Internal Revenue Code of 1986 to allow as a deduction in determining adjusted gross income the deduction for expenses in connection with services as a member of a reserve component of the Armed Forces of the United States, to allow employers a credit against income tax with respect to employees who participate in the military reserve components, and to allow a comparable credit for participating reserve component self-employed individuals, and for other purposes.

S. 571

At the request of Mr. THURMOND, the names of the Senator from Utah (Mr. BENNETT) and the Senator from Hawaii (Mr. INOUYE) were added as a cosponsors of S. 571, a bill to provide for the location of the National Museum of the United States Army.

S. 626

At the request of Mr. JEFFORDS, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 626, a bill to amend the Internal Revenue Code of 1986 to permanently extend the work opportunity credit and the welfare-to-work credit, and for other purposes.

S. 682

At the request of Mr. MCCAIN, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 682, a bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test.

S. 706

At the request of Mr. KERRY, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 706, a bill to amend the Social Security Act to establish programs to alleviate the nursing profession shortage, and for other purposes.

S. 742

At the request of Mr. GRASSLEY, the names of the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Virginia (Mr. WARNER), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Missouri (Mrs. CARNAHAN) were added as a cosponsors of S. 742, a bill to provide for pension reform, and for other purposes.

S. 760

At the request of Mr. HATCH, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 760, a bill to amend the Internal Revenue Code of 1986 to encourage and accelerate the nationwide production, retail sale, and consumer use of new motor vehicles that are powered by fuel cell technology, hybrid technology, battery electric technology, alternative fuels, or other advanced motor vehicle technologies, and for other purposes.

S. 778

At the request of Mr. HAGEL, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 778, a bill to expand the class of beneficiaries who may apply for adjustment of status under section 245(i) of the Immigration and Nationality Act by extending the deadline for classification petition and labor certification filings.

S. 823

At the request of Mr. GRAHAM, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 823, a bill to assure access under group health plans and health insurance coverage to covered emergency medical services.

S. 828

At the request of Mr. LIEBERMAN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 828, a bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for certain energy-efficient property.

S. 830

At the request of Mr. CHAFEE, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 830, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 837

At the request of Mr. BOND, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 837, a bill to amend the Internal Revenue Code of 1986 to provide a safe harbor for determining that certain individuals are not employees.

S. 839

At the request of Mrs. HUTCHISON, the names of the Senator from Maine (Ms. COLLINS) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 839, a bill to amend title XVIII of the Social Security Act to increase the amount of payment for inpatient hospital services under the medicare program and to freeze the reduction in payments to hospitals for indirect costs of medical education.

S.J. RES. 7

At the request of Mr. HATCH, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S.J. Res. 7, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

S.J. RES. 13

At the request of Mr. WARNER, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S.J. Res. 13, a joint resolution conferring honorary citizenship of the United States on Paul Yves Roch Gilbert du Motier, also known as the Marquis de Lafayette.

S. RES. 63

At the request of Mr. CAMPBELL, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. Res. 63, a resolution commemorating and acknowledging the dedication and sacrifice made by the men and women who have lost their lives while serving as law enforcement officers.

S. RES. 75

At the request of Mr. HUTCHINSON, the names of the Senator from Utah (Mr. HATCH), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Tennessee (Mr. FRIST), and the Senator from Colorado (Mr. CAMPBELL) were added as cosponsors of S. Res. 75, a resolution designating the week begining May 13, 2001, as ''National Biotechnology Week.''

S. RES. 80

At the request of Mrs. MURRAY, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of S. Res. 80, a resolution honoring the ''Whidbey 24'' for their professionalism, bravery, and courage.

S. CON. RES. 36

At the request of Mr. MCCAIN, the name of the Senator from North Carolina (Mr. EDWARDS) was added as a cosponsor of S. Con. Res. 36, a concurrent resolution honoring the National Science Foundation for 50 years of service to the Nation.

AMENDMENT NO. 378

At the request of Mrs. MURRAY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was withdrawn as a cosponsor of amendment No. 378.

AMENDMENT NO. 379

At the request of Ms. MIKULSKI, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of amendment No. 379.

AMENDMENT NO. 389

At the request of Mr. VOINOVICH, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of amendment No. 389.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. FEINSTEIN (for herself and Mr. GREGG):

S. 848. A bill to amend title 18, United States Code, to limit the misuse of social security numbers, to establish criminal penalties for such misuse, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am pleased, along with Senator GREGG, to introduce the ''Social Security Number Misuse Prevention Act.'' This legislation combats identity theft by making it harder for criminals to steal another person's Social Security number, our de facto national identifier.

The United States faces a growing identity theft crisis. The Federal Bureau of Investigation estimates 350,000 cases of identity theft occur each year. That's one case every two minutes.

The Federal Trade Commission, FTC, reports that identity theft is the fastest growing crime in the country. If recent trends continue, reports of identity theft to the FTC will double between 2000 and 2001, to over 60,000 cases.

Fully 40 percent of all consumer fraud complaints received by the FTC in the first three months of 2001 involved identity theft.

Unfortunately, the State most affected by these complaints is California. Fully 17 percent of the identity theft complaints the FTC received this past winter came from my home state.

What is identity theft? Identity theft occurs when one person uses another person's Social Security number, birth date, driver's license number, or other identifying information to obtain credit cards, car loans, phone plans or other services in the victim's name.

Identity thieves can get personal information in a myriad of ways, stealing wallets and purses containing identification cards, using personal information found on the Internet, stealing mail, including pre-approved credit offers and credit statements, fraudulently obtaining credit reports or getting personnel records at work.

Of all sources of identity theft, the most common trigger of the crime is the misappropriation of a person's Social Security number. Reports to the Social Security Administration of the Social Security number misuse have increased from 7,868 in 1997 to 46,839 in 2000, an astonishing increase of over 500 percent.

Let me give some examples of victims whose identities were stolen after a thief got hold of their Social Security number: An identity theft ring in Riverside County allegedly bilked eight victims of $700,000. The thieves stole personal information of employees at a large phone company and drained their on-line stock accounts. One employee reportedly had $285,000 taken from his account when someone was able to access his account by supplying the employee's name and social Security number. Three youths robbed a young woman on a San Francisco MUNI bus. The thieves stole her driver's license and social security card. While the victim was traveling over the Christmas holiday, the thieves represented themselves as her and drained her bank accounts, applied for cell phones, credit cards and other accounts. They also redirected her mail to a general delivery post to the Tenderloin. Amy Boyer, a 20 year-old dental assistant from Maine was killed in 1999 by a stalker who bought her Social Security number off the Internet for $45, and then used it to locate her work address. Michelle Brown of Los Angeles, California, had her Social Security number stolen in 1999, and it was used to charge $50,000 including a $32,000 truck, a $5,000 liposuction operation, and a year-long residential lease. While assuming the victim's name, the perpetrator also became the object of an arrest warrant for drug smuggling in Texas.

This bill proposes concrete measures to get Social Security numbers beyond the reach of criminals.

The bill prohibits anyone from selling or displaying a Social Security number to the general public without the Social Security number holder's consent.

No longer will identity thieves or stalkers, like the man who killed Amy Boyer, be able to log anonymously onto a website and obtain another person's Social Security number. Information brokers will no longer be able to sell Social Security numbers to anyone who asks for a nominal fee.

The bill also requires Federal, State, and local governments to take affirmative steps to protect Social Security numbers. Before giving out records such as bankruptcy filings, liens, or birth certificates to the general public, government entities will need to redact the Social Security number.

Thus, identity thieves can no longer mine Social Security numbers from county clerks' offices or state records offices.

In addition, the bill prohibits States from using Social Security numbers as identifying numbers on drivers licenses or printing Social Security numbers on checks.

Privacy advocates contend half of all identity theft cases stem from lost or stolen wallets. Public entities should not put individuals at risk by requiring them to carry cards which contain Social Security numbers on them.

In addition, the bill will empower individuals who wish to keep their Social Security numbers confidential and out of public circulation. Companies will be prohibited from denying an individual a good or service if he refuses to give out his Social Security number.

In recognition of the needs of the business community, this legislation permits businesses to use Social Security numbers with appropriate safeguards for internal uses or in transactions with other businesses.

I want to state up front that the business-to-business exception is an area of significant compromise. As a matter of policy, I believe that a Social Security number, like other sensitive elements of personal information, should be under the control of the person to whom it belongs.

I also understand that many businesses, unfortunately, rely extensively on Social Security numbers to conduct a range of transactions. Some of these transactions include checking databases to ensure the identity of a customer or purchaser.

The cost of changing to other identifiers can be significant. One California health care company, for example, conducted an internal study on how much it would cost to switch from Social Security numbers to another customer identifier. The price tag was over $25 million.

The bill directs the Attorney General to implement rules to permit legitimate business-to-business transactions, but prevent abuse. The Attorney general must consider several factors in the rulemaking: (i) The need for appropriate safeguards so that employees cannot misappropriate Social Security numbers, and (ii) The need to implement procedures to prevent identity thieves, stalkers, and others with ill intent from posing as legitimate businesses to obtain Social Security numbers.

In drafting the rule, the Attorney General must ensure that any business-to-businesss exception is consistent with other privacy laws, including Gramm-Leach-Bliley.

Thus, the bill would be consistent with a district court ruling issued last week that recognized limits on financial institutions' use of Social Security numbers. In Individual Reference Services Group v. Federal Trade Commission, the court held Gramm-Leach-Bliley requires banks to give consumers the opportunity to opt-out before their Social Security number is sold. I would like to submit into the record a copy of a Los Angeles Times article describing the decision.

I would like to thank Senator GREGG for working so hard with me to draft this legislation. I am pleased to report that this bill has garnered the support of the Attorney General of California, Bill Lockyer, Los Angeles County Sheriff Lee Baca, Crimes Victims United of California, the Los Angeles Coalition of Crime Victim Advocates, and the Doris Tate Crime Victims Bureau.

Over 350,000 people a year are victims of identity theft, and the numbers continue to grow. Passing the ''Social Security Number Misuse Prevention Act'' will help curb this crime by restricting criminal access to Social Security numbers.

I look forward to working with my colleagues in getting this commonsense bill enacted into law.

I ask unanimous consent that the text of the bill and the article to which I referred be printed in the RECORD.

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

S. 848

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Social Security Number Misuse Prevention Act of 2001''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Prohibition of the display, sale, or purchase of social security numbers.
Sec. 4. No prohibition with respect to public records.
Sec. 5. Rulemaking authority of the Attorney General.
Sec. 6. Treatment of social security numbers on government documents.
Sec. 7. Limits on personal disclosure of a social security number for consumer transactions.
Sec. 8. Extension of civil monetary penalties for misuse of a social security number.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The inappropriate display, sale, or purchase of social security numbers has contributed to a growing range of illegal activities,

including fraud, identity theft, and, in some cases, stalking and other violent crimes.

(2) While financial institutions, health care providers, and other entities have often used social security numbers to confirm the identity of an individual, the general display to the public, sale, or purchase of these numbers has been used to commit crimes, and also can result in serious invasions of individual privacy.

(3) The Federal Government requires virtually every individual in the United States to obtain and maintain a social security number in order to pay taxes, to qualify for social security benefits, or to seek employment. An unintended consequence of these requirements is that social security numbers have become tools that can be used to facilitate crime, fraud, and invasions of the privacy of the individuals to whom the numbers are assigned. Because the Federal Government created and maintains this system, and because the Federal Government does not permit individuals to exempt themselves from those requirements, it is appropriate for the Federal Government to take steps to stem the abuse of this system.

(4) A social security number does not contain, reflect, or convey any publicly significant information or concern any public issue. The display, sale, or purchase of such numbers in no way facilitates uninhibited, robust, and wide-open public debate, and restrictions on such display, sale, or purchase would not affect public debate.

(5) No one should seek to profit from the display, sale, or purchase of social security numbers in circumstances that create a substantial risk of physical, emotional, or financial harm to the individuals to whom those numbers are assigned.

(6) Consequently, this Act offers each individual that has been assigned a social security number necessary protection from the display, sale, and purchase of that number in any circumstance that might facilitate unlawful conduct.

SEC. 3. PROHIBITION OF THE DISPLAY, SALE, OR PURCHASE OF SOCIAL SECURITY NUMBERS.

(a) PROHIBITION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1028 the following:

"§ 1028A. Prohibition of the display, sale, or purchase of social security numbers

''(a) DEFINITIONS.—In this section:

''(1) DISPLAY.—The term 'display' means to intentionally communicate or otherwise make available (on the Internet or in any other manner) to the general public an individual's social security number.

''(2) PERSON.—The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, or any other entity.

''(3) PURCHASE.—The term 'purchase' means providing directly or indirectly, anything of value in exchange for a social security number.

''(4) SALE.—The term 'sale' means obtaining, directly or indirectly, anything of value in exchange for a social security number.

''(5) STATE.—The term 'State' means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

''(b) LIMITATION ON DISPLAY.—Except as provided in section 1028B, no person may display any individual's social security number to the general public without the affirmatively expressed consent of the individual.

''(c) LIMITATION ON SALE OR PURCHASE.—Except as otherwise provided in this section, no person may sell or purchase any individual's social security number without the affirmatively expressed consent of the individual.

''(d) PROHIBITION OF WRONGFUL USE AS PERSONAL IDENTIFICATION NUMBER.—No person may obtain any individual's social security number for purposes of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for any illegal purpose.

''(e) PREREQUISITES FOR CONSENT.—In order for consent to exist under subsection (b) or (c), the person displaying or seeking to display, selling or attempting to sell, or purchasing or attempting to purchase, an individual's social security number shall—

''(1) inform the individual of the general purpose for which the number will be used, the types of persons to whom the number may be available, and the scope of transactions permitted by the consent; and

''(2) obtain the affirmatively expressed consent (electronically or in writing) of the individual.

''(f) EXCEPTIONS.—

''(1) IN GENERAL.—Except as provided in subsection (d), nothing in this section shall be construed to prohibit or limit the display, sale, or purchase of a social security number—

''(A) permitted, required, or excepted, expressly or by implication, under section 205(c)(2), 1124A(a)(3), or 1141(c) of the Social Security Act (42 U.S.C. 405(c)(2), 1320a–3a(a)(3), and 1320b–11(c)), section 7(a)(2) of the Privacy Act of 1974 (5 U.S.C. 552a note), section 6109(d) of the Internal Revenue Code of 1986, or section 6(b)(1) of the Professional Boxing Safety Act of 1996 (15 U.S.C. 6305(b)(1));

''(B) for a public health purpose, including the protection of the health or safety of an individual in an emergency situation;

''(C) for a national security purpose;

''(D) for a law enforcement purpose, including the investigation of fraud, as required under subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), and the enforcement of a child support obligation;

''(E) if the display, sale, or purchase of the number is for a business-to-business use, including, but not limited to—

''(i) the prevention of fraud (including fraud in protecting an employee's right to employment benefits);

''(ii) the facilitation of credit checks or the facilitation of background checks of employees, prospective employees, and volunteers;

''(iii) compliance with any requirement related to the social security program established under title II of the Social Security Act (42 U.S.C. 401 et seq.); or

''(iv) the retrieval of other information from, or by, other businesses, commercial enterprises, or private nonprofit organizations,

except that, nothing in this subparagraph shall be construed as permitting a professional or commercial user to display or sell a social security number to the general public;

''(F) if the transfer of such a number is part of a data matching program under the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a note) or any similar computer data matching program involving a Federal, State, or local agency; or

''(G) if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program.

''(g) CIVIL ACTION IN UNITED STATES DISTRICT COURT; DAMAGES; ATTORNEY'S FEES AND COSTS.—

''(1) IN GENERAL.—Any individual aggrieved by any act of any person in violation of this section may bring a civil action in a United States district court to recover—

''(A) such preliminary and equitable relief as the court determines to be appropriate; and

''(B) the greater of—

''(i) actual damages;

''(ii) liquidated damages of $2,500; or

''(iii) in the case of a violation that was willful and resulted in profit or monetary gain, liquidated damages of $10,000.

''(2) STATUTE OF LIMITATIONS.—No action may be commenced under this subsection more than 3 years after the date on which the violation was or should reasonably have been discovered by the aggrieved individual.

''(3) NONEXCLUSIVE REMEDY.—The remedy provided under this subsection shall be in addition to any other remedy available to the individual.

''(h) CIVIL PENALTIES.—

''(1) IN GENERAL.—Any person who the Attorney General determines has violated this section shall be subject, in addition to any other penalties that may be prescribed by law—

''(A) to a civil penalty of not more than $5,000 for each such violation; and

''(B) to a civil penalty of not more than $50,000, if the violations have occurred with such frequency as to constitute a general business practice.

''(2) DETERMINATION OF VIOLATIONS.—Any willful violation committed contemporaneously with respect to the social security numbers of 2 or more individuals by means of mail, telecommunication, or otherwise, shall be treated as a separate violation with respect to each such individual.

''(3) ENFORCEMENT PROCEDURES.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a), other than subsections (a), (b), (f), (h), (i), (j), (m), and (n) and the first sentence of subsection (c) of such section, and the provisions of subsections (d) and (e) of section 205 of such Act (42 U.S.C. 405) shall apply to a civil penalty under this subsection in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of such Act (42 U.S.C. 1320a–7a(a)), except that, for purposes of this paragraph, any reference in section 1128A of such Act (42 U.S.C. 1320a–7a) to the Secretary shall be deemed to be a reference to the Attorney General.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1028 the following:

''1028A. Prohibition of the display, sale, or purchase of social security numbers.''.

(b) CRIMINAL SANCTIONS.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) in paragraph (8), by inserting ''or'' after the semicolon; and

(2) by inserting after paragraph (8) the following new paragraphs:

''(9) except as provided in paragraph (5) of section 1028A(a) of title 18, United States Code, knowingly and willfully displays, sells, or purchases (as those terms are defined in paragraph (1) of such section) any individual's social security number (as defined in such paragraph) without the affirmatively expressed consent of that individual after having met the prerequisites for consent under paragraph (4) of such section, electronically or in writing, with respect to that individual; or

''(10) obtains any individual's social security number for the purpose of locating or identifying the individual with the intent to injure or to harm that individual, or to use the identity of that individual for an illegal purpose;''.

