United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, SECOND SESSION

Vol. 150 WASHINGTON, WEDNESDAY, NOVEMBER 17, 2004 No. 132

House of Representatives

HOUSE OF REPRESENTATIVES
WEDNESDAY, NOVEMBER 17, 2004

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. BISHOP of Utah).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 17, 2004.

I hereby appoint the Honorable ROB BISHOP to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

Dr. Bob M. Patterson, Pastor, First Baptist Church, Warm Springs, Georgia, offered the following prayer:

Father, we open this session with prayer not because of tradition or misplaced need to convince You to be on our side. But in this place, sacred to our republic, we admit that we are lost and clueless without Your presence and guidance.

Our first thoughts today are with those in harm's way around Your world in defense of freedom. We pray for victory that will be complete and permanent. For families who find themselves separated, we ask for strong bonds in spite of missed birthdays, anniversaries and holidays. And for those who have received a flag folded three-cornered, we pray Your presence will be an unseen source of comfort and hope.

As the people's business is conducted in this hallowed Chamber, we ask for our representatives to not doubt their beliefs or believe their doubts. We pray for them the courage born of godly convictions and tempered by humility. We ask that You give them a clear idea of what is just and best for our republic coupled with the resolve to do the right thing.

We pray this in the name of the one who promised to be present and to guide us, Jesus the Christ. Amen.

NOTICE

If the 108th Congress, 2d Session, adjourns sine die on or before November 20, 2004, a final issue of the Congressional Record for the 108th Congress, 2d Session, will be published on Monday, December 13, 2004, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 10. The final issue will be dated Monday, December 13, 2004, and will be delivered on Tuesday, December 14, 2004.

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By order of the Joint Committee on Printing.

ROBERT W. NEY, *Chairman.*

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Printed on recycled paper.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Ohio (Mr. KUCINICH) come forward and lead the House in the Pledge of Allegiance.

Mr. KUCINICH led the Pledge of Allegiance as follows:

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

THANKING THE REVEREND DR. BOB PATTERSON

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, I rise to thank the reverend Dr. Bob Patterson for his message today. Bob is no stranger to the halls of the United States House or to Georgia congressmen named Phil. When he was a young man growing up in Hall County, Georgia, in the 1970s, he was appointed to serve as a House page by then Congressman Phil Landrum, and later, he was on detached duty with the House Press Gallery during the Nixon impeachment inquiry.

But Bob did not answer to the siren song of politics. He returned to Georgia to finish college, and then he headed to Texas for seminary. Ministers are not known for staying in one place too long, but Bob has made his home at the First Baptist Church of Warm Springs, Georgia, since 1986.

Warm Springs, Georgia, should sound familiar to those who take a strong interest in American history. Even before he was elected President, Franklin Delano Roosevelt was a frequent visitor and a part-time resident. He was convinced that the warm spring water that existed there had a healing effect on his polio, and he set up an institute in this west Georgia community where other victims of the disease, many of them children, could come for care.

FDR built a house in Warm Springs that is known as the Little White House, and it was in this house in 1945 that the President died.

FDR saw Warm Springs as a place to serve others, and Bob Patterson has carried on that tradition in the heart of Meriwether County. The thesis for his doctoral dissertation was entitled ''Developing a Need-Based Community Ministry Strategy for First Baptist Church in Warm Springs.'' He has personally ministered to the needs in his local community by serving the Family Connection initiative. In fact, he has been honored by both the Rotary and the Pilot clubs for his outstanding contribution to all of Meriwether County.

U.S. MUST DEVELOP EXIT STRATEGY IN IRAQ

(Mr. KUCINICH asked and was given permission to address the House for 1 minute.)

Mr. KUCINICH. Mr. Speaker, the United States must begin to present an exit strategy in Iraq. Bombing the villages to save the villages is not an exit strategy. It is absolutely horrific that as many as 100,000 innocent civilians may have perished in Iraq. Stopping troops who have served their tour of duty from returning to their families is not an exit strategy. Expanding house-to-house fighting across Iraq is not an exit strategy.

The United States must develop an exit strategy in Iraq. It must bring our troops home, and we must seek a new relationship with the United Nations to help make this possible.

In the weeks ahead, I will join with other Members of the House in expanding this discussion. We have a new Congress coming up. We have to take new directions. And we can start by discussing a new direction for Iraq that will result in the United States getting out, bringing our troops home and reestablishing our relationship with the world.

BUSINESS AS USUAL

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute.)

Mr. DEFAZIO. Mr. Speaker, it is business as usual after the election here in Washington. Right now they are writing a bill to finance the entire Federal Government, hundreds of billions of dollars, behind closed doors. It will be brought up with one vote, no amendments allowed, up or down. Why not? Maybe because we are borrowing $1 million a minute to run the Federal Government, $1 million a minute.

Yesterday the Pension Benefit Guarantee Fund announced that its deficit has doubled to $24 billion. They are broke. They cannot guarantee pensions. Social Security will collect $163 billion more than it needs, but every penny will be borrowed and spent this year for current consumption. We hit the federal debt limit for the third time in 3 years, but the Federal Government is not in default because they are borrowing from Federal employees' pension savings.

Is this not great? Nothing wrong with this picture. We do not need to change. The majority has a plan: more spending, more borrowing, more tax cuts, more dynamic scoring, which means we pretend none of this exists, and we pass the bill to our kids and grandkids.

WORKING TOGETHER

(Mr. GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GREEN of Texas. Mr. Speaker, the election is over, and I rise to congratulate President Bush, a fellow Texan, on his reelection. I look forward to working with the President over the next 4 years, particularly to ensure the security of our Nation and to support our men and women in combat. The elimination of terrorist networks across the world and victory in Iraq are mutual goals on which I think we can work together.

While the President's election victory was decisive, 51 percent does not constitute a mandate. Nearly half of America voted for a Democratic platform that protects Social Security and provides more Americans with health insurance. So the President should not mistake this election as a mandate for his efforts to privatize Social Security.

To put Social Security in the hands of a volatile stock market would dismantle our Nation's secured social safety network. We must do more to stop the increase in Americans without health insurance. To expand health savings accounts and association health plans would increase the ranks of uninsured by more than 1 million per year.

During the President's first term, we saw the middle class dwindle, the gap between rich and poor widen. If the President wants to reverse this trend and provide Americans with true health care and economic security, we can work together. But if working together means enacting controversial policies that dismantle the social safety net, this President can count on aggressive opposition.

God bless the United States of America.

TROUBLING ECONOMIC NEWS

(Mr. EMANUEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EMANUEL. Mr. Speaker, as we returned for this lame duck session, we are confronted with a slew of troubling economic news. Just yesterday we learned that inflation is up by 1.7 percent, the sharpest monthly increase in over 15 years. The value of the dollar is dropping to all-time new lows. We also learned that the Pension Benefit Guarantee Corporation's long-term deficit doubled from $11.2 billion to $23.3 billion, a deficit resulting from the PBGC assuming responsibilities for pension plans of 192 failed companies, up from 155 last year alone.

And while we are confronting these new challenges, the annual budget deficit is at $400 billion, an all-time high. On top of the pension benefit deficit, the Federal Government has added, in just the last 3 years, $2 trillion to the Nation's debt, and we are being asked to vote on an additional $900 billion just this week alone.

Mr. Speaker, the American people look to us to solve their problems,

America's problems, not our own problems or our own challenges. But in some ways finishing last year's business this year is a fitting end to the 108th Congress.

REPUBLICAN RULES CHANGE

(Mr. PALLONE asked and was given permission to address the House for 1 minute.)

Mr. PALLONE. Mr. Speaker, this morning, House Republicans are meeting here on Capitol Hill to vote on a change to their conference rules. A new rule would allow an indicted leader to continue in his position as leader if the indictment comes from a State grand jury.

Can my colleagues imagine that? If House Republicans make this rule change, they are condoning unethical behavior at the State level by their own leaders here in the House. The American people should be outraged by this arrogant behavior.

Back in 1993, Republicans made the change in their rules to demonstrate to the American people that they were not above the law, that if they ran this House, the American people would not have to worry about ethical problems, that Republicans would hold themselves to a higher standard.

Now, however, it appears that higher standard is gone. House Republicans are saying they are willing to stand behind one of their leaders after he is indicted by a State grand jury. It does not matter the charge. The Republicans simply do not care. But I am betting that the American people will care, Mr. Speaker.

TRIBUTE TO RAUL A. BESTEIRO, JR.

(Mr. HINOJOSA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HINOJOSA. Mr. Speaker, I rise today to pay tribute to one of the finest citizens of South Texas, Raul A. Besteiro, Jr., who passed away November 14, 2004. The Brownsville Herald called him a ''Brownsville Pioneer'' because of his groundbreaking efforts to transform the region.

For those of us committed to education and economic development, he was the ultimate role model. Mr. Besteiro dedicated his life to improving educational and economic opportunities for his hometown of Brownsville, Texas. He has left a lasting impact on the entire south Texas region.

Mr. Besteiro saw the potential of our region and committed his life's work to helping us achieve it. Whether he was preparing future scientists in the classroom, leading a school system to excellence, or promoting the economic development of our region through the Brownsville Port Authority, Raul Besteiro made south Texas a better and stronger place to live in. Let us carry out his legacy. He will be sorely missed, and we mourn his passing.

MORAL VALUE OF GOVERNMENT'S ''BORROW AND SPEND'' ECONOMIC POLICIES

(Mr. DAVIS of Tennessee asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DAVIS of Tennessee. Mr. Speaker, there has been a lot of talk and discussion in media and throughout the country about morals and the role they played in the elections. I personally welcome these discussions, but I am saddened by the fact that there has been little talk about the moral values of the government's ''borrow and spend'' economic policies.

This week, we will have a vote to raise the debt ceiling for the third time in the last 3 years. Why? Because Congress has been content to manage the American taxpayers' money in a way that immorally disregards the well-being of our Nation's economic future.

I believe it is immoral for this country to keep racking up debt as far as the eye can see only to pass it on to our children and our grandchildren. I think it is immoral to continue to borrow and spend and ask our soldiers to make the ultimate sacrifice while we refuse to make even marginal sacrifices in our fiscal policies.

Mr. Speaker, last week, on Thursday, November 11, the 278th Regimental Combat Unit left for Iraq. Many of these brave men and women of this National Guard unit come from my district in Tennessee. I was able to visit the 278th in Fort Shelby, Mississippi, the day they went off to defend our country. I wish them luck and offer my prayers for their safe return home.

□ 1015

Now I wish our soldiers' government would take the steps necessary to curb this deficit spending, to reinstate true budget enforcement measures like pay-go, and to pay down this national debt instead of continuing to raise the ceiling, so that when our troops return home, they are not left footing the bill for a war they so bravely fought. As we continue to discuss morality in America, I hope we will not continue to ignore the immoralities within our current fiscal policies.

RECESS

The SPEAKER pro tempore (Mr. DAVIS of Tennessee). Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 10 o'clock and 15 minutes a.m.), the House stood in recess subject to the call of the Chair.

□ 1400

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. SIMPSON) at 2 p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later in the day.

VETERANS BENEFITS IMPROVEMENT ACT OF 2004

Mr. SMITH of New Jersey. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2486) to amend title 38, United States Code, to improve and extend housing, education, and other benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

The Clerk read as follows:

S. 2486

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 ''Veterans Benefits Improvement Act of 2004''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Reference to title 38, United States Code.

TITLE I—VETERANS EARN AND LEARN ACT

Sec. 101. Short title.
Sec. 102. Modification of benefit entitlement charges for certain on-job training programs.
Sec. 103. Increase in benefit for individuals pursuing apprenticeship or on-job training.
Sec. 104. Authority for competency-based apprenticeship programs.
Sec. 105. Ten-year extension of delimiting period for survivors' and dependents' educational assistance for spouses of members who die on active duty.
Sec. 106. Availability of education benefits for payment for national admissions exams and national exams for credit at institutions of higher education.
Sec. 107. Requirement for coordination of data among the Departments of Veterans Affairs, Defense, and Labor with respect to on-job training.
Sec. 108. Pilot program to provide on-job benefits to train Department of Veterans Affairs' claims adjudicators.
Sec. 109. Collection of payment for educational assistance under Montgomery GI Bill from members of the Selected Reserve called to active duty.
Sec. 110. Technical and conforming amendments.

TITLE II—EMPLOYMENT MATTERS

Subtitle A—Employment and Reemployment Rights

Sec. 201. Two-year period of continuation of employer-sponsored health care coverage.

Sec. 202. Reinstatement of reporting requirements.
Sec. 203. Requirement for employers to provide notice of rights and duties under USERRA.
Sec. 204. Demonstration project for referral of USERRA claims against Federal agencies to the Office of Special Counsel.

Subtitle B—Other Matters

Sec. 211. Report of employment placement, retention, and advancement of recently separated servicemembers.

TITLE III—BENEFITS MATTERS

Sec. 301. Additional dependency and indemnity compensation for surviving spouses with dependent children.
Sec. 302. Offset of veterans' disability compensation and dependency and indemnity compensation from awards under radiation exposure compensation program.
Sec. 303. Exclusion of life insurance proceeds from consideration as income for veterans' pension purposes.
Sec. 304. Certain service-connected disability benefits authorized for persons disabled by treatment or vocational rehabilitation provided by the Department of Veterans Affairs.
Sec. 305. Effective date of death pension.
Sec. 306. Codification of administrative actions relating to presumptions of service connection for veterans exposed to ionizing radiation.
Sec. 307. Codification of cost-of-living adjustment provided in Public Law 108–47.
Sec. 308. Cross-reference amendments relating to concurrent payment of retired pay and veterans' disability compensation.

TITLE IV—HOUSING MATTERS

Sec. 401. Authority to provide specially adapted housing to certain disabled veterans.
Sec. 402. Transitional housing amendments.
Sec. 403. Increase in maximum amount of home loan guaranty for construction and purchase of homes and annual indexing of amount.
Sec. 404. Extension of authority for guarantee of adjustable rate mortgages.
Sec. 405. Extension and improvement of authority for guarantee of hybrid adjustable rate mortgages.
Sec. 406. Termination of collection of loan fees from veterans rated eligible for compensation at pre-discharge rating examinations.
Sec. 407. Three-year extension of Native American veteran housing loan pilot program.

TITLE V—MATTERS RELATING TO FIDUCIARIES

Sec. 501. Definition of fiduciary.
Sec. 502. Inquiry, investigations, and qualification of fiduciaries.
Sec. 503. Misuse of benefits by fiduciaries.
Sec. 504. Additional protections for beneficiaries with fiduciaries.
Sec. 505. Annual report.
Sec. 506. Annual adjustment in benefits thresholds.
Sec. 507. Effective dates.

TITLE VI—MEMORIAL AFFAIRS MATTERS

Sec. 601. Designation of Prisoner of War/Missing in Action National Memorial, Riverside National Cemetery, Riverside, California.
Sec. 602. Lease of certain National Cemetery Administration property.
Sec. 603. Exchanges of real property for national cemeteries.

TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

Sec. 701. Clarification of meaning of ''judgment'' as used in the Act.
Sec. 702. Requirements relating to waiver of rights under the Act.
Sec. 703. Right of servicemember plaintiffs to request stay of civil proceedings.
Sec. 704. Termination of leases.

TITLE VIII—OTHER MATTERS

Sec. 801. Principal office of United States Court of Appeals for Veterans Claims.
Sec. 802. Technical amendments relating to the United States Court of Appeals for Veterans Claims.
Sec. 803. Extension of biennial report of Advisory Committee on Former Prisoners of War.
Sec. 804. Availability of administrative and judicial redress for certain veterans denied opportunity to compete for Federal employment.
Sec. 805. Report on servicemembers' and veterans' awareness of benefits and services available under laws administered by Secretary of Veterans Affairs.

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—VETERANS EARN AND LEARN ACT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Veterans Earn and Learn Act of 2004''.

SEC. 102. MODIFICATION OF BENEFIT ENTITLEMENT CHARGES FOR CERTAIN ON-JOB TRAINING PROGRAMS.

(a) IN GENERAL.—Section 3687 is amended by adding at the end the following new subsection:

''(e)(1) For each month that an individual (as defined in paragraph (3)) is paid a training assistance allowance under subsection (a), the entitlement of the individual shall be charged at a percentage rate (rounded to the nearest percent) that is equal to the ratio of—

''(A) the training assistance allowance for the month involved, to

''(B) the monthly educational assistance allowance otherwise payable for full-time enrollment in an educational institution.''.

''(2) For any month in which an individual fails to complete 120 hours of training, the entitlement otherwise chargeable under paragraph (1) shall be reduced in the same proportion as the monthly training assistance allowance payable is reduced under subsection (b)(3).

''(3) In this section, the term 'individual' means—

''(A) an eligible veteran who is entitled to monthly educational assistance allowances payable under section 3015(e) of this title, or

''(B) an eligible person who is entitled to monthly educational assistance allowances payable under section 3532(a) of this title, as the case may be.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to months beginning after September 30, 2005.

SEC. 103. INCREASE IN BENEFIT FOR INDIVIDUALS PURSUING APPRENTICESHIP OR ON–JOB TRAINING.

(a) MONTGOMERY GI BILL.—For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (c)(1) of section 3032 of title 38, United States Code, shall be applied as if—

(1) the reference to ''75 percent'' in subparagraph (A) were a reference to ''85 percent'';

(2) the reference to ''55 percent'' in subparagraph (B) were a reference to ''65 percent''; and

(3) the reference to ''35 percent'' in subparagraph (C) were a reference to ''45 percent''.

(b) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE.—For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (a) of section 3233 of title 38, United States Code, shall be applied as if—

(1) the reference to ''75 percent'' in paragraph (1) were a reference to ''85 percent'';

(2) the reference to ''55 percent'' in paragraph (2) were a reference to ''65 percent''; and

(3) the reference to ''35 percent'' in paragraph (3) were a reference to ''45 percent''.

(c) SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.—(1) For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (b)(2) of section 3687 of title 38, United States Code, shall be applied as if—

(A) the reference to ''$574 for the first six months'' were a reference to ''$650 for the first six months'';

(B) the reference to ''$429 for the second six months'' were a reference to ''$507 for the second six months''; and

(C) the reference to ''$285 for the third six months'' were a reference to ''$366 for the third six months''.

(2) Subsection (d) of such section 3687 shall not apply with respect to the provisions of paragraph (1) for months occurring during fiscal year 2006.

(3) For months beginning on or after January 1, 2008, the Secretary shall carry out subsection (b)(2) of such section 3687 as if paragraphs (1) and (2) were not enacted into law.

(d) SELECTED RESERVE MONTGOMERY GI BILL.—For months beginning on or after October 1, 2005, and before January 1, 2008, Subsection (d)(1) of section 16131 of title 10, United States Code, shall be applied as if—

(1) the reference to ''75 percent'' in subparagraph (A) were a reference to ''85 percent'';

(2) the reference to ''55 percent'' in subparagraph (B) were a reference to ''65 percent''; and

(3) the reference to ''35 percent'' in subparagraph (C) were a reference to ''45 percent''.

SEC. 104. AUTHORITY FOR COMPETENCY-BASED APPRENTICESHIP PROGRAMS.

(a) IN GENERAL.—Section 3672(c) is amended—

(1) by striking ''(1)'' and ''(2)'' and inserting ''(A)'' and ''(B)'', respectively;

(2) by inserting ''(1)'' after ''(c)''; and

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

''(2) The period of a program of apprenticeship may be determined based upon a specific period of time (commonly referred to as a 'time-based program'), based upon the demonstration of successful mastery of skills (commonly referred to as a 'competency-based program'), or based upon a combination thereof.

''(3)(A) In the case of a competency-based program of apprenticeship, State approving agencies shall determine the period for which payment may be made for such a program under chapters 30 and 35 of this title and chapter 1606 of title 10. In determining the period of such a program, State approving agencies shall take into consideration the approximate term of the program recommended in registered apprenticeship program standards recognized by the Secretary of Labor.

''(B) The sponsor of a competency-based program of apprenticeship shall provide notice to the State approving agency involved of any such standards that may apply to the program and the proposed approximate period of training under the program.

''(4) The sponsor of a competency-based program of apprenticeship shall notify the Secretary upon the successful completion of a program of apprenticeship by an individual under chapter 30 or 35 of this title, or chapter 1606 of title 10, as the case may be.''.

(b) INCREASED USE OF APPRENTICESHIPS.—Section 3672(d)(1) is amended by adding at the end the following new sentence: ''The Secretary of Labor shall provide assistance and services to the Secretary, and to State approving agencies, to increase the use of apprenticeships.''.

(c) FUNDING FOR DEPARTMENT COMPUTER SYSTEM MODIFICATIONS.—From amounts appropriated to the Department of Veterans Affairs for fiscal year 2005 for readjustment benefits, the Secretary of Veterans Affairs shall use an amount not to exceed $3,000,000 to modify computer systems and to develop procedures required to carry out the amendments made by subsection (a) and sections 102 and 103.

SEC. 105. TEN-YEAR EXTENSION OF DELIMITING PERIOD FOR SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE FOR SPOUSES OF MEMBERS WHO DIE ON ACTIVE DUTY.

Section 3512(b)(1) is amended—

(1) in subparagraph (A), by striking ''in subparagraph (B)'' and inserting ''in subparagraph (B) or (C)''; and

(2) by adding at the end the following new subparagraph:

''(C) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(B) of this title by reason of the death of a person on active duty may be afforded educational assistance under this chapter during the 20-year period beginning on the date (as determined by the Secretary) such person becomes an eligible person within the meaning of such section.''.

SEC. 106. AVAILABILITY OF EDUCATION BENEFITS FOR PAYMENT FOR NATIONAL ADMISSIONS EXAMS AND NATIONAL EXAMS FOR CREDIT AT INSTITUTIONS OF HIGHER EDUCATION.

(a) COVERED EXAMS.—Sections 3452(b) and 3501(a)(5) are each amended by adding at the end the following new sentence: ''Such term also includes national tests for admission to institutions of higher learning or graduate schools (such as the Scholastic Aptitude Test (SAT), Law School Admission Test (LSAT), Graduate Record Exam (GRE), and Graduate Management Admission Test (GMAT)) and national tests providing an opportunity for course credit at institutions of higher learning (such as the Advanced Placement (AP) exam and College-Level Examination Program (CLEP)).''.

(b) AMOUNT OF PAYMENT.—

(1) CHAPTER 30.—Section 3032 is amended by adding at the end the following new subsection:

''(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

''(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under subsection (a)(1), (b)(1), (d), or (e)(1) of section 3015 of this title, as the case may be.

''(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.''.

(2) CHAPTER 32.—Section 3232 is amended by adding at the end the following new subsection:

''(d)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

''(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

''(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.''.

(3) CHAPTER 35.—Section 3532 is amended by adding at the end the following new subsection:

''(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3501(a)(5) of this title is the amount of the fee charged for the test.

''(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

''(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.''.

SEC. 107. REQUIREMENT FOR COORDINATION OF DATA AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING.

Section 3694 is amended—

(1) by striking ''In carrying out'' and inserting ''(a) IN GENERAL.—In carrying out''; and

(2) by adding at the end the following new subsection:

''(b) COORDINATION OF INFORMATION AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING.—At the time of a servicemember's discharge or release from active duty service, the Secretary of Defense shall furnish to the Secretary such pertinent information concerning each registered apprenticeship pursued by the servicemember during the period of active duty service of the servicemember. The Secretary, in conjunction with the Secretary of Labor, shall encourage and assist States and private organizations to give credit to servicemembers for the registered apprenticeship program so pursued in the case of any related apprenticeship program the servicemember may pursue as a civilian.''.

SEC. 108. PILOT PROGRAM TO PROVIDE ON-JOB BENEFITS TO TRAIN DEPARTMENT OF VETERANS AFFAIRS' CLAIMS ADJUDICATORS.

