENERAL.—An Indian Tribe or tribal organization receiving funds under paragraph (1) shall agree to provide scholarships to Indians in accordance with the requirements of this subsection.

''(B) MATCHING REQUIREMENT.—With respect to the costs of providing any scholarship pursuant to subparagraph (A)—

''(i) 80 percent of the costs of the scholarship shall be paid from the funds provided under paragraph (1) to the Indian Tribe or tribal organization; and

''(ii) 20 percent of such costs shall be paid from any other source of funds.

''(3) ELIGIBILITY.—An Indian Tribe or tribal organization shall provide scholarships under this subsection only to Indians who are enrolled or accepted for enrollment in a course of study (approved by the Secretary)

in one of the health professions described in this Act.

''(4) CONTRACTS.—In providing scholarships under paragraph (1), the Secretary and the Indian Tribe or tribal organization shall enter into a written contract with each recipient of such scholarship. Such contract shall—

''(A) obligate such recipient to provide service in an Indian health program (as defined in section 110(a)(2)(A)) in the same service area where the Indian Tribe or tribal organization providing the scholarship is located, for—

''(i) a number of years equal to the number of years for which the scholarship is provided (or the part-time equivalent thereof, as determined by the Secretary), or for a period of 2 years, whichever period is greater; or

''(ii) such greater period of time as the recipient and the Indian Tribe or tribal organization may agree;

''(B) provide that the scholarship—

''(i) may only be expended for—

''(I) tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attendance at the educational institution; and

''(II) payment to the recipient of a monthly stipend of not more than the amount authorized by section 338(g)(1)(B) of the Public Health Service Act (42 U.S.C. 254m(g)(1)(B), such amount to be reduced pro rata (as determined by the Secretary) based on the number of hours such student is enrolled, and may not exceed, for any year of attendance which the scholarship is provided, the total amount required for the year for the purposes authorized in this clause; and

''(ii) may not exceed, for any year of attendance which the scholarship is provided, the total amount required for the year for the purposes authorized in clause (i);

''(C) require the recipient of such scholarship to maintain an acceptable level of academic standing as determined by the educational institution in accordance with regulations issued pursuant to this Act; and

''(D) require the recipient of such scholarship to meet the educational and licensure requirements appropriate to the health profession involved.

''(5) BREACH OF CONTRACT.—

''(A) IN GENERAL.—An individual who has entered into a written contract with the Secretary and an Indian Tribe or tribal organization under this subsection and who—

''(i) fails to maintain an acceptable level of academic standing in the education institution in which he or she is enrolled (such level determined by the educational institution under regulations of the Secretary);

''(ii) is dismissed from such education for disciplinary reasons;

''(iii) voluntarily terminates the training in such an educational institution for which he or she has been provided a scholarship under such contract before the completion of such training; or

''(iv) fails to accept payment, or instructs the educational institution in which he or she is enrolled not to accept payment, in whole or in part, of a scholarship under such contract, in lieu of any service obligation arising under such contract;

shall be liable to the United States for the Federal share of the amount which has been paid to him or her, or on his or her behalf, under the contract.

''(B) FAILURE TO PERFORM SERVICE OBLIGATION.—If for any reason not specified in subparagraph (A), an individual breaches his or her written contract by failing to either begin such individual's service obligation required under such contract or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula specified in subsection (l) of section 110 in the manner provided for in such subsection.

''(C) INFORMATION.—The Secretary may carry out this subsection on the basis of information received from Indian Tribes or tribal organizations involved, or on the basis of information collected through such other means as the Secretary deems appropriate.

''(6) REQUIRED AGREEMENTS.—The recipient of a scholarship under paragraph (1) shall agree, in providing health care pursuant to the requirements of this subsection—

''(A) not to discriminate against an individual seeking care on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the program established in title XVIII of the Social Security Act or pursuant to the programs established in title XIX of such Act; and

''(B) to accept assignment under section 1842(b)(3)(B)(ii) of the Social Security Act for all services for which payment may be made under part B of title XVIII of such Act, and to enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX of such Act to provide service to individuals entitled to medical assistance under the plan.

''(7) PAYMENTS.—The Secretary, through the area office, shall make payments under this subsection to an Indian Tribe or tribal organization for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary or area office determines that, for the immediately preceding fiscal year, the Indian Tribe or tribal organization has not complied with the requirements of this subsection.

**"SEC. 106. AMERICAN INDIANS INTO PSYCHOLOGY PROGRAM.**

''(a) IN GENERAL.—Notwithstanding section 102, the Secretary shall provide funds to at least 3 colleges and universities for the purpose of developing and maintaining American Indian psychology career recruitment programs as a means of encouraging Indians to enter the mental health field. These programs shall be located at various colleges and universities throughout the country to maximize their availability to Indian students and new programs shall be established in different locations from time to time.

''(b) QUENTIN N. BURDICK AMERICAN INDIANS INTO PSYCHOLOGY PROGRAM.—The Secretary shall provide funds under subsection (a) to develop and maintain a program at the University of North Dakota to be known as the 'Quentin N. Burdick American Indians Into Psychology Program'. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick American Indians Into Nursing Program authorized under section 115, the Quentin N. Burdick Indians into Health Program authorized under section 117, and existing university research and communications networks.

''(c) REQUIREMENTS.—

''(1) REGULATIONS.—The Secretary shall promulgate regulations pursuant to this Act for the competitive awarding of funds under this section.

''(2) PROGRAM.—Applicants for funds under this section shall agree to provide a program which, at a minimum—

''(A) provides outreach and recruitment for health professions to Indian communities including elementary, secondary and accredited and accessible community colleges that will be served by the program;

''(B) incorporates a program advisory board comprised of representatives from the Tribes and communities that will be served by the program;

''(C) provides summer enrichment programs to expose Indian students to the various fields of psychology through research, clinical, and experimental activities;

''(D) provides stipends to undergraduate and graduate students to pursue a career in psychology;

''(E) develops affiliation agreements with tribal community colleges, the Service, university affiliated programs, and other appropriate accredited and accessible entities to enhance the education of Indian students;

''(F) utilizes, to the maximum extent feasible, existing university tutoring, counseling and student support services; and

''(G) employs, to the maximum extent feasible, qualified Indians in the program.

''(d) ACTIVE DUTY OBLIGATION.—The active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by each graduate who receives a stipend described in subsection (c)(2)(C) that is funded under this section. Such obligation shall be met by service—

''(1) in the Indian Health Service;

''(2) in a program conducted under a funding agreement contract entered into under the Indian Self-Determination and Education Assistance Act;

''(3) in a program assisted under title V; or

''(4) in the private practice of psychology if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

**"SEC. 107. INDIAN HEALTH SERVICE EXTERN PROGRAMS.**

''(a) IN GENERAL.—Any individual who receives a scholarship pursuant to section 105 shall be entitled to employment in the Service, or may be employed by a program of an Indian tribe, tribal organization, or urban Indian organization, or other agency of the Department as may be appropriate and available, during any nonacademic period of the year. Periods of employment pursuant to this subsection shall not be counted in determining the fulfillment of the service obligation incurred as a condition of the scholarship.

''(b) ENROLLEES IN COURSE OF STUDY.—Any individual who is enrolled in a course of study in the health professions may be employed by the Service or by an Indian tribe, tribal organization, or urban Indian organization, during any nonacademic period of the year. Any such employment shall not exceed 120 days during any calendar year.

''(c) HIGH SCHOOL PROGRAMS.—Any individual who is in a high school program authorized under section 103(a) may be employed by the Service, or by a Indian Tribe, tribal organization, or urban Indian organization, during any nonacademic period of the year. Any such employment shall not exceed 120 days during any calendar year.

''(d) ADMINISTRATIVE PROVISIONS.—Any employment pursuant to this section shall be made without regard to any competitive personnel system or agency personnel limitation and to a position which will enable the individual so employed to receive practical experience in the health profession in which he or she is engaged in study. Any individual so employed shall receive payment for his or her services comparable to the salary he or she would receive if he or she were employed in the competitive system. Any individual so employed shall not be counted against any employment ceiling affecting the Service or the Department.

**"SEC. 108. CONTINUING EDUCATION ALLOWANCES.**

''In order to encourage health professionals, including for purposes of this section, community health representatives and

emergency medical technicians, to join or continue in the Service or in any program of an Indian tribe, tribal organization, or urban Indian organization and to provide their services in the rural and remote areas where a significant portion of the Indian people reside, the Secretary, acting through the area offices, may provide allowances to health professionals employed in the Service or such a program to enable such professionals to take leave of their duty stations for a period of time each year (as prescribed by regulations of the Secretary) for professional consultation and refresher training courses.

**"SEC. 109. COMMUNITY HEALTH REPRESENTATIVE PROGRAM.**

''(a) IN GENERAL.—Under the authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the Snyder Act), the Secretary shall maintain a Community Health Representative Program under which the Service, Indian tribes and tribal organizations—

''(1) provide for the training of Indians as community health representatives; and

''(2) use such community health representatives in the provision of health care, health promotion, and disease prevention services to Indian communities.

''(b) ACTIVITIES.—The Secretary, acting through the Community Health Representative Program, shall—

''(1) provide a high standard of training for community health representatives to ensure that the community health representatives provide quality health care, health promotion, and disease prevention services to the Indian communities served by such Program;

''(2) in order to provide such training, develop and maintain a curriculum that—

''(A) combines education in the theory of health care with supervised practical experience in the provision of health care; and

''(B) provides instruction and practical experience in health promotion and disease prevention activities, with appropriate consideration given to lifestyle factors that have an impact on Indian health status, such as alcoholism, family dysfunction, and poverty;

''(3) maintain a system which identifies the needs of community health representatives for continuing education in health care, health promotion, and disease prevention and maintain programs that meet the needs for such continuing education;

''(4) maintain a system that provides close supervision of community health representatives;

''(5) maintain a system under which the work of community health representatives is reviewed and evaluated; and

''(6) promote traditional health care practices of the Indian tribes served consistent with the Service standards for the provision of health care, health promotion, and disease prevention.

**"SEC. 110. INDIAN HEALTH SERVICE LOAN REPAYMENT PROGRAM.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (referred to in this Act as the 'Loan Repayment Program') in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

''(2) DEFINITIONS.—In this section:

''(A) INDIAN HEALTH PROGRAM.—The term 'Indian health program' means any health program or facility funded, in whole or part, by the Service for the benefit of Indians and administered—

''(i) directly by the Service;

''(ii) by any Indian tribe or tribal or Indian organization pursuant to a funding agreement under—

''(I) the Indian Self-Determination and Educational Assistance Act; or

''(II) section 23 of the Act of April 30, 1908 (25 U.S.C. 47) (commonly known as the 'Buy-Indian Act'); or

''(iii) by an urban Indian organization pursuant to title V.

''(B) STATE.—The term 'State' has the same meaning given such term in section 331(i)(4) of the Public Health Service Act.

''(b) ELIGIBILITY.—To be eligible to participate in the Loan Repayment Program, an individual must—

''(1)(A) be enrolled—

''(i) in a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

''(ii) in an approved graduate training program in a health profession; or

''(B) have—

''(i) a degree in a health profession; and

''(ii) a license to practice a health profession in a State;

''(2)(A) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service;

''(B) be eligible for selection for civilian service in the Regular or Reserve Corps of the Public Health Service;

''(C) meet the professional standards for civil service employment in the Indian Health Service; or

''(D) be employed in an Indian health program without a service obligation; and

''(3) submit to the Secretary an application for a contract described in subsection (f).

''(c) FORMS.—

''(1) IN GENERAL.—In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under subsection (l) in the case of the individual's breach of the contract. The Secretary shall provide such individuals with sufficient information regarding the advantages and disadvantages of service as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or a civilian employee of the Indian Health Service to enable the individual to make a decision on an informed basis.

''(2) FORMS TO BE UNDERSTANDABLE.—The application form, contract form, and all other information furnished by the Secretary under this section shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

''(3) AVAILABILITY.—The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

''(d) PRIORITY.—

''(1) ANNUAL DETERMINATIONS.—The Secretary, acting through the Service and in accordance with subsection (k), shall annually—

''(A) identify the positions in each Indian health program for which there is a need or a vacancy; and

''(B) rank those positions in order of priority.

''(2) PRIORITY IN APPROVAL.—Notwithstanding the priority determined under paragraph (1), the Secretary, in determining which applications under the Loan Repayment Program to approve (and which contracts to accept), shall—

''(A) give first priority to applications made by individuals Indians; and

''(B) after making determinations on all applications submitted by individual Indians as required under subparagraph (A), give priority to—

''(i) individuals recruited through the efforts an Indian tribe, tribal organization, or urban Indian organization; and

''(ii) other individuals based on the priority rankings under paragraph (1).

''(e) CONTRACTS.—

''(1) IN GENERAL.—An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f).

''(2) NOTICE.—Not later than 21 days after considering an individual for participation in the Loan Repayment Program under paragraph (1), the Secretary shall provide written notice to the individual of—

''(A) the Secretary's approving of the individual's participation in the Loan Repayment Program, including extensions resulting in an aggregate period of obligated service in excess of 4 years; or

''(B) the Secretary's disapproving an individual's participation in such Program.

''(f) WRITTEN CONTRACT.—The written contract referred to in this section between the Secretary and an individual shall contain—

''(1) an agreement under which—

''(A) subject to paragraph (3), the Secretary agrees—

''(i) to pay loans on behalf of the individual in accordance with the provisions of this section; and

''(ii) to accept (subject to the availability of appropriated funds for carrying out this section) the individual into the Service or place the individual with a tribe, tribal organization, or urban Indian organization as provided in subparagraph (B)(iii); and

''(B) subject to paragraph (3), the individual agrees—

''(i) to accept loan payments on behalf of the individual;

''(ii) in the case of an individual described in subsection (b)(1)—

''(I) to maintain enrollment in a course of study or training described in subsection (b)(1)(A) until the individual completes the course of study or training; and

''(II) while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training);

''(iii) to serve for a time period (referred to in this section as the 'period of obligated service') equal to 2 years or such longer period as the individual may agree to serve in the full-time clinical practice of such individual's profession in an Indian health program to which the individual may be assigned by the Secretary;

''(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iii);

''(3) a provision that any financial obligation of the United States arising out of a contract entered into under this section and any obligation of the individual which is conditioned thereon is contingent upon funds being appropriated for loan repayments under this section;

''(4) a statement of the damages to which the United States is entitled under subsection (l) for the individual's breach of the contract; and

''(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this section.

''(g) LOAN REPAYMENTS.—

''(1) IN GENERAL.—A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

''(A) tuition expenses;

''(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and

''(C) reasonable living expenses as determined by the Secretary.

''(2) AMOUNT OF PAYMENT.—

''(A) IN GENERAL.—For each year of obligated service that an individual contracts to serve under subsection (f) the Secretary may pay up to $35,000 (or an amount equal to the amount specified in section 338B(g)(2)(A) of the Public Health Service Act) on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

''(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

''(ii) provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

''(iii) provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

''(B) TIME FOR PAYMENT.—Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made not later than the end of the fiscal year in which the individual completes such year of service.

''(3) SCHEDULE FOR PAYMENTS.—The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

''(h) COUNTING OF INDIVIDUALS.—Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department.

''(i) RECRUITING PROGRAMS.—The Secretary shall conduct recruiting programs for the Loan Repayment Program and other health professional programs of the Service at educational institutions training health professionals or specialists identified in subsection (a).

''(j) NONAPPLICATION OF CERTAIN PROVISION.—Section 214 of the Public Health Service Act (42 U.S.C. 215) shall not apply to individuals during their period of obligated service under the Loan Repayment Program.

''(k) ASSIGNMENT OF INDIVIDUALS.—The Secretary, in assigning individuals to serve in Indian health programs pursuant to contracts entered into under this section, shall—

''(1) ensure that the staffing needs of Indian health programs administered by an Indian tribe or tribal or health organization receive consideration on an equal basis with programs that are administered directly by the Service; and

''(2) give priority to assigning individuals to Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached contracts entered into under this section.

''(l) BREACH OF CONTRACT.—

''(1) IN GENERAL.—An individual who has entered into a written contract with the Secretary under this section and who—

''(A) is enrolled in the final year of a course of study and who—

''(i) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary);

''(ii) voluntarily terminates such enrollment; or

''(iii) is dismissed from such educational institution before completion of such course of study; or

''(B) is enrolled in a graduate training program, and who fails to complete such training program, and does not receive a waiver from the Secretary under subsection (b)(1)(B)(ii),

shall be liable, in lieu of any service obligation arising under such contract, to the United States for the amount which has been paid on such individual's behalf under the contract.

''(2) AMOUNT OF RECOVERY.—If, for any reason not specified in paragraph (1), an individual breaches his written contract under this section by failing either to begin, or complete, such individual's period of obligated service in accordance with subsection (f), the United States shall be entitled to recover from such individual an amount to be determined in accordance with the following formula:

$$A=3Z(t-s/t)$$

in which—

''(A) 'A' is the amount the United States is entitled to recover;

''(B) 'Z' is the sum of the amounts paid under this section to, or on behalf of, the individual and the interest on such amounts which would be payable if, at the time the amounts were paid, they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States;

''(C) 't' is the total number of months in the individual's period of obligated service in accordance with subsection (f); and

''(D) 's' is the number of months of such period served by such individual in accordance with this section.

Amounts not paid within such period shall be subject to collection through deductions in medicare payments pursuant to section 1892 of the Social Security Act.

''(3) DAMAGES.—

''(A) TIME FOR PAYMENT.—Any amount of damages which the United States is entitled to recover under this subsection shall be paid to the United States within the 1-year period beginning on the date of the breach of contract or such longer period beginning on such date as shall be specified by the Secretary.

''(B) DELINQUENCIES.—If damages described in subparagraph (A) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

''(i) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

''(ii) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

''(C) CONTRACTS FOR RECOVERY OF DAMAGES.—Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31, United States Code, shall apply to any such contract to the extent not inconsistent with this subsection.

''(m) CANCELLATION, WAIVER OR RELEASE.—

''(1) CANCELLATION.—Any obligation of an individual under the Loan Repayment Program for service or payment of damages shall be canceled upon the death of the individual.

''(2) WAIVER OF SERVICE OBLIGATION.—The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Loan Repayment Program whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

''(3) WAIVER OF RIGHTS OF UNITED STATES.—The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

''(4) RELEASE.—Any obligation of an individual under the Loan Repayment Program for payment of damages may be released by a discharge in bankruptcy under title 11 of the United States Code only if such discharge is granted after the expiration of the 5-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

''(n) REPORT.—The Secretary shall submit to the President, for inclusion in each report required to be submitted to the Congress under section 801, a report concerning the previous fiscal year which sets forth—

''(1) the health professional positions maintained by the Service or by tribal or Indian organizations for which recruitment or retention is difficult;

''(2) the number of Loan Repayment Program applications filed with respect to each type of health profession;

''(3) the number of contracts described in subsection (f) that are entered into with respect to each health profession;

''(4) the amount of loan payments made under this section, in total and by health profession;

''(5) the number of scholarship grants that are provided under section 105 with respect to each health profession;

''(6) the amount of scholarship grants provided under section 105, in total and by health profession;

''(7) the number of providers of health care that will be needed by Indian health programs, by location and profession, during the 3 fiscal years beginning after the date the report is filed; and

''(8) the measures the Secretary plans to take to fill the health professional positions maintained by the Service or by tribes, tribal organizations, or urban Indian organizations for which recruitment or retention is difficult.

**"SEC. 111. SCHOLARSHIP AND LOAN REPAYMENT RECOVERY FUND.**

''(a) ESTABLISHMENT.—Notwithstanding section 102, there is established in the Treasury of the United States a fund to be known as the Indian Health Scholarship and Loan Repayment Recovery Fund (referred to in this section as the 'LRRF''). The LRRF Fund shall consist of—

''(1) such amounts as may be collected from individuals under subparagraphs (A) and (B) of section 105(b)(4) and section 110(l) for breach of contract;

''(2) such funds as may be appropriated to the LRRF;

''(3) such interest earned on amounts in the LRRF; and

''(4) such additional amounts as may be collected, appropriated, or earned relative to the LRRF.

Amounts appropriated to the LRRF shall remain available until expended.

''(b) USE OF LRRF.—

''(1) IN GENERAL.—Amounts in the LRRF may be expended by the Secretary, subject to section 102, acting through the Service, to make payments to the Service or to an Indian tribe or tribal organization administering a health care program pursuant to a funding agreement entered into under the Indian Self-Determination and Education Assistance Act—

''(A) to which a scholarship recipient under section 105 or a loan repayment program participant under section 110 has been assigned to meet the obligated service requirements pursuant to sections; and

''(B) that has a need for a health professional to provide health care services as a result of such recipient or participant having breached the contract entered into under section 105 or section 110.

''(2) SCHOLARSHIPS AND RECRUITING.—An Indian tribe or tribal organization receiving payments pursuant to paragraph (1) may expend the payments to provide scholarships or to recruit and employ, directly or by contract, health professionals to provide health care services.

''(c) INVESTING OF FUND.—

''(1) IN GENERAL.—The Secretary of the Treasury shall invest such amounts of the LRRF as the Secretary determines are not required to meet current withdrawals from the LRRF. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

''(2) SALE PRICE.—Any obligation acquired by the LRRF may be sold by the Secretary of the Treasury at the market price.

**"SEC. 112. RECRUITMENT ACTIVITIES.**

''(a) REIMBURSEMENT OF EXPENSES.—The Secretary may reimburse health professionals seeking positions in the Service, Indian tribes, tribal organizations, or urban Indian organizations, including unpaid student volunteers and individuals considering entering into a contract under section 110, and their spouses, for actual and reasonable expenses incurred in traveling to and from their places of residence to an area in which they may be assigned for the purpose of evaluating such area with respect to such assignment.

''(b) ASSIGNMENT OF PERSONNEL.—The Secretary, acting through the Service, shall assign one individual in each area office to be responsible on a full-time basis for recruitment activities.

**"SEC. 113. TRIBAL RECRUITMENT AND RETENTION PROGRAM.**

''(a) FUNDING OF PROJECTS.—The Secretary, acting through the Service, shall fund innovative projects for a period not to exceed 3 years to enable Indian tribes, tribal organizations, and urban Indian organizations to recruit, place, and retain health professionals to meet the staffing needs of Indian health programs (as defined in section 110(a)(2)(A)).

''(b) ELIGIBILITY.—Any Indian tribe, tribal organization, or urban Indian organization may submit an application for funding of a project pursuant to this section.

**"SEC. 114. ADVANCED TRAINING AND RESEARCH.**

''(a) DEMONSTRATION PROJECT.—The Secretary, acting through the Service, shall establish a demonstration project to enable health professionals who have worked in an Indian health program (as defined in section 110) for a substantial period of time to pursue advanced training or research in areas of study for which the Secretary determines a need exists.

''(b) SERVICE OBLIGATION.—

''(1) IN GENERAL.—An individual who participates in the project under subsection (a), where the educational costs are borne by the Service, shall incur an obligation to serve in an Indian health program for a period of obligated service equal to at least the period of time during which the individual participates in such project.

''(2) FAILURE TO COMPLETE SERVICE.—In the event that an individual fails to complete a period of obligated service under paragraph (1), the individual shall be liable to the United States for the period of service remaining. In such event, with respect to individuals entering the project after the date of the enactment of this Act, the United States shall be entitled to recover from such individual an amount to be determined in accordance with the formula specified in subsection (l) of section 110 in the manner provided for in such subsection.

''(c) OPPORTUNITY TO PARTICIPATE.—Health professionals from Indian tribes, tribal organizations, and urban Indian organizations under the authority of the Indian Self-Determination and Education Assistance Act shall be given an equal opportunity to participate in the program under subsection (a).

**"SEC. 115. NURSING PROGRAMS; QUENTIN N. BURDICK AMERICAN INDIANS INTO NURSING PROGRAM.**

''(a) GRANTS.—Notwithstanding section 102, the Secretary, acting through the Service, shall provide funds to—

''(1) public or private schools of nursing;

''(2) tribally controlled community colleges and tribally controlled postsecondary vocational institutions (as defined in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2)); and

''(3) nurse midwife programs, and advance practice nurse programs, that are provided by any tribal college accredited nursing program, or in the absence of such, any other public or private institution,

for the purpose of increasing the number of nurses, nurse midwives, and nurse practitioners who deliver health care services to Indians.

''(b) USE OF GRANTS.—Funds provided under subsection (a) may be used to—

''(1) recruit individuals for programs which train individuals to be nurses, nurse midwives, or advanced practice nurses;

''(2) provide scholarships to Indian individuals enrolled in such programs that may be used to pay the tuition charged for such program and for other expenses incurred in connection with such program, including books, fees, room and board, and stipends for living expenses;

''(3) provide a program that encourages nurses, nurse midwives, and advanced practice nurses to provide, or continue to provide, health care services to Indians;

''(4) provide a program that increases the skills of, and provides continuing education to, nurses, nurse midwives, and advanced practice nurses; or

''(5) provide any program that is designed to achieve the purpose described in subsection (a).

''(c) APPLICATIONS.—Each application for funds under subsection (a) shall include such information as the Secretary may require to establish the connection between the program of the applicant and a health care facility that primarily serves Indians.

''(d) PREFERENCES.—In providing funds under subsection (a), the Secretary shall extend a preference to—

''(1) programs that provide a preference to Indians;

''(2) programs that train nurse midwives or advanced practice nurses;

''(3) programs that are interdisciplinary; and

''(4) programs that are conducted in cooperation with a center for gifted and talented Indian students established under section 5324(a) of the Indian Education Act of 1988.

''(e) QUENTIN N. BURDICK AMERICAN INDIANS INTO NURSING PROGRAM.—The Secretary shall ensure that a portion of the funds authorized under subsection (a) is made available to establish and maintain a program at the University of North Dakota to be known as the 'Quentin N. Burdick American Indians Into Nursing Program'. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick American Indians Into Psychology Program established under section 106(b) and the Quentin N. Burdick Indian Health Programs established under section 117(b).

''(f) SERVICE OBLIGATION.—The active duty service obligation prescribed under section 338C of the Public Health Service Act (42 U.S.C. 254m) shall be met by each individual who receives training or assistance described in paragraph (1) or (2) of subsection (b) that is funded under subsection (a). Such obligation shall be met by service—

''(1) in the Indian Health Service;

''(2) in a program conducted under a contract entered into under the Indian Self-Determination and Education assistance Act;

''(3) in a program assisted under title V; or

''(4) in the private practice of nursing if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

**"SEC. 116. TRIBAL CULTURE AND HISTORY.**

''(a) IN GENERAL.—The Secretary, acting through the Service, shall require that appropriate employees of the Service who serve Indian tribes in each service area receive educational instruction in the history and culture of such tribes and their relationship to the Service.

''(b) REQUIREMENTS.—To the extent feasible, the educational instruction to be provided under subsection (a) shall—

''(1) be provided in consultation with the affected tribal governments, tribal organizations, and urban Indian organizations;

''(2) be provided through tribally-controlled community colleges (within the meaning of section 2(4) of the Tribally Controlled Community College Assistance Act of 1978) and tribally controlled postsecondary vocational institutions (as defined in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2)); and

''(3) include instruction in Native American studies.

**"SEC. 117. INMED PROGRAM.**

''(a) GRANTS.—The Secretary may provide grants to 3 colleges and universities for the

purpose of maintaining and expanding the Native American health careers recruitment program known as the 'Indians into Medicine Program' (referred to in this section as 'INMED') as a means of encouraging Indians to enter the health professions.

''(b) QUENTIN N. BURDICK INDIAN HEALTH PROGRAM.—The Secretary shall provide 1 of the grants under subsection (a) to maintain the INMED program at the University of North Dakota, to be known as the 'Quentin N. Burdick Indian Health Program', unless the Secretary makes a determination, based upon program reviews, that the program is not meeting the purposes of this section. Such program shall, to the maximum extent feasible, coordinate with the Quentin N. Burdick American Indians Into Psychology Program established under section 106(b) and the Quentin N. Burdick American Indians Into Nursing Program established under section 115.

''(c) REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary shall develop regulations to govern grants under to this section.

''(2) PROGRAM REQUIREMENTS.—Applicants for grants provided under this section shall agree to provide a program that—

''(A) provides outreach and recruitment for health professions to Indian communities including elementary, secondary and community colleges located on Indian reservations which will be served by the program;

''(B) incorporates a program advisory board comprised of representatives from the tribes and communities which will be served by the program;

''(C) provides summer preparatory programs for Indian students who need enrichment in the subjects of math and science in order to pursue training in the health professions;

''(D) provides tutoring, counseling and support to students who are enrolled in a health career program of study at the respective college or university; and

''(E) to the maximum extent feasible, employs qualified Indians in the program.

**"SEC. 118. HEALTH TRAINING PROGRAMS OF COMMUNITY COLLEGES.**

''(a) ESTABLISHMENT GRANTS.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall award grants to accredited and accessible community colleges for the purpose of assisting such colleges in the establishment of programs which provide education in a health profession leading to a degree or diploma in a health profession for individuals who desire to practice such profession on an Indian reservation, in the Service, or in a tribal health program.

''(2) AMOUNT.—The amount of any grant awarded to a community college under paragraph (1) for the first year in which such a grant is provided to the community college shall not exceed $100,000.

''(b) CONTINUATION GRANTS.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall award grants to accredited and accessible community colleges that have established a program described in subsection (a)(1) for the purpose of maintaining the program and recruiting students for the program.

''(2) ELIGIBILITY.—Grants may only be made under this subsection to a community college that—

''(A) is accredited;

''(B) has a relationship with a hospital facility, Service facility, or hospital that could provide training of nurses or health professionals;

''(C) has entered into an agreement with an accredited college or university medical school, the terms of which—

''(i) provide a program that enhances the transition and recruitment of students into advanced baccalaureate or graduate programs which train health professionals; and

''(ii) stipulate certifications necessary to approve internship and field placement opportunities at health programs of the Service or at tribal health programs;

''(D) has a qualified staff which has the appropriate certifications;

''(E) is capable of obtaining State or regional accreditation of the program described in subsection (a)(1); and

''(F) agrees to provide for Indian preference for applicants for programs under this section.

''(c) SERVICE PERSONNEL AND TECHNICAL ASSISTANCE.—The Secretary shall encourage community colleges described in subsection (b)(2) to establish and maintain programs described in subsection (a)(1) by—

''(1) entering into agreements with such colleges for the provision of qualified personnel of the Service to teach courses of study in such programs, and

''(2) providing technical assistance and support to such colleges.

''(d) SPECIFIED COURSES OF STUDY.—Any program receiving assistance under this section that is conducted with respect to a health profession shall also offer courses of study which provide advanced training for any health professional who—

''(1) has already received a degree or diploma in such health profession; and

''(2) provides clinical services on an Indian reservation, at a Service facility, or at a tribal clinic.

Such courses of study may be offered in conjunction with the college or university with which the community college has entered into the agreement required under subsection (b)(2)(C).

''(e) PRIORITY.—Priority shall be provided under this section to tribally controlled colleges in service areas that meet the requirements of subsection (b).

''(f) DEFINITIONS.—In this section:

''(1) COMMUNITY COLLEGE.—The term 'community college' means—

''(A) a tribally controlled community college; or

''(B) a junior or community college.

''(2) JUNIOR OR COMMUNITY COLLEGE.—The term 'junior or community college'' has the meaning given such term by section 312(e) of the Higher Education Act of 1965 (20 U.S.C. 1058(e)).

''(3) TRIBALLY CONTROLLED COLLEGE.—The term 'tribally controlled college' has the meaning given the term 'tribally controlled community college' by section 2(4) of the Tribally Controlled Community College Assistance Act of 1978.

**"SEC. 119. RETENTION BONUS.**

''(a) IN GENERAL.—The Secretary may pay a retention bonus to any health professional employed by, or assigned to, and serving in, the Service, an Indian tribe, a tribal organization, or an urban Indian organization either as a civilian employee or as a commissioned officer in the Regular or Reserve Corps of the Public Health Service who—

''(1) is assigned to, and serving in, a position for which recruitment or retention of personnel is difficult;

''(2) the Secretary determines is needed by the Service, tribe, tribal organization, or urban organization;

''(3) has—

''(A) completed 3 years of employment with the Service; tribe, tribal organization, or urban organization; or

''(B) completed any service obligations incurred as a requirement of—

''(i) any Federal scholarship program; or

''(ii) any Federal education loan repayment program; and

''(4) enters into an agreement with the Service, Indian tribe, tribal organization, or urban Indian organization for continued employment for a period of not less than 1 year.

''(b) RATES.—The Secretary may establish rates for the retention bonus which shall provide for a higher annual rate for multiyear agreements than for single year agreements referred to in subsection (a)(4), but in no event shall the annual rate be more than $25,000 per annum.

''(c) FAILURE TO COMPLETE TERM OF SERVICE.—Any health professional failing to complete the agreed upon term of service, except where such failure is through no fault of the individual, shall be obligated to refund to the Government the full amount of the retention bonus for the period covered by the agreement, plus interest as determined by the Secretary in accordance with section 110(l)(2)(B).

''(d) FUNDING AGREEMENT.—The Secretary may pay a retention bonus to any health professional employed by an organization providing health care services to Indians pursuant to a funding agreement under the Indian Self-Determination and Education Assistance Act if such health professional is serving in a position which the Secretary determines is—

''(1) a position for which recruitment or retention is difficult; and

''(2) necessary for providing health care services to Indians.

**"SEC. 120. NURSING RESIDENCY PROGRAM.**

''(a) ESTABLISHMENT.—The Secretary, acting through the Service, shall establish a program to enable Indians who are licensed practical nurses, licensed vocational nurses, and registered nurses who are working in an Indian health program (as defined in section 110(a)(2)(A)), and have done so for a period of not less than 1 year, to pursue advanced training.

''(b) REQUIREMENT.—The program established under subsection (a) shall include a combination of education and work study in an Indian health program (as defined in section 110(a)(2)(A)) leading to an associate or bachelor's degree (in the case of a licensed practical nurse or licensed vocational nurse) or a bachelor's degree (in the case of a registered nurse) or an advanced degrees in nursing and public health.

''(c) SERVICE OBLIGATION.—An individual who participates in a program under subsection (a), where the educational costs are paid by the Service, shall incur an obligation to serve in an Indian health program for a period of obligated service equal to the amount of time during which the individual participates in such program. In the event that the individual fails to complete such obligated service, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula specified in subsection (l) of section 110 in the manner provided for in such subsection.

**"SEC. 121. COMMUNITY HEALTH AIDE PROGRAM FOR ALASKA.**

''(a) IN GENERAL.—Under the authority of the Act of November 2, 1921 (25 U.S.C. 13; commonly known as the Snyder Act), the Secretary shall maintain a Community Health Aide Program in Alaska under which the Service—

''(1) provides for the training of Alaska Natives as health aides or community health practitioners;

''(2) uses such aides or practitioners in the provision of health care, health promotion, and disease prevention services to Alaska Natives living in villages in rural Alaska; and

''(3) provides for the establishment of teleconferencing capacity in health clinics located in or near such villages for use by community health aides or community health practitioners.

''(b) ACTIVITIES.—The Secretary, acting through the Community Health Aide Program under subsection (a), shall—

''(1) using trainers accredited by the Program, provide a high standard of training to community health aides and community health practitioners to ensure that such aides and practitioners provide quality health care, health promotion, and disease prevention services to the villages served by the Program;

''(2) in order to provide such training, develop a curriculum that—

''(A) combines education in the theory of health care with supervised practical experience in the provision of health care;

''(B) provides instruction and practical experience in the provision of acute care, emergency care, health promotion, disease prevention, and the efficient and effective management of clinic pharmacies, supplies, equipment, and facilities; and

''(C) promotes the achievement of the health status objective specified in section 3(b);

''(3) establish and maintain a Community Health Aide Certification Board to certify as community health aides or community health practitioners individuals who have successfully completed the training described in paragraph (1) or who can demonstrate equivalent experience;

''(4) develop and maintain a system which identifies the needs of community health aides and community health practitioners for continuing education in the provision of health care, including the areas described in paragraph (2)(B), and develop programs that meet the needs for such continuing education;

''(5) develop and maintain a system that provides close supervision of community health aides and community health practitioners; and

''(6) develop a system under which the work of community health aides and community health practitioners is reviewed and evaluated to assure the provision of quality health care, health promotion, and disease prevention services.

**''SEC. 122. TRIBAL HEALTH PROGRAM ADMINISTRATION.**

''Subject to Section 102, the Secretary, acting through the Service, shall, through a funding agreement or otherwise, provide training for Indians in the administration and planning of tribal health programs.

**''SEC. 123. HEALTH PROFESSIONAL CHRONIC SHORTAGE DEMONSTRATION PROJECT.**

''(a) PILOT PROGRAMS.—The Secretary may, through area offices, fund pilot programs for tribes and tribal organizations to address chronic shortages of health professionals.

''(b) PURPOSE.—It is the purpose of the health professions demonstration project under this section to—

''(1) provide direct clinical and practical experience in a service area to health professions students and residents from medical schools;

''(2) improve the quality of health care for Indians by assuring access to qualified health care professionals; and

''(3) provide academic and scholarly opportunities for health professionals serving Indian people by identifying and utilizing all academic and scholarly resources of the region.

''(c) ADVISORY BOARD.—A pilot program established under subsection (a) shall incorporate a program advisory board that shall be composed of representatives from the tribes and communities in the service area that will be served by the program.

**''SEC. 124. SCHOLARSHIPS.**

''Scholarships and loan reimbursements provided to individuals pursuant to this title shall be treated as 'qualified scholarships' for purposes of section 117 of the Internal Revenue Code of 1986.

**''SEC. 125. NATIONAL HEALTH SERVICE CORPS.**

''(a) LIMITATIONS.—The Secretary shall not—

''(1) remove a member of the National Health Services Corps from a health program operated by Indian Health Service or by a tribe or tribal organization under a funding agreement with the Service under the Indian Self-Determination and Education Assistance Act, or by urban Indian organizations; or

''(2) withdraw the funding used to support such a member;

unless the Secretary, acting through the Service, tribes or tribal organization, has ensured that the Indians receiving services from such member will experience no reduction in services.

''(b) DESIGNATION OF SERVICE AREAS AS HEALTH PROFESSIONAL SHORTAGE AREAS.—All service areas served by programs operated by the Service or by a tribe or tribal organization sunder the Indian Self-Determination and Education Assistance Act, or by an urban Indian organization, shall be designated under section 332 of the Public Health Service Act (42 U.S.C. 254e) as Health Professional Shortage Areas.

''(c) FULL TIME EQUIVALENT.—National Health Service Corps scholars that qualify for the commissioned corps in the Public Health Service shall be exempt from the full time equivalent limitations of the National Health Service Corps and the Service when such scholars serve as commissioned corps officers in a health program operated by an Indian tribe or tribal organization under the Indian Self-Determination and Education Assistance Act or by an urban Indian organization.

**''SEC. 126. SUBSTANCE ABUSE COUNSELOR EDUCATION DEMONSTRATION PROJECT.**

''(a) DEMONSTRATION PROJECTS.—The Secretary, acting through the Service, may enter into contracts with, or make grants to, accredited tribally controlled community colleges, tribally controlled postsecondary vocational institutions, and eligible accredited and accessible community colleges to establish demonstration projects to develop educational curricula for substance abuse counseling.

''(b) USE OF FUNDS.—Funds provided under this section shall be used only for developing and providing educational curricula for substance abuse counseling (including paying salaries for instructors). Such curricula may be provided through satellite campus programs.

''(c) TERM OF GRANT.—A contract entered into or a grant provided under this section shall be for a period of 1 year. Such contract or grant may be renewed for an additional 1 year period upon the approval of the Secretary.

''(d) REVIEW OF APPLICATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary, after consultation with Indian tribes and administrators of accredited tribally controlled community colleges, tribally controlled postsecondary vocational institutions, and eligible accredited and accessible community colleges, shall develop and issue criteria for the review and approval of applications for funding (including applications for renewals of funding) under this section. Such criteria shall ensure that demonstration projects established under this section promote the development of the capacity of such entities to educate substance abuse counselors.

''(e) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical and other assistance as may be necessary to enable grant recipients to comply with the provisions of this section.

''(f) REPORT.—The Secretary shall submit to the President, for inclusion in the report required to be submitted under section 801 for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects conducted under this section.

''(g) DEFINITIONS.—In this section:

''(1) EDUCATIONAL CURRICULUM.—The term 'educational curriculum' means 1 or more of the following:

''(A) Classroom education.

''(B) Clinical work experience.

''(C) Continuing education workshops.

''(2) TRIBALLY CONTROLLED COMMUNITY COLLEGE.—The term 'tribally controlled community college' has the meaning given such term in section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801(a)(4)).

''(3) TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTION.—The term 'tribally controlled postsecondary vocational institution' has the meaning given such term in section 390(2) of the Tribally Controlled Vocational Institutions Support Act of 1990 (20 U.S.C. 2397h(2)).

**''SEC. 127. MENTAL HEALTH TRAINING AND COMMUNITY EDUCATION.**

''(a) STUDY AND LIST.—

''(1) IN GENERAL.—The Secretary and the Secretary of the Interior in consultation with Indian tribes and tribal organizations shall conduct a study and compile a list of the types of staff positions specified in subsection (b) whose qualifications include or should include, training in the identification, prevention, education, referral or treatment of mental illness, dysfunctional or self-destructive behavior.

''(2) POSITIONS.—The positions referred to in paragraph (1) are—

''(A) staff positions within the Bureau of Indian Affairs, including existing positions, in the fields of—

''(i) elementary and secondary education;

''(ii) social services, family and child welfare;

''(iii) law enforcement and judicial services; and

''(iv) alcohol and substance abuse;

''(B) staff positions within the Service; and

''(C) staff positions similar to those specified in subsection (b) and established and maintained by Indian tribes, tribal organizations, and urban Indian organizations, including positions established pursuant to funding agreements under the Indian Self-determination and Education Assistance Act, and this Act.

''(3) TRAINING CRITERIA.—

''(A) IN GENERAL.—The appropriate Secretary shall provide training criteria appropriate to each type of position specified in subsection (b)(1) and ensure that appropriate training has been or will be provided to any individual in any such position.

''(B) TRAINING.—With respect to any such individual in a position specified pursuant to subsection (b)(3), the respective Secretaries shall provide appropriate training or provide funds to an Indian tribe, tribal organization, or urban Indian organization for the training of appropriate individuals. In the case of a funding agreement, the appropriate Secretary shall ensure that such training costs are included in the funding agreement, if necessary.

''(4) CULTURAL RELEVANCY.—Position specific training criteria shall be culturally relevant to Indians and Indian tribes and shall

ensure that appropriate information regarding traditional health care practices is provided.

''(5) COMMUNITY EDUCATION.—

''(A) DEVELOPMENT.—The Service shall develop and implement, or on request of an Indian tribe or tribal organization, assist an Indian tribe or tribal organization, in developing and implementing a program of community education on mental illness.

''(B) TECHNICAL ASSISTANCE.—In carrying out this paragraph, the Service shall, upon the request of an Indian tribe or tribal organization, provide technical assistance to the Indian tribe or tribal organization to obtain and develop community educational materials on the identification, prevention, referral and treatment of mental illness, dysfunctional and self-destructive behavior.

''(b) STAFFING.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of the Act, the Director of the Service shall develop a plan under which the Service will increase the number of health care staff that are providing mental health services by at least 500 positions within 5 years after such date of enactment, with at least 200 of such positions devoted to child, adolescent, and family services. The allocation of such positions shall be subject to the provisions of section 102(a).

''(2) IMPLEMENTATION.—The plan developed under paragraph (1) shall be implemented under the Act of November 2, 1921 (25 U.S.C. 13) (commonly know as the 'Snyder Act').

**"SEC. 128. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2013 to carry out this title.

## "TITLE II—HEALTH SERVICES

**"SEC. 201. INDIAN HEALTH CARE IMPROVEMENT FUND.**

''(a) IN GENERAL.—The Secretary may expend funds, directly or under the authority of the Indian Self-Determination and Education Assistance Act, that are appropriated under the authority of this section, for the purposes of—

''(1) eliminating the deficiencies in the health status and resources of all Indian tribes;

''(2) eliminating backlogs in the provision of health care services to Indians;

''(3) meeting the health needs of Indians in an efficient and equitable manner;

''(4) eliminating inequities in funding for both direct care and contract health service programs; and

''(5) augmenting the ability of the Service to meet the following health service responsibilities with respect to those Indian tribes with the highest levels of health status and resource deficiencies:

''(A) clinical care, including inpatient care, outpatient care (including audiology, clinical eye and vision care), primary care, secondary and tertiary care, and long term care;

''(B) preventive health, including mammography and other cancer screening in accordance with section 207;

''(C) dental care;

''(D) mental health, including community mental health services, inpatient mental health services, dormitory mental health services, therapeutic and residential treatment centers, and training of traditional health care practitioners;

''(E) emergency medical services;

''(F) treatment and control of, and rehabilitative care related to, alcoholism and drug abuse (including fetal alcohol syndrome) among Indians;

''(G) accident prevention programs;

''(H) home health care;

''(I) community health representatives;

''(J) maintenance and repair; and

''(K) traditional health care practices.

''(b) USE OF FUNDS.—

''(1) LIMITATION.—Any funds appropriated under the authority of this section shall not be used to offset or limit any other appropriations made to the Service under this Act, the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the 'Snyder Act'), or any other provision of law.

''(2) ALLOCATION.—

''(A) IN GENERAL.—Funds appropriated under the authority of this section shall be allocated to service units or Indian tribes or tribal organizations. The funds allocated to each tribe, tribal organization, or service unit under this subparagraph shall be used to improve the health status and reduce the resource deficiency of each tribe served by such service unit, tribe or tribal organization. Such allocation shall weigh the amounts appropriated in favor of those service areas where the health status of Indians within the area, as measured by life expectancy based upon the most recent data available, is significantly lower than the average health status for Indians for all service areas, except that amounts allocated to each such area using such a weighted allocation formula shall not be less than the amounts allocated to each such area in the previous fiscal year.

''(B) APPORTIONMENT.—The apportionment of funds allocated to a service unit, tribe or tribal organization under subparagraph (A) among the health service responsibilities described in subsection (a)(4) shall be determined by the Service in consultation with, and with the active participation of, the affected Indian tribes in accordance with this section and such rules as may be established under title VIII.

''(c) HEALTH STATUS AND RESOURCE DEFICIENCY.—In this section:

''(1) DEFINITION.—The term 'health status and resource deficiency' means the extent to which—

''(A) the health status objective set forth in section 3(2) is not being achieved; and

''(B) the Indian tribe or tribal organization does not have available to it the health resources it needs, taking into account the actual cost of providing health care services given local geographic, climatic, rural, or other circumstances.

''(2) RESOURCES.—The health resources available to an Indian tribe or tribal organization shall include health resources provided by the Service as well as health resources used by the Indian Tribe or tribal organization, including services and financing systems provided by any Federal programs, private insurance, and programs of State or local governments.

''(3) REVIEW OF DETERMINATION.—The Secretary shall establish procedures which allow any Indian tribe or tribal organization to petition the Secretary for a review of any determination of the extent of the health status and resource deficiency of such tribe or tribal organization.

''(d) ELIGIBILITY.—Programs administered by any Indian tribe or tribal organization under the authority of the Indian Self-Determination and Education Assistance Act shall be eligible for funds appropriated under the authority of this section on an equal basis with programs that are administered directly by the Service.

''(e) REPORT.—Not later than the date that is 3 years after the date of enactment of this Act, the Secretary shall submit to the Congress the current health status and resource deficiency report of the Service for each Indian tribe or service unit, including newly recognized or acknowledged tribes. Such report shall set out—

''(1) the methodology then in use by the Service for determining tribal health status and resource deficiencies, as well as the most recent application of that methodology;

''(2) the extent of the health status and resource deficiency of each Indian tribe served by the Service;

''(3) the amount of funds necessary to eliminate the health status and resource deficiencies of all Indian tribes served by the Service; and

''(4) an estimate of—

''(A) the amount of health service funds appropriated under the authority of this Act, or any other Act, including the amount of any funds transferred to the Service, for the preceding fiscal year which is allocated to each service unit, Indian tribe, or comparable entity;

''(B) the number of Indians eligible for health services in each service unit or Indian tribe or tribal organization; and

''(C) the number of Indians using the Service resources made available to each service unit or Indian tribe or tribal organization, and, to the extent available, information on the waiting lists and number of Indians turned away for services due to lack of resources.

''(f) BUDGETARY RULE.—Funds appropriated under the authority of this section for any fiscal year shall be included in the base budget of the Service for the purpose of determining appropriations under this section in subsequent fiscal years.

''(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to diminish the primary responsibility of the Service to eliminate existing backlogs in unmet health care needs or to discourage the Service from undertaking additional efforts to achieve equity among Indian tribes and tribal organizations.

''(h) DESIGNATION.—Any funds appropriated under the authority of this section shall be designated as the 'Indian Health Care Improvement Fund'.

**"SEC. 202. CATASTROPHIC HEALTH EMERGENCY FUND.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—There is hereby established an Indian Catastrophic Health Emergency Fund (referred to in this section as the 'CHEF') consisting of—

''(A) the amounts deposited under subsection (d); and

''(B) any amounts appropriated to the CHEF under this Act.

''(2) ADMINISTRATION.—The CHEF shall be administered by the Secretary solely for the purpose of meeting the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are within the responsibility of the Service.

''(3) EQUITABLE ALLOCATION.—The CHEF shall be equitably allocated, apportioned or delegated on a service unit or area office basis, based upon a formula to be developed by the Secretary in consultation with the Indian tribes and tribal organizations through negotiated rulemaking under title VIII. Such formula shall take into account the added needs of service areas which are contract health service dependent.

''(4) NOT SUBJECT TO CONTRACT OR GRANT.—No part of the CHEF or its administration shall be subject to contract or grant under any law, including the Indian Self-Determination and Education Assistance Act.

''(5) ADMINISTRATION.—Amounts provided from the CHEF shall be administered by the area offices based upon priorities determined by the Indian tribes and tribal organizations within each service area, including a consideration of the needs of Indian tribes and tribal organizations which are contract health service-dependent.

''(b) REQUIREMENTS.—The Secretary shall, through the negotiated rulemaking process under title VIII, promulgate regulations consistent with the provisions of this section—

''(1) establish a definition of disasters and catastrophic illnesses for which the cost of treatment provided under contract would qualify for payment from the CHEF;

''(2) provide that a service unit, Indian tribe, or tribal organization shall not be eligible for reimbursement for the cost of treatment from the CHEF until its cost of treatment for any victim of such a catastrophic illness or disaster has reached a certain threshold cost which the Secretary shall establish at—

''(A) for 1999, not less than $19,000; and

''(B) for any subsequent year, not less than the threshold cost of the previous year increased by the percentage increase in the medical care expenditure category of the consumer price index for all urban consumers (United States city average) for the 12-month period ending with December of the previous year;

''(3) establish a procedure for the reimbursement of the portion of the costs incurred by—

''(A) service units, Indian tribes, or tribal organizations, or facilities of the Service; or

''(B) non-Service facilities or providers whenever otherwise authorized by the Service;

in rendering treatment that exceeds threshold cost described in paragraph (2);

''(4) establish a procedure for payment from the CHEF in cases in which the exigencies of the medical circumstances warrant treatment prior to the authorization of such treatment by the Service; and

''(5) establish a procedure that will ensure that no payment shall be made from the CHEF to any provider of treatment to the extent that such provider is eligible to receive payment for the treatment from any other Federal, State, local, or private source of reimbursement for which the patient is eligible.

''(c) LIMITATION.—Amounts appropriated to the CHEF under this section shall not be used to offset or limit appropriations made to the Service under the authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the Snyder Act) or any other law.

''(d) DEPOSITS.—There shall be deposited into the CHEF all reimbursements to which the Service is entitled from any Federal, State, local, or private source (including third party insurance) by reason of treatment rendered to any victim of a disaster or catastrophic illness the cost of which was paid from the CHEF.

**''SEC. 203. HEALTH PROMOTION AND DISEASE PREVENTION SERVICES.**

''(a) FINDINGS.—Congress finds that health promotion and disease prevention activities will—

''(1) improve the health and well-being of Indians; and

''(2) reduce the expenses for health care of Indians.

''(b) PROVISION OF SERVICES.—The Secretary, acting through the Service and through Indian tribes and tribal organizations, shall provide health promotion and disease prevention services to Indians so as to achieve the health status objective set forth in section 3(b).

''(c) DISEASE PREVENTION AND HEALTH PROMOTION.—In this section:

''(1) DISEASE PREVENTION.—The term 'disease prevention' means the reduction, limitation, and prevention of disease and its complications, and the reduction in the consequences of such diseases, including—

''(A) controlling—

''(i) diabetes;

''(ii) high blood pressure;

''(iii) infectious agents;

''(iv) injuries;

''(v) occupational hazards and disabilities;

''(vi) sexually transmittable diseases; and

''(vii) toxic agents; and

''(B) providing—

''(i) for the fluoridation of water; and

''(ii) immunizations.

''(2) HEALTH PROMOTION.—The term 'health promotion' means fostering social, economic, environmental, and personal factors conducive to health, including—

''(A) raising people's awareness about health matters and enabling them to cope with health problems by increasing their knowledge and providing them with valid information;

''(B) encouraging adequate and appropriate diet, exercise, and sleep;

''(C) promoting education and work in conformity with physical and mental capacity;

''(E) making available suitable housing, safe water, and sanitary facilities;

''(F) improving the physical economic, cultural, psychological, and social environment;

''(G) promoting adequate opportunity for spiritual, religious, and traditional practices; and

''(H) adequate and appropriate programs including—

''(i) abuse prevention (mental and physical);

''(iii) community health;

''(iv) community safety;

''(v) consumer health education;

''(vi) diet and nutrition;

''(vii) disease prevention (communicable, immunizations, HIV/AIDS);

''(viii) environmental health;

''(ix) exercise and physical fitness;

''(x) fetal alcohol disorders;

''(xi) first aid and CPR education;

''(xii) human growth and development;

''(xiii) injury prevention and personal safety;

''(xiv) mental health (emotional, self-worth);

''(xv) personal health and wellness practices;

''(xvi) personal capacity building;

''(xvii) prenatal, pregnancy, and infant care;

''(xviii) psychological well being;

''(xix) reproductive health (family planning);

''(xx) safe and adequate water;

''(xxi) safe housing;

''(xxii) safe work environments;

''(xxiii) stress control;

''(xxiv) substance abuse;

''(xxv) sanitary facilities;

''(xxvi) tobacco use cessation and reduction;

''(xxvii) violence prevention; and

''(xxviii) such other activities identified by the Service, an Indian tribe or tribal organization, to promote the achievement of the objective described in section 3(b).

''(d) EVALUATION.—The Secretary, after obtaining input from affected Indian tribes and tribal organizations, shall submit to the President for inclusion in each statement which is required to be submitted to Congress under section 801 an evaluation of—

''(1) the health promotion and disease prevention needs of Indians;

''(2) the health promotion and disease prevention activities which would best meet such needs;

''(3) the internal capacity of the Service to meet such needs; and

''(4) the resources which would be required to enable the Service to undertake the health promotion and disease prevention activities necessary to meet such needs.

**''SEC. 204. DIABETES PREVENTION, TREATMENT, AND CONTROL.**

''(a) DETERMINATION.—The Secretary, in consultation with Indian tribes and tribal organizations, shall determine—

''(1) by tribe, tribal organization, and service unit of the Service, the prevalence of, and the types of complications resulting from, diabetes among Indians; and

''(2) based on paragraph (1), the measures (including patient education) each service unit should take to reduce the prevalence of, and prevent, treat, and control the complications resulting from, diabetes among Indian tribes within that service unit.

''(b) SCREENING.—The Secretary shall screen each Indian who receives services from the Service for diabetes and for conditions which indicate a high risk that the individual will become diabetic. Such screening may be done by an Indian tribe or tribal organization operating health care programs or facilities with funds from the Service under the Indian Self-Determination and Education Assistance Act.

''(c) CONTINUED FUNDING.—The Secretary shall continue to fund, through fiscal year 2013, each effective model diabetes project in existence on the date of the enactment of this Act and such other diabetes programs operated by the Secretary or by Indian tribes and tribal organizations and any additional programs added to meet existing diabetes needs. Indian tribes and tribal organizations shall receive recurring funding for the diabetes programs which they operate pursuant to this section. Model diabetes projects shall consult, on a regular basis, with tribes and tribal organizations in their regions regarding diabetes needs and provide technical expertise as needed.

''(d) DIALYSIS PROGRAMS.—The Secretary shall provide funding through the Service, Indian tribes and tribal organizations to establish dialysis programs, including funds to purchase dialysis equipment and provide necessary staffing.

''(e) OTHER ACTIVITIES.—The Secretary shall, to the extent funding is available—

''(1) in each area office of the Service, consult with Indian tribes and tribal organizations regarding programs for the prevention, treatment, and control of diabetes;

''(2) establish in each area office of the Service a registry of patients with diabetes to track the prevalence of diabetes and the complications from diabetes in that area; and

''(3) ensure that data collected in each area office regarding diabetes and related complications among Indians is disseminated to tribes, tribal organizations, and all other area offices.