(c) EFFECTIVE DATE.—Section 1028A of title 18, United States Code (as added by subsection (a)), and section 208 of the Social Security Act (42 U.S.C. 408) (as amended by subsection (b)) shall take effect 30 days after the date on which the final regulations promulgated under section 5(b) are published in the Federal Register.

SEC. 4. NO PROHIBITION WITH RESPECT TO PUBLIC RECORDS.

(a) PUBLIC RECORDS EXCEPTION.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code (as amended by section 3(a)(1)), is amended by inserting after section 1028A the following:

"§ 1028B. No prohibition of the display, sale, or purchase of social security numbers included in public records

''(a) IN GENERAL.—Nothing in section 1028A shall be construed to prohibit or limit the display, sale, or purchase of any public record which includes a social security number that—

''(1) is incidentally included in a public record, as defined in subsection (d);

''(2) is intended to be purchased, sold, or displayed pursuant to an exception contained in section 1028A(f);

''(3) is intended to be purchased, sold, or displayed pursuant to the consent provisions of subsections (b), (c), and (e) of section 1028A; or

''(4) includes a redaction of the nonincidental occurrences of the social security numbers when sold or displayed to members of the general public.

''(b) AGENCY REQUIREMENTS.—Each agency in possession of documents that contain social security numbers which are nonincidental, shall, with respect to such documents—

''(1) ensure that access to such numbers is restricted to persons who may obtain them in accordance with applicable law;

''(2) require an individual who is not exempt under section 1028A(f) to provide the social security number of the person who is the subject of the document before making such document available; or

''(3) redact the social security number from the document prior to providing a copy of the requested document to an individual who is not exempt under section 1028A(f) and who is unable to provide the social security number of the person who is the subject of the document.

''(c) RULE OF CONSTRUCTION.—Nothing in this section shall be used as a basis for permitting or requiring a State or local government entity or other repository of public documents to expand or to limit access to documents containing social security numbers to entities covered by the exception in section 1028A(f).

''(d) DEFINITIONS.—In this section:

''(1) INCIDENTAL.—The term 'incidental' means that the social security number is not routinely displayed in a consistent and predictable manner on the public record by a government entity, such as on the face of a document.

''(2) PUBLIC RECORD.—The term 'public record' means any item, collection, or grouping of information about an individual that is maintained by a Federal, State, or local government entity and that is made available to the public.''.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code (as amended by section 3(a)(2)), is amended by inserting after the item relating to section 1028A the following:

''1028B. No prohibition of the display, sale, or purchase of social security numbers included in public records.''.

SEC. 5. RULEMAKING AUTHORITY OF THE ATTORNEY GENERAL.

(a) IN GENERAL.—Except as provided in subsection (b), the Attorney General may prescribe such rules and regulations as the Attorney General deems necessary to carry out the provisions of section 3.

(b) BUSINESS-TO-BUSINESS COMMERCIAL DISPLAY, SALE, OR PURCHASE RULEMAKING.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Attorney General, in consultation with the Commissioner of Social Security, the Federal Trade Commission, and such other Federal agencies as the Attorney General determines appropriate, may conduct such rulemaking procedures in accordance with subchapter II of chapter 5 of title 5, United States Code, as are necessary to promulgate regulations to implement and clarify the business-to-business provisions pertaining to section 1028A(f)(1)(E) of title 18, United States Code (as added by section 3(a)(1)). The Attorney General shall consult with other agencies to ensure, where possible, that these provisions are consistent with other privacy laws, including title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.).

(2) FACTORS TO BE CONSIDERED.—In promulgating the regulations required under paragraph (1), the Attorney General shall, at a minimum, consider the following factors:

(A) The benefit to a particular business practice and to the general public of the sale or purchase of an individual's social security number.

(B) The risk that a particular business practice will promote the use of the social security number to commit fraud, deception, or crime.

(C) The presence of adequate safeguards to prevent the misappropriation of social security numbers by the general public , while permitting internal business uses of such numbers.

(D) The implementation of procedures to prevent identity thieves, stalkers, and others with ill intent from posing as legitimate businesses to obtain social security numbers.

SEC. 6. TREATMENT OF SOCIAL SECURITY NUMBERS ON GOVERNMENT DOCUMENTS.

(a) PROHIBITION OF USE OF SOCIAL SECURITY ACCOUNT NUMBERS ON CHECKS ISSUED FOR PAYMENT BY GOVERNMENTAL AGENCIES.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by adding at the end the following new clause:

''(x) No Federal, State, or local agency may display the social security account number of any individual, or any derivative of such number, on any check issued for any payment by the Federal, State, or local agency.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to violations of section 205(c)(2)(C)(x) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(x)), as added by paragraph (1), occurring after the date that is 3 years after the date of enactment of this Act.

(b) PROHIBITION OF APPEARANCE OF SOCIAL SECURITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR MOTOR VEHICLE REGISTRATION.—

(1) IN GENERAL.—Section 205(c)(2)(C)(vi) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi)) is amended—

(A) by inserting ''(I)'' after ''(vi)''; and

(B) by adding at the end the following new subclause:

''(II)(aa) An agency of a State (or political subdivision thereof), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not disclose the social security account numbers issued by the Commissioner of Social Security, or any derivative of such numbers, on any driver's license or motor vehicle registration or any other document issued by such State (or political subdivision thereof) to an individual for purposes of identification of such individual.

''(bb) Nothing in this subclause shall be construed as precluding an agency of a State (or political subdivision thereof), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, from using a social security account number for an internal use or to link with the database of an agency of another State that is responsible for the administration of any driver's license or motor vehicle registration law.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to licenses, registrations, and other documents issued or reissued after the date that is 1 year after the date of enactment of this Act.

(c) PROHIBITION OF INMATE ACCESS TO SOCIAL SECURITY ACCOUNT NUMBERS.—

(1) IN GENERAL.—Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) (as amended by subsection (b)) is amended by adding at the end the following new clause:

''(xi) No Federal, State, or local agency may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the social security account numbers of other individuals. For purposes of this clause, the term 'prisoner' means an individual confined in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of a criminal offense.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to employment of prisoners, or entry into contract with prisoners, after the date that is 1 year after the date of enactment of this Act.

SEC. 7. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

(a) IN GENERAL.—Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"SEC. 1150A. LIMITS ON PERSONAL DISCLOSURE OF A SOCIAL SECURITY NUMBER FOR CONSUMER TRANSACTIONS.

''(a) IN GENERAL.—A commercial entity may not require an individual to provide the individual's social security number when purchasing a commercial good or service or deny an individual the good or service for refusing to provide that number except—

''(1) for any purpose relating to—

''(A) obtaining a consumer report for any purpose permitted under the Fair Credit Reporting Act;

''(B) a background check of the individual conducted by a landlord, lessor, employer, voluntary service agency, or other entity as determined by the Attorney General;

''(C) law enforcement; or

''(D) a Federal or State law requirement; or

''(2) if the social security number is necessary to verify identity and to prevent fraud with respect to the specific transaction requested by the consumer and no other form of identification can produce comparable information.

''(b) OTHER FORMS OF IDENTIFICATION.—Nothing in this section shall be construed to prohibit a commercial entity from—

''(1) requiring an individual to provide 2 forms of identification that do not contain the social security number of the individual; or

''(2) denying an individual a good or service for refusing to provide 2 forms of identification that do not contain such number.

''(c) APPLICATION OF CIVIL MONEY PENALTIES.—A violation of this section shall be deemed to be a violation of section 1129(a)(3)(F).

''(d) APPLICATION OF CRIMINAL PENALTIES.—A violation of this section shall be deemed to be a violation of section 208(a)(8).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to requests to provide a social security number made on or after the date of enactment of this Act.

SEC. 8. EXTENSION OF CIVIL MONETARY PENALTIES FOR MISUSE OF A SOCIAL SECURITY NUMBER.

(a) TREATMENT OF WITHHOLDING OF MATERIAL FACTS.—

(1) CIVIL PENALTIES.—The first sentence of section 1129(a)(1) of the Social Security Act (42 U.S.C. 1320a–8(a)(1)) is amended—

(A) by striking ''who'' and inserting ''who—'';

(B) by striking ''makes'' and all that follows through ''shall be subject to'' and inserting the following:

''(A) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

''(B) makes such a statement or representation for such use with knowing disregard for the truth; or

''(C) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to'';

(C) by inserting ''or each receipt of such benefits while withholding disclosure of such fact'' after ''each such statement or representation'';

(D) by inserting ''or because of such withholding of disclosure of a material fact'' after ''because of such statement or representation''; and

(E) by inserting ''or such a withholding of disclosure'' after ''such a statement or representation''.

(2) ADMINISTRATIVE PROCEDURE FOR IMPOSING PENALTIES.—The first sentence of section 1129A(a) of the Social Security Act (42 U.S.C. 1320a–8a(a)) is amended—

(A) by striking ''who'' and inserting ''who—''; and

(B) by striking ''makes'' and all that follows through ''shall be subject to'' and inserting the following new paragraphs:

''(1) makes, or causes to be made, a statement or representation of a material fact, for use in determining any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI, that the person knows or should know is false or misleading;

''(2) makes such a statement or representation for such use with knowing disregard for the truth; or

''(3) omits from a statement or representation for such use, or otherwise withholds disclosure of, a fact which the individual knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits under title II or benefits or payments under title VIII or XVI and the individual knows, or should know, that the statement or representation with such omission is false or misleading or that the withholding of such disclosure is misleading,

shall be subject to''.

(b) APPLICATION OF CIVIL MONEY PENALTIES TO ELEMENTS OF CRIMINAL VIOLATIONS.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8(a)), as amended by subsection (a)(1), is amended—

(1) by redesignating paragraph (2) as paragraph (4);

(2) by redesignating the last sentence of paragraph (1) as paragraph (2) and inserting such paragraph after paragraph (1); and

(3) by inserting after paragraph (2) (as so redesignated) the following new paragraph:

''(3) Any person (including an organization, agency, or other entity) who—

''(A) uses a social security account number that such person knows or should know has been assigned by the Commissioner of Social Security (in an exercise of authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Commissioner by any person;

''(B) falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to any individual, when such person knows or should know that such number is not the social security account number assigned by the Commissioner to such individual;

''(C) knowingly alters a social security card issued by the Commissioner of Social Security, or possesses such a card with intent to alter it;

''(D) knowingly displays, sells, or purchases a card that is, or purports to be, a card issued by the Commissioner of Social Security, or possesses such a card with intent to display, purchase, or sell it;

''(E) counterfeits a social security card, or possesses a counterfeit social security card with intent to display, sell, or purchase it;

''(F) discloses, uses, compels the disclosure of, or knowingly displays, sells, or purchases the social security account number of any person in violation of the laws of the United States;

''(G) with intent to deceive the Commissioner of Social Security as to such person's true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner with respect to any information required by the Commissioner in connection with the establishment and maintenance of the records provided for in section 205(c)(2);

''(H) offers, for a fee, to acquire for any individual, or to assist in acquiring for any individual, an additional social security account number or a number which purports to be a social security account number; or

''(I) being an officer or employee of a Federal, State, or local agency in possession of any individual's social security account number, willfully acts or fails to act so as to cause a violation by such agency of clause (vi)(II) or (x) of section 205(c)(2)(C),

shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each violation. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from such violation, of not more than twice the amount of any benefits or payments paid as a result of such violation.''.

(c) CLARIFICATION OF TREATMENT OF RECOVERED AMOUNTS.—Section 1129(e)(2)(B) of the Social Security Act (42 U.S.C. 1320a–8(e)(2)(B)) is amended by striking ''In the case of amounts recovered arising out of a determination relating to title VIII or XVI,'' and inserting ''In the case of any other amounts recovered under this section,''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1129(b)(3)(A) of the Social Security Act (42 U.S.C. 1320a–8(b)(3)(A)) is amended by striking ''charging fraud or false statements''.

(2) Section 1129(c)(1) of the Social Security Act (42 U.S.C. 1320a–8(c)(1)) is amended by striking ''and representations'' and inserting '', representations, or actions''.

(3) Section 1129(e)(1)(A) of the Social Security Act (42 U.S.C. 1320a–8(e)(1)(A)) is amended by striking ''statement or representation referred to in subsection (a) was made'' and inserting ''violation occurred''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to violations of sections 1129 and 1129A of the Social Security Act (42 U.S.C. 1320–8 and 1320a–8a), as amended by this section, committed after the date of enactment of this Act.

(2) VIOLATIONS BY GOVERNMENT AGENTS IN POSSESSION OF SOCIAL SECURITY NUMBERS.—Section 1129(a)(3)(I) of the Social Security Act (42 U.S.C. 1320a–8(a)(3)(I)), as added by subsection (b), shall apply with respect to violations of that section occurring on or after the effective date under section 3(c).

[From the Los Angeles Times, May 8, 2001]

CURB ON SALE OF CONSUMER DATA UPHELD

(By Edmund Sanders)

WASHINGTON.—In a victory for privacy advocates, a federal judge has upheld a proposed government regulation that would effectively end the long-standing practice by credit bureaus of selling consumers' names, addresses and Social Security numbers to marketers, information brokers and others.

Industry groups are likely to appeal the decision by District Judge Ellen Segal Huvelle, which was disclosed Monday by the Federal Trade Commission. If the decision is upheld, the rule—issued by the FTC last year and set to take effect in July—would work dramatic changes in the way businesses rely upon the credit bureaus' databases for everything from updating junk-mail lists to locating debtors.

''It's going to set a higher barrier for the privacy of this kind of information,'' said Robert Gellman, a privacy consultant in Washington.

Credit bureaus and information brokers, who filed suit last year to block the FTC rules, warned that the court decision may have unintended consequences.

''There are many beneficial uses for this information,'' said Clark Walter, a spokesman for Trans Union, the Chicago-based credit bureau. He said the databases are used to find fugitives, parents who owe child support, missing heirs and runaway children. ''How these particular functions would be affected remains to be seen,'' Walter said.

At the heart of the dispute is the top portion of consumer credit reports, known as the credit ''header,'' which is typically limited to a person's name, address, birth date and Social Security number. The header does not include financial information about credit history or bank accounts, which can be released only to creditors and others with a legal right to see it.

Because it has been considered less sensitive, credit header information has been sold for years. Customers include marketing firms, law enforcement agencies, private investigators and journalists.

Last year, the FTC issued rules to prohibit credit bureaus from continuing to sell the information unless consumers had first been given an opportunity to block the practice. The agency said the rule was mandated by Congress as part of a 1999 financial modernization law, which called for new privacy

protections for consumers' financial information.

The Individual Reference Services Group, a trade group of information companies, argued that the FTC had misinterpreted the law. ''We don't think a name and address is 'financial information' under the statute,'' said Ronald Plesser, attorney for the trade group. The companies also argued that the rules violated their constitutional right to free speech.

The FTC countered that any personally identifiable information provided to financial institutions, even if available from other public sources, should be covered by the law.

The disclosure of Social Security numbers, in particular, raised the hackles of privacy advocates, who say the practice has led to an increase in identity theft and other fraud.

In her 62-page ruling, dated April 30, Huvelle said the regulations were lawful and constitutional. ''This gives consumer more control over how their information is used,'' said John Daly, assistant general counsel at the FTC.

The decision marks the latest defeat for credit bureaus and information brokers, whose operating environment is increasingly hostile.

A federal appeals court ruled last month that Trans Union may no longer sell marketing lists based upon certain financial characteristics, such as consumers with three or more credit cards, culled from credit reports.

The FTC banned the practice in 1992, saying it violated federal laws prohibiting the use of credit information for marketing purposes. The other two major credit bureaus halted the practice, but Trans Union continued to sell such lists.

If credit bureaus are prohibited from selling credit header data, businesses will probably turn to other sources, such as the change-of-address database at the U.S. Postal Service or voter registration records.

Mr. GREGG. Mr. President, on October 15, 1999, Amy Boyer, a young woman from Nashua, NH, was killed by a man who went on the Internet, purchased her social security number for $45, used it to find her place of work and kill her.

As a result of that tragic event, and countless others I have subsequently become aware of, it became clear to me that the sale of social security numbers on the Internet was dangerous and needed to be stopped.

Last year, I introduced Amy Boyer's law to do just that. The purpose of that legislation was twofold. First, to ensure that people like Amy Boyer's killer would not be able to purchase social security numbers and second, to prevent companies like Dogpile, and Docusearch.com from being able to sell social security numbers without an individual's consent.

Amy Boyer's law accomplished both of these objectives but became mired down in controversy, frankly from both sides, over how to strike a balance between legitimate business and other lawful uses of the social security number which are necessary in many instances to prevent fraud and identity theft and a desire on the part of the privacy organizations to significantly limit public access to social security numbers.

Let's face it, like it or not, the Social Security Number has become a national identifier of sorts and in many instances, is the only way to ensure accurate identification of people. Health care providers use the social security number to maintain our health records to ensure we are receiving the services we need; banks and financial institutions use them to prevent fraud—a social security number tells them that a loan applicant is exactly who he says he is. The National Center for Missing and Exploited Children and the Association for Children for Enforcement of Support, ACES, use social security numbers to track down kidnappers and deadbeat dads. Big Brothers/Big Sisters of America use social security numbers to do background checks on volunteers to make sure that they are not felons or child molesters. A truly blanket prohibition that did not include any exceptions whatsoever would close-out the above uses. In reality, nobody wants this.

Unfortunately, we were unable to reach a suitable compromise before adjourning last session, but I am pleased today to introduce, with Senator FEINSTEIN, after many months of very hard work, the Social Security Number Misuse Prevention Act of 2001.

This is indeed a compromise proposal. Both Senator FEINSTEIN and myself have had countless meetings with parties interested in this issue and have produced, what I believe to be, a good product. It is not a perfect product, but it is a good first step toward balancing significant diverging interests. We will, of course, continue to work with interested parties to perfect this legislation, but we have agreed in concept to certain key principles.