Section 3677 is amended by adding at the end the following new subsection:

''(d)(1) The Secretary may conduct a pilot program under which the Secretary operates a program of training on the job under this section for a period (notwithstanding subsection (c)(2)) of up to three years in duration to train employees of the Department to become qualified adjudicators of claims for compensation, dependency and indemnity compensation, and pension.

''(2)(A) Not later than three years after the implementation of the pilot project, the Secretary shall submit to Congress an initial report on the pilot project. The report shall include an assessment of the usefulness of the program in recruiting and retaining of personnel of the Department as well as an assessment of the value of the program as a training program.

''(B) Not later than 18 months after the date on which the initial report under subparagraph (A) is submitted, the Secretary shall submit to Congress a final report on the pilot project. The final report shall include recommendations of the Secretary with respect to continuation of the pilot project and with respect to expansion of the types of claims for which the extended period of on the job training is available to train such employees.''.

SEC. 109. COLLECTION OF PAYMENT FOR EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FROM MEMBERS OF THE SELECTED RESERVE CALLED TO ACTIVE DUTY.

(a) ACTIVE DUTY PROGRAM.—Section 3011(b) is amended—

(1) by striking ''The basic pay'' and inserting ''(1) Except as provided in paragraph (2), the basic pay'';

(2) by designating the second sentence as paragraph (3) and in that paragraph by striking ''this chapter'' and inserting ''this subsection''; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

''(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.''.

(b) SELECTED RESERVE PROGRAM.—Section 3012(c) is amended—

(1) by striking ''The basic pay'' and inserting ''(1) Except as provided in paragraph (2), the basic pay'';

(2) by designating the second sentence as paragraph (3) and in that paragraph by striking ''this chapter'' and inserting ''this subsection''; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

''(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.''.

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITION OF TRAINING ESTABLISHMENT.—Section 3452(e), as amended by section 301 of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2658), is amended in paragraph (5) to read as follows:

''(5) The sponsor of a program of apprenticeship.''.

(b) CLARIFICATION OF APPLICABLE APPRENTICESHIP STANDARDS.—(1) Section 3672(c), as amended by section 105(a), is amended in subparagraph (A) by inserting ''apprenticeship'' before ''standards''.

(2) Section 3672(d)(1) is amended by striking ''of programs of training on the job (including programs of apprenticeship)'' and inserting ''of apprenticeship and on the job training programs''.

(c) RECORD-KEEPING REQUIREMENTS FOR QUALIFIED PROVIDERS OF ENTREPRENEURSHIP COURSES.—(1) Section 3675(c) is amended by adding at the end the following new paragraph:

''(4) Notwithstanding paragraph (3), a qualified provider of entrepreneurship courses shall maintain such records as the Secretary determines to be necessary to comply with reporting requirements that apply under section 3684(a)(1) of this title with respect to eligible persons and veterans enrolled in an entrepreneurship course offered by the provider.''.

(2) The amendment made by paragraph (1) shall take effect as if included in the enactment of section 305(a) of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2660).

(d) AUTHORITY TO PAY REPORTING FEE.—Section 3684(c) is amended by striking ''or to any joint apprenticeship training committee acting as a training establishment'' and inserting ''or to the sponsor of a program of apprenticeship''.

TITLE II—EMPLOYMENT MATTERS

Subtitle A—Employment and Reemployment Rights

SEC. 201. TWO-YEAR PERIOD OF CONTINUATION OF EMPLOYER-SPONSORED HEALTH CARE COVERAGE.

(a) IMPROVEMENT IN PERIOD OF COVERAGE.—Subsection (a)(1)(A) of section 4317 is amended by striking ''18-month period'' and inserting ''24-month period''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to elections made under section 4317 of title 38, United States Code, on or after the date of the enactment of this Act.

SEC. 202. REINSTATEMENT OF REPORTING REQUIREMENTS.

Section 4332 is amended in the matter preceding paragraph (1) by striking ''no later than February 1, 1996, and annually thereafter through 2000'' and inserting ''no later than February 1, 2005, and annually thereafter''.

SEC. 203. REQUIREMENT FOR EMPLOYERS TO PROVIDE NOTICE OF RIGHTS AND DUTIES UNDER USERRA.

(a) NOTICE.—Chapter 43 is amended by adding at the end the following new section:

''§ 4334. Notice of rights and duties

''(a) REQUIREMENT TO PROVIDE NOTICE.—Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.

''(b) CONTENT OF NOTICE.—The Secretary shall provide to employers the text of the notice to be provided under this section.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''4334. Notice of rights and duties.''.

(c) IMPLEMENTATION.—(1) Not later than the date that is 90 days after the date of the enactment of this Act, the Secretary of Labor shall make available to employers the notice required under section 4334 of title 38, United States Code, as added by subsection (a).

(2) The amendments made by this section shall apply to employers under chapter 43 of title 38, United States Code, on and after the first date referred to in paragraph (1).

SEC. 204. DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL.

(a) ESTABLISHMENT OF PROJECT.—The Secretary of Labor and the Office of Special Counsel shall carry out a demonstration project under which certain claims against Federal executive agencies under the Uniformed Services Employment and Reemployment Rights Act under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim.

(b) REFERRAL OF ALL PROHIBITED PERSONNEL ACTION CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.—(1) Under the demonstration project, the Office of Special Counsel shall receive and investigate all claims under the Uniformed Services Employment and Reemployment Rights Act with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over related claims pursuant to section 1212 of title 5, United States Code.

(2) For purposes of paragraph (1), a related claim is a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under the Uniformed Services Employment and Reemployment Rights Act.

(c) REFERRAL OF OTHER CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES.—(1) Under the demonstration project, the Secretary—

(A) shall refer to the Office of Special Counsel all claims described in paragraph (2) made during the period of the demonstration project; and

(B) may refer any claim described in paragraph (2) filed before the demonstration project that is pending before the Secretary at the beginning of the demonstration project.

(2) A claim referred to in paragraph (1) is a claim under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social security account number with an odd number as its terminal digit, or, in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—(1) The Office of Special Counsel shall administer the demonstration project. The Secretary shall cooperate with the Office of Special Counsel in carrying out the demonstration project.

(2) In the case of any claim referred, or otherwise received by, to the Office of Special Counsel under the demonstration project, any reference to the ''Secretary'' in sections 4321, 4322, and 4326 of title 38, United States Code, is deemed a reference to the ''Office of Special Counsel''.

(3) In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, the Office of Special Counsel shall retain administrative jurisdiction over the claim.

(e) PERIOD OF PROJECT.—The demonstration project shall be carried out during the period beginning on the date that is 60 days after the date of the enactment of this Act, and ending on September 30, 2007.

(f) EVALUATIONS AND REPORT.—(1) The Comptroller General of the United States shall conduct periodic evaluations of the demonstration project under this section.

(2) Not later than April 1, 2007, the Comptroller General shall submit to Congress a report on the evaluations conducted under paragraph (1). The report shall include the following information and recommendations:

(A) A description of the operation and results of the demonstration program, including—

(i) the number of claims described in subsection (c) referred to, or otherwise received by, the Office of Special Counsel, and the number of such claims referred to the Secretary of Labor; and

(ii) for each Federal executive agency, the number of claims resolved, the type of corrective action obtained, the period of time for final resolution of the claim, and the results obtained.

(B) An assessment of whether referral to the office of special counsel of claims under the demonstration project—

(i) improved services to servicemembers and veterans; or

(ii) significantly reduced or eliminated duplication of effort and unintended delays in resolving meritorious claims of those servicemembers and veterans.

(C) An assessment of the feasibility and advisability of referring all claims under chapter 43 of title 38, United States Code, against Federal executive agencies to the Office of Special Counsel for investigation and resolution.

(D) Such other recommendations for administrative action or legislation as the Comptroller General determines appropriate.

(g) DEFINITIONS.—In this section:

(1) The term ''Office of Special Counsel'' means the Office of Special Counsel established by section 1211 of title 5, United States Code.

(2) The term ''Secretary'' means the Secretary of Labor.

(3) The term ''Federal executive agency'' has the meaning given that term in section 4303(5) of title 38, United States Code.

Subtitle B—Other Matters

SEC. 211. REPORT OF EMPLOYMENT PLACEMENT, RETENTION, AND ADVANCEMENT OF RECENTLY SEPARATED SERVICEMEMBERS.

(a) CONTRACT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall enter into a contract with a qualified entity to conduct a study of and prepare a report on the employment histories of recently separated servicemembers.

(b) CONTENT OF REPORT.—(1) The study conducted pursuant to subsection (a) shall consist of an analysis of employment-related data that have been collected with respect to recently separated servicemembers.

(2) In conducting the study, the qualified entity shall—

(A) determine whether the employment obtained by recently separated servicemembers is commensurate with training and education of those servicemembers;

(B) determine whether recently separated servicemembers received educational assistance or training and rehabilitation under programs administered by the Secretary of Veterans Affairs under chapter 30 or 31 of title 38, United States Code, or under chapter 1606 of title 10, United States Code;

(C) determine whether transition assistance services provided to recently separated servicemembers assisted those servicemembers in obtaining civilian employment;

(D) analyze trends in hiring of veterans by the private sector; and

(E) identify recently separated servicemembers who have reached senior level management positions.

(c) USE OF DATA.—In conducting the study under subsection (a), the qualified entity shall review data compiled and reported by the Bureau of Labor Statistics and shall collect additional data on the employment histories of recently separated servicemembers available from such other sources as the qualified entity determines to be appropriate.

(d) CONTRACT REQUIREMENTS.—(1) The contract entered into under subsection (a) shall contain such terms and conditions as the Secretary may require. The contract shall require that the report on the study be submitted to the Secretary not later than 2 years after the date on which the contract was entered into.

(2) The report required under subsection (a) shall contain the findings and conclusions of the qualified entity on the study and specific recommendations to improve employment opportunities for veterans recently separated from service in the Armed Forces, including, if appropriate, recommendations for—

(A) the establishment of networks of contacts for employment of such veterans in the private sector;

(B) outreach to private sector leaders on the merits and sound business practice of hiring such veterans; and

(C) additional methods to facilitate communication between private sector employers and such veterans who are seeking employment.

(e) FUNDING.—Payment by the Secretary for the contract entered into under subsection (a)—

(1) shall be made from the Department of Veterans Affairs appropriations account from which payments for readjustment benefits are made; and

(2) may not exceed $490,000.

(f) DEFINITIONS.—In this section:

(1) The term ''qualified entity'' means an entity or organization that meets the following requirements:

(A) Demonstrated experience in conducting employment surveys of recently separated servicemembers, including Internet-based surveys, that meet such quality assurance requirements as the Secretary determines appropriate.

(B) Demonstrated familiarity with veteran employment matters.

(C) Demonstrated ability in developing plans to market veterans as employment assets.

(D) Demonstrated ability to acquire services at no cost from other organizations, such as technology, staff services, and advertising services.

(E) Demonstrated ability to develop relationships, establish employment networks, and facilitate interaction between private and public sector leaders and veterans.

(2) The term ''employment history'' means, with respect to a recently separated servicemember, training, placement, retention, and advancement in employment of that servicemember.

(3) The term ''recently separated servicemember'' means any veteran (as defined in section 101(2) of title 38, United States Code) discharged or released from active duty in the Armed Forces of the United States during the 16-year period beginning on January 1, 1990.

TITLE III—BENEFITS MATTERS

SEC. 301. ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN.

(a) ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION.—Section 1311 is amended by adding at the end the following new subsection:

''(e)(1) Subject to paragraphs (2) and (3), if there is a surviving spouse with one or more children below the age of 18, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $250, regardless of the number of such children.

''(2) Dependency and indemnity compensation shall be increased under this subsection only for months occurring during the two-year period beginning on the date on which entitlement to dependency and indemnity compensation commenced.

''(3) The increase in dependency and indemnity compensation of a surviving spouse under this subsection shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of 18.

''(4) Dependency and indemnity compensation under this subsection is in addition to any other dependency and indemnity compensation payable under this chapter.''.

(b) EFFECTIVE DATE.—Subsection (e) of section 1311 of title 38, United States Code, as added by subsection (a), shall take effect with respect to payments for the first month beginning after the date of the enactment of this Act.

SEC. 302. OFFSET OF VETERANS' DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION FROM AWARDS UNDER RADIATION EXPOSURE COMPENSATION PROGRAM.

(a) OFFSET IN LIEU OF FORFEITURE FROM DISABILITY COMPENSATION.—Subsection (c) of section 1112 is amended by adding at the end the following new paragraph:

''(4) A radiation-exposed veteran who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of compensation to which that veteran is entitled by reason of paragraph (1), but there shall be deducted from payment of such compensation the amount of the payment under that Act.''.

(b) OFFSET IN LIEU OF FORFEITURE FROM DEPENDENCY AND INDEMNITY COMPENSATION.—Section 1310 is amended by adding at the end the following new paragraph:

''(c) A person who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of dependency and indemnity compensation to which that person is otherwise entitled, but there shall be deducted from payment of such dependency and indemnity compensation the amount of the payment under that Act.''.

(c) EFFECTIVE DATE.—Paragraph (4) of section 1112(c) of title 38, United States Code, as added by subsection (a), shall take effect with respect to compensation payments for months beginning after March 26, 2002. Subsection (c) of section 1310 of such title, as added by subsection (b), shall take effect with respect to dependency and indemnity compensation payments for months beginning after March 26, 2002.

SEC. 303. EXCLUSION OF LIFE INSURANCE PROCEEDS FROM CONSIDERATION AS INCOME FOR VETERANS' PENSION PURPOSES.

Section 1503(a) is amended—

(1) by striking ''and'' at the end of paragraph (9);

(2) by striking the period at the end of the paragraph (10) and inserting ''; and''; and

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

''(11) lump-sum proceeds of any life insurance policy on a veteran, for purposes of pension under subchapter III of this chapter.''.

SEC. 304. CERTAIN SERVICE-CONNECTED DISABILITY BENEFITS AUTHORIZED FOR PERSONS DISABLED BY TREATMENT OR VOCATIONAL REHABILITATION PROVIDED BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) AUTHORIZED BENEFITS.—Section 1151 is amended by adding at the end the following new subsection:

''(c) A qualifying additional disability under this section shall be treated in the same manner as if it were a service-connected disability for purposes of the following provisions of this title:

''(1) Chapter 21, relating to specially adapted housing.

''(2) Chapter 39, relating to automobiles and adaptive equipment.''.

(b) EFFECTIVE DATE.—Subsection (c) of section 1151 of title 38, United States Code, as added by subsection (a), shall apply with respect to eligibility for benefits and services provided by the Secretary of Veterans Affairs on or after the date of the enactment of this Act.

(c) ADMINISTRATION OF OFFSET PROVISION.—Subsection (b) of section 1151 is amended—

(1) by inserting ''(1)'' after ''(b)'';

(2) by inserting ''(except as otherwise provided in paragraph (2))'' after ''service-connected, then''; and

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

''(2) In the case of a judgment, settlement, or compromise covered by paragraph (1) that becomes final on or after the date of the enactment of this paragraph and that includes an amount that is specifically designated for a purpose for which benefits are provided under chapter 21 or 39 of this title (hereinafter in this paragraph referred to as the 'offset amount'), if such judgment, settlement, or compromise becomes final before the date of the award of benefits under chapter 21 or 39 for the purpose for which the offset amount was specifically designated—

''(A) the amount of such award shall be reduced by the offset amount; and

''(B) if the offset amount is greater than the amount of such award, the excess amount received pursuant to the judgment, settlement or compromise, shall be offset against benefits otherwise payable under this chapter.''.

SEC. 305. EFFECTIVE DATE OF DEATH PENSION.

Section 5110(d) is amended—

(1) by striking ''(1)'';

(2) by striking ''death compensation or dependency and indemnity compensation'' and inserting ''death compensation, dependency and indemnity compensation, or death pension''; and

(3) by striking paragraph (2).

SEC. 306. CODIFICATION OF ADMINISTRATIVE ACTIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION FOR VETERANS EXPOSED TO IONIZING RADIATION.

(a) COVERED DISEASES.—Subsection (c)(2) of section 1112 is amended by adding at the end the following new subparagraphs:

''(Q) Cancer of the bone.

''(R) Cancer of the brain.

''(S) Cancer of the colon.

''(T) Cancer of the lung.

''(U) Cancer of the ovary.''.

(b) COVERED RADIATION-RISK ACTIVITIES.—Subsection (c)(3)(B) of such section is amended by adding at the end the following new clause:

''(iv) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of March 26, 2002.

SEC. 307. CODIFICATION OF COST-OF-LIVING ADJUSTMENT PROVIDED IN PUBLIC LAW 108–47.

(a) VETERANS' DISABILITY COMPENSATION.—Section 1114 is amended—

(1) by striking ''$104'' in subsection (a) and inserting ''$106'';

(2) by striking ''$201'' in subsection (b) and inserting ''$205'';

(3) by striking ''$310'' in subsection (c) and inserting ''$316'';

(4) by striking ''$445'' in subsection (d) and inserting ''$454'';

(5) by striking ''$633'' in subsection (e) and inserting ''$646'';

(6) by striking ''$801'' in subsection (f) and inserting ''$817'';

(7) by striking ''$1,008'' in subsection (g) and inserting ''$1,029'';

(8) by striking ''$1,171'' in subsection (h) and inserting ''$1,195'';

(9) by striking ''$1,317'' in subsection (i) and inserting ''$1,344'';

(10) by striking ''$2,193'' in subsection (j) and inserting ''$2,239'';

(11) in subsection (k)—

(A) by striking ''$81'' both places it appears and inserting ''$82''; and

(B) by striking ''$2,728'' and ''$3,827'' and inserting ''$2,785'' and ''$3,907'', respectively;

(12) by striking ''$2,728'' in subsection (l) and inserting ''$2,785'';

(13) by striking ''$3,010'' in subsection (m) and inserting ''$3,073'';

(14) by striking ''$3,425'' in subsection (n) and inserting ''$3,496'';

(15) by striking ''$3,827'' each place it appears in subsections (o) and (p) and inserting ''$3,907'';

(16) by striking ''$1,643'' and ''$2,446'' in subsection (r) and inserting ''$1,677'' and ''$2,497'', respectively; and

(17) by striking ''$2,455'' in subsection (s) and inserting ''$2,506''.

(b) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Section 1115(1) is amended—

(1) by striking ''$125'' in subparagraph (A) and inserting ''$127'';

(2) by striking ''$215'' and ''$64'' in subparagraph (B) and inserting ''$219'' and ''$65'', respectively;

(3) by striking ''$85'' and ''$64'' in subparagraph (C) and inserting ''$86'' and ''$65'', respectively;

(4) by striking ''$101'' in subparagraph (D) and inserting ''$103'';

(5) by striking ''$237'' in subparagraph (E) and inserting ''$241''; and

(6) by striking ''$198'' in subparagraph (F) and inserting ''$202''.

(c) CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.—Section 1162 is amended by striking ''$588'' and inserting ''$600''.

(d) DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.—(1) Section 1311(a) is amended—

(A) by striking ''$948'' in paragraph (1) and inserting ''$967''; and

(B) by striking ''$204'' in paragraph (2) and inserting ''$208''.

(2) The table in section 1311(a)(3) is amended to read as follows:

Pay grade	Monthly rate	Pay grade	Monthly rate
E–1	$967	W–4	$1,157
E–2	967	O–1	1,022
E–3	967	O–2	1,056
E–4	967	O–3	1,130
E–5	967	O–4	1,195
E–6	967	O–5	1,316
E–7	1,000	O–6	1,483
E–8	1,056	O–7	1,602
E–9	[1]1,102	O–8	1,758
W–1	1,022	O–9	1,881
W–2	1,063	O–10	[2]2,063
W–3	1,094		

[1]If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,189.

[2]If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $2,213.

(3) Section 1311(b) is amended by striking ''$237'' and inserting ''$241''.

(4) Section 1311(c) is amended by striking ''$237'' and inserting ''$241''.

(5) Section 1311(d) is amended by striking ''$113'' and inserting ''$115''.

(e) DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.—(1) Section 1313(a) is amended—

(A) by striking ''$402'' in paragraph (1) and inserting ''$410'';

(B) by striking ''$578'' in paragraph (2) and inserting ''$590'';

(C) by striking ''$752'' in paragraph (3) and inserting ''$767''; and

(D) by striking ''$752'' and ''$145'' in paragraph (4) and inserting ''$767'' and ''$148'', respectively.

(2) Section 1314 is amended—

(A) by striking ''$237'' in subsection (a) and inserting ''$241'';

(B) by striking ''$402'' in subsection (b) and inserting ''$410''; and

(C) by striking ''$201'' in subsection (c) and inserting ''$205''.

SEC. 308. CROSS-REFERENCE AMENDMENTS RELATING TO CONCURRENT PAYMENT OF RETIRED PAY AND VETERANS' DISABILITY COMPENSATION.

(a) PROHIBITION AGAINST DUPLICATION OF BENEFITS.—Section 5304(a)(1) is amended by inserting ''as provided in section 1414 of title 10 or'' after ''Except''.

(b) WAIVER OF RETIRED PAY.—Section 5305 is amended by striking ''Any'' in the first sentence and inserting ''Except as provided in section 1414 of title 10, any''.

TITLE IV—HOUSING MATTERS

SEC. 401. AUTHORITY TO PROVIDE SPECIALLY ADAPTED HOUSING TO CERTAIN DISABLED VETERANS.

The text of section 2101 is amended to read as follows:

''(a) ACQUISITION OF HOUSING WITH SPECIAL FEATURES.—(1) Subject to paragraph (3), the Secretary may assist a disabled veteran described in paragraph (2) in acquiring a suitable housing unit with special fixtures or movable facilities made necessary by the nature of the veteran's disability, and necessary land therefor.

''(2) A veteran is described in this paragraph if the veteran is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability that meets any of the following criteria:

''(A) The disability is due to the loss, or loss of use, of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

''(B) The disability is due to—

''(i) blindness in both eyes, having only light perception, plus

''(ii) loss or loss of use of one lower extremity.

''(C) The disability is due to the loss or loss of use of one lower extremity together with—

''(i) residuals of organic disease or injury; or

''(ii) the loss or loss of use of one upper extremity,

which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

''(D) The disability is due to the loss, or loss of use, of both upper extremities such as to preclude use of the arms at or above the elbows.

''(3) The regulations prescribed under subsection (c) shall require that assistance under paragraph (1) may be provided to a veteran only if the Secretary finds that—

''(A) it is medically feasible for the veteran to reside in the proposed housing unit and in the proposed locality;

''(B) the proposed housing unit bears a proper relation to the veteran's present and anticipated income and expenses; and

''(C) the nature and condition of the proposed housing unit are such as to be suitable to the veteran's needs for dwelling purposes.

''(b) ADAPTATIONS TO RESIDENCE OF VETERAN.—(1) Subject to paragraph (3), the Secretary shall assist any disabled veteran described in paragraph (2) (other than a veteran who is eligible for assistance under subsection (a))—

''(A) in acquiring such adaptations to such veteran's residence as are determined by the Secretary to be reasonably necessary because of such disability; or

''(B) in acquiring a residence already adapted with special features determined by the Secretary to be reasonably necessary for the veteran because of such disability.

''(2) A veteran is described in this paragraph if the veteran is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability that meets either of the following criteria:

''(A) The disability is due to blindness in both eyes with 5/200 visual acuity or less.

''(B) The disability includes the anatomical loss or loss of use of both hands.

''(3) Assistance under paragraph (1) may be provided only to a veteran who the Secretary determines—

''(A) is residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family; or

''(B) if the veteran's residence is to be constructed or purchased, will be residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family.

''(c) REGULATIONS.—Assistance under this section shall be provided in accordance with such regulations as the Secretary may prescribe.''.

SEC. 402. TRANSITIONAL HOUSING AMENDMENTS.

(a) USE OF VETERAN VOLUNTEERS.—Section 2051 is amended by adding at the end the following new subsection:

''(g) Notwithstanding any other provision of law, a multifamily transitional housing project that is funded by a loan guaranteed under this subchapter may accept uncompensated voluntary services performed by any eligible entity (as that term is defined in section 2011(d) of this title) in connection with the construction, alteration, or repair of such project.''.