**''SEC. 205. SHARED SERVICES.**

''(a) IN GENERAL.—The Secretary, acting through the Service and notwithstanding any other provision of law, is authorized to enter into funding agreements or other arrangements with Indian tribes or tribal organizations for the delivery of long-term care and similar services to Indians. Such projects shall provide for the sharing of staff or other services between a Service or tribal facility and a long-term care or other similar facility owned and operated (directly or through a funding agreement) by such Indian tribe or tribal organization.

''(b) REQUIREMENTS.—A funding agreement or other arrangement entered into pursuant to subsection (a)—

''(1) may, at the request of the Indian tribe or tribal organization, delegate to such tribe or tribal organization such powers of supervision and control over Service employees as the Secretary deems necessary to carry out the purposes of this section;

''(2) shall provide that expenses (including salaries) relating to services that are shared

between the Service and the tribal facility be allocated proportionately between the Service and the tribe or tribal organization; and

''(3) may authorize such tribe or tribal organization to construct, renovate, or expand a long-term care or other similar facility (including the construction of a facility attached to a Service facility).

''(c) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

''(d) USE OF EXISTING FACILITIES.—The Secretary shall encourage the use for long-term or similar care of existing facilities that are under-utilized or allow the use of swing beds for such purposes.

**''SEC. 206. HEALTH SERVICES RESEARCH.**

''(a) FUNDING.—The Secretary shall make funding available for research to further the performance of the health service responsibilities of the Service, Indian tribes, and tribal organizations and shall coordinate the activities of other Agencies within the Department to address these research needs.

''(b) ALLOCATION.—Funding under subsection (a) shall be allocated equitably among the area offices. Each area office shall award such funds competitively within that area.

''(c) ELIGIBILITY FOR FUNDS.—Indian tribes and tribal organizations receiving funding from the Service under the authority of the Indian Self-Determination and Education Assistance Act shall be given an equal opportunity to compete for, and receive, research funds under this section.

''(d) USE.—Funds received under this section may be used for both clinical and nonclinical research by Indian tribes and tribal organizations and shall be distributed to the area offices. Such area offices may make grants using such funds within each area.

**''SEC. 207. MAMMOGRAPHY AND OTHER CANCER SCREENING.**

''The Secretary, through the Service or through Indian tribes or tribal organizations, shall provide for the following screening:

''(1) Mammography (as defined in section 1861(jj) of the Social Security Act) for Indian women at a frequency appropriate to such women under national standards, and under such terms and conditions as are consistent with standards established by the Secretary to assure the safety and accuracy of screening mammography under part B of title XVIII of the Social Security Act.

''(2) Other cancer screening meeting national standards.

**''SEC. 208. PATIENT TRAVEL COSTS.**

''The Secretary, acting through the Service, Indian tribes and tribal organizations shall provide funds for the following patient travel costs, including appropriate and necessary qualified escorts, associated with receiving health care services provided (either through direct or contract care or through funding agreements entered into pursuant to the Indian Self-Determination and Education Assistance Act) under this Act:

''(1) Emergency air transportation and nonemergency air transportation where ground transportation is infeasible.

''(2) Transportation by private vehicle, specially equipped vehicle and ambulance.

''(3) Transportation by such other means as may be available and required when air or motor vehicle transportation is not available.

**''SEC. 209. EPIDEMIOLOGY CENTERS.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—In addition to those centers operating 1 day prior to the date of enactment of this Act, (including those centers for which funding is currently being provided through funding agreements under the Indian Self-Determination and Education Assistance Act), the Secretary shall, not later than 180 days after such date of enactment, establish and fund an epidemiology center in each service area which does not have such a center to carry out the functions described in paragraph (2). Any centers established under the preceding sentence may be operated by Indian tribes or tribal organizations pursuant to funding agreements under the Indian Self-Determination and Education Assistance Act, but funding under such agreements may not be divisible.

''(2) FUNCTIONS.—In consultation with and upon the request of Indian tribes, tribal organizations and urban Indian organizations, each area epidemiology center established under this subsection shall, with respect to such area shall—

''(A) collect data related to the health status objective described in section 3(b), and monitor the progress that the Service, Indian tribes, tribal organizations, and urban Indian organizations have made in meeting such health status objective;

''(B) evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health;

''(C) assist Indian tribes, tribal organizations, and urban Indian organizations in identifying their highest priority health status objectives and the services needed to achieve such objectives, based on epidemiological data;

''(D) make recommendations for the targeting of services needed by tribal, urban, and other Indian communities;

''(E) make recommendations to improve health care delivery systems for Indians and urban Indians;

''(F) provide requested technical assistance to Indian Tribes and urban Indian organizations in the development of local health service priorities and incidence and prevalence rates of disease and other illness in the community; and

''(G) provide disease surveillance and assist Indian tribes, tribal organizations, and urban Indian organizations to promote public health.

''(3) TECHNICAL ASSISTANCE.—The director of the Centers for Disease Control and Prevention shall provide technical assistance to the centers in carrying out the requirements of this subsection.

''(b) FUNDING.—The Secretary may make funding available to Indian tribes, tribal organizations, and eligible intertribal consortia or urban Indian organizations to conduct epidemiological studies of Indian communities.

**''SEC. 210. COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAMS.**

''(a) IN GENERAL.—The Secretary, acting through the Service, shall provide funding to Indian tribes, tribal organizations, and urban Indian organizations to develop comprehensive school health education programs for children from preschool through grade 12 in schools for the benefit of Indian and urban Indian children.

''(b) USE OF FUNDS.—Funds awarded under this section may be used to—

''(1) develop and implement health education curricula both for regular school programs and after school programs;

''(2) train teachers in comprehensive school health education curricula;

''(3) integrate school-based, community-based, and other public and private health promotion efforts;

''(4) encourage healthy, tobacco-free school environments;

''(5) coordinate school-based health programs with existing services and programs available in the community;

''(6) develop school programs on nutrition education, personal health, oral health, and fitness;

''(7) develop mental health wellness programs;

''(8) develop chronic disease prevention programs;

''(9) develop substance abuse prevention programs;

''(10) develop injury prevention and safety education programs;

''(11) develop activities for the prevention and control of communicable diseases;

''(12) develop community and environmental health education programs that include traditional health care practitioners;

''(13) carry out violence prevention activities; and

''(14) carry out activities relating to such other health issues as are appropriate.

''(c) TECHNICAL ASSISTANCE.—The Secretary shall, upon request, provide technical assistance to Indian tribes, tribal organization and urban Indian organizations in the development of comprehensive health education plans, and the dissemination of comprehensive health education materials and information on existing health programs and resources.

''(d) CRITERIA.—The Secretary, in consultation with Indian tribes tribal organizations, and urban Indian organizations shall establish criteria for the review and approval of applications for funding under this section.

''(e) COMPREHENSIVE SCHOOL HEALTH EDUCATION PROGRAM.—

''(1) DEVELOPMENT.—The Secretary of the Interior, acting through the Bureau of Indian Affairs and in cooperation with the Secretary and affected Indian tribes and tribal organizations, shall develop a comprehensive school health education program for children from preschool through grade 12 for use in schools operated by the Bureau of Indian Affairs.

''(2) REQUIREMENTS.—The program developed under paragraph (1) shall include—

''(A) school programs on nutrition education, personal health, oral health, and fitness;

''(B) mental health wellness programs;

''(C) chronic disease prevention programs;

''(D) substance abuse prevention programs;

''(E) injury prevention and safety education programs; and

''(F) activities for the prevention and control of communicable diseases.

''(3) TRAINING AND COORDINATION.—The Secretary of the Interior shall—

''(A) provide training to teachers in comprehensive school health education curricula;

''(B) ensure the integration and coordination of school-based programs with existing services and health programs available in the community; and

''(C) encourage healthy, tobacco-free school environments.

**''SEC. 211. INDIAN YOUTH PROGRAM.**

''(a) IN GENERAL.—The Secretary, acting through the Service, is authorized to provide funding to Indian tribes, tribal organizations, and urban Indian organizations for innovative mental and physical disease prevention and health promotion and treatment programs for Indian and urban Indian preadolescent and adolescent youths.

''(b) USE OF FUNDS.—

''(1) IN GENERAL.—Funds made available under this section may be used to—

''(A) develop prevention and treatment programs for Indian youth which promote mental and physical health and incorporate cultural values, community and family involvement, and traditional health care practitioners; and

''(B) develop and provide community training and education.

''(2) LIMITATION.—Funds made available under this section may not be used to provide services described in section 707(c).

''(c) REQUIREMENTS.—The Secretary shall—

''(1) disseminate to Indian tribes, tribal organizations, and urban Indian organizations information regarding models for the delivery of comprehensive health care services to Indian and urban Indian adolescents;

''(2) encourage the implementation of such models; and

''(3) at the request of an Indian tribe, tribal organization, or urban Indian organization, provide technical assistance in the implementation of such models.

''(d) CRITERIA.—The Secretary, in consultation with Indian tribes, tribal organization, and urban Indian organizations, shall establish criteria for the review and approval of applications under this section.

**''SEC. 212. PREVENTION, CONTROL, AND ELIMINATION OF COMMUNICABLE AND INFECTIOUS DISEASES.**

''(a) IN GENERAL.—The Secretary, acting through the Service after consultation with Indian tribes, tribal organizations, urban Indian organizations, and the Centers for Disease Control and Prevention, may make funding available to Indian tribes and tribal organizations for—

''(1) projects for the prevention, control, and elimination of communicable and infectious diseases, including tuberculosis, hepatitis, HIV, respiratory syncitial virus, hanta virus, sexually transmitted diseases, and H. Pylori, which projects may include screening, testing and treatment for HCV and other infectious and communicable diseases;

''(2) public information and education programs for the prevention, control, and elimination of communicable and infectious diseases;

''(3) education, training, and clinical skills improvement activities in the prevention, control, and elimination of communicable and infectious diseases for health professionals, including allied health professionals; and

''(4) a demonstration project that studies the seroprevalence of the Hepatitis C virus among a random sample of American Indian and Alaskan Native populations and identifies prevalence rates among a variety of tribes and geographic regions.

''(b) REQUIREMENT OF APPLICATION.—The Secretary may provide funds under subsection (a) only if an application or proposal for such funds is submitted.

''(c) TECHNICAL ASSISTANCE AND REPORT.—In carrying out this section, the Secretary—

''(1) may, at the request of an Indian tribe or tribal organization, provide technical assistance; and

''(2) shall prepare and submit, biennially, a report to Congress on the use of funds under this section and on the progress made toward the prevention, control, and elimination of communicable and infectious diseases among Indians and urban Indians.

**''SEC. 213. AUTHORITY FOR PROVISION OF OTHER SERVICES.**

''(a) IN GENERAL.—The Secretary, acting through the Service, Indian tribes, and tribal organizations, may provide funding under this Act to meet the objective set forth in section 3 through health care related services and programs not otherwise described in this Act. Such services and programs shall include services and programs related to—

''(1) hospice care and assisted living;

''(2) long-term health care;

''(3) home- and community-based services;

''(4) public health functions; and

''(5) traditional health care practices.

''(b) AVAILABILITY OF SERVICES FOR CERTAIN INDIVIDUALS.—At the discretion of the Service, Indian tribe, or tribal organization, services hospice care, home health care (under section 201), home- and community-based care, assisted living, and long term care may be provided (on a cost basis) to individuals otherwise ineligible for the health care benefits of the Service. Any funds received under this subsection shall not be used to offset or limit the funding allocated to a tribe or tribal organization.

''(c) DEFINITIONS.—In this section:

''(1) HOME- AND COMMUNITY-BASED SERVICES.—The term 'home- and community-based services' means 1 or more of the following:

''(A) Homemaker/home health aide services.

''(B) Chore services.

''(C) Personal care services.

''(D) Nursing care services provided outside of a nursing facility by, or under the supervision of, a registered nurse.

''(E) Training for family members.

''(F) Adult day care.

''(G) Such other home- and community-based services as the Secretary or a tribe or tribal organization may approve.

''(2) HOSPICE CARE.—The term 'hospice care' means the items and services specified in subparagraphs (A) through (H) of section 1861(dd)(1) of the Social Security Act (42 U.S.C. 1395x(dd)(1)), and such other services which an Indian tribe or tribal organization determines are necessary and appropriate to provide in furtherance of such care.

''(3) PUBLIC HEALTH FUNCTIONS.—The term 'public health functions' means public health related programs, functions, and services including assessments, assurances, and policy development that Indian tribes and tribal organizations are authorized and encouraged, in those circumstances where it meets their needs, to carry out by forming collaborative relationships with all levels of local, State, and Federal governments.

**''SEC. 214. INDIAN WOMEN'S HEALTH CARE.**

''The Secretary acting through the Service, Indian tribes, tribal organizations, and urban Indian organizations shall provide funding to monitor and improve the quality of health care for Indian women of all ages through the planning and delivery of programs administered by the Service, in order to improve and enhance the treatment models of care for Indian women.

**''SEC. 215. ENVIRONMENTAL AND NUCLEAR HEALTH HAZARDS.**

''(a) STUDY AND MONITORING PROGRAMS.—The Secretary and the Service shall, in conjunction with other appropriate Federal agencies and in consultation with concerned Indian tribes and tribal organizations, conduct a study and carry out ongoing monitoring programs to determine the trends that exist in the health hazards posed to Indian miners and to Indians on or near Indian reservations and in Indian communities as a result of environmental hazards that may result in chronic or life-threatening health problems. Such hazards include nuclear resource development, petroleum contamination, and contamination of the water source or of the food chain. Such study (and any reports with respect to such study) shall include—

''(1) an evaluation of the nature and extent of health problems caused by environmental hazards currently exhibited among Indians and the causes of such health problems;

''(2) an analysis of the potential effect of ongoing and future environmental resource development on or near Indian reservations and communities including the cumulative effect of such development over time on health;

''(3) an evaluation of the types and nature of activities, practices, and conditions causing or affecting such health problems including uranium mining and milling, uranium mine tailing deposits, nuclear power plant operation and construction, and nuclear waste disposal, oil and gas production or transportation on or near Indian reservations or communities, and other development that could affect the health of Indians and their water supply and food chain;

''(4) a summary of any findings or recommendations provided in Federal and State studies, reports, investigations, and inspections during the 5 years prior to the date of the enactment of this Act that directly or indirectly relate to the activities, practices, and conditions affecting the health or safety of such Indians; and

''(5) a description of the efforts that have been made by Federal and State agencies and resource and economic development companies to effectively carry out an education program for such Indians regarding the health and safety hazards of such development.

''(b) DEVELOPMENT OF HEALTH CARE PLANS.—Upon the completion of the study under subsection (a), the Secretary and the Service shall take into account the results of such study and, in consultation with Indian tribes and tribal organizations, develop a health care plan to address the health problems that were the subject of such study. The plans shall include—

''(1) methods for diagnosing and treating Indians currently exhibiting such health problems;

''(2) preventive care and testing for Indians who may be exposed to such health hazards, including the monitoring of the health of individuals who have or may have been exposed to excessive amounts of radiation, or affected by other activities that have had or could have a serious impact upon the health of such individuals; and

''(3) a program of education for Indians who, by reason of their work or geographic proximity to such nuclear or other development activities, may experience health problems.

''(c) SUBMISSION TO CONGRESS.—

''(1) GENERAL REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary and the Service shall submit to Congress a report concerning the study conducted under subsection (a).

''(2) HEALTH CARE PLAN REPORT.—Not later than 1 year after the date on which the report under paragraph (1) is submitted to Congress, the Secretary and the Service shall submit to Congress the health care plan prepared under subsection (b). Such plan shall include recommended activities for the implementation of the plan, as well as an evaluation of any activities previously undertaken by the Service to address the health problems involved.

''(d) TASK FORCE.—

''(1) ESTABLISHED.—There is hereby established an Intergovernmental Task Force (referred to in this section as the 'task force') that shall be composed of the following individuals (or their designees):

''(A) The Secretary of Energy.

''(B) The Administrator of the Environmental Protection Agency.

''(C) The Director of the Bureau of Mines.

''(D) The Assistant Secretary for Occupational Safety and Health.

''(E) The Secretary of the Interior.

''(2) DUTIES.—The Task Force shall identify existing and potential operations related to nuclear resource development or other environmental hazards that affect or may affect the health of Indians on or near an Indian reservation or in an Indian community, and enter into activities to correct existing health hazards and ensure that current and future health problems resulting from nuclear resource or other development activities are minimized or reduced.

''(3) ADMINISTRATIVE PROVISIONS.—The Secretary shall serve as the chairperson of the Task Force. The Task Force shall meet at least twice each year. Each member of the Task Force shall furnish necessary assistance to the Task Force.

''(e) PROVISION OF APPROPRIATE MEDICAL CARE.—In the case of any Indian who—

''(1) as a result of employment in or near a uranium mine or mill or near any other environmental hazard, suffers from a work related illness or condition;

''(2) is eligible to receive diagnosis and treatment services from a Service facility; and

''(3) by reason of such Indian's employment, is entitled to medical care at the expense of such mine or mill operator or entity responsible for the environmental hazard;

the Service shall, at the request of such Indian, render appropriate medical care to such Indian for such illness or condition and may recover the costs of any medical care so rendered to which such Indian is entitled at the expense of such operator or entity from such operator or entity. Nothing in this subsection shall affect the rights of such Indian to recover damages other than such costs paid to the Service from the employer for such illness or condition.

**''SEC. 216. ARIZONA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.**

''(a) IN GENERAL.—For fiscal years beginning with the fiscal year ending September 30, 1983, and ending with the fiscal year ending September 30, 2013, the State of Arizona shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health care services to members of federally recognized Indian Tribes of Arizona.

''(b) LIMITATION.—The Service shall not curtail any health care services provided to Indians residing on Federal reservations in the State of Arizona if such curtailment is due to the provision of contract services in such State pursuant to the designation of such State as a contract health service delivery area pursuant to subsection (a).

**''SEC. 216A. NORTH DAKOTA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.**

''(a) IN GENERAL.—For fiscal years beginning with the fiscal year ending September 30, 2001, and ending with the fiscal year ending September 30, 2013, the State of North Dakota shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health care services to members of federally recognized Indian Tribes of North Dakota.

''(b) LIMITATION.—The Service shall not curtail any health care services provided to Indians residing on Federal reservations in the State of North Dakota if such curtailment is due to the provision of contract services in such State pursuant to the designation of such State as a contract health service delivery area pursuant to subsection (a).

**''SEC. 216B. SOUTH DAKOTA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.**

''(a) IN GENERAL.—For fiscal years beginning with the fiscal year ending September 30, 2001, and ending with the fiscal year ending September 30, 2013, the State of South Dakota shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health care services to members of federally recognized Indian Tribes of South Dakota.

''(b) LIMITATION.—The Service shall not curtail any health care services provided to Indians residing on Federal reservations in the State of South Dakota if such curtailment is due to the provision of contract services in such State pursuant to the designation of such State as a contract health service delivery area pursuant to subsection (a).

**''SEC. 217. CALIFORNIA CONTRACT HEALTH SERVICES DEMONSTRATION PROGRAM.**

''(a) IN GENERAL.—The Secretary may fund a program that utilizes the California Rural Indian Health Board as a contract care intermediary to improve the accessibility of health services to California Indians.

''(b) REIMBURSEMENT OF BOARD.—

''(1) AGREEMENT.—The Secretary shall enter into an agreement with the California Rural Indian Health Board to reimburse the Board for costs (including reasonable administrative costs) incurred pursuant to this section in providing medical treatment under contract to California Indians described in section 809(b) throughout the California contract health services delivery area described in section 218 with respect to high-cost contract care cases.

''(2) ADMINISTRATION.—Not more than 5 percent of the amounts provided to the Board under this section for any fiscal year may be used for reimbursement for administrative expenses incurred by the Board during such fiscal year.

''(3) LIMITATION.—No payment may be made for treatment provided under this section to the extent that payment may be made for such treatment under the Catastrophic Health Emergency Fund described in section 202 or from amounts appropriated or otherwise made available to the California contract health service delivery area for a fiscal year.

''(c) ADVISORY BOARD.—There is hereby established an advisory board that shall advise the California Rural Indian Health Board in carrying out this section. The advisory board shall be composed of representatives, selected by the California Rural Indian Health Board, from not less than 8 tribal health programs serving California Indians covered under this section, at least 50 percent of whom are not affiliated with the California Rural Indian Health Board.

**''SEC. 218. CALIFORNIA AS A CONTRACT HEALTH SERVICE DELIVERY AREA.**

''The State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura shall be designated as a contract health service delivery area by the Service for the purpose of providing contract health services to Indians in such State, except that any of the counties described in this section may be included in the contract health services delivery area if funding is specifically provided by the Service for such services in those counties.

**''SEC. 219. CONTRACT HEALTH SERVICES FOR THE TRENTON SERVICE AREA.**

''(a) IN GENERAL.—The Secretary, acting through the Service, shall provide contract health services to members of the Turtle Mountain Band of Chippewa Indians that reside in the Trenton Service Area of Divide, McKenzie, and Williams counties in the State of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the State of Montana.

''(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as expanding the eligibility of members of the Turtle Mountain Band of Chippewa Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.

**''SEC. 220. PROGRAMS OPERATED BY INDIAN TRIBES AND TRIBAL ORGANIZATIONS.**

''The Service shall provide funds for health care programs and facilities operated by Indian tribes and tribal organizations under funding agreements with the Service entered into under the Indian Self-Determination and Education Assistance Act on the same basis as such funds are provided to programs and facilities operated directly by the Service.

**''SEC. 221. LICENSING.**

''Health care professionals employed by Indian Tribes and tribal organizations to carry out agreements under the Indian Self-Determination and Education Assistance Act, shall, if licensed in any State, be exempt from the licensing requirements of the State in which the agreement is performed.

**''SEC. 222. AUTHORIZATION FOR EMERGENCY CONTRACT HEALTH SERVICES.**

''With respect to an elderly Indian or an Indian with a disability receiving emergency medical care or services from a non-Service provider or in a non-Service facility under the authority of this Act, the time limitation (as a condition of payment) for notifying the Service of such treatment or admission shall be 30 days.

**''SEC. 223. PROMPT ACTION ON PAYMENT OF CLAIMS.**

''(a) REQUIREMENT.—The Service shall respond to a notification of a claim by a provider of a contract care service with either an individual purchase order or a denial of the claim within 5 working days after the receipt of such notification.

''(b) FAILURE TO RESPOND.—If the Service fails to respond to a notification of a claim in accordance with subsection (a), the Service shall accept as valid the claim submitted by the provider of a contract care service.

''(c) PAYMENT.—The Service shall pay a valid contract care service claim within 30 days after the completion of the claim.

**''SEC. 224. LIABILITY FOR PAYMENT.**

''(a) NO LIABILITY.—A patient who receives contract health care services that are authorized by the Service shall not be liable for the payment of any charges or costs associated with the provision of such services.

''(b) NOTIFICATION.—The Secretary shall notify a contract care provider and any patient who receives contract health care services authorized by the Service that such patient is not liable for the payment of any charges or costs associated with the provision of such services.

''(c) LIMITATION.—Following receipt of the notice provided under subsection (b), or, if a claim has been deemed accepted under section 223(b), the provider shall have no further recourse against the patient who received the services involved.

**''SEC. 225. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2013 to carry out this title.

## ''TITLE III—FACILITIES

**''SEC. 301. CONSULTATION, CONSTRUCTION AND RENOVATION OF FACILITIES; REPORTS.**

''(a) CONSULTATION.—Prior to the expenditure of, or the making of any firm commitment to expend, any funds appropriated for the planning, design, construction, or renovation of facilities pursuant to the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the Snyder Act), the Secretary, acting through the Service, shall—

''(1) consult with any Indian tribe that would be significantly affected by such expenditure for the purpose of determining and, whenever practicable, honoring tribal preferences concerning size, location, type, and other characteristics of any facility on which such expenditure is to be made; and

''(2) ensure, whenever practicable, that such facility meets the construction standards of any nationally recognized accrediting body by not later than 1 year after the date on which the construction or renovation of such facility is completed.

''(b) CLOSURE OF FACILITIES.—

''(1) IN GENERAL.—Notwithstanding any provision of law other than this subsection, no Service hospital or outpatient health care facility or any inpatient service or special care facility operated by the Service, may be closed if the Secretary has not submitted to the Congress at least 1 year prior to the date such proposed closure an evaluation of the impact of such proposed closure which specifies, in addition to other considerations—

''(A) the accessibility of alternative health care resources for the population served by such hospital or facility;

''(B) the cost effectiveness of such closure;

''(C) the quality of health care to be provided to the population served by such hospital or facility after such closure;

''(D) the availability of contract health care funds to maintain existing levels of service;

''(E) the views of the Indian tribes served by such hospital or facility concerning such closure;

''(F) the level of utilization of such hospital or facility by all eligible Indians; and

''(G) the distance between such hospital or facility and the nearest operating Service hospital.

''(2) TEMPORARY CLOSURE.—Paragraph (1) shall not apply to any temporary closure of a facility or of any portion of a facility if such closure is necessary for medical, environmental, or safety reasons.

''(c) PRIORITY SYSTEM.—

''(1) ESTABLISHMENT.—The Secretary shall establish a health care facility priority system, that shall—

''(A) be developed with Indian tribes and tribal organizations through negotiated rulemaking under section 802;

''(B) give the needs of Indian tribes' the highest priority, with additional priority being given to those service areas where the health status of Indians within the area, as measured by life expectancy based upon the most recent data available, is significantly lower than the average health status for Indians in all service areas; and

''(C) at a minimum, include the lists required in paragraph (2)(B) and the methodology required in paragraph (2)(E);

except that the priority of any project established under the construction priority system in effect on the date of this Act shall not be affected by any change in the construction priority system taking place thereafter if the project was identified as one of the top 10 priority inpatient projects or one of the top 10 outpatient projects in the Indian Health Service budget justification for fiscal year 2001, or if the project had completed both Phase I and Phase II of the construction priority system in effect on the date of this Act.

''(2) REPORT.—The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report that includes—

''(A) a description of the health care facility priority system of the Service, as established under paragraph (1);

''(B) health care facility lists, including—

''(i) the total health care facility planning, design, construction and renovation needs for Indians;

''(ii) the 10 top-priority inpatient care facilities;

''(iii) the 10 top-priority outpatient care facilities;

''(iv) the 10 top-priority specialized care facilities (such as long-term care and alcohol and drug abuse treatment); and

''(v) any staff quarters associated with such prioritized facilities;

''(C) the justification for the order of priority among facilities;

''(D) the projected cost of the projects involved; and

''(E) the methodology adopted by the Service in establishing priorities under its health care facility priority system.

''(3) CONSULTATION.—In preparing each report required under paragraph (2) (other than the initial report) the Secretary shall annually—

''(A) consult with, and obtain information on all health care facilities needs from, Indian tribes and tribal organizations including those tribes or tribal organizations operating health programs or facilities under any funding agreement entered into with the Service under the Indian Self-Determination and Education Assistance Act; and

''(B) review the total unmet needs of all tribes and tribal organizations for health care facilities (including staff quarters), including needs for renovation and expansion of existing facilities.

''(4) CRITERIA.—For purposes of this subsection, the Secretary shall, in evaluating the needs of facilities operated under any funding agreement entered into with the Service under the Indian Self-Determination and Education Assistance Act, use the same criteria that the Secretary uses in evaluating the needs of facilities operated directly by the Service.

''(5) EQUITABLE INTEGRATION.—The Secretary shall ensure that the planning, design, construction, and renovation needs of Service and non-Service facilities, operated under funding agreements in accordance with the Indian Self-Determination and Education Assistance Act are fully and equitably integrated into the health care facility priority system.

''(d) REVIEW OF NEED FOR FACILITIES.—

''(1) REPORT.—Beginning in 2002, the Secretary shall annually submit to the President, for inclusion in the report required to be transmitted to Congress under section 801 of this Act, a report which sets forth the needs of the Service and all Indian tribes and tribal organizations, including urban Indian organizations, for inpatient, outpatient and specialized care facilities, including the needs for renovation and expansion of existing facilities.

''(2) CONSULTATION.—In preparing each report required under paragraph (1) (other than the initial report), the Secretary shall consult with Indian tribes and tribal organizations including those tribes or tribal organizations operating health programs or facilities under any funding agreement entered into with the Service under the Indian Self-Determination and Education Assistance Act, and with urban Indian organizations.

''(3) CRITERIA.—For purposes of this subsection, the Secretary shall, in evaluating the needs of facilities operated under any funding agreement entered into with the Service under the Indian Self-Determination and Education Assistance Act, use the same criteria that the Secretary uses in evaluating the needs of facilities operated directly by the Service.

''(4) EQUITABLE INTEGRATION.—The Secretary shall ensure that the planning, design, construction, and renovation needs of facilities operated under funding agreements, in accordance with the Indian Self-Determination and Education Assistance Act, are fully and equitably integrated into the development of the health facility priority system.

''(5) ANNUAL NOMINATIONS.—Each year the Secretary shall provide an opportunity for the nomination of planning, design, and construction projects by the Service and all Indian tribes and tribal organizations for consideration under the health care facility priority system.

''(e) INCLUSION OF CERTAIN PROGRAMS.—All funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13), for the planning, design, construction, or renovation of health facilities for the benefit of an Indian tribe or tribes shall be subject to the provisions of section 102 of the Indian Self-Determination and Education Assistance Act.

''(f) INNOVATIVE APPROACHES.—The Secretary shall consult and cooperate with Indian tribes, tribal organizations and urban Indian organizations in developing innovative approaches to address all or part of the total unmet need for construction of health facilities, including those provided for in other sections of this title and other approaches.

**"SEC. 302. SAFE WATER AND SANITARY WASTE DISPOSAL FACILITIES.**

''(a) FINDINGS.—Congress finds and declares that—

''(1) the provision of safe water supply facilities and sanitary sewage and solid waste disposal facilities is primarily a health consideration and function;

''(2) Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence or inadequacy of such facilities;

''(3) the long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such facilities and other preventive health measures;

''(4) many Indian homes and communities still lack safe water supply facilities and sanitary sewage and solid waste disposal facilities; and

''(5) it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply facilities and sanitary sewage waste disposal facilities as soon as possible.

''(b) PROVISION OF FACILITIES AND SERVICES.—

''(1) IN GENERAL.—In furtherance of the findings and declarations made in subsection (a), Congress reaffirms the primary responsibility and authority of the Service to provide the necessary sanitation facilities and services as provided in section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a).

''(2) ASSISTANCE.—The Secretary, acting through the Service, is authorized to provide under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a)—

''(A) financial and technical assistance to Indian tribes, tribal organizations and Indian communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities, including the provision of existing plans, standard details, and specifications available in the Department, to be used at the option of the tribe or tribal organization;

''(B) ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; and

''(C) priority funding for the operation, and maintenance assistance for, and emergency repairs to, tribal sanitation facilities when necessary to avoid an imminent health threat or to protect the investment in sanitation facilities and the investment in the health benefits gained through the provision of sanitation facilities.

''(3) PROVISIONS RELATING TO FUNDING.—Notwithstanding any other provision of law—

''(A) the Secretary of Housing and Urban Development is authorized to transfer funds appropriated under the Native American Housing Assistance and Self-Determination

Act of 1996 to the Secretary of Health and Human Services;

''(B) the Secretary of Health and Human Services is authorized to accept and use such funds for the purpose of providing sanitation facilities and services for Indians under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a);

''(C) unless specifically authorized when funds are appropriated, the Secretary of Health and Human Services shall not use funds appropriated under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a) to provide sanitation facilities to new homes constructed using funds provided by the Department of Housing and Urban Development;

''(D) the Secretary of Health and Human Services is authorized to accept all Federal funds that are available for the purpose of providing sanitation facilities and related services and place those funds into funding agreements, authorized under the Indian Self-Determination and Education Assistance Act, between the Secretary and Indian tribes and tribal organizations;

''(E) the Secretary may permit funds appropriated under the authority of section 4 of the Act of August 5, 1954 (42 U.S.C. 2004) to be used to fund up to 100 percent of the amount of a tribe's loan obtained under any Federal program for new projects to construct eligible sanitation facilities to serve Indian homes;

''(F) the Secretary may permit funds appropriated under the authority of section 4 of the Act of August 5, 1954 (42 U.S.C. 2004) to be used to meet matching or cost participation requirements under other Federal and non-Federal programs for new projects to construct eligible sanitation facilities;

''(G) all Federal agencies are authorized to transfer to the Secretary funds identified, granted, loaned or appropriated and thereafter the Department's applicable policies, rules, regulations shall apply in the implementation of such projects;

''(H) the Secretary of Health and Human Services shall enter into inter-agency agreements with the Bureau of Indian Affairs, the Department of Housing and Urban Development, the Department of Agriculture, the Environmental Protection Agency and other appropriate Federal agencies, for the purpose of providing financial assistance for safe water supply and sanitary sewage disposal facilities under this Act; and

''(I) the Secretary of Health and Human Services shall, by regulation developed through rulemaking under section 802, establish standards applicable to the planning, design and construction of water supply and sanitary sewage and solid waste disposal facilities funded under this Act.

''(c) 10-YEAR FUNDING PLAN.—The Secretary, acting through the Service and in consultation with Indian tribes and tribal organizations, shall develop and implement a 10-year funding plan to provide safe water supply and sanitary sewage and solid waste disposal facilities serving existing Indian homes and communities, and to new and renovated Indian homes.

''(d) CAPABILITY OF TRIBE OR COMMUNITY.—The financial and technical capability of an Indian tribe or community to safely operate and maintain a sanitation facility shall not be a prerequisite to the provision or construction of sanitation facilities by the Secretary.

''(e) FINANCIAL ASSISTANCE.—The Secretary may provide financial assistance to Indian tribes, tribal organizations and communities for the operation, management, and maintenance of their sanitation facilities.

''(f) RESPONSIBILITY FOR FEES FOR OPERATION AND MAINTENANCE.—The Indian family, community or tribe involved shall have the primary responsibility to establish, collect, and use reasonable user fees, or otherwise set aside funding, for the purpose of operating and maintaining sanitation facilities. If a community facility is threatened with imminent failure and there is a lack of tribal capacity to maintain the integrity or the health benefit of the facility, the Secretary may assist the Tribe in the resolution of the problem on a short term basis through cooperation with the emergency coordinator or by providing operation and maintenance service.

''(g) ELIGIBILITY OF CERTAIN TRIBES OR ORGANIZATIONS.—Programs administered by Indian tribes or tribal organizations under the authority of the Indian Self-Determination and Education Assistance Act shall be eligible for—

''(1) any funds appropriated pursuant to this section; and

''(2) any funds appropriated for the purpose of providing water supply, sewage disposal, or solid waste facilities;

on an equal basis with programs that are administered directly by the Service.

''(h) REPORT.—

''(1) IN GENERAL.—The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, a report which sets forth—

''(A) the current Indian sanitation facility priority system of the Service;

''(B) the methodology for determining sanitation deficiencies;

''(C) the level of initial and final sanitation deficiency for each type sanitation facility for each project of each Indian tribe or community; and

''(D) the amount of funds necessary to reduce the identified sanitation deficiency levels of all Indian tribes and communities to a level I sanitation deficiency as described in paragraph (4)(A).

''(2) CONSULTATION.—In preparing each report required under paragraph (1), the Secretary shall consult with Indian tribes and tribal organizations (including those tribes or tribal organizations operating health care programs or facilities under any funding agreements entered into with the Service under the Indian Self-Determination and Education Assistance Act) to determine the sanitation needs of each tribe and in developing the criteria on which the needs will be evaluated through a process of negotiated rulemaking.

''(3) METHODOLOGY.—The methodology used by the Secretary in determining, preparing cost estimates for and reporting sanitation deficiencies for purposes of paragraph (1) shall be applied uniformly to all Indian tribes and communities.

''(4) SANITATION DEFICIENCY LEVELS.—For purposes of this subsection, the sanitation deficiency levels for an individual or community sanitation facility serving Indian homes are as follows:

''(A) A level I deficiency is a sanitation facility serving and individual or community—

''(i) which complies with all applicable water supply, pollution control and solid waste disposal laws; and

''(ii) in which the deficiencies relate to routine replacement, repair, or maintenance needs.

''(B) A level II deficiency is a sanitation facility serving and individual or community—

''(i) which substantially or recently complied with all applicable water supply, pollution control and solid waste laws, in which the deficiencies relate to small or minor capital improvements needed to bring the facility back into compliance;

''(ii) in which the deficiencies relate to capital improvements that are necessary to enlarge or improve the facilities in order to meet the current needs for domestic sanitation facilities; or

''(iii) in which the deficiencies relate to the lack of equipment or training by an Indian Tribe or community to properly operate and maintain the sanitation facilities.

''(C) A level III deficiency is an individual or community facility with water or sewer service in the home, piped services or a haul system with holding tanks and interior plumbing, or where major significant interruptions to water supply or sewage disposal occur frequently, requiring major capital improvements to correct the deficiencies. There is no access to or no approved or permitted solid waste facility available.

''(D) A level IV deficiency is an individual or community facility where there are no piped water or sewer facilities in the home or the facility has become inoperable due to major component failure or where only a washeteria or central facility exists.

''(E) A level V deficiency is the absence of a sanitation facility, where individual homes do not have access to safe drinking water or adequate wastewater disposal.

''(i) DEFINITIONS.—In this section:

''(1) FACILITY.—The terms 'facility' or 'facilities' shall have the same meaning as the terms 'system' or 'systems' unless the context requires otherwise.

''(2) INDIAN COMMUNITY.—The term 'Indian community' means a geographic area, a significant proportion of whose inhabitants are Indians and which is served by or capable of being served by a facility described in this section.

**"SEC. 303. PREFERENCE TO INDIANS AND INDIAN FIRMS.**

''(a) IN GENERAL.—The Secretary, acting through the Service, may utilize the negotiating authority of the Act of June 25, 1910 (25 U.S.C. 47), to give preference to any Indian or any enterprise, partnership, corporation, or other type of business organization owned and controlled by an Indian or Indians including former or currently federally recognized Indian tribes in the State of New York (hereinafter referred to as an 'Indian firm') in the construction and renovation of Service facilities pursuant to section 301 and in the construction of safe water and sanitary waste disposal facilities pursuant to section 302. Such preference may be accorded by the Secretary unless the Secretary finds, pursuant to rules and regulations promulgated by the Secretary, that the project or function to be contracted for will not be satisfactory or such project or function cannot be properly completed or maintained under the proposed contract. The Secretary, in arriving at such finding, shall consider whether the Indian or Indian firm will be deficient with respect to—

''(1) ownership and control by Indians;

''(2) equipment;

''(3) bookkeeping and accounting procedures;

''(4) substantive knowledge of the project or function to be contracted for;

''(5) adequately trained personnel; or

''(6) other necessary components of contract performance.

''(b) EXEMPTION FROM DAVIS-BACON.—For the purpose of implementing the provisions of this title, construction or renovation of facilities constructed or renovated in whole or in part by funds made available pursuant to this title are exempt from the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act). For all health facilities, staff quarters and sanitation facilities, construction and renovation subcontractors shall be paid wages at rates that are not less than the prevailing wage rates for similar construction in the locality involved, as determined by the Indian tribe,

Tribes, or tribal organizations served by such facilities.

**"SEC. 304. SOBOBA SANITATION FACILITIES.**

''Nothing in the Act of December 17, 1970 (84 Stat. 1465) shall be construed to preclude the Soboba Band of Mission Indians and the Soboba Indian Reservation from being provided with sanitation facilities and services under the authority of section 7 of the Act of August 5, 1954 (68 Stat 674), as amended by the Act of July 31, 1959 (73 Stat. 267).

**"SEC. 305. EXPENDITURE OF NONSERVICE FUNDS FOR RENOVATION.**

''(a) PERMISSIBILITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary is authorized to accept any major expansion, renovation or modernization by any Indian tribe of any Service facility, or of any other Indian health facility operated pursuant to a funding agreement entered into under the Indian Self-Determination and Education Assistance Act, including—

''(A) any plans or designs for such expansion, renovation or modernization; and

''(B) any expansion, renovation or modernization for which funds appropriated under any Federal law were lawfully expended;

but only if the requirements of subsection (b) are met.

''(2) PRIORITY LIST.—The Secretary shall maintain a separate priority list to address the need for increased operating expenses, personnel or equipment for such facilities described in paragraph (1). The methodology for establishing priorities shall be developed by negotiated rulemaking under section 802. The list of priority facilities will be revised annually in consultation with Indian tribes and tribal organizations.

''(3) REPORT.—The Secretary shall submit to the President, for inclusion in each report required to be transmitted to the Congress under section 801, the priority list maintained pursuant to paragraph (2).

''(b) REQUIREMENTS.—The requirements of this subsection are met with respect to any expansion, renovation or modernization if—

''(1) the tribe or tribal organization—

''(A) provides notice to the Secretary of its intent to expand, renovate or modernize; and

''(B) applies to the Secretary to be placed on a separate priority list to address the needs of such new facilities for increased operating expenses, personnel or equipment; and

''(2) the expansion renovation or modernization—

''(A) is approved by the appropriate area director of the Service for Federal facilities; and

''(B) is administered by the Indian tribe or tribal organization in accordance with any applicable regulations prescribed by the Secretary with respect to construction or renovation of Service facilities.

''(c) RIGHT OF TRIBE IN CASE OF FAILURE OF FACILITY TO BE USED AS A SERVICE FACILITY.—If any Service facility which has been expanded, renovated or modernized by an Indian tribe under this section ceases to be used as a Service facility during the 20-year period beginning on the date such expansion, renovation or modernization is completed, such Indian tribe shall be entitled to recover from the United States an amount which bears the same ratio to the value of such facility at the time of such cessation as the value of such expansion, renovation or modernization (less the total amount of any funds provided specifically for such facility under any Federal program that were expended for such expansion, renovation or modernization) bore to the value of such facility at the time of the completion of such expansion, renovation or modernization.

**"SEC. 306. FUNDING FOR THE CONSTRUCTION, EXPANSION, AND MODERNIZATION OF SMALL AMBULATORY CARE FACILITIES.**

''(a) AVAILABILITY OF FUNDING.—

''(1) IN GENERAL.—The Secretary, acting through the Service and in consultation with Indian tribes and tribal organization, shall make funding available to tribes and tribal organizations for the construction, expansion, or modernization of facilities for the provision of ambulatory care services to eligible Indians (and noneligible persons as provided for in subsections (b)(2) and (c)(1)(C)). Funding under this section may cover up to 100 percent of the costs of such construction, expansion, or modernization. For the purposes of this section, the term 'construction' includes the replacement of an existing facility.

''(2) REQUIREMENT.—Funding under paragraph (1) may only be made available to an Indian tribe or tribal organization operating an Indian health facility (other than a facility owned or constructed by the Service, including a facility originally owned or constructed by the Service and transferred to an Indian tribe or tribal organization) pursuant to a funding agreement entered into under the Indian Self-Determination and Education Assistance Act.

''(b) USE OF FUNDS.—

''(1) IN GENERAL.—Funds provided under this section may be used only for the construction, expansion, or modernization (including the planning and design of such construction, expansion, or modernization) of an ambulatory care facility—

''(A) located apart from a hospital;

''(B) not funded under section 301 or section 307; and

''(C) which, upon completion of such construction, expansion, or modernization will—

''(i) have a total capacity appropriate to its projected service population;

''(ii) provide annually not less than 500 patient visits by eligible Indians and other users who are eligible for services in such facility in accordance with section 807(b)(1)(B); and

''(iii) provide ambulatory care in a service area (specified in the funding agreement entered into under the Indian Self-Determination and Education Assistance Act) with a population of not less than 1,500 eligible Indians and other users who are eligible for services in such facility in accordance with section 807(b)(1)(B).

''(2) LIMITATION.—Funding provided under this section may be used only for the cost of that portion of a construction, expansion or modernization project that benefits the service population described in clauses (ii) and (iii) of paragraph (1)(C). The requirements of such clauses (ii) and (iii) shall not apply to a tribe or tribal organization applying for funding under this section whose principal office for health care administration is located on an island or where such office is not located on a road system providing direct access to an inpatient hospital where care is available to the service population.

''(c) APPLICATION AND PRIORITY.—

''(1) APPLICATION.—No funding may be made available under this section unless an application for such funding has been submitted to and approved by the Secretary. An application or proposal for funding under this section shall be submitted in accordance with applicable regulations and shall set forth reasonable assurance by the applicant that, at all times after the construction, expansion, or modernization of a facility carried out pursuant to funding received under this section—

''(A) adequate financial support will be available for the provision of services at such facility;

''(B) such facility will be available to eligible Indians without regard to ability to pay or source of payment; and

''(C) such facility will, as feasible without diminishing the quality or quantity of services provided to eligible Indians, serve noneligible persons on a cost basis.

''(2) PRIORITY.—In awarding funds under this section, the Secretary shall give priority to tribes and tribal organizations that demonstrate—

''A) a need for increased ambulatory care services; and

''(B) insufficient capacity to deliver such services.

''(d) FAILURE TO USE FACILITY AS HEALTH FACILITY.—If any facility (or portion thereof) with respect to which funds have been paid under this section, ceases, within 5 years after completion of the construction, expansion, or modernization carried out with such funds, to be utilized for the purposes of providing health care services to eligible Indians, all of the right, title, and interest in and to such facility (or portion thereof) shall transfer to the United States unless otherwise negotiated by the Service and the Indian tribe or tribal organization.

''(e) NO INCLUSION IN TRIBAL SHARE.—Funding provided to Indian tribes and tribal organizations under this section shall be non-recurring and shall not be available for inclusion in any individual tribe's tribal share for an award under the Indian Self-Determination and Education Assistance Act or for reallocation or redesign thereunder.

**"SEC. 307. INDIAN HEALTH CARE DELIVERY DEMONSTRATION PROJECT.**

''(a) HEALTH CARE DELIVERY DEMONSTRATION PROJECTS.—The Secretary, acting through the Service and in consultation with Indian tribes and tribal organizations, may enter into funding agreements with, or make grants or loan guarantees to, Indian tribes or tribal organizations for the purpose of carrying out a health care delivery demonstration project to test alternative means of delivering health care and services through health facilities, including hospice, traditional Indian health and child care facilities, to Indians.

''(b) USE OF FUNDS.—The Secretary, in approving projects pursuant to this section, may authorize funding for the construction and renovation of hospitals, health centers, health stations, and other facilities to deliver health care services and is authorized to—

''(1) waive any leasing prohibition;

''(2) permit carryover of funds appropriated for the provision of health care services;

''(3) permit the use of other available funds;

''(4) permit the use of funds or property donated from any source for project purposes;

''(5) provide for the reversion of donated real or personal property to the donor; and

''(6) permit the use of Service funds to match other funds, including Federal funds.

''(c) CRITERIA.—

''(1) IN GENERAL.—The Secretary shall develop and publish regulations through rulemaking under section 802 for the review and approval of applications submitted under this section. The Secretary may enter into a contract, funding agreement or award a grant under this section for projects which meet the following criteria:

''(A) There is a need for a new facility or program or the reorientation of an existing facility or program.

''(B) A significant number of Indians, including those with low health status, will be served by the project.

''(C) The project has the potential to address the health needs of Indians in an innovative manner.

''(D) The project has the potential to deliver services in an efficient and effective manner.

''(E) The project is economically viable.

''(F) The Indian tribe or tribal organization has the administrative and financial capability to administer the project.

''(G) The project is integrated with providers of related health and social services and is coordinated with, and avoids duplication of, existing services.

''(2) PEER REVIEW PANELS.—The Secretary may provide for the establishment of peer review panels, as necessary, to review and evaluate applications and to advise the Secretary regarding such applications using the criteria developed pursuant to paragraph (1).

''(3) PRIORITY.—The Secretary shall give priority to applications for demonstration projects under this section in each of the following service units to the extent that such applications are filed in a timely manner and otherwise meet the criteria specified in paragraph (1):

''(A) Cass Lake, Minnesota.

''(B) Clinton, Oklahoma.

''(C) Harlem, Montana.

''(D) Mescalero, New Mexico.

''(E) Owyhee, Nevada.

''(F) Parker, Arizona.

''(G) Schurz, Nevada.

''(H) Winnebago, Nebraska.

''(I) Ft. Yuma, California

''(d) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical and other assistance as may be necessary to enable applicants to comply with the provisions of this section.

''(e) SERVICE TO INELIGIBLE PERSONS.—The authority to provide services to persons otherwise ineligible for the health care benefits of the Service and the authority to extend hospital privileges in Service facilities to non-Service health care practitioners as provided in section 807 may be included, subject to the terms of such section, in any demonstration project approved pursuant to this section.

''(f) EQUITABLE TREATMENT.—For purposes of subsection (c)(1)(A), the Secretary shall, in evaluating facilities operated under any funding agreement entered into with the Service under the Indian Self-Determination and Education Assistance Act, use the same criteria that the Secretary uses in evaluating facilities operated directly by the Service.

''(g) EQUITABLE INTEGRATION OF FACILITIES.—The Secretary shall ensure that the planning, design, construction, renovation and expansion needs of Service and non-Service facilities which are the subject of a funding agreement for health services entered into with the Service under the Indian Self-Determination and Education Assistance Act, are fully and equitably integrated into the implementation of the health care delivery demonstration projects under this section.

**''SEC. 308. LAND TRANSFER.**

''(a) GENERAL AUTHORITY FOR TRANSFERS.—Notwithstanding any other provision of law, the Bureau of Indian Affairs and all other agencies and departments of the United States are authorized to transfer, at no cost, land and improvements to the Service for the provision of health care services. The Secretary is authorized to accept such land and improvements for such purposes.

''(b) CHEMAWA INDIAN SCHOOL.—The Bureau of Indian Affairs is authorized to transfer, at no cost, up to 5 acres of land at the Chemawa Indian School, Salem, Oregon, to the Service for the provision of health care services. The land authorized to be transferred by this section is that land adjacent to land under the jurisdiction of the Service and occupied by the Chemawa Indian Health Center.

**''SEC. 309. LEASES.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary is authorized, in carrying out the purposes of this Act, to enter into leases with Indian tribes and tribal organizations for periods not in excess of 20 years. Property leased by the Secretary from an Indian tribe or tribal organization may be reconstructed or renovated by the Secretary pursuant to an agreement with such Indian tribe or tribal organization.

''(b) FACILITIES FOR THE ADMINISTRATION AND DELIVERY OF HEALTH SERVICES.—The Secretary may enter into leases, contracts, and other legal agreements with Indian tribes or tribal organizations which hold—

''(1) title to;

''(2) a leasehold interest in; or

''(3) a beneficial interest in (where title is held by the United States in trust for the benefit of a tribe);

facilities used for the administration and delivery of health services by the Service or by programs operated by Indian tribes or tribal organizations to compensate such Indian tribes or tribal organizations for costs associated with the use of such facilities for such purposes, and such leases shall be considered as operating leases for the purposes of scoring under the Budget Enforcement Act, notwithstanding any other provision of law. Such costs include rent, depreciation based on the useful life of the building, principal and interest paid or accrued, operation and maintenance expenses, and other expenses determined by regulation to be allowable pursuant to regulations under section 105(1) of the Indian Self-Determination and Education Assistance Act.

**''SEC. 310. LOANS, LOAN GUARANTEES AND LOAN REPAYMENT.**

''(a) HEALTH CARE FACILITIES LOAN FUND.—There is established in the Treasury of the United States a fund to be known as the 'Health Care Facilities Loan Fund' (referred to in this Act as the 'HCFLF') to provide to Indian Tribes and tribal organizations direct loans, or guarantees for loans, for the construction of health care facilities (including inpatient facilities, outpatient facilities, associated staff quarters and specialized care facilities such as behavioral health and elder care facilities).

''(b) STANDARDS AND PROCEDURES.—The Secretary may promulgate regulations, developed through rulemaking as provided for in section 802, to establish standards and procedures for governing loans and loan guarantees under this section, subject to the following conditions:

''(1) The principal amount of a loan or loan guarantee may cover up to 100 percent of eligible costs, including costs for the planning, design, financing, site land development, construction, rehabilitation, renovation, conversion, improvements, medical equipment and furnishings, other facility related costs and capital purchase (but excluding staffing).

''(2) The cumulative total of the principal of direct loans and loan guarantees, respectively, outstanding at any one time shall not exceed such limitations as may be specified in appropriation Acts.

''(3) In the discretion of the Secretary, the program under this section may be administered by the Service or the Health Resources and Services Administration (which shall be specified by regulation).

''(4) The Secretary may make or guarantee a loan with a term of the useful estimated life of the facility, or 25 years, whichever is less.

''(5) The Secretary may allocate up to 100 percent of the funds available for loans or loan guarantees in any year for the purpose of planning and applying for a loan or loan guarantee.

''(6) The Secretary may accept an assignment of the revenue of an Indian tribe or tribal organization as security for any direct loan or loan guarantee under this section.

''(7) In the planning and design of health facilities under this section, users eligible under section 807(b) may be included in any projection of patient population.

''(8) The Secretary shall not collect loan application, processing or other similar fees from Indian tribes or tribal organizations applying for direct loans or loan guarantees under this section.

''(9) Service funds authorized under loans or loan guarantees under this section may be used in matching other Federal funds.

''(c) FUNDING.—

''(1) IN GENERAL.—The HCFLF shall consist of—

''(A) such sums as may be initially appropriated to the HCFLF and as may be subsequently appropriated under paragraph (2);

''(B) such amounts as may be collected from borrowers; and

''(C) all interest earned on amounts in the HCFLF.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to initiate the HCFLF. For each fiscal year after the initial year in which funds are appropriated to the HCFLF, there is authorized to be appropriated an amount equal to the sum of the amount collected by the HCFLF during the preceding fiscal year, and all accrued interest on such amounts.

''(3) AVAILABILITY OF FUNDS.—Amounts appropriated, collected or earned relative to the HCFLF shall remain available until expended.

''(d) FUNDING AGREEMENTS.—Amounts in the HCFLF and available pursuant to appropriation Acts may be expended by the Secretary, acting through the Service, to make loans under this section to an Indian tribe or tribal organization pursuant to a funding agreement entered into under the Indian Self-Determination and Education Assistance Act.

''(e) INVESTMENTS.—The Secretary of the Treasury shall invest such amounts of the HCFLF as such Secretary determines are not required to meet current withdrawals from the HCFLF. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price. Any obligation acquired by the fund may be sold by the Secretary of the Treasury at the market price.

''(f) GRANTS.—The Secretary is authorized to establish a program to provide grants to Indian tribes and tribal organizations for the purpose of repaying all or part of any loan obtained by an Indian tribe or tribal organization for construction and renovation of health care facilities (including inpatient facilities, outpatient facilities, associated staff quarters and specialized care facilities). Loans eligible for such repayment grants shall include loans that have been obtained under this section or otherwise.

**''SEC. 311. TRIBAL LEASING.**

''Indian Tribes and tribal organizations providing health care services pursuant to a funding agreement contract entered into under the Indian Self-Determination and Education Assistance Act may lease permanent structures for the purpose of providing such health care services without obtaining advance approval in appropriation Acts.

**''SEC. 312. INDIAN HEALTH SERVICE/TRIBAL FACILITIES JOINT VENTURE PROGRAM.**

''(a) AUTHORITY.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall make arrangements with Indian tribes and tribal organizations to establish joint venture demonstration projects under which an Indian tribe or tribal organization shall expend tribal, private, or other available funds, for the acquisition or construction of a health facility for a minimum of 10 years, under a no-cost lease, in exchange for agreement by the Service to provide the equipment, supplies, and staffing for the operation and maintenance of such a health facility.

''(2) USE OF RESOURCES.—A tribe or tribal organization may utilize tribal funds, private sector, or other available resources, including loan guarantees, to fulfill its commitment under this subsection.

''(3) ELIGIBILITY OF CERTAIN ENTITIES.—A tribe that has begun and substantially completed the process of acquisition or construction of a health facility shall be eligible to establish a joint venture project with the Service using such health facility.

''(b) REQUIREMENTS.—

''(1) IN GENERAL.—The Secretary shall enter into an arrangement under subsection (a)(1) with an Indian tribe or tribal organization only if—

''(A) the Secretary first determines that the Indian tribe or tribal organization has the administrative and financial capabilities necessary to complete the timely acquisition or construction of the health facility described in subsection (a)(1); and

''(B) the Indian tribe or tribal organization meets the needs criteria that shall be developed through the negotiated rulemaking process provided for under section 802.

''(2) CONTINUED OPERATION OF FACILITY.—The Secretary shall negotiate an agreement with the Indian tribe or tribal organization regarding the continued operation of a facility under this section at the end of the initial 10 year no-cost lease period.

''(3) BREACH OR TERMINATION OF AGREEMENT.—An Indian tribe or tribal organization that has entered into a written agreement with the Secretary under this section, and that breaches or terminates without cause such agreement, shall be liable to the United States for the amount that has been paid to the tribe or tribal organization, or paid to a third party on the tribe's or tribal organization's behalf, under the agreement. The Secretary has the right to recover tangible property (including supplies), and equipment, less depreciation, and any funds expended for operations and maintenance under this section. The preceding sentence shall not apply to any funds expended for the delivery of health care services, or for personnel or staffing.