First, the public access to the social security number must be limited because of the significant risk of invasions of privacy and the potential for misuse, not the least of which is identity theft. And second, that there are certain legitimate purposes for which the social security number is essential—and we must protect those legitimate uses.

Let me summarize the bill's main provisions:

First, the legislation contains a prohibition against obtaining social security number with wrongful intent. Persons are prohibited from obtaining a social security number for the purpose of locating or identifying an individual with the intent to physically injure, harm, or use the identity of the individual for any illegal purpose.

Second, the legislation prohibits the display, sale and purchase of social security numbers to and by the general public without the individual's consent, except for certain limited purposes. Those purposes include: For purposes permitted, required or excepted under the Social Security Act, section 7 (a)(2) of the Privacy Act of 1974, section 6109(d) of the Internal Revenue Code of 1986 or section 6(b)(1) of the Professional Boxing Safety Act of 1996: for a public health purpose, including the protection of the health and safety of an individual or in an emergency situation; for a national security purpose; for a law enforcement purpose, including the investigation of fraud and the enforcement of child support obligations; for business-to-business use, including, but not limited to the prevention of fraud, the facilitation of credit checks or background checks of employees, prospective employees, and volunteers, compliance with any requirement related to the social security program, or the retrieval of other information from other businesses or commercial enterprises; except that no business may sell or display a social security number to the general public. For data matching programs under the Computer Matching and Privacy Protection Act of 1988 or any similar data matching program involving a Federal, State or local agency; or if such number is required to be submitted as part of the process for applying for any type of Federal, State, or local government benefit or program.

Third, an individual may not be required to provide their social security number when purchasing a commercial good or service unless the social security number is necessary: For purposes relating to the Fair Credit Reporting Act, for a background check of the individual conducted by a landlord, lessor, employer, volunteer service agency, or other entity determined by the Attorney General, for law enforcement, or pursuant to a Federal or State law requirement; or if the social security number is necessary to verify identity and prevent fraud with respect to the specific transaction requested by the consumer and no other form of identification can produce comparable information.

Fourth, within 3 years after the date of enactment of this legislation, Social Security numbers may not appear on checks issued for payment by Federal, State, or local government agencies.

Fifth, within 1 year after the date of enactment of this legislation, Social Security numbers may not appear on any driver's license, motor vehicle registration or any other document issued to an individual for purposes of identification of such individual. However, State Departments of Motor Vehicles may continue to use social security numbers internally and for purposes of sharing information about driving records with other jurisdictions.

Sixth, the legislation prohibits prisoners from gaining access to social security numbers.

Finally, on the issue of Public Records, which was and remains a very difficult issue. In fact, last year, it was one of the issues that resulted in our inability to pass Amy Boyer's Law. Amy Boyer's law allowed Social Security Numbers to continue to appear in public records with no limitation on access. It did so in recognition of the fact that many states, local governments, and other governmental entities use Social Security Numbers in the same way that many businesses

do—to ensure accurate identification of individuals who use their services and to prevent fraud.

Many States require social security numbers to be used in documents such as marriage licenses, bankruptcy records, real estate and tax liens, etc. These documents are, under most state laws, a matter of public record, which means the general public can readily gain access to them. Were we to make the appearance of social security numbers in every public record illegal, many states and third party beneficiaries whose business is based on providing access to public records to law offices and other subscribers would have to redact social security numbers from many hundreds of thousands of public documents. This would be a huge task, and it is unclear whether we would in any significant way, further reduce the illegal activity we are trying to prevent. In other words, it is unclear whether the administrative burden and cost would outweigh the potential benefit. This was a very real concern.

At the same time we recognized the very real harm that could be caused by unlimited public access to public documents containing social security numbers—in many cases, right on the face of the document. Social security numbers in public records can be dangerous if a stalker knows where to look, and so I made a commitment lasts year to continue to look at this problem and to address it in a way that was sound and fair, and consistent with the overall principles and goals of the legislation.

As with the other provisions in this legislation, Senator FEINSTEIN and I reached a compromise.

Under our compromise proposal there is no requirement for redaction of social security numbers that appear incidentally in public records, (i.e. not on the face of a document or in a document in a consistent manner). We are trying to limit access to social security numbers for routinely appear in a public record consistently and predictably, on the same page, in every document.

For those records, records where the social security number appears non-incidentally, the number must be redacted before the public document is sold or displayed to the general public. Individuals requesting the document who are able to provide the social security belonging to the person who is the subject of the document before receiving the document may receive an unrelated copy of the public document.

I believe that the Feinstein-Gregg Social Security Number Misuse Prevention Act is a well thought-out, tightly woven piece of legislation that has effectively recognized and balanced the many concerns surrounding the uses of Social Security numbers. Passing this legislation is one of the most important things that Congress can do this year to reduce identity theft and protect individual privacy while permitting the continued legitimate and limited uses of the social security number.

I thank Senator FEINSTEIN and look forward to continuing to work with her throughout the legislative process.

By Mr. BOND:

S. 849. A bill to amend provisions of law enacted by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121 to ensure full analysis of potential impacts on small entities of rules proposed by certain agencies, and for other purposes: to the Committee on Small Business.

Mr. BOND. Mr. President, we are awaiting the imminent arrival of the budget from the House. We have had many important things going on in this Chamber. The debate on education is tremendously important. Yet I think it is necessary that we take a moment and recognize something that colleagues on both sides of the aisle will find very important, and I know support; and that is, the fact that this is Small Business Week.

All of us know, particularly those of us who serve on the Small Business Committee, that small businesses are the dynamic engine which keeps the economy of America growing and provides most of the new jobs that are created. It provides opportunities, for the entrepreneurs and their families, for people to gain the kind of life they wish. In many areas, it also provides tremendous innovations that make our economy more advanced and enhances the livelihoods of not only the workers but the customers of those small businesses.

This week I have been working with my colleagues on Small Business. My ranking member, Senator KERRY, and I, and members of the committee have participated in recognition ceremonies for Outstanding Small Businesspersons of the Year. There was White House recognition yesterday.

I say to all my colleagues, there is a Small Businessperson of the Year from your State. I hope you have had the opportunity to congratulate them, to thank them for their work, and also to listen to them on what is important for small business.

Since I took over and had the honor of becoming chairman of the Committee on Small Business in 1995, we have made it a point for the committee to be the eyes and ears of small business. We have listened to what small businesses have had to say, small businesses in Missouri and Massachusetts and Minnesota and Georgia and all across the Nation. If you ask them, they will tell you.

We found out a number of things that are of concern to them. They are concerned about excessive regulation. They are concerned about taxation. They are concerned about the complexity of taxation. They are concerned about getting access to the Government contracting business that is available, unfortunately, too often only to larger businesses.

Last year I hosted a national women's small business summit in Kansas City, MO, and getting access to defense contracts and other Federal Government contracts was high on their list. Working together with members of the Small Business Committee, we pushed to get rid of bundling and make sure that the small businesses get their fair share of contracts.

I will be introducing a measure, a mentoring and protege bill, to do with other agencies of the Federal Government what the Defense Department has done, and that is to assign an experienced government contractor to work with small businesses to help them get in line for the contracts so they can participate in and fulfill those contracts.

I have, with Senator KERRY, introduced a resolution commending Small Business Week. Somebody has put a hold on it. I really hope to reason with them and see if we can't get that passed. Almost anything we have done in small business in this body has been on a bipartisan basis. We hope to overcome that problem.

There are a number of tax measures that are pending before the Senate now. I introduced the Small Business Works Act as a tax measure right after this session of Congress convened. It was based upon the tax priorities that women business owners had. No. 1 was getting rid of the alternative minimum tax. You have to figure out two guides of taxes, and then most small businesses are taxed as individuals. Some 21.2 million of them pay taxes on their personal income tax form. And when you have an AMT, you find out you lose many of the business deductions, and the small business person winds up paying a higher tax—certainly a higher tax, in many instances, than a regular C corporation pays.

In addition, we would move up and make effective now 100-percent deductibility for health insurance paid for by small businesses. A proprietor running a small business should have the same opportunities to get health insurance for herself and her family as a large corporation does for its employees. That is in there.

On Monday I introduced the Independent Contractor Determination Act. One of the things women business owners told us was, it is particularly troubling and has been a longstanding headache for small businesses to figure out who is an independent contractor and who is not. There is a 20-factor formula. Nobody understands the 20 factors, but the one thing you do understand is, if an IRS agent comes in 3 or 4 years later and applies the test, the IRS agent is going to win because nobody knows how to figure it out. The result is many small businesses have faced very heavy burdens. Some have been put out of business because somebody rejiggered them from independent contractor to employee, and this has been a tremendous problem. The laws ought to be simple enough to understand. There is a lot of complexity in the law.

One of the things we must do, as we reform the Tax Code, is make it simpler. There is no more complex, uninterpretable, undefinable, unreasonable provision in the law than the current independent contractor provision. We must change that.

The average small business spends 5 percent of its revenues figuring out the tax. That is not paying the taxes, that is just figuring out how much they owe. A nickel out of every dollar goes to calculating taxes because we have made it too complex. We need to make it simpler.

Today I introduced a measure to build upon the Red Tape Reduction Act, also known as the Small Business Regulatory Enforcement Fairness Act. I was very pleased in 1996 to work with my then ranking member, Senator Bumpers, and we presented a bill unanimously out of the Small Business Committee to provide some relief for small businesses from excessive redtape and regulation. We thought we would have all kinds of problems getting on the floor, but we worked on a bipartisan basis. We had worked with the agencies of government to make sure their concerns were expressed.

The only people who came to the floor were people who wished to be added as cosponsors. It passed unanimously, and it has been having an impact.

The purpose of the Red Tape Reduction Act was to ensure that small businesses would be given a voice in the regulatory process at the time when it could make the difference before the regulation was published. The act has proven to be a regulatory process more attentive to the impact on small business and, consequently, is more fair and more efficient.

I cite my good friend and constituent Dr. Murray Weidenbaum at the Center for the Study of American Business at Washington University who told me a couple of years ago that the Red Tape Reduction Act was perhaps the only—certainly the most—significant regulatory reform measure passed by Congress in recent history, in the last 20 years or so.

We have seen the impact of this provision. The Red Tape Reduction Act, among other things, requires that OSHA and EPA convene panels to involve small businesses in formulating regulations before the regulations are proposed. It gives the agencies the unique opportunity to learn upfront what problems their regulation may cause and to correct the problems with the least difficulty.

In one case, EPA totally abandoned a regulation when they recognized that the industry could deal with it much more effectively on its own.

Experience with the panel process has proven to be an unequivocal success. The former chief counsel for advocacy of the Small Business Administration, Jere Glover, who worked hard to make sure the act worked, stated:

> Unquestionably, the SBREFA panel process has had a very salutary impact on the regulatory deliberations of OSHA and EPA, resulting in major changes to draft regulations. What is important to note is that these changes were accomplished without sacrificing the agencies' public policy objectives.

That is what we had in mind. Many times small businesses get run over if they are left out of the process. We had a hearing just a couple weeks ago in the Small Business Committee and found out the fisheries regulations had worked tremendous hardship on small fishermen along the North Carolina coast when they decided to change the bag limit, the catch limit, in the fall and wiped out many small businesses. They forgot to ask how best to implement the fisheries regulation.

Another business in my State was working on a process to replace a particular chemical that the EPA said it was going to phase out. They had invested a great deal of time, money, and interest in the process of getting it developed. EPA changed the rule and the regulation and the time limit in midprocess and left them completely out in the dark.

These are the kinds of things that Government ought not to be doing. Government ought not to be running roughshod over people who are trying to contribute to the economy, provide good employment opportunities, provide a solid tax base for the community, and provide good wages for the proprietor and employees and their families.

We think the Red Tape Reduction Act can be expanded and can be of even greater value. It has demonstrated the value of small business input in the regulatory process, but still too many agencies are trying to evade the requirements to conduct regulatory flexibility analyses—that is the technical term for seeing how it will impact the small business; ''regulatory flexibility'' analysis is the technical term—to figure out how it is going to hurt small business.

We now realize that the Internal Revenue Service should also be required to conduct small business review panels so that their regulations will impose the least possible burden on a small business while still achieving the mission of the agency.

I think there is no question we have worked with the new Commissioner of the IRS, Commissioner Rossotti. We have seen many steps taken by the IRS to relieve the burdens. I don't know anybody who really likes to pay taxes. We realize that it is an important part of supporting our Government and our system. But at least we ought to do so in a way that is the least confusing and burdensome.

So I think it is important that we provide a mechanism so that parties will be able to reserve the benefits of their rights to participate at the earliest stages and have the most impact. We believe the litigation that is available at the end of the process if an agency fails to take into account the burden on small business is important because prior to the Redtape Reduction Act, the law had been on the books since 1980 that agencies ought to consider the impact on small business, and it was absolutely, totally ignored by the agencies; without judicial enforcement, they didn't get anywhere. So we added judicial enforcement and they started paying attention.

The Agency Accountability Act, which I introduce today, cures a number of additional problems that we have identified. Let me run through quickly what it does. No. 1, it requires agencies to publish the decision to certify a regulation as not having a significant economic impact on a substantial number of small entities separately in the Federal Register. That means, in certain circumstances, the agency doesn't have to consider the impact on small business. That is how most of the bad regulations get through. EPA was infamous for doing that and saying it didn't have any impact. The regulation comes down to small business, which says we are getting killed. Then they have to fight the battle. Then they go to court and prove that they are impacted and the EPA didn't pay any attention to them.

This says if you are going to use that escape clause to say the regulation doesn't have any impact on a small business, you have to set that out—set out in the Federal Register what you are doing and the fact that it does not have an impact. So you can perhaps correct the problems if there are small businesses that can show they are impacted before the regulation is issued.

Second, the Triple A Act requires the agency to publish a summary of its economic analysis supporting the certification decision; i.e., if you say it doesn't have any economic impact, don't just grab it out of your hip pocket, or hat. You have to have an analysis to show why it would not. You have to make that available to the public so that interested parties will be able to see whether, in fact, it was pulled out of your hat, or whether it is based on sound economic reasoning.

The third thing the Triple A does is it allows small entities to seek judicial review of this certification decision. They can go to the agency and say: Agency, you are trying to get out of the regulatory flexibility requirements—you are trying to get out of the requirement to see how the impact on small business can be lessened. If they say they disagree with them, the small entity can go to court and get it enforced.

When I say ''small entity,'' this is not only available to small businesses, it is available to local governments, to not-for-profit organizations, eleemosynary institutions, available for the small entities in this country that do not have lobbyists or a presence in Washington. Small entities are entitled to use this Redtape Reduction Act.

Fourth, the measure directs the Chief Counsel for Advocacy of the Small

Business Administration to put out a regulation defining the terms that the agency has to use in determining whether they can escape an analysis of how small business will be impacted. These terms are ''significant economic impact,'' and ''substantial number of small entities.'' We found that a number of agencies like to jack around with those terms and skew the facts so that they can sneak out the back door without having to do what the bill requires. This gives the advocacy counsel the ability to say this is what we mean and this is how you have to abide by it. If they don't follow that, then they are ducking their responsibilities under SBREFA and the Regulatory Flexibility Act.

The other thing is, Triple A adds the IRS, U.S. Forest Service, National Marine Fisheries Service, and the Fish and Wildlife Service to the list of agencies that must conduct small business review panels before they can issue proposed regulations.

All Federal agencies are covered by the provisions of the Regulatory Flexibility Act. If you ignore it, you can get hauled into court and have your regulation overturned if it has a significant economic impact on a substantial number of small entities. But this is to say that based on their track record and problems in the past, we are going to have you do what OSHA and EPA have been required to do, and that is set up panels involving small businesses prior to formulating the regulation. If you ask small business how is this regulation going to affect you and people like you, you may find out that there are a lot better ways of doing it. That is what EPA found out in one of the regulations it considered.

Certainly, an agency is not going to be able to say: Gee, I had no idea that it would cause such a hardship on you. It is as important as any part of Government service, and it is too bad we have to write it into law. We cannot be good Government servants, either as legislators or bureaucrats, or members of the executive branch if we don't listen to the voices, the hopes, concerns, and problems of average citizens. We are just saying under this new measure that there are a couple of agencies that have to be told by law to listen to the people they are going to regulate. Pay attention to them. They don't have to like all the regulations but at least listen to their concerns about how the regulations affect them and how you may be able to accomplish the purpose of the law you are seeking to administer, without putting burdens on small agencies.

Well, Mr. President, this bill grows out of extensive review of how the Redtape Reduction Act has functioned in the last 5 years. We still see a lot of frustration by small businesses about how agencies continue to find ways to avoid including small business input in rulemakings, and some of the actions that our agencies take confirm the worst image of agency bureaucrats who are thought to know what is best for small business throughout the country, and when the small businesses are actually providing jobs, developing technology and keeping the economy growing. But somebody here in Washington has a lot better idea how they ought to be running their business.

We need to have an interaction so that the people out there who are creating jobs, developing the technology, earning a living for their families and themselves can have an input into the agency that is going to regulate.

The General Accounting Office found recently that the EPA missed 1,098 small companies in the 32 SIC codes of industries that will be affected by their rule lowering the threshold for companies to report their use of lead. EPA thus concluded that their rule would not have a significant economic impact on a substantial number of small entities despite reducing the threshold of lead emissions from 25,000 pounds to 10 pounds—a reduction of 99.96 percent. EPA, instead, relied on an average revenue compiled from all companies in the manufacturing industries to determine what threshold would be set to trigger the small business review panel required by the Redtape Production Act. The average included companies such as General Motors, General Electric, 3M, and others that skewed the average so that it looked as though the rule would have no impact on small business.

But I can tell you that a small business with 11 pounds of lead is absolutely clobbered by this rule.

Although EPA claimed to conduct outreach to find firms that would be affected, they only contacted nine sources, although some of these sources allegedly contacted have no record of EPA contacting them. I think there is no excuse for that type of arrogance and abject avoidance of their requirements with respect to small business. This shoddy economic analysis exposes a loophole through which EPA should no longer be able to drive their trucks, and it will be closed by the Agency Accountability Act.