(b) AUTHORIZATION FOR COMMERCIALLY-LEASED SPACE.—Section 2052(c)(1) is amended by striking ''services'' and inserting ''services, other commercial activities,''.

SEC. 403. INCREASE IN MAXIMUM AMOUNT OF HOME LOAN GUARANTY FOR CONSTRUCTION AND PURCHASE OF HOMES AND ANNUAL INDEXING OF AMOUNT.

(a) MAXIMUM LOAN GUARANTY BASED ON 100 PERCENT OF FREDDIE MAC CONFORMING LOAN RATE.—Section 3703(a)(1) is amended by striking ''$60,000'' each place it appears in subparagraphs (A)(i)(IV) and (B) and inserting ''the maximum guaranty amount (as defined in subparagraph (C))''.

(b) DEFINITION.—Such section is further amended by adding at the end the following new subparagraph:

''(C) In this paragraph, the term 'maximum guaranty amount' means the dollar amount that is equal to 25 percent of the Freddie Mac conforming loan limit limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.''.

SEC. 404. EXTENSION OF AUTHORITY FOR GUARANTEE OF ADJUSTABLE RATE MORTGAGES.

Section 3707(a) is amended by striking ''during fiscal years 1993, 1994, and 1995'' and inserting ''during fiscal years 1993 through 2008''.

SEC. 405. EXTENSION AND IMPROVEMENT OF AUTHORITY FOR GUARANTEE OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) EXTENSION OF AUTHORITY.—Subsection (a) of section 3707A is amended by striking ''during fiscal years 2004 and 2005'' and inserting ''during fiscal years 2004 through 2008''.

(b) MODIFICATION OF INTEREST RATE ADJUSTMENT REQUIREMENTS.—Subsection (c) of such section is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by striking paragraph (3) and inserting the following new paragraphs:

''(3) in the case of the initial contract interest rate adjustment—

''(A) if the initial contract interest rate remained fixed for less than 5 years, be limited to a maximum increase or decrease of 1 percentage point; or

''(B) if the initial contract interest rate remained fixed for 5 years or more, be limited to a maximum increase or decrease of such percentage point or points as the Secretary may prescribe;

''(4) in the case of any single annual interest rate adjustment after the initial contract interest rate adjustment, be limited to a maximum increase or decrease of 1 percentage point; and''; and

(3) in paragraph (5), as so redesignated, by striking ''5 percentage points'' and all that follows and inserting ''such number of percentage points as the Secretary shall prescribe for purposes of this section.''.

(c) NO EFFECT ON GUARANTEE OF LOANS UNDER HYBRID ADJUSTABLE RATE MORTGAGE GUARANTEE DEMONSTRATION PROJECT.—The amendments made by this section shall not be construed to affect the force or validity of any guarantee of a loan made by the Secretary of Veterans Affairs under the demonstration project for the guarantee of hybrid adjustable rate mortgages under section 3707A of title 38, United States Code, as in effect on the day before the date of the enactment of this Act.

SEC. 406. TERMINATION OF COLLECTION OF LOAN FEES FROM VETERANS RATED ELIGIBLE FOR COMPENSATION AT PRE-DISCHARGE RATING EXAMINATIONS.

Section 3729(c) is amended—

(1) by inserting ''(1)'' before ''A fee''; and

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

''(2) A veteran who is rated eligible to receive compensation as a result of a pre-discharge disability examination and rating shall be treated as receiving compensation for purposes of this subsection as of the date on which the veteran is rated eligible to receive compensation as a result of the pre-discharge disability examination and rating without regard to whether an effective date of the award of compensation is established as of that date.''.

SEC. 407. THREE-YEAR EXTENSION OF NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM.

Section 3761(c) is amended by striking ''December 31, 2005'' and inserting ''December 31, 2008''.

TITLE V—MATTERS RELATING TO FIDUCIARIES

SEC. 501. DEFINITION OF FIDUCIARY.

(a) IN GENERAL.—(1) Chapter 55 is amended by adding at the end the following new section:

''§ 5506. Definition of 'fiduciary'

''For purposes of this chapter and chapter 61 of this title, the term 'fiduciary' means—

''(1) a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a beneficiary (or a beneficiary's estate); or

''(2) any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary.''.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''5506. Definition of 'fiduciary'.''.

(b) CONFORMING AMENDMENTS TO SECTION 5502.—Section 5502 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''other person'' and inserting ''other fiduciary''; and

(B) in the second sentence of paragraph (2), by inserting ''for benefits under this title'' after ''in connection with rendering fiduciary services'';

(2) in subsection (b), by striking ''guardian, curator, conservator, or other person'' each place it appears and inserting ''fiduciary''; and

(3) in subsection (d), by striking ''guardian, curator, or conservator'' and inserting ''fiduciary''.

(c) CONFORMING AMENDMENT TO SECTION 6101.—Section 6101(a) is amended by striking ''guardian, curator,'' and all that follows through ''beneficiary,'' and inserting ''fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary,''.

SEC. 502. INQUIRY, INVESTIGATIONS, AND QUALIFICATION OF FIDUCIARIES.

(a) IN GENERAL.—Chapter 55, as amended by section 501(a)(1), is further amended by adding at the end the following new section:

''§ 5507. Inquiry, investigations, and qualification of fiduciaries

''(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

''(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

''(A) to be conducted in advance of such certification;

''(B) to the extent practicable, to include a face-to-face interview with such person; and

''(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

''(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

''(3) the furnishing of any bond that may be required by the Secretary.

''(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

''(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

''(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

''(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

''(B) the spouse or parent of an incompetent beneficiary;

''(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

''(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed $3,600, as adjusted pursuant to section 5312 of this title.

''(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the item added by section 501(a)(2) the following new item:

''5507. Inquiry, investigations, and qualification of fiduciaries.''.

SEC. 503. MISUSE OF BENEFITS BY FIDUCIARIES.

(a) PROTECTION OF VETERANS BENEFITS WHEN ADMINISTERED BY FIDUCIARIES.—(1) Chapter 61 is amended by adding at the end the following new sections:

"§ 6106. Misuse of benefits by fiduciaries

''(a) FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY FIDUCIARIES.—A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual's benefit.

''(b) MISUSE OF BENEFITS DEFINED.—For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

''(c) REGULATIONS.—The Secretary may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this section.

"§ 6107. Reissuance of benefits

''(a) NEGLIGENT FAILURE BY SECRETARY.—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of benefits that were so misused.

''(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

''(A) A case in which the Secretary failed to review a fiduciary's accounting within 60 days of the date on which that accounting is scheduled for review.

''(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification to terminate the fiduciary.

''(C) In any other case in which actual negligence is shown.

''(b) REISSUANCE OF MISUSED BENEFITS IN OTHER CASES.—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused.

''(2) Paragraph (1) applies to a fiduciary that—

''(A) is not an individual; or

''(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

''(3) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary's successor fiduciary as the case may be.

''(c) LIMITATION ON TOTAL AMOUNT PAID.—The total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

''(d) RECOUPMENT OF AMOUNTS REISSUED.—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

''6106. Misuse of benefits by fiduciaries.
''6107. Reissuance of benefits.''.

SEC. 504. ADDITIONAL PROTECTIONS FOR BENEFICIARIES WITH FIDUCIARIES.

(a) ONSITE REVIEWS AND REQUIRED ACCOUNTINGS.—(1) Chapter 55, as amended by section 502(a), is further amended by adding at the end the following new sections:

"§ 5508. Periodic onsite reviews of institutional fiduciaries

''In addition to such other reviews of fiduciaries as the Secretary may otherwise conduct, the Secretary shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under laws administered by the Secretary to another individual pursuant to the appointment of such person or agency as a fiduciary under section 5502(a)(1) of this title in any case in which the fiduciary is serving in that capacity with respect to more than 20 beneficiaries and the total annual amount of such benefits exceeds $50,000, as adjusted pursuant to section 5312 of this title.

"§ 5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting

''(a) REQUIRED REPORTS AND ACCOUNTINGS.—The Secretary may require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

''(b) ACTIONS UPON FAILURE TO FILE.—In any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a), the Secretary may, after furnishing notice to such fiduciary and the beneficiary entitled to such payment of benefits, require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.''.

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 502(b) the following new items:

''5508. Periodic onsite reviews of institutional fiduciaries.
''5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting.''.

(b) JUDICIAL ORDERS OF RESTITUTION.—(1) Chapter 61, as amended by section 503(a), is further amended by adding at the end the following new section:

"§ 6108. Authority for judicial orders of restitution

''(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

''(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

''(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

''(d) Amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary shall be paid to the individual whose benefits were misused. If the Secretary has previously reissued the misused benefits, the amounts shall be treated in the same manner as overpayments recouped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.''.

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 503(b) the following new item:

''6108. Authority for judicial orders of restitution.''.

SEC. 505. ANNUAL REPORT.

(a) IN GENERAL.—Chapter 55, as amended by section 504(a)(1), is further amended by adding at the end the following new section:

"§ 5510. Annual report

''The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary's Annual Performance and Accountability Report information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following: —

''(1) The number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent).

''(2) The types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of this title).

''(3) The total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit.

''(4) The number of fiduciaries who are the spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian in fact, and supervised direct payees.

''(5) The number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.

''(6) How such cases of misuse of benefits were addressed by the Secretary.

''(7) The final disposition of such cases of misuse of benefits, including the number and dollar amount of any benefits reissued to beneficiaries.

''(8) The number of fiduciary cases referred to the Office of the Inspector General and the nature of the actions taken by the Inspector General.

''(9) The total amount of money recovered by the government in cases arising from the misuse of benefits by a fiduciary.

''(10) Such other information as the Secretary considers appropriate.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the items added by the amendment made by section 504(a)(2) the following new item:

''5510. Annual report.''.

SEC. 506. ANNUAL ADJUSTMENT IN BENEFITS THRESHOLDS.

Section 5312(b)(1) is amended by inserting ''and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title,'' after ''(d)(3) of such section,''.

SEC. 507. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, this title and the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of the enactment of this Act.

(b) SPECIAL RULES.—(1) Section 5510 of title 38, United States Code, as added by section

505(a), shall take effect on the date of the enactment of this Act.

(2) Sections 6106 and 6107 of title 38, United States Code, as added by section 503(a), shall apply with respect to any determinations by the Secretary of Veterans Affairs made after the date of the enactment of this Act of misuse of funds by a fiduciary.

TITLE VI—MEMORIAL AFFAIRS MATTERS

SEC. 601. DESIGNATION OF PRISONER OF WAR/MISSING IN ACTION NATIONAL MEMORIAL, RIVERSIDE NATIONAL CEMETERY, RIVERSIDE, CALIFORNIA.

(a) DESIGNATION.—The memorial to former prisoners of war and members of the Armed Forces listed as missing in action that is under construction at Riverside National Cemetery in Riverside, California, is hereby designated: ''Prisoner of War/Missing in Action National Memorial''.

(b) EFFECT OF DESIGNATION.—Such national memorial designated by subsection (a) is not a unit of the National Park System, and the designation of the national memorial shall not be construed to require Federal funds to be expended for any purpose related to the national memorial.

SEC. 602. LEASE OF CERTAIN NATIONAL CEMETERY ADMINISTRATION PROPERTY.

(a) IN GENERAL.—Chapter 24 is amended by adding at the end the following new section:

''§ 2412. Lease of land and buildings

''(a) LEASE AUTHORIZED.—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

''(b) TERM.—The term of a lease under subsection (a) may not exceed 10 years.

''(c) LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).

''(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

''(d) NOTICE.—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

''(e) NATIONAL CEMETERY ADMINISTRATION FACILITIES OPERATION FUND.—(1) There is established on the book of the Treasury an account to be known as the 'National Cemetery Administration Facilities Operation Fund' (in this section referred to as the 'Fund').

''(2) The Fund shall consist of the following:

''(A) Proceeds from the lease of land or buildings under this section.

''(B) Proceeds of agricultural licenses of lands of the National Cemetery Administration.

''(C) Any other amounts appropriated to or otherwise authorized for deposit in the Fund by law.

''(3) Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.

''(4) Amounts in the Fund shall remain available until expended.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2412. Lease of land and buildings.''.

SEC. 603. EXCHANGES OF REAL PROPERTY FOR NATIONAL CEMETERIES.

Section 2406 is amended by inserting ''exchange,'' after ''agencies,''.

TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

SEC. 701. CLARIFICATION OF MEANING OF ''JUDGMENT'' AS USED IN THE ACT.

Section 101 of the Servicemembers Civil Relief Act (50 U.S.C. App. 511) is amended by adding at the end the following new paragraph:

''(9) JUDGMENT.—The term 'judgment' means any judgment, decree, order, or ruling, final or temporary.''.

SEC. 702. REQUIREMENTS RELATING TO WAIVER OF RIGHTS UNDER THE ACT.

Section 107 of the Servicemembers Civil Relief Act (50 U.S.C. App. 517) is amended—

(1) in subsection (a), by inserting after the first sentence the following new sentence: ''Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.'';

(2) by redesignating subsection (c) as subsection (d); and

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

''(c) PROMINENT DISPLAY OF CERTAIN CONTRACT RIGHTS WAIVERS.—Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.''.

SEC. 703. RIGHT OF SERVICEMEMBER PLAINTIFFS TO REQUEST STAY OF CIVIL PROCEEDINGS.

Section 202(a) of the Servicemembers Civil Relief Act (50 U.S.C. App. 522(a)) is amended by inserting ''plaintiff or'' before ''defendant''.

SEC. 704. TERMINATION OF LEASES.

(a) JOINT LEASES.—Subsection (a) of section 305 of the Servicemembers Civil Relief Act (50 U.S.C. App. 535) is amended to read as follows:

''(a) TERMINATION BY LESSEE.—

''(1) IN GENERAL.—The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

''(A) the lessee's entry into military service; or

''(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

''(2) JOINT LEASES.—A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.''.

(b) MOTOR VEHICLES LEASES.—

(1) APPLICABILITY TO PCS ORDERS FROM STATES OUTSIDE CONUS.—Subparagraph (B) of subsection (b)(2) of such section is amended by striking ''military orders for'' and all that follows through ''or to deploy'' and inserting ''military orders—

''(i) for a change of permanent station—

''(I) from a location in the continental United States to a location outside the continental United States; or

''(II) from a location in a State outside the continental United States to any location outside that State; or

''(ii) to deploy''.

(2) DEFINITIONS.—Such section is further amended by adding at the end the following new subsection:

''(i) DEFINITIONS.—

''(1) MILITARY ORDERS.—The term 'military orders', with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

''(2) CONUS.—The term 'continental United States' means the 48 contiguous States and the District of Columbia.''.

(c) COVERAGE OF INDIVIDUAL DEPLOYMENTS.—Subsection (b) of such section is further amended in paragraph (1)(B) and paragraph (2)(B)(ii) (as designated by subsection (b) of this section) by inserting '', or as an individual in support of a military operation,'' after ''deploy with a military unit''.

TITLE VIII—OTHER MATTERS

SEC. 801. PRINCIPAL OFFICE OF UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

Section 7255 is amended by striking ''District of Columbia'' and inserting ''Washington, D.C., metropolitan area''.

SEC. 802. TECHNICAL AMENDMENTS RELATING TO THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

(a) RESTORATION OF PRIOR PROVISION RELATING TO CHIEF JUDGE.—Section 7253(d)(1) is amended by inserting after ''(1)'' the following: ''The chief judge of the Court is the head of the Court.''.

(b) CAPITALIZATION AMENDMENTS.—Section 7253(d)(4)(A) is amended by striking ''court'' in clauses (i) and (ii) and inserting ''Court''.

(c) DATE OF ENACTMENT REFERENCE.—Section 7253(h)(4) is amended by striking ''the date of the enactment of this subsection'' and inserting ''December 27, 2001,''.

SEC. 803. EXTENSION OF BIENNIAL REPORT OF ADVISORY COMMITTEE ON FORMER PRISONERS OF WAR.

Section 541(c)(1) is amended by striking ''2003'' and inserting ''2009''.

SEC. 804. AVAILABILITY OF ADMINISTRATIVE AND JUDICIAL REDRESS FOR CERTAIN VETERANS DENIED OPPORTUNITY TO COMPETE FOR FEDERAL EMPLOYMENT.

(a) ADMINISTRATIVE REDRESS.—Section 3330a(a)(1) of title 5, United States Code, is amended—

(1) by inserting ''(A)'' after ''(1)''; and

(2) by adding at the end the following new subparagraph:

''(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.''.

(b) JUDICIAL REDRESS.—Section 3330b(a) is amended by inserting '', or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section,'' after ''a preference eligible''.

SEC. 805. REPORT ON SERVICEMEMBERS' AND VETERANS' AWARENESS OF BENEFITS AND SERVICES AVAILABLE UNDER LAWS ADMINISTERED BY SECRETARY OF VETERANS AFFAIRS.

(a) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a report setting forth a detailed description of (1) the outreach efforts of the Department of Veterans Affairs, as of the date of the enactment of this Act, to inform members of the uniformed services and veterans (and their family members and survivors) of the benefits and services to which they are entitled under laws administered by the Secretary, and (2) the current level of awareness of those members and veterans (and family members and survivors) of those benefits and services.

(b) MATTERS TO BE INCLUDED.—The report under subsection (a) shall include the following:

(1) A description of the outreach activities conducted by the Secretary in each of the three Administrations of the Department of Veterans Affairs and outreach activities conducted by other entities within the Department.

(2) The results of a national survey, conducted as described in subsection (c), to ascertain servicemembers' and veterans' level

of awareness of benefits and services referred to in subsection (a) and whether servicemembers and veterans know how to access those benefits and services.

(3) Recommendations by the Secretary on how outreach and awareness activities to veterans and servicemembers may be improved.

(c) CONDUCT OF SURVEY.—The survey conducted for purposes of subsection (b)(2) shall be conducted in a manner to include a statistically valid sample of persons in each of the following groups:

(1) World War II veterans.

(2) Korean conflict era veterans.

(3) Vietnam era veterans.

(4) Persian Gulf era veterans.

(5) Active duty servicemembers.

(6) National Guard and Reserve members activated under title 10, United States Code.

(7) Family members and survivors.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey (Mr. SMITH) and the gentleman from Maine (Mr. MICHAUD) each will control 20 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. SMITH).

(Mr. SMITH of New Jersey asked and was given permission to revise and extend his remarks.)

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of S. 2486, the Veterans Benefits Improvement Act of 2004. This solid compromise package incorporates 14 benefit bills that have been referred to the House Committee on Veterans' Affairs, this Congress and contains more than 40 substantive provisions. S. 2468 would enhance a wide range of veterans' benefits, including protections for mobilized servicemembers.

I want to draw my colleagues' attention to Title I of this comprehensive bill, which is derived from H.R. 1716, the Veterans Earn and Learn Act. This is a bill that I introduced last year along with the ranking member, the gentleman from Illinois (Mr. EVANS), and others.

The Veterans Earn and Learn Act represents the fifth in a series of employment and business opportunities bills that our Subcommittee on Benefits has offered over the last 3 and a half years. The Veterans Earn and Learn Act would significantly update the Montgomery GI Bill on-job training and apprenticeship programs to reflect learning opportunities in American business and industry today. This legislation is Congress's first major rewrite of the on-job training, or OJT, and apprentice policies for veterans since World War II.

Additionally, effective October 1, 2005, Title I includes a 10 percent increase in the monthly educational assistance allowance the VA furnishes to veterans and others pursuing this particular type of training.

The Veterans Earn and Learn Act is timely because almost 200,000 servicemembers and Reservists separate each year, and they would now all be eligible to use these Earn and Learn initiatives to continue to build transferrable skills.

VA's OJT and apprenticeship program is a valuable program for employers as well. Tapping into veterans as a rich resource of skilled and qualified employees is a shrewd business strategy for employers of all sizes. Veterans bring a unique combination of skill, discipline, character and talent to the workplace.

Title II of the compromise focuses on protecting the civilian job benefits of activated Reservists. In light of longer active duty tours, the major provision here would increase from 18 to 24 months the maximum period of employer-sponsored health care coverage that a Reservist-employee may elect to continue to receive.

Title III, Mr. Speaker, focuses on veterans' benefits matters. The key provision of this title is a $250 monthly increase in dependency and indemnity payments for a surviving spouse with children under the age of 18. This increase would be payable for 2 years following the service-connected death of a servicemember or veteran.

Title IV enhances housing benefits for veterans. Among its important provisions is an increase of the maximum VA home loan to 25 percent of the Freddie Mac conforming loan amount for a single family residence. The increase raises from $240,000 to $333,700 the maximum VA home loan guaranty.

I am also pleased that this title makes some needed changes to provide flexibility in VA's administration of Transitional Housing program for homeless veterans. The very first loan under this program should close this month, I would point out to my colleagues, and I am looking forward to several more projects getting under way in the next 6 months.

Title V focuses on protecting some of our most vulnerable veterans and dependents when it is necessary to pay the VA benefits on their behalf to a third party.

This bill also makes improvements to the Servicemembers Civil Relief Act. I am pleased it includes provisions that I had authored, including one to furnish additional protections to servicemembers and their spouses with respect to residential and motor vehicle leases when the servicemember is mobilized or sent to a new duty assignment, sometimes with little advance notice.

Finally, I am especially pleased that one of the sections of Title VIII would allow the principal office of the U.S. Court of Appeals for Veterans Claims to be located at any location in the Washington, D.C., metropolitan area, if that location would allow greater cost efficiencies or a permanent building for the court.

Mr. Speaker, I rise today in strong support of S. 2486, the Veterans Benefits Improvement Act of 2004.

I appreciate the opportunity to work with ARLEN SPECTER and BOB GRAHAM, the distinguished chairman and ranking member, respectively, of the Senate Committee on Veterans' Affairs, in writing this comprehensive legislation. I thank them both for their leadership.

The Veterans' Benefits Improvement Act of 2004 incorporates 14 benefits bills that have been referred to the House Committee on Veterans' Affairs this Congress. S. 2486 contains more than 40 substantive provisions which would enhance programs affecting veterans' education, training, employment, reemployment, compensation and pension, housing, fiduciary, protections for mobilized servicemembers, and other benefits.

Mr. Speaker, I want to draw my colleagues' attention to title one of this comprehensive bill, the Veterans Earn and Learn Act, which is derived from H.R. 1716, introduced by Ranking Member LANE EVANS and me and many others.

This section represents the fifth of six measures in a Veterans' Jobs and Business Opportunities package that our Subcommittee on Benefits has authored over the last 3½ years. I appreciate the vision and bipartisan leadership of JACK QUINN and BOB FILNER, followed by J.D. HAYWORTH and BOB FILNER, then MIKE SIMPSON and SILVESTRE REYES, and now HENRY BROWN and MICHAEL MICHAUD on this package.

Title one of the bill would significantly update the on-job training and apprenticeship programs administered by the Department of Veterans Affairs to reflect learning opportunities in American business and industry today. Indeed, this legislation is Congress' first major rewrite of on-job training, OJT, and apprenticeship policies for veterans since World War II.

Plus, effective October 1 of 2005, the bill would increase by 10 percent the monthly educational assistance allowance that the Department of Veterans Affairs furnishes eligible veterans, dependent widows and children, and Reservists.

The Veterans Earn and Learn title of the bill is timely because 419 military occupational specialties are currently transferable to the civilian economy. Almost 200,000 separating servicemembers per year, including Reservists, would be eligible to use these Earn and Learn initiatives to continue to build transferable skills. This measure represents a unique opportunity for veterans, Reservists, and dependent widows and children to use their VA educational assistance benefits to augment the entry-level wage the employer pays them as they train on the job. As the training wage increases over time, the monthly VA educational assistance allowance decreases.