''(d) RECOVERY FOR NON-USE.—An Indian tribe or tribal organization that has entered into a written agreement with the Secretary under this section shall be entitled to recover from the United States an amount that is proportional to the value of such facility should at any time within 10 years the Service ceases to use the facility or otherwise breaches the agreement.

''(e) DEFINITION.—In this section, the terms 'health facility' or 'health facilities' include staff quarters needed to provide housing for the staff of the tribal health program.

**"SEC. 313. LOCATION OF FACILITIES.**

''(a) PRIORITY.—The Bureau of Indian Affairs and the Service shall, in all matters involving the reorganization or development of Service facilities, or in the establishment of related employment projects to address unemployment conditions in economically depressed areas, give priority to locating such facilities and projects on Indian lands if requested by the Indian owner and the Indian tribe with jurisdiction over such lands or other lands owned or leased by the Indian tribe or tribal organization so long as priority is given to Indian land owned by an Indian tribe or tribes.

''(b) DEFINITION.—In this section, the term 'Indian lands' means—

''(1) all lands within the exterior boundaries of any Indian reservation;

''(2) any lands title to which is held in trust by the United States for the benefit of any Indian tribe or individual Indian, or held by any Indian tribe or individual Indian subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power; and

''(3) all lands in Alaska owned by any Alaska Native village, or any village or regional corporation under the Alaska Native Claims Settlement Act, or any land allotted to any Alaska Native.

**"SEC. 314. MAINTENANCE AND IMPROVEMENT OF HEALTH CARE FACILITIES.**

''(a) REPORT.—The Secretary shall submit to the President, for inclusion in the report required to be transmitted to Congress under section 801, a report that identifies the backlog of maintenance and repair work required at both Service and tribal facilities, including new facilities expected to be in operation in the fiscal year after the year for which the report is being prepared. The report shall identify the need for renovation and expansion of existing facilities to support the growth of health care programs.

''(b) MAINTENANCE OF NEWLY CONSTRUCTED SPACE.—

''(1) IN GENERAL.—The Secretary may expend maintenance and improvement funds to support the maintenance of newly constructed space only if such space falls within the approved supportable space allocation for the Indian tribe or tribal organization.

''(2) DEFINITION.—For purposes of paragraph (1), the term 'supportable space allocation' shall be defined through the negotiated rulemaking process provided for under section 802.

''(c) CONSTRUCTION OF REPLACEMENT FACILITIES.—

''(1) IN GENERAL.—In addition to using maintenance and improvement funds for the maintenance of facilities under subsection (b)(1), an Indian tribe or tribal organization may use such funds for the construction of a replacement facility if the costs of the renovation of such facility would exceed a maximum renovation cost threshold.

''(2) DEFINITION.—For purposes of paragraph (1), the term 'maximum renovation cost threshold' shall be defined through the negotiated rulemaking process provided for under section 802.

**"SEC. 315. TRIBAL MANAGEMENT OF FEDERALLY-OWNED QUARTERS.**

''(a) ESTABLISHMENT OF RENTAL RATES.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, an Indian tribe or tribal organization which operates a hospital or other health facility and the Federally-owned quarters associated therewith, pursuant to a funding agreement under the Indian Self-Determination and Education Assistance Act, may establish the rental rates charged to the occupants of such quarters by providing notice to the Secretary of its election to exercise such authority.

''(2) OBJECTIVES.—In establishing rental rates under paragraph (1), an Indian tribe or tribal organization shall attempt to achieve the following objectives:

''(A) The rental rates should be based on the reasonable value of the quarters to the occupants thereof.

''(B) The rental rates should generate sufficient funds to prudently provide for the operation and maintenance of the quarters, and, subject to the discretion of the Indian tribe or tribal organization, to supply reserve funds for capital repairs and replacement of the quarters.

''(3) ELIGIBILITY FOR QUARTERS IMPROVEMENT AND REPAIR.—Any quarters whose rental rates are established by an Indian tribe or tribal organization under this subsection shall continue to be eligible for quarters improvement and repair funds to the same extent as other Federally-owned quarters that are used to house personnel in Service-supported programs.

''(4) NOTICE OF CHANGE IN RATES.—An Indian tribe or tribal organization that exercises the authority provided under this subsection shall provide occupants with not less than 60 days notice of any change in rental rates.

''(b) COLLECTION OF RENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, and subject to paragraph (2), an Indian tribe or a tribal organization that operates Federally-owned quarters pursuant to a funding agreement under the Indian Self-Determination and Education Assistance Act shall have the authority to collect rents directly from Federal employees who occupy such quarters in accordance with the following:

''(A) The Indian tribe or tribal organization shall notify the Secretary and the Federal employees involved of its election to exercise its authority to collect rents directly from such Federal employees.

''(B) Upon the receipt of a notice described in subparagraph (A), the Federal employees involved shall pay rents for the occupancy of such quarters directly to the Indian tribe or tribal organization and the Secretary shall have no further authority to collect rents from such employees through payroll deduction or otherwise.

''(C) Such rent payments shall be retained by the Indian tribe or tribal organization and shall not be made payable to or otherwise be deposited with the United States.

''(D) Such rent payments shall be deposited into a separate account which shall be used by the Indian tribe or tribal organization for the maintenance (including capital repairs and replacement expenses) and operation of the quarters and facilities as the Indian tribe or tribal organization shall determine appropriate.

''(2) RETROCESSION.—If an Indian tribe or tribal organization which has made an election under paragraph (1) requests retrocession of its authority to directly collect rents from Federal employees occupying Federally-owned quarters, such retrocession shall become effective on the earlier of—

''(A) the first day of the month that begins not less than 180 days after the Indian tribe or tribal organization notifies the Secretary of its desire to retrocede; or

''(B) such other date as may be mutually agreed upon by the Secretary and the Indian tribe or tribal organization.

''(c) RATES.—To the extent that an Indian tribe or tribal organization, pursuant to authority granted in subsection (a), establishes rental rates for Federally-owned quarters provided to a Federal employee in Alaska, such rents may be based on the cost of comparable private rental housing in the nearest established community with a year-round population of 1,500 or more individuals.

**"SEC. 316. APPLICABILITY OF BUY AMERICAN REQUIREMENT.**

''(a) IN GENERAL.—The Secretary shall ensure that the requirements of the Buy American Act apply to all procurements made with funds provided pursuant to the authorization contained in section 318, except that Indian tribes and tribal organizations shall be exempt from such requirements.

''(b) FALSE OR MISLEADING LABELING.—If it has been finally determined by a court or

Federal agency that any person intentionally affixed a label bearing a 'Made in America' inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to the authorization contained in section 318, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.

(c) DEFINITION.—In this section, the term 'Buy American Act' means title III of the Act entitled 'An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes', approved March 3, 1933 (41 U.S.C. 10a et seq.).

**"SEC. 317. OTHER FUNDING FOR FACILITIES.**

''Notwithstanding any other provision of law—

''(1) the Secretary may accept from any source, including Federal and State agencies, funds that are available for the construction of health care facilities and use such funds to plan, design and construct health care facilities for Indians and to place such funds into funding agreements authorized under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f et seq.) between the Secretary and an Indian tribe or tribal organization, except that the receipt of such funds shall not have an effect on the priorities established pursuant to section 301;

''(2) the Secretary may enter into interagency agreements with other Federal or State agencies and other entities and to accept funds from such Federal or State agencies or other entities to provide for the planning, design and construction of health care facilities to be administered by the Service or by Indian tribes or tribal organizations under the Indian Self-Determination and Education Assistance Act in order to carry out the purposes of this Act, together with the purposes for which such funds are appropriated to such other Federal or State agency or for which the funds were otherwise provided;

''(3) any Federal agency to which funds for the construction of health care facilities are appropriated is authorized to transfer such funds to the Secretary for the construction of health care facilities to carry out the purposes of this Act as well as the purposes for which such funds are appropriated to such other Federal agency; and

''(4) the Secretary, acting through the Service, shall establish standards under regulations developed through rulemaking under section 802, for the planning, design and construction of health care facilities serving Indians under this Act.

**"SEC. 318. AUTHORIZATION OF APPROPRIATIONS.**

''There is authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2013 to carry out this title.

## "TITLE IV—ACCESS TO HEALTH SERVICES

**"SEC. 401. TREATMENT OF PAYMENTS UNDER MEDICARE PROGRAM.**

''(a) IN GENERAL.—Any payments received by the Service, by an Indian tribe or tribal organization pursuant to a funding agreement under the Indian Self-Determination and Education Assistance Act, or by an urban Indian organization pursuant to title V of this Act for services provided to Indians eligible for benefits under title XVIII of the Social Security Act shall not be considered in determining appropriations for health care and services to Indians.

''(b) EQUAL TREATMENT.—Nothing in this Act authorizes the Secretary to provide services to an Indian beneficiary with coverage under title XVIII of the Social Security Act in preference to an Indian beneficiary without such coverage.

''(c) SPECIAL FUND.—

''(1) USE OF FUNDS.—Notwithstanding any other provision of this title or of title XVIII of the Social Security Act, payments to which any facility of the Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and first used (to such extent or in such amounts as are provided in appropriation Acts) for the purpose of making any improvements in the programs of the Service which may be necessary to achieve or maintain compliance with the applicable conditions and requirements of this title and of title XVIII of the Social Security Act. Any funds to be reimbursed which are in excess of the amount necessary to achieve or maintain such conditions and requirements shall, subject to the consultation with tribes being served by the service unit, be used for reducing the health resource deficiencies of the Indian tribes.

''(2) NONAPPLICATION IN CASE OF ELECTION FOR DIRECT BILLING.—Paragraph (1) shall not apply upon the election of an Indian tribe or tribal organization under section 405 to receive direct payments for services provided to Indians eligible for benefits under title XVIII of the Social Security Act.

**"SEC. 402. TREATMENT OF PAYMENTS UNDER MEDICAID PROGRAM.**

''(a) SPECIAL FUND.—

''(1) USE OF FUNDS.—Notwithstanding any other provision of law, payments to which any facility of the Service (including a hospital, nursing facility, intermediate care facility for the mentally retarded, or any other type of facility which provides services for which payment is available under title XIX of the Social Security Act) is entitled under a State plan by reason of section 1911 of such Act shall be placed in a special fund to be held by the Secretary and first used (to such extent or in such amounts as are provided in appropriation Acts) for the purpose of making any improvements in the facilities of such Service which may be necessary to achieve or maintain compliance with the applicable conditions and requirements of such title. Any payments which are in excess of the amount necessary to achieve or maintain such conditions and requirements shall, subject to the consultation with tribes being served by the service unit, be used for reducing the health resource deficiencies of the Indian tribes. In making payments from such fund, the Secretary shall ensure that each service unit of the Service receives 100 percent of the amounts to which the facilities of the Service, for which such service unit makes collections, are entitled by reason of section 1911 of the Social Security Act.

''(2) NONAPPLICATION IN CASE OF ELECTION FOR DIRECT BILLING.—Paragraph (1) shall not apply upon the election of an Indian tribe or tribal organization under section 405 to receive direct payments for services provided to Indians eligible for medical assistance under title XIX of the Social Security Act.

''(b) PAYMENTS DISREGARDED FOR APPROPRIATIONS.—Any payments received under section 1911 of the Social Security Act for services provided to Indians eligible for benefits under title XIX of the Social Security Act shall not be considered in determining appropriations for the provision of health care and services to Indians.

''(c) DIRECT BILLING.—For provisions relating to the authority of certain Indian tribes and tribal organizations to elect to directly bill for, and receive payment for, health care services provided by a hospital or clinic of such tribes or tribal organizations and for which payment may be made under this title, see section 405.

**"SEC. 403. REPORT.**

''(a) INCLUSION IN ANNUAL REPORT.—The Secretary shall submit to the President, for inclusion in the report required to be transmitted to the Congress under section 801, an accounting on the amount and use of funds made available to the Service pursuant to this title as a result of reimbursements under titles XVIII and XIX of the Social Security Act.

''(b) IDENTIFICATION OF SOURCE OF PAYMENTS.—If an Indian tribe or tribal organization receives funding from the Service under the Indian Self-Determination and Education Assistance Act or an urban Indian organization receives funding from the Service under Title V of this Act and receives reimbursements or payments under title XVIII, XIX, or XXI of the Social Security Act, such Indian tribe or tribal organization, or urban Indian organization, shall provide to the Service a list of each provider enrollment number (or other identifier) under which it receives such reimbursements or payments.

**"SEC. 404. GRANTS TO AND FUNDING AGREEMENTS WITH THE SERVICE, INDIAN TRIBES OR TRIBAL ORGANIZATIONS, AND URBAN INDIAN ORGANIZATIONS.**

''(a) IN GENERAL.—The Secretary shall make grants to or enter into funding agreements with Indian tribes and tribal organizations to assist such organizations in establishing and administering programs on or near Federal Indian reservations and trust areas and in or near Alaska Native villages to assist individual Indians to—

''(1) enroll under sections 1818, 1836, and 1837 of the Social Security Act;

''(2) pay premiums for health insurance coverage; and

''(3) apply for medical assistance provided pursuant to titles XIX and XXI of the Social Security Act.

''(b) CONDITIONS.—The Secretary shall place conditions as deemed necessary to effect the purpose of this section in any funding agreement or grant which the Secretary makes with any Indian tribe or tribal organization pursuant to this section. Such conditions shall include, but are not limited to, requirements that the organization successfully undertake to—

''(1) determine the population of Indians to be served that are or could be recipients of benefits or assistance under titles XVIII, XIX, and XXI of the Social Security Act;

''(2) assist individual Indians in becoming familiar with and utilizing such benefits and assistance;

''(3) provide transportation to such individual Indians to the appropriate offices for enrollment or applications for such benefits and assistance;

''(4) develop and implement—

''(A) a schedule of income levels to determine the extent of payments of premiums by such organizations for health insurance coverage of needy individuals; and

''(B) methods of improving the participation of Indians in receiving the benefits and assistance provided under titles XVIII, XIX, and XXI of the Social Security Act.

''(c) AGREEMENTS FOR RECEIPT AND PROCESSING OF APPLICATIONS.—The Secretary may enter into an agreement with an Indian tribe or tribal organization, or an urban Indian organization, which provides for the receipt and processing of applications for medical assistance under title XIX of the Social Security Act, child health assistance under title XXI of such Act and benefits under title XVIII of such Act by a Service facility or a health care program administered by such Indian tribe or tribal organization, or urban Indian organization, pursuant to a funding agreement under the Indian Self-Determination and Education Assistance Act or a grant

or contract entered into with an urban Indian organization under title V of this Act. Notwithstanding any other provision of law, such agreements shall provide for reimbursement of the cost of outreach, education regarding eligibility and benefits, and translation when such services are provided. The reimbursement may be included in an encounter rate or be made on a fee-for-service basis as appropriate for the provider. When necessary to carry out the terms of this section, the Secretary, acting through the Health Care Financing Administration or the Service, may enter into agreements with a State (or political subdivision thereof) to facilitate cooperation between the State and the Service, an Indian tribe or tribal organization, and an urban Indian organization.

''(d) GRANTS.—

''(1) IN GENERAL.—The Secretary shall make grants or enter into contracts with urban Indian organizations to assist such organizations in establishing and administering programs to assist individual urban Indians to—

''(A) enroll under sections 1818, 1836, and 1837 of the Social Security Act;

''(B) pay premiums on behalf of such individuals for coverage under title XVIII of such Act; and

''(C) apply for medical assistance provided under title XIX of such Act and for child health assistance under title XXI of such Act.

''(2) REQUIREMENTS.—The Secretary shall include in the grants or contracts made or entered into under paragraph (1) requirements that are—

''(A) consistent with the conditions imposed by the Secretary under subsection (b);

''(B) appropriate to urban Indian organizations and urban Indians; and

''(C) necessary to carry out the purposes of this section.

**''SEC. 405. DIRECT BILLING AND REIMBURSEMENT OF MEDICARE, MEDICAID, AND OTHER THIRD PARTY PAYORS.**

''(a) ESTABLISHMENT OF DIRECT BILLING PROGRAM.—

''(1) IN GENERAL.—The Secretary shall establish a program under which Indian tribes, tribal organizations, and Alaska Native health organizations that contract or compact for the operation of a hospital or clinic of the Service under the Indian Self-Determination and Education Assistance Act may elect to directly bill for, and receive payment for, health care services provided by such hospital or clinic for which payment is made under the medicare program established under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.), or from any other third party payor.

''(2) APPLICATION OF 100 PERCENT FMAP.—The third sentence of section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) shall apply for purposes of reimbursement under title XIX of the Social Security Act for health care services directly billed under the program established under this section.

''(b) DIRECT REIMBURSEMENT.—

''(1) USE OF FUNDS.—Each hospital or clinic participating in the program described in subsection (a) of this section shall be reimbursed directly under titles XVIII and XIX of the Social Security Act for services furnished, without regard to the provisions of section 1880(c) of the Social Security Act (42 U.S.C. 1395qq(c)) and sections 402(a) and 807(b)(2)(A), but all funds so reimbursed shall first be used by the hospital or clinic for the purpose of making any improvements in the hospital or clinic that may be necessary to achieve or maintain compliance with the conditions and requirements applicable generally to facilities of such type under title XVIII or XIX of the Social Security Act. Any funds so reimbursed which are in excess of the amount necessary to achieve or maintain such conditions shall be used—

''(A) solely for improving the health resources deficiency level of the Indian tribe; and

''(B) in accordance with the regulations of the Service applicable to funds provided by the Service under any contract entered into under the Indian Self-Determination Act (25 U.S.C. 450f et seq.).

''(2) AUDITS.—The amounts paid to the hospitals and clinics participating in the program established under this section shall be subject to all auditing requirements applicable to programs administered directly by the Service and to facilities participating in the medicare and medicaid programs under titles XVIII and XIX of the Social Security Act.

''(3) SECRETARIAL OVERSIGHT.—The Secretary shall monitor the performance of hospitals and clinics participating in the program established under this section, and shall require such hospitals and clinics to submit reports on the program to the Secretary on an annual basis.

''(4) NO PAYMENTS FROM SPECIAL FUNDS.—Notwithstanding section 1880(c) of the Social Security Act (42 U.S.C. 1395qq(c)) or section 402(a), no payment may be made out of the special funds described in such sections for the benefit of any hospital or clinic during the period that the hospital or clinic participates in the program established under this section.

''(c) REQUIREMENTS FOR PARTICIPATION.—

''(1) APPLICATION.—Except as provided in paragraph (2)(B), in order to be eligible for participation in the program established under this section, an Indian tribe, tribal organization, or Alaska Native health organization shall submit an application to the Secretary that establishes to the satisfaction of the Secretary that—

''(A) the Indian tribe, tribal organization, or Alaska Native health organization contracts or compacts for the operation of a facility of the Service;

''(B) the facility is eligible to participate in the medicare or medicaid programs under section 1880 or 1911 of the Social Security Act (42 U.S.C. 1395qq; 1396j);

''(C) the facility meets the requirements that apply to programs operated directly by the Service; and

''(D) the facility—

''(i) is accredited by an accrediting body as eligible for reimbursement under the medicare or medicaid programs; or

''(ii) has submitted a plan, which has been approved by the Secretary, for achieving such accreditation.

''(2) APPROVAL.—

''(A) IN GENERAL.—The Secretary shall review and approve a qualified application not later than 90 days after the date the application is submitted to the Secretary unless the Secretary determines that any of the criteria set forth in paragraph (1) are not met.

''(B) GRANDFATHER OF DEMONSTRATION PROGRAM PARTICIPANTS.—Any participant in the demonstration program authorized under this section as in effect on the day before the date of enactment of the Alaska Native and American Indian Direct Reimbursement Act of 2000 shall be deemed approved for participation in the program established under this section and shall not be required to submit an application in order to participate in the program.

''(C) DURATION.—An approval by the Secretary of a qualified application under subparagraph (A), or a deemed approval of a demonstration program under subparagraph (B), shall continue in effect as long as the approved applicant or the deemed approved demonstration program meets the requirements of this section.

''(d) EXAMINATION AND IMPLEMENTATION OF CHANGES.—

''(1) IN GENERAL.—The Secretary, acting through the Service, and with the assistance of the Administrator of the Health Care Financing Administration, shall examine on an ongoing basis and implement—

''(A) any administrative changes that may be necessary to facilitate direct billing and reimbursement under the program established under this section, including any agreements with States that may be necessary to provide for direct billing under title XIX of the Social Security Act; and

''(B) any changes that may be necessary to enable participants in the program established under this section to provide to the Service medical records information on patients served under the program that is consistent with the medical records information system of the Service.

''(2) ACCOUNTING INFORMATION.—The accounting information that a participant in the program established under this section shall be required to report shall be the same as the information required to be reported by participants in the demonstration program authorized under this section as in effect on the day before the date of enactment of the Alaska Native and American Indian Direct Reimbursement Act of 2000. The Secretary may from time to time, after consultation with the program participants, change the accounting information submission requirements.

''(e) WITHDRAWAL FROM PROGRAM.—A participant in the program established under this section may withdraw from participation in the same manner and under the same conditions that a tribe or tribal organization may retrocede a contracted program to the Secretary under authority of the Indian Self-Determination Act (25 U.S.C. 450 et seq.). All cost accounting and billing authority under the program established under this section shall be returned to the Secretary upon the Secretary's acceptance of the withdrawal of participation in this program.

**''SEC. 406. REIMBURSEMENT FROM CERTAIN THIRD PARTIES OF COSTS OF HEALTH SERVICES.**

''(a) RIGHT OF RECOVERY.—Except as provided in subsection (g), the United States, an Indian tribe or tribal organization shall have the right to recover the reasonable charges billed or expenses incurred by the Secretary or an Indian tribe or tribal organization in providing health services, through the Service or an Indian tribe or tribal organization to any individual to the same extent that such individual, or any nongovernmental provider of such services, would be eligible to receive reimbursement or indemnification for such charges or expenses if—

''(1) such services had been provided by a nongovernmental provider; and

''(2) such individual had been required to pay such charges or expenses and did pay such expenses.

''(b) URBAN INDIAN ORGANIZATIONS.—Except as provided in subsection (g), an urban Indian organization shall have the right to recover the reasonable charges billed or expenses incurred by the organization in providing health services to any individual to the same extent that such individual, or any other nongovernmental provider of such services, would be eligible to receive reimbursement or indemnification for such charges or expenses if such individual had been required to pay such charges or expenses and did pay such charges or expenses.

''(c) LIMITATIONS ON RECOVERIES FROM STATES.—Subsections (a) and (b) shall provide a right of recovery against any State, only if the injury, illness, or disability for

which health services were provided is covered under—

''(1) workers' compensation laws; or

''(2) a no-fault automobile accident insurance plan or program.

''(d) NONAPPLICATION OF OTHER LAWS.—No law of any State, or of any political subdivision of a State and no provision of any contract entered into or renewed after the date of enactment of the Indian Health Care Amendments of 1988, shall prevent or hinder the right of recovery of the United States or an Indian tribe or tribal organization under subsection (a), or an urban Indian organization under subsection (b).

''(e) NO EFFECT ON PRIVATE RIGHTS OF ACTION.—No action taken by the United States or an Indian tribe or tribal organization to enforce the right of recovery provided under subsection (a), or by an urban Indian organization to enforce the right of recovery provided under subsection (b), shall affect the right of any person to any damages (other than damages for the cost of health services provided by the Secretary through the Service).

''(f) METHODS OF ENFORCEMENT.—

''(1) IN GENERAL.—The United States or an Indian tribe or tribal organization may enforce the right of recovery provided under subsection (a), and an urban Indian organization may enforce the right of recovery provided under subsection (b), by—

''(A) intervening or joining in any civil action or proceeding brought—

''(i) by the individual for whom health services were provided by the Secretary, an Indian tribe or tribal organization, or urban Indian organization; or

''(ii) by any representative or heirs of such individual; or

''(B) instituting a civil action.

''(2) NOTICE.—All reasonable efforts shall be made to provide notice of an action instituted in accordance with paragraph (1)(B) to the individual to whom health services were provided, either before or during the pendency of such action.

''(g) LIMITATION.—Notwithstanding this section, absent specific written authorization by the governing body of an Indian tribe for the period of such authorization (which may not be for a period of more than 1 year and which may be revoked at any time upon written notice by the governing body to the Service), neither the United States through the Service, nor an Indian tribe or tribal organization under a funding agreement pursuant to the Indian Self-Determination and Education Assistance Act, nor an urban Indian organization funded under title V, shall have a right of recovery under this section if the injury, illness, or disability for which health services were provided is covered under a self-insurance plan funded by an Indian tribe or tribal organization, or urban Indian organization. Where such tribal authorization is provided, the Service may receive and expend such funds for the provision of additional health services.

''(h) COSTS AND ATTORNEYS' FEES.—In any action brought to enforce the provisions of this section, a prevailing plaintiff shall be awarded reasonable attorneys' fees and costs of litigation.

''(i) RIGHT OF ACTION AGAINST INSURERS AND EMPLOYEE BENEFIT PLANS.—

''(1) IN GENERAL.—Where an insurance company or employee benefit plan fails or refuses to pay the amount due under subsection (a) for services provided to an individual who is a beneficiary, participant, or insured of such company or plan, the United States or an Indian tribe or tribal organization shall have a right to assert and pursue all the claims and remedies against such company or plan, and against the fiduciaries of such company or plan, that the individual could assert or pursue under applicable Federal, State or tribal law.

''(2) URBAN INDIAN ORGANIZATIONS.—Where an insurance company or employee benefit plan fails or refuses to pay the amounts due under subsection (b) for health services provided to an individual who is a beneficiary, participant, or insured of such company or plan, the urban Indian organization shall have a right to assert and pursue all the claims and remedies against such company or plan, and against the fiduciaries of such company or plan, that the individual could assert or pursue under applicable Federal or State law.

''(j) NONAPPLICATION OF CLAIMS FILING REQUIREMENTS.—Notwithstanding any other provision in law, the Service, an Indian tribe or tribal organization, or an urban Indian organization shall have a right of recovery for any otherwise reimbursable claim filed on a current HCFA-1500 or UB–92 form, or the current NSF electronic format, or their successors. No health plan shall deny payment because a claim has not been submitted in a unique format that differs from such forms.

**''SEC. 407. CREDITING OF REIMBURSEMENTS.**

''(a) RETENTION OF FUNDS.—Except as provided in section 202(d), this title, and section 807, all reimbursements received or recovered under the authority of this Act, Public Law 87–693, or any other provision of law, by reason of the provision of health services by the Service or by an Indian tribe or tribal organization under a funding agreement pursuant to the Indian Self-Determination and Education Assistance Act, or by an urban Indian organization funded under title V, shall be retained by the Service or that tribe or tribal organization and shall be available for the facilities, and to carry out the programs, of the Service or that tribe or tribal organization to provide health care services to Indians.

''(b) NO OFFSET OF FUNDS.—The Service may not offset or limit the amount of funds obligated to any service unit or entity receiving funding from the Service because of the receipt of reimbursements under subsection (a).

**''SEC. 408. PURCHASING HEALTH CARE COVERAGE.**

''An Indian tribe or tribal organization, and an urban Indian organization may utilize funding from the Secretary under this Act to purchase managed care coverage for Service beneficiaries (including insurance to limit the financial risks of managed care entities) from—

''(1) a tribally owned and operated managed care plan;

''(2) a State or locally-authorized or licensed managed care plan; or

''(3) a health insurance provider.

**''SEC. 409. INDIAN HEALTH SERVICE, DEPARTMENT OF VETERAN'S AFFAIRS, AND OTHER FEDERAL AGENCY HEALTH FACILITIES AND SERVICES SHARING.**

''(a) EXAMINATION OF FEASIBILITY OF ARRANGEMENTS.—

''(1) IN GENERAL.—The Secretary shall examine the feasibility of entering into arrangements or expanding existing arrangements for the sharing of medical facilities and services between the Service and the Veterans' Administration, and other appropriate Federal agencies, including those within the Department, and shall, in accordance with subsection (b), prepare a report on the feasibility of such arrangements.

''(2) SUBMISSION OF REPORT.—Not later than September 30, 2001, the Secretary shall submit the report required under paragraph (1) to Congress.

''(3) CONSULTATION REQUIRED.—The Secretary may not finalize any arrangement described in paragraph (1) without first consulting with the affected Indian tribes.

''(b) LIMITATIONS.—The Secretary shall not take any action under this section or under subchapter IV of chapter 81 of title 38, United States Code, which would impair—

''(1) the priority access of any Indian to health care services provided through the Service;

''(2) the quality of health care services provided to any Indian through the Service;

''(3) the priority access of any veteran to health care services provided by the Veterans' Administration;

''(4) the quality of health care services provided to any veteran by the Veteran's Administration;

''(5) the eligibility of any Indian to receive health services through the Service; or

''(6) the eligibility of any Indian who is a veteran to receive health services through the Veterans' Administration provided, however, the Service or the Indian tribe or tribal organization shall be reimbursed by the Veterans' Administration where services are provided through the Service or Indian tribes or tribal organizations to beneficiaries eligible for services from the Veterans' Administration, notwithstanding any other provision of law.

''(c) AGREEMENTS FOR PARITY IN SERVICES.—The Service may enter into agreements with other Federal agencies to assist in achieving parity in services for Indians. Nothing in this section may be construed as creating any right of a veteran to obtain health services from the Service.

**''SEC. 410. PAYOR OF LAST RESORT.**

''The Service, and programs operated by Indian tribes or tribal organizations, or urban Indian organizations shall be the payor of last resort for services provided to individuals eligible for services from the Service and such programs, notwithstanding any Federal, State or local law to the contrary, unless such law explicitly provides otherwise.

**''SEC. 411. RIGHT TO RECOVER FROM FEDERAL HEALTH CARE PROGRAMS.**

''Notwithstanding any other provision of law, the Service, Indian tribes or tribal organizations, and urban Indian organizations (notwithstanding limitations on who is eligible to receive services from such entities) shall be entitled to receive payment or reimbursement for services provided by such entities from any Federally funded health care program, unless there is an explicit prohibition on such payments in the applicable authorizing statute.

**''SEC. 412. TUBA CITY DEMONSTRATION PROJECT.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, including the Anti-Deficiency Act, provided the Indian tribes to be served approve, the Service in the Tuba City Service Unit may—

''(1) enter into a demonstration project with the State of Arizona under which the Service would provide certain specified medicaid services to individuals dually eligible for services from the Service and for medical assistance under title XIX of the Social Security Act in return for payment on a capitated basis from the State of Arizona; and

''(2) purchase insurance to limit the financial risks under the project.

''(b) EXTENSION OF PROJECT.—The demonstration project authorized under subsection (a) may be extended to other service units in Arizona, subject to the approval of the Indian tribes to be served in such service units, the Service, and the State of Arizona.

**''SEC. 413. ACCESS TO FEDERAL INSURANCE.**

''Notwithstanding the provisions of title 5, United States Code, Executive Order, or administrative regulation, an Indian tribe or tribal organization carrying out programs under the Indian Self-Determination and

Education Assistance Act or an urban Indian organization carrying out programs under title V of this Act shall be entitled to purchase coverage, rights and benefits for the employees of such Indian tribe or tribal organization, or urban Indian organization, under chapter 89 of title 5, United States Code, and chapter 87 of such title if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with such Indian tribe or tribal organization, or urban Indian organization, are currently deposited in the applicable Employee's Fund under such title.

**"SEC. 414. CONSULTATION AND RULEMAKING.**

''(a) CONSULTATION.—Prior to the adoption of any policy or regulation by the Health Care Financing Administration, the Secretary shall require the Administrator of that Administration to—

''(1) identify the impact such policy or regulation may have on the Service, Indian tribes or tribal organizations, and urban Indian organizations;

''(2) provide to the Service, Indian tribes or tribal organizations, and urban Indian organizations the information described in paragraph (1);

''(3) engage in consultation, consistent with the requirements of Executive Order 13084 of May 14, 1998, with the Service, Indian tribes or tribal organizations, and urban Indian organizations prior to enacting any such policy or regulation.

''(b) RULEMAKING.—The Administrator of the Health Care Financing Administration shall participate in the negotiated rulemaking provided for under title VIII with regard to any regulations necessary to implement the provisions of this title that relate to the Social Security Act.

**"SEC. 415. LIMITATIONS ON CHARGES.**

''No provider of health services that is eligible to receive payments or reimbursements under titles XVIII, XIX, or XXI of the Social Security Act or from any Federally funded (whether in whole or part) health care program may seek to recover payment for services—

''(1) that are covered under and furnished to an individual eligible for the contract health services program operated by the Service, by an Indian tribe or tribal organization, or furnished to an urban Indian eligible for health services purchased by an urban Indian organization, in an amount in excess of the lowest amount paid by any other payor for comparable services; or

''(2) for examinations or other diagnostic procedures that are not medically necessary if such procedures have already been performed by the referring Indian health program and reported to the provider.

**"SEC. 416. LIMITATION ON SECRETARY'S WAIVER AUTHORITY.**

''Notwithstanding any other provision of law, the Secretary may not waive the application of section 1902(a)(13)(D) of the Social Security Act to any State plan under title XIX of the Social Security Act.

**"SEC. 417. WAIVER OF MEDICARE AND MEDICAID SANCTIONS.**

''Notwithstanding any other provision of law, the Service or an Indian tribe or tribal organization or an urban Indian organization operating a health program under the Indian Self-Determination and Education Assistance Act shall be entitled to seek a waiver of sanctions imposed under title XVIII, XIX, or XXI of the Social Security Act as if such entity were directly responsible for administering the State health care program.

**"SEC. 418. MEANING OF 'REMUNERATION' FOR PURPOSES OF SAFE HARBOR PROVISIONS; ANTITRUST IMMUNITY.**

''(a) MEANING OF REMUNERATION.—Notwithstanding any other provision of law, the term 'remuneration' as used in sections 1128A and 1128B of the Social Security Act shall not include any exchange of anything of value between or among—

''(1) any Indian tribe or tribal organization or an urban Indian organization that administers health programs under the authority of the Indian Self-Determination and Education Assistance Act;

''(2) any such Indian tribe or tribal organization or urban Indian organization and the Service;

''(3) any such Indian tribe or tribal organization or urban Indian organization and any patient served or eligible for service under such programs, including patients served or eligible for service pursuant to section 813 of this Act (as in effect on the day before the date of enactment of the Indian Health Care Improvement Act Reauthorization of 2001); or

''(4) any such Indian tribe or tribal organization or urban Indian organization and any third party required by contract, section 206 or 207 of this Act (as so in effect), or other applicable law, to pay or reimburse the reasonable health care costs incurred by the United States or any such Indian tribe or tribal organization or urban Indian organization;

provided the exchange arises from or relates to such health programs.

''(b) ANTITRUST IMMUNITY.—An Indian tribe or tribal organization or an urban Indian organization that administers health programs under the authority of the Indian Self-Determination and Education Assistance Act or title V shall be deemed to be an agency of the United States and immune from liability under the Acts commonly known as the Sherman Act, the Clayton Act, the Robinson-Patman Anti-Discrimination Act, the Federal Trade Commission Act, and any other Federal, State, or local antitrust laws, with regard to any transaction, agreement, or conduct that relates to such programs.

**"SEC. 419. CO-INSURANCE, CO-PAYMENTS, DEDUCTIBLES AND PREMIUMS.**

''(a) EXEMPTION FROM COST-SHARING REQUIREMENTS.—Notwithstanding any other provision of Federal or State law, no Indian who is eligible for services under title XVIII, XIX, or XXI of the Social Security Act, or under any other Federally funded health care programs, may be charged a deductible, co-payment, or co-insurance for any service provided by or through the Service, an Indian tribe or tribal organization or urban Indian organization, nor may the payment or reimbursement due to the Service or an Indian tribe or tribal organization or urban Indian organization be reduced by the amount of the deductible, co-payment, or co-insurance that would be due from the Indian but for the operation of this section. For the purposes of this section, the term 'through' shall include services provided directly, by referral, or under contracts or other arrangements between the Service, an Indian tribe or tribal organization or an urban Indian organization and another health provider.

''(b) EXEMPTION FROM PREMIUMS.—

''(1) MEDICAID AND STATE CHILDREN'S HEALTH INSURANCE PROGRAM.—Notwithstanding any other provision of Federal or State law, no Indian who is otherwise eligible for medical assistance under title XIX of the Social Security Act or child health assistance under title XXI of such Act may be charged a premium as a condition of receiving such assistance under title XIX of XXI of such Act.

''(2) MEDICARE ENROLLMENT PREMIUM PENALTIES.—Notwithstanding section 1839(b) of the Social Security Act or any other provision of Federal or State law, no Indian who is eligible for benefits under part B of title XVIII of the Social Security Act, but for the payment of premiums, shall be charged a penalty for enrolling in such part at a time later than the Indian might otherwise have been first eligible to do so. The preceding sentence applies whether an Indian pays for premiums under such part directly or such premiums are paid by another person or entity, including a State, the Service, an Indian Tribe or tribal organization, or an urban Indian organization.

**"SEC. 420. INCLUSION OF INCOME AND RESOURCES FOR PURPOSES OF MEDICALLY NEEDY MEDICAID ELIGIBILITY.**

''For the purpose of determining the eligibility under section 1902(a)(10)(A)(ii)(IV) of the Social Security Act of an Indian for medical assistance under a State plan under title XIX of such Act, the cost of providing services to an Indian in a health program of the Service, an Indian Tribe or tribal organization, or an urban Indian organization shall be deemed to have been an expenditure for health care by the Indian.

**"SEC. 421. ESTATE RECOVERY PROVISIONS.**

''Notwithstanding any other provision of Federal or State law, the following property may not be included when determining eligibility for services or implementing estate recovery rights under title XVIII, XIX, or XXI of the Social Security Act, or any other health care programs funded in whole or part with Federal funds:

''(1) Income derived from rents, leases, or royalties of property held in trust for individuals by the Federal Government.

''(2) Income derived from rents, leases, royalties, or natural resources (including timber and fishing activities) resulting from the exercise of Federally protected rights, whether collected by an individual or a tribal group and distributed to individuals.

''(3) Property, including interests in real property currently or formerly held in trust by the Federal Government which is protected under applicable Federal, State or tribal law or custom from recourse, including public domain allotments.

''(4) Property that has unique religious or cultural significance or that supports subsistence or traditional life style according to applicable tribal law or custom.

**"SEC. 422. MEDICAL CHILD SUPPORT.**

''Notwithstanding any other provision of law, a parent shall not be responsible for reimbursing the Federal Government or a State for the cost of medical services provided to a child by or through the Service, an Indian tribe or tribal organization or an urban Indian organization. For the purposes of this subsection, the term 'through' includes services provided directly, by referral, or under contracts or other arrangements between the Service, an Indian Tribe or tribal organization or an urban Indian organization and another health provider.

**"SEC. 423. PROVISIONS RELATING TO MANAGED CARE.**

''(a) RECOVERY FROM MANAGED CARE PLANS.—Notwithstanding any other provision in law, the Service, an Indian Tribe or tribal organization or an urban Indian organization shall have a right of recovery under section 408 from all private and public health plans or programs, including the medicare, medicaid, and State children's health insurance programs under titles XVIII, XIX, and XXI of the Social Security Act, for the reasonable costs of delivering health services to Indians entitled to receive services from the Service, an Indian Tribe or tribal organization or an urban Indian organization.

''(b) LIMITATION.—No provision of law or regulation, or of any contract, may be relied upon or interpreted to deny or reduce payments otherwise due under subsection (a), except to the extent the Service, an Indian

tribe or tribal organization, or an urban Indian organization has entered into an agreement with a managed care entity regarding services to be provided to Indians or rates to be paid for such services, provided that such an agreement may not be made a prerequisite for such payments to be made.

''(c) PARITY.—Payments due under subsection (a) from a managed care entity may not be paid at a rate that is less than the rate paid to a 'preferred provider' by the entity or, in the event there is no such rate, the usual and customary fee for equivalent services.

''(d) NO CLAIM REQUIREMENT.—A managed care entity may not deny payment under subsection (a) because an enrollee with the entity has not submitted a claim.

''(e) DIRECT BILLING.—Notwithstanding the preceding subsections of this section, the Service, an Indian tribe or tribal organization, or an urban Indian organization that provides a health service to an Indian entitled to medical assistance under the State plan under title XIX of the Social Security Act or enrolled in a child health plan under title XXI of such Act shall have the right to be paid directly by the State agency administering such plans notwithstanding any agreements the State may have entered into with managed care organizations or providers.

''(f) REQUIREMENT FOR MEDICAID MANAGED CARE ENTITIES.—A managed care entity (as defined in section 1932(a)(1)(B) of the Social Security Act shall, as a condition of participation in the State plan under title XIX of such Act, offer a contract to health programs administered by the Service, an Indian tribe or tribal organization or an urban Indian organization that provides health services in the geographic area served by the managed care entity and such contract (or other provider participation agreement) shall contain terms and conditions of participation and payment no more restrictive or onerous than those provided for in this section.

''(g) PROHIBITION.—Notwithstanding any other provision of law or any waiver granted by the Secretary no Indian may be assigned automatically or by default under any managed care entity participating in a State plan under title XIX or XXI of the Social Security Act unless the Indian had the option of enrolling in a managed care plan or health program administered by the Service, an Indian tribe or tribal organization, or an urban Indian organization.

''(h) INDIAN MANAGED CARE PLANS.—Notwithstanding any other provision of law, any State entering into agreements with one or more managed care organizations to provide services under title XIX or XXI of the Social Security Act shall enter into such an agreement with the Service, an Indian tribe or tribal organization or an urban Indian organization under which such an entity may provide services to Indians who may be eligible or required to enroll with a managed care organization through enrollment in an Indian managed care organization that provides services similar to those offered by other managed care organizations in the State. The Secretary and the State are hereby authorized to waive requirements regarding discrimination, capitalization, and other matters that might otherwise prevent an Indian managed care organization or health program from meeting Federal or State standards applicable to such organizations, provided such Indian managed care organization or health program offers Indian enrollees services of an equivalent quality to that required of other managed care organizations.

''(i) ADVERTISING.—A managed care organization entering into a contract to provide services to Indians on or near an Indian reservation shall provide a certificate of coverage or similar type of document that is written in the Indian language of the majority of the Indian population residing on such reservation.

**''SEC. 424. NAVAJO NATION MEDICAID AGENCY.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may treat the Navajo Nation as a State under title XIX of the Social Security Act for purposes of providing medical assistance to Indians living within the boundaries of the Navajo Nation.

''(b) ASSIGNMENT AND PAYMENT.—Notwithstanding any other provision of law, the Secretary may assign and pay all expenditures related to the provision of services to Indians living within the boundaries of the Navajo Nation under title XIX of the Social Security Act (including administrative expenditures) that are currently paid to or would otherwise be paid to the States of Arizona, New Mexico, and Utah, to an entity established by the Navajo Nation and approved by the Secretary, which shall be denominated the Navajo Nation Medicaid Agency.

''(c) AUTHORITY.—The Navajo Nation Medicaid Agency shall serve Indians living within the boundaries of the Navajo Nation and shall have the same authority and perform the same functions as other State agency responsible for the administration of the State plan under title XIX of the Social Security Act.

''(d) TECHNICAL ASSISTANCE.—The Secretary may directly assist the Navajo Nation in the development and implementation of a Navajo Nation Medicaid Agency for the administration, eligibility, payment, and delivery of medical assistance under title XIX of the Social Security Act (which shall, for purposes of reimbursement to such Nation, include Western and traditional Navajo healing services) within the Navajo Nation. Such assistance may include providing funds for demonstration projects conducted with such Nation.

''(e) FMAP.—Notwithstanding section 1905(b) of the Social Security Act, the Federal medical assistance percentage shall be 100 per cent with respect to amounts the Navajo Nation Medicaid agency expends for medical assistance and related administrative costs.

''(f) WAIVER AUTHORITY.—The Secretary shall have the authority to waive applicable provisions of Title XIX of the Social Security Act to establish, develop and implement the Navajo Nation Medicaid Agency.

''(g) SCHIP.—At the option of the Navajo Nation, the Secretary may treat the Navajo Nation as a State for purposes of title XXI of the Social Security Act under terms equivalent to those described in the preceding subsections of this section.

**''SEC. 425. INDIAN ADVISORY COMMITTEES.**

''(a) NATIONAL INDIAN TECHNICAL ADVISORY GROUP.—The Administrator of the Health Care Financing Administration shall establish and fund the expenses of a National Indian Technical Advisory Group which shall have no fewer than 14 members, including at least 1 member designated by the Indian tribes and tribal organizations in each service area, 1 urban Indian organization representative, and 1 member representing the Service. The scope of the activities of such group shall be established under section 802 provided that such scope shall include providing comment on and advice regarding the programs funded under titles XVIII, XIX, and XXI of the Social Security Act or regarding any other health care program funded (in whole or part) by the Health Care Financing Administration.

''(b) INDIAN MEDICAID ADVISORY COMMITTEES.—The Administrator of the Health Care Financing Administration shall establish and provide funding for a Indian Medicaid Advisory Committee made up of designees of the Service, Indian tribes and tribal organizations and urban Indian organizations in each State in which the Service directly operates a health program or in which there is one or more Indian tribe or tribal organization or urban Indian organization.

**''SEC. 426. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2002 through 2013 to carry out this title.''.

## ''TITLE V—HEALTH SERVICES FOR URBAN INDIANS

**''SEC. 501. PURPOSE.**

''The purpose of this title is to establish programs in urban centers to make health services more accessible and available to urban Indians.

**''SEC. 502. CONTRACTS WITH, AND GRANTS TO, URBAN INDIAN ORGANIZATIONS.**

''Under the authority of the Act of November 2, 1921 (25 U.S.C. 13)(commonly known as the Snyder Act), the Secretary, through the Service, shall enter into contracts with, or make grants to, urban Indian organizations to assist such organizations in the establishment and administration, within urban centers, of programs which meet the requirements set forth in this title. The Secretary, through the Service, subject to section 506, shall include such conditions as the Secretary considers necessary to effect the purpose of this title in any contract which the Secretary enters into with, or in any grant the Secretary makes to, any urban Indian organization pursuant to this title.

**''SEC. 503. CONTRACTS AND GRANTS FOR THE PROVISION OF HEALTH CARE AND REFERRAL SERVICES.**

''(a) AUTHORITY.—Under the authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the Snyder Act), the Secretary, acting through the Service, shall enter into contracts with, and make grants to, urban Indian organizations for the provision of health care and referral services for urban Indians. Any such contract or grant shall include requirements that the urban Indian organization successfully undertake to—

''(1) estimate the population of urban Indians residing in the urban center or centers that the organization proposes to serve who are or could be recipients of health care or referral services;

''(2) estimate the current health status of urban Indians residing in such urban center or centers;

''(3) estimate the current health care needs of urban Indians residing in such urban center or centers;

''(4) provide basic health education, including health promotion and disease prevention education, to urban Indians;

''(5) make recommendations to the Secretary and Federal, State, local, and other resource agencies on methods of improving health service programs to meet the needs of urban Indians; and

''(6) where necessary, provide, or enter into contracts for the provision of, health care services for urban Indians.

''(b) CRITERIA.—The Secretary, acting through the Service, shall by regulation adopted pursuant to section 520 prescribe the criteria for selecting urban Indian organizations to enter into contracts or receive grants under this section. Such criteria shall, among other factors, include—

''(1) the extent of unmet health care needs of urban Indians in the urban center or centers involved;

''(2) the size of the urban Indian population in the urban center or centers involved;

''(3) the extent, if any, to which the activities set forth in subsection (a) would duplicate any project funded under this title;

''(4) the capability of an urban Indian organization to perform the activities set forth in subsection (a) and to enter into a contract with the Secretary or to meet the requirements for receiving a grant under this section;

''(5) the satisfactory performance and successful completion by an urban Indian organization of other contracts with the Secretary under this title;

''(6) the appropriateness and likely effectiveness of conducting the activities set forth in subsection (a) in an urban center or centers; and

''(7) the extent of existing or likely future participation in the activities set forth in subsection (a) by appropriate health and health-related Federal, State, local, and other agencies.

''(c) HEALTH PROMOTION AND DISEASE PREVENTION.—The Secretary, acting through the Service, shall facilitate access to, or provide, health promotion and disease prevention services for urban Indians through grants made to urban Indian organizations administering contracts entered into pursuant to this section or receiving grants under subsection (a).

''(d) IMMUNIZATION SERVICES.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall facilitate access to, or provide, immunization services for urban Indians through grants made to urban Indian organizations administering contracts entered into, or receiving grants, under this section.

''(3) DEFINITION.—In this section, the term 'immunization services' means services to provide without charge immunizations against vaccine-preventable diseases.

''(e) MENTAL HEALTH SERVICES.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall facilitate access to, or provide, mental health services for urban Indians through grants made to urban Indian organizations administering contracts entered into, or receiving grants, under this section.

''(2) ASSESSMENT.—A grant may not be made under this subsection to an urban Indian organization until that organization has prepared, and the Service has approved, an assessment of the mental health needs of the urban Indian population concerned, the mental health services and other related resources available to that population, the barriers to obtaining those services and resources, and the needs that are unmet by such services and resources.

''(3) USE OF FUNDS.—Grants may be made under this subsection—

''(A) to prepare assessments required under paragraph (2);

''(B) to provide outreach, educational, and referral services to urban Indians regarding the availability of direct behavioral health services, to educate urban Indians about behavioral health issues and services, and effect coordination with existing behavioral health providers in order to improve services to urban Indians;

''(C) to provide outpatient behavioral health services to urban Indians, including the identification and assessment of illness, therapeutic treatments, case management, support groups, family treatment, and other treatment; and

''(D) to develop innovative behavioral health service delivery models which incorporate Indian cultural support systems and resources.

''(f) CHILD ABUSE.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall facilitate access to, or provide, services for urban Indians through grants to urban Indian organizations administering contracts entered into pursuant to this section or receiving grants under subsection (a) to prevent and treat child abuse (including sexual abuse) among urban Indians.

''(2) ASSESSMENT.—A grant may not be made under this subsection to an urban Indian organization until that organization has prepared, and the Service has approved, an assessment that documents the prevalence of child abuse in the urban Indian population concerned and specifies the services and programs (which may not duplicate existing services and programs) for which the grant is requested.

''(3) USE OF FUNDS.—Grants may be made under this subsection—

''(A) to prepare assessments required under paragraph (2);

''(B) for the development of prevention, training, and education programs for urban Indian populations, including child education, parent education, provider training on identification and intervention, education on reporting requirements, prevention campaigns, and establishing service networks of all those involved in Indian child protection; and

''(C) to provide direct outpatient treatment services (including individual treatment, family treatment, group therapy, and support groups) to urban Indians who are child victims of abuse (including sexual abuse) or adult survivors of child sexual abuse, to the families of such child victims, and to urban Indian perpetrators of child abuse (including sexual abuse).

''(4) CONSIDERATIONS.—In making grants to carry out this subsection, the Secretary shall take into consideration—

''(A) the support for the urban Indian organization demonstrated by the child protection authorities in the area, including committees or other services funded under the Indian Child Welfare Act of 1978 (25 U.S.C. 1901 et seq.), if any;

''(B) the capability and expertise demonstrated by the urban Indian organization to address the complex problem of child sexual abuse in the community; and

''(C) the assessment required under paragraph (2).

''(g) MULTIPLE URBAN CENTERS.—The Secretary, acting through the Service, may enter into a contract with, or make grants to, an urban Indian organization that provides or arranges for the provision of health care services (through satellite facilities, provider networks, or otherwise) to urban Indians in more than one urban center.

**''SEC. 504. CONTRACTS AND GRANTS FOR THE DETERMINATION OF UNMET HEALTH CARE NEEDS.**

''(a) AUTHORITY.—

''(1) IN GENERAL.—Under authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the Snyder Act), the Secretary, acting through the Service, may enter into contracts with, or make grants to, urban Indian organizations situated in urban centers for which contracts have not been entered into, or grants have not been made, under section 503.

''(2) PURPOSE.—The purpose of a contract or grant made under this section shall be the determination of the matters described in subsection (b)(1) in order to assist the Secretary in assessing the health status and health care needs of urban Indians in the urban center involved and determining whether the Secretary should enter into a contract or make a grant under section 503 with respect to the urban Indian organization which the Secretary has entered into a contract with, or made a grant to, under this section.

''(b) REQUIREMENTS.—Any contract entered into, or grant made, by the Secretary under this section shall include requirements that—

''(1) the urban Indian organization successfully undertake to—

''(A) document the health care status and unmet health care needs of urban Indians in the urban center involved; and

''(B) with respect to urban Indians in the urban center involved, determine the matters described in paragraphs (2), (3), (4), and (7) of section 503(b); and

''(2) the urban Indian organization complete performance of the contract, or carry out the requirements of the grant, within 1 year after the date on which the Secretary and such organization enter into such contract, or within 1 year after such organization receives such grant, whichever is applicable.

''(c) LIMITATION ON RENEWAL.—The Secretary may not renew any contract entered into, or grant made, under this section.

**''SEC. 505. EVALUATIONS; RENEWALS.**

''(a) PROCEDURES.—The Secretary, acting through the Service, shall develop procedures to evaluate compliance with grant requirements under this title and compliance with, and performance of contracts entered into by urban Indian organizations under this title. Such procedures shall include provisions for carrying out the requirements of this section.

''(b) COMPLIANCE WITH TERMS.—The Secretary, acting through the Service, shall evaluate the compliance of each urban Indian organization which has entered into a contract or received a grant under section 503 with the terms of such contract of grant. For purposes of an evaluation under this subsection, the Secretary, in determining the capacity of an urban Indian organization to deliver quality patient care shall, at the option of the organization—

''(1) conduct, through the Service, an annual onsite evaluation of the organization; or

''(2) accept, in lieu of an onsite evaluation, evidence of the organization's provisional or full accreditation by a private independent entity recognized by the Secretary for purposes of conducting quality reviews of providers participating in the medicare program under Title XVIII of the Social Security Act.

''(c) NONCOMPLIANCE.—

''(1) IN GENERAL.—If, as a result of the evaluations conducted under this section, the Secretary determines that an urban Indian organization has not complied with the requirements of a grant or complied with or satisfactorily performed a contract under section 503, the Secretary shall, prior to renewing such contract or grant, attempt to resolve with such organization the areas of noncompliance or unsatisfactory performance and modify such contract or grant to prevent future occurrences of such noncompliance or unsatisfactory performance.

''(2) NONRENEWAL.—If the Secretary determines, under an evaluation under this section, that noncompliance or unsatisfactory performance cannot be resolved and prevented in the future, the Secretary shall not renew such contract or grant with such organization and is authorized to enter into a contract or make a grant under section 503 with another urban Indian organization which is situated in the same urban center as the urban Indian organization whose contract or grant is not renewed under this section.

''(d) DETERMINATION OF RENEWAL.—In determining whether to renew a contract or grant with an urban Indian organization under section 503 which has completed performance of a contract or grant under section 504, the Secretary shall review the

records of the urban Indian organization, the reports submitted under section 507, and, in the case of a renewal of a contract or grant under section 503, shall consider the results of the onsite evaluations or accreditation under subsection (b).

**"SEC. 506. OTHER CONTRACT AND GRANT REQUIREMENTS.**

''(a) APPLICATION OF FEDERAL LAW.—Contracts with urban Indian organizations entered into pursuant to this title shall be in accordance with all Federal contracting laws and regulations relating to procurement except that, in the discretion of the Secretary, such contracts may be negotiated without advertising and need not conform to the provisions of the Act of August 24, 1935 (40 U.S.C. 270a, et seq.).

''(b) PAYMENTS.—Payments under any contracts or grants pursuant to this title shall, notwithstanding any term or condition of such contract or grant—

''(1) be made in their entirety by the Secretary to the urban Indian organization by not later than the end of the first 30 days of the funding period with respect to which the payments apply, unless the Secretary determines through an evaluation under section 505 that the organization is not capable of administering such payments in their entirety; and

''(2) if unexpended by the urban Indian organization during the funding period with respect to which the payments initially apply, be carried forward for expenditure with respect to allowable or reimbursable costs incurred by the organization during 1 or more subsequent funding periods without additional justification or documentation by the organization as a condition of carrying forward the expenditure of such funds.

''(c) REVISING OR AMENDING CONTRACT.—Notwithstanding any provision of law to the contrary, the Secretary may, at the request or consent of an urban Indian organization, revise or amend any contract entered into by the Secretary with such organization under this title as necessary to carry out the purposes of this title.

''(d) FAIR AND UNIFORM PROVISION OF SERVICES.—Contracts with, or grants to, urban Indian organizations and regulations adopted pursuant to this title shall include provisions to assure the fair and uniform provision to urban Indians of services and assistance under such contracts or grants by such organizations.

''(e) ELIGIBILITY OF URBAN INDIANS.—Urban Indians, as defined in section 4(f), shall be eligible for health care or referral services provided pursuant to this title.

**"SEC. 507. REPORTS AND RECORDS.**

''(a) REPORT.—For each fiscal year during which an urban Indian organization receives or expends funds pursuant to a contract entered into, or a grant received, pursuant to this title, such organization shall submit to the Secretary, on a basis no more frequent than every 6 months, a report including—

''(1) in the case of a contract or grant under section 503, information gathered pursuant to paragraph (5) of subsection (a) of such section;

''(2) information on activities conducted by the organization pursuant to the contract or grant;

''(3) an accounting of the amounts and purposes for which Federal funds were expended; and

''(4) a minimum set of data, using uniformly defined elements, that is specified by the Secretary, after consultations consistent with section 514, with urban Indian organizations.