I submitted previously, when I introduced the measure this morning, the GAO testimony presented at the hearing. Now I know there will be moans and groans by those who claim that this bill will make the regulatory profess more difficult and force agencies to jump through hoops and will make it harder to issue new regulations.

Let me respond as follows: Had the agencies agreed to comply with the intent and spirit of SBREFA, rather than defy SBREFA, the Redtape Reduction Act, the Agency Accountability Act would not be needed.

Frankly, if it were clear that agencies were doing what Congress intended for them to do, then this bill would be unnecessary. If they are doing adequate analysis in reaching out to small business now, then this act will have no impact on how they promulgate their regulation.

I have very simple views on this subject. I want an agency that intends to regulate how a business conducts its affairs, to do so carefully and only after it has listened to the small businesses that will be affected to see if there are ways in which to lessen the burden and still achieve the objective.

Unfortunately, as I said, there is overwhelming evidence that agencies are not treating this obligation seriously, and we must tell them in forceful terms that we really meant it when we said 5 years ago: You have to pay attention to small business.

I was very pleased we did so in a tremendous bipartisan, unanimous vote. I am hoping we can do the same with this agency accountability bill. Let all agencies know firsthand: If you do your job right, then this should be no problem. If you are not doing your job this way, you ought to be because it will cause less headache, less lawsuits, and less problems in the end.

Had EPA done what it should have done in the lead TRI rulemaking, there would not be the litigation we are seeing now, and it would have saved businesses and the Government untold sums of taxpayers' dollars.

This body has said they want to treat small businesses fairly. The Agency Accountability Act is the next step in doing so.

As I said earlier, I have introduced with bipartisan support a number of measures that I think are going to be very helpful for small business. I hope during the course of Small Business Week my colleagues will look at these and particularly take the time to listen to the men and women of small business who have come to Washington and continue the work in their home States to find out what their concerns are.

I will be cosponsoring a measure that my colleague, Senator KERRY, will be introducing to reauthorize and extend a very important STTR bill which is a very important act in terms of transferring technology. It is a small business technology transfer program. I will have a statement that I will add after Senator KERRY introduces the bill. I hope this will merit the attention of our colleagues.

I ask unanimous consent that the testimony of Hubert Potter, Tim Kalinowski, and Victor Rezendes of the General Accounting Office before the Committee on Small Business and a Summary of Provisions be printed in the RECORD.

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

TESTIMONY OF HUBERT POTTER, A COMMERCIAL FISHERMAN FROM HOBUCKEN, NC, BEFORE THE SENATE SMALL BUSINESS COMMITTEE, APRIL 24, 2001

Thank you Mr. Chairman and Members of the Committee.

My name is Hubert Potter. I am a 4th generation commercial fisherman from Hobucken, North Carolina, a fishing community in Pamlico County. I'll be 67 years old this August, and I've been commercial fishing for a living since I was 15.

I am a member of the North Carolina Fisheries Association, and have been a Board member of that group for several years, including a stint as Vice-Chairman. As such, I've tried to stay on top of the political and bureaucratic issues affecting us.

Just about all of my experience has been aboard a type of fishing vessel called a trawler. My wife and I have owned 5 trawlers over our lifetime, ranging in size from 32 to 75 ft in length. We sold our last one this past September.

Like just about everything else, there have been a lot of things that stay the same in our way of life. Things like the weather, fish prices, and fish cycles. Just like any red-blooded American, us fishermen like it when prices are high, fish are plentiful, and the good Lord provides us with fair weather. We might like all these things, but we also know that it just doesn't work that way all the time, or even most of the time.

Although we can accept whatever bad weather the Lord gives us, or the natural peaks and valleys of fish cycles put on us by mother nature, it is hard to accept or even understand the lack of sensitivity and sometimes the callousness of our own government. At first it seems funny when we read about that some of the bureaucrats say about the effects of proposed regulations. But, Mr. Chairman, after you've had a chance to sit down and think about what they've said, it can really hurt your feelings. When you get over that, it just plain makes you angry that your own government would say that these regulations will not affect your small business.

Commercial fishing is very dependent upon the weather, water temperature, currents, and natural fish cycles. Some years there will be lots of fish in a certain area, and in other years there will be few or none. The difference may be due to weather changes, or just because the cycles are different. That's why diversity is so important to us. For example, it it's possible to fish for summer flounder, that's what I would do. Flounder are not available off our coast year round, so we have to do others things. If I wasn't fishing for summer flounder, I would be shrimping.

One of the most regulated fisheries on the East Coast is the summer flounder fishery. Although us fishermen try to stay on top of all of the regulations, most of us had no idea what the Regulatory Flexibility Act was until we got involved with the North Carolina Fisheries Association in a lawsuit against the National Marine Fisheries Service. That's when we found out that NMFS didn't think that summer flounder regulations had any impact on us as small business people.

During one of the hearings held in Norfolk, Virginia, over 100 fishermen from our state attended at the request of the court. We were all sworn in and I personally took the stand. Allow me to read from the court order: 'The federal government did consider three possible quotas for the 1997 fishery, but the government failed to do any significant analysis to support its conclusion that there would be no significant impact. It is evident to this Court from the some 100 North Carolina fishermen who appeared to testify that their businesses were significantly affected and that there was a significant economic impact. . . .''

The Judge also said, ''. . . this Court will not stand by and allow the Secretary to attempt to achieve a desirable end by using illegal means. Granted, administrative agencies have a substantial amount of discretion in determining how they will follow Congressional mandates. That discretion, however, does not include rewriting or ignoring statutes.''

And this quote by Judge Doumar says it all: ''. . . the Secretary has produced a so-called economic report that obviously is designed to justify a prior determination''.

Mr. Chairman, although our life has been like a roller coaster ride over the years, Renona and I have done ok. But we really fear for the future of our younger fishing families because of all the regulations and the lack of feeling for hard working people. There was one year when our summer flounder fishery was closed in December due to regulations, when families just didn't have the money for Christmas. That's because shrimping, crabbing, and other fisheries have naturally slacked out in December and many of us depended on the summer flounder fishing for Christmas money. Yet, we find out that our own government says that the regulations have no significant impact.

Maybe they think a slack Christmas is not having an impact. In my wildest dreams, it's hard for me to figure how they think.

Mr. Chairman, speaking on behalf of commercial fishing families, I want to thank you for scheduling this hearing. Our small businesses are so small that we don't have the time to stay on top of a lot of these kinds of issues. We do know that we are expected to abide by the laws of our land, and we expect that our own government should do that also.

It's been discouraging to see our incomes drop as regulations increase, and read reports by the government that the regulations will have no significant impact on us. Although it's hard work, we love what we do, and we would like to be able to continue providing our country with a healthy and tasty source of protein.

We really hope that our government wants us to continue doing that too.

Thank you, and I would be glad to answer any questions from the Committee.

TESTIMONY OF TIM KALINOWSKI

Good Morning and thank you for the opportunity to address this distinguished committee. My name is Tim Kalinowski and I am the Vice-President of Operations for Foam Supplies, Inc. (FSI) located in Earth City, Missouri.

FSI is a typical, small, mid western family owned business. It is still run by Dave and Karen Keske who founded the business in 1972. They bought the first facility with the help of two small business loans and built their current facility by offering shares in the building and land to their 62 employees, who receive monthly rental income for their investment.

FSI has always operated in an environmentally responsible manner and we are proud of our reputation. FSI manufacturers rigid non-CFC urethane foams and solvent less urethane dispensing equipment. These products have uses ranging from flotation foam used in boat building to insulation foam used in building construction. Our company has always been a leader in the field. In the 1980's, aware of EPA's plans to phase out CFCs due to its negative effect on the earth's ozone layer, FSI worked aggressively to find suitable substitutes. FSI was the first company to patent an HCFC–22 blown urethane foam, years before the EPA mandated phase-out.

Technology development does not occur overnight and it does not come cheap. FSI spends a lot of money to develop new products and is wiling to do so because it is how we compete against the large companies. FSI is a small company with tight margins and we can only be innovative if we are able to spread the costs over time. FSI had the ability to do this in the CFC rulemaking, because the EPA notified us well in advance of the phase out and we had the time to properly test and prepare new formulations.

I am here today to take exception to EPA's actions in the July 11, 2000 Notice of Proposed Rulemaking regarding the Significant New Alternatives Policy or SNAP program. The EPA SNAP program was not designed to accelerate the phase out of ozone depleting substances. For example, under the plan developed by EPA and industry in the early 1990's, HCFC–22 may be produced and imported until 2010. Use may continue after that date until stocks are depleted. In this recent SNAP proposal EPA has ignored the current production and manufacturing deadline and has proposed to accelerate the deadline for not only the manufacture, but also the use of these substitutes to 2005. This new deadline would hit small businesses extremely hard because it changes the rules midstream and gives us less time to develop new products and also absorb the costs of research and development. In addition to finding this new deadline unacceptable, it is our position that this action is not within the scope of the SNAP program.

While this particular issue is extremely important to my small business, the concern that I bring before this committee has more to do with how the EPA approached this proposed rulemaking. I think everyone would agree that regulation works best when all concerned parties work together to consider all the issues. When the regulatory process is by-passed and rules are broken the resulting regulation can be both harmful and ineffective. Sadly, EPA did not follow the rules when it proposed the SNAP program last year.

In late June, 2000 during an unrelated call to EPA, I was informed that EPA was about to publish this proposed rule in the Federal Register. When questioning why the EPA had not contacted manufacturers or end users that this proposal was being considered, I was told that they considered it a success that they were able to keep this proposal quiet, prior to publication.

This would have been less of a concern if EPA understood our industry.

In the NPRM the EPA stated that: (1) ''EPA believes that today's proposal will not result in a significant cost to appliance manufacturers or consumers''; (2) ''This rule would not have a significant impact on a substantial number of small entities because we expect the cost of the SNAP requirements to be minor''; and (3) ''EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposal.''

We take great exception to these remarks.

I am here to tell you that this rule will have an affect on thousands of small manufacturers across the country. The only economic study that EPA seems to have done was based on data from a multi-billion dollar appliance manufacturer. If EPA was truly interested in knowing what companies would be impacted by this rule, they only had to make a few phone calls or pull up a few web sites to identify boatbuilders, truck body manufacturers, refrigerator equipment manufacturers, and many other small entities. But they never did. In fact they overlooked our industry. They did not know how much this rule would cost my small business and they did not know how many small businesses would face similar costs.

The only phone call that I am aware of to an end-user was made after the rule was proposed. An EPA staff person contacted the National Marine Manufacturers Association and informed them that boat builders never had an extension and were currently violating the law. When the NMMA called me for a clarification, there was panic in the voice on the other end of the phone. They believed that by commenting they had struck

a hornet's nest. I faxed them a copy of the initial rule, which clearly stated that boat builders did have an extension and were not in violation of the law. EPA was eventually forced to recognize that indeed boat builders did have an extension and were overlooked in this rulemaking process.

Instead of accusing boat builders of operating illegally, EPA should have learned from them and tried to find out how the proposed rule affected them. EPA would have learned that the Coast Guard requires boats under 20 feet to have flotation foam injected or poured into the hull of the boat. EPA would have learned that over 1500 small business boat builders use these products and would be impacted by this rule. EPA would have known that it made a big mistake in overlooking these types of small businesses and that it needed to go back and look, listen, and learn about these impacts.

The EPA also stated that ''non-ozone depleting substitutes are now available for all end-users.'' As evidence they cite a 1998 United Nations Technical Options Committee Report. However, one of the authors of that report took exception to EPA's interpretation of the report and commented that, ''the proposed rule incorrectly interprets the UNTOC 1998 report. (Copies of the author's comments are in your handouts)

The bottom line is that this rule will affect many small businesses that EPA never considered when the proposal was developed. In addition, it is obvious that the EPA staff did not do their homework, because the proposed alternatives are more expensive, unavailable at this time, less effective or present other VOC or flammability hazards.

This rule will severely jeopardize FSI and it's customers who cannot possibly pass on the increased chemical and testing costs to their customers and still hope to be able to compete with the larger corporations.

Another very important overlooked casualty of this rule would be the environment itself. Breakthroughs in any industry are commonly a result of the efforts of the little guy who has to stay one step ahead of the big corporations just to stay in business. Our industry is constantly trying to develop new products, which benefit our customers and improve the environment. There are products being tested and developed by FSI and others like us that would have to be abandoned due to this new deadline. These products would not only be better for the environment, but also more cost effective for the small businessman.

Dave and Karen Keske's of FSI and other small business entrepreneurs want to be able to continue to dedicate their limited resources to test and develop new products. These are products that they are confident will be better for their customers and for the environment. This will only happen if the issues and concerns of companies directly impacted by the rules are made aware of these rules before they are proposed. This was supposed to happen in this rulemaking. The SBREFA law requires it and in this case the law was ignored. Because this has happened, EPA has put FSI and many other small businesses in serious economic jeopardy.

In closing, I would like to make one point very clear, FSI is not looking for special treatment. We only want to be treated in accordance with the law. It is our belief that when the playing field is kept level, FSI and other small businesses prosper.

Thank you for your attention.

TESTIMONY OF VICTOR REZENDES

I am pleased to be here today to discuss the implementation of the Regulatory Flexibility Act of 1980 (RFA), as amended, and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). As you requested, I will discuss our work on the implementation of these two statutes in recent years, with particular emphasis on a report that we prepared for this committee last year on the implementation of the acts by the Environmental Protection Agency (EPA).

The RFA requires federal agencies to examine the impact of their proposed and final rules on ''small entities'' (small businesses, small governmental jurisdictions, and small organizations) and to solicit the ideas and comments of such entities for this purpose. Specifically, whenever agencies are required to publish a notice of proposed rulemaking, the RFA requires agencies to prepare an initial and a final regulatory flexibility analysis. However, the RFA also states that those analytical requirements do not apply if the head of the agency certifies that the rule will not have a ''significant economic impact on a substantial number of small entities,'' or what I will—for the sake of brevity—term a ''significant impact.'' SBREFA was enacted to strengthen the RFA's protections for small entities, and some of the act's requirements are built on this ''significant impact'' determination. For example, one provision of SBREFA requires that before publishing a proposed rule that may have a significant impact, EPA and the Occupational Safety and Health Administration must convene a small business advocacy review panel for the draft rule, and collect the advice and recommendations of representatives of affected small entities about the potential impact of the draft rule.

We have reviewed the implementation of the RFA and SBREFA several times during recent years, with topics ranging from specific provisions in each statute to the overall implementation of the RFA. Although both of these reform initiatives have clearly affected how federal agencies regulate, we believe that their full promise has not been realized. To achieve that promise, Congress may need to clarify what it expects the agencies to do with regard to the statutes' requirements. In particular, Congress may need to clearly delineate—or have some other organization delineate—what is meant by the terms ''significant economic impact'' and ''substantial number of small entities.'' The RFA does not define what Congress meant by these terms and does not give any entity the authority or responsibility to define them governmentwide. As a result, agencies have had to construct their own definitions, and those definitions vary. Over the past decade, we have recommended several times that Congress provide greater clarity with regard to these terms, but to date Congress has not acted on our recommendations.

The questions that remain unanswered are numerous and varied. For example, does Congress believe that the economic impact of a rule should be measured in terms of compliance costs as a percentage of businesses' annual revenues or the percentage of work hours available to the firms? If so, is 3 percent (or 1 percent) of revenues or work hours the appropriate definition of ''significant?'' Should agencies take into account the cumulative impact of their rules on small entities, even within a particular program area? Should agencies count the impact of the underlying statutes when determining whether their rules have a significant impact? What should be considered a ''rule'' for purposes of the requirement in the RFA that the agencies review rules with a significant impact within 10 years of their promulgation? Should agencies review rules that had a significant impact at the time they were originally published, or only those that currently have that effect?

These questions are not simply matters of administrative conjecture within the agencies. They lie at the heart of the RFA and SBREFA, and the answers to the questions can be a substantive effect on the amount of regulatory relief provided through those statutes. Because Congress did not answer these questions when the statutes were enacted, agencies have had to developed their own answers. If Congress does not like the answers that the agencies have developed, it needs to either amend the underlying statutes and provide what it believes are the correct answers or give some other entity the authority to issue guidance on these issues.

PROPOSED EPA LEAD RULE

The implications of the current lack of clarity with regard to the term ''significant impact'' and the discretion that agencies have to define it were clearly illustrated in a report that we prepared for this committee last year. One part of our report focused on a proposed rule that EPA published in August 1999 that would, upon implementation, lower certain reporting thresholds for lead and lead compounds under the Toxics Release Inventory program from as high as 25,000 pounds to 10 pounds. EPA estimated that approximately 5,600 small businesses would be affected by the rule, and that the first-year costs of the rule for each of these small businesses would be between $5,200 and $7,500. EPA said that the total cost of the rule in the first year of implementation would be about $116 million. However, EPA certified that the rule would not have a significant impact, and therefore did not trigger certain analytical and procedural requirements of the RFA.

Mr. Chairman, last year you asked us to review the methodology that EPA used in the economic analysis for the proposed lead rule and describe key aspects of that methodology that may have contributed to the agency's conclusion that the rule would not have a significant impact. You also asked us to determine whether additional data or analysis could have yielded a different conclusion about the rule's impact on small entities. Finally, you also asked us to describe and compare the rates at which EPA's major program offices certified that their substantive proposed rules would not have a significant impact. We did not examine whether lead was a persistent bioaccumulative toxic or the value of the Toxics Release Inventory program in general.

EPA's current guidance on how the RFA should be implemented gives the agency's program offices substantial discretion with regard to certification decisions but also provides numerical guidelines to help define what constitutes a significant impact. For example, the guidance indicates that a rule should be presumed eligible for certification as not having a significant impact if it does not impose annual compliance costs amounting to 1 percent of estimated annual revenues on any number of small entities. However, if those compliance costs amount to 3 percent or more of revenues on 1,000 or more small entities, the guidance indicates that the program office should presume that the rule is ineligible for certification.