VA's OJT and apprenticeship program is a valuable program for employers, too. For example, in a 3-year apprenticeship, VA education benefits under this measure would augment the veteran's training wage furnished by the employer by $17,891. In fact, Missouri has documented that VA's on-job training and apprenticeship programs improve employee retention and bring significant federal training dollars to Missouri communities to the tune of $38 million annually. Tapping into veterans as a rich source of skilled and qualified employees is a shrewd business strategy for employers of all sizes, as veterans bring a unique combination of skill, discipline, character, and talent to the workplace.

The monthly OJT/apprenticeship rates vary based on eligibility. But here are some brief examples of the amount of VA educational

program allowances beneficiaries would receive in 1- and 2-year on-job training programs and 3- and 4-year apprenticeships under the Montgomery GI Bill:

A Reservist participating in a 1-year on-job training program as a management trainee in a retail establishment would receive $2,471 over 12 monthly payments.

A widow or dependent child who participates in a 2-year training program as a financial adviser with an investment firm would receive $9,643 over 24 monthly payments.

A veteran who participates in a 3-year apprenticeship program in plumbing would receive $17,891 over 36 monthly payments.

A veteran who participates in a 4-year apprenticeship program as an electrician would receive $22,529 over 48 monthly payments.

Mr. Speaker, it's important to note that on-job training and apprenticeships are excellent, practical ways for veterans to use their VA education benefits, especially for those who are married with families to support. VA education benefits are not limited to classroom training.

Let me now highlight other titles in this comprehensive bill.

Title two focuses on employment matters. A major aspect of this title is a provision to increase from 18 to 24 months the maximum period of employer-sponsored health coverage that an employee covered by the Uniform Services Employment and Reemployment Rights Act of 1994 may elect to continue to receive. This extension of coverage is essential given the longer active-duty tours of our reservists. I commend Representatives HENRY BROWN and MICHAEL MICHAUD for their leadership on this issue.

Title three focuses on veterans' benefits matters. A key part of this title is the provision that provides a $250 monthly increase in dependency and indemnity payments for a surviving spouse with children under age 18. These payments are authorized during the 2-year period following the service-connected death of the servicemember or veteran. I commend Chairman SPECTER and Ranking Member GRAHAM for their leadership on this provision.

Title four enhances housing matters. Among other important provisions, this section of the bill increases the maximum VA home loan to 25 percent of the Freddie Mac conforming loan amount for a single-family residence. It also annually indexes the maximum amount of VA's home loan guaranty for construction or purchase of a home to that Freddie Mac limit. In effect, the increase raises from 240,000 to $333,700 the maximum home loan purchase amount on a VA-guaranteed purchase.

I am also very pleased this section makes some small needed changes the Department of Veterans Affairs has asked for to provide greater flexibility in its administration of the Transitional Housing program. I was pleased to work with VA in this regard so as to make the Transitional Housing program as effective as possible.

Title five focuses on fiduciary matters to protect our more vulnerable veterans and dependents when they require a third party payee to receive VA benefits on their behalf. These provisions are the result of 2 hearings held by the Subcommittee on Benefits, and I commend Representatives HENRY BROWN and SUSAN DAVIS for their work on this section of the bill.

Title six addresses various memorial affairs issues, including designating a monument constructed at the Riverside National Cemetery in Riverside, CA, as a Prisoner of War/Missing in Action National Memorial.

Title seven makes various improvements to the Servicemembers Civil Relief Act. I am very pleased this section of the bill includes the provision I authored to furnish additional protections to servicemembers and their spouses with respect to residential and motor vehicle leases. This provision modifies section 305 of the Servicemembers Civil Relief Act to address the reality of servicemembers having to terminate leases due to longer-term mobilization or deployment. This provision clarifies that if a servicemember terminates a lease entered into jointly with a dependent—usually the spouse—the obligations of both the servicemember and the dependent are terminated. This affords military families the additional protections they need when the servicemember is mobilized to a new duty assignment—sometimes with little advance notice—and the family, too, must relocate.

Lastly, title eight addresses other important matters. I am pleased this section authorizes that the principal office of the U.S. Court of Appeals for Veterans Claims to be located at any location in the Washington, DC, metropolitan area. Another location may furnish greater cost efficiencies for the court.

In closing, I thank Chairman BROWN and Ranking Member MICHAUD for their leadership and continued bipartisan cooperation. I'd also like to thank the staff on both sides of the aisle in the House and Senate Committees on Veterans' Affairs for their diligent work in bringing this bill to the floor.

Mr. Speaker, I urge my colleagues to support S. 2486.

Mr. Speaker, for the benefit of my colleagues, the following is a joint explanatory statement describing the compromise agreement we have reached with the other body and a letter from the Committee on the Judiciary concerning S. 2486 and our committee's response.

EXPLANATORY STATEMENT ON SENATE AMENDMENTS TO S. 2486

S. 2486, as amended, the ''Veterans Benefits Improvement Act of 2004,'' reflects a Compromise Agreement reached by the Senate and House Committees on Veterans' Affairs (the Committees) on the following bills reported during the 108th Congress: S. 2485, as amended; S. 2486, as amended; and S. 1132, as introduced (Senate Bills); H.R. 1716, as amended; H.R. 3936; H.R. 4175, as amended; H.R. 4345; and H.R. 4658, as amended (House Bills).

The Senate and House Committees on Veterans' Affairs have prepared the following explanation of S. 2486, as amended (Compromise Agreement). Differences between the provisions contained in the Compromise Agreement and the related provisions of S. 2485, as amended; S. 2486, as amended; S. 1132, as introduced; H.R. 1716, as amended; H.R. 3936; H.R. 4175, as amended; H.R. 4345; and H.R. 4658, as amended; are noted in this document, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—VETERANS EARN AND LEARN ACT

MODIFICATION OF BENEFIT ENTITLEMENT CHARGES FOR CERTAIN ON-JOB TRAINING PROGRAMS

Current Law

Section 3687 of title 38, United States Code, charges the Montgomery GI Bill-Active Duty and Selected Reserve programs' entitlement usage based on the actual ''dollars used'' of monthly VA payment amounts. The entitlement charge under the Vietnam-era and survivors' and dependents' educational assistance programs is based on the time spent in certain training programs.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 102 of H.R. 1716, as amended, would modify the manner in which VA on-job training and apprenticeship benefit entitlement is charged under the MGIB, Vietnam-era and survivors' and dependents' programs. The modification would charge entitlement usage for all programs based on ''dollars used'' rather than time spent in training. This provision would take effect one year after date of enactment.

Compromise Agreement

Section 102 of the Compromise Agreement follows the House language with an effective date of months beginning after September 30, 2005.

INCREASE IN BENEFIT FOR INDIVIDUALS PURSUING APPRENTICESHIP OR ON-JOB TRAINING

Current Law

Sections 3032 and 3233 of title 38, United States Code, and Section 16131 of title 10, United States Code, state that beneficiaries pursuing full-time apprenticeship or on-job training programs will receive 75 percent of the monthly educational assistance benefit for the first six months of training, 55 percent for the second six months of training and 35 percent for the subsequent months.

Section 3687 of title 38, United States Code, states that beneficiaries receiving full-time VA monthly Survivors' and Dependents' Educational Assistance allowances payable to individuals pursuing full-time apprenticeship or on-job training programs will receive, as of October 1, 2004, $585 for the first six months of training, $438 for the second six months of training, $291 for the third six months, and $147 for the remainder of the program.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 104 of H.R. 1716, as amended, would increase by 10 percent the full-time VA monthly educational assistance allowance payable to individuals pursuing a full-time apprenticeship or on-job training program. For the first six months of training, the percentage of the monthly benefit would increase to 85 percent; for the second six months of training, to 65 percent; and for subsequent months to 45 percent. These percentage increases would apply to the Montgomery GI Bill Active Duty and Selected Reserve programs, and the Post-Vietnam Era Veterans' Educational Assistance program. The Survivors' and Dependents' Educational Assistance program would increase to $650 for the first six months of training, $507 for the second six months of training and $366 for the third six months. This provision would be in effect from October 1, 2005 through September 30, 2010.

Compromise Agreement

Section 103 of the Compromise Agreement generally follows the House language, but

the 10 percent increase would take effect October 1, 2005 through December 31, 2007.

AUTHORITY FOR COMPETENCY-BASED APPRENTICESHIPS

Current Law

Section 3672 of title 38, United States Code, currently allows payment of VA educational assistance benefits for time-based apprenticeships.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 105 of H.R. 1716, as amended, would authorize VA to pay educational assistance benefits to veterans participating in approved programs of competency-based apprenticeships; this new authority is in addition to time-based apprenticeships. In the case of a competency-based apprenticeship registered with the Secretary of Labor, this provision requires VA to consider Department of Labor standards in determining the appropriate length and structure of the competency-based apprenticeship. This section would also direct the Secretary of Veterans Affairs to use up to $3 million to develop the computer systems and procedures needed to carry out section 105(a), 102, 103, and 104 of the bill.

Compromise Agreement

Section 104 of the Compromise Agreement follows the House language. The Committees note that this provision acknowledges competency-based apprenticeships but does not require employers to use them in lieu of time-based apprenticeships. In today's workplace, apprenticeship programs are time-based or competency-based, or a combination of the two. Lastly, the Committees note that apprenticeships offered in industries that elect not to register them with the Department of Labor, but are approved by a State approving agency or VA, would continue to serve as legitimate training opportunities for veterans.

TEN-YEAR EXTENSION OF DELIMITING PERIOD FOR SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE FOR SPOUSES OF MEMBERS WHO DIES ON ACTIVE DUTY

Current Law

Chapter 35 of title 38, United States Code, entitles the surviving spouse of a servicemember or veteran who died of a service-connected injury, or the spouse of a veteran who is rated by VA as totally and permanently disabled as the result of a service-connected disability, to educational assistance provided by the Secretary. An eligible spouse is entitled to use such educational assistance during a ten-year period beginning on either: (1) the date the person became eligible by reason of the servicemember's or veteran's service-connected death, or (2) the date on which the veteran was rated by VA as totally and permanently disabled as the result of a service-connected injury. A spouse may be eligible for two ten-year eligibility periods as the result of two distinct qualifying events. A spouse who is entitled to two eligibility periods will not have a subsequent period of eligibility reduced by any earlier period.

Senate Bill

Section 203 of S. 2486, as amended, would extend chapter 35 educational assistance eligibility from 10 to 20 years for a surviving spouse of any person who died on active duty.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 105 of the Compromise Agreement follows the Senate language.

AVAILABILITY OF EDUCATIONAL BENEFITS FOR PAYMENT FOR NATIONAL ADMISSIONS EXAMS AND NATIONAL EXAMS FOR CREDIT AT INSTITUTIONS OF HIGHER EDUCATION

Current Law

Sections 3452(b) and 3501(a)(5) of title 38, United States Code, define the term ''program of education'' to generally include a required course, or combination of courses, that lead to an identified educational, professional, or vocational objective. A ''program of education'' also includes licensing or certification tests that are generally required to enter into, maintain, or advance in a vocation or profession. Section 3002(3) of title 38, United States Code, expands the definition of ''program of education'' provided in 3452(b) to include preparatory courses for a test required or used for admission to an institution of higher education or graduate school.

Senate Bill

Section 204 of S. 2486, as amended, would authorize VA to provide educational assistance benefits to reimburse eligible beneficiaries for the cost of certain national tests required for admission to institutions of higher learning or graduate schools and for national tests that can qualify veterans for receipt of college credit.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 106 of the Compromise Agreement follows the Senate language, but adds the College Level Examination Program (CLEP) as an example of a test for which educational assistance benefits may be used.

REQUIREMENT FOR COORDINATION OF DATA AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 107 of H.R. 1716, as amended, would require certain coordination of information among the Departments of Veterans Affairs, Defense, and Labor with respect to on-job training and apprenticeship programs. First, at the time of a servicemember's separation from active duty, the Secretary of Defense would be required to furnish the Secretary of Veterans Affairs with information concerning each registered apprenticeship pursued by the servicemember during his or her active duty service. Second, it would require the Secretary of Veterans Affairs, in coordination with the Secretary of Labor, to encourage and assist States and private organizations to accord credit to servicemembers for skills in any related apprenticeship the servicemember may pursue in civilian life.

Compromise Agreement

Section 107 of the Compromise Agreement follows the House language.

PILOT PROGRAM TO PROVIDE ON-JOB BENEFITS TO TRAIN DEPARTMENT OF VETERANS AFFAIRS CLAIMS ADJUDICATORS

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 106 of H.R. 1716, as amended, would require the Secretary of Veterans Affairs to establish a pilot program to furnish structured on-job training and on-job training benefits to claims adjudicators training in its disability compensation, dependency and indemnity compensation (DIC), and pension programs. The Secretary would be required to submit reports concerning continuation and expansion of the pilot program.

Compromise Agreement

Section 108 of the Compromise Agreement generally follows the House language, but authorizes the Secretary to establish a pilot program to furnish formal, structured on-job training/benefits to claims adjudicators at the Secretary's discretion, and not by statutory mandate. The Committees note that one of VA's four regional offices that adjudicate educational assistance claims already offer such formal, structured on-job training.

COLLECTION OF PAYMENT FOR EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FROM MEMBERS OF THE SELECTED RESERVE CALLED TO ACTIVE DUTY

Current Law

Sections 3011(b) and 3012(c) require that for a servicemember to be eligible for Montgomery GI Bill (MGIB) educational assistance benefits, the servicemember's active duty pay must be reduced by $100 for each of the first 12 months that the individual is entitled to such pay. The Secretary of Defense (or, in cases involving the activation of U.S. Coast Guard personnel, the Secretary of Homeland Security) is responsible for the collection of the $1,200 payment.

Senate Bill

Section 201 of S. 2486, as amended, would permit the Secretary of Defense (or, in cases involving the activation of Coast Guard personnel, the Secretary of Homeland Security) to collect an activated Selected Reserve member's $1,200 payment before the servicemember commences use of MGIB educational assistance benefits.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 109 of the Compromise Agreement follows the Senate language with the requirement that the servicemember furnish a $1,200 payment not later than 1 year after completion of the 2 years of active duty.

TITLE II—EMPLOYMENT MATTERS

Subtitle A—Employment and Reemployment Rights

TWO-YEAR PERIOD OF CONTINUATION OF EMPLOYER-SPONSORED HEALTH CARE COVERAGE

Current Law

Section 4317(a)(1)(A) of title 38, United States Code, allows servicemembers covered under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to elect to continue employer-provided health coverage for up to 18 months while on active duty, provided the servicemember pays up to 102 percent of the premium.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 201 of H.R. 4658, as amended, would increase from 18 months to 24 months the maximum period of employer-provided health coverage that an employee covered by USERRA may elect to continue. The coverage would become effective on the first day of the servicemember's absence from employment following the date of enactment of this provision.

Compromise Agreement

Section 201 of the Compromise Agreement follows the House language.

REINSTATEMENT OF REPORTING REQUIREMENTS

Current Law

Section 4332 of title 38, United States Code, formerly required that the Secretary of Labor, in consultation with the Office of Special Counsel and the U.S. Attorney General, provide annual reports to Congress on the disposition of cases filed under USERRA. This requirement expired on February 1, 1996.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 202 of H.R. 4658, as amended, would reinstate a requirement that the Secretary of Labor, in consultation with the Office of Special Counsel and the U.S. Attorney General, provide annual reports to Congress on the disposition of cases filed under USERRA, effective February 1, 2005.

Compromise Agreement

Section 202 of the Compromise Agreement follows the House language.

REQUIREMENT FOR EMPLOYERS TO PROVIDE NOTICE OF RIGHTS AND DUTIES UNDER USERRA

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 211 of H.R. 4658, as amended, would require employers to provide notice to employees of the rights, benefits and obligations under USERRA. Section 211 would also require the Department of Labor to make available to employers, within 90 days after the date of enactment of this provision, the text of the notice.

Compromise Agreement

Section 203 of the Compromise Agreement follows the House language.

DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL

Current Law

Section 4322 of title 38, United States Code, provides that an individual who believes his or her USERRA rights have been violated by a Federal executive agency may file a complaint with the Secretary of Labor to investigate such complaint. If the Secretary of Labor is unable to resolve the complaint, then in accordance with section 4324 of title 38, United States Code, the individual may request that the Secretary of Labor refer the complaint to the Office of Special Counsel (OSC) for resolution before the Merit Systems Protection Board.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 212 of H.R. 4658, as amended, would require the Secretary of Labor and the Office of Special Counsel (OSC) to carry out a three-year demonstration project on enforcement of USERRA rights for Federal executive branch employees. The demonstration project would allow certain individuals who allege a Federal executive agency has violated their USERRA rights to file a complaint with OSC. For the OSC demonstration project, USERRA cases involving Federal agencies would be selected by the terminal digit of the claimant's social security number or, if there is no social security number, the claimant's case number. Cases with odd terminal digits would be sent directly to OSC. The Comptroller General of the United States would be required to conduct periodic evaluations of the demonstration project and submit to Congress a final report.

Compromise Agreement

Section 204 of the Compromise Agreement follows the House language. While this demonstration project would be limited to USERRA cases involving Federal executive agency employees, the Committees intend to examine further USERRA education and enforcement activities by the Departments of Labor, Justice and Defense to determine whether all claimants are being effectively and efficiently served under the current system.

Subtitle B—Other Matters

REPORT OF EMPLOYMENT PLACEMENT, RETENTION, AND ADVANCEMENT OF RECENTLY SEPARATED SERVICEMEMBERS

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 206 of H.R. 1716, as amended, would direct the Secretary of Veterans Affairs to contract for a report within 180 days of enactment on employment placement, retention, and advancement of recently-separated veterans.

Compromise Agreement

Section 211 of the Compromise Agreement follows the House language.

TITLE III—BENEFITS MATTERS

ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN

Current Law

Section 1311(a) of title 38, United States Code, prescribes the payment of dependency and indemnity compensation (DIC) to the surviving spouse of a veteran or servicemember who dies as a result of a service-connected disability. Section 1311(b) provides for an additional amount of DIC to be paid for each of the surviving spouse's children who are under the age of 18.

Senate Bill

Section 4 of S. 1132, as introduced, would provide for a $250 monthly increase in DIC payments for a surviving spouse with children below the age of 18. Such payments would be authorized during the 5-year period following the service-connected death of the servicemember or veteran. Such payments would cease when all children of a surviving spouse reach age 18.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 301 of the Compromise Agreement follows the Senate language, except that the $250 monthly increase in DIC would only be authorized during the 2-year period following the application for such benefit. The Committees intend that when the Secretary notifies a DIC recipient of the additional benefit provided by this section, such notice shall clearly indicate that this is a transitional benefit which is limited to two years.

OFFSET OF VETERANS' DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION FROM AWARDS UNDER RADIATION EXPOSURE COMPENSATION PROGRAM

Current Law

Under current law, a veteran who first applies for and receives an award under the compensation program administered by the Department of Justice pursuant to the Radiation Exposure Compensation Act (RECA), Public Law 101–426, is prohibited from receiving benefits from the Department of Veterans Affairs. However, a veteran who applies for VA benefits first may then apply for the RECA award, subject to an offset by the Department of Justice of the amounts received from VA.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 202 of H.R. 1716, as amended, would repeal the bar that prevents a veteran or survivor from applying for VA benefits if the individual had previously received compensation from the Department of Justice's RECA program. The bill would allow individuals to receive VA compensation or dependency and indemnity compensation (DIC) benefits to which they are entitled. However, VA would be required to withhold compensation or DIC payments until the amount of the RECA award has been deducted. This provision is effective for compensation or DIC benefits paid after March 26, 2002. This is the date regulations providing for a presumption of service-connection for certain radiation-related disabilities were established.

Compromise Agreement

Section 302 of the Compromise Agreement follows the House language.

EXCLUSION OF LIFE INSURANCE PROCEEDS FROM CONSIDERATION AS INCOME FOR VETERANS' PENSION PURPOSES

Current Law

Section 1503(a) of title 38, United States Code, requires VA in determining eligibility for death pension benefits to consider annual income, including all payments of any kind or from any source.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 203 of H.R. 1716, as amended, would exclude life insurance proceeds from consideration of income for death pension benefits.

Compromise Agreement

Section 303 of the Compromise Agreement follows the House language.

CERTAIN SERVICE-CONNECTED DISABILITY BENEFITS AUTHORIZED FOR PERSONS DISABLED BY TREATMENT OR VOCATIONAL REHABILITATION PROVIDED BY THE DEPARTMENT OF VETERANS AFFAIRS

Current Law

Section 1151(a) of title 38, United States Code, authorizes disability compensation or dependency and indemnity compensation for veterans and their dependents who are injured or die as a result of negligent VA medical treatment, or in VA-sponsored rehabilitation or training. Under the decision of the United States Court of Appeals for the Federal Circuit in Kilpatrick v. Secretary of Veterans Affairs, 327 F.3d 1375 (Fed. Cir. 2003), veterans disabled under section 1151 are eligible for specially adapted housing allowances under chapter 21 of title 38, United States Code. Section 1151(b) prohibits the receipt of VA compensation benefits or DIC (for amounts attributable to loss of consortium or society) where an individual, on or after December 1, 1962, receives a judgment against, or settlement or compromise payment from, the United States, until an amount equal to any judgment against, or settlement or compromise payment from the United States is recouped.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 205(a) of H.R. 1716, as amended, would allow veterans and dependents who

are injured as a result of negligent VA medical treatment or rehabilitation or training to qualify for vocational rehabilitation benefits, in addition to specially adapted automobile and adaptive equipment grants. Section 205(b) would provide that where a judgment, settlement or compromise of a claim is offset against benefits provided by the Secretary, such offset would be applied only to the comparable benefit.

Compromise Agreement

Section 304 of the Compromise Agreement generally follows the House language, but omits eligibility for vocational rehabilitation benefits. Section 205(c) is amended to provide that in the event that a judgment, settlement or compromise specifically designates a portion of such award for housing or automobile benefits such as those provided under Chapters 21 or 39, and the beneficiary later applies for benefits under Chapter 21 or 39, benefits under those chapters would be reduced by the amount of benefits specifically designated in the judgment, settlement or compromise. Any amounts in excess of those permitted under Chapter 21 or 39 would be offset against benefits paid under Chapter 11.

EFFECTIVE DATE OF DEATH PENSION

Current Law

Section 5110(d) of title 38, United States Code, provides that an award based on a death pension claim received more than 45 days after the veteran's death can be effective no earlier than the date of the claim. If the application is received within 45 days of the veteran's death, then the effective date of the death pension award is the first day of the month in which the death occurred.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 204 of H.R. 1716, as amended, would repeal the 45-day rule for the effective date of death pension. Therefore, a claim for death pension received within one year from the date of the veteran's death would be effective the first day of the month in which the death occurred.

Compromise Agreement

Section 305 of the Compromise Agreement follows the House language.

CODIFICATION OF ADMINISTRATIVE ACTIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION FOR VETERANS EXPOSED TO IONIZING RADIATION

Current Law

Section 1112(c)(2) of title 38, United States Code, lists 16 diseases that VA presumes are related to exposure to ionizing radiation. In addition to the 16 listed in statute, VA regulations list an additional five diseases: bone cancer, brain cancer, colon cancer, lung cancer, and ovarian cancer. Servicemembers who participated in certain radiation-risk activities, as defined in section 1112(c)(3)(B), benefit from the presumption of service-connection to ionizing radiation.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 201 of H.R. 1716, as amended, would add bone cancer, brain cancer, colon cancer, lung cancer, and ovarian cancer to the statutory list of those diseases presumed to be related to ionizing radiation exposure during participation in certain radiation-risk activities. Section 201 would also codify additional locations where radiation-risk activities occurred for purposes of determining which veterans qualify for the presumption of service-connection of certain diseases related to ionizing radiation exposure.

Compromise Agreement

Section 306 of the Compromise Agreement follows the House language.