''(b) AUDITS.—The reports and records of the urban Indian organization with respect to a contract or grant under this title shall be subject to audit by the Secretary and the Comptroller General of the United States.

''(c) COST OF AUDIT.—The Secretary shall allow as a cost of any contract or grant entered into or awarded under section 502 or 503 the cost of an annual independent financial audit conducted by—

''(1) a certified public accountant; or

''(2) a certified public accounting firm qualified to conduct Federal compliance audits.

**"SEC. 508. LIMITATION ON CONTRACT AUTHORITY.**

''The authority of the Secretary to enter into contracts or to award grants under this title shall be to the extent, and in an amount, provided for in appropriation Acts.

**"SEC. 509. FACILITIES.**

''(a) GRANTS.—The Secretary may make grants to contractors or grant recipients under this title for the lease, purchase, renovation, construction, or expansion of facilities, including leased facilities, in order to assist such contractors or grant recipients in complying with applicable licensure or certification requirements.

''(b) LOANS OR LOAN GUARANTEES.—The Secretary, acting through the Service or through the Health Resources and Services Administration, may provide loans to contractors or grant recipients under this title from the Urban Indian Health Care Facilities Revolving Loan Fund (referred to in this section as the 'URLF') described in subsection (c), or guarantees for loans, for the construction, renovation, expansion, or purchase of health care facilities, subject to the following requirements:

''(1) The principal amount of a loan or loan guarantee may cover 100 percent of the costs (other than staffing) relating to the facility, including planning, design, financing, site land development, construction, rehabilitation, renovation, conversion, medical equipment, furnishings, and capital purchase.

''(2) The total amount of the principal of loans and loan guarantees, respectively, outstanding at any one time shall not exceed such limitations as may be specified in appropriations Acts.

''(3) The loan or loan guarantee may have a term of the shorter of the estimated useful life of the facility, or 25 years.

''(4) An urban Indian organization may assign, and the Secretary may accept assignment of, the revenue of the organization as security for a loan or loan guarantee under this subsection.

''(5) The Secretary shall not collect application, processing, or similar fees from urban Indian organizations applying for loans or loan guarantees under this subsection.

''(c) URBAN INDIAN HEALTH CARE FACILITIES REVOLVING LOAN FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the Urban Indian Health Care Facilities Revolving Loan Fund. The URLF shall consist of—

''(A) such amounts as may be appropriated to the URLF;

''(B) amounts received from urban Indian organizations in repayment of loans made to such organizations under paragraph (2); and

''(C) interest earned on amounts in the URLF under paragraph (3).

''(2) USE OF URLF.—Amounts in the URLF may be expended by the Secretary, acting through the Service or the Health Resources and Services Administration, to make loans available to urban Indian organizations receiving grants or contracts under this title for the purposes, and subject to the requirements, described in subsection (b). Amounts appropriated to the URLF, amounts received from urban Indian organizations in repayment of loans, and interest on amounts in the URLF shall remain available until expended.

''(3) INVESTMENTS.—The Secretary of the Treasury shall invest such amounts of the URLF as such Secretary determines are not required to meet current withdrawals from the URLF. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price. Any obligation acquired by the URLF may be sold by the Secretary of the Treasury at the market price.

**"SEC. 510. OFFICE OF URBAN INDIAN HEALTH.**

''There is hereby established within the Service an Office of Urban Indian Health which shall be responsible for—

''(1) carrying out the provisions of this title;

''(2) providing central oversight of the programs and services authorized under this title; and

''(3) providing technical assistance to urban Indian organizations.

**"SEC. 511. GRANTS FOR ALCOHOL AND SUBSTANCE ABUSE RELATED SERVICES.**

''(a) GRANTS.—The Secretary may make grants for the provision of health-related services in prevention of, treatment of, rehabilitation of, or school and community-based education in, alcohol and substance abuse in urban centers to those urban Indian organizations with whom the Secretary has entered into a contract under this title or under section 201.

''(b) GOALS OF GRANT.—Each grant made pursuant to subsection (a) shall set forth the goals to be accomplished pursuant to the grant. The goals shall be specific to each grant as agreed to between the Secretary and the grantee.

''(c) CRITERIA.—The Secretary shall establish criteria for the grants made under subsection (a), including criteria relating to the—

''(1) size of the urban Indian population;

''(2) capability of the organization to adequately perform the activities required under the grant;

''(3) satisfactory performance standards for the organization in meeting the goals set forth in such grant, which standards shall be negotiated and agreed to between the Secretary and the grantee on a grant-by-grant basis; and

''(4) identification of need for services.

The Secretary shall develop a methodology for allocating grants made pursuant to this section based on such criteria.

''(d) TREATMENT OF FUNDS RECEIVED BY URBAN INDIAN ORGANIZATIONS.—Any funds received by an urban Indian organization under this Act for substance abuse prevention, treatment, and rehabilitation shall be subject to the criteria set forth in subsection (c).

**"SEC. 512. TREATMENT OF CERTAIN DEMONSTRATION PROJECTS.**

''(a) TULSA AND OKLAHOMA CITY CLINICS.—Notwithstanding any other provision of law, the Tulsa and Oklahoma City Clinic demonstration projects shall become permanent programs within the Service's direct care program and continue to be treated as service units in the allocation of resources and coordination of care, and shall continue to meet the requirements and definitions of an urban Indian organization in this title, and as such will not be subject to the provisions of the Indian Self-Determination and Education Assistance Act.

''(b) REPORT.—The Secretary shall submit to the President, for inclusion in the report required to be submitted to the Congress

under section 801 for fiscal year 1999, a report on the findings and conclusions derived from the demonstration projects specified in subsection (a).

**"SEC. 513. URBAN NIAAA TRANSFERRED PROGRAMS.**

"(a) GRANTS AND CONTRACTS.—The Secretary, acting through the Office of Urban Indian Health of the Service, shall make grants or enter into contracts, effective not later than September 30, 2002, with urban Indian organizations for the administration of urban Indian alcohol programs that were originally established under the National Institute on Alcoholism and Alcohol Abuse (referred to in this section to as 'NIAAA') and transferred to the Service.

"(b) USE OF FUNDS.—Grants provided or contracts entered into under this section shall be used to provide support for the continuation of alcohol prevention and treatment services for urban Indian populations and such other objectives as are agreed upon between the Service and a recipient of a grant or contract under this section.

"(c) ELIGIBILITY.—Urban Indian organizations that operate Indian alcohol programs originally funded under NIAAA and subsequently transferred to the Service are eligible for grants or contracts under this section.

"(d) EVALUATION AND REPORT.—The Secretary shall evaluate and report to the Congress on the activities of programs funded under this section at least every 5 years.

**"SEC. 514. CONSULTATION WITH URBAN INDIAN ORGANIZATIONS.**

"(a) IN GENERAL.—The Secretary shall ensure that the Service, the Health Care Financing Administration, and other operating divisions and staff divisions of the Department consult, to the maximum extent practicable, with urban Indian organizations (as defined in section 4) prior to taking any action, or approving Federal financial assistance for any action of a State, that may affect urban Indians or urban Indian organizations.

"(b) REQUIREMENT.—In subsection (a), the term 'consultation' means the open and free exchange of information and opinion among urban Indian organizations and the operating and staff divisions of the Department which leads to mutual understanding and comprehension and which emphasizes trust, respect, and shared responsibility.

**"SEC. 515. FEDERAL TORT CLAIMS ACT COVERAGE.**

"For purposes of section 224 of the Public Health Service Act (42 U.S.C. 233), with respect to claims by any person, initially filed on or after October 1, 1999, whether or not such person is an Indian or Alaska Native or is served on a fee basis or under other circumstances as permitted by Federal law or regulations, for personal injury (including death) resulting from the performance prior to, including, or after October 1, 1999, of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, or for purposes of section 2679 of title 28, United States Code, with respect to claims by any such person, on or after October 1, 1999, for personal injury (including death) resulting from the operation of an emergency motor vehicle, an urban Indian organization that has entered into a contract or received a grant pursuant to this title is deemed to be part of the Public Health Service while carrying out any such contract or grant and its employees (including those acting on behalf of the organization as provided for in section 2671 of title 28, United States Code, and including an individual who provides health care services pursuant to a personal services contract with an urban Indian organization for the provision of services in any facility owned, operated, or constructed under the jurisdiction of the Indian Health Service) are deemed employees of the Service while acting within the scope of their employment in carrying out the contract or grant, except that such employees shall be deemed to be acting within the scope of their employment in carrying out the contract or grant when they are required, by reason of their employment, to perform medical, surgical, dental or related functions at a facility other than a facility operated by the urban Indian organization pursuant to such contract or grant, but only if such employees are not compensated for the performance of such functions by a person or entity other than the urban Indian organization.

**"SEC. 516. URBAN YOUTH TREATMENT CENTER DEMONSTRATION.**

"(a) CONSTRUCTION AND OPERATION.—The Secretary, acting through the Service, shall, through grants or contracts, make payment for the construction and operation of at least 2 residential treatment centers in each State described in subsection (b) to demonstrate the provision of alcohol and substance abuse treatment services to urban Indian youth in a culturally competent residential setting.

"(b) STATES.—A State described in this subsection is a State in which—

"(1) there reside urban Indian youth with a need for alcohol and substance abuse treatment services in a residential setting; and

"(2) there is a significant shortage of culturally competent residential treatment services for urban Indian youth.

**"SEC. 517. USE OF FEDERAL GOVERNMENT FACILITIES AND SOURCES OF SUPPLY.**

"(a) IN GENERAL.—The Secretary shall permit an urban Indian organization that has entered into a contract or received a grant pursuant to this title, in carrying out such contract or grant, to use existing facilities and all equipment therein or pertaining thereto and other personal property owned by the Federal Government within the Secretary's jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

"(b) DONATION OF PROPERTY.—Subject to subsection (d), the Secretary may donate to an urban Indian organization that has entered into a contract or received a grant pursuant to this title any personal or real property determined to be excess to the needs of the Service or the General Services Administration for purposes of carrying out the contract or grant.

"(c) ACQUISITION OF PROPERTY.—The Secretary may acquire excess or surplus government personal or real property for donation, subject to subsection (d), to an urban Indian organization that has entered into a contract or received a grant pursuant to this title if the Secretary determines that the property is appropriate for use by the urban Indian organization for a purpose for which a contract or grant is authorized under this title.

"(d) PRIORITY.—In the event that the Secretary receives a request for a specific item of personal or real property described in subsections (b) or (c) from an urban Indian organization and from an Indian tribe or tribal organization, the Secretary shall give priority to the request for donation to the Indian tribe or tribal organization if the Secretary receives the request from the Indian tribe or tribal organization before the date on which the Secretary transfers title to the property or, if earlier, the date on which the Secretary transfers the property physically, to the urban Indian organization.

"(e) RELATION TO FEDERAL SOURCES OF SUPPLY.—For purposes of section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)) (relating to Federal sources of supply, including lodging providers, airlines, and other transportation providers), an urban Indian organization that has entered into a contract or received a grant pursuant to this title shall be deemed an executive agency when carrying out such contract or grant, and the employees of the urban Indian organization shall be eligible to have access to such sources of supply on the same basis as employees of an executive agency have such access.

**"SEC. 518. GRANTS FOR DIABETES PREVENTION, TREATMENT AND CONTROL.**

"(a) AUTHORITY.—The Secretary may make grants to those urban Indian organizations that have entered into a contract or have received a grant under this title for the provision of services for the prevention, treatment, and control of the complications resulting from, diabetes among urban Indians.

"(b) GOALS.—Each grant made pursuant to subsection (a) shall set forth the goals to be accomplished under the grant. The goals shall be specific to each grant as agreed upon between the Secretary and the grantee.

"(c) CRITERIA.—The Secretary shall establish criteria for the awarding of grants made under subsection (a) relating to—

"(1) the size and location of the urban Indian population to be served;

"(2) the need for the prevention of, treatment of, and control of the complications resulting from diabetes among the urban Indian population to be served;

"(3) performance standards for the urban Indian organization in meeting the goals set forth in such grant that are negotiated and agreed to by the Secretary and the grantee;

"(4) the capability of the urban Indian organization to adequately perform the activities required under the grant; and

"(5) the willingness of the urban Indian organization to collaborate with the registry, if any, established by the Secretary under section 204(e) in the area office of the Service in which the organization is located.

"(d) APPLICATION OF CRITERIA.—Any funds received by an urban Indian organization under this Act for the prevention, treatment, and control of diabetes among urban Indians shall be subject to the criteria developed by the Secretary under subsection (c).

**"SEC. 519. COMMUNITY HEALTH REPRESENTATIVES.**

"The Secretary, acting through the Service, may enter into contracts with, and make grants to, urban Indian organizations for the use of Indians trained as health service providers through the Community Health Representatives Program under section 107(b) in the provision of health care, health promotion, and disease prevention services to urban Indians.

**"SEC. 520. REGULATIONS.**

"(a) EFFECT OF TITLE.—This title shall be effective on the date of enactment of this Act regardless of whether the Secretary has promulgated regulations implementing this title.

"(b) PROMULGATION.—

"(1) IN GENERAL.—The Secretary may promulgate regulations to implement the provisions of this title.

"(2) PUBLICATION.—Proposed regulations to implement this title shall be published by the Secretary in the Federal Register not later than 270 days after the date of enactment of this Act and shall have a comment period of not less than 120 days.

"(3) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under this title shall expire on the date that is 18 months after the date of enactment of this Act.

"(c) NEGOTIATED RULEMAKING COMMITTEE.—A negotiated rulemaking committee shall be established pursuant to section 565 of title 5, United States Code, to

carry out this section and shall, in addition to Federal representatives, have as the majority of its members representatives of urban Indian organizations from each service area.

''(d) ADAPTION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures to the unique context of this Act.

**"SEC. 521. AUTHORIZATION OF APPROPRIATIONS.**

''There is authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2013 to carry out this title.

## "TITLE VI—ORGANIZATIONAL IMPROVEMENTS

**"SEC. 601. ESTABLISHMENT OF THE INDIAN HEALTH SERVICE AS AN AGENCY OF THE PUBLIC HEALTH SERVICE.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—In order to more effectively and efficiently carry out the responsibilities, authorities, and functions of the United States to provide health care services to Indians and Indian tribes, as are or may be hereafter provided by Federal statute or treaties, there is established within the Public Health Service of the Department the Indian Health Service.

''(2) ASSISTANT SECRETARY OF INDIAN HEALTH.—The Service shall be administered by an Assistance Secretary of Indian Health, who shall be appointed by the President, by and with the advice and consent of the Senate. The Assistant Secretary shall report to the Secretary. Effective with respect to an individual appointed by the President, by and with the advice and consent of the Senate, after January 1, 1993, the term of service of the Assistant Secretary shall be 4 years. An Assistant Secretary may serve more than 1 term.

''(b) AGENCY.—The Service shall be an agency within the Public Health Service of the Department, and shall not be an office, component, or unit of any other agency of the Department.

''(c) FUNCTIONS AND DUTIES.—The Secretary shall carry out through the Assistant Secretary of the Service—

''(1) all functions which were, on the day before the date of enactment of the Indian Health Care Amendments of 1988, carried out by or under the direction of the individual serving as Director of the Service on such day;

''(2) all functions of the Secretary relating to the maintenance and operation of hospital and health facilities for Indians and the planning for, and provision and utilization of, health services for Indians;

''(3) all health programs under which health care is provided to Indians based upon their status as Indians which are administered by the Secretary, including programs under—

''(A) this Act;

''(B) the Act of November 2, 1921 (25 U.S.C. 13);

''(C) the Act of August 5, 1954 (42 U.S.C. 2001, et seq.);

''(D) the Act of August 16, 1957 (42 U.S.C. 2005 et seq.); and

''(E) the Indian Self-Determination Act (25 U.S.C. 450f, et seq.); and

''(4) all scholarship and loan functions carried out under title I.

''(d) AUTHORITY.—

''(1) IN GENERAL.—The Secretary, acting through the Assistant Secretary, shall have the authority—

''(A) except to the extent provided for in paragraph (2), to appoint and compensate employees for the Service in accordance with title 5, United States Code;

''(B) to enter into contracts for the procurement of goods and services to carry out the functions of the Service; and

''(C) to manage, expend, and obligate all funds appropriated for the Service.

''(2) PERSONNEL ACTIONS.—Notwithstanding any other provision of law, the provisions of section 12 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 472), shall apply to all personnel actions taken with respect to new positions created within the Service as a result of its establishment under subsection (a).

**"SEC. 602. AUTOMATED MANAGEMENT INFORMATION SYSTEM.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary, in consultation with tribes, tribal organizations, and urban Indian organizations, shall establish an automated management information system for the Service.

''(2) REQUIREMENTS OF SYSTEM.—The information system established under paragraph (1) shall include—

''(A) a financial management system;

''(B) a patient care information system;

''(C) a privacy component that protects the privacy of patient information;

''(D) a services-based cost accounting component that provides estimates of the costs associated with the provision of specific medical treatments or services in each area office of the Service;

''(E) an interface mechanism for patient billing and accounts receivable system; and

''(F) a training component.

''(b) PROVISION OF SYSTEMS TO TRIBES AND ORGANIZATIONS.—The Secretary shall provide each Indian tribe and tribal organization that provides health services under a contract entered into with the Service under the Indian Self-Determination Act automated management information systems which—

''(1) meet the management information needs of such Indian tribe or tribal organization with respect to the treatment by the Indian tribe or tribal organization of patients of the Service; and

''(2) meet the management information needs of the Service.

''(c) ACCESS TO RECORDS.—Notwithstanding any other provision of law, each patient shall have reasonable access to the medical or health records of such patient which are held by, or on behalf of, the Service.

''(d) AUTHORITY TO ENHANCE INFORMATION TECHNOLOGY.—The Secretary, acting through the Assistant Secretary, shall have the authority to enter into contracts, agreements or joint ventures with other Federal agencies, States, private and nonprofit organizations, for the purpose of enhancing information technology in Indian health programs and facilities.

**"SEC. 603. AUTHORIZATION OF APPROPRIATIONS.**

''There is authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2013 to carry out this title.

## "TITLE VII—BEHAVIORAL HEALTH PROGRAMS

**"SEC. 701. BEHAVIORAL HEALTH PREVENTION AND TREATMENT SERVICES.**

''(a) PURPOSES.—It is the purpose of this section to—

''(1) authorize and direct the Secretary, acting through the Service, Indian tribes, tribal organizations, and urban Indian organizations to develop a comprehensive behavioral health prevention and treatment program which emphasizes collaboration among alcohol and substance abuse, social services, and mental health programs;

''(2) provide information, direction and guidance relating to mental illness and dysfunction and self-destructive behavior, including child abuse and family violence, to those Federal, tribal, State and local agencies responsible for programs in Indian communities in areas of health care, education, social services, child and family welfare, alcohol and substance abuse, law enforcement and judicial services;

''(3) assist Indian tribes to identify services and resources available to address mental illness and dysfunctional and self-destructive behavior;

''(4) provide authority and opportunities for Indian tribes to develop and implement, and coordinate with, community-based programs which include identification, prevention, education, referral, and treatment services, including through multi-disciplinary resource teams;

''(5) ensure that Indians, as citizens of the United States and of the States in which they reside, have the same access to behavioral health services to which all citizens have access; and

''(6) modify or supplement existing programs and authorities in the areas identified in paragraph (2).

''(b) BEHAVIORAL HEALTH PLANNING.—

''(1) AREA-WIDE PLANS.—The Secretary, acting through the Service, Indian tribes, tribal organizations, and urban Indian organizations, shall encourage Indian tribes and tribal organizations to develop tribal plans, encourage urban Indian organizations to develop local plans, and encourage all such groups to participate in developing area-wide plans for Indian Behavioral Health Services. The plans shall, to the extent feasible, include—

''(A) an assessment of the scope of the problem of alcohol or other substance abuse, mental illness, dysfunctional and self-destructive behavior, including suicide, child abuse and family violence, among Indians, including—

''(i) the number of Indians served who are directly or indirectly affected by such illness or behavior; and

''(ii) an estimate of the financial and human cost attributable to such illness or behavior;

''(B) an assessment of the existing and additional resources necessary for the prevention and treatment of such illness and behavior, including an assessment of the progress toward achieving the availability of the full continuum of care described in subsection (c); and

''(C) an estimate of the additional funding needed by the Service, Indian tribes, tribal organizations and urban Indian organizations to meet their responsibilities under the plans.

''(2) NATIONAL CLEARINGHOUSE.—The Secretary shall establish a national clearinghouse of plans and reports on the outcomes of such plans developed under this section by Indian tribes, tribal organizations and by areas relating to behavioral health. The Secretary shall ensure access to such plans and outcomes by any Indian tribe, tribal organization, urban Indian organization or the Service.

''(3) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to Indian tribes, tribal organizations, and urban Indian organizations in preparation of plans under this section and in developing standards of care that may be utilized and adopted locally.

''(c) CONTINUUM OF CARE.—The Secretary, acting through the Service, Indian tribes and tribal organizations, shall provide, to the extent feasible and to the extent that funding is available, for the implementation of programs including—

''(1) a comprehensive continuum of behavioral health care that provides for—

''(A) community based prevention, intervention, outpatient and behavioral health aftercare;

''(B) detoxification (social and medical);

''(C) acute hospitalization;

''(D) intensive outpatient or day treatment;

''(E) residential treatment;

''(F) transitional living for those needing a temporary stable living environment that is supportive of treatment or recovery goals;

''(G) emergency shelter;

''(H) intensive case management;

''(I) traditional health care practices; and

''(J) diagnostic services, including the utilization of neurological assessment technology; and

''(2) behavioral health services for particular populations, including—

''(A) for persons from birth through age 17, child behavioral health services, that include—

''(i) pre-school and school age fetal alcohol disorder services, including assessment and behavioral intervention);

''(ii) mental health or substance abuse services (emotional, organic, alcohol, drug, inhalant and tobacco);

''(iii) services for co-occurring disorders (multiple diagnosis);

''(iv) prevention services that are focused on individuals ages 5 years through 10 years (alcohol, drug, inhalant and tobacco);

''(v) early intervention, treatment and aftercare services that are focused on individuals ages 11 years through 17 years;

''(vi) healthy choices or life style services (related to STD's, domestic violence, sexual abuse, suicide, teen pregnancy, obesity, and other risk or safety issues);

''(vii) co-morbidity services;

''(B) for persons ages 18 years through 55 years, adult behavioral health services that include—

''(i) early intervention, treatment and aftercare services;

''(ii) mental health and substance abuse services (emotional, alcohol, drug, inhalant and tobacco);

''(iii) services for co-occurring disorders (dual diagnosis) and co-morbidity;

''(iv) healthy choices and life style services (related to parenting, partners, domestic violence, sexual abuse, suicide, obesity, and other risk related behavior);

''(v) female specific treatment services for—

''(I) women at risk of giving birth to a child with a fetal alcohol disorder;

''(II) substance abuse requiring gender specific services;

''(III) sexual assault and domestic violence; and

''(IV) healthy choices and life style (parenting, partners, obesity, suicide and other related behavioral risk); and

''(vi) male specific treatment services for—

''(I) substance abuse requiring gender specific services;

''(II) sexual assault and domestic violence; and

''(III) healthy choices and life style (parenting, partners, obesity, suicide and other risk related behavior);

''(C) family behavioral health services, including—

''(i) early intervention, treatment and aftercare for affected families;

''(ii) treatment for sexual assault and domestic violence; and

''(iii) healthy choices and life style (related to parenting, partners, domestic violence and other abuse issues);

''(D) for persons age 56 years and older, elder behavioral health services including—

''(i) early intervention, treatment and aftercare services that include—

''(I) mental health and substance abuse services (emotional, alcohol, drug, inhalant and tobacco);

''(II) services for co-occurring disorders (dual diagnosis) and co-morbidity; and

''(III) healthy choices and life style services (managing conditions related to aging);

''(ii) elder women specific services that include—

''(I) treatment for substance abuse requiring gender specific services and

''(II) treatment for sexual assault, domestic violence and neglect;

''(iii) elder men specific services that include—

''(I) treatment for substance abuse requiring gender specific services; and

''(II) treatment for sexual assault, domestic violence and neglect; and

''(iv) services for dementia regardless of cause.

''(d) COMMUNITY BEHAVIORAL HEALTH PLAN.—

''(1) IN GENERAL.—The governing body of any Indian tribe or tribal organization or urban Indian organization may, at its discretion, adopt a resolution for the establishment of a community behavioral health plan providing for the identification and coordination of available resources and programs to identify, prevent, or treat alcohol and other substance abuse, mental illness or dysfunctional and self-destructive behavior, including child abuse and family violence, among its members or its service population. Such plan should include behavioral health services, social services, intensive outpatient services, and continuing after care.

''(2) TECHNICAL ASSISTANCE.—In furtherance of a plan established pursuant to paragraph (1) and at the request of a tribe, the appropriate agency, service unit, or other officials of the Bureau of Indian Affairs and the Service shall cooperate with, and provide technical assistance to, the Indian tribe or tribal organization in the development of a plan under paragraph (1). Upon the establishment of such a plan and at the request of the Indian tribe or tribal organization, such officials shall cooperate with the Indian tribe or tribal organization in the implementation of such plan.

''(3) FUNDING.—The Secretary, acting through the Service, may make funding available to Indian tribes and tribal organizations adopting a resolution pursuant to paragraph (1) to obtain technical assistance for the development of a community behavioral health plan and to provide administrative support in the implementation of such plan.

''(e) COORDINATED PLANNING.—The Secretary, acting through the Service, Indian tribes, tribal organizations, and urban Indian organizations shall coordinate behavioral health planning, to the extent feasible, with other Federal and State agencies, to ensure that comprehensive behavioral health services are available to Indians without regard to their place of residence.

''(f) FACILITIES ASSESSMENT.—Not later than 1 year after the date of enactment of this Act, the Secretary, acting through the Service, shall make an assessment of the need for inpatient mental health care among Indians and the availability and cost of inpatient mental health facilities which can meet such need. In making such assessment, the Secretary shall consider the possible conversion of existing, under-utilized service hospital beds into psychiatric units to meet such need.

**''SEC. 702. MEMORANDUM OF AGREEMENT WITH THE DEPARTMENT OF THE INTERIOR.**

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of the Interior shall develop and enter into a memorandum of agreement, or review and update any existing memoranda of agreement as required under section 4205 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2411), and under which the Secretaries address—

''(1) the scope and nature of mental illness and dysfunctional and self-destructive behavior, including child abuse and family violence, among Indians;

''(2) the existing Federal, tribal, State, local, and private services, resources, and programs available to provide mental health services for Indians;

''(3) the unmet need for additional services, resources, and programs necessary to meet the needs identified pursuant to paragraph (1);

''(4)(A) the right of Indians, as citizens of the United States and of the States in which they reside, to have access to mental health services to which all citizens have access;

''(B) the right of Indians to participate in, and receive the benefit of, such services; and

''(C) the actions necessary to protect the exercise of such right;

''(5) the responsibilities of the Bureau of Indian Affairs and the Service, including mental health identification, prevention, education, referral, and treatment services (including services through multidisciplinary resource teams), at the central, area, and agency and service unit levels to address the problems identified in paragraph (1);

''(6) a strategy for the comprehensive coordination of the mental health services provided by the Bureau of Indian Affairs and the Service to meet the needs identified pursuant to paragraph (1), including—

''(A) the coordination of alcohol and substance abuse programs of the Service, the Bureau of Indian Affairs, and the various Indian tribes (developed under the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986) with the mental health initiatives pursuant to this Act, particularly with respect to the referral and treatment of dually-diagnosed individuals requiring mental health and substance abuse treatment; and

''(B) ensuring that Bureau of Indian Affairs and Service programs and services (including multidisciplinary resource teams) addressing child abuse and family violence are coordinated with such non-Federal programs and services;

''(7) direct appropriate officials of the Bureau of Indian Affairs and the Service, particularly at the agency and service unit levels, to cooperate fully with tribal requests made pursuant to community behavioral health plans adopted under section 701(c) and section 4206 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2412); and

''(8) provide for an annual review of such agreement by the 2 Secretaries and a report which shall be submitted to Congress and made available to the Indian tribes.

''(b) SPECIFIC PROVISIONS.—The memorandum of agreement updated or entered into pursuant to subsection (a) shall include specific provisions pursuant to which the Service shall assume responsibility for—

''(1) the determination of the scope of the problem of alcohol and substance abuse among Indian people, including the number of Indians within the jurisdiction of the Service who are directly or indirectly affected by alcohol and substance abuse and the financial and human cost;

''(2) an assessment of the existing and needed resources necessary for the prevention of alcohol and substance abuse and the treatment of Indians affected by alcohol and substance abuse; and

''(3) an estimate of the funding necessary to adequately support a program of prevention of alcohol and substance abuse and treatment of Indians affected by alcohol and substance abuse.

''(c) CONSULTATION.—The Secretary and the Secretary of the Interior shall, in developing the memorandum of agreement under subsection (a), consult with and solicit the comments of—

''(1) Indian tribes and tribal organizations;

''(2) Indian individuals;

''(3) urban Indian organizations and other Indian organizations;

''(4) behavioral health service providers.

''(d) PUBLICATION.—The memorandum of agreement under subsection (a) shall be published in the Federal Register. At the same time as the publication of such agreement in the Federal Register, the Secretary shall provide a copy of such memorandum to each Indian tribe, tribal organization, and urban Indian organization.

**''SEC. 703. COMPREHENSIVE BEHAVIORAL HEALTH PREVENTION AND TREATMENT PROGRAM.**

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—The Secretary, acting through the Service, Indian tribes and tribal organizations consistent with section 701, shall provide a program of comprehensive behavioral health prevention and treatment and aftercare, including systems of care and traditional health care practices, which shall include—

''(A) prevention, through educational intervention, in Indian communities;

''(B) acute detoxification or psychiatric hospitalization and treatment (residential and intensive outpatient);

''(C) community-based rehabilitation and aftercare;

''(D) community education and involvement, including extensive training of health care, educational, and community-based personnel;

''(E) specialized residential treatment programs for high risk populations including pregnant and post partum women and their children;

''(F) diagnostic services utilizing, when appropriate, neuropsychiatric assessments which include the use of the most advances technology available; and

''(G) a telepsychiatry program that uses experts in the field of pediatric psychiatry, and that incorporates assessment, diagnosis and treatment for children, including those children with concurrent neurological disorders.

''(2) TARGET POPULATIONS.—The target population of the program under paragraph (1) shall be members of Indian tribes. Efforts to train and educate key members of the Indian community shall target employees of health, education, judicial, law enforcement, legal, and social service programs.

''(b) CONTRACT HEALTH SERVICES.—

''(1) IN GENERAL.—The Secretary, acting through the Service (with the consent of the Indian tribe to be served), Indian tribes and tribal organizations, may enter into contracts with public or private providers of behavioral health treatment services for the purpose of carrying out the program required under subsection (a).

''(2) PROVISION OF ASSISTANCE.—In carrying out this subsection, the Secretary shall provide assistance to Indian tribes and tribal organizations to develop criteria for the certification of behavioral health service providers and accreditation of service facilities which meet minimum standards for such services and facilities.

**''SEC. 704. MENTAL HEALTH TECHNICIAN PROGRAM.**

''(a) IN GENERAL.—Under the authority of the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the Snyder Act), the Secretary shall establish and maintain a Mental Health Technician program within the Service which—

''(1) provides for the training of Indians as mental health technicians; and

''(2) employs such technicians in the provision of community-based mental health care that includes identification, prevention, education, referral, and treatment services.

''(b) TRAINING.—In carrying out subsection (a)(1), the Secretary shall provide high standard paraprofessional training in mental health care necessary to provide quality care to the Indian communities to be served. Such training shall be based upon a curriculum developed or approved by the Secretary which combines education in the theory of mental health care with supervised practical experience in the provision of such care.

''(c) SUPERVISION AND EVALUATION.—The Secretary shall supervise and evaluate the mental health technicians in the training program under this section.

''(d) TRADITIONAL CARE.—The Secretary shall ensure that the program established pursuant to this section involves the utilization and promotion of the traditional Indian health care and treatment practices of the Indian tribes to be served.–

**''SEC. 705. LICENSING REQUIREMENT FOR MENTAL HEALTH CARE WORKERS.**

''Subject to section 220, any person employed as a psychologist, social worker, or marriage and family therapist for the purpose of providing mental health care services to Indians in a clinical setting under the authority of this Act or through a funding agreement pursuant to the Indian Self-Determination and Education Assistance Act shall—

''(1) in the case of a person employed as a psychologist to provide health care services, be licensed as a clinical or counseling psychologist, or working under the direct supervision of a clinical or counseling psychologist;

''(2) in the case of a person employed as a social worker, be licensed as a social worker or working under the direct supervision of a licensed social worker; or

''(3) in the case of a person employed as a marriage and family therapist, be licensed as a marriage and family therapist or working under the direct supervision of a licensed marriage and family therapist.

**''SEC. 706. INDIAN WOMEN TREATMENT PROGRAMS.**

''(a) FUNDING.—The Secretary, consistent with section 701, shall make funding available to Indian tribes, tribal organizations and urban Indian organization to develop and implement a comprehensive behavioral health program of prevention, intervention, treatment, and relapse prevention services that specifically addresses the spiritual, cultural, historical, social, and child care needs of Indian women, regardless of age.

''(b) USE OF FUNDS.—Funding provided pursuant to this section may be used to—

''(1) develop and provide community training, education, and prevention programs for Indian women relating to behavioral health issues, including fetal alcohol disorders;

''(2) identify and provide psychological services, counseling, advocacy, support, and relapse prevention to Indian women and their families; and

''(3) develop prevention and intervention models for Indian women which incorporate traditional health care practices, cultural values, and community and family involvement.

''(c) CRITERIA.—The Secretary, in consultation with Indian tribes and tribal organizations, shall establish criteria for the review and approval of applications and proposals for funding under this section.

''(d) EARMARK OF CERTAIN FUNDS.—Twenty percent of the amounts appropriated to carry out this section shall be used to make grants to urban Indian organizations funded under title V.

**''SEC. 707. INDIAN YOUTH PROGRAM.**

''(a) DETOXIFICATION AND REHABILITATION.—The Secretary shall, consistent with section 701, develop and implement a program for acute detoxification and treatment for Indian youth that includes behavioral health services. The program shall include regional treatment centers designed to include detoxification and rehabilitation for both sexes on a referral basis and programs developed and implemented by Indian tribes or tribal organizations at the local level under the Indian Self-Determination and Education Assistance Act. Regional centers shall be integrated with the intake and rehabilitation programs based in the referring Indian community.

''(b) ALCOHOL AND SUBSTANCE ABUSE TREATMENT CENTERS OR FACILITIES.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary, acting through the Service, Indian tribes, or tribal organizations, shall construct, renovate, or, as necessary, purchase, and appropriately staff and operate, at least 1 youth regional treatment center or treatment network in each area under the jurisdiction of an area office.

''(B) AREA OFFICE IN CALIFORNIA.—For purposes of this subsection, the area office in California shall be considered to be 2 area offices, 1 office whose jurisdiction shall be considered to encompass the northern area of the State of California, and 1 office whose jurisdiction shall be considered to encompass the remainder of the State of California for the purpose of implementing California treatment networks.

''(2) FUNDING.—For the purpose of staffing and operating centers or facilities under this subsection, funding shall be made available pursuant to the Act of November 2, 1921 (25 U.S.C. 13) (commonly known as the Snyder Act).

''(3) LOCATION.—A youth treatment center constructed or purchased under this subsection shall be constructed or purchased at a location within the area described in paragraph (1) that is agreed upon (by appropriate tribal resolution) by a majority of the tribes to be served by such center.

''(4) SPECIFIC PROVISION OF FUNDS.—

''(A) IN GENERAL.—Notwithstanding any other provision of this title, the Secretary may, from amounts authorized to be appropriated for the purposes of carrying out this section, make funds available to—

''(i) the Tanana Chiefs Conference, Incorporated, for the purpose of leasing, constructing, renovating, operating and maintaining a residential youth treatment facility in Fairbanks, Alaska;

''(ii) the Southeast Alaska Regional Health Corporation to staff and operate a residential youth treatment facility without regard to the proviso set forth in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l));

''(iii) the Southern Indian Health Council, for the purpose of staffing, operating, and maintaining a residential youth treatment facility in San Diego County, California; and

''(iv) the Navajo Nation, for the staffing, operation, and maintenance of the Four Corners Regional Adolescent Treatment Center, a residential youth treatment facility in New Mexico.

''(B) PROVISION OF SERVICES TO ELIGIBLE YOUTH.—Until additional residential youth treatment facilities are established in Alaska pursuant to this section, the facilities specified in subparagraph (A) shall make every effort to provide services to all eligible Indian youth residing in such State.

''(c) INTERMEDIATE ADOLESCENT BEHAVIORAL HEALTH SERVICES.—

''(1) IN GENERAL.—The Secretary, acting through the Service, Indian Tribes and tribal organizations, may provide intermediate behavioral health services, which may incorporate traditional health care practices, to Indian children and adolescents, including—

''(A) pre-treatment assistance;

''(B) inpatient, outpatient, and after-care services;

''(C) emergency care;

''(D) suicide prevention and crisis intervention; and

''(E) prevention and treatment of mental illness, and dysfunctional and –self-destructive behavior, including child abuse and family violence.

''(2) USE OF FUNDS.—Funds provided under this subsection may be used—

''(A) to construct or renovate an existing health facility to provide intermediate behavioral health services;

''(B) to hire behavioral health professionals;

''(C) to staff, operate, and maintain an intermediate mental health facility, group home, sober housing, transitional housing or similar facilities, or youth shelter where intermediate behavioral health services are being provided; and

''(D) to make renovations and hire appropriate staff to convert existing hospital beds into adolescent psychiatric units; and

''(E) to provide intensive home- and community-based services, including collaborative systems of care.

''(3) CRITERIA.—The Secretary shall, in consultation with Indian tribes and tribal organizations, establish criteria for the review and approval of applications or proposals for funding made available pursuant to this subsection.

''(d) FEDERALLY OWNED STRUCTURES.—

''(1) IN GENERAL.—The Secretary, acting through the Service, shall, in consultation with Indian tribes and tribal organizations—

''(A) identify and use, where appropriate, federally owned structures suitable for local residential or regional behavioral health treatment for Indian youth; and

''(B) establish guidelines, in consultation with Indian tribes and tribal organizations, for determining the suitability of any such Federally owned structure to be used for local residential or regional behavioral health treatment for Indian youth.

''(2) TERMS AND CONDITIONS FOR USE OF STRUCTURE.—Any structure described in paragraph (1) may be used under such terms and conditions as may be agreed upon by the Secretary and the agency having responsibility for the structure and any Indian tribe or tribal organization operating the program.

''(e) REHABILITATION AND AFTERCARE SERVICES.—

''(1) IN GENERAL.—The Secretary, an Indian tribe or tribal organization, in cooperation with the Secretary of the Interior, shall develop and implement within each service unit, community-based rehabilitation and follow-up services for Indian youth who have significant behavioral health problems, and require long-term treatment, community reintegration, and monitoring to support the Indian youth after their return to their home community.

''(2) ADMINISTRATION.—Services under paragraph (1) shall be administered within each service unit or tribal program by trained staff within the community who can assist the Indian youth in continuing development of self-image, positive problem-solving skills, and nonalcohol or substance abusing behaviors. Such staff may include alcohol and substance abuse counselors, mental health professionals, and other health professionals and paraprofessionals, including community health representatives.

''(f) INCLUSION OF FAMILY IN YOUTH TREATMENT PROGRAM.—In providing the treatment and other services to Indian youth authorized by this section, the Secretary, an Indian tribe or tribal organization shall provide for the inclusion of family members of such youth in the treatment programs or other services as may be appropriate. Not less than 10 percent of the funds appropriated for the purposes of carrying out subsection (e) shall be used for outpatient care of adult family members related to the treatment of an Indian youth under that subsection.

''(g) MULTIDRUG ABUSE PROGRAM.—The Secretary, acting through the Service, Indian tribes, tribal organizations and urban Indian organizations, shall provide, consistent with section 701, programs and services to prevent and treat the abuse of multiple forms of substances, including alcohol, drugs, inhalants, and tobacco, among Indian youth residing in Indian communities, on Indian reservations, and in urban areas and provide appropriate mental health services to address the incidence of mental illness among such youth.

**''SEC. 708. INPATIENT AND COMMUNITY-BASED MENTAL HEALTH FACILITIES DESIGN, CONSTRUCTION AND STAFFING ASSESSMENT.**

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary, acting through the Service, Indian tribes and tribal organizations, shall provide, in each area of the Service, not less than 1 inpatient mental health care facility, or the equivalent, for Indians with behavioral health problems.

''(b) TREATMENT OF CALIFORNIA.—For purposes of this section, California shall be considered to be 2 areas of the Service, 1 area whose location shall be considered to encompass the northern area of the State of California and 1 area whose jurisdiction shall be considered to encompass the remainder of the State of California.

''(c) CONVERSION OF CERTAIN HOSPITAL BEDS.—The Secretary shall consider the possible conversion of existing, under-utilized Service hospital beds into psychiatric units to meet needs under this section.

**''SEC. 709. TRAINING AND COMMUNITY EDUCATION.**

''(a) COMMUNITY EDUCATION.—

''(1) IN GENERAL.—The Secretary, in cooperation with the Secretary of the Interior, shall develop and implement, or provide funding to enable Indian tribes and tribal organization to develop and implement, within each service unit or tribal program a program of community education and involvement which shall be designed to provide concise and timely information to the community leadership of each tribal community.

''(2) EDUCATION.—A program under paragraph (1) shall include education concerning behavioral health for political leaders, tribal judges, law enforcement personnel, members of tribal health and education boards, and other critical members of each tribal community.

''(3) TRAINING.—Community-based training (oriented toward local capacity development) under a program under paragraph (1) shall include tribal community provider training (designed for adult learners from the communities receiving services for prevention, intervention, treatment and aftercare).

''(b) TRAINING.—The Secretary shall, either directly or through Indian tribes or tribal organization, provide instruction in the area of behavioral health issues, including instruction in crisis intervention and family relations in the context of alcohol and substance abuse, child sexual abuse, youth alcohol and substance abuse, and the causes and effects of fetal alcohol disorders, to appropriate employees of the Bureau of Indian Affairs and the Service, and to personnel in schools or programs operated under any contract with the Bureau of Indian Affairs or the Service, including supervisors of emergency shelters and halfway houses described in section 4213 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2433).

''(c) COMMUNITY-BASED TRAINING MODELS.—In carrying out the education and training programs required by this section, the Secretary, acting through the Service and in consultation with Indian tribes, tribal organizations, Indian behavioral health experts, and Indian alcohol and substance abuse prevention experts, shall develop and provide community-based training models. Such models shall address—

''(1) the elevated risk of alcohol and behavioral health problems faced by children of alcoholics;

''(2) the cultural, spiritual, and multigenerational aspects of behavioral health problem prevention and recovery; and

''(3) community-based and multidisciplinary strategies for preventing and treating behavioral health problems.

**''SEC. 710. BEHAVIORAL HEALTH PROGRAM.**

''(a) PROGRAMS FOR INNOVATIVE SERVICES.—The Secretary, acting through the Service, Indian Tribes or tribal organizations, consistent with Section 701, may develop, implement, and carry out programs to deliver innovative community-based behavioral health services to Indians.

''(b) CRITERIA.—The Secretary may award funding for a project under subsection (a) to an Indian tribe or tribal organization and may consider the following criteria:

''(1) Whether the project will address significant unmet behavioral health needs among Indians.

''(2) Whether the project will serve a significant number of Indians.

''(3) Whether the project has the potential to deliver services in an efficient and effective manner.

''(4) Whether the tribe or tribal organization has the administrative and financial capability to administer the project.

''(5) Whether the project will deliver services in a manner consistent with traditional health care.

''(6) Whether the project is coordinated with, and avoids duplication of, existing services.

''(c) FUNDING AGREEMENTS.—For purposes of this subsection, the Secretary shall, in evaluating applications or proposals for funding for projects to be operated under any funding agreement entered into with the Service under the Indian Self-Determination Act and Education Assistance Act, use the same criteria that the Secretary uses in evaluating any other application or proposal for such funding.

**''SEC. 711. FETAL ALCOHOL DISORDER FUNDING.**

''(a) ESTABLISHMENT OF PROGRAM.—

''(1) IN GENERAL.—The Secretary, consistent with Section 701, acting through Indian tribes, tribal organizations, and urban Indian organizations, shall establish and operate fetal alcohol disorders programs as provided for in this section for the purposes of meeting the health status objective specified in section 3(b).

''(2) USE OF FUNDS.—Funding provided pursuant to this section shall be used to—

''(A) develop and provide community and in-school training, education, and prevention programs relating to fetal alcohol disorders;

''(B) identify and provide behavioral health treatment to high-risk women;

''(C) identify and provide appropriate educational and vocational support, counseling,

advocacy, and information to fetal alcohol disorder affected persons and their families or caretakers;

''(D) develop and implement counseling and support programs in schools for fetal alcohol disorder affected children;

''(E) develop prevention and intervention models which incorporate traditional practitioners, cultural and spiritual values and community involvement;

''(F) develop, print, and disseminate education and prevention materials on fetal alcohol disorders;

''(G) develop and implement, through the tribal consultation process, culturally sensitive assessment and diagnostic tools including dysmorphology clinics and multidisciplinary fetal alcohol disorder clinics for use in tribal and urban Indian communities;

''(H) develop early childhood intervention projects from birth on to mitigate the effects of fetal alcohol disorders; and

''(I) develop and fund community-based adult fetal alcohol disorder housing and support services.

''(3) CRITERIA.—The Secretary shall establish criteria for the review and approval of applications for funding under this section.

''(b) PROVISION OF SERVICES.—The Secretary, acting through the Service, Indian tribes, tribal organizations and urban Indian organizations, shall—

''(1) develop and provide services for the prevention, intervention, treatment, and aftercare for those affected by fetal alcohol disorders in Indian communities; and

''(2) provide supportive services, directly or through an Indian tribe, tribal organization or urban Indian organization, including services to meet the special educational, vocational, school-to-work transition, and independent living needs of adolescent and adult Indians with fetal alcohol disorders.

''(c) TASK FORCE.—

''(1) IN GENERAL.—The Secretary shall establish a task force to be known as the Fetal Alcohol Disorders Task Force to advise the Secretary in carrying out subsection (b).

''(2) COMPOSITION.—The task force under paragraph (1) shall be composed of representatives from the National Institute on Drug Abuse, the National Institute on Alcohol and Alcoholism, the Office of Substance Abuse Prevention, the National Institute of Mental Health, the Service, the Office of Minority Health of the Department of Health and Human Services, the Administration for Native Americans, the National Institute of Child Health & Human Development, the Centers for Disease Control and Prevention, the Bureau of Indian Affairs, Indian tribes, tribal organizations, urban Indian communities, and Indian fetal alcohol disorders experts.

''(d) APPLIED RESEARCH.—The Secretary, acting through the Substance Abuse and Mental Health Services Administration, shall make funding available to Indian Tribes, tribal organizations and urban Indian organizations for applied research projects which propose to elevate the understanding of methods to prevent, intervene, treat, or provide rehabilitation and behavioral health aftercare for Indians and urban Indians affected by fetal alcohol disorders.

''(e) URBAN INDIAN ORGANIZATIONS.—The Secretary shall ensure that 10 percent of the amounts appropriated to carry out this section shall be used to make grants to urban Indian organizations funded under title V.

**''SEC. 712. CHILD SEXUAL ABUSE AND PREVENTION TREATMENT PROGRAMS.**

''(a) ESTABLISHMENT.—The Secretary and the Secretary of the Interior, acting through the Service, Indian tribes and tribal organizations, shall establish, consistent with section 701, in each service area, programs involving treatment for—

''(1) victims of child sexual abuse; and

''(2) perpetrators of child sexual abuse.

''(b) USE OF FUNDS.—Funds provided under this section shall be used to—

''(1) develop and provide community education and prevention programs related to child sexual abuse;

''(2) identify and provide behavioral health treatment to children who are victims of sexual abuse and to their families who are affected by sexual abuse;

''(3) develop prevention and intervention models which incorporate traditional health care practitioners, cultural and spiritual values, and community involvement;

''(4) develop and implement, though the tribal consultation process, culturally sensitive assessment and diagnostic tools for use in tribal and urban Indian communities.

''(5) identify and provide behavioral health treatment to perpetrators of child sexual abuse with efforts being made to begin offender and behavioral health treatment while the perpetrator is incarcerated or at the earliest possible date if the perpetrator is not incarcerated, and to provide treatment after release to the community until it is determined that the perpetrator is not a threat to children.

**''SEC. 713. BEHAVIORAL MENTAL HEALTH RESEARCH.**

''(a) IN GENERAL.—The Secretary, acting through the Service and in consultation with appropriate Federal agencies, shall provide funding to Indian Tribes, tribal organizations and urban Indian organizations or, enter into contracts with, or make grants to appropriate institutions, for the conduct of research on the incidence and prevalence of behavioral health problems among Indians served by the Service, Indian Tribes or tribal organizations and among Indians in urban areas. Research priorities under this section shall include—

''(1) the inter-relationship and inter-dependence of behavioral health problems with alcoholism and other substance abuse, suicide, homicides, other injuries, and the incidence of family violence; and

''(2) the development of models of prevention techniques.

''(b) SPECIAL EMPHASIS.—The effect of the inter-relationships and interdependencies referred to in subsection (a)(1) on children, and the development of prevention techniques under subsection (a)(2) applicable to children, shall be emphasized.

**''SEC. 714. DEFINITIONS.**

''In this title:

''(1) ASSESSMENT.—The term 'assessment' means the systematic collection, analysis and dissemination of information on health status, health needs and health problems.

''(2) ALCOHOL RELATED NEURODEVELOP-MENTAL DISORDERS.—The term 'alcohol related neurodevelop-mental disorders' or 'ARND' with respect to an individual means the individual has a history of maternal alcohol consumption during pregnancy, central nervous system involvement such as developmental delay, intellectual deficit, or neurologic abnormalities, that behaviorally, there may be problems with irritability, and failure to thrive as infants, and that as children become older there will likely be hyperactivity, attention deficit, language dysfunction and perceptual and judgment problems.

''(3) BEHAVIORAL HEALTH.—The term 'behavioral health' means the blending of substances (alcohol, drugs, inhalants and tobacco) abuse and mental health prevention and treatment, for the purpose of providing comprehensive services. Such term includes the joint development of substance abuse and mental health treatment planning and coordinated case management using a multidisciplinary approach.

''(4) BEHAVIORAL HEALTH AFTERCARE.—

''(A) IN GENERAL.—The term 'behavioral health aftercare' includes those activities and resources used to support recovery following inpatient, residential, intensive substance abuse or mental health outpatient or outpatient treatment, to help prevent or treat relapse, including the development of an aftercare plan.

''(B) AFTERCARE PLAN.—Prior to the time at which an individual is discharged from a level of care, such as outpatient treatment, an aftercare plan shall have been developed for the individual. Such plan may use such resources as community base therapeutic group care, transitional living, a 12-step sponsor, a local 12-step or other related support group, or other community based providers (such as mental health professionals, traditional health care practitioners, community health aides, community health representatives, mental health technicians, or ministers).

''(5) DUAL DIAGNOSIS.—The term 'dual diagnosis' means coexisting substance abuse and mental illness conditions or diagnosis. In individual with a dual diagnosis may be referred to as a mentally ill chemical abuser.–

''(6) FETAL ALCOHOL DISORDERS.—The term 'fetal alcohol disorders' means fetal alcohol syndrome, partial fetal alcohol syndrome, or alcohol related neural developmental disorder.

''(7) FETAL ALCOHOL SYNDROME.—The term 'fetal alcohol syndrome' or 'FAS' with respect to an individual means a syndrome in which the individual has a history of maternal alcohol consumption during pregnancy, and with respect to which the following criteria should be met:

''(A) Central nervous system involvement such as developmental delay, intellectual deficit, microencephaly, or neurologic abnormalities.

''(B) Craniofacial abnormalities with at least 2 of the following: microphthalmia, short palpebral fissures, poorly developed philtrum, thin upper lip, flat nasal bridge, and short upturned nose.

''(C) Prenatal or postnatal growth delay.

''(8) PARTIAL FAS.—The term 'partial FAS' with respect to an individual means a history of maternal alcohol consumption during pregnancy having most of the criteria of FAS, though not meeting a minimum of at least 2 of the following: micro-ophthalmia, short palpebral fissures, poorly developed philtrum, thin upper lip, flat nasal bridge, short upturned nose.

''(9) REHABILITATION.—The term 'rehabilitation' means to restore the ability or capacity to engage in usual and customary life activities through education and therapy.

''(10) SUBSTANCE ABUSE.—The term 'substance abuse' includes inhalant abuse.

**''SEC. 715. AUTHORIZATION OF APPROPRIATIONS.**

''There is authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2013 to carry out this title.

## ''TITLE VIII—MISCELLANEOUS

**''SEC. 801. REPORTS.**

''The President shall, at the time the budget is submitted under section 1105 of title 31, United States Code, for each fiscal year transmit to the Congress a report containing—

''(1) a report on the progress made in meeting the objectives of this Act, including a review of programs established or assisted pursuant to this Act and an assessment and recommendations of additional programs or additional assistance necessary to, at a minimum, provide health services to Indians, and ensure a health status for Indians, which are at a parity with the health services available to and the health status of, the

general population, including specific comparisons of appropriations provided and those required for such parity;

''(2) a report on whether, and to what extent, new national health care programs, benefits, initiatives, or financing systems have had an impact on the purposes of this Act and any steps that the Secretary may have taken to consult with Indian tribes to address such impact, including a report on proposed changes in the allocation of funding pursuant to section 808;

''(3) a report on the use of health services by Indians—

''(A) on a national and area or other relevant geographical basis;

''(B) by gender and age;

''(C) by source of payment and type of service;

''(D) comparing such rates of use with rates of use among comparable non-Indian populations; and

''(E) on the services provided under funding agreements pursuant to the Indian Self-Determination and Education Assistance Act;

''(4) a report of contractors concerning health care educational loan repayments under section 110;

''(5) a general audit report on the health care educational loan repayment program as required under section 110(n);

''(6) a separate statement that specifies the amount of funds requested to carry out the provisions of section 201;

''(7) a report on infectious diseases as required under section 212;

''(8) a report on environmental and nuclear health hazards as required under section 214;

''(9) a report on the status of all health care facilities needs as required under sections 301(c)(2) and 301(d);

''(10) a report on safe water and sanitary waste disposal facilities as required under section 302(h)(1);

''(11) a report on the expenditure of non-service funds for renovation as required under sections 305(a)(2) and 305(a)(3);

''(12) a report identifying the backlog of maintenance and repair required at Service and tribal facilities as required under section 314(a);

''(13) a report providing an accounting of reimbursement funds made available to the Secretary under titles XVIII and XIX of the Social Security Act as required under section 403(a);

''(14) a report on services sharing of the Service, the Department of Veteran's Affairs, and other Federal agency health programs as required under section 412(c)(2);

''(15) a report on the evaluation and renewal of urban Indian programs as required under section 505;

''(16) a report on the findings and conclusions derived from the demonstration project as required under section 512(a)(2);

''(17) a report on the evaluation of programs as required under section 513; and

''(18) a report on alcohol and substance abuse as required under section 701(f).

**''SEC. 802. REGULATIONS.**

''(a) INITIATION OF RULEMAKING PROCEDURES.—

''(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall initiate procedures under subchapter III of chapter 5 of title 5, United States Code, to negotiate and promulgate such regulations or amendments thereto that are necessary to carry out this Act.

''(2) PUBLICATION.—Proposed regulations to implement this Act shall be published in the Federal Register by the Secretary not later than 270 days after the date of enactment of this Act and shall have not less than a 120 day comment period.

''(3) EXPIRATION OF AUTHORITY.—The authority to promulgate regulations under this Act shall expire 18 months from the date of enactment of this Act.

''(b) RULEMAKING COMMITTEE.—A negotiated rulemaking committee established pursuant to section 565 of Title 5, United States Code, to carry out this section shall have as its members only representatives of the Federal Government and representatives of Indian tribes, and tribal organizations, a majority of whom shall be nominated by and be representatives of Indian tribes, tribal organizations, and urban Indian organizations from each service area.

''(c) ADAPTION OF PROCEDURES.—The Secretary shall adapt the negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes.

''(d) FAILURE TO PROMULGATE REGULATIONS.—The lack of promulgated regulations shall not limit the effect of this Act.

''(e) SUPREMACY OF PROVISIONS.—The provisions of this Act shall supersede any conflicting provisions of law (including any conflicting regulations) in effect on the day before the date of enactment of the Indian Self-Determination Contract Reform Act of 1994, and the Secretary is authorized to repeal any regulation that is inconsistent with the provisions of this Act.