These numerical guidelines establish what appears to be a high threshold for what constitutes a significant impact. For example, an EPA rule could theoretically impose $10,000 in compliance costs on 10,000 small businesses, but the guidelines indicate that the agency can presume that the rule does not trigger the requirements of the RFA as long as those costs do not represent at least 1 percent of the affected businesses' annual revenues. The guidance does not take into account the profit margins of the businesses involved. Therefore, if the profit margin in

the affected businesses is less than 5 percent, the costs required to implement a rule could conceivably take one-fifth of that profit and, under EPA's guidelines, still not be considered to have a significant impact. Neither does the guidance take into account the cumulative impact of the agency's rules on small businesses. Therefore, if EPA issued 100 rules, each of which imposed compliance costs amounting to one-half of 1 percent of annual sales on 10,000 businesses, the agency could certify each of the rules as not having a significant impact even though the cumulative impact amounted to 50 percent of the affected businesses' revenues. Consideration of cumulative regulatory impact is not even required within a particular area like the Toxics Release Inventory program. Each toxic substance added to the approximately 600 substances already listed in the program, or each change in the reporting threshold for a listed toxin, constitutes a separate regulatory action under the RFA.

An agency's conclusions about the impact of a rule on small entities can also be driven by the agency's analytical approach. In its original economic analysis for the proposed lead rule, EPA made a number of assumptions that clearly contributed to its determination that no small entities would experience significant economic effects. For example, to estimate the annual revenues of companies expected to file new Toxics Release Inventory reports for lead, EPA assumed that (1) the new filers would have employment and economic characteristics similar to current filers, (2) different types of manufacturers would experience similar economic effects, and (3) the revenues of the smallest manufacturers covered by the proposed rule could be exemplified by the firm at the 25th percentile of the agency's projected revenue distribution for small manufacturers. As a result of these and other assumptions, EPA estimated that the smallest manufacturers affected by the proposed lead rule had annual revenues of $4 million. Using that $4 million revenue estimate and other information, EPA concluded that none of the 5,600 small businesses would experience first-year compliance costs of 1 percent or more of their annual revenues. Therefore, EPA certified that the proposed lead rule would not have a significant impact.

EPA revised these and other parts of the economic analysis for the proposed lead rule before submitting it to the Office of Management and Budget (OMB) for final review in July 2000. According to a summary of the draft revised economic analysis that we reviewed, EPA changed several analytic assumptions and methods, and revised its estimates of the rule's impact on small businesses. Specifically, the agency said that the lead rule would affect more than 8,600 small companies (up from about 5,600 in the original analysis), and as many as 464 of them would experience first-year compliance costs of at least 1 percent of their annual revenues (up from zero in the original estimate). Nevertheless, EPA again concluded that the rule would not have a significant impact. During our review, we discovered that the agency's revised estimate of the number of small companies that would experience a 1 percent economic impact was based on only 36 of the 69 industries that the agency said could be affected by the rule. EPA officials said that the other 33 industries were not included in the agency's estimate because of lack of data.

We attempted to provided a more complete picture of how the lead rule would affect small businesses by estimating how many companies in these missing 33 industries could experience a first-year economic impact of at least 1 percent of annual revenues. We obtained data from the Bureau of the Census for 32 of these 33 industries and estimated that as many as 1,098 additional small businesses could experience this 1-percent effect. If EPA had used this analytic approach in combination with its own studies, it would have concluded that as many as 1,500 small businesses would experience compliance costs amounting to at least 1 percent of annual revenues. Therefore, using its own guidance, EPA could have concluded that the rule should not be certified, prepared a regulatory flexibility analysis, and convened an advocacy review panel for the rule. However, we ultimately concluded that the agency's initial and revised analyses and the conclusions that it based on those studies were within the broad discretion that the RFA and the EPA guidance provided in determining what constituted a ''significant economic impact'' on a ''substantial number of small entities.''

In the final lead rule that EPA published in January 2001, EPA set the new reporting threshold for lead at 100 pounds—up from 10 pounds in the proposed rule. However, just as it did for the proposed rule, EPA concluded that the final rule would not have a significant impact. EPA said that it reached this conclusion because it did not believe the rule would have a significant economic impact (defined as annual costs between 1 and 3 percent of annual revenues) on more than 250 of the 4,100 small businesses expected to be affected by the rule. EPA also illustrated what it viewed as nonsignificant impact in terms of work hours. The agency said that it would take a first-time filer about 110 hours to fill out the form. Because the smallest firm that could be affected by the rule must have at least 20,000 labor hours per year (10 employees times 50 weeks per year per employee times 40 hours per week), EPA said that the 110 hours required to fill out the Toxics Release Inventory form in the first year represents only about one-half of 1 percent of the total amount of time the firm has available in that year.

EPA' determination that the proposed lead rule would not have a significant impact on small entities was not unique. Its four major program offices certified about 78 percent of the substantive proposed rules that they published in the 2½ years before SBREFA took effect in 1996 but certified 96 percent of the proposed rules published in the 2½ years after the act's implementation. In fact, two of the program offices—the Office of Prevention, Pesticides and Toxic Substances and the Office of Solid Waste—certified all 47 of their proposed rules in this post-SBREFA period as not having a significant impact. The Office of Air and Radiation certified 97 percent of its proposed rules during this period, and the Office of Water certified 88 percent. EPA officials told us that the increased rate of certification after SBREFA's implementation was caused by a change in the agency's RFA guidance on what constituted a significant impact. Prior to SBREFA, EPA's policy was to prepare a regulatory flexibility analysis for any rule that the agency expected to have any impact on any small entities. The officials said that this guidance was changed because the SBREFA requirement to convene an advocacy review panel for any proposed rule that was not certified made the continuation of the agency's more inclusive RFA policy too costly and impractical.

PREVIOUS REPORTS ON THE RFA AND SBREFA

We have issued several other reports in recent years on the implementation of the RFA and SBREFA that, in combination, illustrate both the promise and the problems associated with the statutes. For example, in 1991, we examined the implementation of the RFA with regard to small governments and concluded that each of the four federal agencies we reviewed had a different interpretation of key RFA provisions. We said that the act allowed agencies to interpret when they believed their proposed regulations affected small government, and recommended that Congress consider amending the RFA to require the Small Business Administration (SBA) to develop criteria regarding whether and how to conduct the required analyses.

In 1994, we noted that the RFA required the SBA Chief Counsel for Advocacy to monitor agencies' compliance with the act. However, we also said that one reason for agencies' lack of compliance with the RFA's requirements was that the act did not expressly authorize SBA to interpret key provisions in the statute and did not require SBA to develop criteria for agencies to follow in reviewing their rules. We said that if Congress wanted to strengthen the implementation of the RFA, it should consider amending the act to (1) provide SBA with clearer authority and responsibility to interpret the RFA's provisions, and (2) require SBA, in consultation with OMB, to develop criteria as to whether and how federal agencies should conduct RFA analyses.

In our 1998 report on the implementation of the small business advocacy review requirements in SBREFA, we said that the lack of clarity regarding whether EPA should have convened panels for two of its proposed rules was traceable to the lack of agreed-upon governmentwide criteria as to whether a rule has a significant impact. Nevertheless, we said that the panels that had been convened were generally well received by both the agencies and the small business representatives. We also said that if Congress wished to clarify and strengthen the implementation of the RFA and SBREFA, it should consider (1) providing SBA or another entity with clearer authority and responsibility to interpret the RFA's provisions and (2) requiring SBA or some other entity to develop criteria defining a ''significant economic impact on a substantial number of small entities.'' In 1999, we noted a similar lack of clarity regarding the RFA's requirement that agencies review their existing rules that have a significant impact within 10 years of their promulgation. We said that if Congress is concerned that this section of the RFA has been subject to varying interpretations, it may wish to clarify those provisions. We also recommended that OMB take certain actions to improve the administration of these review requirements, some of which have been implemented.

Last year we convened a meeting at GAO on the rule review provision of the RFA, focusing on why the required reviews were not being conducted. Attending that meeting were representatives from 12 agencies that appeared to issue rules with an impact on small entities, representatives from relevant oversight organizations (e.g., OMB and SBA's Office of Advocacy), and congressional staff from the House and Senate Committees on Small Business. The meeting revealed significant differences of opinion regarding key terms in the statute. For example, some agencies did not consider their rules to have a significant impact because they believed the underlying statutes, not the agency-developed regulations, caused the effect on small entities. There was also confusion regarding whether the agencies were supposed to review rules that *had* a significant impact on small entities at the time the rule was first published in the Fedeal Register or those that currently have such an impact. It was not even clear what should be considered to ''rule'' under RFA's rule review requirements—the entire section of the Code of Federal Regulations that was affected by the rule, or just the part of the existing rule that was being amended. By the end of the meeting it was clear that, as one congressional

staff member said, ''determining compliance with (the RFA) is less obvious that we believed before.''

Mr. Chairman, this concludes my prepared statement. I reveal would be happy to responded to any questions.

AGENCY ACCOUNTABILITY ACT—SUMMARY OF PROVISIONS

SECTION 1. SHORT TITLE

This act may be cited as the ''Agency Accountability Act of 2001''.

SECTION 2. FINDINGS AND PURPOSES

SECTION 3. ENSURING FULL ANALYSIS OF POTENTIAL IMPACTS ON SMALL ENTITIES OF RULES PROPOSED BY CERTAIN AGENCIES

This section improves the procedure for the conducting Small Business Advocacy Review Panels by requiring the agency to collaborate with the Chief Counsel for Advocacy of the Small Business Administration in selecting the small entity representatives. It requires the agency to publish the panel report in the Federal Register and to distribute the report to the small entity representatives.

SECTION 4. DEFINITIONS

This section expands the list of agencies required to conduct Small Business Advocacy Review Panels for regulations that will have a significant economic impact on a substantial number of small entities to include the Internal Revenue Service of the Treasury Department, the National Marine Fisheries Service of the Commerce Department, the U.S. Forest Service of the Agriculture Department, and the U.S. Fish and Wildlife Service of the Interior Department. The section also allows organizations that primarily represent small entities to serve as Small Entity Representatives. Finally, this section directs the Chief Counsel for Advocacy of the Small Business Administration to promulgate a rule making to further define the terms ''significant economic impact'' and ''substantial number of small entities'' and to consider the indirect impacts regulations have on small businesses when promulgating these regulations.

SECTION 5. COLLECTION OF INFORMATION REQUIREMENT

This section revises the conditions under which the Internal Revenue Service must conduct an initial regulatory flexibility analysis for interpretative regulations. If the IRS is promulgating a temporary regulation, the IRS may avoid this requirement but it must inform the Chief Counsel for Advocacy at the time of the decision and include an explanation of why the temporary regulation is required because using a notice and comment procedure would be impracticable, unnecessary, or contrary to the public interest, and an explanation of the reasons that circumstances warrant an exception from the panel review requirement. This notice and explanation must also be published in the Federal Register.

SECTION 6. INITIAL REGULATORY FLEXIBILITY ANALYSIS

This sections adds the requirement of conducting a cost/benefit analysis of the regulation to the requirements of the Initial Regulatory Flexibility Analysis required under the Regulatory Flexibility Act. Agencies are also directed to take into account, to the extent practical, the cumulative cost of their regulations on small businesses and the effect of the proposed regulation on those cumulative costs. Finally, agencies are directed to make an initial certification that the benefits of the proposed rule justify the costs of the proposed rule to small entities.

SECTION 7. FINAL REGULATORY FLEXIBILITY ANALYSIS

This section adds cost/benefit analyses to the requirements of the Final Regulatory Flexibility Analysis called for under the Regulatory Flexibility Act. It also requires agencies to make a final certification that the benefits of the regulation justify the costs of the regulation to the small entities that will be subject to it. Finally, agencies are required to describe the comments received on the Initial Regulatory Flexibility Analysis and a statement of any change made as a result of those comments.

SECTION 8. PUBLICATION OF DECISION TO CERTIFY A RULE

This section requires agencies to publish separately in the Federal Register their decision to certify a regulation as not having a significant economic impact on a substantial number of small entities instead of the current requirement of publishing that decision with the proposed rule. This also requires the agency to publish a summary of the economic analysis supporting that decision and indicates what must be in that summary. The complete analysis is to be made available on the Internet to the extent practicable.

SECTION 9. JUDICIAL REVIEW OF CERTIFICATION DECISION

This section makes the agency decision to certify a regulation as not having a singificant economic impact on a substantial number of small entities judicially reviewable and specifies that the remedy shall be voiding of the certification and requiring the agency to conduct the Initial Regulatory Flexibility Analysis, Final Regulatory Flexibility Analysis, and the small business advocacy review panel if required.

SECTION 10. EXCLUSION OF AGENCY OUTREACH TO SMALL BUSINESSES FROM CERTAIN COLLECTION OF INFORMATION REQUIREMENTS

This section excludes outreach efforts to small businesses to determine the impact of regulations from the requirements for Office of Management and Budget clearance under the Paperwork Reduction Act.

SECTION 11. EFFECTIVE DATE

This act shall take effect 90 days after the date of enactment.

By Mr. CHAFEE (for himself, Mr. GRAHAM, Mrs. LINCOLN, Mr. TORRICELLI, and Mr. KOHL):

S. 850. A bill to expand the Federal tax refund intercept program to cover children who are not minors; to the Committee on Finance.

Mr. CHAFEE. Mr. President, I am pleased to be joined today by Senators GRAHAM, LINCOLN, TORRICELLI, and KOHL in introducing the Child Support Fairness and Tax Refund Interception Act of 2001.

The Child Support Fairness and Tax Refund Interception Act of 2001 closes a loophole in current federal statute by expanding the eligibility of one of the most effective means of enforcing child support orders, that of intercepting the federal tax refunds of parents who are delinquent in paying their court-ordered financial support for their children.

Under current law, eligibility for the federal tax refund offset program is limited to cases involving minors, parents on public assistance, or adult children who are disabled. Custodial parents of adult, non-disabled children are not assisted under the IRS tax refund intercept program, and in many cases, they must work multiple jobs in order to make ends meet. Some of these parents have gone into debt to put their college-age children through school.

The legislation we are introducing today will address this inequity by expanding the eligibility of the federal tax refund offset program to cover parents of all children, regardless of whether the child is disabled or a minor. This legislation will not create a cause of action for a custodial parent to seek additional child support. In will merely assist the custodial parent in removing debt that is owed for a level of child support that was determined by a court.

Improving our child support enforcement programs is an issue that should be of concern to us all as it remains a serious problem in the United States. According to the most recent government statistics, there are approximately twelve million active cases in which a child support order requires a noncustodial parent to contribute to the support of his or her child. Of the $22 billion owed in 1999, only $12 billion has been collected. In 1998, only 23 percent of children entitled to child support through our public system received some form of payment, despite federal and state efforts. Similar shortfalls in previous years bring the combined delinquency total to approximately $47 billion. We can fix this injustice in our federal tax refund offset program by helping some of our most needy constituents receive the financial assistance they are owed.

While previous administrations have been somewhat successful in using tax refunds as a tool to collect child support payments, more needs to be done. The IRS tax refund interception program has only collected one-third of tardy child support payments. The Child Support Fairness and Tax Refund Interception Act of 2001 will remove the current barrier to fulfilling an individual's obligation to pay child support, while helping to provide for the future of our nation's children.

I urge my colleagues to join me in supporting this important legislation, and ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 850

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 ''Child Support Fairness and Tax Refund Interception Act of 2001''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Enforcing child support orders remains a serious problem in the United States. There are approximately 12,000,000 active cases in which a child support order requires a noncustodial parent to contribute to the support of his or her child. Of the $22,000,000,000 owed in 1999 pursuant to such orders, $12,000,000,000, or 54 percent, has been collected.

(2) It is an injustice for the Federal Government to issue tax refunds to a deadbeat

spouse while a custodial parent has to work 2 or 3 jobs to compensate for the shortfall in providing for their children.

(3) The Internal Revenue Service (IRS) program to intercept the tax refunds of parents who owe child support arrears has been successful in collecting a tenth of such arrears.

(4) The Congress has periodically expanded eligibility for the IRS tax refund intercept program. Initially, the program was limited to intercepting Federal tax refunds owed to parents on public assistance. In 1984, the Congress expanded the program to cover parents not on public assistance. Finally, the Omnibus Budget Reconciliation Act of 1990 made the program permanent and expanded the program to cover parents of adult children who are disabled.

(5) The injustice to the custodial parent is the same regardless of whether the child is disabled, non-disabled, a minor, or an adult, so long as the child support obligation is provided for by a court or administrative order. It is common for parents to help their adult children finance a college education, a wedding, or a first home. Some parents cannot afford to do that because they are recovering from debt they incurred to cover expenses that would have been covered if they had been paid the child support owed to them in a timely manner.

(6) This Act would address this injustice by expanding the program to cover parents of all adult children, regardless of whether the child is disabled.

(7) This Act does not create a cause of action for a custodial parent to seek additional child support. This Act merely helps the custodial parent recover debt they are owed for a level of child support that was set by a court after both sides had the opportunity to present their arguments about the proper amount of child support.

SEC. 3. USE OF TAX REFUND INTERCEPT PROGRAM TO COLLECT PAST-DUE CHILD SUPPORT ON BEHALF OF CHILDREN WHO ARE NOT MINORS.

Section 464 of the Social Security Act (42 U.S.C. 664) is amended—

(1) in subsection (a)(2)(A), by striking ''(as that term is defined for purposes of this paragraph under subsection (c))''; and

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by striking ''(1) Except as provided in paragraph (2), as used in'' and inserting ''In''; and

(ii) by inserting ''(whether or not a minor)'' after ''a child'' each place it appears; and

(B) by striking paragraphs (2) and (3).

By Mr. THOMPSON (for himself, Mr. KOHL, Mr. VOINOVICH, Mr. LEVIN, Mr. THURMOND, Ms. COLLINS, and Mr. FITZGERALD):

S. 851. A bill to establish a commission to conduct a study of government privacy practices, and for other purposes; to the Committee on Governmental Affairs.