TITLE IV—HOUSING MATTERS

AUTHORITY TO PROVIDE SPECIALLY ADAPTED HOUSING TO CERTAIN DISABLED VETERANS

Current Law

Chapter 21 of title 38, United States Code, authorizes the Secretary to provide grants to adapt or acquire suitable housing for certain severely disabled veterans.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 302 of H.R. 1716, as amended, would extend eligibility for specially adapted housing grants to veterans with permanent and total service-connected disabilities due to the loss, or loss of use, of both arms at or above both elbows.

Compromise Agreement

Section 401 of the Compromise Agreement follows the House language.

TRANSITIONAL HOUSING AMENDMENTS

Current Law

Section 2051 of title 38, United States Code, establishes the general authority governing loan guarantees for multifamily transitional housing. Section 2052 establishes eligibility and other requirements for such loans.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 303 of H.R. 1716, as amended, would provide that a multifamily transitional housing project that is funded by a VA-guaranteed loan may accept uncompensated voluntary services as defined in section 2011(d) of title 38, United States Code, in connection with the construction, alteration, or repair of such project. This section would also add commercial activities, other than neighborhood retail services or job training programs, to the purposes for which multifamily transitional housing space may be used.

Compromise Agreement

Section 402 of the Compromise Agreement follows the House language. The Committees intend that veterans be hired at these new centers of commercial activity where practicable.

INCREASE IN, AND ANNUAL INDEXING OF, MAXIMUM AMOUNT OF HOME LOAN GUARANTY FOR CONSTRUCTION AND PURCHASE OF HOMES

Current Law

Section 3703 of title 38, United States Code, establishes that a loan of more than $144,000 made to an eligible veteran under section 3710 for purchase or construction of a home is automatically guaranteed by the United States in an amount not to exceed the lesser of $60,000 or 25 percent of the loan.

Senate Bill

Section 101 of S. 2486, as amended, would increase the maximum VA home loan guaranty to 25 percent of the Freddie Mac conforming loan amount for a single-family residence and annually index the maximum amount of VA's home loan guaranty for construction or purchase of a home to the Freddie Mac limit.

House Bill

Section 301 of H.R. 1716, as amended, and H.R. 4345 contain a similar provision.

Compromise Agreement

Section 403 of the Compromise Agreement follows the Senate language.

EXTENSION OF AUTHORITY FOR GUARANTEE OF ADJUSTABLE RATE MORTGAGES

Current Law

Section 3707 of title 38, United States Code, formerly authorized a three-year test of a VA-guaranteed adjustable rate mortgage program (ARM). The VA ARM program was in force from fiscal year 1993 through fiscal year 1995.

Senate Bill

Section 102 of S. 2486, as amended, would reinstate the VA ARM program and extend its authorization through fiscal year 2011.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 404 of the Compromise Agreement follows the Senate language but would extend the VA ARM program authorization through fiscal year 2008.

EXTENSION AND IMPROVEMENT OF AUTHORITY FOR GUARANTEE OF HYBRID ADJUSTABLE RATE MORTGAGES

Current Law

Section 3707A of title 38, United States Code, authorizes VA, during fiscal years 2004 and 2005, to guarantee hybrid adjustable rate mortgage (hybrid ARM) loans. Annual interest rate adjustments on VA-guaranteed hybrid ARM loans are subject to a maximum increase or decrease of one percentage point and are limited over the term of the mortgage to a maximum increase of five percentage points above the initial fixed rate of interest.

Senate Bill

Section 103 of S. 2486, as amended, would extend the authority of VA to guarantee hybrid ARM loans through fiscal year 2011. For hybrid ARM loans with fixed periods of interest of less than 5 years, the initial and subsequent annual interest rate adjustments would be limited to one percentage point. For hybrid ARM loans with an initial rate of interest fixed for 5 years or more, section 103 would give VA the authority to set an appropriate interest rate cap for the initial interest rate adjustment. Annual adjustments thereafter would be subject to a one percentage point cap. Finally, section 103 would require VA to prescribe the maximum number of percentage points above the initial fixed rate of interest that would limit, over the term of a hybrid ARM mortgage, interest rate adjustments.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 405 of the Compromise Agreement follows the Senate language but would extend the VA hybrid ARM program through fiscal year 2008.

TERMINATION OF COLLECTION OF LOAN FEES FROM VETERANS RATED ELIGIBLE FOR COMPENSATION AT PRE-DISCHARGE RATING EXAMINATIONS

Current Law

Section 3729(a) of title 38, United States Code, requires VA to collect a fee from each person obtaining a housing loan guaranteed by VA. Section 3729(c) prohibits the collection of loan fees from veterans who are receiving VA disability compensation. Disability compensation may only be paid upon an active duty servicemember's discharge from service.

Senate Bill

Section 104 of S. 2486, as amended, would allow a servicemember who is rated eligible to receive disability compensation as a result of a pre-discharge medical examination

to qualify for a waiver of the VA home loan funding fee.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 406 of the Compromise Agreement follows the Senate language.

THREE-YEAR EXTENSION OF NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM

Current Law

Section 3761 of title 38, United States Code, establishes the general authority governing a pilot program for housing loans to Native Americans residing on tribal lands. The pilot program is authorized through December 31, 2005.

House Bill

H.R. 5153 would extend the Native American Home Loan Program through December 31, 2010.

Senate Bill

The Senate Bills contain no comparable provision.

Compromise Agreement

Section 407 of the Compromise Agreement extends the pilot program until December 31, 2008.

TITLE V—MATTERS RELATING TO FIDUCIARIES

DEFINITION OF FIDUCIARY

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 301 of H.R. 4658, as amended, would define a fiduciary for the purposes of chapters 55 and 61 of title 38, United States Code, as (1) the guardian, curator, conservator, committee or person legally vested with the responsibility or care of a claimant (or the estate) or of a beneficiary (or beneficiary's estate); or (2) any other person appointed in a representative capacity to receive money paid from VA.

Compromise Agreement

Section 501 of the Compromise Agreement follows the House language.

INQUIRY, INVESTIGATIONS, AND QUALIFICATION OF FIDUCIARIES

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 302 of H.R. 4658, as amended, would require VA to certify, following an inquiry or investigation, the fitness of a fiduciary. Such inquiry or investigation would be conducted through, to the extent practicable, a face-to-face interview, review of a credit report issued within one year of the fiduciary's proposed appointment, and the furnishing of any bond that may be required by the Secretary. Additionally, the Secretary would be required to request information on whether that person has been convicted of any offense under Federal or State law resulting in imprisonment for more than one year. If the proposed fiduciary has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary makes a specific finding of rehabilitation and finds that the proposed fiduciary is an appropriate one to act as the fiduciary for the beneficiary.

In cases of a parent or step-parent of a minor beneficiary (natural or adopted), spouse or parent of an incompetent beneficiary, a person who has been appointed by a court of competent jurisdiction, or a person appointed to manage an estate where the annual amount of veterans benefits to be managed does not exceed $3,600 (adjusted for annual cost-of-living increases), the Secretary may certify the potential fiduciary on an expedited basis.

If needed to protect the assets of the beneficiary when a determination of incompetence is being made or appealed, or a fiduciary is appealing a determination of misuse of veteran's benefits, the Secretary would have the authority to appoint a temporary fiduciary, for a period not to exceed 120 days. If a final decision has not been made within 120 days of the appointment of the temporary fiduciary, the Secretary would not be able to continue the temporary appointment without a court order for the appointment of a guardian, conservator, or similar legal fiduciary.

Compromise Agreement

Section 502 of the Compromise Agreement follows the House language with modifications. Language requiring a specific finding of rehabilitation before a person with a prior felony conviction may be appointed to serve as a fiduciary is omitted. The Committees intend that the Secretary have discretion in determining when such a person would be an appropriate person to serve as a fiduciary. The Committees expect the Secretary to consider such factors as the length of time since the conviction, the nature of the offense, the relationship of the proposed fiduciary to the beneficiary, and other factors which would demonstrate the appropriateness of the appointment.

MISUSE OF BENEFITS BY FIDUCIARIES

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 303 of H.R. 4658, as amended, would, if the Secretary or a court of competent jurisdiction determines the fiduciary misused some or all of the veterans' benefits, prohibit a fiduciary from collecting a fee from a beneficiary for any month benefits were misused. Additionally, any fee collected would be considered to be misused.

Any fiduciary, except a Federal, State or local government agency, would be liable for the amount misused, and that amount would be treated as an erroneous payment to the fiduciary for purposes of laws pertaining to the recovery of overpayments. The misappropriated amount would be recovered in the same manner as any other debt due the United States, and the Secretary would repay to the beneficiary or the beneficiary's successor fiduciary, an amount equal to the recovered amount.

In the event the misused benefits are due to the Secretary's negligent failure to investigate or monitor the fiduciary, the Secretary would be liable to reissue all the benefits. Examples of failure to monitor a fiduciary adequately would include the Secretary's failing to review, in a timely manner, a fiduciary's accounting; failing to act in a timely manner when notified of allegations of misuse; and any other case when actual negligence is shown. In any case, a fiduciary who is (1) not an individual (i.e., an agency) or (2) is an individual who, for any month during a period when misuse occurs, serves ten or more individuals who are beneficiaries under title 38, United States Code, the Secretary would also reissue benefits. When the Secretary reissues a benefit payment, the Secretary is directed to make a good-faith effort to recoup the funds from the fiduciary to which the original payment was made.

Compromise Agreement

Section 503 of the Compromise Agreement follows the House language with modifications. The Committees have omitted language authorizing the Secretary to make a finding of misuse and treat the portions of benefits misused as erroneous payments to the fiduciary. Also omitted is language authorizing the Secretary to impose liability upon the fiduciary and recover misused funds in the same manner as any other debt owed to the United States. In addition, the Committees have omitted the provision that would have made a determination by the Secretary that a fiduciary has misused benefits a decision of the Secretary for purposes of section 511(a) of title 38, United States Code. The Committees recognize that it is the duty of the Federal government to recover misused funds and expect that VA and other government agencies will make every effort to recover misused funds. However, at this time, the Committees need to assess further the appropriateness of requiring a fiduciary accused of misuse by the Secretary to appeal such a finding in the appeals venue established for adjudicating veterans' entitlement claims.

The Committees have also amended the provision requiring the Secretary to reissue benefits when the Secretary has negligently failed to monitor or investigate a fiduciary. In particular, the Committees have specified that a timely review of a scheduled accounting or investigation of misuse is one that occurs within 60 days of the scheduled accounting or notification of alleged misuse.

ADDITIONAL PROTECTIONS FOR BENEFICIARIES WITH FIDUCIARIES

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 304 of H.R. 4658, as amended, would require the Secretary to conduct periodic onsite reviews of any person or agency located in the United States that serves as a fiduciary to more than 20 beneficiaries and who administers a total annual amount of benefits administered of $50,000 or more (to be adjusted annually to reflect cost-of-living adjustments). Additionally, the Secretary would be authorized to require a fiduciary to file a report or accounting of disbursement of benefits in accordance with regulations prescribed by the Secretary. In the event a fiduciary fails to file the requested report, the Secretary would be authorized to require a fiduciary to appear in person at a VA regional office to receive payment.

In the event the Secretary determines a fiduciary converts a payment for some use other than for use on the beneficiary's behalf, the Secretary would be authorized to assess, in addition to any other penalty that may be prescribed by law, a civil monetary penalty of not more than $5,000 per conversion. Such person would also be subject to an assessment by the Secretary of not more than twice the amount of any payments converted.

Additionally, any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits, could have ordered, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department and the court would have been required to state on the record the reasons for not ordering restitution, or only ordering partial restitution. Any amounts received or recovered

would be available to defray the expenses incurred by the VA's Office of Inspector General for the inquiry or investigation of fiduciaries.

Compromise Agreement

Section 504 of the Compromise Agreement follows the House language with modifications. The title of new section 5509, of title 38, United States Code, has been changed to reflect more accurately the requirements of that section. The provision for imposition of civil monetary penalties has been omitted. The Compromise Agreement omits provisions allowing amounts received in excess of benefit restitution to be made available to the Office of the Inspector General.

ANNUAL REPORT

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 305 of H.R. 4658, as amended, would require the Secretary to include in the ''Annual Benefits Report of the Veterans Benefits Administration'' or the ''Secretary's Annual Performance and Accountability Report'' information concerning fiduciaries who have been appointed to receive benefits. The required report would include the following (1) the number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child or parent); (2) the types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of title 38, United States Code); (3) the total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit; (4) the number of fiduciaries who are the spouse, parent, step-parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian-in-fact and supervised direct payee; (5) the number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused; (6) how such cases of misuse of benefits were addressed by the Secretary; (7) the final disposition of such cases of misuse of benefits, including the number and dollar amount of any civil or criminal penalties imposed; and (8) such other information as the Secretary considers appropriate.

Compromise Agreement

Section 505 of the Compromise Agreement follows the House language with modifications. Additional reporting requirements concerning cases referred to the Office of the Inspector General and the amounts of money recovered by the government have been added. Language referring to civil or criminal penalties has been omitted.

TITLE VI—MEMORIAL AFFAIRS MATTERS

DESIGNATION OF PRISONER OF WAR/MISSING IN ACTION NATIONAL MEMORIAL, RIVERSIDE NATIONAL CEMETERY, RIVERSIDE, CALIFORNIA

Current Law

There is no applicable current law.

Senate Bill

Section 122 of S. 2485 would designate the Prisoner of War/Missing in Action National Memorial at the Riverside National Cemetery in Riverside, California. Federal funds would be permitted, but not required, at the discretion of the Secretary for maintenance of the memorial, should private funding sources prove to be inadequate.

House Bill

Section 402 of H.R. 1716, as amended, contains a similar provision.

Compromise Agreement

Section 601 of the Compromise Agreement generally follows the House language. However, the memorial is designated: ''Prisoner of War/Missing in Action National Memorial.''

LEASE OF CERTAIN NATIONAL CEMETERY ADMINISTRATION PROPERTY

Current Law

There is no applicable provision in current law.

Senate Bill

Section 107 of S. 2485, as amended, would authorize the Secretary to lease any undeveloped land and unused or underutilized buildings belonging to the United States and administered by the National Cemetery Administration (NCA). The term of any such lease would not be permitted to exceed ten years. Proceeds from the lease of land or buildings and proceeds from licenses sold in return for the agricultural use of NCA lands would be deposited in a National Cemetery Administration Facilities Operation Fund along with any appropriation, or other authorized payment, designated for that fund. Fund proceeds would be available to cover costs incurred by NCA in the operation and maintenance of national cemeteries.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 602 of the Compromise Agreement follows the Senate language.

EXCHANGES OF REAL PROPERTY FOR NATIONAL CEMETERIES

Current Law

Section 2406 of title 38, United States Code, authorizes the Secretary to acquire additional lands for national cemeteries by purchase, gift, condemnation, or transfer from other Federal agencies.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 603 of the Compromise Agreement would authorize the Secretary to acquire additional lands for national cemeteries by exchanging existing national cemetery land.

TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

CLARIFICATION OF MEANING OF ''JUDGMENT'' AS USED IN THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

Current Law

Section 101 of the SCRA provides definitions for purposes of the Act. The section does not define the term ''judgment.''

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 101 of H.R. 4658, as amended, would clarify that ''[t]he term 'judgment' means any judgment, decree, order, or ruling, final or temporary.''

Compromise Agreement

Section 701 of the Compromise Agreement follows the House language.

REQUIREMENTS RELATING TO WAIVER OF RIGHTS UNDER THE SCRA

Current Law

Section 107 of the SCRA provides that servicemembers may waive any of the rights and protections under the Act if certain requirements are met, including a requirement in section 107(b) that waivers be in writing for specified actions.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 102 of H.R. 4658, as amended, would provide that those actions requiring waivers in writing pursuant to section 107(b) of the SCRA must also be executed in a separate instrument. Additionally, section 102 would provide a new requirement that any waiver, in writing, of a right or protection under section 107 of the Act that applies to a contract, lease or similar legal instrument must be in at least 12–point type.

Compromise Agreement

Section 702 of the Compromise Agreement follows the House language.

RIGHT OF SERVICEMEMBERS PLAINTIFFS TO REQUEST STAY OF CIVIL PROCEEDINGS

Current Law

Section 202 of the SCRA provides for a stay of any civil action or proceeding when a servicemember who is a defendant has notice of the action or proceeding.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 103 of H.R. 4658, as amended, would include plaintiffs as well as defendants under section 202 of the SCRA.

Compromise Agreement

Section 703 of the Compromise Agreement follows the House language.

TERMINATION OF LEASES

Current Law

Section 305 of the SCRA provides that servicemembers may, under certain circumstances, terminate residential or motor vehicle leases and specifies the manner of termination.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 104 of H.R. 4658, as amended, would clarify that if, under section 305 of the SCRA the servicemember terminates a lease entered into jointly with a dependent, the obligations of both the servicemember and the dependent are terminated. Section 104 would also modify section 305 of the SCRA to allow motor vehicle lease terminations for any permanent change of station move from a state outside of the continental United States to any other location outside that state, and the term ''continental United States'' would be defined as the ''48 contiguous states and the District of Columbia.'' Further, section 104 would broaden the definition of the term ''military orders'' to mean ''official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.'' Finally, section 104 would amend section 305 of the SCRA to include individual as well as unit deployments for a period of not less than 90 days among the circumstances under which a servicemember could terminate a lease.

Compromise Agreement

Section 704 of the Compromise Agreement follows the House language.

TITLE VIII—OTHER MATTERS

PRINCIPAL OFFICE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Current Law

Section 7255 of title 38, United States Code, requires the principal office of the U.S. Court

of Appeals for Veterans Claims be located in the District of Columbia.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 1 of H.R. 3936 would authorize the principal office of the U.S. Court of Appeals for Veterans Claims to be located at any location in the Washington, D.C., metropolitan area. Section 2 would make findings and express the sense of Congress regarding a new veterans' courthouse and justice center.

Compromise Agreement

Section 801 of the Compromise Agreement follows the House language, but omits section 2 of the bill.

EXTENSION OF BIENNIAL REPORT OF ADVISORY COMMITTEE ON FORMER PRISONERS OF WAR

Current Law

Section 541 of title 38, United States Code, establishes an Advisory Committee on Former Prisoners of War. The Advisory Committee is required to submit to the Secretary, no later than July 1st of each odd numbered year through 2003, a report on the programs and activities of the Department as they pertain to veterans who are former prisoners of war.

Senate Bill

Section 302 of S. 2486, as amended, would extend the reporting requirement through 2009.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 803 of the Compromise Agreement follows the Senate language.

AVAILABILITY OF ADMINISTRATIVE AND JUDICIAL REDRESS FOR CERTAIN VETERANS DENIED OPPORTUNITY TO COMPETE FOR FEDERAL EMPLOYMENT

Current Law

Section 3304(f)(1) of title 5, United States Code, grants ''preference eligible'' veterans (generally, veterans who served during a wartime period; veterans who served during a period for which a campaign badge or expeditionary medal was awarded; or veterans with service-connected disabilities) and veterans who separated from the armed forces under honorable conditions after three years or more of active service the opportunity to compete for vacant positions in the Federal government for which an agency is accepting applications from individuals outside its own workforce under merit promotion procedures.

Section 3330a of title 5, United States Code, allows preference eligible veterans who allege their veterans' preference rights have been violated to seek administrative redress by filing a complaint with the Secretary of Labor. Section 3330b of title 5, United States Code, provides preference eligible veterans with judicial redress for claims arising from allegations of violations of veterans' preference laws.

Senate Bill

Section 204 of S. 2486, as amended, would provide a veteran who has been separated from the armed forces under honorable conditions after three years or more of active service with administrative and judicial redress for alleged violations of his or her rights under section 3304(f)(1) of title 5, United Stated Code.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 804 of the Compromise Agreement follows the Senate language.

REPORT ON SERVICEMEMBERS' AND VETERANS' AWARENESS OF BENEFITS AVAILABLE UNDER LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS

Current Law

Section 7722 of title 38, United States Code, requires the Secretary of Veterans Affairs to distribute full information to eligible servicemembers, veterans and dependents regarding all benefits and services to which they may be entitled under laws administered by the Department.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

In conjunction with the improvements in veterans' benefits, section 805 of the Compromise Agreement would direct the Secretary of Veterans Affairs to submit a report to Congress detailing VA's efforts to make veterans and servicemembers aware of VA benefits and services to which they are entitled. The report would include: (1) a description of the outreach activities conducted by VA at each of its three Administrations and by other internal VA entities; (2) the results of a national survey to ascertain servicemembers' and veterans' level of awareness of VA benefits and services; and (3) recommendations the Secretary may have to improve VA's outreach activities. The report would be due 1 year after the enactment of the Compromise Agreement.

LEGISLATIVE PROVISIONS NOT ADOPTED

IMPROVED VETERANS' BENEFITS FOR FORMER PRISONERS OF WAR

Current Law

Section 1112(b) of title 38, United States Code, specifies 16 disabilities that VA presumes are related to the prisoner of war (POW) experience for the purposes of veterans' and survivors' benefits.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 4 of H.R. 4175 would add osteoporosis to the list of diseases presumed to be the result of the POW experience.

FINDINGS RELATED TO ON-JOB TRAINING AND APPRENTICESHIP PROGRAMS

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 101 of H.R. 1716, as amended, would make Congressional findings with respect to broad purposes for VA's OJT and apprenticeship programs in both the private and public sectors of our economy. These include: helping employers hire and retain skilled workers; establishing a link between the training afforded to servicemembers while serving in the Armed Forces and the training available in civilian settings for purposes of occupational licensing and credentialing; and developing a more highly educated and productive workforce.

INCENTIVE PAYMENT FOR EARLY COMPLETION OF APPRENTICESHIP TRAINING

Current Law

Sections 3032, 3233, and 3687 of title 38, United States Code, and Section 16131 of title 10, United States Code, do not currently contain any incentive to finish on-job training or apprenticeships earlier than the established completion date.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 103 of H.R. 1716, as amended, would establish an incentive payment for program participants who finish their apprenticeship training early. As an incentive for trainees to complete their apprenticeship or attain journeyworker status early, this provision would require VA to pay the trainee a lump-sum amount for the months of VA entitlement remaining that would have been needed to complete the apprenticeship. This provision would be applicable for months beginning on or after October 1, 2005, and ending on October 1, 2010.

ELIGIBILITY OF CERTAIN PERSONS FOR BURIAL IN ARLINGTON NATIONAL CEMETERY

Current Law

Eligibility for burial at Arlington National Cemetery is governed by Federal regulations at section 553.15 of title 32, Code of Federal Regulations. The following categories of persons are eligible for in-ground burial: active duty members of the Armed Forces, except those members serving on active duty for training; retired members of the Armed Forces who have served on active duty, are on a retired list and are entitled to receive retirement pay; former members of the Armed Forces discharged for disability before October 1, 1949, who served on active duty and would have been eligible for retirement under 10 U.S.C. 1202 had the statute been in effect on the date of separation; honorably discharged members of the Armed Forces awarded the Medal of Honor, Distinguished Service Cross, Air Force Cross or Navy Cross, Distinguished Service Medal, Silver Star, or Purple Heart; former prisoners of war who served honorably and who died on or after November 30, 1993; provided they were honorably discharged from the Armed Forces, elected Federal officials (the President, Vice President, and Members of Congress), Federal cabinet secretaries and deputies, agency directors and certain other high Federal officials (level I and II executives), Supreme Court Justices, and chiefs of certain diplomatic missions; the spouse, widow or widower, minor child and, at the discretion of the Secretary of the Army, certain unmarried adult children, and certain surviving spouses of persons eligible for in-ground burial.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 401 of H.R. 1716, as amended, would make eligible for in-ground burial at Arlington National Cemetery (1) a member or former member of a reserve component of the Armed Forces who at the time of death was under 60 years of age and who, but for age, would have been eligible for military retired pay under title 10, United States Code; and (2) a member of a reserve component of the Armed Forces who dies in the line of duty while on active duty for training or inactive duty training. Eligibility in both instances would also extend to the servicemember's dependents.