**''SEC. 803. PLAN OF IMPLEMENTATION.**

''Not later than 240 days after the date of enactment of this Act, the Secretary, in consultation with Indian tribes, tribal organizations, and urban Indian organizations, shall prepare and submit to Congress a plan that shall explain the manner and schedule (including a schedule of appropriate requests), by title and section, by which the Secretary will implement the provisions of this Act.

**''SEC. 804. AVAILABILITY OF FUNDS.**

''Amounts appropriated under this Act shall remain available until expended.

**''SEC. 805. LIMITATION ON USE OF FUNDS APPROPRIATED TO THE INDIAN HEALTH SERVICE.**

''Any limitation on the use of funds contained in an Act providing appropriations for the Department for a period with respect to the performance of abortions shall apply for that period with respect to the performance of abortions using funds contained in an Act providing appropriations for the Service.

**''SEC. 806. ELIGIBILITY OF CALIFORNIA INDIANS.**

''(a) ELIGIBILITY.—

''(1) IN GENERAL.—Until such time as any subsequent law may otherwise provide, the following California Indians shall be eligible for health services provided by the Service:

''(1) Any member of a Federally recognized Indian tribe.

''(2) Any descendant of an Indian who was residing in California on June 1, 1852, but only if such descendant—

''(A) is a member of the Indian community served by a local program of the Service; and

''(B) is regarded as an Indian by the community in which such descendant lives.

''(3) Any Indian who holds trust interests in public domain, national forest, or Indian reservation allotments in California.

''(4) Any Indian in California who is listed on the plans for distribution of the assets of California rancherias and reservations under the Act of August 18, 1958 (72 Stat. 619), and any descendant of such an Indian.

''(b) RULE OF CONSTRUCTION.—Nothing in this section may be construed as expanding the eligibility of California Indians for health services provided by the Service beyond the scope of eligibility for such health services that applied on May 1, 1986.

**''SEC. 807. HEALTH SERVICES FOR INELIGIBLE PERSONS.**

''(a) INELIGIBLE PERSONS.—

''(1) IN GENERAL.—Any individual who—

''(A) has not attained 19 years of age;

''(B) is the natural or adopted child, stepchild, foster-child, legal ward, or orphan of an eligible Indian; and

''(C) is not otherwise eligible for the health services provided by the Service,

shall be eligible for all health services provided by the Service on the same basis and subject to the same rules that apply to eligible Indians until such individual attains 19 years of age. The existing and potential health needs of all such individuals shall be taken into consideration by the Service in determining the need for, or the allocation of, the health resources of the Service. If such an individual has been determined to be legally incompetent prior to attaining 19 years of age, such individual shall remain eligible for such services until one year after the date such disability has been removed.

''(2) SPOUSES.—Any spouse of an eligible Indian who is not an Indian, or who is of Indian descent but not otherwise eligible for the health services provided by the Service, shall be eligible for such health services if all of such spouses or spouses who are married to members of the Indian tribe being served are made eligible, as a class, by an appropriate resolution of the governing body of the Indian tribe or tribal organization providing such services. The health needs of persons made eligible under this paragraph shall not be taken into consideration by the Service in determining the need for, or allocation of, its health resources.

''(b) PROGRAMS AND SERVICES.—

''(1) PROGRAMS.—

''(A) IN GENERAL.—The Secretary may provide health services under this subsection through health programs operated directly by the Service to individuals who reside within the service area of a service unit and who are not eligible for such health services under any other subsection of this section or under any other provision of law if—

''(i) the Indian tribe (or, in the case of a multi-tribal service area, all the Indian tribes) served by such service unit requests such provision of health services to such individuals; and

''(ii) the Secretary and the Indian tribe or tribes have jointly determined that—

''(I) the provision of such health services will not result in a denial or diminution of health services to eligible Indians; and

''(II) there is no reasonable alternative health program or services, within or without the service area of such service unit, available to meet the health needs of such individuals.

''(B) FUNDING AGREEMENTS.—In the case of health programs operated under a funding agreement entered into under the Indian Self-Determination and Educational Assistance Act, the governing body of the Indian tribe or tribal organization providing health services under such funding agreement is authorized to determine whether health services should be provided under such funding agreement to individuals who are not eligible for such health services under any other subsection of this section or under any other provision of law. In making such determinations, the governing body of the Indian tribe or tribal organization shall take into account the considerations described in subparagraph (A)(ii).

''(2) LIABILITY FOR PAYMENT.—

''(A) IN GENERAL.—Persons receiving health services provided by the Service by reason of this subsection shall be liable for payment of such health services under a schedule of charges prescribed by the Secretary which, in the judgment of the Secretary, results in reimbursement in an amount not less than the actual cost of providing the health services. Notwithstanding section 1880 of the Social Security Act, section 402(a) of this Act,

or any other provision of law, amounts collected under this subsection, including medicare or medicaid reimbursements under titles XVIII and XIX of the Social Security Act, shall be credited to the account of the program providing the service and shall be used solely for the provision of health services within that program. Amounts collected under this subsection shall be available for expenditure within such program for not to exceed 1 fiscal year after the fiscal year in which collected.

''(B) SERVICES FOR INDIGENT PERSONS.—Health services may be provided by the Secretary through the Service under this subsection to an indigent person who would not be eligible for such health services but for the provisions of paragraph (1) only if an agreement has been entered into with a State or local government under which the State or local government agrees to reimburse the Service for the expenses incurred by the Service in providing such health services to such indigent person.

''(3) SERVICE AREAS.—

''(A) SERVICE TO ONLY ONE TRIBE.—In the case of a service area which serves only one Indian tribe, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which the governing body of the Indian tribe revokes its concurrence to the provision of such health services.

''(B) MULTI-TRIBAL AREAS.—In the case of a multi-tribal service area, the authority of the Secretary to provide health services under paragraph (1)(A) shall terminate at the end of the fiscal year succeeding the fiscal year in which at least 51 percent of the number of Indian tribes in the service area revoke their concurrence to the provision of such health services.

''(c) PURPOSE FOR PROVIDING SERVICES.—The Service may provide health services under this subsection to individuals who are not eligible for health services provided by the Service under any other subsection of this section or under any other provision of law in order to—

''(1) achieve stability in a medical emergency;

''(2) prevent the spread of a communicable disease or otherwise deal with a public health hazard;

''(3) provide care to non-Indian women pregnant with an eligible Indian's child for the duration of the pregnancy through post partum; or

''(4) provide care to immediate family members of an eligible person if such care is directly related to the treatment of the eligible person.

''(d) HOSPITAL PRIVILEGES.—Hospital privileges in health facilities operated and maintained by the Service or operated under a contract entered into under the Indian Self-Determination Education Assistance Act may be extended to non-Service health care practitioners who provide services to persons described in subsection (a) or (b). Such non-Service health care practitioners may be regarded as employees of the Federal Government for purposes of section 1346(b) and chapter 171 of title 28, United States Code (relating to Federal tort claims) only with respect to acts or omissions which occur in the course of providing services to eligible persons as a part of the conditions under which such hospital privileges are extended.

''(e) DEFINITION.—In this section, the term 'eligible Indian' means any Indian who is eligible for health services provided by the Service without regard to the provisions of this section.

**''SEC. 808. REALLOCATION OF BASE RESOURCES.**

''(a) REQUIREMENT OF REPORT.—Notwithstanding any other provision of law, any allocation of Service funds for a fiscal year that reduces by 5 percent or more from the previous fiscal year the funding for any recurring program, project, or activity of a service unit may be implemented only after the Secretary has submitted to the President, for inclusion in the report required to be transmitted to the Congress under section 801, a report on the proposed change in allocation of funding, including the reasons for the change and its likely effects.

''(b) NONAPPLICATION OF SECTION.—Subsection (a) shall not apply if the total amount appropriated to the Service for a fiscal year is less than the amount appropriated to the Service for previous fiscal year.

**''SEC. 809. RESULTS OF DEMONSTRATION PROJECTS.**

''The Secretary shall provide for the dissemination to Indian tribes of the findings and results of demonstration projects conducted under this Act.

**''SEC. 810. PROVISION OF SERVICES IN MONTANA.**

''(a) IN GENERAL.—The Secretary, acting through the Service, shall provide services and benefits for Indians in Montana in a manner consistent with the decision of the United States Court of Appeals for the Ninth Circuit in McNabb for McNabb v. Bowen, 829 F.2d 787 (9th Cr. 1987).

''(b) RULE OF CONSTRUCTION.—The provisions of subsection (a) shall not be construed to be an expression of the sense of the Congress on the application of the decision described in subsection (a) with respect to the provision of services or benefits for Indians living in any State other than Montana.

**''SEC. 811. MORATORIUM.**

''During the period of the moratorium imposed by Public Law 100–446 on implementation of the final rule published in the Federal Register on September 16, 1987, by the Health Resources and Services Administration, relating to eligibility for the health care services of the Service, the Service shall provide services pursuant to the criteria for eligibility for such services that were in effect on September 15, 1987, subject to the provisions of sections 806 and 807 until such time as new criteria governing eligibility for services are developed in accordance with section 802.

**''SEC. 812. TRIBAL EMPLOYMENT.**

''For purposes of section 2(2) of the Act of July 5, 1935 (49 Stat. 450, Chapter 372), an Indian tribe or tribal organization carrying out a funding agreement under the Self-Determination and Education Assistance Act shall not be considered an employer.

**''SEC. 813. PRIME VENDOR.**

''For purposes of section 4 of Public Law 102–585 (38 U.S.C. 812) Indian tribes and tribal organizations carrying out a grant, cooperative agreement, or funding agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) shall be deemed to be an executive agency and part of the Service in the and, as such, may act as an ordering agent of the Service and the employees of the tribe or tribal organization may order supplies on behalf thereof on the same basis as employees of the Service.

**''SEC. 814. NATIONAL BI-PARTISAN COMMISSION ON INDIAN HEALTH CARE ENTITLEMENT.**

''(a) ESTABLISHMENT.—There is hereby established the National Bi-Partisan Indian Health Care Entitlement Commission (referred to in this Act as the 'Commission').

''(b) MEMBERSHIP.—The Commission shall be composed of 25 members, to be appointed as follows:

''(1) Ten members of Congress, of which—

''(A) three members shall be from the House of Representatives and shall be appointed by the majority leader;

''(B) three members shall be from the House of Representatives and shall be appointed by the minority leader;

''(C) two members shall be from the Senate and shall be appointed by the majority leader; and

''(D) two members shall be from the Senate and shall be appointed by the minority leader;

who shall each be members of the committees of Congress that consider legislation affecting the provision of health care to Indians and who shall elect the chairperson and vice-chairperson of the Commission.

''(2) Twelve individuals to be appointed by the members of the Commission appointed under paragraph (1), of which at least 1 shall be from each service area as currently designated by the Director of the Service, to be chosen from among 3 nominees from each such area as selected by the Indian tribes within the area, with due regard being given to the experience and expertise of the nominees in the provision of health care to Indians and with due regard being given to a reasonable representation on the Commission of members who are familiar with various health care delivery modes and who represent tribes of various size populations.

''(3) Three individuals shall be appointed by the Director of the Service from among individual who are knowledgeable about the provision of health care to Indians, at least 1 of whom shall be appointed from among 3 nominees from each program that is funded in whole or in part by the Service primarily or exclusively for the benefit of urban Indians.

All those persons appointed under paragraphs (2) and (3) shall be members of Federally recognized Indian Tribes.

''(c) TERMS.—

''(1) IN GENERAL.—Members of the Commission shall serve for the life of the Commission.

''(2) APPOINTMENT OF MEMBERS.—Members of the Commission shall be appointed under subsection (b)(1) not later than 90 days after the date of enactment of this Act, and the remaining members of the Commission shall be appointed not later than 60 days after the date on which the members are appointed under such subsection.

''(3) VACANCY.—A vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made.

''(d) DUTIES OF THE COMMISSION.—The Commission shall carry out the following duties and functions:

''(1) Review and analyze the recommendations of the report of the study committee established under paragraph (3) to the Commission.

''(2) Make recommendations to Congress for providing health services for Indian persons as an entitlement, giving due regard to the effects of such a programs on existing health care delivery systems for Indian persons and the effect of such programs on the sovereign status of Indian Tribes;

''(3) Establish a study committee to be composed of those members of the Commission appointed by the Director of the Service and at least 4 additional members of Congress from among the members of the Commission which shall—

''(A) to the extent necessary to carry out its duties, collect and compile data necessary to understand the extent of Indian needs with regard to the provision of health services, regardless of the location of Indians, including holding hearings and soliciting the views of Indians, Indian tribes, tribal organizations and urban Indian organizations, and which may include authorizing and funding feasibility studies of various

models for providing and funding health services for all Indian beneficiaries including those who live outside of a reservation, temporarily or permanently;

''(B) make recommendations to the Commission for legislation that will provide for the delivery of health services for Indians as an entitlement, which shall, at a minimum, address issues of eligibility, benefits to be provided, including recommendations regarding from whom such health services are to be provide,d and the cost, including mechanisms for funding of the health services to be provided;

''(C) determine the effect of the enactment of such recommendations on the existing system of the delivery of health services for Indians;

''(D) determine the effect of a health services entitlement program for Indian persons on the sovereign status of Indian tribes;

''(E) not later than 12 months after the appointment of all members of the Commission, make a written report of its findings and recommendations to the Commission, which report shall include a statement of the minority and majority position of the committee and which shall be disseminated, at a minimum, to each Federally recognized Indian tribe, tribal organization and urban Indian organization for comment to the Commission; and

''(F) report regularly to the full Commission regarding the findings and recommendations developed by the committee in the course of carrying out its duties under this section.

''(4) Not later than 18 months after the date of appointment of all members of the Commission, submit a written report to Congress containing a recommendation of policies and legislation to implement a policy that would establish a health care system for Indians based on the delivery of health services as an entitlement, together with a determination of the implications of such an entitlement system on existing health care delivery systems for Indians and on the sovereign status of Indian tribes.

''(e) ADMINISTRATIVE PROVISIONS.—

''(1) COMPENSATION AND EXPENSES.—

''(A) CONGRESSIONAL MEMBERS.—Each member of the Commission appointed under subsection (b)(1) shall receive no additional pay, allowances, or benefits by reason of their service on the Commission and shall receive travel expenses and per diem in lieu of subsistence in accordance with sections 5702 and 5703 of title 5, United States Code.

''(B) OTHER MEMBERS.—The members of the Commission appointed under paragraphs (2) and (3) of subsection (b), while serving on the business of the Commission (including travel time) shall be entitled to receive compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and while so serving away from home and the member's regular place of business, be allowed travel expenses, as authorized by the chairperson of the Commission. For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.

''(2) MEETINGS AND QUORUM.—

''(A) MEETINGS.—The Commission shall meet at the call of the chairperson.

''(B) QUORUM.—A quorum of the Commission shall consist of not less than 15 members, of which not less than 6 of such members shall be appointees under subsection (b)(1) and not less than 9 of such members shall be Indians.

''(3) DIRECTOR AND STAFF.—

''(A) EXECUTIVE DIRECTOR.—The members of the Commission shall appoint an executive director of the Commission. The executive director shall be paid the rate of basic pay equal to that for level V of the Executive Schedule.

''(B) STAFF.—With the approval of the Commission, the executive director may appoint such personnel as the executive director deems appropriate.

''(C) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

''(D) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

''(E) FACILITIES.—The Administrator of the General Services Administration shall locate suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.

''(f) POWERS.—

''(1) HEARINGS AND OTHER ACTIVITIES.—For the purpose of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties, except that at least 6 regional hearings shall be held in different areas of the United States in which large numbers of Indians are present. Such hearings shall be held to solicit the views of Indians regarding the delivery of health care services to them. To constitute a hearing under this paragraph, at least 5 members of the Commission, including at least 1 member of Congress, must be present. Hearings held by the study committee established under this section may be counted towards the number of regional hearings required by this paragraph.

''(2) STUDIES BY GAO.—Upon request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

''(3) COST ESTIMATES.—

''(A) IN GENERAL.—The Director of the Congressional Budget Office or the Chief Actuary of the Health Care Financing Administration, or both, shall provide to the Commission, upon the request of the Commission, such cost estimates as the Commission determines to be necessary to carry out its duties.

''(B) REIMBURSEMENTS.—The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under subparagraph (A).

''(4) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Commission, the head of any federal Agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the federal employee.

''(5) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of a Federal Agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

''(6) USE OF MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as Federal Agencies and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

''(7) OBTAINING INFORMATION.—The Commission may secure directly from the any Federal Agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 4, United States Code. Upon request of the chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

''(8) SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''(9) PRINTING.—For purposes of costs relating to printing and binding, including the cost of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $4,000,000 to carry out this section. The amount appropriated under this subsection shall not be deducted from or affect any other appropriation for health care for Indian persons.

**"SEC. 815. APPROPRIATIONS; AVAILABILITY.**

''Any new spending authority (described in subsection (c)(2)(A) or (B) of section 401 of the Congressional Budget Act of 1974) which is provided under this Act shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

**"SEC. 816. AUTHORIZATION OF APPROPRIATIONS.**

''There is authorized to be appropriated such sums as may be necessary for each fiscal year through fiscal year 2013 to carry out this title.''.

## TITLE II—CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT

### Subtitle A—Medicare

**SEC. 201. LIMITATIONS ON CHARGES.**

Section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) is amended—

(1) in subparagraph (R), by striking ''and'' at the end;

(2) in subparagraph (S), by striking the period and inserting '', and''; and

(3) by adding at the end the following:

''(T) in the case of hospitals and critical access hospitals which provide inpatient hospital services for which payment may be made under this title, to accept as payment in full for services that are covered under and furnished to an individual eligible for the contract health services program operated by the Indian Health Service, by an Indian tribe or tribal organization, or furnished to an urban Indian eligible for health services purchased by an urban Indian organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act), in accordance with such admission practices and such payment methodology and amounts as are prescribed under regulations issued by the Secretary.''.

**SEC. 202. QUALIFIED INDIAN HEALTH PROGRAM.**

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by inserting after section 1880 the following:

''QUALIFIED INDIAN HEALTH PROGRAM

''SEC. 1880A. (a) DEFINITION OF QUALIFIED INDIAN HEALTH PROGRAM.—In this section:

''(1) IN GENERAL.—The term 'qualified Indian health program' means a health program operated by—

''(A) the Indian Health Service;

''(B) an Indian tribe or tribal organization or an urban Indian organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act) and which is funded in whole or part by the Indian Health Service under the Indian Self Determination and Education Assistance Act; or

''(C) an urban Indian organization (as so defined) and which is funded in whole or in part under title V of the Indian Health Care Improvement Act.

''(2) INCLUDED PROGRAMS AND ENTITIES.—Such term may include 1 or more hospital, nursing home, home health program, clinic, ambulance service or other health program that provides a service for which payments may be made under this title and which is covered in the cost report submitted under this title or title XIX for the qualified Indian health program.

''(b) ELIGIBILITY FOR PAYMENTS.—A qualified Indian health program shall be eligible for payments under this title, notwithstanding sections 1814(c) and 1835(d), if and for so long as the program meets all the conditions and requirements set forth in this section.

''(c) DETERMINATION OF PAYMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision in the law, a qualified Indian health program shall be entitled to receive payment based on an all-inclusive rate which shall be calculated to provide full cost recovery for the cost of furnishing services provided under this section.

''(2) DEFINITION OF FULL COST RECOVERY.—

''(A) IN GENERAL.—Subject to subparagraph (B), in this section, the term 'full cost recovery' means the sum of—

''(i) the direct costs, which are reasonable, adequate and related to the cost of furnishing such services, taking into account the unique nature, location, and service population of the qualified Indian health program, and which shall include direct program, administrative, and overhead costs, without regard to the customary or other charge or any fee schedule that would otherwise be applicable; and

''(ii) indirect costs which, in the case of a qualified Indian health program—

''(I) for which an indirect cost rate (as that term is defined in section 4(g) of the Indian Self-Determination and Education Assistance Act) has been established, shall be not less than an amount determined on the basis of the indirect cost rate; or

''(II) for which no such rate has been established, shall be not less than the administrative costs specifically associated with the delivery of the services being provided.

''(B) LIMITATION.—Notwithstanding any other provision of law, the amount determined to be payable as full cost recovery may not be reduced for co-insurance, co-payments, or deductibles when the service was provided to an Indian entitled under Federal law to receive the service from the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization or because of any limitations on payment provided for in any managed care plan.

''(3) OUTSTATIONING COSTS.—In addition to full cost recovery, a qualified Indian health program shall be entitled to reasonable outstationing costs, which shall include all administrative costs associated with outreach and acceptance of eligibility applications for any Federal or State health program including the programs established under this title, title XIX, and XXI.

''(4) DETERMINATION OF ALL-INCLUSIVE ENCOUNTER OR PER DIEM AMOUNT.—

''(A) IN GENERAL.—Costs identified for services addressed in a cost report submitted by a qualified Indian health program shall be used to determine an all-inclusive encounter or per diem payment amount for such services.

''(B) NO SINGLE REPORT REQUIREMENT.—Not all qualified Indian health programs provided or administered by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization need be combined into a single cost report.

''(C) PAYMENT FOR ITEMS NOT COVERED BY A COST REPORT.—A full cost recovery payment for services not covered by a cost report shall be made on a fee-for-service, encounter, or per diem basis.

''(5) OPTIONAL DETERMINATION.—The full cost recovery rate provided for in paragraphs (1) through (3) may be determined, at the election of the qualified Indian health program, by the Health Care Financing Administration or by the State agency responsible for administering the State plan under title XIX and shall be valid for reimbursements made under this title, title XIX, and title XXI. The costs described in paragraph (2)(A) shall be calculated under whatever methodology yields the greatest aggregate payment for the cost reporting period, provided that such methodology shall be adjusted to include adjustments to such payment to take into account for those qualified Indian health programs that include hospitals—

''(A) a significant decrease in discharges;

''(B) costs for graduate medical education programs;

''(C) additional payment as a disproportionate share hospital with a payment adjustment factor of 10; and

''(D) payment for outlier cases.

''(6) ELECTION OF PAYMENT.—A qualified Indian health program may elect to receive payment for services provided under this section—

''(A) on the full cost recovery basis provided in paragraphs (1) through (5);

''(B) on the basis of the inpatient or outpatient encounter rates established for Indian Health Service facilities and published annually in the Federal Register;

''(C) on the same basis as other providers are reimbursed under this title, provided that the amounts determined under paragraph (c)(2)(B) shall be added to any such amount;

''(D) on the basis of any other rate or methodology applicable to the Indian Health Service or an Indian Tribe or tribal organization; or

''(E) on the basis of any rate or methodology negotiated with the agency responsible for making payment.

''(d) ELECTION OF REIMBURSEMENT FOR OTHER SERVICES.—

''(1) IN GENERAL.—A qualified Indian health program may elect to be reimbursed for any service the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization may be reimbursed for under section 1880 and section 1911.

''(2) OPTION TO INCLUDE ADDITIONAL SERVICES.—An election under paragraph (1) may include, at the election of the qualified Indian health program—

''(A) any service when furnished by an employee of the qualified Indian health program who is licensed or certified to perform such a service to the same extent that such service would be reimbursable if performed by a physician and any service or supplies furnished as incident to a physician's service as would otherwise be covered if furnished by a physician or as an incident to a physician's service;

''(B) screening, diagnostic, and therapeutic outpatient services including part-time or intermittent screening, diagnostic, and therapeutic skilled nursing care and related medical supplies (other than drugs and biologicals), furnished by an employee of the qualified Indian health program who is licensed or certified to perform such a service for an individual in the individual's home or in a community health setting under a written plan of treatment established and periodically reviewed by a physician, when furnished to an individual as an outpatient of a qualified Indian health program;

''(C) preventive primary health services as described under section 330 of the Public Health Service Act, when provided by an employee of the qualified Indian health program who is licensed or certified to perform such a service, regardless of the location in which the service is provided;

''(D) with respect to services for children, all services specified as part of the State plan under title XIX, the State child health plan under title XXI, and early and periodic screening, diagnostic, and treatment services as described in section 1905(r);

''(E) influenza and pneumococcal immunizations;

''(F) other immunizations for prevention of communicable diseases when targeted; and

''(G) the cost of transportation for providers or patients necessary to facilitate access for patients.''.

**Subtitle B—Medicaid**

**SEC. 211. STATE CONSULTATION WITH INDIAN HEALTH PROGRAMS.**

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

(1) in paragraph (64), by striking ''and'' at the end:

(2) in paragraph (65), by striking the period and inserting ''; and''; and

(3) by inserting after paragraph (65), the following:

''(66) if the Indian Health Service operates or funds health programs in the State or if there are Indian tribes or tribal organizations or urban Indian organizations (as those terms are defined in Section 4 of the Indian Health Care Improvement Act) present in the State, provide for meaningful consultation with such entities prior to the submission of, and as a precondition of approval of, any proposed amendment, waiver, demonstration project, or other request that would have the effect of changing any aspect of the State's administration of the State plan under this title, so long as—

''(A) the term 'meaningful consultation' is defined through the negotiated rulemaking process provided for under section 802 of the Indian Health Care Improvement Act; and

''(B) such consultation is carried out in collaboration with the Indian Medicaid Advisory Committee established under section 415(a)(3) of that Act.''.

**SEC. 212. FMAP FOR SERVICES PROVIDED BY INDIAN HEALTH PROGRAMS.**

The third sentence of Section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) is amended to read as follows:

''Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per cent with respect to amounts expended as medical assistance for services which are received through the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as defined in section 4 of the Indian Health Care Improvement Act) under section 1911, whether directly, by referral, or under contracts or other arrangements between the Indian Health Service, Indian tribe or tribal organization, or urban Indian organization and another health provider.''.

**SEC. 213. INDIAN HEALTH SERVICE PROGRAMS.**

Section 1911 of the Social Security Act (42 U.S.C. 1396j) is amended to read as follows:

''INDIAN HEALTH SERVICE PROGRAMS

''SEC. 1911. (a) IN GENERAL.—The Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization

(as those terms are defined in section 4 of the Indian Health Care Improvement Act), shall be eligible for reimbursement for medical assistance provided under a State plan by such entities if and for so long as the Service, Indian tribe or tribal organization, or urban Indian organization provides services or provider types of a type otherwise covered under the State plan and meets the conditions and requirements which are applicable generally to the service for which it seeks reimbursement under this title and for services provided by a qualified Indian health program under section 1880A.

''(b) PERIOD FOR BILLING.—Notwithstanding subsection (a), if the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization which provides services of a type otherwise covered under the State plan does not meet all of the conditions and requirements of this title which are applicable generally to such services submits to the Secretary within 6 months after the date on which such reimbursement is first sought an acceptable plan for achieving compliance with such conditions and requirements, the Service, an Indian tribe or tribal organization, or urban Indian organization shall be deemed to meet such conditions and requirements (and to be eligible for reimbursement under this title), without regard to the extent of actual compliance with such conditions and requirements during the first 12 months after the month in which such plan is submitted.

''(c) AUTHORITY TO ENTER INTO AGREEMENTS.—The Secretary may enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided by the Indian Health Service, Indian tribes or tribal organizations, or urban Indian organizations, directly, through referral, or under contracts or other arrangements between the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization and another health care provider to Indians who are eligible for medical assistance under the State plan.''.

**Subtitle C—State Children's Health Insurance Program**

**SEC. 221. ENHANCED FMAP FOR STATE CHILDREN'S HEALTH INSURANCE PROGRAM.**

(a) IN GENERAL.—Section 2105(b) of the Social Security Act (42 U.S.C. 1397ee(b)) is amended—

(1) by striking ''For purposes'' and inserting the following:

''(1) IN GENERAL.—Subject to paragraph (2), for purposes''; and

(2) by adding at the end the following:

''(2) SERVICES PROVIDED BY INDIAN PROGRAMS.—Without regard to which option a State chooses under section 2101(a), the 'enhanced FMAP' for a State for a fiscal year shall be 100 per cent with respect to expenditures for child health assistance for services provided through a health program operated by the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as such terms are defined in section 4 of the Indian Health Care Improvement Act).''.

(b) CONFORMING AMENDMENT.—Section 2105(c)(6)(B) of such Act (42 U.S.C. 1397ee(c)(6)(B)) is amended by inserting ''an Indian tribe or tribal organization, or an urban Indian organization (as such terms are defined in section 4 of the Indian Health Care Improvement Act),'' after ''Service,''.

**SEC. 222. DIRECT FUNDING OF STATE CHILDREN'S HEALTH INSURANCE PROGRAM.**

Title XXI of Social Security Act (42 U.S.C. 1397aa et seq.) is amended by adding at the end the following:

**''SEC. 2111. DIRECT FUNDING OF INDIAN HEALTH PROGRAMS.**

''(a) IN GENERAL.—The Secretary may enter into agreements directly with the Indian Health Service, an Indian tribe or tribal organization, or an urban Indian organization (as such terms are defined in section 4 of the Indian Health Care Improvement Act) for such entities to provide child health assistance to Indians who reside in a service area on or near an Indian reservation. Such agreements may provide for funding under a block grant or such other mechanism as is agreed upon by the Secretary and the Indian Health Service, Indian tribe or tribal organization, or urban Indian organization. Such agreements may not be made contingent on the approval of the State in which the Indians to be served reside.

''(b) TRANSFER OF FUNDS.—Notwithstanding any other provision of law, a State may transfer funds to which it is, or would otherwise be, entitled to under this title to the Indian Health Service, an Indian tribe or tribal organization or an urban Indian organization—

''(1) to be administered by such entity to achieve the purposes and objectives of this title under an agreement between the State and the entity; or

''(2) under an agreement entered into under subsection (a) between the entity and the Secretary.''.

**Subtitle D—Authorization of Appropriations**

**SEC. 231. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary for each of fiscal years 2002 through 2013 to carry out this title and the amendments by this title.

**TITLE III—MISCELLANEOUS PROVISIONS**

**SEC. 301. REPEALS.**

The following are repealed:

(1) Section 506 of Public Law 101–630 (25 U.S.C. 1653 note) is repealed.

(2) Section 712 of the Indian Health Care Amendments of 1988 is repealed.

**SEC. 302. SEVERABILITY PROVISIONS.**

If any provision of this Act, any amendment made by the Act, or the application of such provision or amendment to any person or circumstances is held to be invalid, the remainder of this Act, the remaining amendments made by this Act, and the application of such provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**SEC. 303. EFFECTIVE DATE.**

This Act and the amendments made by this Act take effect on October 1, 2001.

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By Mr. HATCH (for himself and Mr. BENNETT):

S. 213. A bill to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails; to the Committee on Energy and Natural Resources.

Mr. HATCH. Mr. President, I rise today to introduce an amendment to the National Trails System Act which would update the feasibility and suitability studies of four national historic trails and allow possible additions to them. The trails in question are the Oregon, the Mormon, the Pony Express and the California National Historic Trails.

In 1978, the Oregon and Mormon trails were established by the National Trails System Act. At that time the language of the bill defined these trails as ''point to point,'' limiting them to one beginning point and one destination. The Mormon Pioneer National Historic Trail at that time was defined as the route Brigham Young took in 1846 through Iowa and then to the Salt Lake Valley in 1847. The Oregon Trail was defined narrowly as the route taken by settlers from Independence, Missouri, to Oregon City from 1841 to 1848. It, too, was limited to a single trail with only three variants.

Later, in 1992, Congress passed an amendment for the establishment of the California and Pony Express National Historic Trails. This amendment broadened the possibility of trail variants for the California Trail and provided a more accurate depiction of the original trail. However, the legislation I am introducing today will provide additional authority for variations to these trails.

To those of us in the West, these trails are the highways of our history. With this legislation, I hope to capture the stories made along the side roads, as well. In many cases, our most interesting and telling history was made along the variations of the main trails. Since the enactment of the National Trails System Act in 1978, there has been a great deal of support to broaden the Act to include these side roads to history.

Not every pioneer company embarked on their journey from Omaha, Nebraska or Independence, Missouri. Tens of thousands of settlers began from other starting points. These trail variations and alternate routes show the ingenuity and adaptability of the poineers as they were forced to contend with inclement weather, lack of water, difficult terrain, and hostile Native American tribes. The variant routes taken by the pioneers tell important stories that would otherwise slip through the cracks under a strict interpretation of the National Trails System Act.

The Act requires that comprehensive management and use plans be prepared for all historic trails. In 1981, such plans were completed for the Mormon and Oregon trails. Since that time, however, endless hours of research by the Park Service and trails organizations have produced a more complete picture of the westward expansion. The National Park Service has determined, however, that legislation is required to update the trails with this newfound history.

That is why I am introducing this legislation today. This bill would authorize the study of further important additions to the California, Mormon Pioneer, Oregon, and Pony Express National Historic Trails and allow for a more complete story to be told of our history in the West.

I thank the Senate for the opportunity to address this issue today, and I urge my colleagues to support this legislation.

By Mr. McCAIN (for himself, Mr. INOUYE, Mr. CONRAD, Mr. DASCHLE, and Mr. CAMPBELL):

S. 214. A bill to elevate the position of Director of the Indian Health Service within the Department of Health and Human Services to Assistant Secretary for Indian Health, and for other purposes; to Committee on Indian Affairs.

Mr. McCAIN. Mr. President, I rise to introduce legislation to designate the Director of the Indian Health Service as an Assistant Secretary for Indian Health within the Department of Health and Human Services. My colleagues, Senators INOUYE, CONRAD, DASCHLE and CAMPBELL are joining me in this effort as original co-sponsors. I am pleased to note that Congressman Nethercutt from Washington will introduce companion legislation on the House side.

The purpose of this legislation is simple. It will redesignate the current Director of the Indian Health Service, IHS, as a new Assistant Secretary within the Department of Health and Human Services to be responsible for Indian health policy and budgetary matters.

As the primary health care delivery system, the Indian Health Service is the principal advocate for Indian health care needs, both on the reservation level and for urban populations. More than 1.5 million Indian people are served every year by the IHS. At its current capacity, the IHS estimates that it can only meet about 60 percent of tribal health care needs. The IHS will continue to be challenged by a growing Indian population as well as an increasing disparity between the health status of Indian people as compared to other Americans. Thousands of Indian people continue to suffer from the worst imaginable health care conditions in Indian country—from diabetes to cancer to infant mortality. In nearly every category, the health status of Native Americans falls far below the national standard.

The purpose of this bill is to respond to the desire by Indian people for a stronger leadership and policy role within the primary health care agency, the Department of Health and Human Services. The Assistant Secretary for Indian Health will ensure that critical policy and budgetary decisions will be made with the full involvement and consultation of not only the Indian Health Service, but also the direct involvement of the Tribal governments.

This legislation is long overdue in bringing focus and national attention to the health care status of Indian people and fulfilling the federal trust responsibility toward Indian tribes. Implementation of this bill is intended to support the long-standing policies of Indian self-determination and tribal self-governance and assist Indian tribes who are making positive strides in providing direct health care to their own communities.

Tribal communities are in dire need of a senior policy official who is knowledgeable about the programs administered by the IHS and who can provide the leadership for the health care needs of American Indians and Alaska Natives. We continue to pursue passage of this legislation as many believe that the priority of Indian health issues within the Department should be raised to the highest levels within our federal government.

I look forward to working with my colleagues on both sides of the aisle and the new Administration to ensure prompt passage of this legislation. I ask unanimous consent that the full text of this bill be included in the RECORD.

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

S. 214

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

**SECTION 1. OFFICE OF ASSISTANT SECRETARY FOR INDIAN HEALTH.**

(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services the Office of the Assistant Secretary for Indian Health in order to, in a manner consistent with the government-to-government relationship between the United States and Indian tribes—

(1) facilitate advocacy for the development of appropriate Indian health policy; and

(2) promote consultation on matters related to Indian health.

(b) ASSISTANT SECRETARY FOR INDIAN HEALTH.—In addition to the functions performed on the date of enactment of this Act by the Director of the Indian Health Service, the Assistant Secretary for Indian Health shall perform such functions as the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') may designate. The Assistant Secretary for Indian Health shall—

(1) report directly to the Secretary concerning all policy- and budget-related matters affecting Indian health;

(2) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

(3) advise each Assistant Secretary of the Department of Health and Human Services concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

(4) advise the heads of other agencies and programs of the Department of Health and Human Services concerning matters of Indian health with respect to which those heads have authority and responsibility; and

(5) coordinate the activities of the Department of Health and Human Services concerning matters of Indian health.

(c) REFERENCES.—Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to the Director of the Indian Health Service shall be deemed to refer to the Assistant Secretary for Indian Health.

(d) RATE OF PAY.—

(1) POSITIONS AT LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(A) by striking the following:

''Assistant Secretaries of Health and Human Services (6).''; and

(B) by inserting the following:

''Assistant Secretaries of Health and Human Services (7).''.

(2) POSITIONS AT LEVEL V.—Section 5316 of title 5, United States Code, is amended by striking the following:

''Director, Indian Health Service, Department of Health and Human Services.''.

(e) DUTIES OF ASSISTANT SECRETARY FOR INDIAN HEALTH.—Section 601(a) of the Indian Health Care Improvement Act (25 U.S.C. 1661(a)) is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) in the second sentence of paragraph (1), as so designated, by striking ''a Director,'' and inserting ''the Assistant Secretary for Indian Health,''; and

(3) by striking the third sentence of paragraph (1) and all that follows through the end of the subsection and inserting the following: ''The Assistant Secretary for Indian Health shall carry out the duties specified in paragraph (2).

''(2) The Assistant Secretary for Indian Health shall—

''(A) report directly to the Secretary concerning all policy- and budget-related matters affecting Indian health;

''(B) collaborate with the Assistant Secretary for Health concerning appropriate matters of Indian health that affect the agencies of the Public Health Service;

''(C) advise each Assistant Secretary of the Department of Health and Human Services concerning matters of Indian health with respect to which that Assistant Secretary has authority and responsibility;

''(D) advise the heads of other agencies and programs of the Department of Health and Human Services concerning matters of Indian health with respect to which those heads have authority and responsibility; and

''(E) coordinate the activities of the Department of Health and Human Services concerning matters of Indian health.''.

(f) CONTINUED SERVICE BY INCUMBENT.—The individual serving in the position of Director of the Indian Health Service on the date preceding the date of enactment of this Act may serve as Assistant Secretary for Indian Health, at the pleasure of the President after the date of enactment of this Act.

(g) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO INDIAN HEALTH CARE IMPROVEMENT ACT.—The Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.) is amended—

(A) in section 601—

(i) in subsection (c), by striking ''Director of the Indian Health Service'' both places it appears and inserting ''Assistant Secretary for Indian Health''; and

(ii) in subsection (d), by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''; and

(B) in section 816(c)(1), by striking ''Director of the Indian Health Service'' and inserting ''Assistant Secretary for Indian Health''.

(2) AMENDMENTS TO OTHER PROVISIONS OF LAW.—The following provisions are each amended by striking ''Director of the Indian Health Service'' each place it appears and inserting ''Assistant Secretary for Indian Health'':

(A) Section 203(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 761b(a)(1)).

(B) Subsections (b) and (e) of section 518 of the Federal Water Pollution Control Act (33 U.S.C. 1377 (b) and (e)).

(C) Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)).

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By Ms. STABENOW:

S. 215. A bill to amend the Federal Food, Drug, and Cosmetic Act to permit importation in personal baggage and by mail of certain covered products for personal use from certain foreign countries and to correct impediments in implementation of the Medicine Equity and Drug Safety Act of 2000; to the

Committee on Health, Education, Labor, and Pensions.

Ms. STABENOW. Mr. President, today I rise to introduce my first bill in the Senate, the Medication Equity and Drug Savings Act, or the MEDS Act.

On January 22, a little over a week ago, I had the privilege of addressing my colleagues in my first speech on the Senate floor. The topic of the speech was health care, specifically the need to pass a strong Patients' Bill of Rights. I pledged my commitment to making health care a priority during my tenure in this esteemed body.

Today, I am pleased to share with my colleagues that I am taking the next step in keeping my promise by introducing a bill that addresses another priority health care issue: the price of prescription drugs. We all know that providing prescription drugs for seniors has become a very important issue for the American public. In fact, this was a key issue in many campaigns throughout the country, including my own.

On a fundamental level, I believe everyone should have access to affordable prescription drugs, especially senior citizens enrolled in Medicare and the disabled. It is an outrage that not only must those seniors, who rely solely on Medicare for their health insurance, pay for all of their medications out of their own pockets, but that in many instances they pay more for the same drug than their counterparts with other insurance.

So we have situations where those without insurance, and most often this falls on our seniors—but anyone without insurance is most often walking into the pharmacy and paying more. We did a study in my State that showed, on average, they paid twice as much as someone with insurance for the very same medications.

I have conducted several prescription drug price studies in Michigan, and I have learned that, in fact, there is a genuine problem that touches the lives of so many people whom I represent. My concerns have been confirmed by literally thousands of letters and e-mails and phone calls from seniors and families who cannot afford to buy their medications.

I have been saddened by the sheer number of seniors who confided in me that the cost of their drugs is so high that they are often forced to give up their meals or are not able to heat their homes. In Michigan that can be very serious in the wintertime. This is in order to buy their medications.

These are not new stories. I know my colleagues have heard these stories as well, but they are real. They are not just stories. They are affecting people today. As we speak, there are seniors somewhere deciding whether or not they are going to skip their meals to get their medicine, or whether they are going to eat and not have the medications they need.

I also know from hearing from doctors in my district who are worried about seniors, who decided to do their own self-regulation. They cannot afford all their pills, so they will skip a couple of pills, or they will take them every other day, or cut them in half. Oftentimes they have been placed in serious jeopardy as to their health because they have not been able to afford their medications and they have taken them inappropriately.

The bottom line is that Medicare should include a defined, voluntary prescription drug benefit to help cover the costs of prescription drugs for seniors and the disabled. I am committed to working with my colleagues across the aisle, and the administration, to finish what we started last year and create this new component of Medicare that is absolutely critical. Without it, we are not fulfilling the promise of universal health care for those over the age of 65, or the disabled. If we do not cover medications, we are not providing health care in the truest sense for those individuals.

In fact, one of the very first bills I cosponsored this year was S. 10, a bill that would create this important benefit in the Medicare program. I am ready to work with my colleagues to make sure that we do whatever it takes to update Medicare and create a defined benefit that will make such an incredible difference in the lives of seniors and their families in my great State of Michigan and all across the country. As we work on this complex issue, there are other approaches we can take in a more immediate sense to cut the costs of prescription drugs.

Last year, Congress passed and the President signed into law an important new Act that would permit U.S. manufactured, FDA approved drugs to be reimported back into the United States by wholesalers. I firmly believe that implementing this Act could substantially reduce the cost of drugs, not just for seniors, but for everyone.

Many of my colleagues may remember that during my campaign I organized several bus trips to Canada. As you know, Canada is just a short trip over a bridge or through a tunnel for many residents of Michigan. What I discovered on my bus trips was almost unbelievable.

With just a short drive across the border, U.S. citizens can substantially reduce the cost of their medications by purchasing them in Canadian pharmacies. The difference in price for medications was absolutely shocking. A price study I conducted, comparing the price of several drugs purchased in the U.S. to the Canadian prices, conformed what we saw happening on our bus trips—the price of the same drug purchased in Canada is substantially lower than the average U.S. price.

I have brought a chart to the floor to show my colleagues some of the incredible differences between the average price in Canada and the average price in Michigan. I would like to point those out today.

Zocor, a drug to reduce cholesterol, costs $109.73 in Michigan for 50, 5 milligram tablets. The same drug costs only $46.17 in Canada. That is a 138 percent difference in price.

Prilosec, a drug to treat ulcers $115.37 in Michigan for 20, 20 milligram capsules. The same drug costs only $55.10 in Canada. That is a 109 percent difference in price.

Procardia XL, a drug to treat heart problems, costs $133.36 for 100, 30 milligram tablets in Michigan. The same drug costs only $74.25 in Canada. That is an 80 percent difference in price.

Norvasc, a drug to treat high blood pressure, costs $116.79 for 90, 5 milligram tablets. The same drug costs only $89.91 in Canada. That is a 30 percent difference in price.

Tamoxifen, a drug to treat breast cancer, costs $136.50 in Michigan for a one month supply. The same drug costs only $15.92 in Canada. That is an 88 percent savings in price.

Zoloft, a drug to treat depression, costs $220.64 for 100, 50 milligram tablets in Michigan. The same drug costs $129.05 in Canada. That is a 30 percent difference in price.

These are all drugs that have been manufactured in the United States and have met all FDA manufacturing, safety and purity requirements. Furthermore, because these are U.S. drugs, the companies developing and manufacturing them have all benefited from substantial assistance from the U.S. government, including NIH supported research and the Research and Development tax credit. Furthermore, a great deal of this research is conducted in state universities.

I believe that U.S. citizens should have access to these U.S. drugs that are sold at lower prices in other countries. Competition is key to ensuring prices that consumers are willing to pay. Keeping the Canadian border, as well as other borders, closed is an obstacle to competition and is serving to maintain artificially high prices for drugs in the United States. I believe that permitting U.S. wholesalers, such as pharmacies, to bring lower priced drugs back into this country could reduce the price of drugs for every American.

As my colleagues know, the Secretary of Health and Human Services was given broad discretion in implementing the wholesale reimportation provision of the Act. The former Secretary expressed concerns that the provision may not provide cost savings and could pose risks to the public health and opted not to promulgate rules. I understand that my colleagues are urging the new Secretary to reconsider this decision and to begin the implementation process. I am hopeful this may happen and would like to work with my colleagues to forward this effort.

Nonetheless, I recognize that there are some concerns with the law enacted last year. My bill addresses these concerns by correcting these impediments that may delay the Secretary from promulgating regulations and

permitting reimportation. Furthermore, my bill directs the Secretary to dispense with the delay and instructs him to begin the rulemaking process within 30 days of enactment of the bill.

The first of the concerns about wholesale reimportation addressed by my bill is the sunset provision. My bill would lift the 5 year sunset imposed in the Act. Critics argued that sunsetting the provision would be a disincentive for distributors to develop ways to comply with the reimportation requirements when there was the possibility that reimportation could be prohibited again in the near future.

Careful thought was put into the requirements to ensure consumers would be protected. I believe reimporters should be given every opportunity to meet these requirement and that removing the sunset will give these distributors what they need.

Further, I believe consumers should always have access to U.S. manufactured drugs as long as they comply with FDA safety requirements and there is no need for a sunset. If Congress or the administration identifies safety concerns in the future, they should be addressed by revising the reimportation safety requirements, not sunsetting the entire provision of the law.

The act also did not specify that reimorters could use the manufacturers' FDA-approved labels. These labels are required by law if the products are to be sold in the United States. My bill would make those labels available to the reimporters from the manufacturers for a small fee.

Finally, while the act prohibited manufacturers from entering into agreements with distributors that would interfere with reimportation of drugs, critics argue this provision was not strong enough to work. My legislation tightens up this section by prohibiting manufacturers from discriminating against wholesalers simply because they intend to reimport the product.

The bill also has stronger language prohibiting price fixing. Wholesale reimportation of prescription drugs is only half the story. While I think it is critical that wholesalers be permitted to bring U.S.-manufactured drugs back into the country to reduce the price for consumers, I also believe individuals should be able to cross the border and purchase medication for themselves.

The act we passed last year did not change the current law which prohibits individuals from bringing medications across the border for their own use. That is why my bill also makes personal reimportation legal. I believe individuals should be able to cross the border and purchase prescription drugs at a lower price for their own use.

The FDA currently has an enforcement policy that permits individuals who meet specific requirements to bring a 90-day supply of medication with them into the United States from another country, and my legislation would codify the current enforcement policy into law. It requires essentially the same safety precautions currently expected of individuals who bring medication over the border under the FDA's enforcement policy.

The bill also recognizes that some individuals may be too ill to cross the borders themselves and permits them to designate a proxy to bring the medication back for them as long as they provide a letter from their doctor indicating that the trip to another country would endanger their health.

The bill also provides opportunities for individuals to order medication over the Internet—there are other new sites being developed—and other means—hotlines, et cetera—in order to also have prescription drugs delivered by mail.

I am committed to this issue of making prescription drugs more affordable for everyone. This is a matter of fairness. This bill is a matter of fairness to Americans, young and old, who need to have access to affordable prescription drugs. We as Americans ought not to be underwriting the research and at the same time, after the medications, as great as they are, are developed, manufactured, and sold, have Americans paying on average twice as much as those in other countries. That makes no sense to me.

I am committed to working with my colleagues on both sides of the aisle. I appreciate the time I have been given today. This is a critical issue. I cannot think of a more serious issue affecting particularly older people today than the issue of access to medications. I think it is shameful that we have even one senior who is having to choose today, tomorrow, or next week between eating or taking their medicine. We can fix that. One way is to start with this legislation which opens our borders and allows real competition for the best price for American citizens.

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. 215

*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 maybe cited as the ''Medication Equity and Drug Savings Act''.

**SEC. 2. IMPORTATION OF COVERED PRODUCTS FOR PERSONAL USE.**

(a) IN GENERAL.—Chapter VIII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 et seq.) is amended by adding at the end the following:

**''SEC. 805. IMPORTATION OF COVERED PRODUCTS FOR PERSONAL USE.**

''(a) DEFINITIONS.—In this section:

''(1) COVERED PRODUCT.—The term 'covered product' means a prescription drug described in section 503(b)(1).

''(2) FOREIGN COUNTRY.—The term 'foreign country' means—

''(A) Australia, Canada, Israel, Japan, New Zealand, Switzerland, and South Africa; and

''(B) any other country, union, or economic area that the Secretary designates for the purposes of this section, subject to such limitations as the Secretary determines to be appropriate to protect the public health.

''(3) MARKET VALUE.—The term 'market value' means—

''(A) the price paid for a covered product in foreign country; or

''(B) in the case of a gift, the price at which the covered product is being sold in the foreign country from which the covered product is imported.

''(b) IMPORTATION IN PERSON.—

''(1) REGULATIONS.—Notwithstanding subsections (d) and (t) of section 301 and section 801(a), the Secretary shall promulgate regulations permitting individuals to import into the United States from a foreign country, in personal baggage, a covered product that meets—

''(A) the conditions specified in paragraph (2); and

''(B) such additional criteria as the Secretary specifies to ensure the safety of patients in the United States.

''(2) CONDITIONS.—A covered product may be imported under the regulations if—

''(A) the intended use of the covered product is appropriately identified;

''(B) the covered product is not considered to represent a significant health risk (as determined by the Secretary without any consideration given to the cost or availability of such a product in the United States); and

''(C) the individual seeking to import the covered product—

''(i) states in writing that the covered product is for the personal use of the individual;

''(ii) seeks to import a quantity of the covered product appropriate for personal use, such as a 90-day supply;

''(iii) provides the name and address of a health professional licensed to prescribe drugs in the United States that is responsible for treatment with the covered product or provides evidence that the covered product is for the continuation of a treatment begun in a foreign country;

''(iv) provides a detailed description of the covered product being imported, including the name, quantity, and market value of the covered product;

''(v) provides the time when and the place where the covered product is purchased;

''(vi) provides the port of entry through which the covered product is imported;

''(vii) provides the name, address, and telephone number of the individual who is importing the covered product; and

''(viii) provides any other information that the Secretary determines to be necessary, including such information as the Secretary determines to be appropriate to identify the facility in which the covered product was manufactured.

''(3) IMPORTATION BY AN INDIVIDUAL OTHER THAN THE PATIENT.—The regulations shall permit an individual who seeks to import a covered product under this subsection to designate another individual to effectuate the importation if the individual submits to the Secretary a certification by a health professional licensed to prescribe drugs in the United States that travelling to a foreign country to effectuate the importation would pose a significant risk to the health of the individual.

''(4) CONSULTATION.—In promulgating regulations under paragraph (1), the Secretary shall consult with the United States Trade Representative and the Commissioner of Customs.

''(c) IMPORTATION BY MAIL.—

''(1) REGULATIONS.—Notwithstanding subsections (d) and (t) of section 301 and section 801(a), the Secretary shall promulgate regulations permitting individuals to import into the United States by mail a covered product

that meets such criteria as the Secretary specifies to ensure the safety of patients in the United States.

''(2) CRITERIA.—In promulgating regulations under paragraph (1), the Secretary shall impose the conditions specified in subsection (b)(2) to the maximum extent practicable.

''(3) CONSULTATION.—In promulgating regulations under paragraph (1), the Secretary shall consult with the United States Trade Representative and the Commissioner of Customs.

''(d) RECORDS.—Any information documenting the importation of a covered product under subsections (b) and (c) shall be gathered and maintained by the Secretary for such period as the Secretary determines to be appropriate.

''(e) STUDY AND REPORT.—

''(1) STUDY.—The Secretary shall conduct a study on the imports permitted under this section, taking into consideration the information received under subsections (b) and (c).

''(2) EVALUATIONS.—In conducting the study, the Secretary shall evaluate—

''(A) the safety and purity of the covered products imported; and

''(B) patent, trade, and other issues that may have an effect on the safety or availability of the covered products.

''(3) REPORT.—Not later than 5 years after the date of enactment of this section, the Secretary shall submit to Congress a report describing the results of the study.

''(f) NO EFFECT ON OTHER AUTHORITY.—Nothing in this section limits the statutory, regulatory, or enforcement authority of the Secretary relating to importation of covered products, other than the importation described in subsections (b) and (c).

''(g) LIMITATION.—Information collected under this section shall be subject to section 522a of title 5, United States Code.''.

(b) CONFORMING AMENDMENT.—Section 801(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(d)(1)) is amended by striking ''section 804'' and inserting ''sections 804 and 805''.

**SEC. 3. CORRECTION OF IMPEDIMENTS IN IMPLEMENTATION OF MEDICINE EQUITY AND DRUG SAFETY ACT OF 2000.**

(a) ACCESS TO LABELING TO PERMIT IMPORTATION.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following paragraph:

''(4) specify a fair and reasonable fee that a manufacturer may charge an importer for printing and shipping labels for a covered product for use by the importer.'';

(2) in subsection (e)(2), by inserting after ''used only for purposes of testing'' the following: ''or the labeling of covered products''; and

(3) in subsection (h)—

(A) by striking ''No manufacturer'' and inserting the following:

''(1) IN GENERAL.—No manufacturer''; and

(B) by adding at the end the following:

''(2) NO CONDITIONS FOR LABELING.—No manufacturer of a covered product may impose any condition for the privilege of an importer in using labeling for a covered product, except a requirement that the importer pay a fee for such use established by regulation under subsection (b)(4).''.

(b) PROHIBITION OF PRICING CONDITIONS.—Paragraph (1) of section 804(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384(h)) (as designated by subsection (a)(3)(A)) is amended by inserting before the period at the end the following: ''that—

''(A) imposes a condition regarding the price at which an importer may resell a covered product; or

''(B) discriminates against a person on the basis of—

''(i) importation by the person of a covered product imported under subsection (a); or

''(ii) sale or distribution by the person of such covered products''.

(c) CONDITIONS FOR TAKING EFFECT.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) is amended by striking subsection (l) and inserting the following:

''(l) CONDITIONS FOR TAKING EFFECT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), this section shall become effective only if the Secretary certifies to Congress that there is no reasonable likelihood that the implementation of this section would pose any appreciable additional risk to the public health or safety.

''(2) REGULATIONS.—Notwithstanding the failure of the Secretary to make a certification under paragraph (1), the Secretary, not later than 30 days after the date of enactment of this paragraph, shall commence a rulemaking for the purpose of formulating regulations to enable the Secretary to implement this section immediately upon making such a certification.''.

(d) REPEAL OF SUNSET PROVISION.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) is amended by striking subsection (m).

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) (as amended by subsection (d)) is amended by adding at the end the following:

''(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 2002 and each subsequent fiscal year such sums as are necessary to carry out this section.''.

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By Mr. SPECTER (for himself, Mr. HARKIN, Mr. BIDEN, and Mr. JEFFORDS):

S. 216. A bill to establish a Commission for the comprehensive study of voting procedures in Federal, State, and local elections, and for other purposes; to the Committee on Rules and Administration.

Mr. SPECTER. Mr. President, I have sought recognition to introduce legislation which seeks to modernize Federal election voting procedures throughout the United States. The 2000 election saga is now over and, in the words of President John F. KENNEDY, ''Our task now is not to fix the blame for the past, but to fix the course for the future.''

I believe that had we studied our country's voting and monitoring procedures after President KENNEDY's election, we would have in place today a uniform Federal election system that would have avoided the very problem presented in Florida. The presidential election of the year 2000 has drawn attention to several issues relating to current voting technologies. The central question is, how can we ensure fair, reliable, prompt and secure voting procedures?

In this electronic age—in a nation that has put a man on the moon and an ATM machine on every corner —we have no excuse not to ensure that we have an accurate voting system in which every person's vote counts. Thousands of my Pennsylvania constituents raise similar questions relating to the paradox of the ''Internet age'' and antiquated voting procedures. In order to move the voting process to the point we expect in the 21st century, we must establish a system that will improve the integrity of elections and facilitate faster, more accurate results and overcome the weaknesses of older election technology.