Mr. THOMPSON. Mr. President, I rise today to introduce the ''Citizens' Privacy Commission Act of 2001.'' This legislation will establish an 11-member commission to examine how Federal, State, and local governments collect and use our personal information and to make recommendations to Congress as we consider how to map out government privacy protections for the future. The Citizens' Privacy Commission, whose members will include experts with a diversity of experiences, will look at the spectrum of privacy concerns involving Federal, State, and local government, from protecting citizens' genetic information, to guaranteeing the safe use of Social Security numbers, to ensuring confidentiality to citizens visiting government web sites.

As we all know, Americans are increasingly concerned about the potential misuse of their personal information. A variety of measures intended to address the collection, use, and distribution of personal information by the private sector have been introduced in Congress. Recent events, however, suggest that government privacy practices warrant closer scrutiny. For example, details surfaced last summer about the FBI's new e-mail surveillance system—Carnivore. Civil libertarians and Internet users alike continue to question the legitimacy of this ''online wiretapping.''

Also last summer, after the White House Office of National Drug Control Policy was found to be using ''cookies'' on Internet search engines, I requested that GAO investigate Federal agencies' use of these information-collection devices on their own Web sites. GAO only had time to investigate a small sample of Federal agency sites, but they found a number of unauthorized ''cookies,'' including one that was operated by a third-party private company on an agency Web site under an agreement that gave the private company co-ownership of the data collected on visitors to the site.

As a follow-up to the GAO investigation, Congressman JAY INSLEE and I worked together on an amendment to require all agency Inspectors General to report to Congress on each agency's Internet information-collection practices. Fewer than half of the Inspectors General have completed their investigations, but the preliminary findings are cause for concern. In audits performed this past winter, sixteen Inspectors General identified sixty-four agency Web sites that were violating the privacy policies established by the last Administration by using information-collection devices called ''cookies'' without the required approval.

Last fall, Congressmen ARMEY and TAUZIN released a GAO report that revealed that 97 percent of the Web sites of Federal agencies, including the Federal Trade Commission, weren't in compliance with privacy standards that the FTC was advocating for private sector Web sites.

On top of all these examples, there is the issue of computer security at Federal agencies, which has been notoriously lax for years. GAO and Federal agency Inspectors General report time and time again that sensitive information on citizens' health and financial records is vulnerable to hackers. Just this spring, GAO issued a report which explained how easily their investigators were able to hack into IRS computers and gain access to citizens' e-filed taxes. Not surprisingly, a recent poll shows that most Americans perceive government as the greatest threat to their personal privacy, above both the media and corporations.

Last year, Senator KOHL and I sponsored the Senate companion bill to the Hutchinson-Moran Privacy Commission Act. This bill would have created a commission to study privacy issues in both the government and the private sector. The House bill failed a suspension vote by a narrow margin. There was a lack of consensus on whether a commission was warranted for the private sector issues being deliberated by the Congress. There was no disagreement, however, on the need for a commission to study the government's management of citizens' personal privacy. Many privacy advocates believe that the Privacy Act of 1974 and other laws addressing government privacy practices need to be updated, but we need a better understanding of the extent of the problem and of what exactly needs to be done.

Federal, State, and local governments collect, use, and distribute a large quantity of personal information for legitimate purposes. Yet because governments operate under different incentives and under a different legal relationship than the private sector, they may pose unique privacy problems. Unlike businesses, governments collect personal information under the force of law. Furthermore, governments do not face the market incentives that can discourage information collection or sharing. With the power and authority of government and the breadth of information it collects comes the potential for mistakes or abuse. The risk of privacy violations could also threaten to undermine the public's confidence in e-Government, our effort to make government more accessible and responsive to citizens through the Internet. In fact, according to a recent Pew Internet and American Life report, only 31 percent of Americans say they trust the government to do the right thing most of the time or all of the time.

The last Federal privacy commission operated over 25 years ago, from 1975 to 1977. Since then, there have been enormous leaps in technology. Today, a few keystrokes on a computer hooked up to the Internet can produce a quantity of information that was unimaginable in 1975. The question we must answer today is the same question Congress addressed in 1975: ''How can government achieve the correct balance between protecting personal privacy and allowing appropriate uses of information?'' The technological advances and other changes that have occurred since the 1970's, however, demand a reevaluation of the government privacy protections that we currently have in place. While we have passed laws laying out a framework for the Federal government, it is time to reassess the laws designed to safeguard citizens' privacy in light of the current state of technology.

The Citizens' Privacy Commission will help us find the balance between protecting the privacy of individuals

and permitting specific and appropriate uses of personal information for legitimate and necessary government purposes. The Commission will be directed to study a wide variety of issues relating to personal privacy and the government, including the collection, use, and distribution of personal information by Federal, State, and local governments, as well as current legislative and regulatory efforts to respond to privacy problems in the government. In the course of its examination of these issues, the Commission will also be required to hold at least three field hearings around the country and to set up a Web site to facilitate public participation and public comment. After 18 months of study, the Commission will submit a report to Congress on its findings, including any recommendations for legislation to reform or augment current laws. The Commission's report will be available for consideration by the next Congress.

It is my hope that we all can work together to pass the Citizens' Privacy Commission Act of 2001 to help us make informed and thoughtful decisions to protect the privacy of the American people. I would like to thank Senator KOHL, who has worked with me on a privacy commission bill for some time, as well as Senators VOINOVICH, LEVIN, THURMOND, COLLINS, and FITZGERALD for joining us as cosponsors. I urge my colleagues to support this important legislation.

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

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

S. 851

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 ''Citizens' Privacy Commission Act of 2001''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Americans are increasingly concerned about their civil liberties and the security, collection, use, and distribution of their personal information by government, including medical records and genetic information, educational records, health records, tax records, library records, driver's license numbers, and other records.

(2) The shift from a paper based government to an information technology reliant government calls for a reassessment of the most effective way to balance personal privacy and information use, keeping in mind the potential for unintended effects on technology development and privacy needs.

(3) Concerns have been raised about the adequacy of existing government privacy laws and the adequacy of their enforcement in light of new technologies.

SEC. 3. ESTABLISHMENT.

There is established a commission to be known as the ''Citizens' Privacy Commission'' (in this Act referred to as the ''Commission'').

SEC. 4. DUTIES OF COMMISSION.

(a) STUDY.—The Commission shall conduct a study of issues relating to protection of individual privacy and the appropriate balance to be achieved between protecting individual privacy and allowing appropriate uses of information, including the following:

(1) The collection, use, and distribution of personal information by Federal, State, and local governments.

(2) Current efforts and proposals to address the collection, use, and distribution of personal information by Federal and State governments, including—

(A) existing statutes and regulations relating to the protection of individual privacy, including section 552a of title 5, United States Code (commonly referred to as the Privacy Act of 1974) and section 552 of that title (commonly referred to as the Freedom of Information Act); and

(B) privacy protection efforts undertaken by the Federal Government, State governments, foreign governments, and international governing bodies.

(3) The extent to which individuals in the United States can obtain redress for privacy violations by government.

(b) FIELD HEARINGS.—The Commission shall conduct at least 3 field hearings in different geographical regions of the United States.

(c) REPORT.—

(1) IN GENERAL.—Not later than 18 months after the appointment of all members of the Commission—

(A) a majority of the members of the Commission shall approve a report; and

(B) the Commission shall submit the approved report to the Congress and the President.

(2) CONTENTS.—The report shall include a detailed statement of findings, conclusions, and recommendations regarding government collection, use and disclosure of personal information, including the following:

(A) Findings on potential threats posed to individual privacy.

(B) Analysis of purposes for which sharing of information is appropriate and beneficial to the public.

(C) Analysis of the effectiveness of existing statutes, regulations, technology advances, third-party verification, and market forces in protecting individual privacy.

(D) Recommendations on whether additional legislation or regulation is necessary, and if so, specific suggestions on proposals to reform or augment current laws and regulations relating to citizens' privacy.

(E) Analysis of laws, regulations, or proposals which may impose unreasonable costs or burdens, raise constitutional concerns, or cause unintended harm in other policy areas, such as security, law enforcement, medical research and treatment, employee benefits, or critical infrastructure protection.

(F) Cost analysis of legislative or regulatory changes proposed in the report.

(G) Recommendations on non-legislative solutions to individual privacy concerns, including new technology, education, best practices, and third party verification.

(H) Recommendations on alternatives to government collection of information, including private sector retention.

(I) Review of the effectiveness and utility of third-party verification.

(d) ADDITIONAL REPORT.—Together with the report under subsection (c), the Commission shall submit to the Congress and the President any additional report of dissenting opinions or minority views by a member of the Commission.

(e) INTERIM REPORT.—The Commission may submit to the Congress and the President an interim report approved by a majority of the members of the Commission.

SEC. 5. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 11 members appointed as follows:

(1) 2 members appointed by the President.

(2) 2 members appointed by the Majority Leader of the Senate.

(3) 2 members appointed by the Minority Leader of the Senate.

(4) 2 members appointed by the Speaker of the House of Representatives.

(5) 2 members appointed by the Minority Leader of the House of Representatives.

(6) 1 member, who shall serve as Chairperson of the Commission, appointed jointly by the President, the Majority Leader of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives.

(b) DIVERSITY OF VIEWS.—The appointing authorities under subsection (a) shall seek to ensure that the membership of the Commission has a diversity of experiences and expertise on the issues to be studied by the Commission, such as views and experiences of Federal, State, and local governments, the media, the academic community, consumer groups, public policy groups and other advocacy organizations, civil liberties experts, and business and industry (including small business, the information technology industry, the health care industry, and the financial services industry).

(c) DATE OF APPOINTMENT.—The appointment of the members of the Commission shall be made not later than 30 days after the date of the enactment of this Act.

(d) TERMS.—Each member of the Commission shall be appointed for the life of the Commission.

(e) VACANCIES.—A vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

(f) COMPENSATION; TRAVEL EXPENSES.—Members of the Commission shall serve without pay, but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(h) MEETINGS.—

(1) IN GENERAL.—The Commission shall meet at the call of the Chairperson or a majority of its members.

(2) INITIAL MEETING.—Not later than 45 days after the date of the enactment of this Act, the Commission shall hold its initial meeting.

SEC. 6. DIRECTOR; STAFF; EXPERTS AND CONSULTANTS.

(a) DIRECTOR.—

(1) IN GENERAL.—Not later than 40 days after the date of enactment of this Act, the Chairperson of the Commission shall appoint a Director without regard to the provisions of title 5, United States Code, governing appointments to the competitive service.

(2) PAY.—The Director shall be paid at the rate payable for level III of the Executive Schedule established under section 5314 of such title.

(b) STAFF.—The Director may appoint staff as the Director determines appropriate.

(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—

(1) IN GENERAL.—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.

(2) PAY.—The staff of the Commission shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for grade GS–15 of the General Schedule under section 5332 of that title.

(d) EXPERTS AND CONSULTANTS.—The Director may procure temporary and intermittent

services under section 3109(b) of title 5, United States Code.

(e) STAFF OF FEDERAL AGENCIES.—

(1) IN GENERAL.—Upon request of the Director, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out this Act.

(2) NOTIFICATION.—Before making a request under this subsection, the Director shall give notice of the request to each member of the Commission.

SEC. 7. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purpose of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), if the Chairperson of the Commission submits a request to a Federal department or agency for information necessary to enable the Commission to carry out this Act, the head of that department or agency shall furnish that information to the Commission.

(2) EXCEPTION FOR NATIONAL SECURITY.—If the head of that department or agency determines that it is necessary to guard that information from disclosure to protect the national security interests of the United States, the head shall not furnish that information to the Commission.

(d) WEBSITE.—The Commission shall establish a website to facilitate public participation and the submission of public comments.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Director, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out this Act.

(g) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property to carry out this Act, but only to the extent or in the amounts provided in advance in appropriation Acts.

(h) CONTRACTS.—The Commission may contract with and compensate persons and government agencies for supplies and services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

(i) SUBPOENA POWER.—

(1) IN GENERAL.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter that the Commission is empowered to investigate by section 4. The attendance of witnesses and the production of evidence may be required by such subpoena from any place within the United States and at any specified place of hearing within the United States.

(2) FAILURE TO OBEY A SUBPOENA.—If a person refuses to obey a subpoena issued under paragraph (1), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(3) SERVICE OF SUBPOENAS.—The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) SERVICE OF PROCESS.—All process of any court to which application is made under paragraph (2) may be served in the judicial district in which the person required to be served resides or may be found.

SEC. 8. PRIVACY PROTECTIONS.

(a) DESTRUCTION OR RETURN OF INFORMATION REQUIRED.—Upon the conclusion of the matter or need for which individually identifiable information was disclosed to the Commission, the Commission shall either destroy the individually identifiable information or return it to the person or entity from which it was obtained, unless the individual that is the subject of the individually identifiable information has authorized its disclosure.

(b) DISCLOSURE OF INFORMATION PROHIBITED.—The Commission—

(1) shall protect individually identifiable information from improper use; and

(2) may not disclose such information to any person, including the Congress or the President, unless the individual that is the subject of the information has authorized such a disclosure.

(c) PROPRIETARY BUSINESS INFORMATION AND FINANCIAL INFORMATION.—The Commission shall protect from improper use, and may not disclose to any person, proprietary business information and proprietary financial information that may be viewed or obtained by the Commission in the course of carrying out its duties under this Act.

(d) INDIVIDUALLY IDENTIFIABLE INFORMATION DEFINED.—In this section, the term ''individually identifiable information'' means any information, whether oral or recorded in any form or medium, that identifies an individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify an individual.

SEC. 9. BUDGET ACT COMPLIANCE.

Any new contract authority authorized by this Act shall be effective only to the extent or in the amounts provided in advance in appropriation Acts.

SEC. 10. TERMINATION.

The Commission shall terminate 30 days after submitting a report under section 4(c).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Commission $3,000,000 to carry out this Act.

(b) AVAILABILITY.—Any sums appropriated pursuant to the authorization in subsection (a) shall remain available until expended.

Mr. KOHL. Mr. President, I rise today to introduce the ''Citizens' Privacy Commission Act'' with my colleague, Senator FRED THOMPSON. Privacy has become an issue of paramount importance in this era of electronic commerce, advanced communications, and far-reaching business conglomerates. Our challenge is to clearly define privacy concerns and decide how best to protect privacy as technology and the economy move forward. However, even as we consider privacy guidelines for the private sector, the government should follow the highest privacy standards and demonstrate not only that they are preferable, but that they work.

The measure we introduce today would create a Commission to examine how the various levels of government collect, use and share information about citizens. Although the recent privacy debate has been focused on online privacy and how the private sector collects and sells personally identifiable information, the government should not be overlooked. All levels of government have their own websites that are as capable of collecting sensitive information. There is also concern that the Privacy Act of 1974, which regulates how the government can collect, use and share personal information, is not being enforced or properly adhered to by federal government agencies. Furthermore, there is evidence that some government websites continue to collect information through the use of ''cookies'' in direct violation of former President Clinton's June 2000 executive order forbidding them to do so absent a ''compelling reason'' to do so.

Our proposal is simple, and its goals are modest and meaningful. Specifically, our measure creates an 11 member, bipartisan panel to study data collection practices, privacy protection standards, and existing privacy laws that apply to government collection and use of personal information. We also ask the Commission to examine pending privacy initiatives before Congress. Furthermore, we ask the Commission to determine if federal legislation is needed, and what impact new privacy laws would be. Finally, we direct the Commission to detail its findings and recommendations in a Final Report to be issued 18 months after enactment.

There is ample precedent for this Commission. In the mid-1970's, the privacy debate focused on government collection and misuse of personal data. Ultimately, Congress enacted the Freedom of Information Act, the Privacy Act, and the Privacy Study Commission. Since that time, however, very little attention has been paid to genuine concerns about government use of sensitive personal information. Having passed critical legislation in the 1970s, many people felt satisfied that the issue was taken care of. Unfortunately, we have grown lax about policing ourselves in this area. This bill will right the course and change that. In fact, this legislation provides us with the opportunity to establish a model of privacy protection. The intellectual capital created by the work of this Commission will help us set a responsible example for the private sector.

Privacy protection is a unique struggle, cutting across the public and private sector and involving virtually every sector of our nation's economy. Perhaps there is no possibility of a universal principle defining necessary privacy protections. But the federal government has an unparalleled opportunity to try to craft a set of guidelines for privacy protection that can serve as a model. We believe the time

has come for Congress to enact reasonable and thoughtful privacy legislation. This legislation is a sensible first step in that process.

In closing, let me be clear that this bill is neither a ploy to prevent the enactment of more specific privacy proposals, nor a stalling tactic to suspend discussion of privacy protection until the Commission publishes its final report. Rather, this legislation is a both a genuine effort to gather information on this increasingly complex topic and a plan to accomplish something positive in this field. This is legislation that can and should be passed by the Congress. Therefore, I truly hope we can move quickly to enact this measure into law, so that the Commission can get to work as soon as possible.

By Mrs. FEINSTEIN (for herself, Mr. THOMAS, Mr. LEAHY, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. LEVIN, Mr. WELLSTONE, Mrs. BOXER, Mr. AKAKA, Mr. FEINGOLD, Mr. KENNEDY, Mrs. MURRAY, and Mr. TORRICELLI):

S. 852. A bill to support the aspirations of the Tibetan people to safeguard their distinct identity; to the Committee on Foreign Relations.

Mrs. FEINSTEIN. Mr. President, I rise today to address the tragedy that is unfolding in Tibet and, alongside Senators THOMAS, LEAHY, JEFFORDS, LIEBERMAN, LEVIN, WELLSTONE, BOXER, AKAKA, FEINGOLD, KENNEDY, MURRAY, and TORICELLI introduce the Tibetan Policy Act of 2001.

This legislation is intended to safeguard the legitimate aspirations of the Tibetan people in their struggle to preserve their cultural and religious identity, and to encourage dialogue between the Dalai Lama or his representative and the Government of the People's Republic of China about the future of Tibet.

As many of my colleagues are aware, I have worked for well over a decade, since before I came to the Senate, to find the right balance for establishing a lasting, constructive dialogue between Chinese and Tibetan leaders. I have tried to do so with the best interests of both sides in mind. For years, I have tried to build trust and improve communication between Chinese and Tibetan leaders.