TECHNICAL AMENDMENTS TO EDUCATION PROGRAM PROVISIONS

Current Law

Section 3452(e) of title 38, United States Code, as amended by section 301 of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2658) authorizes education assistance benefits for certain self-employment

and on-job training programs (franchises) for less than six months under the Montgomery GI Bill (MGIB) when the beneficiary receives a training wage.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 403 of H.R. 4658, as amended, would make a technical correction to waive the training-wage requirement for programs of less than six months beginning October 1, 2005, and ending on September 30, 2010. The Department of Veterans Affairs would be required to review and approve all such programs before any MGIB educational assistance benefits could be dispersed.

PREVENTION OF DOUBLE TAXATION OF CERTAIN SERVICEMEMBERS

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 105 of H.R. 4658, as amended, would prohibit a tax jurisdiction from imposing a use, excise or similar tax on the personal property of a servicemember who is not a resident, if the tax jurisdiction's laws do not provide a credit against such taxes previously paid on the same personal property in another tax jurisdiction.

FINDINGS AND SENSE OF CONGRESS REGARDING NEW VETERANS COURTHOUSE AND JUSTICE CENTER

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 2 of H.R. 3936 would make findings and express the sense of Congress that all other Article I courts of the United States are located in a dedicated courthouse; that the U.S. Court of Appeals for Veterans Claims, since its creation in 1988, has been located in a commercial office building; and that a dedicated Veterans Courthouse and Justice Center should be provided for the Court and the veterans it serves, and should be located, if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation. Section 2 would also require that not later than 90 days after the date of enactment of this provision, the Secretary of Defense, the Secretary of Veterans Affairs, and the Administrator of General Services submit to the House and Senate Committees on Veterans' Affairs and Armed Services a joint report on the feasibility of locating a new Veterans Courthouse and Justice Center at an appropriate Pentagon Reservation site.

EDUCATIONAL ASSISTANCE UNDER THE MONTGOMERY GI BILL FOR MEMBERS OF THE SELECTED RESERVE WHO AGGREGATE TWO OR MORE YEARS OF ACTIVE DUTY SERVICE DURING ANY FIVE-YEAR PERIOD

Current Law

Section 3012 of title 38, United States Code, authorizes the Department of Veterans Affairs to provide Chapter 30 educational assistance benefits to an individual who, after June 30, 1985, first enters on active duty and has his or her pay reduced by $100 per month for the first 12 months of active duty and serves at least two continuous years on active duty.

Senate Bill

Section 202 of S. 2486, as amended, would grant entitlement to Chapter 30 educational assistance benefits to an individual in the Selected Reserve who, during any five-year period beginning on or after September 11, 2001, and ending on June 30, 2008, serves an aggregate of two years of active duty service. The activated Selected Reserve member would be required to make a $1,200 contribution within one year of completing two years of aggregate active duty service.

House Bill

The House Bills contain no comparable provision.

MODIFICATION OF DEFINITION OF MINORITY GROUP MEMBER FOR PURPOSES OF ADVISORY COMMITTEE ON MINORITY VETERANS

Current Law

Section 544 of title 38, United States Code, establishes an Advisory Committee on Minority Veterans. For purposes of that section of law the term ''minority group members'' includes veterans who are: Asian American; Black; Hispanic; Native American (including American Indian, Alaskan Native, and Native Hawaiian); or Pacific-Islander American.

Senate Bill

Section 303 of S. 2486, as amended, would amend the definition of ''minority group member'' to conform to the new Race and Ethnic Standards used in Federal statistical reporting and in the 2000 United States Census. Specifically, section 303 would redefine the categories of minority group members making the following changes: substituting ''Asian'' for ''Asian American;'' ''Black or African American'' for ''Black;'' ''Hispanic, Latino, or Spanish Origin'' for ''Hispanic;'' and ''American Indian or Alaska Native'' and ''Native Hawaiian or other Pacific Islander'' for ''Native American (including American Indian, Alaskan Native, and Native Hawaiian).''

House Bill

The House Bills contain no comparable provision.

INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION

Current Law

Current law does not require an annual cost-of-living adjustment to veterans' and survivors' disability compensation.

Senate Bill

S. 2483 contains a similar provision.

House Bill

Section 2 of H.R. 4175 would provide, effective December 1, 2004, a cost-of-living adjustment to the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. The percentage increase would be equal to the percentage increase for benefits provided under the Social Security Act.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, November 16, 2004.

Hon. CHRIS SMITH,
Chairman, Committee on Veterans' Affairs, House of Representatives, Washington, DC.

DEAR CHAIRMAN SMITH: In recognition of the desire to expedite floor consideration of S. 2486, the ''Veterans Benefits Improvement Act of 2004,'' the Committee on the Judiciary hereby waives consideration of the bill. Section 504(b) of the bill creates a new §6108 of Title 38 of the U.S. Code. This new section gives courts the authority to order restitution to the Department of Veterans Affairs when a fiduciary is convicted of missing veterans benefits. These provisions fall within the committee on the Judiciary's Rule X jurisdiction. However, given the need to expedite this legislation, I will not seek a referral of S. 2486 based on their inclusion.

The Committee on the Judiciary takes this action with the understanding that the Committee's jurisdiction over these provisions is in no way diminished or altered. I would appreciate your including this letter and your response in the Congressional Record during consideration of S. 2486 on the House floor.

Sincerely,
F. JAMES SENSENBRENNER, Jr.,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, DC, November 16, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of November 16, 2004, regarding the jurisdictional interest of the Committee on the Judiciary in section 504(b) of S. 2486, the Veterans Benefits Improvement Act of 2004.

Your willingness to forego a sequential referral to expedite House consideration of S. 2486 is most appreciated. The Committee on Veterans' Affairs understands that your letter does not waive jurisdiction of the Committee on the Judiciary over the bill and is not a precedent for other bills.

Again, thank you for your cooperation in this matter. Be assured I will include our exchange of letters in the Congressional Record.

Sincerely,
CHRISTOPHER H. SMITH,
Chairman.

Mr. Speaker, I reserve the balance of my time.

Mr. MICHAUD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker I rise in strong support of S. 2486, the Veterans Benefits Improvement Act of 2004. I would like to thank the ranking member, the gentleman from Illinois (Mr. EVANS), and the gentleman from New Jersey (Mr. SMITH) for their leadership on this legislation and my good friend and colleague on the Subcommittee on Benefits, the gentleman from South Carolina (Mr. BROWN). I have enjoyed working with him during this Congress.

I was proud to join Members on both sides of the aisle in introducing provisions to help our veterans and servicemembers and their families. It is good to see that work contained in this final bill.

This legislation demonstrates the bipartisan nature of the Committee on Veterans Affairs and our ability to work together for the good of our Nation's veterans. The Members and staff of both sides of the aisle also should be recognized for their efforts in putting legislation together.

Finally, I would like to acknowledge the good work done by the other body. Senator SPECTER and Senator GRAHAM and their staffs worked diligently to bring this bill forward. It has been a bipartisan and bicameral effort. Our Nation's veterans and their families would be better off with this legislation.

S. 2486 is a comprehensive bill drawn from a number of provisions that came before our committee. I would like to take a moment to point out just a few.

Many of the provisions in Title I, the Veterans Earn and Learn Act of S. 2486, are drawn from H.R. 1716. Title I will provide improved benefits and job assistance for future skilled workers as they leave military service. The gentleman from South Carolina (Mr. BROWN) introduced and I was happy to support a provision to extend eligibility of employer-sponsored health care coverage to Reservists who have been activated for up to 24 months of active service. This provision is found in section 201 of the bill.

Section 2111 drawn from a bipartisan H.R. 4173 provides for a report of employment placement, retention and advancement of recently separated servicemembers.

I am also pleased that the other body included provisions similar to H.R. 1750 to increase by $250 the amount of dependency and indemnity compensation benefits received by surviving spouses with children under age 18 for the first 2 years of eligibility. The ranking member, the gentleman from Illinois (Mr. EVANS), has been a long-time advocate for our Nation's disabled veterans and their families.

S. 2486 contains provisions drawn from the Evans bill, H.R. 4172, to codify certain disabilities as presumptive disabilities for atomic veterans and to provide an offset rather than a bar to benefits when an atomic veteran or survivor receives benefits under the Radiation Exposure Compensation Act.

I would like to thank the gentleman from New Hampshire (Mr. BRADLEY) for the opportunity to join with him in introducing H.R. 2163 to equalize the position of surviving spouses who receive death pension benefits and who are also the beneficiaries of veterans' life insurance. The provisions of H.R. 2163 are contained in section 303 and 305 of this bill.

The Veterans Benefits Improvement Act of 2004 includes a provision that is drawn from my bill, H.R. 2612, to allow veterans who have lost or lost the use of both arms at or above the elbow due to a service-connected disability to receive a special adaptive housing grant. This will provide needed assistance to those veterans currently being disabled in Iraq and Afghanistan as well as veterans of former wars, such as James Moore of Lincoln, Nebraska, who contacted the committee concerning this issue.

The gentlewoman from California (Mrs. DAVIS) has been a leader on our committee for veterans' housing issues, and her work is reflected in S. 2486. Section 103 is drawn from her bill, H.R. 4616, and provisions from the Senate to extend the authority for hybrid adjustable mortgages.

S. 2486 will also benefit Native American veterans in my State and across the country. The Pleasant Point and Indian Township Passamoquody Tribe of Maine has entered into a memorandum of understanding to participate in the VA's Native America Home Loan pilot project. The newest member of our committee, the gentlewoman from South Dakota (Ms. HERSETH), introduced H.R. 5153 to extend this program. That provision is included as section 406 of this bill.

The gentlewoman from California (Mrs. DAVIS) has also been a leader in working to protect our most vulnerable veterans, and I was pleased to join her in introducing H.R. 4032 to improve protection and remedies in the event of fiduciary misuse. Many of the provisions of H.R. 4032 are included in Title V of the Veterans Benefit Improvement Act of 2004.

Mr. Speaker, as you can see, there has been a great deal of bipartisan support put together in this bill. S. 2486 will improve the lives of veterans of today and provide a sense of security for those servicemembers who are risking their lives all around the world. I urge all Members to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of New Jersey. Mr. Speaker, I yield such time as he may consume to the gentleman from South Carolina (Mr. BROWN), who has been a great workhorse on this committee. As I indicated earlier, this bill alone has some 40 disparate provisions. It encompasses over 14 bills. The gentleman, as the subcommittee chairman, has walked point on all of this; and I want to thank the distinguished chairman for his very able and very effective leadership as subcommittee chairman.

Mr. BROWN of South Carolina. Mr. Speaker, I thank the gentleman for his kind remarks.

Mr. Speaker, I rise today in strong support of S. 2486, the Veterans Benefit Improvement Act of 2004. We have been working on this comprehensive bill throughout the 108th Congress, like our chairman said. I commend the Committee on Veteran's Affairs leadership for bringing it to the floor today.

It incorporates 14 separate House bills and comprises 43 substantive provisions. Countless servicemembers, veterans and their families will directly benefit from S. 2486. Likewise, Mr. Speaker, by significant enhancing and modernizing the VA on-the-job training and apprenticeship programs for veterans, American businesses and industry will feel the positive effects of this bill, as well as 858 civilian occupations offer apprenticeships. These improvements can be especially useful to American small businesses, the bedrock of our economy.

I would like to briefly note Title V of the bill, which addresses the needs of our most vulnerable veterans, those who require a fiduciary to handle monetary benefits received from the VA. It is an unfortunate fact that when someone is responsible for another person's money, temptations may arise to take advantage of that position, ultimately to the detriment of the person being assisted. S. 2486 would add protection for incompetent veterans or dependents when their benefits are misused.

Currently, over 100,000 veterans, widows or adult helpless children and minors have an appointed fiduciary. While VA overall does a good job of protecting this population, S. 2486 addresses many of our concerns with the fiduciary program.

Mr. Speaker, I applaud the gentleman from New Jersey (Mr. SMITH), our great chairman, and the gentleman from Illinois (Mr. EVANS), the ranking member, for their continuing foresight and leadership, as well as my great friend, the gentleman from Maine (Mr. MICHAUD), the ranking member of the Subcommittee on Benefits.

In addition to the Subcommittee on Benefits as a whole, I thank the members of the committee who worked with the gentleman from Maine (Mr. MICHAUD) and myself for bringing the bill forward.

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The full committee's vice chairman, the gentleman from Florida (Mr. BILIRAKIS), the gentlewoman from Florida (Ms. GINNY BROWN-WAITE), the gentlewoman from California (Mrs. DAVIS), the gentleman from New Hampshire (Mr. BRADLEY), the gentleman from Texas (Mr. REYES); indeed, this has been a team effort.

I also want to thank the Subcommittee on Benefits staff on both sides of the aisle.

Mr. Speaker, I urge my colleagues to support the Veterans Benefit Improvement Act of 2004.

Mr. MICHAUD. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EVANS), the ranking member of the committee.

Mr. EVANS. Mr. Speaker, I rise in strong support of S. 2486. This legislation includes a number of measures to improve the lives of this Nation's veterans and their families.

I also want to thank the gentleman from New Jersey (Mr. SMITH), the chairman of committee, and the gentleman from South Carolina (Mr. BROWN) and the gentleman from Maine (Mr. MICHAUD), the chairman and ranking member of the Subcommittee on Benefits, and both of their staffs for their hard work in bringing this legislation to the floor.

In particular, I also want to acknowledge the work and contribution of Pat Ryan, who is retiring from the committee after many years of service.

I also want to thank the members of the other body, Senator SPECTER and Senator GRAHAM and their staffs for the contributions made to this bill.

Mr. Speaker, today, we recognize the sacrifices of the men and women in uniform who served our Nation. By passing this important legislative package, this bill honors their service and provides them with the care that they have earned.

As is the committee's custom, this bill incorporates a large number of provisions from bills introduced by other Members from both sides of the aisle in both bodies. The House Committee on Veterans Affairs has a long-standing record of working in a bipartisan manner, and I am glad that we have the

gentleman from New Jersey's (Mr. SMITH's) leadership on his side, who has worked together with us on our side so that we can continue this practice.

I am very pleased to be a sponsor or an original cosponsor of many of the other bills which were incorporated into this package and look forward to their implementation.

Mr. Speaker, we can finalize the committee's work for this Congress. We have many accomplishments that we can be proud of, and I want to thank the chairman and members of the committee for working so hard and dedicating our work to our Nation's veterans. I urge all Members to vote for this legislation.

Mr. Speaker, I rise in strong support of S. 2486, a legislative package encompassing a number of important measures to assist this nation's veterans and their families.

I would like to thank the Chairman of our Committee, CHRIS SMITH, and the Chairman and Ranking Member of the Benefits Subcommittee, HENRY BROWN and MIKE MICHAUD, and their staffs for their work in bringing this important legislation to the floor.

I also want to thank the Members of the other body, Senator SPECTER and Senator GRAHAM and their staffs for their contribution to this bill.

Mr. Speaker, it is incumbent upon us to recognize the many sacrifices of the brave men and women in uniform who have so gallantly served our Nation. We do so by passing legislation honoring their service and providing them with the benefits they surely have earned.

As is the Committee's custom, this bill incorporates a large number of provisions, from bills introduced by Members from both sides of the aisle and both bodies. The House Veterans' Affairs committee has a long-standing tradition of working in a bipartisan manner and I am proud that we have continued this practice as exhibited in this bill. I thank the Chairman for his leadership in continuing this tradition. This bill is truly the product of a bipartisan, bicameral effort.

I am very pleased to be a sponsor or an original cosponsor of many of the bills which were incorporated into this measure. These provisions will improve the quality of our life of our Nation's veterans and their families. It honors their service and sacrifice to this country.

Mr. Speaker, Congress has made important strides in providing quality educational assistance to servicemembers, veterans and their families; however, we have not made similar progress with respect to the job training and vocational programs available under the Montgomery G.I. Bill. Accordingly, S. 2486, as amended, is a strong step in the right direction in the job training and economic development area.

Specifically, this bill includes important provisions that would modernize, enhance and encourage greater participation in the on-job training and apprenticeship programs administered by the Department of Veterans Affairs (VA). It is important for veterans to be able to use the Montgomery G.I. bill education benefits for academic courses leading to a degree. I used VA education benefits to further my own education upon leaving military service. It is, however, just as important for the future electricians, plumbers, auto mechanics and other skilled workers to be able to effectively use the Montgomery G.I. Bill to fulfill the training and certification requirements they may need to prepare them to transition to the civilian workforce and contribute to society. The Committee worked diligently to ensure that these provisions accurately reflect contemporary industry and labor practices. We also worked with the VA to address its administrative concerns regarding these provisions. More important, Mr. Speaker, these provisions will provide veterans with improved job-training skills and opportunities under the Montgomery G.I. Bill.

I am pleased to support in the bill a measure brought forth by the other body which will allow an additional 10-year period for those Gold Star Wives and the surviving widowers of men and women who die during military service to use their education benefits. Men and women who die during military service are often in their early twenties and leave behind young children. By providing an additional 10 years, we will allow those surviving spouses an opportunity to raise their children before resuming their education. We have learned that this benefit is underutilized because surviving spouses are reluctant to resume their education while raising young children.

The bill recognizes the need for continued health insurance for those members of the Guard and Reserve who are called up for increasing periods of time. Therefore, a provision is included allowing these reservists to maintain employer-sponsored health insurance for 24 months, 6 months longer than that provided by current law.

I am pleased that a measure introduced by my good friend, the gentleman from Massachusetts, Mr. MCGOVERN, is included. He recognized that one of the biggest obstacles to effective utilization of employment-related rights for returning servicemembers is the lack of information concerning those rights. The bill requires the Department of Labor to provide employers with a notice of employee rights under the Uniformed Services Employment and Reemployment Rights Act, known as USERRA, and requires employers to post those notices.

S. 2486, as amended, also includes a provision requiring a study and report on employment, retention and advancement in employment of former servicemembers. This study and report will provide valuable information and assist Congress in our efforts to do all we can to facilitate the transition of servicemembers to the civilian workforce and promote veterans' employment opportunities generally.

Several years ago, an evaluation of VA's programs for survivors found that surviving spouses of veterans who have children and who receive Dependency and Indemnity Compensation (DIC) need an additional $250 per month to maintain the same standard of living as DIC recipients without children for the first 5 years after the veteran's death. I joined the Ranking Member of the Benefits Subcommittee, MIKE MICHAUD and others in introducing H.R. 1750 to implement that recommendation. I am pleased that the bill will provide the increased benefit to DIC recipients for the first 2 years following eligibility. I regret that funding was not available to provide benefits for a longer period. Nonetheless, this is an important step in implementing the evaluation's recommendations and providing for the widows and widowers who have borne the battle and their children.

I am particularly pleased that included within this bill are provisions that would codify current VA regulations regarding additional cancers recognized as presumptively service connected under the ''Atomic Veterans'' program, and repeal a bar that prevents a veteran or survivor from applying for VA compensation, subject to an offset, if they have already received compensation from the Justice Department under the Radiation Exposure Compensation Act. As the son of a veteran who was exposed to ionizing radiation in the Pacific, I have long been an advocate for the ''Atomic Veterans'' program and will continue my efforts to recognize and honor their often dangerous confidential service in defense of this country.

Additionally, Mr. Speaker, I support the provision of this bill which will exclude VA life insurance proceeds from being counted as income for those very low-income survivors of wartime veterans. Currently, those who have an effective advocate are able to time their request for death pension in a manner which will allow them to give up a few months of death pension benefits in order to keep the veteran's life insurance proceeds. Those without effective advocacy often lose a year of benefits. We care for the widow and widower of those who have borne the battle by providing a simple solution to the problem identified by VA in current law.

Veterans who are disabled by reason of VA medical treatment or vocational rehabilitation activities qualify for cash benefits and grants for specially adapted housing. They are, however, denied grants for automobiles and other motor vehicle adaptations. A provision drawn from a bill introduced by Mr. REYES and myself will not allow such veterans to obtain an automobile grant.

Veterans who have lost the use of their arms do not currently qualify for specially adapted housing. I joined Mr. MICHAUD in introducing a bill to permit such veterans to qualify for this benefit and am pleased this bill includes a provision drawn from that bill.

This bill will significantly improve VA's home loan program, including home loans for Native Americans. I am pleased that provision from bills introduced by Mrs. DAVIS of California and the newest Member of our Committee, Ms. HERSETH of South Dakota, are included in the final bill.

VA's most vulnerable veterans are those who require a fiduciary to handle their financial benefits. I joined Mrs. DAVIS of California in introducing legislation to provide improved protections for beneficiaries whose benefits are misused by fiduciaries. This bill contains a number of important provisions drawn from H.R. 4032.

The bill also makes a number of improvements to the Servicemembers Civil Relief Act which was substantially rewritten in the first session of this Congress.

Mr. Speaker, many provisions from this comprehensive package are drawn from bills which have been considered by the House Committee on Veterans Affairs. The bill has been enhanced and improved by measures considered by the other body. As we finalize the Committee's work for this Congress we have many accomplishments of which we can be proud.

Again, I want to thank Chairman SMITH for his leadership and his dedication to serving our nation's veterans. This is an excellent bill which will make a difference in the lives of this nation's veterans and their families. I urge all Members to show their support for the men and women who have worn the uniform in defense of our country by voting to pass this legislative package.

Mr. SMITH of New Jersey. Mr. Speaker, I yield such time as he may consume to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE), a distinguished member of our committee.

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I thank the gentleman very much for the time.

I am very pleased to support Senate 2486, the Veterans Benefit Improvement Act of 2004, and I am glad we got it finished this year. I know that there was some question about whether or not we would have time to get this very important bill up, and I certainly commend the gentleman from New Jersey (Mr. SMITH), the chairman, and the gentleman from Illinois (Mr. EVANS), the ranking member, for their efforts on behalf of veterans, along with all the members of the committee who are truly dedicated to America's heroes.

This bill includes an expansion of educational benefits for veterans and clarifies protections to servicemen and -women under the Servicemember Civil Relief Act, and it also improves the housing benefit available to veterans through the VA home loan.

It is the last provision of this bill that I would like to elaborate on as it is the product of a bipartisan collaboration between the gentlewoman from California (Mrs. DAVIS) and myself. Certainly, the chairman of the committee was very, very generous in working so hard on the bill and all the provisions of the bill, but this particular provision is one that will certainly impact our young men and women returning from Iraq.

Like so many other aspects of a soldier's life, many soldiers postpone homeownership until after they are out of the service. For these soldiers, as housing prices increase, the VA home loan value actually decreases in real terms.

The rising housing market erodes the purchasing power of the VA home loan. Depending on where the veteran lives, the current maximum of $240,000 is simply insufficient to meet their housing needs.

The bill, which encompasses a bill which the gentlewoman from California (Mrs. DAVIS) and I had worked on, which passed this House, indexes the maximum VA guarantee amount to 25 percent of the Freddie Mac conforming loan rate. The prevailing VA loan under this new change would be $333,700 in 2004, and it would continue to adjust as housing market needs increase.

We are all very proud of the young men and women who serve our Nation, past and present, and I am sure that the Members will agree that the value of their benefit should not vary depending on where they live or where they choose to purchase a home.

This legislation is very important and timely, and I urge my colleagues' support. I urge all the Members to support this.

Again, I commend my colleagues and especially the chairman for working so hard on this, what could very easily be called an omnibus, comprehensive bill to benefit our Nation's veterans.

Mr. MICHAUD. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Maine (Mr. MICHAUD) has 12 minutes remaining. The gentleman from New Jersey (Mr. SMITH) has 10 minutes remaining.

Mr. MICHAUD. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. RODRIGUEZ).

Mr. RODRIGUEZ. Mr. Speaker, I rise today in support of S. 2486, the Veterans Benefit Improvement Act, and I would like to take this opportunity to thank the gentleman from New Jersey (Chairman SMITH), as well as the gentleman from Illinois (Ranking Member Evans) and the gentleman from Maine (Mr. MICHAUD), the ranking member of the Subcommittee on Benefits, for their leadership in this particular issue.

One of the best things about being a member of this committee is the ability to pass a comprehensive bill, a benefits bill, every year while keeping on with the PAYGO provisions.