It is not really practical for someone to layout an entire bill with the precise procedures to implement these objectives, but it seems to me that it will be useful to establish a Commission which would take up the question of how to reform our Federal election procedures. On November 14, 2000, the first legislative day following the presidential election, I introduced legislation addressing the issue of modernizing our voting procedures. Today, I am reintroducing essentially the same bill with my distinguished colleague, Senator HARKIN, as the lead cosponsor. This bill would establish a Commission for the Comprehensive Study of Voting Procedures which would take up the very question of the best methods to ensure accurate, electronic, and timely reporting of vote counts. The Commission would then submit a report to the President and Congress which would include recommendations to reform or augment current voting procedures for Federal elections. Further, this bill would authorize matching grants for States and localities to implement the Commission's recommendations in relation to Federal elections. Congress should address this issue as least as to Federal elections, leaving the matters of State and local elections to State officials under Federalist concepts.

Specifically, my bill would create a 6 member Commission with the President, Senate Majority Leader, Senate Minority Leader, Speaker of the House, and House Minority Leader each appointing one member; and the Director of the Office of Election Administration of the Federal Election Commission serving as a advisory, non-voting member. The Commission would conduct a thorough study of all issues relating to voting procedures in Federal, State, and local elections, including the following: (1) Voting procedures in Federal, State, and local government elections; (2) Current voting procedures which represent the best practices in Federal, State, and local government elections; (3) Current legislation and regulatory efforts which affect voting procedures; (4) Implementing standardized voting procedures, including technology, for Federal, State, and local government elections; (5) Speed and timeliness of reporting vote counts in Federal, State, and local government elections; (6) Accuracy of vote counts in Federal, State, and local government elections; (7) Security of voting procedures in Federal, State, and local

government elections; (8) Accessibility of voting procedures for individuals with disabilities and the elderly; and (9) Level of matching grant funding necessary to enable States and localities to implement the recommendations of the Commission for the modernization of State and local voting procedures. The details of this bill are incorporated in the attached section-by-section analysis.

Studies have shown that more than half of the nation's registered voters are currently using outdated voting systems. A recent USA Today article noted that most voters across our country still punch paper ballots, even though experts say that system is more vulnerable to voter error than any other. In addition, approximately 20% of voters use mechanical-lever machines that are no longer manufactured, while more than 25% of voters fill in a circle, square, or arrow next to their choice of candidates on a ballot.

My bill is necessary to prevent a recurrence of the problems that threatened the 2000 presidential election whose problems could have been avoided if we had modernized voting and monitoring procedures. Voting is the fundamental safeguard of our democracy and we have the technological power to ensure that every person's vote does count. The time is now to repair the problems of our patchwork system in order to restore the faith of American voters in our Federal election process. Mr. President, I ask that the full text of the bill and a section by section analysis be printed in the RECORD.

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

S. 216

*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 ''Commission on the Comprehensive Study of Voting Procedures Act of 2001''.

**SEC. 2. FINDINGS.**

Congress finds that—

(1) Americans are increasingly concerned about current voting procedures;

(2) Americans are increasingly concerned about the speed and timeliness of vote counts;

(3) Americans are increasingly concerned about the accuracy of vote counts;

(4) Americans are increasingly concerned about the security of voting procedures;

(5) the shift in the United States is to the increasing use of technology which calls for a reassessment of the use of standardized technology for Federal elections; and

(6) there is a need for Congress to establish a method for standardizing voting procedures in order to ensure the integrity of Federal elections.

**SEC. 3. ESTABLISHMENT OF COMMISSION.**

There is established the Commission on the Comprehensive Study of Voting Procedures (in this Act referred to as the ''Commission'').

**SEC. 4. DUTIES OF THE COMMISSION; MATCHING GRANT PROGRAM.**

(a) STUDY.—Not later than 1 year after the date on which all of the members of the Commission have been appointed under section 5, the Commission shall complete a thorough study of all issues relating to voting procedures in Federal, State, and local elections, including the following:

(1) Voting procedures in Federal, State, and local government elections.

(2) Voting procedures that represent the best practices in Federal, State, and local government elections.

(3) Legislation and regulatory efforts that affect voting procedures issues.

(4) The implementation of standardized voting procedures, including standardized technology, for Federal, State, and local government elections.

(5) The speed and timeliness of vote counts in Federal, State and local elections.

(6) The accuracy of vote counts in Federal, State and local elections.

(7) The security of voting procedures in Federal, State and local elections.

(8) The accessibility of voting procedures for individuals with disabilities and the elderly.

(9) The level of matching grant funding necessary to enable States and localities to implement the recommendations made by the Commission under subsection (b) for the modernization of State and local voting procedures.

(b) RECOMMENDATIONS.—The Commission shall develop recommendations with respect to Federal elections matters.

(c) REPORTS.—

(1) FINAL REPORT.—Not later than 180 days after the expiration of the period referred to in subsection (a), the Commission shall submit a report, that has been approved by a majority of the members of the Commission, to the President and Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

(2) INTERIM REPORTS.—The Commission may submit to the President and Congress any interim reports that are approved by a majority of the members of the Commission.

(3) ADDITIONAL REPORTS.—The Commission may, together with the report submitted under paragraph (1), submit additional reports that contain any dissenting or minority opinions of the members of the Commission.

(d) MATCHING GRANT PROGRAM.—

(1) AUTHORITY.—After the submission of the final report under subsection (c)(1), the Attorney General, acting through the Assistant Attorney General for the Office of Justice Programs, shall award grants to State and local governments to enable such governments to implement the recommendations made by the Commission under subsection (b).

(2) APPLICATION.—To be eligible to receive a grant under paragraph (1), a State or local government shall prepare and submit to the Attorney General an application at such time, in such manner, and containing such information as the Attorney General may require including an assurance that the applicant will comply with the requirements of paragraph (3).

(3) MATCHING FUNDS.—The Attorney General may not award a grant to a State or local government under this subsection unless the government agrees to makes available (directly or through donations from public or private entities) non-Federal contributions toward the activities to be conducted under the grant in an amount equal to not less than $1 for each $1 of Federal funds provided under the grant.

(4) AMOUNT OF GRANT.—The Attorney General shall determine the amount of each grant under this subsection based on the recommendations made by the Commission under subsection (b).

(5) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, the amounts recommended for each fiscal year by the Commission under subsection (b) as being necessary for the modernization of State and local voting procedures with respect to Federal elections.

**SEC. 5. MEMBERSHIP.**

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of—

(1) five voting members of whom—

(A) one shall be appointed by the President;

(B) one shall be appointed by the majority leader of the Senate;

(C) one shall be appointed by the minority leader of the Senate;

(D) one shall be appointed by the Speaker of the House of Representatives; and

(E) one shall be appointed by the minority leader of the House of Representatives; and

(2) the Director of the Office of Election Administration of the Federal Election Commission who shall be an advisory, nonvoting member.

(b) DATE OF APPOINTMENT.—The appointments of the members of the Commission shall be made not later than 30 days after the date of enactment of this Act.

(c) TERMS.—Each member of the Commission shall be appointed for the life of the Commission.

(d) VACANCIES.—A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) MEETINGS.—

(1) IN GENERAL.—The Commission shall meet at the call of the Chairperson or a majority if its members.

(2) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall select a Chairperson and Vice Chairperson from among its members.

**SEC. 6. POWERS OF THE COMMISSION.**

(a) HEARINGS AND SESSIONS.—The Commission may hold such hearings for the purpose of carrying out this Act, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act. The Commission may administer oaths and affirmations to witnesses appearing before the Commission.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this Act. Upon request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) WEBSITE.—For purposes of conducting the study under section 4(a), the Commission shall establish a website to facilitate public comment and participation.

(d) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Chairperson of the Commission, the Administrator of the General Services Administration shall provide to the Commission, on a reimbursable basis, the

administrative support services that are necessary to enable the Commission to carry out its duties under this Act.

(f) CONTRACTS.—The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 3709 of the Revised Statutes (42 U.S.C. 5).

(g) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property to carry out this Act.

**SEC. 7. COMMISSION PERSONNEL MATTERS.**

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

**SEC. 8. LIMITATION ON CONTRACTING AUTHORITY.**

Any new contracting authority provided for in this Act shall be effective only to the extent, or in the amounts, provided for in advance in appropriations Acts.

**SEC. 9. TERMINATION OF THE COMMISSION.**

The Commission shall terminate 30 days after the date on which the Commission submits its report under section 4.

**SEC. 10. RULE OF CONSTRUCTION.**

Nothing in this Act shall be construed to prohibit the enactment of an Act with respect to voting procedures during the period in which the Commission is carrying out its duties under this Act.

**SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to the Commission to carry out this Act.

(b) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

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SECTION-BY-SECTION ANALYSIS—THE COMMISSION FOR THE COMPREHENSIVE STUDY OF VOTING PROCEDURES ACT OF 2001

Sections 1–2. Denotes the title of the bill and enumerates the findings, which include increasing concern over voting procedures; increasing concern over the speed, timeliness, and accuracy of voting counts; increasing use of technology by American citizens; and increasing need for standardized voting technology and standardized voting procedures in Federal elections.

Section 3. Establishes the Commission for the Comprehensive Study of Voting Procedures.

Section 4. Directs the Commission to conduct a study of issues relating to voting procedures, which should take no more than one year from the appointment of the full Commission and should include the following:

Monitoring voting procedures in Federal, State, and local government elections;

Current voting procedures which represent the best practices in Federal, State, and local government elections;

Current legislation and regulatory efforts which affect voting procedures issues;

Implementing standardized voting procedures, including standardized technology, for Federal, State, and local government elections;

Speed and timeliness of reporting vote counts in Federal, State, and local government elections;

Accuracy of vote counts in Federal, State, and local government elections;

Security of voting procedures in Federal, State, and local government elections;

Accessibility of voting procedures for individuals with disabilities and the elderly;

Level of matching grant funding necessary to enable States and localities to implement the recommendations of the Commission for the modernization of State and local voting procedures.

Requires the Commission to submit a report to Congress on its findings, including any recommendations for legislation to reform or augment current voting procedures, within 180 days of completing their study.

Establishes a matching grant program for States and localities under the Assistant Attorney General for the Office of Justice Programs, following the submissions of the Commission's final report. Also, authorizes an amount to be appropriated as the Commission finds necessary for States and localities to implement the recommendations of the Commission with respect to Federal elections.

Section 5. Specifies the membership of the Commission. Stipulates that the Commission consist of 6 members appointed as follows:

1 by the President
1 by the Senate Majority Leader
1 by the Senate Minority Leader
1 by the Speaker of the House
1 by the House Minority Leader
the Director of the Office of Election Administration of the Federal Election Commission.

Sections 6–7. Authorizes powers to the Commission, establishes a Web site to facilitate public participation and comment, and provides for the hiring of a Director and staff.

Section 8–9. Limits the contracting authority of the Commission to those provided under appropriations and specifies that the Commission terminate 30 days after the final report is submitted.

Section 10–11. Specifies the caveat that the Act will not prohibit the enactment of legislation on voting procedure issues during the existence of the Commission and authorizes appropriations.

Mr. HARKIN. Mr. President, I am pleased to join with Senator SPECTER on the introduction of the Commission on the Comprehensive Study of Voting Procedures Act of 2001. This measure is very similar to the one we introduced soon after last year's election. I think that we can all agree that this year's Presidential election has exposed a number of serious flaws in Florida's voting system, as well as in those of many states around the country.

First, thousands of ballots were not counted due to voter error. Some people voted for two candidates. Some voted for no candidate. And thousands who voted for just one candidate did so in such a way that their ballots could not be accurately read by vote-counting machines.

Second, the systems we traditionally use to decide elections—systems that can determine the results of an election that is won by one percent or two percent or five percent of the vote—simply aren't accurate enough to decide an election based on a margin of just hundredths of one percent. For example, ask any election expert in the country, and they'll tell you that punch card machines just aren't up to such a task. The press late last year was filled with reports and analysis showing that punch card systems have a far greater proportion of undercounted votes than other systems.

We also now know that butterfly ballots were not the wisest idea. And it's not just a matter of avoiding that particular design. We've also got to develop a mechanism to ensure that ballots are designed in ways that voter error is minimized. In addition, we learned that some Floridians thought they were registered to vote. However, when they arrived at the polls, they found that their names were not listed on the registration roles. These citizens were not allowed to vote in Florida.

Clearly, our voting system has flaws. However there's nothing wrong with our voting system that can't be fixed by what's right with it. For example, in Iowa, we have a law that allows any potential voter who is not found on the registration roles to cast a ''challenged ballot.'' This challenged ballot is like an absentee ballot. It's put in an envelope, and election officials spend the days immediately after the election rechecking registration roles for clerical errors.

If an error was made, and a person was indeed registered to vote, then his or her challenged ballot is counted. This isn't a perfect solution, but it ensures that fewer people fall through the

cracks. And there are more creative answers like this just waiting to be discovered in innovative, forward-thinking counties throughout America. That's why Senator SPECTER and I have introduced a bill designed to revamp our election systems to make them as clear, accessible and accurate as possible.

The Specter-Harkin bill establishes a bipartisan commission which would spend one year examining election practices throughout America. The Commission would seek to discover the strengths and weaknesses in our election system in order to determine the best course of action for the future.

The Commission would specifically be responsible for studying the following:

(1) Voting procedures in Federal, State, and local government elections.

(2) Voting procedures that represent the best practices in Federal, State, and local government elections.

(3) Legislation and regulatory efforts that affect voting procedures issues.

(4) The implementation of standardized voting procedures, including standardized technology for Federal, State, and local government elections.

(5) The speed and timeliness of vote counts in Federal, State and local elections.

(6) The accuracy of vote counts in Federal, State and local elections.

(7) The security of voting procedures in Federal, State and local elections.

(8) The accessibility of voting procedures for individuals with disabilities and the elderly.

(9) The level of matching grant funding necessary to implement the Commission's recommendations.

Lastly, the bill authorizes a one-to-one matching grant program subject to the appropriation of the funds.

The commission would seek to answer questions like the following: What are the latest innovations in voting technology? What are the best failsafe systems we can install to alert voters that they've voted for too many candidates or too few? Are we doing everything we can to make our voting system accessible to the elderly, people with disabilities, and others with special needs?

The next Presidential election is less than four years away. By allotting 12 full months for the Commission to study our voting systems, we'll leave time for the Commission to finish a report and submit it to Congress for review and passage, and to allow Federal, State and local governments to pass and implement new voting legislation. But the timeline is tight, and we must move forward quickly.

Clearly, when it comes to voting, local officials should have discretion in their precincts. But at the very least, we must establish minimum standards for accessibility and accuracy in order to ensure a full, fair and precise count. We also need clear guidelines regarding the recounting of votes in very close elections. Each vote is an expression of one American's will, and we cannot deny anyone that fundamental right to shape our democracy.

There will always be conflicting views about what happened in Florida. And we'll probably never come to complete agreement on the results. But let us move forward and work together to minimize voting inaccuracies in the future and ensure every American's right to be heard.

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By Mr. SCHUMER (for himself, Mr. WARNER, Mr. DURBIN, Mr. SANTORUM, Mr. SARBANES, Mr. CHAFEE, Mr. VOINOVICH, Mr. KERRY, Mr. DODD, and Ms. MIKULSKI):

S. 217. A bill to amend the Internal Revenue Code of 1986 to provide a uniform dollar limitation for all types of transportation fringe benefits excludable from gross income, and for other purposes; to the Committee on Finance.

Mr. SCHUMER. Mr. President, I am proud to join my colleagues—Senators WARNER, DURBIN, CHAFEE, SARBANES, SANTORUM, DODD, KERRY, VOINOVICH, and MIKULSKI today to introduce the Commuter Benefits Equity Act of 2001. This bill corrects an inequity in the tax code and has the potential to draw hundreds of thousands of commuters out of their cars and onto our nation's transit and commuter rail systems.

The inequity I am speaking about is the largely ignored difference in the amount of ''pretax'' compensation that current law permits employers to give employees to cover parking and transit costs. At present, a company may provide a worker with $175 per month to cover parking expenses. That limit is set at $65 per employee for mass transit expenses.

At a time when our nation's highways and bridges are under unprecedented strain, it is hard to believe that federal law provides a greater incentive for workers to drive to work than to leave their cars at home.

The Commuter Benefits Equity Act of 2001 would raise the monthly cap to $175 for transit and provide ''cost of living'' increases for both benefits in the future. I would note that the parking benefit just received a $5 COLA.

It is often said that people love their cars and simply will not ride mass transit to work. Many times this view is asserted as if it were an incontrovertible fact. I don't believe it at all, and recent ridership increases show how untrue such statements are.

According to the American Public Transportation Association, Americans took over 9.4 billion trips on public transportation last year—a 320 million ride increase over 1999. This figure marks the highest ridership number in more than forty years. It also signifies a 20 percent increase over the last five years.

Clearly, Americans are willing to use mass transportation. I suspect that if the federal government were to remove barriers like the current disparity in the parking and transit benefits, even more would abandon their cars.

It certainly is a goal worth pursuing.

According to the Texas Transportation Institute, between 1982 and 1997 the average delays faced by commuters in our metropolitan areas increased by alarming percentages. Over that fifteen-year period, commuters in New York endured a 158-percent increase in the amount of time they spent stuck in traffic. And that, comparatively speaking, is low. The figure for Detroit commuters was 182 percent. In Dallas it was 300 percent. Denver commuters faced a grim 337-percent increase.

The monthly cap on the federal transit benefit must be raised because it is far below the average costs incurred by the suburban commuters who use mass transportation. For instance, it costs a Westchester, New York commuter over $170 per month to take MetroNorth into the City. In Chicago, the average cost is approximately $148. In suburban Seattle that cost can exceed $200. Many commuters who would prefer to ride a train into work versus sitting in traffic probably can't afford to do so. This is because the choice between paying the majority of their own mass transportation costs or sitting in traffic and getting heavily subsidized parking is one they cannot justify economically.

My colleagues and I believe that by creating a more level playing field between the transit and parking benefits, mass transportation use in this country will rise more rapidly. We also anticipate that our nation's urban highways will operate more efficiently. This view is shared by groups such as the Sierra Club, Environmental Defense, and the U.S. Conference of Mayors, who have endorsed the Commuter Benefits Equity Act of 2001.

Mr. President, I ask unanimous consent that any comments relating to this bill appear in the RECORD following my remarks as well as the text of the Commuter Benefits Equity Act of 2001.

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

S. 217

*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 ''Commuter Benefits Equity Act of 2001''.

**SEC. 2. UNIFORM DOLLAR LIMITATION FOR ALL TYPES OF TRANSPORTATION FRINGE BENEFITS.**

(a) IN GENERAL.—Subparagraph (A) of section 132(f)(2) of the Internal Revenue Code of 1986 (relating to limitation on exclusion) is amended by striking ''$65'' and inserting ''$175''.

(b) CONFORMING AMENDMENT.—Section 9010 of the Transportation Equity Act for the 21st Century is amended by striking subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

**SEC. 3. CLARIFICATION OF FEDERAL EMPLOYEE BENEFITS.**

Section 7905 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2)(C) by inserting ''and'' after the semicolon;

(B) in paragraph (3) by striking ''; and'' and inserting a period; and

(C) by striking paragraph (4); and

(2) in subsection (b)(2)(A) by amending subparagraph (A) to read as follows:

''(A) a qualified transportation fringe as defined in section 132(f)(1) of the Internal Revenue Code of 1986;''.

Mr. WARNER. Mr. President, I am pleased today to join with my distinguished colleague from New York, Senator SCHUMER, to introduce the Commuter Benefits Equity Act of 2001.

Transportation gridlock in the metropolitan Washington region is dramatic and well documented. The average commuter spends about 76 hours a year idling on our area roads. The average speed on the Capital Beltway has decreased from 47 miles per hour to 23 miles per hour today. This wasted time in cars results in lost work productivity, lost time with families and degraded air quality. The quality of life for commuters is significantly reduced all across the country. I firmly believe the strength of our economy will be jeopardized if the growing rate of congestion in our communities remains unchecked.

Yes, the construction of new roads and the expansion of existing roads must occur. But, this alone is not the answer to our problems. Relief from our growing gridlock will not come from any one solution. It will only come from an integrated policy of options that provide short-term, immediate solutions, together with long-term planning for new transportation facilities, both roads and transit.

For these reasons, I have worked over the years to provide commuters with greater incentives to use mass transit, bus or rail, and to join vanpools. Increased transit ridership, extension of the Metro system, the Dulles Rapid Transit System, and expanded telecommuting opportunities are critical to providing temporary short-term solutions. Greater transit use and broader telework options are measures we can implement today that will deliver results tomorrow.

The measure I am introducing today with Senator SCHUMER will provide parity in the tax code for those who enjoy employer-provided parking and those who elect to commute by mass transit.

Today, the tax code provides two benefits for employers to offer their employees, both Federal employees and those in the private sector. Employers can offer employees a cash benefit of $65 per month for commuting expenses, or employers can set aside up to $65 per month of an employee's pre-tax income to pay for commuting costs. Under the tax code, however, the employer-provided parking benefit is valued at $175 per month.

The legislation introduced today will increase the transit/vanpool benefit to $175 per month to be on par with the value of the parking benefit.

Last year, I authored a provision in the FY 2001 Department of Defense Authorization bill requiring the Department of Defense to offer the cash commuting benefit to all DOD employees working in areas that do not meet the Federal air quality standards. With a total metropolitan Washington regional federal workforce of 323,000 persons, the Department of Defense is, by far, the single largest federal employer with 65,000 persons.

The implementation of this benefit by the Federal agencies will improve employee satisfaction and have a positive effect on retention rates in the Federal workforce. This measure, however, is not limited to Federal employees. It does extend the benefit to private sector employees as well.

Equally important are the resulting air quality benefits from increased transit use. According to the Environmental Protection Agency, the metropolitan Washington area is an air quality non-attainment area, categorized as severe, under the Clean Air Act Amendments of 1990. Mobile sources are responsible for the majority of our air quality violations.

Mr. President, I commend this legislation to my colleagues for their attention. It's costs are modest, and the benefits to our society are significant.

Mr. SARBANES. Mr. President, I am pleased to join with my colleagues Senators SCHUMER and WARNER in introducing the Commuter Benefits Equity Act of 2001. This measure is another important step forward in our efforts to make transit services more accessible and improve the quality of life for commuters throughout the nation.

All across the nation, congestion and gridlock are taking their toll in terms of economic loss, environmental impacts, and personal frustration. According to the Texas Transportation Institute's Annual Mobility Report, in 1997, Americans in 68 urban areas spent 4.3 billion hours stuck in traffic, with an estimated cost to the nation of $72 billion in lost time and wasted fuel, and the problem is growing. One way in which federal, state, and local governments are responding to this problem is by promoting greater use of transit as a commuting option. The American Public Transportation Association estimates that last year, Americans took over 9.4 billion trips on transit, the highest level in more than 40 years. But we need to do more to encourage people to get out of their cars and onto public transportation.

The Internal Revenue Code currently allows employers to provide a tax-free transit benefit to their employees. Under this ''Commuter Choice'' program, employers can set aside up to $65 per month of an employee's pre-tax income to pay for the cost of commuting by public transportation or vanpool. Alternatively, an employer can choose to offer the same amount as a tax-free benefit in addition to an employee's salary. This program is designed to encourage Americans to leave their cars behind when commuting to work.

By all accounts, this program is working. In the Washington area, for example, the Washington Metropolitan Area Transit Authority reports that 168,500 commuters take advantage of transit pass programs offered by their employers. That means fewer cars on our congested streets and highways.

Employees of the federal government account for a large percentage of those benefitting from this program in the Washington area. Under an Executive Order issued by President Clinton, all federal agencies in the National Capital Region, which includes Montgomery, Prince George's, and Frederick Counties, Maryland, as well as several counties in Northern Virginia, are required to offer this transit benefit to their employees. The Commuter Choice program is now being used by 115,000 Washington-area federal employees who are choosing to take transit to work.

However, despite the success of the Commuter Choice program in taking cars off the road, our tax laws still reflect a bias toward driving. The Internal Revenue Code allows employers to offer a tax-free parking benefit to their employees of up to $175 per month. The striking disparity between the amount allowed for parking—$175 per month—and the amount allowed for transit—$65 per month—undermines our commitment to supporting public transportation use.

The Commuter Benefits Equity Act would address this discrepancy by raising the maximum monthly transit benefit to $175, equal to the parking benefit. The federal government should not reward those who drive to work more richly than those who take public transportation. Indeed, since the passage of the Intermodal Surface Transportation Efficiency Act of 1991, federal transportation policy has endeavored to create a level playing field between highways and transit, favoring neither mode above the other. The Commuter Benefits Equity Act would ensure that our tax laws reflect this balanced approach.

In addition, the Commuter Benefits Equity Act would remedy another inconsistency in current law. Private-sector employers can offer their employees the transit benefit in tandem with the parking benefit, to help employees pay for the costs of parking at transit facilities, commuter rail stations, or other locations which serve public transportation or vanpool commuters. However, under current law, federal agencies cannot offer a parking benefit to their employees who use park-and-ride lots or other remote parking locations. The Commuter Benefits Equity Act would remove this restriction, allowing federal employees access to the same benefits enjoyed by their private-sector counterparts.

The Washington Metropolitan Region is home to thousands of federal employees. It is also one of the nation's most highly congested areas, with the second longest average commute time

in the country. This area ranks third in the nation in the number of workers commuting more than 60 minutes to work, and has the highest per vehicle congestion cost and the second highest per capita congestion cost in the nation. It is clearly in our interest to support programs which encourage federal employees to make greater use of public transportation for their commuting needs.

The simple change made by the Commuter Benefits Equity Act would provide a significant benefit to those federal employees whose commute to work includes parking at a transit facility. For example, a commuter who rides the Metrorail System to work and parks at the Wheaton park-and-ride lot pays about $50 monthly for parking, on top of the cost of riding the train. A private-sector employee whose employer provides the parking benefit in addition to salary could receive $600 a year tax free to help pay these parking costs. Federal government employees should be allowed the same benefit.

I support the Commuter Benefits Equity Act because it creates parity—parity in the tax code between the parking and transit benefits, and parity for federal employees with their private-sector counterparts. Both of these improvements will aid our efforts to fight congestion and pollution by supporting public transportation. I encourage my colleagues to join me in supporting the Commuter Benefits Equity Act.

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By Mr. McCONNELL (for himself, Mr. TORRICELLI, Mrs. FEINSTEIN, Mr. ALLARD, Mr. SMITH of Oregon, Ms. LANDRIEU, Mr. BURNS, Mr. BENNETT, Mr. BREAUX, Mr. HUTCHINSON, Mr. SANTORUM, Mr. WARNER, Mr. REID, and Mr. ROBERTS).

S. 218. A bill to establish an Election Administration Commission to study Federal, State, and local voting procedures and election administration and provide grants to modernize voting procedures and election administration, and for other purposes; to the Committee on Rules and Administration.

Mr. McCONNELL. Mr. President, I rise today to re-introduce along with Senators TORRICELLI, FEINSTEIN, ALLARD, SMITH, BREAUX, BURNS, REID, BENNETT, LANDRIE, SANTORUM, ROBERTS, HUTCHINSON, and WARNER meaningful, bipartisan legislation to reform the administration of our nation's elections. I ask that the entire text of my statement and the text of the legislation appear in the record.

As we move into the twenty-first century it is inexcusable that the world's most advanced democracy relies on voting systems designed shortly after the Second World War. The goal of our legislation is rather simple: that no American ever again be forced to hear the phrases dimpled chad, hanging chad or pregnant chad. The Election Reform Act will ensure that our nation's electoral process is brought up to twenty-first century standards.

By combining the Federal Election Commission's Election Clearinghouse and the Department of Defenses' Office of Voting Assistance, which facilitates voting by American civilians and servicemen overseas, into the Election Administration Commission, the bill will create one agency that can bring focuses expertise to bear on the administration of elections. This Commission will consist of four Commissioners appointed by the President with the advice and consent of the Senate. It will continue to carry out the functions of the two entities that are being combined to create it.

In addition, the new Commission will engage in ongoing study and make periodic recommendations on the best practices relating to voting technology and ballot design as well as polling place accessibility for the disabled. The Commission will also study and recommend ways to improve voter registration, verification of registration, and the maintenance and accuracy of voter rolls. This is of special urgency in view of the allegations surfacing in this election of hundreds of felons being listed on voting rolls and illegally voting, as reported in the Miami Herald, while other law abiding citizens who allegedly registered were not included on the voting rolls and were unable to vote. Such revelations from this year's elections coupled with the well-knows report by ''60 Minutes'' of the prevalence of dead people and pets both registering and voting in past elections make clear the need for thoughtful study and recommendations to ensure that everyone who is legally entitled to vote is able to do so and that everyone who votes is legally entitled to do so—and does so only once.

In addition to its studies and recommendations, the Commission will provide matching grants to states working to improve election administration. During the first four years, low-income communities will get priority for these grants and low-income communities are permanently exempted from the requirement to provide matching funds. The legislation also ensure that states comply with the provisions in the Uniformed Overseas Voting Act designed to facilitate voting by members of the armed forces stationed overseas.

Finally, I am pleased also to announce that Representative TOM DAVIS, along with Representatives ROTHMAN, DREIER, and HASTINGS are re-introducing the House companion to our bill today.

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Mr. DODD (for himself, Mr. McCAIN, Mr. HOLLINGS, and Mr. HAGEL):

S. 219. A bill to suspend for two years the certification procedures under section 490(b) of the Foreign Assistance Act of 1961 in order to foster greater multilateral cooperation in international counternarcotics programs, and for other purposes; to the Committee on Foreign Relations.

Mr. DODD. Mr. President, today I send to the desk legislation on behalf of myself, Senators McCAIN, HOLLINGS and HAGEL. The purpose of the bill we are introducing today is to help the incoming Bush administration in its efforts to strengthen international cooperation in combating international drug trafficking and drug-related crimes.

As you know, the issue of how best to construct and implement an effective international counter narcotics policy has been the subject of much debate in this Chamber over the years, and I would add much disagreement. Our intention in introducing this legislation is to try to see if there is some way to end what has become a stale annual debate that has not brought us any closer to mounting a credible effort to eliminate or even contain the international drug mafia. We all can agree that drugs are a problem—a big problem. We can agree as well that the international drug trade poses a direct threat to the United States and to international efforts to promote democracy, economic stability, human rights, and the rule of law throughout the world, but most especially in our own hemisphere.

While the international impact is serious and of great concern, of even greater concern to me personally are effects it is having here at home. Last year Americans spent more than $60 billion to purchase illegal drugs. Nearly 15 million Americans (twelve years of age and older) use illegal drugs, including 1.5 million cocaine users, 208,000 heroin addicts, and more than 11 million smokers of marijuana. This menace isn't just confined to inner cities or the poor. Illegal drug use occurs among members of every ethnic and socioeconomic group in the United States.

The human and economic costs of illegal drug consumption by Americans are enormous. More than 16,000 people die annual as a result of drug induced deaths. Drug related illness, death, and crime cost the United States approximately over $100 billion annually, including costs for lost productivity, premature death, and incarceration.

This is an enormously lucrative business—drug trafficking generates estimated revenues of $400 billion annually. The United States has spent more than $30 billion in foreign interdiction and source country counter narcotics programs since 1981, and despite impressive seizures at the border, on the high seas, and in other countries, foreign drugs are cheaper and more readily available in the United States today than two decades ago.

We think that for a variety of reasons, that the time is right to give the incoming Bush administration some flexibility with respect to the annual certification process, so that it can determine whether this is the best mechanism for producing the kind of international cooperation and partnership that is needed to contain this transnational menace. I believe that

government leaders, particularly in this hemisphere, have come to recognize that illegal drug production and consumption are increasingly threats to political stability within their national borders. Clearly President Pastrana of Colombia has acknowledged that fact and has sought to work very closely with the United States in implementing Plan Colombia. Similarly President Vincente Fox of Mexico has made international counter narcotics cooperation a high priority since assuming office last December. These leaders also feel strongly, however, that unilateral efforts by the United States to grade their governments' performance in this area is a major irritant in the bilateral relationship and counterproductive to their efforts to instill a cooperative spirit in their own bureaucracies.

The legislation we are introducing today recognizes that illicit drug production, distribution and consumption are national security threats to many governments around the globe, and especially many of those in our own hemisphere, including Mexico, Colombia, and other countries in the Andean region. It urges the Administration to develop an enhanced multilateral strategy for addressing these threats from both the supply and demand side of the equation. It calls upon the President to consider convening a conference of heads of state, at an early date, to review on a country-by-country basis, national strategies for drug reduction and prevention, and agree upon a time table for action. It also recommends that the President submit any legislative changes to existing law which he deems necessary in order to implement this international program within one year from the enactment of this legislation.

In order to create the kind of international cooperation and mutual respect that must be present if the Bush administration's effort is to produce results, the bill would also suspend the annual drug certification procedure for a period of 2 years, while efforts are ongoing to develop and implement this enhanced multilateral strategy. I believe it is fair to say that while the certification procedure may have had merit when it was enacted into law in 1986, it has now become a hurdle to furthering bilateral and multilateral cooperation with other governments, particularly those in our own hemisphere such as Mexico and Colombia—governments whose cooperation is critical if we are to succeed in stemming the flow of drugs across our borders.

Let me make clear however, that while we would not be ''grading'' other governments on whether they have ''cooperated fully'' during the two year ''suspension'' period, the detailed reporting requirements currently required by law concerning what each government has done to cooperate in the areas of eradication, extradition, asset seizure, money laundering and demand reduction during the previous calendar year will remain in force. We will be fully informed as to whether governments are following short of their national and international obligations. Moreover, if the President determines during the two year suspension period that the certification process may be useful in order to elicit more cooperation from a particular government he may go ahead and issue the annual certification decision with respect to that country. The annual determination as to which countries are major producers or transit sources of illegal drugs will also continue to be required by law.

I believe that we need to reach out to other governments who share our concerns about the threat that drugs pose to the very fabric of their societies and our own. It is arrogant to assume we are the only Nation that cares about such matters. We need to sit down and figure out what each of us can do better to make it harder for drug traffickers to ply their trade. It is in that spirit that we urge our colleagues to give this proposal serious consideration. Together, working collectively we can defeat the traffickers. But if we expend our energies playing the blame game, we are certainly not going to effectively address this threat. We aren't going to stop one additional teenager from becoming hooked on drugs, or one more citizen from being mugged outside his home by some drug crazed thief.

During the Clinton Administration, Barry McCaffrey, the Director of the Office of National Drug Control Policy did a fine job in attempting to forge more cooperative relations with Colombia, Mexico and other countries in our own hemisphere. The OAS has also done some important work over the last several years in putting in place an institutional framework for dealing with the complexities of compiling national statistics so that we can better understand what needs to be done. The United Nations, through its Office for Drug Control and Crime Prevention has also made some important contributions in furthering international cooperation in this area. However, still more needs to be done. We believe that this legislation will build upon that progress. I would urge my colleagues to give some thought and attention to our legislative initiative. We believe that if they do, that they will come to the conclusion that it is worthy of their support.

Mr. President, I ask unanimous consent that the text of this legislation be printed in the RECORD at the conclusion of these remarks.

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

S. 219

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

**SECTION 1. TWO-YEAR SUSPENSION OF DRUG CERTIFICATION PROCEDURES.**

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

(1) The international drug trade poses a direct threat to the United States and to international efforts to promote democracy, economic stability, human rights, and the rule of law.

(2) The United States has a vital national interest in combating the financial and other resources of the multinational drug cartels, which resources threaten the integrity of political and financial institutions both in the United States and abroad.

(3) Illegal drug use occurs among members of every ethnic and socioeconomic group in the United States.

(4) Worldwide drug trafficking generates revenues estimated at $400,000,000,000 annually.

(5) The 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances form the legal framework for international dung control cooperation.

(6) The United Nations International Drug Control Program, the International Narcotics Control Board, and the Organization of American States can play important roles in facilitating the development and implementation of more effective multilateral programs to combat both domestic and international drug trafficking and consumption.

(7) The annual certification process required by section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j), which has been in effect since 1986, does not currently foster effective and consistent bilateral or multilateral cooperation with United States counternarcotics programs because its provisions are vague and inconsistently applied and in many cases have been superseded by subsequent bilateral and multilateral agreements and because it alienates the very allies whose cooperation we seek.

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

(1) many governments are extremely concerned by the national security threat posed by illicit drug production, distribution, and consumption, and crimes related thereto, particularly those in the Western Hemisphere;

(2) an enhanced multilateral strategy should be developed among drug producing, transit, and consuming nations designed to improve cooperation with respect to the investigation and prosecution of drug related crimes, and to make available information on effective drug education and drug treatment;

(3) the President should at the earliest feasible date in 2001 convene a conference of heads of state of major illicit drug producing countries, major drug transit countries, and major money laundering countries to present and review country by country drug reduction and prevention strategies relevant to the specific circumstances of each country, and agree to a program and timetable for implementation of such strategies; and

(4) not later than one year after the date of the enactment of this Act, the President should transmit to Congress legislation to implement a proposed multilateral strategy to achieve the goals referred to in paragraph (2), including any amendments to existing law that may be required to implement that strategy.

(c) TWO-YEAR SUSPENSION OF DRUG CERTIFICATION PROCESS.—(1) Subsections (a) through (g) of section 490 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291j), relating to annual certification procedures for assistance for certain drug-producing countries and drug-transit countries, shall not apply in the first 2 calendar years beginning after the date of the enactment of this Act.

(2) Notwithstanding any provision of paragraph (1), section 489 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291h), relating to the international narcotics control strategy report, and section 490(h) of that Act (22 U.S.C. 2291j(h)), relating to determinations of major drug-transit countries and major illicit drug producing countries, shall continue to apply in the 2 calendar years referred to in that paragraph.

(3) The President may waive the applicability of paragraph (1) to one or more countries in one or both of the calendar years referred to in that paragraph if the President determines that bilateral counternarcotics cooperation would be enhanced by the applicability of subsections (a) through (g) of section 490 of the Foreign Assistance Act of 1961 to such country or countries in such calendar year.

(d) APPLICABILITY.—(1) Except as provided in paragraph (2), the provisions of subsection (c) shall take effect on the date of the enactment of this Act and apply with respect to certifications otherwise required under section 490 of the Foreign Assistance of 1961 in the first two fiscal years beginning after that date.

(2) If this Act is enacted on or before February 28, 2001, the provisions of subsection (c) shall take effect on the date of the enactment of this Act and apply with respect to certifications otherwise required under section 490 of the Foreign Assistance of 1961 in fiscal years 2001 and 2002.

Mr. HOLLINGS. Mr. President, I rise today to join my good friend Senator DODD, and our distinguished colleagues Senator HAGEL and Chairman MCCAIN, in cosponsoring an important piece of legislation with far-reaching effects in our struggle to combat drug trafficking. Our bill calls for the development of a multilateral strategy among major illicit drug producing, transit, drug demand, and consuming countries to improve cooperation with respect to the investigation and prosecution of drug related crimes. Intelligence reports have shown that sophisticated cartels operate on a truly global scale. America's drug demand problems may feed Europe's money laundering problems which are related to Asia's organized crime problems or street-crime in Latin America. All the states of the world are under attack from a common, sophisticated enemy. Our bill encourages the President of the United States to bring the heads of state together to review individual country strategies and develop a new multilateral approach. This bill requires the President to submit to Congress legislation to implement a multilateral strategy devised through the consultation process described above.

Drug trafficking becomes harder to fight as the world becomes increasingly interconnected. I am united with my colleagues to remain vigilant in fighting the proliferation of drugs on the streets of the United States. The last time I checked, the United States does not produce one ounce of cocaine, or one ounce of heroin. This bill recognizes the essential truth of drug trafficking—it is a multinational, multifaceted criminal plague that respects no borders.

With this in mind, I rise to support a 2-year moratorium of the annual U.S. certification procedures which require the President to certify that other nations qualify as ''partners'' in combating drug trafficking. This certification is required for the release of certain U.S. bilateral assistance, as well as for the release of multilateral development aid from institutions where the United States is a voting member. This practice stymies multilateral cooperation in combating drug trafficking and has not yielded any measurable results—unless one counts the resentment of our neighbors. We need a new approach and new strategic partners. This legislation will direct President Bush to seek out new approaches and new partners rather than wasting time and energy on certification.

Officials from Mexico, our neighbor and close ally, have routinely appealed to the President of the United States and to Congress to suspend the drug certification process. They argue it is detrimental to bilateral cooperation in enforcement and interdiction, it is bad for the morale of law enforcement, and it serves to absolve the United States from its responsibility in the proliferation of drug trafficking. Americans spend an estimated $110 billion a year on illegal drugs—the equivalent of one-tenth the value of the country's entire industrial production. Unfortunately, the dedicated and hardworking efforts of our law enforcement and customs officials to gain control of drugs entering our country from Mexico are to date unsuccessful. The Mexican police have been overwhelmed by the sheer volume of drugs transhipped through their country (The DEA estimated that, in 1999, 55 percent of the cocaine and 14 percent of the heroin which enter the United States came from Mexico, as did 3,700 metric tons of marijuana). The situation is further complicated by the existing corruption in Mexican police ranks. By way of example, in December 1999 the Government of Mexico reported that between 1997 and 1999 more than 1,400 federal police officers had been fired for corruption and that 357 of the officers had been prosecuted. Given the pervasive scale of the problem, the Federal Preventive Police (FPP) was created to investigate and root out crooked officers in the federal police. By the winter of 2000, several agents of the FPP were under investigation themselves for corruption.

Despite these grim examples there are clear signs of hope. In July 2000 Mexico turned a corner in history and ended seven decades of one-party rule by sending opposition candidate Vincente Fox to Los Pinos. Fox cast a wide net in the Mexican mainstream with themes of inclusion and governmental responsiveness in a historic campaign. ''Democracy is a starting point—it is the process by which society becomes organized and gains its own voice'' said Fox. ''Democracy provides the legitimacy necessary for the country to meet the historic challenges in the areas of development, social justice, and the reduction of inequality.''

President Fox represents a clean break with the institutionalized corruption and graft that carried Mexico to the brink of Chaos in 1994 when PRI presidential candidate Donaldo Colosio was assassinated. President Fox inherited a judicial system and a federal police force rocked by scandal and largely ineffectual in combating drug trafficking. Mexico ranked 4th in the World Bank's 2000 list of most corrupt governments. Backed with a popular mandate for change, Fox put fighting corruption as the overarching goal in all his policy initiatives. The task will not be easy. Last Friday, January 19th, for example, it was reported that convicted drug kingpin Joaquin Guzmán Loera escaped from a maximum security prison in Jalisco. Guzmán is a leader of the Félix Gallardo drug family, which authorities say is deeply involved in shipping illegal drugs to the United States.

While I am sobered by the accounts of the Guzmán escape, it is encouraging that the Mexican Supreme Court reversed its decision on extraditions for drug crimes and agreed to turn over drug kingpins wanted in the United States. We must further these confidence-building initiatives between the United States and Mexico. One way to do this is to grant Mexico a two-year moratorium from the drug certification process to allow President Fox to organize his Administration and to set his course. We should not evaluate President Fox for the corruption of his predecessors. We must allow him to address the endemic corruption that plaques the Mexican state.

This legislation does not cede Congress' role in the so-called drug war. It call for new energy and a new multilateral approach. It emphasizes Congress' interest in building real partnerships and looking for new answers in this difficult struggle. This legislation will give us a fresh start with our neighbor to the south and build confidence between our people. President Fox is committed to reforming Mexico and I intend to urge my colleagues to help this vibrant new leader to achieve his goal. He has brought the liberating force of democracy to his people, but his work is not done. President Fox has to use his power to transform the state. He has an old order to dismantle, a new one to build, and 6 years to do it. I have confidence in Mr. Fox and his able cabinet. My colleagues and I are reaching out to the Fox Administration and the Mexican people; we want to build a partnership and seek new ways to address common problems.

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By Mrs. BOXER:

S. 221. A bill to authorize the Secretary of Energy to make loans through a revolving loan fund for States to construct electricity generation facilities for use in electricity supply emergencies.

Mrs. BOXER. Mr. President, since last week, I have introduced several bills to help California deal with the

electricity crisis and to help prevent such emergencies from occurring in other States in the future. Today, I am introducing another such bill—the State Electricity Reserve Fund Act.

Current electricity generating capacity is tied to the expected need. Private generating companies have no incentive to build or maintain facilities that would generate capacity greater than what is needed to meet consumer demand. The plants would be idle most of the time. As a result, electricity shortages can occur.

A lack of rainfall, which means that hydroelectric facilities cannot be operated as often, as well as unseasonably hot or cold temperatures, or rapid population increases in a State can all result in a demand for electricity unexpectedly exceeding supply. But with supply tied to expected demand, this can result in devastatingly large price increases for consumers and/or electricity shortages, which in turn could cause brownouts or blackouts.

This is exactly what has happened in California. In the late 1980's, the California Public Utilities Commission required utilities to determine demand for new power generating capacity. At that time, the state recognized that generation needs could increase. However, the utilities argued that no new capacity would be needed in California until 2005. The utilities fought the attempt by the state to make them build more generating capacity. The utilities argued it was not needed.

It turned out that it was needed. And whether the utilities should have known is another argument for another day. But the point here is that we cannot rely on the private sector to create a ''rainy day fund'' of electricity in the event of emergencies.

So, the State Electricity Reserve Fund Act would create a revolving loan fund for states to use to help pay for the creation of an electricity reserve capacity. These loans could be used by states to build electricity generation facilities that would be controlled by the state and would be kept in reserve unless the Governor of the State declares an electricity emergency.

Mr. President, it is not an unusual thing for the federal government to prepare for energy emergencies. We have the Strategic Petroleum Reserve in the case of oil shortages, and last year we established the Home Heating Oil Reserve for the Northeastern States. My bill is based on the same premise.

True, we cannot store electricity like we can store petroleum and heating oil. But we can financially help States build a reserve facility, including a reserve of the fuel that is needed to generate electricity, to be used in the case of electricity emergencies. If such a reserve had existed in California, we would not have reached State III emergencies and rolling blackouts over the past couple of weeks.

Mr. President, I think being prepared for emergencies is always a good policy. Helping States be prepared for electricity emergencies is no different.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 221

*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 ''State Electricity Reserve Fund Act of 2001''.

**SEC. 2. PURPOSE.**

The purpose of this Act is to assist States in creating electric generating capacity to be used in the event of an electricity emergency.

**SEC. 3. EMERGENCY ELECTRICITY GENERATION FACILITIES.**

(a) REVOLVING LOAN FUND.—There is established in the Treasury of the United States a revolving loan fund to be known as the ''State Electricity Reserve Loan Fund'' consisting of such amounts as may be appropriated or credited to such Fund as provided in this section.

(b) EXPENDITURES FROM LOAN FUND.—

(1) IN GENERAL.—The Secretary of Energy, under such rules and regulations as the Secretary may prescribe, may make loans from the State Electricity Reserve Loan Fund, without further appropriation, to a State.

(2) PURPOSE.—Loans provided under this section shall be used for the purpose of designing and constructing 1 or more facilities in a State with capacity to generate an amount of electricity sufficient to meet the amount of any intermittent deficiencies in electricity supply that the State may reasonably be expected to experience during any period over the next 10 years.

(3) USE OF FUNDS.—A facility designed or constructed with a loan provided under this section—

(A) shall be owned by the State and operated by the State directly or through a contract with an electric utility or a consortium of electric utilities; and

(B) shall be operated to supply electricity to the electricity transmission grid only during periods of electricity emergencies declared by the Governor of the State.

(4) DETERMINATIONS BY SECRETARY.—No loan shall be provided under this section unless the Secretary determines that—

(A) there is reasonable assurance of repayment of the loan; and

(B) the amount of the loan, together with other funds provided by or available to the State, is adequate to assure completion of the facility or facilities for which the loan is made.

(5) LOAN AMOUNT.—The amount of a loan provided under this section shall not exceed the lesser of—

(A) 40 percent of the costs to be incurred in designing and constructing the facility or facilities involved; or

(B) $1,000,000,000.

(c) LOAN REPAYMENT.—

(1) LENGTH OF REPAYMENT.—

(A) IN GENERAL.—Before making a loan under this section, the Secretary shall determine the period of time within which a State must repay such loan.

(B) LIMITATION.—Except as provided in subparagraph (C), the Secretary shall in no case allow repayment of such loan—

(i) to begin later than the date that is 2 years after the date on which the loan is made; and

(ii) to be completed later than the date that is 10 years after the date on which the loan is made.

(C) MORATORIUM.—The Secretary may grant a temporary moratorium on the repayment of a loan provided under this section if, in the determination of the Secretary, continued repayment of such loan would cause a financial hardship on the State that received the loan.

(2) INTEREST.—The Secretary may not impose or collect interest or other charges on a loan provided under this section.

(3) CREDIT TO LOAN FUND.—Repayment of amounts loaned under this section shall be credited to the State Electricity Reserve Loan Fund and shall be available for the purposes for which the fund is established.

(d) ADMINISTRATION EXPENSES.—The Secretary may defray the expenses of administering the loans provided under this section.

(e) APPROPRIATIONS.—Out of any funds in the Treasury not otherwise appropriated, there are appropriated to the State Electricity Reserve Loan Fund—

(1) $5,000,000,000 in fiscal year 2002;
(2) $4,000,000,000 in fiscal year 2003;
(3) $3,000,000,000 in fiscal year 2004;
(4) $2,000,000,000 in fiscal year 2005; and
(5) $1,000,000,000 in fiscal year 2006.

## ADDITIONAL COSPONSORS

S. 6

At the request of Mr. DASCHLE, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 6, a bill to amend the Public Health Service Act, the Employee Retirement Income Security Act of 1974, and the Internal Revenue Code of 1986 to protect consumers in managed care plans and other health coverage.

S. 27

At the request of Mr. FEINGOLD, the names of the Senator from Missouri (Mrs. CARNAHAN), the Senator from New Mexico (Mr. BINGAMAN), and the Senator from Indiana (Mr. BAYH) were added as cosponsors of S. 27, a bill to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

S. 28

At the request of Mr. GRAMM, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 28, a bill to guarantee the right of all active duty military personnel, merchant mariners, and their dependents to vote in Federal, State, and local elections.

S. 29

At the request of Mr. BOND, the names of the Senator from Colorado (Mr. ALLARD) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. 29, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for 100 percent of the health insurance costs of self-employed individuals.

S. 70

At the request of Mr. INOUYE, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 70, a bill to amend the Public Health Service Act to provide for the establishment of a National Center for Social Work Research.

S. 88

At the request of Mr. ROCKEFELLER, the names of the Senator from Hawaii

(Mr. INOUYE) and the Senator from Colorado (Mr. ALLARD) were added as cosponsors of S. 88, a bill to amend the Internal Revenue Code of 1986 to provide an incentive to ensure that all Americans gain timely and equitable access to the Internet over current and future generations of broadband capability.

S. 104

At the request of Ms. SNOWE, the names of the Senator from North Carolina (Mr. EDWARDS) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 104, a bill to require equitable coverage of prescription contraceptive drugs and devices, and contraceptive services under health plans.

S. 147

At the request of Mrs. FEINSTEIN, the name of the Senator from Texas (Mr. GRAMM) was added as a cosponsor of S. 147, a bill to provide for the appointment of additional Federal district judges, and for other purposes.

S. 148

At the request of Mr. CRAIG, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 148, a bill to amend the Internal Revenue Code of 1986 to expand the adoption credit, and for other purposes.

S. 171

At the request of Mr. DORGAN, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 171, a bill to repeal certain travel provisions with respect to Cuba and certain trade sanctions with respect to Cuba, Iran, Libya, North Korea, and Sudan, and for other purposes.

S. CON. RES. 4

At the request of Mr. NICKLES, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. Con. Res. 4, a concurrent resolution expressing the sense of Congress regarding housing affordability and ensuring a competitive North American market for softwood lumber.

## SENATE CONCURRENT RESOLUTION 5—COMMEMORATING THE 100TH ANNIVERSARY OF THE UNITED STATES ARMY NURSE CORPS

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

S. CON. RES. 5

Whereas since the War of American Independence, nurses have served the Armed Forces of the United States in peace and in war;

Whereas on February 2, 1901, Congress authorized the establishment of a permanent nurse corps;

Whereas for the past 100 years the United States Army Nurse Corps has served with distinction at home and on distant battlefields;

Whereas over 21,000 Army nurses served in World War I, and many of them were noted in British Army dispatches for their meritorious service;

Whereas in World War II, over 57,000 Army nurses again served with distinction, including 67 who were captured in the Philippines and held as prisoners of war for 3 years before their liberation in February 1945;

Whereas Army nurses served in hostilities in Korea, Vietnam, Grenada, Panama, Kuwait, and Somalia;

Whereas Army nurses were there to care for United States soldiers, wherever those soldiers were fighting, thereby winning extraordinary distinction and respect for the Nation and the United States Army;

Whereas on this 100th Anniversary of the United States Army Nurse Corps, nurses in the Army Reserve, the Army National Guard, and the Regular Army are deployed to over 15 countries, including to Bosnia-Herzegovina and Kosovo;

Whereas the motto of Army nurses, ''Ready, Caring, Proud'' is more than mere words, it is the creed by which the Army nurse lives and serves;

Whereas it is certain that Army nurses, selflessly serving the Nation, will continue to be the credentials of our Army, even though no one can predict the cause, location, or magnitude of future battles; and

Whereas the United States Army Nurse Corps is committed to providing quality care in peace and war, at anytime and in any place: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That Congress—

(1) recognizes the valor, commitment, and sacrifice that United States Army nurses have made throughout the history of the Nation;

(2) commends the United States Army Nurse Corps for 100 years of selfless service;

(3) requests that the President issue a proclamation recognizing the 100th anniversary of the United States Army Nurse Corps on February 2, 2001; and

(4) calls upon the people of the United States to observe that anniversary with appropriate ceremonies and activities.

Mr. INOUYE. Mr. President, I rise today to introduce a resolution to commemorate the 100th anniversary of the United States Army Nurse Corps.

As a proud supporter of the Army Nurse Corps, both the officers and the many enlisted and civilian personnel who work with them, I am pleased that we are taking time today to recognize their contributions to our army and our nation.

Since the War of Independence, nurses have served our military in peace and in war, but it was not until 1901 that a bill came before the Congress to establish a permanent Nurse Corps. The Nurse Corps became a permanent corps of the medical department under the Army Reorganization Act passed by the Congress on February 2, 1901. At that time, the Nurse corps was composed of only women.

The Army Nurse Corps has a proud history. More than 21,000 nurses served during World War I, many of them named in British Army dispatches for their meritorious service. In World War II, more than 57,000 Army nurses again served with distinction. Sixty-six of those nurses were captured in the Philippines and held as prisoners of war for three years before their liberation in February 1945. There is not enough time to describe all of the heroic actions of the nurses who waded ashore on the Anzio beachhead and many other locations throughout the war. One nurse, Lieutenant Frances Y. Slinger from Roxbury, Massachusetts, wrote a letter to Stars and Stripes from her tent in Belgium:

> Sure we rough it. But compared to the way you men are taking it, we can't complain, nor do we feel that bouquets are due us. . . . It is to you we doff our helmets. To every G.I. wearing the American uniform-for you we have the greatest admiration and respect.

Seventeen days later, on October 21, 1944, Lieutenant Slanger died of wounds caused by the shelling of her tented hospital area. Hundreds of soldiers replied:

> To all Army nurses overseas: We men were not given the choice of working in the battlefield or the home front. We cannot take any credit for being here. We are here because we have to be. You are here because you felt you were needed. So, when an injured man opens his eyes to see one of you . . . . Concerned with his welfare, he can't but be overcome by the very thought that you are doing it because you want to . . . you endure whatever hardships you must be where you can do us the most good.

Eventually, on August 9, 1955, Public Law 294 authorized commissions for male nurses in the U.S. Army Reserve. Army Nurses went to serve our nation in Korea, Vietnam, Grenada, Panama, Operation Desert Shield/Desert Storm, Somalia, Bosnia, Kosovo and other far away destinations. Army Nurses are currently deployed to more than 15 countries, and there are nurses in the Army Reserves, Army National Guard and the Active Force. Today, we recognize the men and women of the Army Nurse Corps for their selfless service and dedication to our nation and our military. I commend the Army Nurse Corps for its commitment to excellence and for a century of leadership and caring for America's Army from 1901 to 2001.

## CONCURRENT RESOLUTION 6—EXPRESSING THE SYMPATHY FOR THE VICTIMS OF THE DEVASTATING EARTHQUAKE THAT STRUCK INDIA ON JANUARY 26, 2001, AND SUPPORT FOR ONGOING AID EFFORTS

Mr. TORRICELLI (for himself and Mr. BROWNBACK) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S.CON.RES 6

Whereas on the morning of January 26, 2001, a devastating and deadly earthquake shook the state of Gujarat in western India, killing untold tens of thousands of people, injuring countless others, and crippling most of the region;

Whereas the earthquake of January 26, 2001, has left thousands of buildings in ruin, caused widespread fires, and destroyed infrastructure;

Whereas the people of India and people of Indian origin have displayed strength, courage, and determination in the aftermath of the earthquake;

Whereas the people of the United States and India have developed a strong friendship based on mutual interests and respect;

Whereas India has asked the World Bank for $1,700,000,000 in economic assistance to start rebuilding from the earthquake;

Whereas the United States has offered technical and monetary assistance through the United States Agency for International Development (USAID); and

Whereas offers of assistance have also come from the Governments of Turkey, Switzerland, Taiwan, Russia, Germany, China, Canada, and others, as well as countless nongovernmental organizations: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That Congress—

(1) expresses its deepest sympathies to the citizens of the state of Gujarat and to all of India for the tragic losses suffered as a result of the earthquake of January 26, 2001;

(2) expresses its support for—

(A) the people of India as they continue their efforts to rebuild their cities and their lives;

(B) the efforts of the World Bank;

(C) continuing and substantially increasing the amount of disaster assistance being provided by the United States Agency for International Development (USAID) and other relief agencies; and

(D) providing future economic assistance in order to help rebuild Gujarat; and

(3) recognizes and encourages the important assistance that also could be provided by other nations to alleviate the suffering of the people of India.