For me this is very personal. I first met the Dalai Lama in 1978. I have watched him, I have seen him, I have talked with him many, many times.

The Dalai Lama has pledged, over and over again, that what he wants is ''one-country, two systems'' approach, whereby Tibetans could live their life, practice their religion, educate their children, and maintain their language with dignity and respect among the Han Chinese people.

I have had the opportunity to speak, at great length, with the President of China and other senior members of the Chinese leadership about Tibet.

For years, I believed compromise, good will, and moderation were the right tools for tearing down obstacles and building cooperation between the peoples of China and Tibet.

I have even carried messages between the Dalai Lama and the President of China seeking to bring the two together.

In 1997, for example, I carried a letter from the Dalai Lama to President Jiang which, in part, stated that ''I have, for my part, openly and in confidence conveyed to you that I am not demanding independence for Tibet, which I believe is fundamental to the Chinese government.'' The letter also suggested that the Dalai Lama and President Jiang meet to discuss relations between the Tibetans and the Chinese government, and the ''maintenance and enhancement of those cultural, civic, and religious institutions that are so important to the Tibetan people and others throughout the world.''

What I got back was essentially that the Dalai Lama was just a splittist and that his word was not good.

I, for one, believe he is sincere, in his non-violence, in his dedication to being a monk, in his concern for the Tibetan people, heritage, and religion.

Yet Beijing has consistently ignored promises to preserve indigenous Tibetan political, cultural and religious systems. Indeed, Beijing has not kept its commitments made twice by China's paramount leaders—Deng Xiaoping in 1979 and Jiang Zemin in 1997.

I believe that the time has come for the United States government to increase our attention to enhanced Tibetan cultural and religious autonomy.

And I feel that I can no longer, in conscience, sit quietly and allow the situation in Tibet, the wiping away of Tibetan culture from the Tibetan Plateau, in fact, to deteriorate further.

In many ways, introducing this legislation, especially now, is a very difficult step for me. I have a strong, abiding interest in good relations between the United States and China, and I am fully aware that in the current environment there will be many in China who would rather dismiss this legislation out of hand than work together to address the underlying issues.

But, the many reasonable overtures made by me, many of my colleagues in Congress, and other individuals and organizations throughout the world to work together with China over the past several years to address this issue have thus far failed to persuade Beijing to reconsider its approach to Tibet.

And there does not appear to be a ''good time'' in U.S.-China relations to introduce this legislation.

So I would say this to my friends in China that as they consider this legislation and its intent: I take this action now because I and many of my colleagues are at the point where we feel that this legislation is necessary to open Beijing's eyes to a simple truth: honoring the basic rights of minorities in China is not a threat to China's sovereignty, and running roughshod over its own citizens is not in China's best interest.

I say this because many senior Chinese leaders, including Mao Zedong, Zhou En Lai, Deng Xiaoping, Hu Yaobang, and Jiang Zemin have acknowledged as much in the past.

And I say this because the aspirations of the Tibetan people are not for independence, but for autonomy and respect for their cultural and religious institutions. As both the letter I conveyed to President Jiang in 1997 and the Dalai Lama's statement on the 41st Anniversary of the Tibetan National Uprising stated, ''my approach envisages that Tibet enjoy genuine autonomy within the framework of the People's Republic of China . . . such a mutually beneficial solution would contribute to the stability and unity of China, their two most important priorities, while at the same time the Tibetans would be ensured of their basic right to preserve their own civilization and to protect the delicate environment of the Tibetan plateau.''

And I say this because I recognize that China is a rising great nation, with a rich culture and long history. Careful reading of its history shows that China, like the United States, draws real strength from its diversity, from its cultural, religious, and ethnic multiplicity.

But, I am now convinced China's leadership will not modify its behavior in Tibet until it becomes crystal clear that China's behavior risks tarnishing its international image and burdening China with tangible costs.

Unfortnately, the situation in Tibet today is dreadful, and promises only to get worse. Beijing is pursuing policies that threaten the Tibetan people's very existence and distinct identity, and Chinese security forces hold the region in an iron grip.

As Secretary Powell stated in his confirmation hearing before the Foreign Relations Committee. ''It is a very difficult situation right now with the Chinese sending more and more Han Chinese in to settle Tibet.'' Chinese settlers are flooding into Tibet, displacing ethnic Tibetans, guiding development in ways that clash with traditional Tibetan needs and values, and monopolizing local resources.

I do not want to debate the complex historical interactions that characterize the history of relations between China and Tibet. I am not interested in arguing about events in the past. What I am interested in is the quality of life and the right to exist as these concepts apply to Tibetans and Chinese today.

And, without question, a strong case can be made that Tibet has fared poorly under Chinese stewardship during the past fifty years: Beijing has consistently ignored promises to preserve indigenous Tibetan political, cultural and religious systems and institutions, despite having formally guaranteed these rights in the 1951 Seventeen

Point Agreement that incorporated Tibet into China. And, as I stated earlier, Beijing has never seriously moved itself to carry through on promises to find solutions to the Tibet problem, promises made at least twice by China's paramount leaders, Deng Xiaoping in 1979 and Jiang Zemin in 1997. Tibet has been the scene of many grassroots movements protesting unwelcome Chinese intrusions and policies since 1956, when Beijing first began seriously disrupting Tibetan society by forcefully imposing so-called ''democratic reforms'' in the region. China's response to Tibetan protests has typically been violent, excessive, and unrestrained. In 1959, Beijing viciously and bloodily suppressed the massive popular protest known as the Lhasa Uprising. Indeed, it is estimated that nearly 1.2 million Tibetans died at the hands of Chinese forces during the worst years of violence, between 1956 and 1976. International commissions and third-party courts of opinion, most notably the International Commission of Jurists and numerous United Nations resolutions, consistently pointed fingers at China as a violator in Tibet of fundamental human rights and of the basic principles of international law.

According to the 2000 State Department Country Report on Human Rights Practices: Chinese Government authorities continued to commit numerous serious human rights abuses in Tibet, including instances of torture, arbitrary arrest, detention without public trial, and lengthy detention of Tibetan nationalists for peacefully expressing political or religious views. Tight controls on religion and on other fundamental freedoms continued and intensified during the year.

And, as Human Rights Watch/Asia reports, China's activities are targeting not just the present, but Tibet's future as well: Children in the Tibetan capital, Lhasa, are being discouraged from expressing religious faith and practicing devotional activities as part of the authorities' campaign in middle schools and some primary schools. Children aged between seven and thirteen in schools targeted by the campaign are being told that Tibetan Buddhist practice is 'backward behavior' and an obstacle to progress. In some schools, children are given detention of forced to pay fines when they fail to observe a ban on wearing traditional Buddhist ''protection cords.''

Corrupt officials. Oppressive police tactics and midnight arrests. Seizure and imprisonment without formal charges. Beatings and unexplained deaths while in custody. The steady grinding down of Tibetan cultural and religious institutions. The list of abuses in Tibet goes on and on. There is no need for me to repeat them here.

I say all this as one who wants to work with China's leadership to help find a solution to this, and other, problems, and see a positive relationship between the U.S. and China, and between the people of China and the people of Tibet.

I want to be a positive force for bringing Tibetan and Chinese leaders to the table for face-to-face dialogue.

It is not my intention with this legislation to merely point fingers and lay blame. My intent in introducing the Tibetan Policy Act of 2001 is not to stigmatize or chastise China.

My intent in introducing the Tibetan Policy Act of 2001 is to place the full faith of the United States government behind efforts to preserve the distinct cultural, religious and ethnic autonomy of the Tibetan people.

Specifically, the Tibetan Policy Act of 2001: Outlines Tibet's unique historical, cultural and religious heritage and describes the efforts by the United States, the Dalai Lama, and others to initiate dialogue with China on the status of Tibet. Codifies the position of Special Coordinator for Tibetan Issues at the Department of State, assures that relevant U.S. government reports will list Tibet as a separate section under China and that the Congressional-Executive Commission on the People's Republic of China will hold Beijing to acceptable standards of behavior in Tibet. Authorizes $2.75 million for humanitarian assistance for Tibetan refugees, scholarships for Tibetan exiles, and human rights activities by Tibetan non-governmental organizations. Establishes U.S. policy goals for international economic assistance to and in Tibet to ensure that ethnic Tibetans benefit from development policies in Tibet. Calls on the Secretary of State to make best efforts to establish an office in Lhasa, the Capital of Tibet. Provides U.S. support for consideration of Tibet at the United Nations. Ensures that Tibetan language training is available for foreign service officers. Highlights concerns about the lack of religious freedom in Tibet by calling on China to cease activities which attack the fundamental characteristics of religious freedom in Tibet.

In addition, the Tibet Policy Act expresses the Sense of the Congress that: The President and the Secretary of State should initiate steps to encourage China to enter into negotiations with the Dalai Lama or his representatives on the question of Tibet and the cultural and religious autonomy of the Tibetan people. That the President and the Secretary of State should request the immediate and unconditional release of political or religious prisoners in Tibet; seek access for international humanitarian organizations to prisons in Tibet; and seek the immediate medical parole of Ngawang Choephel and other Tibetan prisoners known to be in ill-health. The United States will seek ways to support economic development, cultural preservation, health care, and education and environmental sustainability for Tibetans inside Tibet.

The Tibetan Policy Act does not aim to punish anyone. I do not believe that threats or force will sway Beijing from its present course.

But, I am convinced that we must send a clear message.

I am under no illusion that passing the Tibetan Policy Act of 2001 will immediately change the situation in Tibet.

Nor am I under any illusion that changing current conditions in Tibet will be an easy process. It will be a long and difficult process requiring patience and perseverance.

But I am hopeful that better, more effective efforts on our part and better coordination with like-minded members of the international community will encourage China to change its thinking and modify its behavior towards Tibet.

To paraphrase an old Chinese proverb: you have to take a first step to start any journey. This legislation, I hope, is a first step in bringing together the Dalai Lama or his representative and the Chinese government to discuss the future of Tibet and to take action to safeguard the distinct cultural, religious, and social identity of the Tibetan people.

I urge my colleagues here in the Senate, as well as my friends in China, to join with me in taking it.

By Mrs. BOXER:

S. 855. A bill to protect children and other vulnerable subpopulations from exposure to environmental pollutants, to protect children from exposure to pesticides in schools, and to provide parents with information concerning toxic chemicals that pose risks to children, and for other purposes; to the Committee on Environment and Publc Works.

Mrs. BOXER. Mr. President, today I am reintroducing a bill to protect children from the dangers posed by pollution and toxic chemicals in our environment. The Children's Environmental Protection Act, (CEPA), is based on the fact that children are not small adults. Children eat more food, drink more water, and breathe more air as a percentage of their body weight than adults. Children also grow rapidly, and therefore are physiologically more vulnerable to toxic substances than adults. This makes them more susceptible to the dangers posed by those substances.

How is this understanding that children suffer higher risks from the dangers posed by toxic and harmful substances taken into account in our environmental and public health standards? Do we gather and consider data that specifically evaluates how those substances affect children? If that data is lacking, do we apply extra caution when we determine the amount of toxics that can be released into the air and water, the level of harmful contaminants that may be present in our drinking water, or the amount of pesticides that may be present in our food?

In most cases, the answer to all of these questions is ''no.'' In fact, most of these standards are designed to protect adults rather than children. In

most cases, we do not even have the data that would allow us to measure how those substances specifically affect children. And, in the face of that uncertainty, we generally assume that what we don't know about the dangers toxic and harmful substances pose to our children won't hurt them. We generally don't apply extra caution to take account of that uncertainty.

CEPA would change the answers to those questions from ''no'' to ''yes.'' It would childproof our environmental laws. CEPA is based on the premise that what we don't know about the dangers toxic and harmful substances pose to our children may very well hurt them.

CEPA would require the Environmental Protection Agency (EPA) to set environmental and public health standards to protect children. It would require EPA to explicitly consider the dangers that toxic and harmful substances pose to children when setting those standards. Finally, if EPA discovers that it does not have specific data that would allow it to measure those dangers, EPA would be required to apply an additional safety factor, an additional measure of caution, to account for that lack of information. The Safe Drinking Water Act Amendments of 1996 included my amendment to require EPA to set drinking water standards at safe levels for children. All of our environmental laws should reflect the special needs of children. CEPA would ensure that children's health risks are properly taken into account.

This process would, I acknowledge, take some time. So, while EPA is in the process of updating the standards, CEPA would provide parents and teachers with a number of tools to immediately protect their children from toxic and harmful substances.

First, CEPA would require EPA to provide all schools and day care centers that receive federal funding a copy of EPA's guide to help schools adopt a least toxic pest management policy. CEPA would also prohibit the use of dangerous pesticides—those containing known or probably carcinogens, reproductive toxins, acute nerve toxins and endocrine disrupters—in those areas. Under CEPA, parents would also receive advance notification before pesticides are applied on school or day care center grounds.

Second, CEPA would expand the federal Toxics Release Inventory (TRI) to require the reporting of toxic chemical releases that may pose special risks to children. In particular, CEPA provides that releases of small amounts of lead, mercury, dioxin, cadmium and chromium be reported under TRI. These chemicals are either highly toxic, persist in the environment or can accumulate in the human body over many years—all features that render them particularly dangerous to children. Lead, for example, will seriously affect a child's development, but is still released into the environment through lead smelting and waste incineration. CEPA would then require EPA to identify other toxic chemicals that may present special risks to children, and to provide that releases of those chemicals be reported under TRI.

Third, CEPA would direct EPA to create a list of recommended safer-for-children products that minimize potential risks to children.

Finally, CEPA would require EPA to create a family right-to-know information kit that would include practical suggestions to help parents reduce their children's exposure to toxic and harmful substances in the environment.

My CEPA bill is based on the premise that what we don't know about the dangers that toxic and harmful substances pose to our children may very well hurt them. It would require EPA to apply caution in the face of that uncertainty. And, ultimately, it would childproof our environmental laws to ensure that those laws protect the most vulnerable among us—our children.

I encourage my colleagues to support this bill.

By Mr. KERRY (for himself, Mr. BOND, Mr. CLELAND, Ms. LANDRIEU, Mr. BENNETT, Mr. LEVIN, Mr. LIEBERMAN, Mr. HARKIN, Mr. BINGAMAN, Mr. ENZI, and Ms. CANTWELL):

S. 856. A bill to reauthorize the Small Business Technology Transfer Program, and for other purposes; to the Committee on Small Business.

Mr. KERRY. Mr. President, today I rise to introduce legislation to reauthorize the Small Business Administration's Small Business Technology Transfer, STTR, Program.

The STTR program funds cooperative R&D projects between small companies and research institutions as an incentive to advance the nation's technological progress. For those of us who were here when Congress created this program in 1992, we will remember that we were looking for ways to move research from the laboratories to market. What could we do to keep promising research from stagnating in Federal labs and research universities? Our research in this country is world renowned, so it wasn't a question of good science and engineering. We, without a doubt, have one of the finest university systems in the world, and we have outstanding research institutions. What we needed was more development, development of innovative technology. We needed a system that would take this research and find ways it could be applied to everyday life and national priorities. One such company is Sterling Semiconductor. Sterling, in conjunction with the University of Colorado, has developed silicon carbide wafers for use in semiconductors that can withstand extreme temperatures and conditions. In addition to defense applications, these wafers can be used for everything from traffic lights to automobile dashboards and communications equipment.

With technology transfer, it was not just the issue of the tenured professor who risked security if he or she left to try and commercialize their research; it was also an issue of creating businesses and jobs that maximized the contributions of our scientists and engineers once they graduated. There simply weren't enough opportunities at universities and labs for these bright individuals to do research and development. The answer was to encourage the creation of small businesses dedicated to research, its development, and ultimately moving that research out of the lab and finding a commercial application.

We knew that the SBA's existing Small Business Innovation Research, SBIR, program had proven to be extremely successful over the previous ten years, so we established what is now known as the Small Business Technology Transfer program. The STTR program complements the SBIR program. Whereas the SBIR program funds R&D projects at small companies, STTR funds cooperative R&D projects between a small company and a research institution, such as a university or Federally funded R&D lab. The STTR program fosters development and commercialization of ideas that either originate at a research institution or require significant research institution involvement, such as expertise or facilities, for their successful development.

This has been a very successful program. One company, Cambridge Research Instruments of Woburn, Massachusetts, has been working on an STTR project with the Marine Biological Lab in Woods Hole. They have developed a liquid crystal-based polarized light microscope for structural imaging. While that is a mouthful, I'm told that it helps in manufacturing flat screen computer monitors, and even helps improve the in vitro fertilization procedure. Together this company and the lab expect to have sales in excess of $1 million dollars next year from this STTR project.

As this example illustrates, the STTR program serves an important purpose for this country's research and development, our small businesses, our economy, and our nation. The program is set to expire at midnight on Sunday, September 30th. By the way, we absolutely have no intention of letting reauthorization get down to the wire, which was the unfortunate fate of the reauthorization of the SBIR program last year. I have worked in partnership with Senator BOND to develop this legislation, and as part of the process we have consulted with and listened to our friends in the House, both on the Small Business Committee and the Science Committee. We do not see this legislation as contentious, and we have every intention of seeing this bill signed into law well before September.

Shaping this legislation has gone beyond policy makers; we have reached out to small companies that conduct

the STTR projects and research universities and Federal labs. On my part, I sponsored two meetings in Massachusetts on March 16th to discuss the STTR program. At my office in Boston, there was a very helpful discussion with six of Massachusetts' research universities expressing what they like and dislike about the program, and why they use it, or don't use it more. The meeting included the licensing managers from Boston University, Harvard, MIT, Northeastern University, and the University of Massachusetts. They said they need to hear more about the STTR program and have more outreach to their scientists and engineers so that they understand when and how to apply for the program. Based on their suggestions, we've included an outreach mandate in our bill. In addition, we're trying to provide SBA with more resources in its Office of Technology to be responsive to the concerns of STTR institutions and small businesses.