Although I was worried this particular year that that might not happen, I am glad that our colleagues in the Senate and the staff of our committees worked out this compromise.

Mr. Speaker, this bill has many wonderful provisions that would enhance the benefits of our veterans, National Guardsmen and their families receive, including additional educational benefits.

With passage of this particular piece of legislation, veterans will be able to use their Montgomery GI bill for apprenticeships and on-the-job training, as well as national admissions exams.

I am very pleased that this bill acknowledges the rewards and sacrifices many of our Reservists are making. With the passage of this particular piece of legislation, those men and women, Reservists who are called to active duty for more than 24 consecutive months, will be able to pay into the GI bill and become eligible for benefits.

This bill also includes some enhanced VA home loan language, which I know the gentlewoman from California (Mrs. DAVIS), my colleague, has been advocating for.

Like all Americans, our veterans dream of obtaining the American dream of homeownership. Our veterans have fought selflessly on behalf of our country and are entitled to the benefits we have promised them, including home loan benefits. Unfortunately, for many, this dream is faced with many obstacles.

The current VA home loan limit of $240,000 prevents many veterans from using their loan benefits to purchase a home in high-cost areas, such as in California or Florida and parts of the State of Texas. This legislation indexes the maximum loan amount to 100 percent of the Freddie Mac conforming loan rate to make the VA home loans compatible with the home loans available to the public nationwide. Additionally, this legislation allows the maximum VA loan amounts to adjust automatically each year to Freddie Mac standards in order to remain compatible with the national housing markets.

This legislation is extremely important. During 2003, 3 million veterans took advantage of the VA home loans, and I am positive more veterans will be able to take advantage of this particular benefit because of the improvements we are making today. As our troops are fighting in Iraq and Afghanistan, we must continue to show them the thanks of a grateful Nation.

I cannot think of a better way of saying thank you than improving the benefits of our soldiers, and so by this particular legislation, although there are many benefits we would like to take advantage of for our veterans, I am glad that the committee has been able to work with the money to make this happen.

Mr. SMITH of New Jersey. Mr. Speaker, we reserve the balance of our time.

Mr. MICHAUD. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Mrs. DAVIS).

Mrs. DAVIS of California. Mr. Speaker, with another Veterans Day recently passed, we heard much about the incredible sacrifices made by America's veterans and their tremendous bravery. I strongly echo those sentiments.

Because our courageous military personnel are willing to go into battle and sacrifice on our behalf, America's independence and liberties have remained intact for over 200 years, and we are truly indebted to those who fought in the Armed Forces.

However, Mr. Speaker, I strongly feel that we must honor these brave men and women with more than our words. After risking everything on our behalf, our veterans ask only that we work to improve the services they earned through their dedication and their bravery.

This is why the Veterans Benefit Improvement Act of 2004 before us today greatly enhances the services we provide to our military heroes. It increases the compensation we provide to surviving spouses and their children; gives veterans new opportunities to receive vocational training when leaving the military; and protects the civilian jobs of Reservists deployed overseas.

I was very honored, Mr. Speaker, by the opportunity to contribute directly to this comprehensive benefits legislation.

During my first term in Congress, I became interested in improving the home loan program offered by the Department of Veterans Affairs and introduced H.R. 1735 and cosponsored H.R. 4345, which increases the home loan limit available to veterans. I also introduced H.R. 4616 to offer adjustable-rate mortgages through the VA program.

Our veterans certainly deserve the same opportunity for home ownership as the public at large and the freedom to choose which loan will best meet their needs.

This legislation links the VA home loan amount to the Freddie Mac index to guarantee annual increases, and at the same time, it extends a program offering veterans the freedom to choose a fixed-rate or an adjustable-rate mortgage.

It is particularly helpful and a real victory for those veterans in San Diego because we are a high-cost area.

Additionally, S. 2486 provides new protections from fraud and abuse to a vulnerable class of veterans who require a guardian or fiduciary to oversee their finances and VA payments.

My staff in San Diego tried to assist a veteran who lost out on his VA disability compensation over a long period of time because his fiduciary had withheld payment for herself. Unfortunately, we could not recover the veteran's losses because current law did not provide revenues to recoup stolen payments.

After learning about this abuse, we introduced H.R. 4032 to give the VA the authority to conduct more thorough background checks of fiduciaries and to give veterans who fall victim to this abuse new revenues to recover their losses, and I am pleased these provisions were included in the legislation before us today.

I want to thank the House leadership for bringing this comprehensive veterans benefits package before the Congress and for acting in the interest of our former service members, and I urge my colleagues to support it.

Mr. SMITH of New Jersey. Mr. Speaker, I yield 2 minutes to the gentleman from Maine (Mr. MICHAUD), my good friend and colleague, to allocate as he would like.

Mr. MICHAUD. Mr. Speaker, I yield 2 minutes to the gentlewoman from South Dakota (Ms. HERSETH).

Ms. HERSETH. Mr. Speaker, I rise in support of the veterans bills being considered today and to thank and congratulate my colleagues, especially the gentleman from New Jersey (Chairman SMITH), the gentleman from Illinois (Ranking Member EVANS), the gentleman from South Carolina (Mr. BROWN) and the gentleman from Maine (Mr. MICHAUD) and their staff for their hard work and commitment to these important bills. I want to commend the gentleman from Texas (Mr. RODRIGUEZ), my colleague and friend, as well for his distinguished service on the Committee on Veterans Affairs.

I express my strong support today for the Veterans Benefits Improvement Act which includes two measures I introduced earlier this year to extend important veterans programs scheduled to expire.

The first of these measures is a provision to extend to 2010 the Veterans Administration's Native American Home Loan pilot program. This program directs home loans to eligible Native American veterans who wish to purchase, construct or improve a home on tribal trust lands. This extension will allow more veterans living on tribal trust lands to take advantage of this important benefit over the next 6 years.

Since the inception of this pilot program in 1992, the Department of Veterans Affairs has made more than 400 direct loans to Native American veterans, including loans to 17 veterans from my State of South Dakota. These loans are important tools for helping Native Americans purchase, construct or improve homes in Indian country.

The second measure which I introduced extends to 2009 the requirement that the Advisory Committee on Former Prisoners of War submit biennial reports to the Secretary of Veterans Affairs on the programs and activities of the Department of Veterans Affairs that pertain to former prisoners of war.

The Advisory Committee on Former Prisoners of War reviews Department policies and makes suggestions to improve compensation, rehabilitation programs and health care benefits for former POWs. Passage of the Veterans Benefits Improvement Act would require reports from the Advisory Committee on former POWs every 2 years through 2009, a 5-year extension of current law.

Thanks again to my fellow members of the Committee on Veterans Affairs and all staff for their work on these important bills. At a time in our Nation's history when we are asking men and women in our Armed Forces for greater sacrifices, we must make sure we provide the services promised to our veterans. I look forward to supporting these measures and continuing to work with my colleagues to ensure they receive the benefits they have earned and deserve.

□ 1430

Mr. SMITH of New Jersey. Mr. Speaker, I reserve the balance of my time.

Mr. MICHAUD. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WATERS).

(Ms. WATERS asked and was given permission to revise and extend her remarks.)

Ms. WATERS. Mr. Speaker, I am very pleased to join with my colleagues today in support of veterans. On Veterans Day, I visited a program in my district known as U.S. Vets. This is a program that houses veterans in transition. They really work with the homeless. They have a huge residential complex, and the veterans are able to stay at this complex while they get job training leading to a job. In addition to that, they have a central facility there where they prepare meals for the veterans. They also have a wonderful computer room where veterans are learning computer skills.

And while I was very pleased to be there on Veterans Day with them, I was reminded of all those things we need to do for veterans that should have been done a long time ago. This bill goes a long way to attending to some of those things that we should have done.

For example, surviving spouses can now get $250 in dependency and indemnity compensation. Veterans who were exposed to radiation can now be eligible for VA compensation. We increase the educational assistance by 10 percent, allowing veterans to pursue a full-time apprenticeship program, or on-the-job training. There are other benefits in this bill.

We can all be proud on both sides of the aisle that we are finally paying attention in a real way. I know that there has been a lot of debate about the cost of some of the things we would like to do, but I do not think at a time in particular where we are at war and where veterans are coming back with the loss of a limb, with health impairments and other kinds of deficiencies that they are now confronted with that we can talk about not being able to afford to pay in order to make their lives comfortable when they return from war.

So I am very pleased, and I wish to commend all my colleagues on both sides of the aisle for pursuing this bill that will help our veterans.

Mr. SMITH of New Jersey. Mr. Speaker, I continue to reserve the balance of my time.

Mr. MICHAUD. Mr. Speaker, I yield myself such time as I may consume, before yielding to my last speaker, to thank our chairman, the gentleman from New Jersey (Mr. SMITH); the subcommittee chairman, the gentleman from South Carolina (Mr. BROWN); and our ranking member, the gentleman from Illinois (Mr. EVANS), as well as the committee staff on both sides of the aisle for all the hard work that they have done in the Committee on Veterans' Affairs over the last 2 years.

Mr. Speaker, I yield the balance of my time to the gentlewoman from Texas (Ms. JACKSON-LEE).

Mr. SMITH of New Jersey. Mr. Speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE) as well.

The SPEAKER pro tempore (Mr. SIMPSON). The gentlewoman from Texas (Ms. JACKSON-LEE) is recognized for 6 minutes.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I think this is a very important moment on this floor, and I think

that we owe this entire committee a debt of gratitude; the chairman, the gentleman from New Jersey (Mr. SMITH); the ranking member, the gentleman from Illinois (Mr. EVANS); certainly to the chairman of the subcommittee, the gentleman from South Carolina (Mr. BROWN). I thank the gentleman from Maine (Mr. MICHAUD) for yielding me this time. And, of course, on the health bills that I will speak very briefly to, our ranking member, the gentleman from Texas (Mr. RODRIGUEZ) and the gentleman from Connecticut (Mr. SIMMONS).

Mr. Speaker, let me say why I think it is important that Members owe these colleagues a debt of gratitude. There is not one district that does not confront the dilemma of a veteran. There is not one district that does not owe to those veterans appreciation and applause. Many times we find those families and the veterans wondering about the concern and the commitment of this body or of their fellow Americans for the work they have done.

In the backdrop of Veterans Day, I want to acknowledge both the chairman and the ranking member of the full committee, who are always steadfast in reminding us not to forget the veterans. This comprehensive Veterans Benefits Improvement Act is a gift long overdue. And the reason I say that is because I represent the Veterans Hospital in Houston, Texas, and among the issues that we are concerned about, in addition to taking care of the health needs of those veterans, there are the psychological needs and the employment needs.

Americans need to know that this legislation is now going to deal head-on with the large unemployment that we find among veterans, and returning veterans. For a number of years, Mr. Speaker, I have worked with an organization called Stand Down, which works with our communities' homeless veterans. Whenever I go to Stand Down, the veterans simply say, all we want is an opportunity; all we want is to be able to be apprentices, as this particular bill is doing; all we want is to be able to have full-time VA monthly educational assistance, as this bill is doing; all we want is to have competency-based apprenticeships; all we want is for our families to have increased benefits and to show our pride in our Nation and also to make our Nation again proud of us.

So I want to thank my colleagues for this legislation, and I add my appreciation as well as someone who represents the veterans hospitals for the legislation that deals with S. 2484, the Department of Veterans Affairs Health Care Personnel Enhancement Act, and as well the Veterans Health Programs Improvement Act of 2004. What this does is of course say to our veterans that we care.

Let me also say to my colleagues that I spent some time in Iraq just a few weeks ago, and visited, after going to Iraq, the Landstuhl Hospital in Ramstein, where there were a number of injured soldiers, many of them who will be returning veterans. I want my colleagues to know that what they wanted most of all was to return to conflict, to combat, to be with their comrades as soldiers. But they were grateful, as returning veterans, that we would show them that we care, and today we are showing them we do so. We could not have done it without the leaders of this committee.

So, Mr. Speaker, I am today thanking them, and as I close, I want to add a very special appreciation for a dear friend of this House and a dear friend of veterans in the United States of America, and that is our friend and colleague, the gentleman from San Antonio, Texas (Mr. RODRIGUEZ).

I cannot say enough, Mr. Speaker, about the compassion of CIRO RODRIGUEZ. I cannot say enough about the kindness and the caring attitude that he has exhibited to his colleagues and friends on the floor of this body. More importantly, I cannot say enough about his voice of reason when challenging the system for health care for all Americans, but clearly challenging the system for health care for our veterans. He demonstrated such a cooperative spirit with his own chairman, the gentleman from Connecticut (Mr. SIMMONS), and I know they had a special bond and a special friendship in working together.

We know that health care for our veterans is an indication to their families and an indication to veterans and the enlisted personnel as to how much America thanks them and how much America recognizes their sacrifice. We could not have done it without the face of CIRO RODRIGUEZ going out day after day visiting with his own veterans, speaking across the country, speaking as the chairman of the Congressional Hispanic Caucus, and recognizing the importance of thanking our veterans in a real meaningful way by the legislation he has helped to produce.

Might I also thank him for his support in providing posthumous citizenship to those who lost their lives in Afghanistan and Iraq, to those who were not citizens but who came from our immigrant community. CIRO, we owe you a debt of gratitude. It is my honor and privilege to have served with you. The veterans of America will thank you continuously as they rise again to serve their country and in their daily lives, and their families owe you also a debt of gratitude. Thank you again, my friend. We wish you the very best. We honor you as you honor the veterans.

Mr. Speaker, I thank each and every one of the members of this committee for allowing this body to thank the veterans by this legislation. I ask my colleagues to support all the legislation on the floor for the veterans of America.

I rise today as a strong supporter of S. 2486, the Veterans' Benefits Improvements Act of 2004, which received unanimous approval in the Senate and is now before this body for passage. The Veterans' Benefits Improvements Act would improve and enhance education, housing, employment, medical, and other benefits for veterans.

As a Member of this body I have always been an ardent supporter of our Nation's brave veterans and of the idea that they should receive the best of care and support that our Nation has to offer. I am heartened by this legislation because it takes steps toward improving opportunities that veterans can receive as a condition of their service.

I am especially pleased to find provisions in this legislation that will increase education opportunities for Armed Service members after they leave the Armed Forces. Specifically, the Veterans' Benefits Improvements Act increases the voluntary contribution amount that active duty members of the Armed Forces may make in order to receive increased monthly educational assistance under the Montgomery GI Bill. This additional assistance can very well mean the difference between whether our veterans will be able to afford an education. Furthermore, this legislation excludes veterans' education benefits from the determination of eligibility for, or the amount of, Federal education grants and loans. This is an important distinction because veterans education benefits have been earned through service and should not count against any other aid an individual may be able to receive due to their level of financial hardship. These provisions together will provide more opportunities for our veterans to attend institutions of higher learning and obtain high paying career jobs after they leave the Armed Forces.

The Veterans' Benefits Improvements Act also provides important housing provisions for our Nation's deserving veterans. This legislation calls for increasing the maximum housing loan guarantee amount for which veterans are eligible. As well, the legislation gives power to the Secretary for permanent authority to guarantee adjustable rate mortgages (ARMs) and hybrid ARMs, and to modify interest rates applicable to hybrid ARMs. These important housing provisions will make it easier and more likely for our veterans to purchase suitable housing for themselves and their families.

While The Veterans' Benefits Improvements Act contains a large number of different provisions, this legislation is really about providing our veterans with the ability to improve their lives once they leave the Armed Forces. These men and women left their civilian lives behind to serve our Nation; we owe it to them to allow them to improve their lives once they return to civilian status.

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume to say once again that this is a good bill. As a matter of fact, it is a very, very important bill. And I do want to thank my friend, the gentleman from Illinois (Mr. EVANS), and the gentleman from South Carolina (Mr. BROWN), our distinguished subcommittee chairman, who has done yeoman's work on this, and also the gentleman from Maine (Mr. MICHAUD), who is the ranking member on that subcommittee. This has been a true bipartisan product. I think when President Bush signs this piece of legislation we can all be very, very proud.

I also want to join my friend from Texas in thanking the gentleman from

Texas (Mr. RODRIGUEZ) for his outstanding and exemplary work in the Congress for the past 8 years, and he certainly has put veterans first. So again I want to thank him for his work as well.

Mr. REYES. Mr. Speaker, I rise today in support of S. 2486, the Veteran's Benefits Improvement Act of 2004. I would like to thank my colleagues for bringing it to the floor for a vote.

As you may know, S. 2486 would expand educational and housing benefits to qualified veterans and their dependents. With the rise in cost for educational services and home loans, our Nation's veterans are required to supplement the high costs through loans that can become financially burdensome. With the expansion of these two benefits, we can better ensure they are given the opportunity of continuing their education and purchasing their own home.

In addition, I am glad to see the inclusion of important language to provide housing and automobile benefits to veterans disabled by VA medical treatment or vocational rehabilitation. As you may know, I am a sponsor of H.R. 843 which aims to address this same issue by providing full service-connected disability to persons injured while under the care of the Department of Veterans Affairs. Although this bill does not provide full service-connected disability to injured persons, I am certainly glad to see this piece of legislation included in the bill.

I believe this bill will provide them with the resources needed to fulfil their dreams and long term goals for education and home ownership. In addition, this legislation will solidify the care for our veterans welfare and health while under the care of the Department of Veterans Affairs.

Mr. Speaker, I strongly urge my colleagues to support the passage of this important bill.

Mr. SMITH of New Jersey. Mr. Speaker, I yield back the balance of my time.

Mr. MICHAUD. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and pass the Senate bill, S. 2486.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of New Jersey. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2486, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

VETERANS HEALTH PROGRAMS IMPROVEMENT ACT OF 2004

Mr. SMITH of New Jersey. Mr. Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 3936) to amend title 38, United States Code, to authorize the principal office of the United States Court of Appeals for Veterans Claims to be at any location in the Washington, DC, metropolitan area, rather than only in the District of Columbia, and expressing the sense of Congress that a dedicated Veterans Courthouse and Justice Center should be provided for that Court and those it serves and should be located, if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation, and for other purposes.

The Clerk read as follows:

Senate amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Health Programs Improvement Act of 2004''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Reference to title 38, United States Code.

TITLE I—ASSISTANCE TO HOMELESS VETERANS

Sec. 101. Authorization of appropriations.

TITLE II—VETERANS LONG-TERM CARE PROGRAMS

Sec. 201. Assistance for hiring and retention of nurses at State veterans' homes.
Sec. 202. Treatment of Department of Veterans Affairs per diem payments to State homes for veterans.
Sec. 203. Extension of authority to provide care under long-term care pilot programs.
Sec. 204. Prohibition on collection of copayments for hospice care.

TITLE III—MEDICAL CARE

Sec. 301. Sexual trauma counseling program.
Sec. 302. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries.
Sec. 303. Enhancement of medical preparedness of Department of Veterans Affairs.

TITLE IV—MEDICAL FACILITIES MANAGEMENT AND ADMINISTRATION

Subtitle A—Major Medical Facility Leases

Sec. 401. Major medical facility leases.
Sec. 402. Authorization of appropriations.
Sec. 403. Authority for long-term lease of certain lands of University of Colorado.

Subtitle B—Facilities Management

Sec. 411. Department of Veterans Affairs Capital Asset Fund.
Sec. 412. Annual report to Congress on inventory of Department of Veterans Affairs historic properties.
Sec. 413. Authority to acquire and transfer real property for use for homeless veterans.
Sec. 414. Limitation on implementation of mission changes for specified Veterans Health Administration facilities.
Sec. 415. Authority to use project funds to construct or relocate surface parking incidental to a construction or nonrecurring maintenance project.
Sec. 416. Inapplicability of limitation on use of advance planning funds to authorized major medical facility projects.
Sec. 417. Improvements to enhanced-use lease authority.
Sec. 418. First option for Commonwealth of Kentucky on Department of Veterans Affairs Medical Center, Louisville, Kentucky.
Sec. 419. Transfer of jurisdiction, General Services Administration property, Boise, Idaho.

Subtitle C—Designation of Facilities

Sec. 421. Thomas E. Creek Department of Veterans Affairs Medical Center.
Sec. 422. James J. Peters Department of Veterans Affairs Medical Center.
Sec. 423. Bob Michel Department of Veterans Affairs Outpatient Clinic.
Sec. 424. Charles Wilson Department of Veterans Affairs Outpatient Clinic.
Sec. 425. Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic.

TITLE V—PERSONNEL ADMINISTRATION

Sec. 501. Pilot program to study innovative recruitment tools to address nursing shortages at Department of Veterans Affairs health care facilities.
Sec. 502. Technical correction to listing of certain hybrid positions in Veterans Health Administration.
Sec. 503. Under Secretary for Health.

TITLE VI—OTHER MATTERS

Sec. 601. Extension and codification of authority for recovery audits.
Sec. 602. Inventory of medical waste management activities at Department of Veterans Affairs health care facilities.
Sec. 603. Inclusion of all enrolled veterans among persons eligible to use canteens operated by Veterans' Canteen Service.
Sec. 604. Annual reports on waiting times for appointments for specialty care.
Sec. 605. Technical clarification.

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—ASSISTANCE TO HOMELESS VETERANS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Section 2013 is amended in paragraph (4) by striking ''$75,000,000'' and inserting ''$99,000,000''.

TITLE II—VETERANS LONG-TERM CARE PROGRAMS

SEC. 201. ASSISTANCE FOR HIRING AND RETENTION OF NURSES AT STATE VETERANS' HOMES.

(a) IN GENERAL.—(1) Chapter 17 is amended by inserting after section 1743 the following new section:

''§ 1744. Hiring and retention of nurses: payments to assist States

''(a) PAYMENT PROGRAM.—The Secretary shall make payments to States under this section for the purpose of assisting State homes in the hiring and retention of nurses and the reduction of nursing shortages at State homes.

''(b) ELIGIBLE RECIPIENTS.—Payments to a State for a fiscal year under this section shall, subject to submission of an application, be made to any State that during that fiscal year—

''(1) receives per diem payments under this subchapter for that fiscal year; and

''(2) has in effect an employee incentive scholarship program or other employee incentive program at a State home designed to promote the hiring and retention of nursing staff and to reduce nursing shortages at that home.

''(c) USE OF FUNDS RECEIVED.—A State may use an amount received under this section only to provide funds for a program described in subsection (b)(2). Any program shall meet such criteria as the Secretary may prescribe. In prescribing such criteria, the Secretary shall take into consideration the need for flexibility and innovation.

''(d) LIMITATIONS ON AMOUNT OF PAYMENT.—(1) A payment under this section may not be used to provide more than 50 percent of the costs for a fiscal year of the employee incentive scholarship or other employee incentive program for which the payment is made.

''(2) The amount of the payment to a State under this section for any fiscal year is, for each State home in that State with a program described in subsection (b)(2), the amount equal to 2 percent of the amount of payments estimated to be made to that State, for that State home, under section 1741 of this title for that fiscal year.

''(e) APPLICATIONS.—A payment under this section for any fiscal year with respect to any State home may only be made based upon an application submitted by the State seeking the payment with respect to that State home. Any such application shall describe the nursing shortage at the State home and the employee incentive scholarship program or other employee incentive program described in subsection (c) for which the payment is sought.

''(f) SOURCE OF FUNDS.—Payments under this section shall be made from funds available for other payments under this subchapter.

''(g) DISBURSEMENT.—Payments under this section to a State home shall be made as part of the disbursement of payments under section 1741 of this title with respect to that State home.

''(h) USE OF CERTAIN RECEIPTS.—The Secretary shall require as a condition of any payment under this section that, in any case in which the State home receives a refund payment made by an employee in breach of the terms of an agreement for employee assistance that used funds provided under this section, the payment shall be returned to the State home's incentive program account and credited as a non-Federal funding source.