## SENATE RESOLUTION 15—CONGRATULATING THE BALTIMORE RAVENS FOR WINNING SUPER BOWL XXXV

Mr. SARBANES (for himself and Ms. MIKULSKI) submitted the following resolution; which was considered and agreed to:

S. RES. 15

Whereas in March of 1984, the Baltimore Colts stole away in the dark of night, to become the Indianapolis Colts;

Whereas for eleven long years, the football-crazy fans of Baltimore waited for an NFL franchise;

Whereas the arrival of the Ravens, coupled with the enthusiasm and energy of their fans, has ushered in a new era of unity in the Baltimore community;

Whereas the drive of the Baltimore Ravens' organization to win has embodied the spirit and pride of Baltimore as a city with great football heritage and as a great city on the rise;

Whereas members of the Ravens' team have exemplified confidence, character, perseverance, talent, dedication, and most importantly, a commitment to giving something back to the Baltimore community;

Whereas the Baltimore Ravens' defense goes down in history as one of the NFL's all-time best defensive units;

Whereas in the 2000–2001 NFL season, the Baltimore Ravens compiled a remarkable record of achievements including—

(1) the American Football Conference title;

(2) the NFL record for the least number of points allowed in a season (165);

(3) 4 shutouts;

(4) the NFL record for the least rushing yards allowed in a 16-game season;

(5) a Ravens' franchise record of 12 regular season wins;

(6) the NFL's Defensive Player of the Year Award (Ray Lewis);

(7) an NFL punt return leader (Jermaine Lewis); and

(8) a rookie running back who rushed for over 1,300 yards (Jamal Lewis); and

Whereas the Baltimore Ravens won Super Bowl XXXV, defeating the valiant New York Giants 34 to 7 in a hard-fought battle: Now, therefore, be it

*Resolved,* That the Senate—

(1) commends the unity, loyalty, community spirit, and enthusiasm of the Baltimore Ravens' fans;

(2) applauds the Baltimore Ravens for their commitment to high standards of character, perseverance, professionalism, excellence, and teamwork;

(3) praises the Baltimore Ravens' players and organization for their commitment to the Greater Baltimore Community through their many charitable activities;

(4) congratulates both the Baltimore Ravens and the New York Giants for providing football fans with a hard-fought, but sportsmanlike Super Bowl;

(5) congratulates the Baltimore Ravens and their fans on a Super Bowl victory and an NFL Championship; and

(6) recognizes the achievements of the players, coaches, and support staff who were instrumental in helping the Baltimore Ravens win Super Bowl XXXV on January 28, 2001.

SEC. 2. The Secretary of the Senate shall transmit an enrolled copy of this resolution to the Baltimore Ravens' owner, Art Modell, and to the Ravens' head coach, Brian Billick.

Mr. SARBANES. Mr. President, it is with great pride that I introduce this resolution congratulating the Baltimore Ravens on their remarkable championship season. On Super Bowl Sunday, the Baltimore Ravens completed an incredible season, beating the New York Giants by a score of 34 to 7 to become the 2000–2001 National Football League Champions.

At the beginning of the season, very few of the experts thought the Ravens would have a chance at glory. And as the team endured a five game stretch without a touchdown, the nay sayers grew and many wrote the Ravens off entirely. But during the season's early rough spots, when the team could have fallen to pieces, no one pointed fingers or assigned blame. Instead, under the leadership of a great coaching staff, they grew together and formed a remarkable bond not only amongst each other but also with the fans of Baltimore.

And then, with the NFL's best defense leading the way, the Baltimore Ravens began to string together win after win. The victories weren't always pretty, but the team always found a way to win—with a new hero stepping forward to make something happen. Week in and week out, Matt Stover, Quadry Ismail, Shannon Sharpe, Duane Starks, Jamal Lewis, Jermaine Lewis, Ray Lewis, Trent Dilfer, Rod Woodson, Tony Siragusa, Sam Adams, Jonathan Ogden, and countless others took it upon themselves to make the big play.

Still, even through the playoffs, the experts kept scratching their heads wondering how the Ravens were beating their highly acclaimed opponents. To the very end, the doubters outweighed the believers. Only the Ravens themselves and the fans of Baltimore truly dared to believe that a Championship season was possible. Finally, after a hard fought, playoff run—on the road—against the AFC's finest, the Ravens have brought the Lombardi Trophy home to Baltimore. And now the experts believe.

The game was a defensive masterpiece as those who know and have followed the Ravens would expect. But what makes this victory particularly special is that the Ravens played as a team, with remarkable cohesiveness and spirit. And in the world spotlight, they were able to display their diverse, but largely unsung, talents. Jamie Sharper's interception, Jermaine Lewis's terrific kickoff return, Brandon Stokely's outstanding touchdown reception, Jamal Lewis's diving touchdown run, Trent Dilfer's pain-filled, but error-free game, Kyle Richardson's coffin corner punts and Ray Lewis's MVP Award-winning performance, are just a few of the individual efforts that combined to secure this victory. The list goes on and on.

And Finally, I want to take a moment to recognize the leadership of Coach Brian Billick who is in his second year as head coach of the Ravens. We all know that to be champions requires a strong commitment to working harder than the rest. The Ravens' Super Bowl win is a credit to an extraordinary effort by the entire Baltimore Ravens' organization, from Art Modell down—but I would be remiss if I didn't mention the motivational push, level head and remarkable football mind demonstrated by Coach Billick and his coaching staff throughout the season, and especially during the playoff run. Most importantly, he helped Baltimore believe through thick and thin.

There is a statue of Edgar Allen Poe located in the plaza of the University of Baltimore Law School not too far from PSiNet Stadium, with an engraving that reads, ''Dreaming dreams that no mortal ever dared to dream before; To thee the laurels belong''.

Today the Lombardi Trophy belongs to the Baltimore Ravens because they dared to dream when no one else believed a championship was possible. I congratulate them and their worthy opponents, the New York Giants, on a tremendous season and I urge my colleagues to do the same.

## AMENDMENT SUBMITTED

## LOAN FORGIVENESS FOR HEAD START TEACHERS ACT OF 2001

### FEINSTEIN AMENDMENT NO. 1

(Ordered referred to the Committee on Health, Education, Labor, and Pensions.)

Mrs. FEINSTEIN submitted an amendment intended to be proposed by her to the bill (S. 123) to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers; as follows:

At the end, add the following:

(d) DIRECT STUDENT LOAN FORGIVENESS.—

(1) IN GENERAL.—Section 460 of the Higher Education Act of 1965 (20 U.S.C 1087j) is amended—

(A) in subsection (b)(1), by amending subparagraph (A) to read as follows:

''(A)(i) has been employed—

''(I) as a full-time teacher for 5 consecutive complete school years in a school that qualifies under section 465(a)(2)(A) for loan cancellation for Perkins loan recipients who teach in such a school; or

''(II) as a Head Start teacher for 5 consecutive complete program years under the Head Start Act; and

''(ii)(I) if employed as a secondary school teacher, is teaching a subject area that is relevant to the borrower's academic major as certified by the chief administrative officer of the public or nonprofit private secondary school in which the borrower is employed;

''(II) if employed as an elementary school teacher, has demonstrated, as certified by the chief administrative officer of the public or nonprofit private elementary school in which the borrower is employed, knowledge and teaching skills in reading, writing, mathematics, and other areas of the elementary school curriculum; and

''(III) if employed as a Head Start teacher, has demonstrated knowledge and teaching skills in reading, writing, early childhood development, and other areas of a preschool curriculum, with a focus on cognitive learning; and'';

(B) in subsection (g), by adding at the end the following:

''(3) HEAD START.—An individual shall be eligible for loan forgiveness under this section for service described in subclause (II) of subsection (b)(1)(A)(i) only if such individual received a baccalaureate or graduate degree on or after the date of enactment of the Loan Forgiveness for Head Start Teachers Act of 2001.''; and

(C) by adding at the end the following:

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal year 2007 and succeeding fiscal years to carry out loan repayment under this section for service described in subclause (II) of subsection (b)(1)(A)(i).''.

(2) CONFORMING AMENDMENTS.—Section 460 of such Act (20 U.S.C. 1087j) is amended—

(A) in subsection (c)(1), by inserting ''or fifth complete program year'' after ''fifth complete school year of teaching'';

(B) in subsection (f), by striking ''subsection (b)'' and inserting ''subsection (b)(1)(A)(i)(I)'';

(C) in subsection (g)(1)(A), by striking ''subsection (b)(1)(A)'' and inserting ''subsection (b)(1)(A)(i)(I)''; and

(D) in subsection (h), by inserting ''except as part of the term 'program year','' before ''where''.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the Session of the Senate on Tuesday, January 30, 2001 to conduct a hearing. The purpose of this hearing will be to review the report from the Commission on 21st Century Production Agriculture.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, January 30, 2001, to consider the nomination of Robert Zoellick to be United States Trade Representative.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Tuesday, January 30, 2001, at 2:30 p.m. The markup will take place in Dirksen Room 226.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PRIVILEGE OF THE FLOOR

Mr. GRAHAM. Mr. President, I ask unanimous consent that Mr. Dan Wenk, a congressional fellow in our office, be granted the privilege of the floor for the duration of today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. I ask unanimous consent that Megan Wanzer be granted the privileges of the floor for the remainder of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

## MEASURE READ THE FIRST TIME—S. 220

Mr. SESSIONS. Mr. President, I understand S. 220 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 220) to amend title 11 of the United States code, and for other purposes.

Mr. SESSIONS. I ask for its second reading and would object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will be read for the second time on the next legislative day.

Mr. SESSIONS. I ask unanimous consent the bill be printed in the RECORD.

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

S. 220

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

**SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Bankruptcy Reform Act of 2001''.

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

Sec. 100. Short title; references; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Sense of Congress and study.
Sec. 104. Notice of alternatives.
Sec. 105. Debtor financial management training test program.
Sec. 106. Credit counseling.
Sec. 107. Schedules of reasonable and necessary expenses.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

Sec. 201. Promotion of alternative dispute resolution.
Sec. 202. Effect of discharge.
Sec. 203. Discouraging abuse of reaffirmation practices.

Subtitle B—Priority Child Support

Sec. 211. Definition of domestic support obligation.
Sec. 212. Priorities for claims for domestic support obligations.
Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 216. Continued liability of property.
Sec. 217. Protection of domestic support claims against preferential transfer motions.
Sec. 218. Disposable income defined.
Sec. 219. Collection of child support.
Sec. 220. Nondischargeability of certain educational benefits and loans.

Subtitle C—Other Consumer Protections

Sec. 221. Amendments to discourage abusive bankruptcy filings.
Sec. 222. Sense of Congress.
Sec. 223. Additional amendments to title 11, United States Code.
Sec. 224. Protection of retirement savings in bankruptcy.
Sec. 225. Protection of education savings in bankruptcy.
Sec. 226. Definitions.
Sec. 227. Restrictions on debt relief agencies.
Sec. 228. Disclosures.
Sec. 229. Requirements for debt relief agencies.
Sec. 230. GAO study.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Reinforcement of the fresh start.
Sec. 302. Discouraging bad faith repeat filings.
Sec. 303. Curbing abusive filings.
Sec. 304. Debtor retention of personal property security.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 306. Giving secured creditors fair treatment in chapter 13.
Sec. 307. Domiciliary requirements for exemptions.
Sec. 308. Residency requirement for homestead exemption.
Sec. 309. Protecting secured creditors in chapter 13 cases.
Sec. 310. Limitation on luxury goods.
Sec. 311. Automatic stay.
Sec. 312. Extension of period between bankruptcy discharges.
Sec. 313. Definition of household goods and antiques.
Sec. 314. Debt incurred to pay nondischargeable debts.

Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
Sec. 316. Dismissal for failure to timely file schedules or provide required information.
Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 320. Prompt relief from stay in individual cases.
Sec. 321. Chapter 11 cases filed by individuals.
Sec. 322. Limitation.
Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
Sec. 325. United States trustee program filing fee increase.
Sec. 326. Sharing of compensation.
Sec. 327. Fair valuation of collateral.
Sec. 328. Defaults based on nonmonetary obligations.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

Sec. 401. Adequate protection for investors.
Sec. 402. Meetings of creditors and equity security holders.
Sec. 403. Protection of refinance of security interest.
Sec. 404. Executory contracts and unexpired leases.
Sec. 405. Creditors and equity security holders committees.
Sec. 406. Amendment to section 546 of title 11, United States Code.
Sec. 407. Amendments to section 330(a) of title 11, United States Code.
Sec. 408. Postpetition disclosure and solicitation.
Sec. 409. Preferences.
Sec. 410. Venue of certain proceedings.
Sec. 411. Period for filing plan under chapter 11.
Sec. 412. Fees arising from certain ownership interests.
Sec. 413. Creditor representation at first meeting of creditors.
Sec. 414. Definition of disinterested person.
Sec. 415. Factors for compensation of professional persons.
Sec. 416. Appointment of elected trustee.
Sec. 417. Utility service.
Sec. 418. Bankruptcy fees.
Sec. 419. More complete information regarding assets of the estate.

Subtitle B—Small Business Bankruptcy Provisions

Sec. 431. Flexible rules for disclosure statement and plan.
Sec. 432. Definitions.
Sec. 433. Standard form disclosure statement and plan.
Sec. 434. Uniform national reporting requirements.
Sec. 435. Uniform reporting rules and forms for small business cases.
Sec. 436. Duties in small business cases.
Sec. 437. Plan filing and confirmation deadlines.
Sec. 438. Plan confirmation deadline.
Sec. 439. Duties of the United States trustee.
Sec. 440. Scheduling conferences.
Sec. 441. Serial filer provisions.
Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee.
Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses.
Sec. 444. Payment of interest.
Sec. 445. Priority for administrative expenses.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

Sec. 501. Petition and proceedings related to petition.
Sec. 502. Applicability of other sections to chapter 9.

TITLE VI—BANKRUPTCY DATA

Sec. 601. Improved bankruptcy statistics.
Sec. 602. Uniform rules for the collection of bankruptcy data.
Sec. 603. Audit procedures.
Sec. 604. Sense of Congress regarding availability of bankruptcy data.

TITLE VII—BANKRUPTCY TAX PROVISIONS

Sec. 701. Treatment of certain liens.
Sec. 702. Treatment of fuel tax claims.
Sec. 703. Notice of request for a determination of taxes.
Sec. 704. Rate of interest on tax claims.
Sec. 705. Priority of tax claims.
Sec. 706. Priority property taxes incurred.
Sec. 707. No discharge of fraudulent taxes in chapter 13.
Sec. 708. No discharge of fraudulent taxes in chapter 11.
Sec. 709. Stay of tax proceedings limited to prepetition taxes.
Sec. 710. Periodic payment of taxes in chapter 11 cases.
Sec. 711. Avoidance of statutory tax liens prohibited.
Sec. 712. Payment of taxes in the conduct of business.
Sec. 713. Tardily filed priority tax claims.
Sec. 714. Income tax returns prepared by tax authorities.
Sec. 715. Discharge of the estate's liability for unpaid taxes.
Sec. 716. Requirement to file tax returns to confirm chapter 13 plans.
Sec. 717. Standards for tax disclosure.
Sec. 718. Setoff of tax refunds.
Sec. 719. Special provisions related to the treatment of State and local taxes.
Sec. 720. Dismissal for failure to timely file tax returns.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec. 801. Amendment to add chapter 15 to title 11, United States Code.
Sec. 802. Other amendments to titles 11 and 28, United States Code.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.
Sec. 902. Authority of the corporation with respect to failed and failing institutions.
Sec. 903. Amendments relating to transfers of qualified financial contracts.
Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
Sec. 905. Clarifying amendment relating to master agreements.
Sec. 906. Federal Deposit Insurance Corporation Improvement Act of 1991.
Sec. 907. Bankruptcy Code amendments.
Sec. 908. Recordkeeping requirements.
Sec. 909. Exemptions from contemporaneous execution requirement.
Sec. 910. Damage measure.
Sec. 911. SIPC stay.
Sec. 912. Asset-backed securitizations.
Sec. 913. Effective date; application of amendments.

TITLE X—PROTECTION OF FAMILY FARMERS

Sec. 1001. Permanent reenactment of chapter 12.
Sec. 1002. Debt limit increase.
Sec. 1003. Certain claims owed to governmental units.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

Sec. 1101. Definitions.
Sec. 1102. Disposal of patient records.
Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses.
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## TITLE I—NEEDS-BASED BANKRUPTCY

**SEC. 101. CONVERSION.**

Section 706(c) of title 11, United States Code, is amended by inserting ''or consents to'' after ''requests''.

**SEC. 102. DISMISSAL OR CONVERSION.**

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

**''§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13''**;

and

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)'';

(B) in paragraph (1), as redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking ''but not at the request or suggestion of'' and inserting ''trustee, bankruptcy administrator, or'';

(II) by inserting '', or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title,'' after ''consumer debts''; and

(III) by striking ''a substantial abuse'' and inserting ''an abuse''; and

(ii) by striking the next to last sentence; and

(C) by adding at the end the following:

''(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

''(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

''(II) $10,000.

''(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act (42 U.S.C. 10408), or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

''(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, and siblings of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) who is not a dependent and who is unable to pay for such reasonable and necessary expenses.

''(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

''(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child under the age of 18 years up to $1,500 per year per child to attend a private elementary or secondary school, if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary.

''(iii) The debtor's average monthly payments on account of secured debts shall be calculated as—

''(I) the sum of—

''(aa) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

''(bb) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts; divided by

''(II) 60.

''(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as—

''(I) the total amount of debts entitled to priority; divided by

''(II) 60.

''(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

''(ii) In order to establish special circumstances, the debtor shall be required to—

''(I) itemize each additional expense or adjustment of income; and

''(II) provide—

''(aa) documentation for such expense or adjustment to income; and

''(bb) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

''(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

''(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

''(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

''(II) $10,000.

''(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that shows how each such amount is calculated.

''(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not apply or has been rebutted, the court shall consider—

''(A) whether the debtor filed the petition in bad faith; or

''(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

''(4)(A) The court shall order the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion brought under section 707(b), including reasonable attorneys' fees, if—

''(i) a trustee appointed under section 586(a)(1) of title 28 or from a panel of private trustees maintained by the bankruptcy administrator brings a motion for dismissal or conversion under this subsection; and

''(ii) the court—

''(I) grants that motion; and

''(II) finds that the action of the counsel for the debtor in filing under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

''(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, at a minimum, the court shall order—

''(i) the assessment of an appropriate civil penalty against the counsel for the debtor; and

''(ii) the payment of the civil penalty to the trustee, the United States trustee, or the bankruptcy administrator.

''(C) In the case of a petition, pleading, or written motion, the signature of an attorney shall constitute a certification that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

''(ii) determined that the petition, pleading, or written motion—

''(I) is well grounded in fact; and

''(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

''(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

''(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion brought by a party in interest (other than a trustee, United States trustee, or bankruptcy administrator) under this subsection if—

''(i) the court does not grant the motion; and

''(ii) the court finds that—

''(I) the position of the party that brought the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

''(II) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

''(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

''(C) For purposes of this paragraph—

''(i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(I) has less than 25 full-time employees as determined on the date the motion is filed; and

''(II) is engaged in commercial or business activity; and

''(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(I) a parent corporation; and

''(II) any other subsidiary corporation of the parent corporation.

''(6) Only the judge, United States trustee, or bankruptcy administrator may bring a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.

''(7) No judge, United States trustee, panel trustee, bankruptcy administrator or other party in interest may bring a motion under paragraph (2), if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

''(10A) 'current monthly income'—

''(A) means the average monthly income from all sources which the debtor, or in a joint case, the debtor and the debtor's spouse, receive without regard to whether the income is taxable income, derived during the 6-month period preceding the date of determination; and

''(B) includes any amount paid by any entity other than the debtor (or, in a joint case, the debtor and the debtor's spouse), on a regular basis to the household expenses of the debtor or the debtor's dependents (and, in a joint case, the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;''.

(c) UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR DUTIES.—Section 704 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The trustee shall—''; and

(2) by adding at the end the following:

''(b)(1) With respect to an individual debtor under this chapter—

''(A) the United States trustee or bankruptcy administrator shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

''(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

''(2) The United States trustee or bankruptcy administrator shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee or bankruptcy administrator does not believe that such a motion would be appropriate, if the United States trustee or bankruptcy administrator determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or

''(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census.

''(3) In any case in which a motion to dismiss or convert, or a statement is required to be filed by this subsection, the United States trustee or bankruptcy administrator may decline to file a motion to dismiss or convert pursuant to section 704(b)(2) if the product of the debtor's current monthly income multiplied by 12 exceeds 100 percent, but does not exceed 150 percent of—

''(A)(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or

''(ii) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; and

''(B) the product of the debtor's current monthly income, reduced by the amounts determined under section 707(b)(2)(A)(ii) (except for the amount calculated under the other necessary expenses standard issued by the Internal Revenue Service) and clauses (iii) and (iv) of section 707(b)(2)(A), multiplied by 60 is less than the lesser of—

''(i) 25 percent of the debtor's nonpriority unsecured claims in the case or $6,000, whichever is greater; or

''(ii) $10,000.''.

(d) NOTICE.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

''(d) In an individual case under chapter 7 in which the presumption of abuse is triggered under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has been triggered.''.

(e) NONLIMITATION OF INFORMATION.—Nothing in this title shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator or trustee.

(f) DISMISSAL FOR CERTAIN CRIMES.—Section 707 of title 11, United States Code, as amended by this section, is amended by adding at the end the following:

''(c)(1) In this subsection—

''(A) the term 'crime of violence' has the meaning given that term in section 16 of title 18; and

''(B) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18.

''(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victims dismiss a voluntary case filed by an individual debtor under this chapter if that individual was convicted of that crime.

''(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.''.

(g) CONFIRMATION OF PLAN.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(7) the action of the debtor in filing the petition was in good faith;''.

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1)(B), by inserting ''to unsecured creditors'' after ''to make payments''; and

(2) by striking paragraph (2) and inserting the following:

''(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date the petition is filed and for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported

by the Bureau of the Census, plus $525 per month for each individual in excess of 4.''.

(i) CLERICAL AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

''707. Dismissal of a case or conversion to a case under chapter 11 or 13.''.

**SEC. 103. SENSE OF CONGRESS AND STUDY.**

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.

(b) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the Director regarding the utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of such standards has had on debtors and on the bankruptcy courts.

(2) RECOMMENDATION.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Director under paragraph (1).

**SEC. 104. NOTICE OF ALTERNATIVES.**

Section 342(b) of title 11, United States Code, is amended to read as follows:

''(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

''(1) a brief description of—

''(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

''(B) the types of services available from credit counseling agencies; and

''(2) statements specifying that—

''(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both; and

''(B) all information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General.''.

**SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.**

(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the ''Director'') shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who are appointed under chapter 13 of title 11, United States Code, and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate individual debtors on how to better manage their finances.

(b) TEST.—

(1) SELECTION OF DISTRICTS.—The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) USE.—For an 18-month period beginning not later than 270 days after the date of enactment of this Act, such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

(c) EVALUATION.—

(1) IN GENERAL.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups.

(2) REPORT.—Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs and their costs.

**SEC. 106. CREDIT COUNSELING.**

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

''(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

''(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved nonprofit budget and credit counseling agencies for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from that agency by reason of the requirements of paragraph (1).

''(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling service may be disapproved by the United States trustee or bankruptcy administrator at any time.

''(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

''(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

''(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

''(iii) is satisfactory to the court.

''(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.''.

(b) CHAPTER 7 DISCHARGE.—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking ''or'' at the end;

(2) in paragraph (10), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111.

''(12)(A) Paragraph (11) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of that district determines that the approved instructional courses are not adequate to service the additional individuals required to complete such instructional courses under this section.

''(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

''(g) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

''(h) Subsection (g) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete the instructional course by reason of the requirements of this section.

''(i) Each United States trustee or bankruptcy administrator that makes a determination described in subsection (h) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The debtor shall—''; and

(2) by adding at the end the following:

''(b) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

''(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).''.

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

**"§ 111. Credit counseling services; financial management instructional courses**

''(a) The clerk of each district shall maintain a publicly available list of—

''(1) credit counseling agencies that provide 1 or more programs described in section 109(h) currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable; and

''(2) instructional courses concerning personal financial management currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable.

''(b) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency or instructional course concerning personal financial management as follows:

''(1) The United States trustee or bankruptcy administrator shall have thoroughly reviewed the qualifications of the credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the programs or instructional courses which will be offered by such agency or provider, and may require an agency or provider of an instructional course which has sought approval to provide information with respect to such review.

''(2) The United States trustee or bankruptcy administrator shall have determined that the credit counseling agency or course of instruction fully satisfies the applicable standards set forth in this section.

''(3) When an agency or course of instruction is initially approved, such approval shall be for a probationary period not to exceed 6 months. An agency or course of instruction is initially approved if it did not appear on the approved list for the district under subsection (a) immediately prior to approval.

''(4) At the conclusion of the probationary period under paragraph (3), the United States trustee or bankruptcy administrator may only approve for an additional 1-year period, and for successive 1-year periods thereafter, any agency or course of instruction which has demonstrated during the probationary or subsequent period that such agency or course of instruction—

''(A) has met the standards set forth under this section during such period; and

''(B) can satisfy such standards in the future.

''(5) Not later than 30 days after any final decision under paragraph (4), that occurs either after the expiration of the initial probationary period, or after any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate United States District Court.

''(c)(1) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters as relate to the quality, effectiveness, and financial security of such programs.

''(2) To be approved by the United States trustee or bankruptcy administrator, a credit counseling agency shall, at a minimum—

''(A) be a nonprofit budget and credit counseling agency, the majority of the board of directors of which—

''(i) are not employed by the agency; and

''(ii) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

''(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

''(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

''(D) provide full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by the debtor and how such costs will be paid;

''(E) provide adequate counseling with respect to client credit problems that includes an analysis of their current situation, what brought them to that financial status, and how they can develop a plan to handle the problem without incurring negative amortization of their debts;

''(F) provide trained counselors who receive no commissions or bonuses based on the counseling session outcome, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

''(G) demonstrate adequate experience and background in providing credit counseling; and

''(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

''(d) The United States trustee or bankruptcy administrator shall only approve an instructional course concerning personal financial management—

''(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

''(A) trained personnel with adequate experience and training in providing effective instruction and services;

''(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such course of instruction;

''(C) adequate facilities situated in reasonably convenient locations at which such course of instruction is offered, except that such facilities may include the provision of such course of instruction or program by telephone or through the Internet, if the course of instruction or program is effective; and

''(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such course of instruction or program, including any evaluation of satisfaction of course of instruction or program requirements for each debtor attending such course of instruction or program, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee, bankruptcy administrator, or chief bankruptcy judge for the district in which such course of instruction or program is offered; and

''(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

''(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

''(B) is otherwise likely to increase substantially debtor understanding of personal financial management.

''(e) The District Court may, at any time, investigate the qualifications of a credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such credit counseling agencies. The District Court may, at any time, remove from the approved list under subsection (a) a credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

''(f) The United States trustee or bankruptcy administrator shall notify the clerk that a credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

''(g)(1) No credit counseling service may provide to a credit reporting agency information concerning whether an individual debtor has received or sought instruction concerning personal financial management from the credit counseling service.

''(2) A credit counseling service that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

''(A) any actual damages sustained by the debtor as a result of the violation; and

''(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''111. Credit counseling services; financial management instructional courses.''.

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

''(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

''(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.''.

**SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.**

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

## TITLE II—ENHANCED CONSUMER PROTECTION

### Subtitle A—Penalties for Abusive Creditor Practices

**SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.**

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended by adding at the end the following:

''(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on unsecured consumer debts by not more than 20 percent of the claim, if—

''(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency described in section 111 acting on behalf of the debtor;

''(B) the offer of the debtor under subparagraph (A)—

''(i) was made at least 60 days before the filing of the petition; and

''(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of

the loan, or a reasonable extension thereof; and

''(C) no part of the debt under the alternative repayment schedule is nondischargeable.

''(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

''(A) the creditor unreasonably refused to consider the debtor's proposal; and

''(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).''.

(b) LIMITATION ON AVOIDABILITY.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment plan between the debtor and any creditor of the debtor created by an approved credit counseling agency.''.

**SEC. 202. EFFECT OF DISCHARGE.**

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title), unless the plan is dismissed, in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

''(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

''(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

''(2) such act is in the ordinary course of business between the creditor and the debtor; and

''(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.''.

**SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION PRACTICES.**

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (c), by striking paragraph (2) and inserting the following:

''(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;'';

(2) by adding at the end the following:

''(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement, statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with the reaffirmation.

''(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms 'Amount Reaffirmed' and 'Annual Percentage Rate' shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases 'Before agreeing to reaffirm a debt, review these important disclosures' and 'Summary of Reaffirmation Agreement' may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms 'Amount Reaffirmed' and 'Annual Percentage Rate' must be used where indicated.

''(3) The disclosure statement required under this paragraph shall consist of the following:

''(A) The statement: 'Part A: Before agreeing to reaffirm a debt, review these important disclosures:';

''(B) Under the heading 'Summary of Reaffirmation Agreement', the statement: 'This Summary is made pursuant to the requirements of the Bankruptcy Code';

''(C) The 'Amount Reaffirmed', using that term, which shall be—

''(i) the total amount which the debtor agrees to reaffirm, and

''(ii) the total of any other fees or cost accrued as of the date of the disclosure statement.

''(D) In conjunction with the disclosure of the 'Amount Reaffirmed', the statements—

''(i) 'The amount of debt you have agreed to reaffirm'; and

''(ii) 'Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.'.

''(E) The 'Annual Percentage Rate', using that term, which shall be disclosed as—

''(i) if, at the time the petition is filed, the debt is open end credit as defined under the Truth in Lending Act (15 U.S.C. 1601 et seq.), then—

''(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)(5) and (6)), as applicable, as disclosed to the debtor in the most recent periodic statement prior to the agreement or, if no such periodic statement has been provided the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II);

''(ii) if, at the time the petition is filed, the debt is closed end credit as defined under the Truth in Lending Act (15 U.S.C. 1601 et seq.), then—

''(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act (15 U.S.C. 1638(a)(4)), as disclosed to the debtor in the most recent disclosure statement given the debtor prior to the reaffirmation agreement with respect to the debt, or, if no such disclosure statement was provided the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

''(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act (15 U.S.C. 1601 et seq.), by stating 'The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.'.

''(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the obligations you are reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

''(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

''(i) by making the statement: 'Your first payment in the amount of $_____ is due on _____ but the future payment amount may be different. Consult your reaffirmation or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

''(ii) by making the statement: 'Your payment schedule will be:', and describing the repayment schedule with the number, amount and due dates or period of payments scheduled to repay the obligations reaffirmed to the extent then known by the disclosing party; or

''(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

''(I) The following statement: 'Note: When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirmation or what the law requires, talk to the attorney who helped you negotiate this agreement. If you don't have an attorney helping you, the judge will explain the effect of your reaffirmation when the reaffirmation hearing is held.'.

''(J)(i) The following additional statements:

'' 'Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

'' '1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

'' '2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

'' '3. If you were represented by an attorney during the negotiation of the reaffirmation agreement, the attorney must have signed the certification in Part C.

'' '4. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, you must have completed and signed Part E.

'' '5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other

than the one in Part B) has been signed, it must be attached.

''6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

''7. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your agreement. The bankruptcy court must approve the agreement as consistent with your best interests, except that no court approval is required if the agreement is for a consumer debt secured by a mortgage, deed of trust, security deed or other lien on your real property, like your home.

''Your right to rescind a reaffirmation. You may rescind (cancel) your reaffirmation at any time before the bankruptcy court enters a discharge order or within 60 days after the agreement is filed with the court, whichever is longer. To rescind or cancel, you must notify the creditor that the agreement is canceled.

''What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy. That means that if you default on your reaffirmed debt after your bankruptcy is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of the agreement in the future under certain conditions.

''Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

''What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A ''lien'' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.'.

''(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

''6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.'.

''(4) The form of reaffirmation agreement required under this paragraph shall consist of the following:

''Part B: Reaffirmation Agreement. I/we agree to reaffirm the obligations arising under the credit agreement described below.

''Brief description of credit agreement:

''Description of any changes to the credit agreement made as part of this reaffirmation agreement:

''Signature: Date:

''Borrower:

''Co-borrower, if also reaffirming:

''Accepted by creditor:

''Date of creditor acceptance:'.

''(5)(A) The declaration shall consist of the following:

''Part C: Certification by Debtor's Attorney (If Any).

''I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor(s); (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

''Signature of Debtor's Attorney: Date:'.

''(B) In the case of reaffirmations in which a presumption of undue hardship has been established, the certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

''(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

''(6)(A) The statement in support of reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

''Part D: Debtor's Statement in Support of Reaffirmation Agreement.

''1. I believe this agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

''2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(B) Where the debtor is represented by counsel and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(iv)), the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

''I believe this agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'

''(7) The motion, which may be used if approval of the agreement by the court is required in order for it to be effective and shall be signed and dated by the moving party, shall consist of the following:

''Part E: Motion for Court Approval (To be completed only where debtor is not represented by an attorney.). I (we), the debtor, affirm the following to be true and correct:

''I am not represented by an attorney in connection with this reaffirmation agreement.

''I believe this agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement above, and because (provide any additional relevant reasons the court should consider):

''Therefore, I ask the court for an order approving this reaffirmation agreement.'.

''(8) The court order, which may be used to approve a reaffirmation, shall consist of the following:

''Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.'.

''(9) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

''(A) such creditor retains a security interest in real property that is the debtor's principal residence;

''(B) such act is in the ordinary course of business between the creditor and the debtor; and

''(C) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

''(l) Notwithstanding any other provision of this title:

''(1) A creditor may accept payments from a debtor before and after the filing of a reaffirmation agreement with the court.

''(2) A creditor may accept payments from a debtor under a reaffirmation agreement which the creditor believes in good faith to be effective.

''(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

''(m)(1) Until 60 days after a reaffirmation agreement is filed with the court (or such additional period as the court, after notice and hearing and for cause, orders before the expiration of such period), it shall be presumed that the reaffirmation agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of the reaffirmation agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation which identifies additional sources of funds to make the payments as agreed upon under the terms of the reaffirmation agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the agreement. No agreement shall be disapproved without notice and hearing to the debtor and creditor and such hearing shall be concluded before the entry of the debtor's discharge.

''(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(iv)).''.

(b) LAW ENFORCEMENT.—

(1) IN GENERAL.—Chapter 9 of title 18, United States Code, is amended by adding at the end the following:

**"§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules**

''(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially

fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

''(b) UNITED STATES DISTRICT ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION—The individuals referred to in subsection (a) are—

''(1) a United States attorney for each judicial district of the United States; and

''(2) an agent of the Federal Bureau of Investigation (within the meaning of section 3107) for each field office of the Federal Bureau of Investigation.

''(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

''(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case which may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.''.

(2) CLERICAL AMENDMENT.—The analysis for chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.''.

**Subtitle B—Priority Child Support**

**SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.**

Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

''(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

''(ii) a governmental unit;

''(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

''(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

''(i) a separation agreement, divorce decree, or property settlement agreement;

''(ii) an order of a court of record; or

''(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

''(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt;''.

**SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.**

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as redesignated, by striking ''First'' and inserting ''Second'';

(4) in paragraph (3), as redesignated, by striking ''Second'' and inserting ''Third'';

(5) in paragraph (4), as redesignated—

(A) by striking ''Third'' and inserting ''Fourth''; and

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

(6) in paragraph (5), as redesignated, by striking ''Fourth'' and inserting ''Fifth'';

(7) in paragraph (6), as redesignated, by striking ''Fifth'' and inserting ''Sixth'';

(8) in paragraph (7), as redesignated, by striking ''Sixth'' and inserting ''Seventh''; and

(9) by inserting before paragraph (2), as redesignated, the following:

''(1) First:

''(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of that person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

''(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date the petition was filed are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a government unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.''.

**SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.**

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

''(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first become payable after the date on which the petition is filed.'';

(2) in section 1208(c)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.'';

(3) in section 1222(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.'';

(4) in section 1222(b)—

(A) by redesignating paragraph (11) as paragraph (12); and

(B) by inserting after paragraph (10) the following:

''(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;'';

(5) in section 1225(a)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that first become payable after the date on which the petition is filed.'';

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid'' after ''completion by the debtor of all payments under the plan'';

(7) in section 1307(c)—

(A) in paragraph (9), by striking ''or'' at the end;

(B) in paragraph (10), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.'';

(8) in section 1322(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding in the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.'';

(9) in section 1322(b)—

(A) in paragraph (9), by striking ''; and'' and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following:

''(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and'';

(10) in section 1325(a) (as amended by this Act), by adding at the end the following:

''(8) the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has

paid all amounts payable under such order or statute for such obligation that first becomes payable after the date on which the petition is filed; and''';

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid'' after ''completion by the debtor of all payments under the plan''.

**SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.**

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) under subsection (a)—

''(A) of the commencement or continuation of a civil action or proceeding—

''(i) for the establishment of paternity;

''(ii) for the establishment or modification of an order for domestic support obligations;

''(iii) concerning child custody or visitation;

''(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

''(v) regarding domestic violence;

''(B) the collection of a domestic support obligation from property that is not property of the estate;

''(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order;

''(D) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses under State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16));

''(E) the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));

''(F) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)) or under an analogous State law; or

''(G) the enforcement of medical obligations as specified under title IV of the Social Security Act (42 U.S.C. 601 et seq.);''.

**SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.**

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

''(5) for a domestic support obligation;'';

(B) in paragraph (15)—

(i) by inserting ''to a spouse, former spouse, or child of the debtor and'' before ''not of the kind'';

(ii) by inserting ''or'' after ''court of record,''; and

(iii) by striking ''unless—'' and all that follows through the end of the paragraph and inserting a semicolon; and

(C) by striking paragraph (18); and

(2) in subsection (c), by striking ''(6), or (15)'' each place it appears and inserting ''or (6)''.

**SEC. 216. CONTINUED LIABILITY OF PROPERTY.**

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

''(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));'';

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting ''of a kind that is specified in section 523(a)(5); or''; and

(3) in subsection (g)(2), by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

**SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.**

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

''(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;''.

**SEC. 218. DISPOSABLE INCOME DEFINED.**

(a) CONFIRMATION OF PLAN UNDER CHAPTER 12.—Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date on which the petition is filed'' after ''dependent of the debtor''.

(b) CONFIRMATION OF PLAN UNDER CHAPTER 13.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date on which the petition is filed'' after ''dependent of the debtor''.

**SEC. 219. COLLECTION OF CHILD SUPPORT.**

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Section 704 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (a)—

(A) in paragraph (8), by striking ''and'' at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(10) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c); and''; and

(2) by adding at the end the following:

''(c)(1) In any case described in subsection (a)(10), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides for assistance in collecting child support during and after the bankruptcy procedures;

''(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

''(iii) include in the notice an explanation of the rights of the holder of the claim to payment of the claim under this chapter; and

''(B)(i) notify in writing the State child support agency of the State in which the holder of the claim resides of the claim;

''(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

''(iii) at such time as the debtor is granted a discharge under section 727, notify the holder of that claim and the State child support agency of the State in which that holder resides of—

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor;

''(III) the last recent known name and address of the debtor's employer; and

''(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

''(aa) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

''(bb) was reaffirmed by the debtor under section 524(c).

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.''.

(b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—Section 1106 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(8) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In any case described in subsection (a)(7), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

''(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

''(B)(i) notify, in writing, the State child support agency (of the State in which the holder of the claim resides) of the claim;

''(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

''(iii) at such time as the debtor is granted a discharge under section 1141, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor;

''(III) the last recent known name and address of the debtor's employer; and

''(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

''(aa) is not discharged under paragraph (2), (3), or (14) of section 523(a); or

''(bb) was reaffirmed by the debtor under section 524(c).

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.''.

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—Section 1202 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In any case described in subsection (b)(6), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

''(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

''(B)(i) notify, in writing, the State child support agency (of the State in which the holder of the claim resides) of the claim;

''(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

''(iii) at such time as the debtor is granted a discharge under section 1228, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor;

''(III) the last recent known name and address of the debtor's employer; and

''(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

''(aa) is not discharged under paragraph (2), (4), or (14) of section 523(a); or

''(bb) was reaffirmed by the debtor under section 524(c).

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.''.

(d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Section 1302 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In any case described in subsection (b)(6), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

''(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

''(B)(i) notify in writing the State child support agency of the State in which the holder of the claim resides of the claim;

''(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

''(iii) at such time as the debtor is granted a discharge under section 1328, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor;

''(III) the last recent known name and address of the debtor's employer; and

''(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

''(aa) is not discharged under paragraph (2), (4), or (14) of section 523(a); or

''(bb) was reaffirmed by the debtor under section 524(c).

''(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.''.

**SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.**

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

''(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

''(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

''(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

''(B) any other educational loan that is a qualified education loan, as that term is defined in section 221(e)(1) of the Internal Revenue Code of 1986, incurred by an individual debtor;''.

**Subtitle C—Other Consumer Protections**

**SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.**

Section 110 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by striking ''a person, other than an attorney or an employee of an attorney'' and inserting ''the attorney for the debtor or an employee of such attorney under the direct supervision of such attorney'';

(2) in subsection (b)—

(A) in paragraph (1), by adding at the end the following: ''If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer shall be required to—

''(A) sign the document for filing; and

''(B) print on the document the name and address of that officer, principal, responsible person or partner.''; and

(B) by striking paragraph (2) and inserting the following:

''(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice to debtors concerning bankruptcy petition preparers, which shall be on an official form issued by the Judicial Conference of the United States.

''(B) The notice under subparagraph (A)—

''(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

''(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

''(iii) shall—

''(I) be signed by—

''(aa) the debtor; and

''(bb) the bankruptcy petition preparer, under penalty of perjury; and

''(II) be filed with any document for filing.'';

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking ''(2) For purposes'' and inserting ''(2)(A) Subject to subparagraph (B), for purposes''; and

(ii) by adding at the end the following:

''(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the preparer.''; and

(B) by striking paragraph (3);

(4) in subsection (d)—

(A) by striking ''(d)(1)'' and inserting ''(d)''; and

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

''(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

''(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

''(i) whether—

''(I) to file a petition under this title; or

''(II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

''(ii) whether the debtor's debts will be eliminated or discharged in a case under this title;

''(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

''(iv) concerning—

''(I) the tax consequences of a case brought under this title; or

''(II) the dischargeability of tax claims;

''(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

''(vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

''(vii) concerning bankruptcy procedures and rights.'';

(6) in subsection (f)—

(A) by striking ''(f)(1)'' and inserting ''(f)''; and

(B) by striking paragraph (2);

(7) in subsection (g)—

(A) by striking ''(g)(1)'' and inserting ''(g)''; and

(B) by striking paragraph (2);

(8) in subsection (h)—

(A) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

''(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor.'';

(C) in paragraph (2), as redesignated—

(i) by striking ''Within 10 days after the date of filing a petition, a bankruptcy petition preparer shall file a'' and inserting ''A'';

(ii) by inserting ''by the bankruptcy petition preparer shall be filed together with the petition,'' after ''perjury''; and

(iii) by adding at the end the following: ''If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).'';

(D) by striking paragraph (3), as redesignated, and inserting the following:

''(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services—

''(i) rendered by the preparer during the 12-month period immediately preceding the date of filing of the petition; or

''(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

''(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

''(C) An individual may exempt any funds recovered under this paragraph under section 522(b).''; and

(E) in paragraph (4), as redesignated, by striking ''or the United States trustee'' and inserting ''the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court,'';

(9) in subsection (i)(1), by striking the matter preceding subparagraph (A) and inserting the following:

''(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on motion of the debtor, trustee, United States trustee, or bankruptcy administrator, and after the court holds a hearing with respect to that violation or act, the court shall order the bankruptcy petition preparer to pay to the debtor—'';

(10) in subsection (j)—

(A) in paragraph (2)—

(i) in subparagraph (A)(i)(I), by striking ''a violation of which subjects a person to criminal penalty'';

(ii) in subparagraph (B)—

(I) by striking ''or has not paid a penalty'' and inserting ''has not paid a penalty''; and

(II) by inserting ''or failed to disgorge all fees ordered by the court'' after ''a penalty imposed under this section,'';

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

''(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued upon motion of the court, the trustee, the United States trustee, or the bankruptcy administrator.''; and

(11) by adding at the end the following:

''(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

''(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—

''(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

''(B) advised the debtor to use a false Social Security account number;

''(C) failed to inform the debtor that the debtor was filing for relief under this title; or

''(D) prepared a document for filing in a manner that failed to disclose the identity of the preparer.

''(3) The debtor, the trustee, a creditor, the United States trustee, or the bankruptcy administrator may file a motion for an order imposing a fine on the bankruptcy petition preparer for each violation of this section.

''(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.

''(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.''.

**SEC. 222. SENSE OF CONGRESS.**

It is the sense of Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

**SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.**

Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

''(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.''.

**SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.**

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ''and'' at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting ''; and'';

(iii) by adding at the end the following:

''(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''; and

(iv) by striking ''(2)(A) any property'' and inserting:

''(3) Property listed in this paragraph is—

''(A) any property'';

(B) by striking paragraph (1) and inserting:

''(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.'';

(C) by striking ''(b) Notwithstanding'' and inserting ''(b)(1) Notwithstanding'';

(D) by striking ''paragraph (2)'' each place it appears and inserting ''paragraph (3)'';

(E) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)'';

(F) by striking ''Such property is—''; and

(G) by adding at the end the following:

''(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

''(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from the estate.

''(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

''(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

''(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

''(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

''(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that direct transfer.

''(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that distribution.

''(ii) A distribution described in this clause is an amount that—

''(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

''(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount.''; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''subsection (b)(1)'' and inserting ''subsection (b)(2)''; and

(B) by adding at the end the following:

''(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period and inserting a semicolon;

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

''(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) in the case of a loan from a thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;''; and

(4) by adding at the end of the flush material at the end of the subsection, the following: ''Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(18) owed to a pension, profit-sharing, stock bonus, or other plan established under

section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

''(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) a loan from the thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title.

Nothing in paragraph (18) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute 'disposable income' under section 1325.''.

(e) ASSET LIMITATION.—Section 522 of title 11, United States Code, is amended by adding at the end the following:

''(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of that Code or a simple retirement account under section 408(p) of that Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 (which amount shall be adjusted as provided in section 104 of this title) in a case filed by an individual debtor, except that such amount may be increased if the interests of justice so require.''.

**SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.**

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (10); and

(C) by inserting after paragraph (4) the following:

''(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of filing of the petition, but—

''(A) only if the designated beneficiary of such account was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account;

''(B) only to the extent that such funds—

''(i) are not pledged or promised to any entity in connection with any extension of credit; and

''(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

''(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

''(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of filing of the petition, but—

''(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were paid or contributed;

''(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

''(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;''; and

(2) by adding at the end the following:

''(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).''.

**SEC. 226. DEFINITIONS.**

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (2) the following:

''(3) 'assisted person' means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than $150,000;'';

(2) by inserting after paragraph (4) the following:

''(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;''; and

(3) by inserting after paragraph (12) the following:

''(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

''(A) any person that is an officer, director, employee or agent of that person;

''(B) a nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of the person, to the extent that the creditor is assisting the person to restructure any debt owed by the person to the creditor;

''(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union; or

''(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.''.

(b) CONFORMING AMENDMENT.—Section 104(b)(1) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections''.

**SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.**

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

**''§ 526. Restrictions on debt relief agencies**

''(a) A debt relief agency shall not—

''(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(i) the services that such agency will provide to such person; or

''(ii) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

''(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

''(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

''(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

''(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

''(A) may bring an action to enjoin such violation;

''(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

''(4) The United States District Court for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

''(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

''(A) enjoin the violation of such section; or

''(B) impose an appropriate civil penalty against such person.''.

''(d) No provision of this section, section 527, or section 528 shall—

''(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

''(2) be deemed to limit or curtail the authority or ability—

''(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

''(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting before the item relating to section 527, the following:

''526. Debt relief enforcement.''.

**SEC. 228. DISCLOSURES.**

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

**''§ 527. Disclosures**

''(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

''(1) the written notice required under section 342(b)(1) of this title; and

''(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

''(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

''(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

''(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

''(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions.

''(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

''''IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.

''''If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

''''The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

''''Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee' and by creditors.

''''If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so and a creditor is not permitted to coerce you into reaffirming your debts.

''''If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

''''If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of relief.

''''Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.'.

''(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

''(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2)) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

''(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

''(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

''(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by this Act, is amended by inserting after the item relating to section 526 the following:

''527. Disclosures.''.

**SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.**

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

**''§ 528. Requirements for debt relief agencies**

''(a) A debt relief agency shall—

''(1) not later than 5 business days after the first date such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

''(A) the services such agency will provide to such assisted person; and

''(B) the fees or charges for such services for such services, and the terms of payment;

''(2) provide the assisted person with a copy of the fully executed and completed contract;

''(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

''(4) clearly and conspicuously using the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.

''(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

''(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

''(B) statements such as 'federally supervised repayment plan' or 'Federal debt restructuring help' or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

''(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

''(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

''(B) include the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code,' or a substantially similar statement.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by this Act, is amended by inserting after the item relating to section 527, the following:

''528. Debtor's bill of rights.''.

**SEC. 230. GAO STUDY.**

(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of cases by individual debtors under such title, the names and social security numbers of such debtors for the purposes of allowing such Office to determine whether such debtors have outstanding obligations for child support (as determined on the basis of information in the Federal Case Registry or other national database).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

## TITLE III—DISCOURAGING BANKRUPTCY ABUSE

**SEC. 301. REINFORCEMENT OF THE FRESH START.**

Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''on a prisoner by any court'',

(2) by striking ''section 1915(b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915'', and

(3) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears.

**SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.**

Section 362(c) of title 11, United States Code, is amended—

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

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

(3) by adding at the end the following:

''(3) if a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

''(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

''(B) upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

''(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(i) as to all creditors, if—

''(I) more than 1 previous case under any of chapter 7, 11, or 13 in which the individual was a debtor was pending within the preceding 1-year period;

''(II) a previous case under any of chapter 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

''(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

''(bb) provide adequate protection as ordered by the court; or

''(cc) perform the terms of a plan confirmed by the court; or

''(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

''(aa) if a case under chapter 7, with a discharge; or

''(bb) if a case under chapter 11 or 13, with a confirmed plan which will be fully performed; and

''(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

''(4)(A)(i) if a single or joint case is filed by or against an individual debtor under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

''(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

''(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

''(C) a stay imposed under subparagraph (B) shall be effective on the date of entry of the order allowing the stay to go into effect; and

''(D) for purposes of subparagraph (B), a case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(i) as to all creditors if—

''(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

''(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to pay adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

''(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of such creditor.''.

**SEC. 303. CURBING ABUSIVE FILINGS.**

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

''(A) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or

''(B) multiple bankruptcy filings affecting the real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after the date of entry of such order by the court, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (19), as added by this Act, the following:

''(20) under subsection (a), of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order, except

that the debtor, in a subsequent case, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

''(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

''(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

''(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case;''.

**SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.**

Title 11, United States Code, is amended—

(1) in section 521(a) (as so designated by this Act)—

(A) in paragraph (4), by striking '', and'' at the end and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

''(A) enters into an agreement with the creditor pursuant to section 524(c) of this title with respect to the claim secured by such property; or

''(B) redeems such property from the security interest pursuant to section 722 of this title.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) of this title is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee brought before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.''; and

(2) in section 722, by inserting ''in full at the time of redemption'' before the period at the end.

**SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.**

Title 11, United States Code, is amended—

(1) in section 362—

(A) in subsection (c), by striking ''(e), and (f)'' inserting ''(e), (f), and (h)'';

(B) by redesignating subsection (h) as subsection (k); and

(C) by inserting after subsection (g) the following:

''(h)(1) In an individual case under chapter 7, 11, or 13, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) of this title—

''(A) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate in that statement that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of this title, reaffirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; and

''(B) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms.

''(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the proceeding on the motion.''; and

(2) in section 521—

(A) in subsection (a)(2), as so designated by this Act, by striking ''consumer'';

(B) in subsection (a)(2)(B), as so designated by this Act—

(i) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first date set for the meeting of creditors under section 341(a) of this title''; and

(ii) by striking ''forty-five day'' and inserting ''30-day'';

(C) in subsection (a)(2)(C), as so designated by this Act, by inserting '', except as provided in section 362(h) of this title'' before the semicolon; and

(D) by adding at the end the following:

''(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.''.

**SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.**

(a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(i) the plan provides that—

''(I) the holder of such claim retain the lien securing such claim until the earlier of—

''(aa) the payment of the underlying debt determined under nonbankruptcy law; or

''(bb) discharge under section 1328; and

''(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and''.

(b) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended by adding at the end the following flush sentence:

''For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 5-year period preceding the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.''.

(c) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by this Act, is amended—

(1) by inserting after paragraph (13) the following:

''(13A) 'debtor's principal residence'—

''(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

''(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer;''; and

(2) by inserting after paragraph (27), the following:

''(27A) 'incidental property' means, with respect to a debtor's principal residence—

''(A) property commonly conveyed with a principal residence in the area where the real estate is located;

''(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

''(C) all replacements or additions;''.

**SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.**

Section 522(b)(3)(A) of title 11, United States Code, as so designated by this Act, is amended—

(1) by striking ''180 days'' and inserting ''730 days''; and

(2) by striking '', or for a longer portion of such 180-day period than in any other place'' and inserting ''or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place''.

**SEC. 308. RESIDENCY REQUIREMENT FOR HOMESTEAD EXEMPTION.**

Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(3)(A), as so designated by this Act, by inserting ''subject to subsections (o) and (p),'' before ''any property''; and

(2) by adding at the end the following:

''(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

''(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(3) a burial plot for the debtor or a dependent of the debtor;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 7-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.''.

**SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.**

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B)—

(A) by striking ''in the converted case, with allowed secured claims'' and inserting ''only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) with respect to cases converted from chapter 13—

''(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding; and

''(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.''.

(b) GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

''(2)(A) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

''(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

''(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

''(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.''.

(c) ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.—

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, is amended—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking ''or'' at the end and inserting ''and''; and

(C) by adding at the end the following:

''(iii) if—

''(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

''(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or''.

(2) PAYMENTS.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

''(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

''(A) proposed by the plan to the trustee;

''(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

''(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

''(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

''(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

''(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.''.

**SEC. 310. LIMITATION ON LUXURY GOODS.**

Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

''(C)(i) for purposes of subparagraph (A)—

''(I) consumer debts owed to a single creditor and aggregating more than $250 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

''(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

''(ii) for purposes of this subparagraph—

''(I) the term 'extension of credit under an open end credit plan' means an extension of credit under an open end credit plan, within the meaning of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);

''(II) the term 'open end credit plan' has the meaning given that term under section 103 of Consumer Credit Protection Act (15 U.S.C. 1602); and

''(III) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.''.

**SEC. 311. AUTOMATIC STAY.**

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (21), as added by this Act, the following:

''(22) under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement;

''(23) under subsection (a)(3), of the commencement of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated under the lease agreement or applicable State law;

''(24) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs;

''(25) under subsection (a) of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;''.

**SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.**

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking ''six'' and inserting ''8''; and

(2) in section 1328, by inserting after subsection (e) the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 if the debtor has received a discharge in any case filed under this title within 5 years before the order for relief under this chapter.''.

**SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.**

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

''(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

''(i) clothing;

''(ii) furniture;

''(iii) appliances;

''(iv) 1 radio;

''(v) 1 television;

''(vi) 1 VCR;

''(vii) linens;

''(viii) china;

''(ix) crockery;

''(x) kitchenware;

''(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor, but only 1 personal computer only if used primarily for the education or entertainment of such minor children;

''(xii) medical equipment and supplies;

''(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor; and

''(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor.

''(B) The term 'household goods' does not include—

''(i) works of art (unless by or of the debtor or the dependents of the debtor);

''(ii) electronic entertainment equipment (except 1 television, 1 radio, and 1 VCR);

''(iii) items acquired as antiques;

''(iv) jewelry (except wedding rings); and

''(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.''.

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director

of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by this section, with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact that section 522(f)(4) of that title, as added by this section, has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to section 522(f)(4) of title 11, United States Code, consistent with the Director's findings.

**SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.**

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

''(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);''.