Later that day, my office was part of a meeting in Newton at Innovative Training Systems in which about 20 leaders and representatives of small high-tech companies talked about the SBIR and STTR programs. They make a tremendous contribution to the economy and state of Massachusetts. They said that the Phase II award for STTR should be raised form $500,000 to $750,000 to be consistent with the SBIR program. Otherwise, since a minimum of 30 percent of the award goes to the university partner, it was too little money to really develop the research.

As I said, we listened to them. And we also listened to what the program managers of the participating agencies had to say. Agencies participate in this program if their extramural R&D budget is greater than $1 billion. Consequently, there are five eligible agencies: the Department of Defense, the Department of Energy, the National Aeronautics and Space Administration, the Department of Health and Human Services, and the National Science Foundation. For the STTR projects, they set aside .15 percent of their extramural R&D budget. The comes to about $65 million per year invested in these collaborations between small business and research institutions.

Combining all the suggestions for improvement, the STTR Program Reauthorization Act of 2001 does the following:

1. It reauthorizes the program for nine years, setting the expiration date for September 30th, 2010.

2. Starting in two years, FY2003, it raises in small increments the percentage that Departments and Agencies set aside for STTR R&D. In FY2004, the percentage increases from .15 percent to .3 percent. After three years, in FY2007, the bill raises the percentage from .3 percent to .5 percent;

3. Starting in two years, FY2003, the legislation raises the Phase II grant award amount from $500,000 to $750,000;

4. It requires the participating agencies to implement an outreach program to research institutions in conjunction with any such outreach done with the SBIR program;

5. As last year's legislation did for the SBIR program, this bill strengthens the data collection requirements regarding awards and the data rights for companies and research institutions that conduct STTR projects. The goal is to collect better information about the companies doing the projects, as well as the research and development, so that we can measure success and track technologies.

While I believe that these changes reflect common sense and are reasonable, I would like to discuss two of the proposed changes.

First, I would like to talk about reauthorizing the program for nine years. The STTR program was a pilot program when it was first enacted in 1992. Upon review in 1997, the results of the program were generally good and the program was reauthorized that year. A more recent review and study of the program shows that the program has become more successful as it has had more time to develop. Specifically, the commercialization rate of the research is higher than for most research and development expenditures. Further, universities and research is higher than for most research and development expenditures. Further, universities and research institutions have developed excellent working relationships with small businesses, and the program has also had good geographic diversity, involving small companies and research institutions throughout the country. The nine-year reauthorization will allow the agencies, small businesses and universities to gradually ramp up to the higher percentage in a predictable and orderly manner.

Second, I would like to talk about the gradual, incremental increases in the percentages reserved for STTR contracts and the increase in the Phase II awards. When we reached out to the small businesses and the research institutions that conduct STTR projects, and the program managers of the five agencies that participate in the STTR program, we heard two recurring themes: one, raise the amount of the Phase II awards; and two, increase the amount of the percentage reserved for STTR projects.

Speaking to the first issue, we heard that the Phase II awards of $500,000 generally are not sufficient for the research and development projects and should be increased to $750,000, the same as the SBIR Phase II awards, to make the awards worth applying for the small businesses and research institutions.

As for the second issue, we were told that the percentage of .15 reserved for STTR awards needed to be increased in order to better meet the needs of the agencies. Last year, that .15 percent of the five agencies' extramural research and development budgets amounted to a total $65 million dollars available for small businesses and research institutions to further develop research and transfer technology from the lab to market through the STTR program. Less than a quarter of one percent to help strengthen this country's technological progress is not extravagant; in fact, it is not adequate support for this important segment of the economy.

Nevertheless, we are very conscientious about the needs of the departments and agencies to meet their missions for the nation and have proposed gradual increases that take into full consideration the realities of implementing the changes for the agencies and departments that participate in the program. Consequently, the legislation does not increase the percentage for STTR awards until two full years after the program has been reauthorized.

We are also conscientious about the fact that we want more research, not less, so we have timed the increase of the Phase II awards to coincide with the initial percentage increase reserved for STTR projects.

Overall, we believe this gradual increase will help encourage more innovation and greater cooperation between research institutions and small businesses. As the program requires, at least 30 percent of these additional funds will go to university and research institutions. Not only do the universities and research institutions that collaborate with small businesses get 30 percent of the STTR award money for each contract, they also benefit in that they often receive license fees and royalties. We are also conscientious about being fiscally responsible, the percentage increases will have no budget implication since it does not increase the amount of the money spent. Rather, it ultimately, after six years, redirects one half of one percent to this very successful program which benefits the economy overall.

This bill will ensure that this successful program is continued and increased. It will also provide Congress with important information and data on the program and encourage more outreach to small businesses and research institutions.

I want to encourage my colleagues to learn about this program, to find out the benefits to their state's hi-tech small businesses and research universities and labs, and to join me in passing this legislation in the Senate as soon as possible. To my friend from Missouri, Senator BOND, I want to thank you and your staff for working with me and my staff to build this country's technological progress. I also want to thank all of the cosponsors: Senators CLELAND, LANDRIEU, BENNETT, LEVIN, LIEBERMAN, HARKIN, BINGAMAN, ENZI, and CANTWELL.

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. 856

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Technology Transfer Program Reauthorization Act of 2001''.

SEC. 2. EXTENSION OF PROGRAM AND EXPENDITURE AMOUNTS.

(a) IN GENERAL.—Section 9(n)(1) of the Small Business Act (15 U.S.C. 638(n)(1)) is amended to read as follows:

''(1) REQUIRED EXPENDITURE AMOUNTS.—

''(A) IN GENERAL.—With respect to each fiscal year through fiscal year 2010, each Federal agency that has an extramural budget for research, or research and development, in excess of $1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

''(B) EXPENDITURE AMOUNTS.—The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be—

''(i) 0.15 percent for each fiscal year through fiscal year 2003;

''(ii) 0.3 percent for each of fiscal years 2004 through 2006; and

''(iii) 0.5 percent for fiscal year 2007 and each fiscal year thereafter.

(b) CONFORMING AMENDMENT.—Section 9 of the Small Business Act (15 U.S.C. 638) is amended in subsections (b)(4) and (e)(6), by striking ''pilot'' each place it appears.

SEC. 3. INCREASE IN AUTHORIZED PHASE II AWARDS.

(a) IN GENERAL.—Section 9(p)(2)(B)(ix) of the Small Business Act (15 U.S.C. 638(p)(2)(B)(ix)) is amended—

(1) by striking ''$500,000'' and inserting ''$750,000''; and

(2) by inserting before the semicolon at the end the following: '', and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall be effective beginning in fiscal year 2004.

SEC. 4. AGENCY OUTREACH.

Section 9(o) of the Small Business Act (15 U.S.C. 638(o)) is amended—

(1) in paragraph (12), by striking ''and'' at the end;

(2) in paragraph (13), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(14) implement an outreach program to research institutions and small business concerns for the purpose of enhancing its STTR program, in conjunction with any such outreach done for purposes of the SBIR program; and''.

SEC. 5. POLICY DIRECTIVE MODIFICATIONS.

Section 9(p) of the Small Business Act (15 U.S.C. 638(p)) is amended by adding at the end the following:

''(3) MODIFICATIONS.—Not later than 120 days after the date of enactment of this paragraph, the Administrator shall modify the policy directive issued pursuant to this subsection to clarify that the rights provided for under paragraph (2)(B)(v) apply to all Federal funding awards under this section, including the first phase (as described in subsection (e)(6)(A)), the second phase (as described in subsection (e)(6)(B)), and the third phase (as described in subsection (e)(6)(C)).''.

SEC. 6. STTR PROGRAM DATA COLLECTION.

(a) IN GENERAL.—Section 9(o) of the Small Business Act (15 U.S.C. 638(o)), as amended by this Act, is amended by adding at the end the following:

''(15) collect, and maintain in a common format in accordance with subsection (v), such information from awardees as is necessary to assess the STTR program, including information necessary to maintain the database described in subsection (k).''.

(b) DATABASE.—Section 9(k) of the Small Business Act (15 U.S.C. 638(k)) is amended—

(1) in paragraph (1)—

(A) by inserting ''or STTR'' after ''SBIR'' each place it appears;

(B) in subparagraph (C), by striking ''and'' at the end;

(C) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(E) with respect to assistance under the STTR program only—

''(i) whether the small business concern or the research institution initiated their collaboration on each assisted STTR project;

''(ii) whether the small business concern or the research institution originated any technology relating to the assisted STTR project;

''(iii) the length of time it took to negotiate any licensing agreement between the small business concern and the research institution under each assisted STTR project; and

''(iv) how the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project were allocated (by percentage) between the small business concern and the research institution.''; and

(2) in paragraph (2)—

(A) by inserting ''or an STTR program under subsection (n)(1)'' after ''(f)(1)'';

(B) in subparagraph (A)(iii), by inserting ''and STTR'' after ''SBIR''; and

(C) in subparagraph (D), by inserting ''or STTR'' after ''SBIR''.

(c) SIMPLIFIED REPORTING REQUIREMENTS.—Section 9(v) of the Small Business Act (15 U.S.C. 638(v)) is amended by inserting ''or STTR'' after ''SBIR'' each place it appears.

(d) REPORTS TO CONGRESS.—Section 9(b)(7) of the Small Business Act (15 U.S.C. 638(b)(7)) is amended by striking ''and (o)(9)'' and inserting '', (o)(9), and (o)(15)''.

Mr. BOND. Mr. President, I am pleased to join with Senator JOHN KERRY, my colleague and ranking member on the Small Business Committee, in sponsoring legislation to reauthorize the Small Business Technology Transfer, STTR, Program. This program has proven itself to be highly effective. The bill we are introducing today acknowledges the success of the STTR Program by expanding it during the length of the reauthorization so that its benefits will increase in the coming years.

The STTR Program was created in 1992 to stimulate technology transfer from research institutions to small firms while, at the same time, accomplishing the Federal government's research and development goals. The program is designed to convert the billions of dollars invested in research and development at our nation's universities, federal laboratories and nonprofit research institutions into new commercial technologies. It does this by joining the ideas and resources of research institutions with the commercialization experience of small companies.

Each agency with an extramural research and development budget of more than $1 billion participates in the program. Currently, the Department of Defense, the National Institutes of Health, the National Aeronautics and Space Administration, NASA, the National Science Foundation, NSF, and the Department of Energy, DOE, have STTR Programs.

To receive an award under the STTR Program, a research institution and a small firm jointly submit a proposal to conduct research on a topic that reflects an agency's mission and research and development needs. The proposals are then peer-reviewed and judged on their scientific, technical and commercial merit. Similar to the Small Business Innovation Research Program, awards are provided in three phases. Phase one awards are designed to determine the scientific and technical merit and feasibility of a proposed research idea, with funding for individual awards limited to $100,000. Phase two awards further develop research from phase one and emphasize the idea's commercialization potential, with individual awards up to $500,000. Phase three awards consist of non-Federal funds for the commercial application of the technology, non-STTR Federal funds for the commercialization of products or services intended for procurement by the Federal government, or non-STTR Federal funds for continued research and development of the technology.

The benefits of fostering collaboration between research institutions and small firms are numerous. Small firms have shown themselves to be excellent at commercializing research when they are provided the opportunity to take advantage of the expertise and resources that reside in our nation's universities. A recent Small Business Administration Office of Advocacy report reviewed the rate of return for research and development by large and small firms both with and without university partners. When these firms do not have university partners, their rate of return is 14 percent. When a collaboration is formed between universities and small firms, however, the rate of return jumps to 44 percent. By contrast, the rate of return only increases to 30 percent when large firms and universities collaborate.

Moreover, partnerships between small firms and universities have led to world-class high-technology economic development. Numerous studies cite the emergence of Silicon Valley and the Route 128 corridor in Massachusetts as directly resulting from the partnerships and technology transfer that occurred, and are still occurring, among small firms, Stanford University and the Massachusetts Institute of Technology. The cooperation between industry and these universities has strengthened considerably our economic competitiveness in the world. The STTR Program seeks to foster this same type of economic development in the hundreds of communities around the country that contain universities

and federal laboratories. And, the STTR Program has proven to be immensely successful at growing small firms from these types of partnerships.

The Committee on Small Business has recently received data on the commercial success of small firms that received STTR awards between 1995 and 1997. The results are truly outstanding. Of the 102 projects surveyed in that time-frame, 53 percent had either resulted in sales or the companies involved in the projects had received follow-on developmental funding for the technology. To date, these projects had resulted in $132 million from sales and $53 million in additional developmental funding. Moreover, the Committee has learned that the companies who had received these STTR awards are projecting an additional $186 million in sales in 2001 and an estimated additional $900 million in sales by 2005. These numbers are even more remarkable when one considers that it typically takes between 7 to 10 years to successfully commercialize new technologies.

In addition to proving to be an amazing commercial success, the STTR Program has also provided high-quality research to the Federal Government. In the most recent published report of the General Accounting Office on the STTR Program, Federal agencies rated highly the technical quality of the proposals. The DOE, as an example, rated the quality of the proposed research in the top ten percent of all research funded by the Department.

A good example of the benefits that the STTR Program provides to small firms and universities is the experience of Engineering Software Research and Development, Inc. in St. Louis, MO. Engineering Software, in partnership with Washington University in St. Louis, received a phase two award from the Air Force to develop an innovative method of analyzing the stresses placed on composite materials. While this technology is currently being used in the aeronautics industry, it has many other practical applications.

The STTR Program permitted Dr. Barna Szabo, who had originated an algorithm he developed at Washington University, to transfer the technology to Engineering Software, which had the software infrastructure to transition the technology from an academic to a practical commercial application. According to Dr. Szabo, Engineering Software has received to date at an estimated $1.25 million in sales and follow-on developmental funding resulting from the technology funded by the STTR award and that the STTR Program was of great assistance in transferring the technology from the academic environment to actual use and application.

Based on the proven success of the STTR Program to date, this legislation increases the funds allocated for the program. This increase is phased-in through the length of the reauthorization. When a program is working as well as the STTR Program, it would be a mistake if Congress did not build on its success.

This is especially true for Federal investment in small business research and development. Despite report after report demonstrating that small businesses innovate at a greater rate than large firms, small businesses only receive less than four percent of all Federal research and development dollars. This number has remained essentially unchanged for the past 22 years. Increasing funds for the STTR Program sends a strong message that the Federal Government acknowledges the contributions that small businesses have made and will continue to make to government research and development efforts and to our nation's economy.

I am pleased that my colleague Senator KERRY and I have worked together on this bi-partisan legislation. It is a good bill for the small business high-technology community and will ensure that our Federal research and development needs are well met in the next decade. When this bill is debated by the full Senate, I trust that it will receive the support of all of our colleagues.

Ms. CANTWELL. Mr. President, research and development has been a fundamental driver of the growth of our economy. It is critical that we continue significant investment in R&D and improve commercialization of the research undertaken at our non-profit institutions.

I thank the Small Business Committee ranking member JOHN KERRY and Chairman CHRISTOPHER BOND for taking a leadership role in reauthorizing the Small Business Technology Transfer program. The program is a companion to the very successful Small Business Innovation Research (SBIR) program which funds R&D projects undertaken by small businesses. Under the STTR program, the U.S. Departments of Defense, Energy, and Health and Human Services, the National Aeronautics and Space Administration, and the National Science Foundation must set-aside .15 percent of their research dollars for award to small high technology firms that partner with non-profit research institutions.

The STTR program is scheduled to expire on September 30, 2001. The Kerry-Bond bill, entitled the Small Business Technology Transfer Program Reauthorization Act of 2001, extends the program until 2010. In addition to extending the STTR program it gradually increases the percentage of Federal R&D funding going to the program from .15 percent to .5 percent over 9 years. There is also a provision to encourage agencies to increase outreach to small business and universities to promote the STTR Program.

Many of our most successful businesses in the changing economy were only recently small businesses. Going back only 25 years, one of my State's largest employers, Microsoft, was a small business. Even today, many of the innovators driving the rapid industrial evolution work in small businesses. But the risk and expense of conducting serious R&D efforts can be beyond the means of many of these businesses.

On the other side of the equation, the commercial value of non-profit research often remains unrealized because there are not adequate opportunities to bring researchers together with those who could best make the research into a marketable product.

This program fills a very important need by bringing together the capabilities of our non-profit research institutions with the entrepreneurial spirit of our small businesses. The program holds great promise as one way to meet the scientific and technological challenges of our changing economy. And this program has already been successful throughout the United States. In my state alone over the past 5 years, 52 grants have been awarded for work in biotechnology, medicine, fluid mechanics, chemistry, electronics and computer technologies. I am very pleased to be able to lend my support to this program and look forward to this bill moving rapidly into law.

STATEMENTS ON SUBMITTED RESOLUTIONS

SENATE RESOLUTION 85—DESIGNATING THE WEEK OF MAY 6 THROUGH 12, 2001, AS ''TEACHER APPRECIATION WEEK'', AND DESIGNATING TUESDAY, MAY 8, 2001 AS ''NATIONAL TEACHER DAY''

Mr. WARNER (for himself, Mr. ALLEN, Mr. COCHRAN, Mr. BROWNBACK, Mr. JEFFORDS, Mr. CRAIG, Mr. THURMOND, Mr. CRAPO, Mr. ENZI, Mr. DEWINE, Ms. MIKULSKI, Mr. HATCH, Mr. SMITH of Oregon, and Mr. STEVENS) submitted the following resolution; which was considered and agreed to:

S. RES. 85

Whereas the foundation of American Freedom and democracy is a strong, effective system of education where every child has the opportunity to learn in a safe and nurturing environment;

Whereas a first rate education system depends on a partnership between parents, principals, teachers, and children;

Whereas much of the success of our Nation is the result of the hard work and dedication of teachers across the Nation;

Whereas in addition to a child's family, knowledgeable and skillful teachers can have a profound impact on the child's early development and future success;

Whereas many people spend their lives building careers, teachers spend their careers building lives;

Whereas our Nation's teachers serve our Nation's children beyond the call of duty as coaches, mentors, and adviser's without regard to fame or fortune; and

Whereas across our Nation, nearly 3,000,000 men and women experience the joys of teaching young minds the virtues of reading, writing, and arithmetic: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week of May 6 through 12, 2001, as ''Teacher Appreciation Week'':