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5);

''(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9) of section 523(a);

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

**SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.**

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (c)—

(A) by inserting ''(1)'' after ''(c)'';

(B) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(C) by adding at the end the following:

''(2) If, within the 90 days prior to the date of the filing of a petition in a voluntary case, the creditor supplied the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number. In the event the creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if the creditor supplied the debtor in the last 2 communications with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number.''; and

(2) by adding at the end the following:

''(e) At any time, a creditor, in a case of an individual debtor under chapter 7 or 13, may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.

''(f) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (e) with respect to a particular case.

''(g)(1) Notice given to a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor. If the creditor designates a person or department to be responsible for receiving notices concerning bankruptcy cases and establishes reasonable procedures so that bankruptcy notices received by the creditor are to be delivered to such department or person, notice shall not be considered to have been brought to the attention of the creditor until received by such person or department.

''(2) No sanction under section 362(k) or any other sanction that a court may impose on account of violations of the stay under section 362(a) or failure to comply with section 542 or 543 may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (a), as so designated by this Act, by striking paragraph (1) and inserting the following:

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

''(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition under section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b); or

''(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

''(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days before the filing of the petition;

''(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;''; and

(2) by adding at the end the following:

''(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case, and the court shall make those documents available to the creditor who requests those documents.

''(2)(A) The debtor shall provide either a tax return or transcript at the election of the debtor, for the latest taxable period prior to filing for which a tax return has been or should have been filed, to the trustee, not later than 7 days before the date first set for the first meeting of creditors, or the case shall be dismissed, unless the debtor demonstrates that the failure to file a return as required is due to circumstances beyond the control of the debtor.

''(B) If a creditor has requested a tax return or transcript referred to in subparagraph (A), the debtor shall provide such tax return or transcript to the requesting creditor at the time the debtor provides the tax return or transcript to the trustee, or the case shall be dismissed, unless the debtor demonstrates that the debtor is unable to provide such information due to circumstances beyond the control of the debtor.

''(3)(A) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case.

''(B) The court shall make such plan available to the creditor who request such plan—

''(i) at a reasonable cost; and

''(ii) not later than 5 days after such request.

''(f) An individual debtor in a case under chapter 7, 11, or 13 shall file with the court at the request of any party in interest—

''(1) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order of relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

''(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

''(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

''(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of income of the debtor;

''(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

''(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in subsection (e)(2)(A) and subsection (f) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

''(h)(1) Not later than 180 days after the date of enactment of the Bankruptcy Reform Act of 2001, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

''(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

''(3) Not later than 1 year and 180 days after the date of enactment of the Bankruptcy Reform Act of 2001, the Director of the Administrative Office of the United States Courts shall prepare and submit to Congress a report that—

''(A) assesses the effectiveness of the procedures under paragraph (1); and

''(B) if appropriate, includes proposed legislation to—

''(i) further protect the confidentiality of tax information; and

''(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

''(i) If requested by the United States trustee or a trustee serving in the case, the debtor shall provide—

''(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; and

''(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

**SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.**

Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(j)(1) Notwithstanding section 707(a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

''(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

''(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.''.

**SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.**

Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a).''.

**SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.**

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

''(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

''(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.'';

(2) in section 1325(b)(1)(B), by striking ''three-year period'' and inserting ''applicable commitment period''; and

(3) in section 1325(b), as amended by this Act, by adding at the end the following:

''(4) For purposes of this subsection, the 'applicable commitment period'—

''(A) subject to subparagraph (B), shall be—

''(i) 3 years; or

''(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

''(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

''(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4; and

''(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.''; and

(4) in section 1329(c), by striking ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)''.

**SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.**

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

**SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.**

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) that 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.''.

**SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.**

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

**''§ 1115. Property of the estate**

''(a) In a case concerning an individual debtor, property of the estate includes, in addition to the property specified in section 541—

''(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

''(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.''.

''(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

''1115. Property of the estate.''.

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(8) in a case concerning an individual, provide for the payment to creditors through the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.''.

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

''(15) In a case concerning an individual in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

''(A) the value of the property to be distributed under the plan on account of such claim is, as of the effective date of the plan, not less than the amount of such claim; or

''(B) the value of the property to be distributed under the plan is not less than the debtor's projected disposable income (as that term is defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the term of the plan, whichever is longer.''.

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: '', except that in a case concerning an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14)''.

(d) EFFECT OF CONFIRMATION—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''The confirmation of a plan does not discharge an individual debtor'' and inserting ''A discharge under this chapter does not discharge a debtor''; and

(2) by adding at the end the following:

''(5) In a case concerning an individual—

''(A) except as otherwise ordered for cause shown, the discharge is not effective until completion of all payments under the plan; and

''(B) at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

''(i) for each allowed unsecured claim, the value, as of the effective date of the plan, of property actually distributed under the plan on account of that claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

''(ii) modification of the plan under 1127 of this title is not practicable.''.

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a case concerning an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

''(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

''(2) extend or reduce the time period for such payments; or

''(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

''(f)(1) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title apply to any modification under subsection (a).

''(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125, as the court may direct, notice and a hearing, and such modification is approved.''.

**SEC. 322. LIMITATION.**

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548 of this title, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 2-year period preceding the filing of the petition which exceeds in the aggregate $100,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.

''(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of the 2-year period) into the debtor's current principal residence, where the debtor's previous and current residences are located in the same State.''.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''522(d),'' and inserting ''522(d), 522(n), 522(p),''; and

(2) in paragraph (3), by striking ''522(d),'' and inserting ''522(d), 522(n), 522(p),''.

**SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.**

(a) IN GENERAL.—Section 541(b) of title 11, United States Code, is amended by inserting after paragraph (6), as added by this Act, the following:

''(7) any amount—

''(A) withheld by an employer from the wages of employees for payment as contributions to—

''(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that amount shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

''(ii) a health insurance plan regulated by State law whether or not subject to such title; or

''(B) received by the employer from employees for payment as contributions to—

''(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that amount shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

''(ii) a health insurance plan regulated by State law whether or not subject to such title;''.

(b) APPLICATION OF AMENDMENT.—The amendments made by this section shall not apply to cases commenced under title 11, United States Code, before the expiration of the 180-day period beginning on the date of enactment of this Act.

**SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.**

(a) IN GENERAL.—Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b), by striking ''Notwithstanding'' and inserting ''Except as provided in subsection (e)(2), and notwithstanding''; and

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

''(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

''(1) of all the property, wherever located, of the debtor as of the date of commencement of such case, and of property of the estate; and

''(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.''.

(b) APPLICABILITY.—This section shall only apply to cases filed after the date of enactment of this Act.

**SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.**

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

''(1) For a case commenced—

''(A) under chapter 7 of title 11, $160; or

''(B) under chapter 13 of title 11, $150.''.

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

''(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;'';

(2) in paragraph (2), by striking ''one-half'' and inserting ''three-fourths''; and

(3) in paragraph (4), by striking ''one-half'' and inserting ''100 percent''.

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking ''pursuant to 28 U.S.C. section 1930(b) and 30.76 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931'' and inserting ''under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title''.

**SEC. 326. SHARING OF COMPENSATION.**

Section 504 of title 11, United States Code, is amended by adding at the end the following:

''(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.''.

**SEC. 327. FAIR VALUATION OF COLLATERAL.**

Section 506(a) of title 11, United States Code, is amended by—

(1) inserting ''(1)'' after ''(a)''; and

(2) by adding at the end the following:

''(2) In the case of an individual debtor under chapters 7 and 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purpose, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.''.

**SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.**

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking the semicolon at the end and inserting the following: ''other than a default that is a

breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of paragraph (b)(1);''; and

(B) in paragraph (2)(D), by striking ''penalty rate or provision'' and inserting ''penalty rate or penalty provision'';

(2) in subsection (c)—

(A) in paragraph (2), by inserting ''or'' at the end;

(B) in paragraph (3), by striking ''; or'' at the end and inserting a period; and

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

(B) by redesignating paragraph (10) as paragraph (5); and

(4) in subsection (f)(1) by striking ''; except that'' and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by inserting ''or of a kind that section 365(b)(2) of this title expressly does not require to be cured'' before the semicolon at the end;

(2) in subparagraph (C), by striking ''and'' at the end;

(3) by redesignating subparagraph (D) as subparagraph (E); and

(4) by inserting after subparagraph (C) the following:

''(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and''.

## TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

### Subtitle A—General Business Bankruptcy Provisions

**SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.**

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by this Act, is amended by inserting after paragraph (48) the following:

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (25), as added by this Act, the following:

''(26) under subsection (a), of—

''(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

''(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or

''(C) any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;''.

**SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.**

Section 341 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.''.

**SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTEREST.**

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are each amended by striking ''10'' each place it appears and inserting ''30''.

**SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.**

(a) IN GENERAL.—Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

''(4)(A) Subject to subparagraph (B), in any case under any chapter of this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

''(i) the date that is 120 days after the date of the order for relief; or

''(ii) the date of the entry of an order confirming a plan.

''(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days upon motion of the trustee or lessor for cause.

''(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.''.

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking ''subsection'' the first place it appears and inserting ''subsections (b) and''.

**SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.**

(a) APPOINTMENT.—Section 1102(a) of title 11, United States Code, is amended by adding at the end the following:

''(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act (15 U.S.C. 632(a)(1))), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.''.

(b) INFORMATION.—Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

''(3) A committee appointed under subsection (a) shall—

''(A) provide access to information for creditors who—

''(i) hold claims of the kind represented by that committee; and

''(ii) are not appointed to the committee;

''(B) solicit and receive comments from the creditors described in subparagraph (A); and

''(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).''.

**SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.**

Section 546 of title 11, United States Code, is amended—

(1) by redesignating the second subsection designated as subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (i); and

(2) by adding at the end the following:

''(j)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

''(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any applicable State statute that is similar to section 7–209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Reform Act of 2001, or any successor thereto.''.

**SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.**

Section 330(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking ''(A) In'' and inserting ''In''; and

(B) by inserting ''to an examiner, trustee under chapter 11, or professional person'' after ''awarded''; and

(2) by adding at the end the following:

''(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326 of this title.''.

**SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.**

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.''.

**SEC. 409. PREFERENCES.**

Section 547(c) of title 11, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

''(B) made according to ordinary business terms;'';

(2) in paragraph (8), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.''.

**SEC. 410. VENUE OF CERTAIN PROCEEDINGS.**

Section 1409(b) of title 28, United States Code, is amended by inserting '', or a nonconsumer debt against a noninsider of less than $10,000,'' after ''$5,000''.

**SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.**

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (2), on''; and

(2) by adding at the end the following:

''(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

''(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.''.

**SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.**

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the first place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

(4) by striking ''but only'' and all that follows through ''such period'' and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

**SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.**

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following: ''Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

**SEC. 414. DEFINITION OF DISINTERESTED PERSON.**

Section 101(14) of title 11, United States Code, is amended to read as follows:

''(14) 'disinterested person' means a person that—

''(A) is not a creditor, an equity security holder, or an insider;

''(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

''(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;''.

**SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.**

Section 330(a)(3) of title 11, United States Code, as amended by this Act, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

''(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and''.

**SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.**

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

''(B) Upon the filing of a report under subparagraph (A)—

''(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

''(ii) the service of any trustee appointed under subsection (d) shall terminate.

''(C) In the case of any dispute arising out of an election described in subparagraph (A), the court shall resolve the dispute.''.

**SEC. 417. UTILITY SERVICE.**

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)''; and

(2) by adding at the end the following:

''(c)(1)(A) For purposes of this subsection, the term 'assurance of payment' means—

''(i) a cash deposit;

''(ii) a letter of credit;

''(iii) a certificate of deposit;

''(iv) a surety bond;

''(v) a prepayment of utility consumption; or

''(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

''(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

''(2) Subject to paragraphs (3) through (5), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

''(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

''(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

''(i) the absence of security before the date of filing of the petition;

''(ii) the payment by the debtor of charges for utility service in a timely manner before the date of filing of the petition; or

''(iii) the availability of an administrative expense priority.

''(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of filing of the petition without notice or order of the court.''.

**SEC. 418. BANKRUPTCY FEES.**

Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ''Notwithstanding section 1915 of this title, the'' and inserting ''The''; and

(2) by adding at the end the following:

''(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such debtor has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term ''filing fee'' means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

''(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

''(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.''.

**SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.**

(a) IN GENERAL.—

(1) DISCLOSURE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

## Subtitle B—Small Business Bankruptcy Provisions

**SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.**

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon ''and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information''; and

(2) by striking subsection (f), and inserting the following:

''(f) Notwithstanding subsection (b), in a small business case—

''(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

''(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

''(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 20 days before the date of the hearing on confirmation of the plan; and

''(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.''.

**SEC. 432. DEFINITIONS.**

(a) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by this Act,

is amended by striking paragraph (51C) and inserting the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

''(51D) 'small business debtor'—

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $3,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

''(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $3,000,000 (excluding debt owed to 1 or more affiliates or insiders);''.

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting ''debtor'' after ''small business''.

**SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.**

Within a reasonable period of time after the date of enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

**SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.**

(a) REPORTING REQUIRED.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

**''§ 308. Debtor reporting requirements**

''(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

''(b) A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

''(4)(A) whether the debtor is—

''(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

''(ii) timely filing tax returns and other required government filings and paying taxes and other administrative claims when due;

''(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

''(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

''308. Debtor reporting requirements.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

**SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.**

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

**SEC. 436. DUTIES IN SMALL BUSINESS CASES.**

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

**''§ 1116. Duties of trustee or debtor in possession in small business cases**

''In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court waives that requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns and other required government filings; and

''(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

''(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

''1116. Duties of trustee or debtor in possession in small business cases.''.

**SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.**

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan, and any necessary disclosure statement, shall be filed not later than 300 days after the date of the order for relief; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e), within which the plan shall be confirmed, may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

**SEC. 438. PLAN CONFIRMATION DEADLINE.**

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the plan shall be confirmed not later than 175 days after the date of the order for relief, unless such 175-day period is extended as provided in section 1121(e)(3).''.

**SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.**

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G), by striking ''and'' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and'';

(2) in paragraph (5), by striking ''and'' at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(7) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

''(i) begin to investigate the debtor's viability;

''(ii) inquire about the debtor's business plan;

''(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

''(iv) attempt to develop an agreed scheduling order; and

''(v) inform the debtor of other obligations;

''(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and

''(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

''(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.''.

**SEC. 440. SCHEDULING CONFERENCES.**

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking '', may''; and

(2) by striking paragraph (1) and inserting the following:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''.

**SEC. 441. SERIAL FILER PROVISIONS.**

Section 362 of title 11, United States Code, as amended by this Act is amended—

(1) in subsection (k), as redesignated by this Act—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.''; and

(2) by adding at the end the following:

''(l)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) do not apply in a case in which the debtor—

''(A) is a debtor in a small business case pending at the time the petition is filed;

''(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C).

''(2) This subsection does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that the filing of that petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

''(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.''.

**SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.**

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

''(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

''(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes by a preponderance of the evidence that—

''(A) a plan with a reasonable possibility of being confirmed will be filed within a reasonable period of time; and

''(B) the grounds include an act or omission of the debtor—

''(i) for which there exists a reasonable justification for the act or omission; and

''(ii) that will be cured within a reasonable period of time fixed by the court.

''(3) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

''(4) For purposes of this subsection, the term 'cause' includes—

''(A) substantial or continuing loss to or diminution of the estate;

''(B) gross mismanagement of the estate;

''(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

''(D) unauthorized use of cash collateral harmful to 1 or more creditors;

''(E) failure to comply with an order of the court;

''(F) repeated failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

''(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee or the bankruptcy administrator;

''(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;

''(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

''(K) failure to pay any fees or charges required under chapter 123 of title 28;

''(L) revocation of an order of confirmation under section 1144;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan;

''(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

''(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.

''(5) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.''.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''or'' at the end;

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

(3) by adding at the end the following:

''(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.''.

**SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.**

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

**SEC. 444. PAYMENT OF INTEREST.**

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting ''or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later'' after ''90-day period)''; and

(2) by striking subparagraph (B) and inserting the following:

''(B) the debtor has commenced monthly payments that—

''(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

''(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or''.

**SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.**

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of 2 years following the later of

the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);''.

## TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

### SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting ''notwithstanding section 301(b)'' before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''A voluntary''; and

(2) by striking the last sentence and inserting the following:

''(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.''.

### SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560, 561, 562'' after ''557,''.

## TITLE VI—BANKRUPTCY DATA

### SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

**''§ 159. Bankruptcy statistics**

''(a) The clerk of each district shall collect statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be on a standardized form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

''(b) The Director shall—

''(1) compile the statistics referred to in subsection (a);

''(2) make the statistics available to the public; and

''(3) not later than October 31, 2002, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

''(B) the current monthly income, average income, and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

''(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the filing of the petition and the closing of the case;

''(E) for the reporting period—

''(i) the number of cases in which a reaffirmation was filed; and

''(ii)(I) the total number of reaffirmations filed;

''(II) of those cases in which a reaffirmation was filed, the number of cases in which the debtor was not represented by an attorney; and

''(III) of those cases in which a reaffirmation was filed, the number of cases in which the reaffirmation was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders determining the value of property securing a claim issued;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

''(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

''(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel or damages awarded under such Rule.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''159. Bankruptcy statistics.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

### SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

**''§ 589b. Bankruptcy data**

''(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

''(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

''(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

''(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

''(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

''(3) appropriate privacy concerns and safeguards.

''(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

''(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''589b. Bankruptcy data.''.

### SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine

the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;

(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

(C) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

''(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Reform Act of 2001; and''; and

(2) by adding at the end the following:

''(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Reform Act of 2001.

''(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

''(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.''.

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by this Act, is amended in each of paragraphs (3) and (4) by inserting ''or an auditor appointed under section 586(f) of title 28'' after ''serving in the case''.

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

''(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

**SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.**

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

## TITLE VII—BANKRUPTCY TAX PROVISIONS

**SEC. 701. TREATMENT OF CERTAIN LIENS.**

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title'';

(2) in subsection (b)(2), by inserting ''(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)'' after ''507(a)(1)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

''(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

''(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

''(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).''.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

**SEC. 702. TREATMENT OF FUEL TAX CLAIMS.**

Section 501 of title 11, United States Code, is amended by adding at the end the following:

''(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement and, if so filed, shall be allowed as a single claim.''.

**SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.**

Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting ''at the address and in the manner designated in paragraph (1)'' after ''determination of such tax'';

(2) by striking ''(1) upon payment'' and inserting ''(A) upon payment'';

(3) by striking ''(A) such governmental unit'' and inserting ''(i) such governmental unit'';

(4) by striking ''(B) such governmental unit'' and inserting ''(ii) such governmental unit'';

(5) by striking ''(2) upon payment'' and inserting ''(B) upon payment'';

(6) by striking ''(3) upon payment'' and inserting ''(C) upon payment'';

(7) by striking ''(b)'' and inserting ''(2)''; and

(8) by inserting before paragraph (2), as so designated, the following:

''(b)(1)(A) The clerk of each district shall maintain a listing under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

''(i) designate an address for service of requests under this subsection; and

''(ii) describe where further information concerning additional requirements for filing such requests may be found.

''(B) If a governmental unit referred to in subparagraph (A) does not designate an address and provide that address to the clerk under that subparagraph, any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of that governmental unit.''.

**SEC. 704. RATE OF INTEREST ON TAX CLAIMS.**

(a) IN GENERAL.—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

**''§ 511. Rate of interest on tax claims**

''(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

''(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 510 the following:

''511. Rate of interest on tax claims.''.

**SEC. 705. PRIORITY OF TAX CLAIMS.**

Section 507(a)(8) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting ''for a taxable year ending on or before the date of filing of the petition'' after ''gross receipts'';

(B) in clause (i), by striking ''for a taxable year ending on or before the date of filing of the petition''; and

(C) by striking clause (ii) and inserting the following:

''(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

''(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

''(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period; plus 90 days.''; and

(2) by adding at the end the following:

''An otherwise applicable time period specified in this paragraph shall be suspended for (i) any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus (ii) any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.''.

**SEC. 706. PRIORITY PROPERTY TAXES INCURRED.**

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking ''assessed'' and inserting ''incurred''.

**SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.**

Section 1328(a)(2) of title 11, United States Code, as amended by section 314 of this Act, is amended by striking ''paragraph'' and inserting ''section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),''.

**SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.**

Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt described in section 523(a)(2) or for a tax or customs duty with respect to which the debtor—

''(A) made a fraudulent return; or

''(B) willfully attempted in any manner to evade or defeat that tax or duty.''.

**SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.**

Section 362(a)(8) of title 11, United States Code, is amended by striking ''the debtor'' and inserting ''a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning an individual debtor's tax liability for a taxable period ending before the order for relief under this title''.

**SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.**

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking ''deferred cash payments,'' and all that follows through the end of the subparagraph, and inserting ''regular installment payments in cash—

''(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

''(ii) over a period ending not later than 5 years after the date of the entry of the order for relief under section 301, 302, or 303; and

''(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for in the plan (other than cash payments made to a class of creditors under section 1122(b)); and''; and

(3) by adding at the end the following:

''(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).''.

**SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.**

Section 545(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law''.

**SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.**

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

''(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable period of time after the lien attaches by the trustee of a bankruptcy estate under section 554 of title 11; or

''(2) payment of the tax is excused under a specific provision of title 11.

''(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

''(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

''(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.''.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting ''whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,'' before ''except''.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by adding ''and'' at the end; and

(3) by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c), by inserting '', including the payment of all ad valorem property taxes with respect to the property'' before the period at the end.

**SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.**

Section 726(a)(1) of title 11, United States Code, is amended by striking ''before the date on which the trustee commences distribution under this section;'' and inserting the following: ''on or before the earlier of—

''(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

''(B) the date on which the trustee commences final distribution under this section;''.

**SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.**

Section 523(a) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting ''or equivalent report or notice,'' after ''a return,'';

(B) in clause (i), by inserting ''or given'' after ''filed''; and

(C) in clause (ii)—

(i) by inserting ''or given'' after ''filed''; and

(ii) by inserting '', report, or notice'' after ''return''; and

(2) by adding at the end the following:

''For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.''.

**SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.**

Section 505(b)(2) of title 11, United States Code, as amended by this Act, is amended by inserting ''the estate,'' after ''misrepresentation,''.

**SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.**

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

**''§ 1308. Filing of prepetition tax returns**

''(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

''(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

''(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

''(B) for any return that is not past due as of the date of the filing of the petition, the later of—

''(i) the date that is 120 days after the date of that meeting; or

''(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

''(2) Upon notice and hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—

''(A) a period of not more than 30 days for returns described in paragraph (1); and

''(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

''(c) For purposes of this section, the term 'return' includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.''.

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

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

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

''(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following '', and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

**SEC. 717. STANDARDS FOR TAX DISCLOSURE.**

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting ''including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case,'' after ''records''; and

(2) by striking ''a hypothetical reasonable investor typical of holders of claims or interests'' and inserting ''such a hypothetical investor''.

**SEC. 718. SETOFF OF TAX REFUNDS.**

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (26), as added by this Act, the following:

''(27) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the order for relief against an income tax liability for a taxable period that also ended before the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, upon motion of the trustee and after notice and hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of that authority in the setoff under section 506(a);''.

**SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.**

(a) IN GENERAL.—Section 346 of title 11, United States Code, is amended to read as follows:

**''§ 346. Special provisions related to the treatment of state and local taxes**

''(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

''(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make said returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

''(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

''(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

''(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

''(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

''(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

''(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

''(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

''(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

''(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the order for relief under this title to the extent that—

''(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

''(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

''(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

''(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local

law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

''(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

''(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 728 of title 11, United States Code, is repealed.

(2) Section 1146 of title 11, United States Code, is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

(3) Section 1231 of title 11, United States Code, is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

**SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.**

Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(k)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

''(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.''.

**TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES**

**SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.**

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

**''CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES**

''Sec.
''1501. Purpose and scope of application.
''SUBCHAPTER I—GENERAL PROVISIONS
''1502. Definitions.
''1503. International obligations of the United States.
''1504. Commencement of ancillary case.
''1505. Authorization to act in a foreign country.
''1506. Public policy exception.
''1507. Additional assistance.
''1508. Interpretation.
''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT
''1509. Right of direct access.
''1510. Limited jurisdiction.
''1511. Commencement of case under section 301 or 303.
''1512. Participation of a foreign representative in a case under this title.
''1513. Access of foreign creditors to a case under this title.
''1514. Notification to foreign creditors concerning a case under this title.
''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF
''1515. Application for recognition.
''1516. Presumptions concerning recognition.
''1517. Order granting recognition.
''1518. Subsequent information.
''1519. Relief that may be granted upon filing petition for recognition.
''1520. Effects of recognition of a foreign main proceeding.
''1521. Relief that may be granted upon recognition.
''1522. Protection of creditors and other interested persons.
''1523. Actions to avoid acts detrimental to creditors.
''1524. Intervention by a foreign representative.
''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES
''1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
''1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
''1527. Forms of cooperation.
''SUBCHAPTER V—CONCURRENT PROCEEDINGS
''1528. Commencement of a case under this title after recognition of a foreign main proceeding.
''1529. Coordination of a case under this title and a foreign proceeding.
''1530. Coordination of more than 1 foreign proceeding.
''1531. Presumption of insolvency based on recognition of a foreign main proceeding.
''1532. Rule of payment in concurrent proceedings.

**''§ 1501. Purpose and scope of application**

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

''(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

''(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

''(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

''SUBCHAPTER I—GENERAL PROVISIONS

**''§ 1502. Definitions**

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

''(7) 'recognition' means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

''(8) 'within the territorial jurisdiction of the United States', when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

**''§ 1503. International obligations of the United States**

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

**''§ 1504. Commencement of ancillary case**

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

**''§ 1505. Authorization to act in a foreign country**

''A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

**''§ 1506. Public policy exception**

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

**''§ 1507. Additional assistance**

''(a) Subject to the specific limitations stated elsewhere in this chapter the court, if

recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

**''§ 1508. Interpretation**

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

**''§ 1509. Right of direct access**

''(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

''(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

''(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

''(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

''(3) a court in the United States shall grant comity or cooperation to the foreign representative.

''(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

''(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

''(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

''(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

**''§ 1510. Limited jurisdiction**

''The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

**''§ 1511. Commencement of case under section 301 or 303**

''(a) Upon recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

**''§ 1512. Participation of a foreign representative in a case under this title**

''Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

**''§ 1513. Access of foreign creditors to a case under this title**

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

**''§ 1514. Notification to foreign creditors concerning a case under this title**

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for their filing;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

**''§ 1515. Application for recognition**

''(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

**''§ 1516. Presumptions concerning recognition**

''(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding (as defined in section 101) and that the person or body is a foreign representative (as defined in section 101), the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

**''§ 1517. Order granting recognition**

''(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

''(2) the foreign representative applying for recognition is a person or body as defined in section 101; and

''(3) the petition meets the requirements of section 1515.

''(b) The foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. The case under this chapter may be closed in the manner prescribed under section 350.

**''§ 1518. Subsequent information**

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the

court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

**''§ 1519. Relief that may be granted upon filing petition for recognition**

''(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

''(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (28) of section 362(b) or pursuant to section 362(l) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

**''§ 1520. Effects of recognition of a foreign main proceeding**

''(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

''(1) sections 361 and 362 apply with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

''(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

''(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

''(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

''(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

''(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

**''§ 1521. Relief that may be granted upon recognition**

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 1519(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (28) of section 362(b) or pursuant to section 362(l) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

**''§ 1522. Protection of creditors and other interested persons**

''(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

''(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

**''§ 1523. Actions to avoid acts detrimental to creditors**

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

''(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

**''§ 1524. Intervention by a foreign representative**

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

**''§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives**

''(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

**''§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives**

''(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

**''§ 1527. Forms of cooperation**

''Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

**''§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding**

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor

has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

**"§ 1529. Coordination of a case under this title and a foreign proceeding**

''If a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) If the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

''(A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

''(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.

''(2) If a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

''(A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

**"§ 1530. Coordination of more than 1 foreign proceeding**

''In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

**"§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding**

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

**"§ 1532. Rule of payment in concurrent proceedings**

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

**"15. Ancillary and Other Cross-Border Cases ..... 1501".**

**SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.**

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: '', and this chapter, sections 307, 362(l), 555 through 557, and 559 through 562 apply in a case under chapter 15''; and

(2) by adding at the end the following:

''(j) Chapter 15 applies only in a case under such chapter, except that—

''(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

''(2) section 1509 applies whether or not a case under this title is pending.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 15 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking ''or 13'' and inserting ''13, or 15,''.

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows:

**"§ 1410. Venue of cases ancillary to foreign proceedings**

''A case under chapter 15 of title 11 may be commenced in the district court for the district—

''(1) in which the debtor has its principal place of business or principal assets in the United States;

''(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

''(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.''.

(d) OTHER SECTIONS OF TITLE 11.—

(1) Section 109(b)(3) of title 11, United States Code, is amended to read as follows:

''(3)(A) a foreign insurance company, engaged in such business in the United States; or

''(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101) in the United States.''.

(2) Section 303(k) of title 11, United States Code, is repealed.

(3)(A) Section 304 of title 11, United States Code, is repealed.

(B) The table of sections at the beginning of chapter 3 of title 11, United States Code, is amended by striking the item relating to section 304.

(C) Section 306 of title 11, United States Code, is amended by striking '', 304,'' each place it appears.

(4) Section 305(a)(2) of title 11, United States Code, is amended to read as follows:

''(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

''(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.''.

(5) Section 508 of title 11, United States Code, is amended—

(A) by striking subsection (a); and

(B) in subsection (b), by striking ''(b)''.

## TITLE IX—FINANCIAL CONTRACT PROVISIONS

**SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.**

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by inserting '', resolution, or order'' after ''any similar agreement that the Corporation determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V).

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), (IV), or (V).

Such term is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.''.

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institutions's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A)—

(A) by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(B) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(C) by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''; and

(2) in subparagraph (E), by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

**SEC. 902. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.**

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking ''other than paragraph (12) of this subsection, subsection (d)(9)'' and inserting ''other than subsections (d)(9) and (e)(10)''; and

(2) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

**SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.**

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

''(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

''(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

''(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contract and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITION.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution.''.

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.''.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the

Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

''(I) immediately upon the organization of the institution; or

''(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.''.

**SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.**

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the depository institution in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''.

**SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.**

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

**SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.**

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon '', or is exempt from such registration by order of the Securities and Exchange Commission''; and

(B) in subparagraph (B), by inserting before the period ''or that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act'';

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;''; and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(3) in paragraph (11), by inserting before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(4) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and''; and

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

''(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.''.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 408; and

(2) by inserting after section 406 the following new section:

**''SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.**

''(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, except that for such purpose—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency;

''(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

''(c) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations to implement this section, the Comptroller of the Currency shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation

adopted pursuant to the Federal Deposit Insurance Act.

''(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.''.

**SEC. 907. BANKRUPTCY CODE AMENDMENTS.**

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

''(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract on the date of the filing of the petition;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and inserting ''at any time before'';

(C) by amending paragraph (47) to read as follows:

''(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;'';

(D) in paragraph (48), by inserting '', or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission,'' after ''1934''; and

(E) by amending paragraph (53B) to read as follows:

''(53B) 'swap agreement'—

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including—

''(I) a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

''(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

''(III) a currency swap, option, future, or forward agreement;

''(IV) an equity index or an equity swap, option, future, or forward agreement;

''(V) a debt index or a debt swap, option, future, or forward agreement;

''(VI) a credit spread or a credit swap, option, future, or forward agreement;

''(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

''(VIII) a weather swap, weather derivative, or weather option;

''(ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that—

''(I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

''(iii) any combination of agreements or transactions referred to in this subparagraph;

''(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), but do not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.'';

(2) in section 741(7), by striking paragraph (7) and inserting the following:

''(7) 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

''(vi) any combination of the agreements or transactions referred to in this subparagraph;

''(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

''(ix) any security agreement or arrangement or other credit enhancement, related to any agreement or transaction referred to in this subparagraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan.''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

''(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

''(22) 'financial institution' means—

''(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741, such customer; or

''(B) in connection with a securities contract, as defined in section 741, an investment company registered under the Investment Company Act of 1940;'';

(2) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means an entity that, at the time it enters into a securities contract, commodity contract, or forward contract, or at the time of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;''; and

(3) by striking paragraph (26) and inserting the following:

''(26) 'forward contract merchant' means a Federal reserve bank, or an entity, the business of which consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement'—

''(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing; and

''(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

''(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(A) in paragraph (6), by inserting '', pledged to, and under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, and under the control of,'' after ''held by'';

(C) by striking paragraph (17) and inserting the following:

''(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, and under the control of, or due from such swap participant to margin, guarantee, secure, or settle any swap agreement;''; and

(D) by inserting after paragraph (27), as added by this Act, the following new paragraph:

''(28) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; or''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(l) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (28) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement''; and

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(2) by adding at the end the following:

''(k) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

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

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**''§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract''**;

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**''§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract''**;

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**''§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement''**;

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

**"§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement"**;

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of one or more swap agreements''; and

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of one or more swap agreements''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

**"§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts**

''(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b) EXCEPTION.—

''(1) IN GENERAL.—A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2) COMMODITY BROKERS.—If a debtor is a commodity broker subject to subchapter IV of chapter 7—

''(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under that subchapter IV; and

''(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(3) CONSTRUCTION.—No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

''(A) a cross-margining agreement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under section 5(a)(12)(A) of the Commodity Exchange Act and has been approved; or

''(B) any other netting agreement between a clearing organization, as defined in section 761, and another entity that has been approved by the Commodity Futures Trading Commission.

''(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

''(d) CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15 of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts.

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

**"§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

**"§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants**

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting before the period the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(28), 555, 556, 559, 560, or 561 of this title)''; and

(2) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(28), 555, 556, 559, 560, 561''.

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant,'';

(2) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(3) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by inserting before the period at the end '', a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice''; and

(5) in section 556, by inserting '', financial participant,'' after ''commodity broker''.

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.'';

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

''560. Contractual right to liquidate, terminate, or accelerate a swap agreement.'';

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.'';

and

(B) by inserting after the item relating to section 752 the following:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

**SEC. 908. RECORDKEEPING REQUIREMENTS.**

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.''.

**SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.**

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

''(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

''(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

''(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

''(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

''(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.''.

**SEC. 910. DAMAGE MEASURE.**

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by this Act, the following:

**''§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements**

''If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date of such liquidation, termination, or acceleration.''; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by this Act) the following:

''562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(g)''; and

(2) by adding at the end the following:

''(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.''.

**SEC. 911. SIPC STAY.**

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FROM STAY.—

''(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101 and 741 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

''(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

''(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

**SEC. 912. ASSET-BACKED SECURITIZATIONS.**

Section 541 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting after paragraph (7), as added by this Act, the following:

''(8) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a);''; and

(2) by adding at the end the following new subsection:

''(f) For purposes of this section—

''(1) the term 'asset-backed securitization' means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, including, without limitation, all securities issued by governmental units, at least one class or tranche of which was rated investment grade by one or more nationally recognized securities rating organizations, when the securities were initially issued by an issuer;

''(2) the term 'eligible asset' means—

''(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, whether or not the same are in existence as of the date of the transfer, including residential and commercial mortgage loans, consumer receivables, trade receivables, assets of governmental units, including payment obligations relating to taxes, receipts, fines, tickets, and other sources of revenue, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any residual interest in property subject to receivables included in such financial assets plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

''(B) cash; and

''(C) securities, including without limitation, all securities issued by governmental units;

''(3) the term 'eligible entity' means—

''(A) an issuer; or

''(B) a trust, corporation, partnership, governmental unit, limited liability company (including a single member limited liability company), or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

''(4) the term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto; and

''(5) the term 'transferred' means the debtor, under a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(8) (whether or not reference is made to this title or any section hereof), irrespective and without limitation of—

''(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

''(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

''(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.''.

**SEC. 913. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—This title shall take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

## TITLE X—PROTECTION OF FAMILY FARMERS

**SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.**

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277, 112 Stat. 2681-610), and amended by this Act, is reenacted.

(2) EFFECTIVE DATE.—Subsection (a) shall be deemed to have taken effect on July 1, 2000.

(b) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

**SEC. 1002. DEBT LIMIT INCREASE.**

(a) IN GENERAL.—Section 104(b) of title 11, United States Code, is amended by adding at the end the following:

''(4) The dollar amount in section 101(18) shall be adjusted at the same times and in the same manner as the dollar amounts in paragraph (1) of this subsection.''.

(b) EFFECTIVE DATE.—The first adjustment required by section 104(b)(4) of title 11, United States Code, as added by subsection (a) of this section, shall occur on the later of—

(1) April 1, 2001; or

(2) 60 days after the date of enactment of this Act.

**SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.**

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, is amended to read as follows:

''(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

''(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

''(B) the holder of a particular claim agrees to a different treatment of that claim;''.

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by this Act, is amended by striking ''a State or local governmental unit'' and inserting ''any governmental unit''.

## TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

**SEC. 1101. DEFINITIONS.**

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraph (27A), as added by this Act, as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

''(27A) 'health care business'—

''(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

''(i) the diagnosis or treatment of injury, deformity, or disease; and

''(ii) surgical, drug treatment, psychiatric, or obstetric care; and

''(B) includes—

''(i) any—

''(I) general or specialized hospital;

''(II) ancillary ambulatory, emergency, or surgical treatment facility;

''(III) hospice;

''(IV) home health agency; and

''(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

''(ii) any long-term care facility, including any—

''(I) skilled nursing facility;

''(II) intermediate care facility;

''(III) assisted living facility;

''(IV) home for the aged;

''(V) domiciliary care facility; and

''(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;''.

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

''(40A) 'patient' means any person who obtains or receives services from a health care business;

''(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;''.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

**SEC. 1102. DISPOSAL OF PATIENT RECORDS.**

(a) IN GENERAL.—Subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

**''§ 351. Disposal of patient records**

''If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

''(1) The trustee shall—

''(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

''(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the last known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

''(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

''(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

''(A) if the records are written, shredding or burning the records; or

''(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 350 the following:

''351. Disposal of patient records.''.

**SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.**

Section 503(b) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as that term is defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

''(A) in disposing of patient records in accordance with section 351; or

''(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business;

''(9) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or related to a failure to operate or penalty provisions, for the period of 2 years following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6); and''.

**SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.**

(a) IN GENERAL.—

(1) APPOINTMENT OF OMBUDSMAN.—Subchapter II of chapter 3 of title 11, United States Code, is amended by inserting after section 331 the following:

**''§ 332. Appointment of ombudsman**

''(a) IN GENERAL.—

''(1) AUTHORITY TO APPOINT.—Not later than 30 days after a case is commenced by a health care business under chapter 7, 9, or 11, the court shall order the appointment of an ombudsman to monitor the quality of patient care to represent the interests of the patients of the health care business, unless the court finds that the appointment of the ombudsman is not necessary for the protection of patients under the specific facts of the case.

''(2) QUALIFICATIONS.—If the court orders the appointment of an ombudsman, the United States trustee shall appoint 1 disinterested person, other than the United States trustee, to serve as an ombudsman, including a person who is serving as a State Long-Term Care Ombudsman appointed under title III or VII of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq., 3058 et seq.).

''(b) DUTIES.—An ombudsman appointed under subsection (a) shall—

''(1) monitor the quality of patient care, to the extent necessary under the circumstances, including interviewing patients and physicians;

''(2) not later than 60 days after the date of appointment, and not less frequently than every 60 days thereafter, report to the court, at a hearing or in writing, regarding the quality of patient care at the health care business involved; and

''(3) if the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised, notify the court by motion or written report, with notice to appropriate parties in interest, immediately upon making that determination.

''(c) CONFIDENTIALITY.—An ombudsman shall maintain any information obtained by the ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. The ombudsman may not review confidential patient records, unless the court provides prior approval, with restrictions on the ombudsman to protect the confidentiality of patient records.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 331 the following:

''332. Appointment of ombudsman.''.

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter proceeding subparagraph (A), by inserting ''an ombudsman appointed under section 331, or'' before ''a professional person''; and

(2) in subparagraph (A), by inserting ''ombudsman,'' before ''professional person''.

**SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.**

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(11) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

''(A) is in the vicinity of the health care business that is closing;

''(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

''(C) maintains a reasonable quality of care.''.

(b) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended by striking ''sections 704(2), 704(5), 704(7), 704(8), and 704(9)'' and inserting ''paragraphs (2), (5), (7), (8), (9), and (11) of section 704(a)''.

**SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.**

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (28), as added by this Act, the following:

''(29) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)) pursuant to title XI of such Act (42 U.S.C. 1301 et seq.) or title XVIII of such Act (42 U.S.C. 1395 et seq.).''.

## TITLE XII—TECHNICAL AMENDMENTS

**SEC. 1201. DEFINITIONS.**

Section 101 of title 11, United States Code, as amended by this Act, is amended—

(1) by striking ''In this title—'' and inserting ''In this title the following definitions shall apply:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A) and (38), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph;

(6) by striking paragraph (54) and inserting the following:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property.''; and

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

**SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.**

Section 104 of title 11, United States Code, as amended by section 322 of this Act, is amended by inserting ''522(f)(3),'' after ''522(d),'' each place it appears.

**SEC. 1203. EXTENSION OF TIME.**

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

**SEC. 1204. TECHNICAL AMENDMENTS.**

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking ''subsection (c) or (d) of''; and

(2) in section 552(b)(1), by striking ''product'' each place it appears and inserting ''products''.

**SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.**

Section 110(j)(4) of title 11, United States Code, as so designated by this Act, is amended by striking ''attorney's'' and inserting ''attorneys' ''.

**SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.**

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

**SEC. 1207. EFFECT OF CONVERSION.**

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

**SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.**

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

**SEC. 1209. EXCEPTIONS TO DISCHARGE.**

Section 523 of title 11, United States Code, as amended by this Act, is amended—

(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14);

(2) in subsection (a)(9), by striking ''motor vehicle'' and inserting ''motor vehicle, vessel, or aircraft''; and

(3) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

**SEC. 1210. EFFECT OF DISCHARGE.**

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1), or that''.

**SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.**

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

**SEC. 1212. PROPERTY OF THE ESTATE.**

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

**SEC. 1213. PREFERENCES.**

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (i)''; and

(2) by adding at the end the following:

''(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.''.

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

**SEC. 1214. POSTPETITION TRANSACTIONS.**

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'' each place it appears;

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

**SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.**

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

**SEC. 1216. GENERAL PROVISIONS.**

Section 901(a) of title 11, United States Code, as amended by this Act, is amended by inserting ''1123(d),'' after ''1123(b),''.

**SEC. 1217. ABANDONMENT OF RAILROAD LINE.**

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

**SEC. 1218. CONTENTS OF PLAN.**

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

**SEC. 1219. DISCHARGE UNDER CHAPTER 12.**

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking ''1222(b)(10)'' each place it appears and inserting ''1222(b)(9)''.

**SEC. 1220. BANKRUPTCY CASES AND PROCEEDINGS.**

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

**SEC. 1221. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.**

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before '' 'bankruptcy''; and

(B) by striking the period at the end and inserting ''; and''; and

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before '' 'document''; and

(B) by striking ''this title'' and inserting ''title 11''.

**SEC. 1222. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.**

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.''.

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.''.

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without considering whether

this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

**SEC. 1223. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.**

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''30''.

**SEC. 1224. EXTENSIONS.**

Section 302(d)(3) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended—

(1) in subparagraph (A), in the matter following clause (ii), by striking ''or October 1, 2002, whichever occurs first''; and

(2) in subparagraph (F)—

(A) in clause (i)—

(i) in subclause (II), by striking ''or October 1, 2002, whichever occurs first''; and

(ii) in the matter following subclause (II), by striking ''October 1, 2003, or''; and

(B) in clause (ii), in the matter following subclause (II)—

(i) by striking ''before October 1, 2003, or''; and

(ii) by striking '', whichever occurs first''.

**SEC. 1225. BANKRUPTCY JUDGESHIPS.**

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2001''.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the eastern district of California.

(B) Four additional bankruptcy judgeships for the central district of California.

(C) One additional bankruptcy judgeship for the district of Delaware.

(D) Two additional bankruptcy judgeships for the southern district of Florida.

(E) One additional bankruptcy judgeship for the southern district of Georgia.

(F) Two additional bankruptcy judgeships for the district of Maryland.

(G) One additional bankruptcy judgeship for the eastern district of Michigan.

(H) One additional bankruptcy judgeship for the southern district of Mississippi.

(I) One additional bankruptcy judgeship for the district of New Jersey.

(J) One additional bankruptcy judgeship for the eastern district of New York.

(K) One additional bankruptcy judgeship for the northern district of New York.

(L) One additional bankruptcy judgeship for the southern district of New York.

(M) One additional bankruptcy judgeship for the eastern district of North Carolina.

(N) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(O) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(P) One additional bankruptcy judgeship for the district of Puerto Rico.

(Q) One additional bankruptcy judgeship for the western district of Tennessee.

(R) One additional bankruptcy judgeship for the eastern district of Virginia.

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) shall not be filled if the vacancy—

(A) results from the death, retirement, resignation, or removal of a bankruptcy judge; and

(B) occurs 5 years or more after the appointment date of a bankruptcy judge appointed under paragraph (1).

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under paragraphs (1), (3), (7), (8), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring—

(A) 8 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 10 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 8 years or more after August 29, 1994, with respect to the district of Puerto Rico;

(D) 8 years or more after June 27, 1994, with respect to the district of South Carolina; and

(E) 8 years or more after November 23, 1993, with respect to the eastern district of Tennessee.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to temporary judgeship positions referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: ''Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the United States court of appeals for the circuit in which such district is located.''; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3''; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

**SEC. 1226. COMPENSATING TRUSTEES.**

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''and'';

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

(C) by adding at the end the following:

''(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

''(A) by prorating such amount over the remaining duration of the plan; and

''(B) by monthly payments not to exceed the greater of—

''(i) $25; or

''(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan.''; and

(2) by adding at the end the following:

''(d) Notwithstanding any other provision of this title—

''(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior proceeding under this title; and

''(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).''.

**SEC. 1227. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.**

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

''(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the filing of the petition;''.

**SEC. 1228. JUDICIAL EDUCATION.**

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test and reaffirmations under section 707(b) of title 11, United States Code, as amended by this Act.

**SEC. 1229. RECLAMATION.**

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) Except as provided in subsection (d) of this section and subsection (c) of section 507, and subject to the prior rights of holders of security interests in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, not later than 45 days after the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

''(A) not later than 45 days after the date of receipt of such goods by the debtor; or

''(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

''(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(7).''.

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

''(10) the value of any goods received by the debtor not later than 20 days after the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.''.

**SEC. 1230. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.**

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual seeking bankruptcy under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a bankruptcy case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

**SEC. 1231. ENCOURAGING CREDITWORTHINESS.**

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

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

**SEC. 1232. PROPERTY NO LONGER SUBJECT TO REDEMPTION.**

Section 541(b) of title 11, United States Code, is amended by inserting after paragraph (8), as added by this Act, the following:

''(9) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

''(A) the tangible personal property is in the possession of the pledgee or transferee;

''(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

''(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b) of this title; or''.

**SEC. 1233. TRUSTEES.**

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following:

''(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.''.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

''(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

''(4) The Attorney General shall prescribe procedures to implement this subsection.''.

**SEC. 1234. BANKRUPTCY FORMS.**

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

''The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.''.

**SEC. 1235. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS.**

(a) IN GENERAL.—Section 158 of title 28, United States Code, is amended—

(1) by striking subsection (d) and inserting the following:

''(d)(1) In a case in which the appeal is heard by the district court, the judgment, decision, order, or decree of the bankruptcy judge shall be deemed a judgment, decision, order, or decree of the district court entered 31 days after such appeal is filed with the district court, unless not later than 30 days after such appeal is filed with the district court—

''(A) the district court—

''(i) files a decision on the appeal from the judgment, decision, order, or decree of the bankruptcy judge; or

''(ii) enters an order extending such 30-day period for cause upon motion of a party or upon the court's own motion; or

''(B) all parties to the appeal file written consent that the district court may retain such appeal until it enters a decision.

''(2) For the purpose of this subsection, an appeal shall be considered filed with the district court on the date on which the notice of appeal is filed, except that in a case in which the appeal is heard by the district court because a party has made an election under subsection (c)(1)(B), the appeal shall be considered filed with the district court on the date on which such election is made.

''(e) The courts of appeals shall have jurisdiction of appeals from—

''(1) all final judgments, decisions, orders, and decrees of district courts entered under subsection (a);

''(2) all final judgments, decisions, orders, and decrees of bankruptcy appellate panels entered under subsection (b); and

''(3) all judgments, decisions, orders, and decrees of district courts entered under subsection (d) to the extent that such judgments, decisions, orders, and decrees would be reviewable by a district court under subsection (a).

''(f) In accordance with rules prescribed by the Supreme Court of the United States under sections 2072 through 2077, the court of appeals may, in its discretion, exercise jurisdiction over an appeal from an interlocutory judgment, decision, order, or decree under subsection (e)(3).''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 305(c) of title 11, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

(2) Section 1334(d) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

(3) Section 1452(b) of title 28, United States Code, is amended by striking ''section 158(d)'' and inserting ''subsection (e) or (f) of section 158''.

**SEC. 1236. EXEMPTIONS.**

Section 522(g)(2) of title 11, United States Code, is amended by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

## TITLE XIII—CONSUMER CREDIT DISCLOSURE

**SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.**

(a) MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum

Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

''(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

''(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

''(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

''(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Reform Act of 2001, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

''(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

''(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

''(H) The Board shall—

''(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

''(ii) establish the table required under clause (i) by assuming—

''(I) a significant number of different annual percentage rates;

''(II) a significant number of different account balances;

''(III) a significant number of different minimum payment amounts; and

''(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

''(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

''(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

''(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

''(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: _____.' (the blank space to be filled in by the creditor).''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

**SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.**

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISER.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''; and

(B) in subsection (b), by adding at the end the following:

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

**SEC. 1303. DISCLOSURES RELATED TO ''INTRODUCTORY RATES''.**

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

''(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

''(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

''(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

''(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

''(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

''(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

''(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

''(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(D) DEFINITIONS.—In this paragraph—

''(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

''(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

''(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

**SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.**

(a) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(7) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—

''(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

''(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

''(ii) the information described in paragraph (6).

''(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

''(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

''(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

''(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

**SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.**

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

''(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

''(B) The amount of the late payment fee to be imposed if payment is made after such date.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

**SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.**

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

**SEC. 1307. DUAL USE DEBIT CARD.**

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

**SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.**

(a) STUDY.—

(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of bankruptcy cases filed under title 11, United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

**SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.**

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term ''clear and conspicuous'', as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

**SEC. 1310. ENFORCEMENT OF CERTAIN FOREIGN JUDGMENTS BARRED.**

(a) IN GENERAL.—Notwithstanding any other provision of law or contract, a court within the United States shall not recognize or enforce any judgment rendered in a foreign court if, by clear and convincing evidence, the court in which recognition or enforcement of the judgment is sought determines that the judgment gives effect to any purported right or interest derived, directly or indirectly, from any fraudulent misrepresentation or fraudulent omission that occurred in the United States during the period beginning on January 1, 1975, and ending on December 31, 1993.

(b) EXCEPTION.—Subsection (a) shall not prevent recognition or enforcement of a judgment rendered in a foreign court if the foreign tribunal rendering judgment giving effect to the right or interest concerned determines that no fraudulent misrepresentation or fraudulent omission described in subsection (a) occurred.

**TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS**

**SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

## READING OF WASHINGTON'S FAREWELL ADDRESS

Mr. SESSIONS. Notwithstanding the resolution of the Senate of January 24, 1901, I ask unanimous consent that the Senate convene at 12 noon Monday, February 26, 2001; that immediately following the prayer, the disposition of the Journal, and the Pledge of Allegiance to the Flag, the traditional reading of Washington's Farewell Address take place, and that the Chair be authorized to appoint a Senator to perform this task.

The PRESIDING OFFICER. Without objection, it is so ordered.

## DISCHARGE AND REFERRAL—S. 21

Mr. SESSIONS. Mr. President, I ask unanimous consent that S. 21 be discharged from the Committee on Finance and be referred to the Committees on the Budget and Governmental Affairs per the order of August 4, 1977.

The PRESIDING OFFICER. Without objection, it is so ordered.

## APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to the order of the Senate of January 24, 1901, as modified by the order of January 30, 2001, appoints the Senator from Virginia (Mr. ALLEN) to read Washington's Farewell Address on February 26, 2001.

The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276d–276g, as amended, appoints the Senator from Washington (Mrs. MURRAY) as Co-Chair of the Senate Delegation to the Canada-U.S. Interparliamentary Group conference during the 107th Congress.

The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h–276k, as amended, appoints the Senator from Connecticut (Mr. DODD) as Co-Chairman of the Senate Delegation to the Mexico-U.S. Interparliamentary Group conference during the 107th Congress.

The Chair, on behalf of the Vice President, in accordance with 22 U.S.C. 1928a–1928d, as amended, appoints the Senator from Delaware (Mr. BIDEN) as Co-Chairman of the Senate Delegation to the North Atlantic Assembly during the 107th Congress.

## CONGRATULATING THE BALTIMORE RAVENS FOR WINNING SUPER BOWL XXXV

Mr. SESSIONS. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 15, submitted earlier today by Senators SARBANES and MIKULSKI.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 15) congratulating the Baltimore Ravens for winning Super Bowl XXXV.

There being no objection, the Senate proceeded to consider the resolution.

Ms. MIKULSKI. I stand to honor the Baltimore Ravens who soared over the Super Bowl winning 34–7.

I also want to honor the city of Baltimore. Baltimore has often been overlooked and under valued.

Baltimore is the comeback city: the crime rate is dropping; test scores are rising; we are building a digital harbor; and now we are the Super Bowl champs for the first time since 1971.

We want the world to get to know Baltimore as a dynamic city, a city of communities—that's unified around our values, our patriotism, and our Ravens, a city with a great football heritage—and a great football future.

I congratulate the Baltimore fans, loyal and with high energy. They spent 11 years without any team at all after our Colts snuck out of town. We now have the Ravens—and we're the Super Bowl champs. We deserved this win.

I congratulate owner Art Modell, who won his first Super Bowl in 40 years of owning the team; head coach Brian Bilick, who won after only 2 years as a head coach; Ray Lewis, named most valuable player; the Ravens defense, one of the best defensive teams ever, making records and Super Bowl history, allowing just 165 points in the 16-game regular season, and had caught four interceptions during the Super Bowl.

The Ravens' offense and special teams scored big. Quarterback, Trent Dilfer threw the first touchdown pass of the game and had no interceptions; Brandon Stokely caught a 38-yard touchdown pass; Jermaine Lewis, a Maryland native and former Maryland Terrapin, returned an 84-yard kick-off to put the game out of reach.

The resolution we are passing today commends the loyalty, community spirit and enthusiasm of the Baltimore fans, applauds the Baltimore Ravens for their high standards of character, perseverance, professionalism, excellence and teamwork, praises the Ravens for their community service, congratulates the Ravens and the New York Giants for a hard-fought, sportsmanlike Super Bowl, congratulates the Ravens and their fans for the Super Bowl victory, and recognizes the achievements of the players, coaches and support staff who made this win possible.

We have been celebrating since Sunday night.

Today we had a parade through Baltimore.

We gave the Ravens the key to our city; they already have the key to our hearts.

I just watched as our colleagues from New York made good on their bet and recited Edgar Allen Poe's ''The Raven.''

We want our colleagues to share in our excitement for our Ravens and for our city.

Mr. SESSIONS. I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 15) was agreed to.

The preamble was agreed to.

(The resolution is located in today's RECORD under ''Senate Resolutions.'')

## ORDERS FOR WEDNESDAY, JANUARY 31, 2001

Mr. SESSIONS. On behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 10 a.m. on Wednesday, January 31. I further ask consent that on Wednesday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business until 10:30 a.m. with Senators speaking for up to 5 minutes each, with the following exceptions: Senator BROWNBACK or his designee, 10 to 10:15 a.m.; Senator DURBIN or his designee, 10:15 to 10:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. On behalf of the majority leader, I further ask that following morning business the Senate proceed to executive session to begin consideration of the Ashcroft nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

## PROGRAM

Mr. SESSIONS. Tomorrow the Senate will be in a period of morning business from 10 a.m. to 10:30 a.m. Following morning business, the Senate will resume consideration of Senator Ashcroft's nomination to be Attorney General of the United States. Under the order, debate will occur throughout the day. It is hoped that we can schedule Senators in an alternating manner throughout the day.

## ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. SESSIONS. If there is no further business to come before the Senate, I now ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:14 p.m., adjourned until Wednesday, January 31, 2001, at 10 a.m.

## CONFIRMATIONS

Executive nominations confirmed by the Senate January 30, 2001:

DEPARTMENT OF THE INTERIOR

GALE ANN NORTON, OF COLORADO, TO BE SECRETARY OF THE INTERIOR.

ENVIRONMENTAL PROTECTION AGENCY

CHRISTINE TODD WHITMAN, OF NEW JERSEY, TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.