''(i) ANNUAL REPORT FROM PAYMENT RECIPIENTS.—Any State home receiving a payment under this section for any fiscal year, shall, as a condition of the payment, be required to agree to provide to the Secretary a report setting forth in detail the use of funds received through the payment, including a descriptive analysis of how effective the incentive program has been on nurse staffing in the State home during that fiscal year. The report for any fiscal year shall be provided to the Secretary within 60 days of the close of the fiscal year and shall be subject to audit by the Secretary. Eligibility for a payment under this section for any later fiscal year is contingent upon the receipt by the Secretary of the annual report under this subsection for the previous fiscal year in accordance with this subsection.

''(j) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. The regulations shall include the establishment of criteria for the award of payments under this section.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after section 1743 the following new item:

''1744. Hiring and retention of nurses: payments to assist States.''.

(b) IMPLEMENTATION.—The Secretary of Veterans Affairs shall implement section 1744 of title 38, United States Code, as added by subsection (a), as expeditiously as possible. The Secretary shall establish such interim procedures as necessary so as to ensure that payments are made to eligible States under that section commencing not later than June 1, 2005, notwithstanding that regulations under subsection (j) of that section may not have become final.

SEC. 202. TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS PER DIEM PAYMENTS TO STATE HOMES FOR VETERANS.

Section 1741 is amended by adding at the end the following new subsection:

''(e) Payments to States pursuant to this section shall not be considered a liability of a third party, or otherwise be used to offset or reduce any other payment made to assist veterans.''.

SEC. 203. EXTENSION OF AUTHORITY TO PROVIDE CARE UNDER LONG-TERM CARE PILOT PROGRAMS.

Subsection (h) of section 102 of the Veterans Millennium Health Care and Benefits Act (38 U.S.C. 1710B note) is amended—

(1) by inserting ''(1)'' before ''The authority of''; and

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

''(2) In the case of a veteran who is participating in a pilot program under this section as of the end of the three-year period applicable to that pilot program under paragraph (1), the Secretary may continue to provide to that veteran any of the services that could be provided under the pilot program. The authority to provide services to any veteran under the preceding sentence applies during the period beginning on the date specified in paragraph (1) with respect to that pilot program and ending on December 31, 2005.''.

SEC. 204. PROHIBITION ON COLLECTION OF CO-PAYMENTS FOR HOSPICE CARE.

Section 1710B(c)(2) is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) to a veteran being furnished hospice care under this section; or''.

TITLE III—MEDICAL CARE

SEC. 301. SEXUAL TRAUMA COUNSELING PROGRAM.

(a) PERMANENT AUTHORITY FOR PROGRAM.—Section 1720D(a) is amended—

(1) in paragraph (1), by striking ''During the period through December 31, 2004, the'' and inserting ''The''; and

(2) in paragraph (2), by striking '', during the period through December 31, 2004,''.

(b) EXTENSION TO COVER ACTIVE DUTY FOR TRAINING.—Such section is further amended by inserting ''or active duty for training'' in paragraph (1) before the period at the end.

SEC. 302. CENTERS FOR RESEARCH, EDUCATION, AND CLINICAL ACTIVITIES ON COMPLEX MULTI-TRAUMA ASSOCIATED WITH COMBAT INJURIES.

(a) IN GENERAL.—(1) Subchapter II of chapter 73 of title 38, United States Code, is amended by adding at the end the following new section:

''§ 7327. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries

''(a) PURPOSE.—The purpose of this section is to provide for the improvement of the provision of health care services and related rehabilitation and education services to eligible veterans suffering from complex multi-trauma associated with combat injuries through—

''(1) the development of improved models and systems for the furnishing by the Department of health care, rehabilitation, and education services to veterans;

''(2) the conduct of research to support the provision of such services in accordance with the most current evidence on multi-trauma injuries; and

''(3) the education and training of health care personnel of the Department with respect to the provision of such services.

''(b) DESIGNATION OF CENTERS.—(1) The Secretary shall designate an appropriate number of cooperative centers for clinical care, consultation, research, and education activities on combat injuries.

''(2) Each center designated under paragraph (1) shall function as a center for—

''(A) research on the long-term effects of injuries sustained as a result of combat in order to support the provision of services for such injuries in accordance with the most current evidence on complex multi-trauma;

''(B) the development of rehabilitation methodologies for treating individuals with complex multi-trauma; and

''(C) the continuous and consistent coordination of care from the point of referral throughout the rehabilitation process and ongoing follow-up after return to home and community.

''(3) The Secretary shall designate one of the centers designated under paragraph (1) as the lead center for activities referred to in that paragraph. As the lead center for such activities, such center shall—

''(A) develop and provide periodic review of research priorities, and implement protocols, to ensure that projects contribute to the activities of the centers designated under paragraph (1);

''(B) oversee the coordination of the professional and technical activities of such centers to ensure the quality and validity of the methodologies and statistical services for research project leaders;

''(C) develop and ensure the deployment of an efficient and cost-effective data management system for such centers;

''(D) develop and distribute educational materials and products to enhance the evaluation and care of individuals with combat injuries by medical care providers of the Department who are not specialized in the assessment and care of complex multi-trauma;

''(E) develop educational materials for individuals suffering from combat injuries and for their families; and

''(F) serve as a resource for the clinical and research infrastructure of such centers by disseminating clinical outcomes and research findings to improve clinical practice.

''(4) The Secretary shall designate centers under paragraph (1) upon the recommendation of the Under Secretary for Health.

''(5) The Secretary may designate a center under paragraph (1) only if the center meets the requirements of subsection (c).

''(c) REQUIREMENTS FOR CENTERS.—To be designated as a center under this section, a facility shall—

''(1) be a regional lead center for the care of traumatic brain injury;

''(2) be located at a tertiary care medical center and have on-site availability of primary and subspecialty medical services relating to complex multi-trauma;

''(3) have, or have the capacity to develop, the capability of managing impairments associated with combat injuries;

''(4) be affiliated with a school of medicine;

''(5) have, or have experience with, participation in clinical research trials;

''(6) provide amputation care and rehabilitation;

''(7) have pain management programs;

''(8) provide comprehensive brain injury rehabilitation; and

''(9) provide comprehensive general rehabilitation.

''(d) ADDITIONAL RESOURCES.—The Secretary shall provide each center designated under this section such resources as the Secretary determines to be required by such center to achieve adequate capability of managing individuals with complex multi-trauma, including—

''(1) the upgrading of blind rehabilitation services by employing or securing the services of blind rehabilitation specialists;

''(2) employing or securing the services of occupational therapists with blind rehabilitation training;

''(3) employing or securing the services of additional mental health services providers; and

''(4) employing or securing additional rehabilitation nursing staff to meet care needs.

''(e) COOPERATION WITH DEPARTMENT OF DEFENSE.—(1) The Secretary of Veterans Affairs may assist the Secretary of Defense in the care of members of the Armed Forces with complex multi-trauma at military treatment facilities by—

''(A) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, certified rehabilitation registered nurses of the Department of Veterans Affairs to such facilities to assess and coordinate the care of such members; and

''(B) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, blind rehabilitation specialists of the Department of Veterans Affairs to such facilities to consult with the medical staff of such facilities on the special needs of such members who have visual impairment as a consequence of combat injury.

''(2) Assistance shall be provided under this subsection through agreements for the sharing of health-care resources under section 8111 of this title.

''(f) AWARD OF FUNDING.—Centers designated under this section may compete for the award of funding from amounts appropriated for the Department for medical and prosthetics research.

''(g) DISSEMINATION OF INFORMATION.—(1) The Under Secretary for Health shall ensure that information produced by the centers designated under this section that may be useful for other activities of the Veterans Health Administration is disseminated throughout the Administration.

''(2) Information shall be disseminated under this subsection through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means.

''(h) NATIONAL OVERSIGHT.—The Under Secretary for Health shall designate an appropriate officer to oversee the operation of the centers designated under this section and provide for periodic evaluation of the centers.

''(i) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Department of Veterans Affairs for the centers designated under this section amounts as follows:

''(A) $7,000,000 for fiscal year 2005.

''(B) $8,000,000 for each of fiscal years 2006 through 2008.

''(2) In addition to amounts authorized to be appropriated by paragraph (1) for a fiscal year, the Under Secretary for Health may allocate to each center designated under this section, from other funds authorized to be appropriated for such fiscal year for the Department generally for medical and for medical and prosthetic research, such amounts as the Under Secretary for Health determines appropriate to carry out the purposes of this section.''.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7326 the following new item:

''7327. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries.''.

(b) DESIGNATION OF CENTERS.—The Secretary of Veterans Affairs shall designate the centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries required by section 7327 of title 38, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act.

(c) ANNUAL REPORTS.—(1) Not later than eighteen months after the date of the designation of centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries required by section 7327 of title 38, United States Code (as so added), and annually thereafter through 2008, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the status and activities of such centers during the one-year period beginning on the date of such designation, for the first such report, and for successive one-year periods, for subsequent reports.

(2) Each such report shall include, for the period covered by such report, the following:

(A) A description of the activities carried out at each center, and the funding provided for such activities.

(B) A description of any advances made in the participating programs of each center in research, education, training, and clinical activities on complex multi-trauma associated with combat injuries.

(C) A description of the actions taken by the Under Secretary for Health pursuant to subsection (g) of that section (as so added) to disseminate throughout the Veterans Health Administration information derived from such activities.

SEC. 303. ENHANCEMENT OF MEDICAL PREPAREDNESS OF DEPARTMENT OF VETERANS AFFAIRS.

(a) PEER REVIEW PANEL.—In order to assist the Secretary of Veterans Affairs in selecting facilities of the Department of Veterans Affairs to serve as sites for centers under section 7328 of title 38, United States Code, as added by subsection (c), the Secretary shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the selection of such facilities. The panel shall be established not later than 90 days after the date of the enactment of this Act and shall include experts in the fields of toxicological research, infectious diseases, radiology, clinical care of veterans exposed to such hazards, and other persons as determined appropriate by the Secretary. Members of the panel shall serve as consultants to the Department of Veterans Affairs. Amounts available to the Secretary for Medical Care may be used for purposes of carrying out this subsection. The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(b) PROPOSALS.—The Secretary shall solicit proposals for designation of facilities as described in subsection (a). The announcement of the solicitation of such proposals shall be issued not later than 60 days after the date of the enactment of this Act, and the deadline for the submission of proposals in response to such solicitation shall be not later than 90 days after the date of such announcement. The peer review panel established under subsection (a) shall complete its review of the proposals and submit its recommendations to the Secretary not later than 60 days after the date of the deadline for the submission of proposals. The Secretary shall then select the four sites for the location of such centers not later than 45 days after the date on which the peer review panel submits its recommendations to the Secretary.

(c) REVISED SECTION.—(1) Subchapter II of chapter 73 is amended by inserting after section 7327, as added by section 302(a)(1) of this Act, a new section with—

(A) a heading as follows:

"§ 7328. Medical preparedness centers"; and

(B) a text consisting of the text of subsections (a) through (h) of section 7325 of title 38, United States Code, and a subsection (i) at the end as follows:

''(i) FUNDING.—(1) There are authorized to be appropriated for the centers under this section $10,000,000 for each of fiscal years 2005 through 2007.

''(2) In addition to any amounts appropriated for a fiscal year specifically for the activities of the centers pursuant to paragraph (1), the Under Secretary for Health shall allocate to the centers from other funds appropriated for that fiscal year generally for the Department medical care account and the Department medical and prosthetic research account such amounts as the Under Secretary determines necessary in order to carry out the purposes of this section.''.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7327, as added by section 302(a)(2) of this Act, the following new item:

''7328. Medical preparedness centers.''.

TITLE IV—MEDICAL FACILITIES MANAGEMENT AND ADMINISTRATION

Subtitle A—Major Medical Facility Leases

SEC. 401. MAJOR MEDICAL FACILITY LEASES.

The Secretary of Veterans Affairs may enter into contracts for major medical facility leases at the following locations, in an amount for each facility lease not to exceed the amount shown for that location:

(1) Wilmington, North Carolina, Outpatient Clinic, $1,320,000.

(2) Greenville, North Carolina, Outpatient Clinic, $1,220,000.

(3) Norfolk, Virginia, Outpatient Clinic, $1,250,000.

(4) Summerfield, Florida, Marion County Outpatient Clinic, $1,230,000.

(5) Knoxville, Tennessee, Outpatient Clinic, $850,000.

(6) Toledo, Ohio, Outpatient Clinic, $1,200,000.

(7) Crown Point, Indiana, Outpatient Clinic, $850,000.

(8) Fort Worth, Texas, Tarrant County Outpatient Clinic, $3,900,000.

(9) Plano, Texas, Collin County Outpatient Clinic, $3,300,000.

(10) San Antonio, Texas, Northeast Central Bexar County Outpatient Clinic, $1,400,000.

(11) Corpus Christi, Texas, Outpatient Clinic, $1,200,000.

(12) Harlingen, Texas, Outpatient Clinic, $650,000.

(13) Denver, Colorado, Health Administration Center, $1,950,000.

(14) Oakland, California, Outpatient Clinic, $1,700,000.

(15) San Diego, California, North County Outpatient Clinic, $1,300,000.

(16) San Diego, California, South County Outpatient Clinic, $1,100,000.

SEC. 402. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 2005 for the Medical Care account, $24,420,000 for the leases authorized in section 401.

SEC. 403. AUTHORITY FOR LONG-TERM LEASE OF CERTAIN LANDS OF UNIVERSITY OF COLORADO.

Notwithstanding section 8103 of title 38, United States Code, the Secretary of Veterans Affairs may enter into a lease for real property located at the Fitzsimmons Campus of the University of Colorado for purposes of a medical facility (as that term is defined in section 8101 of title 38, United States Code) for a period of up to 75 years.

Subtitle B—Facilities Management

SEC. 411. DEPARTMENT OF VETERANS AFFAIRS CAPITAL ASSET FUND.

(a) ESTABLISHMENT OF FUND.—(1) Subchapter I of chapter 81 is amended by adding at the end the following new section:

"§ 8118. Authority for transfer of real property; Department of Veterans Affairs Capital Asset Fund

''(a)(1) The Secretary may transfer real property under the jurisdiction or control of the Secretary (including structures and equipment associated therewith) to another department or agency of the United States, to a State (or a political subdivision of a State), or to any public or private entity, including an Indian tribe. Such a transfer may be made only if the Secretary receives compensation of not less than the fair market value of the property, except that no compensation is required, or compensation at less than fair market value may be accepted, in the case of a transfer to a grant and

per diem provider (as defined in section 2002 of this title). When a transfer is made to a grant and per diem provider for less than fair market value, the Secretary shall require in the terms of the conveyance that if the property transferred is used for any purpose other than a purpose under chapter 20 of this title, all right, title, and interest to the property shall revert to the United States.

''(2) The Secretary may exercise the authority provided by this section notwithstanding sections 521, 522, and 541 through 545 of title 40. Any such transfer shall be in accordance with this section and section 8122 of this title.

''(3) The authority provided by this section may not be used in a case to which section 8164 of this title applies.

''(4) The Secretary may enter into partnerships or agreements with public or private entities dedicated to historic preservation to facilitate the transfer, leasing, or adaptive use of structures or properties specified in subsection (b)(3)(D).

''(5) The authority of the Secretary under paragraph (1) expires on the date that is seven years after the date of the enactment of this section.

''(b)(1) There is established in the Treasury of the United States a revolving fund to be known as the Department of Veterans Affairs Capital Asset Fund (hereinafter in this section referred to as the 'Fund'). Amounts in the Fund shall remain available until expended.

''(2) Proceeds from the transfer of real property under this section shall be deposited into the Fund.

''(3) To the extent provided in advance in appropriations Acts, amounts in the Fund may be expended for the following purposes:

''(A) Costs associated with the transfer of real property under this section, including costs of demolition, environmental remediation, maintenance and repair, improvements to facilitate the transfer, and administrative expenses.

''(B) Costs, including costs specified in subparagraph (A), associated with future transfers of property under this section.

''(C) Costs associated with enhancing medical care services to veterans by improving, renovating, replacing, updating, or establishing patient care facilities through construction projects to be carried out for an amount less than the amount specified in 8104(a)(3)(A) for a major medical facility project.

''(D) Costs, including costs specified in subparagraph (A), associated with the transfer, lease, or adaptive use of a structure or other property under the jurisdiction of the Secretary that is listed on the National Register of Historic Places.

''(c) The Secretary shall include in the budget justification materials submitted to Congress for any fiscal year in support of the President's budget for that fiscal year for the Department specification of the following:

''(1) The real property transfers to be undertaken in accordance with this section during that fiscal year.

''(2) All transfers completed under this section during the preceding fiscal year and completed and scheduled to be completed during the fiscal year during which the budget is submitted.

''(3) The deposits into, and expenditures from, the Fund that are incurred or projected for each of the preceding fiscal year, the current fiscal year, and the fiscal year covered by the budget.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 8117 the following new item:

''8118. Authority for transfer of real property; Department of Veterans Affairs Capital Asset Fund.''.

(b) INITIAL AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Veterans Affairs Capital Asset Fund established under section 8118 of title 38, United States Code (as added by subsection (a)), the amount of $10,000,000.

(c) TERMINATION OF NURSING HOME REVOLVING FUND.—(1) Section 8116 is repealed.

(2) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8116.

(d) TRANSFER OF UNOBLIGATED BALANCES TO CAPITAL ASSET FUND.—Any unobligated balances in the nursing home revolving fund under section 8116 of title 38, United States Code, as of the date of the enactment of this Act shall be deposited in the Department of Veterans Affairs Capital Asset Fund established under section 8118 of title 38, United States Code (as added by subsection (a)).

(e) PROCEDURES APPLICABLE TO TRANSFERS.—(1) Paragraph (2) of section 8122(a) is amended to read as follows:

''(2) Except as provided in paragraph (3), the Secretary may not during any fiscal year transfer to any other department or agency of the United States or to any other entity real property that is owned by the United States and administered by the Secretary unless the proposed transfer is described in the budget submitted to Congress pursuant to section 1105 of title 31 for that fiscal year.''.

(2) Section 8122(d) is amended—

(A) by inserting ''(1)'' before ''Real property''; and

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

''(2) The Secretary may transfer real property under this section, or under section 8118 of this title, if the Secretary—

''(A) places a notice in the real estate section of local newspapers and in the Federal Register of the Secretary's intent to transfer that real property (including land, structures, and equipment associated with the property);

''(B) holds a public hearing;

''(C) provides notice to the Administrator of General Services of the Secretary's intention to transfer that real property and waits for 30 days to elapse after providing that notice; and

''(D) after such 30-day period has elapsed, notifies the congressional veterans' affairs committees of the Secretary's intention to dispose of the property and waits for 60 days to elapse from the date of that notice.''.

(3) Section 8164(a) is amended by inserting ''8118 or'' after ''rather than under section''.

(4) Section 8165(a)(2) is amended by striking ''nursing home revolving fund'' and inserting ''Department of Veterans Affairs Capital Asset Fund established under section 8118 of this title''.

(f) CONTINGENT EFFECTIVENESS.—Subsection (d) and the amendments made by subsection (c) shall take effect at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with subsection (b) of section 1710B of title 38, United States Code.

(g) ANNUAL UPDATE.—Following a certification under subsection (f), the Secretary shall submit to Congress an annual update on that certification.

SEC. 412. ANNUAL REPORT TO CONGRESS ON INVENTORY OF DEPARTMENT OF VETERANS AFFAIRS HISTORIC PROPERTIES.

(a) IN GENERAL.—Not later than December 15 of 2005, 2006, and 2007, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the historic properties administered or controlled by the Secretary.

(b) INITIAL REPORT.—In the initial report under subsection (a), the Secretary shall set forth a complete inventory of the historic structures and property under the jurisdiction of the Secretary. The report shall include a description and classification of each such property based upon historical nature, current physical condition, and potential for transfer, leasing, or adaptive use.

(c) SUBSEQUENT REPORTS.—In reports under subsection (a) after the initial report, the Secretary shall provide an update of the status of each property identified in the initial report, with the proposed and actual disposition, if any, of each property. Each such report shall include any recommendation of the Secretary for legislation to enhance the transfer, leasing, or adaptive use of such properties.

SEC. 413. AUTHORITY TO ACQUIRE AND TRANSFER REAL PROPERTY FOR USE FOR HOMELESS VETERANS.

(a) AUTHORITY.—Upon identification of a parcel of real property meeting the description in subsection (b), the Secretary of Veterans Affairs may acquire that property (with the structures and improvements thereon) or, in the case of property owned by the United States and administered by another Federal department or agency, may accept administrative jurisdiction over that property, with the expectation of promptly transferring that property to a homeless assistance provider identified under paragraph (2) of subsection (b), subject to the condition that the primary purpose for which the property shall be used is to provide housing for homeless veterans.

(b) SPECIFIED PROPERTY.—A parcel of real property referred to in subsection (a) is a parcel in the District of Columbia—

(1) that the Secretary determines to be suitable for use for housing for homeless veterans; and

(2) for which there is an identified homeless assistance provider that is prepared to acquire the property for such purpose from the Secretary promptly upon the acquisition of the property by the Secretary.

(c) TRANSFER OF PROPERTY.—Upon acquiring real property under subsection (a), the Secretary shall immediately transfer all right, title, and interest of the United States (other than the reversionary interest retained under subsection (e)) to the homeless assistance provider identified under subsection (b)(2). Such transfer shall be for such consideration as the Secretary determines appropriate.

(d) TERMS AND CONDITIONS.—The acquisition and transfer of real property under this section shall be made upon such terms and conditions as the Secretary may specify not inconsistent with other applicable provisions of law.

(e) REVERTER.—The terms of the transfer shall provide that if the property is no longer used for the purpose for which conveyed by the Secretary, title to the property shall revert to the United States.

SEC. 414. LIMITATION ON IMPLEMENTATION OF MISSION CHANGES FOR SPECIFIED VETERANS HEALTH ADMINISTRATION FACILITIES.

(a) LIMITATION.—The Secretary of Veterans Affairs may not implement a mission change for a medical facility of the Department of Veterans Affairs specified in subsection (c) until—

(1) the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a written notice of the mission change; and

(2) the period prescribed by subsection (b) has elapsed.

(b) CONGRESSIONAL REVIEW PERIOD.—(1) The period referred to in subsection (a)(2) is the period beginning on the date of the receipt of the notice under subsection (a)(1) by the committees specified in that subsection and ending on the later of—

(A) the end of the 60-day period beginning on the date on which the notice is received by those committees; or

(B) the end of a period of 30 days of continuous session of Congress beginning on the date on which the notification is received by those committees or, if either House of Congress is not in session on such date, the first day after such date that both Houses of Congress are in session.

(2) For the purposes of paragraph (1)(B)—

(A) the continuity of a session of Congress is broken only by an adjournment of Congress sine die; and

(B) any day on which either House is not in session because of an adjournment of more than three days to a day certain is excluded in the computation of any period of time in which Congress is in continuous session.

(c) SPECIFIED FACILITIES.—A facility referred to in subsection (a) as being specified in this subsection is any of the following facilities of the Department of Veterans Affairs:

(1) The Department of Veterans Affairs medical centers in Boston, Massachusetts.

(2) The Department of Veterans Affairs medical centers in New York City, New York.

(3) The Department of Veterans Affairs medical center in Big Spring, Texas.

(4) The Carl Vinson Department of Veterans Affairs Medical Center, Dublin, Georgia.

(5) The Department of Veterans Affairs medical center in Montgomery, Alabama.

(6) The Department of Veterans Affairs medical center in Louisville, Kentucky.

(7) The Department of Veterans Affairs medical center in Muskogee Oklahoma, and the outpatient clinic in Tulsa, Oklahoma.

(8) The John J. Pershing Department of Veterans Affairs Medical Center, Poplar Bluff, Missouri.

(9) The Department of Veterans Affairs medical center in Ft. Wayne, Indiana.

(10) The Department of Veterans Affairs Medical Center in Waco, Texas.

(11) The Jonathan M. Wainwright Department of Veterans Affairs Medical Center, Walla Walla, Washington.

(d) COVERED MISSION CHANGES.—For purposes of this section, a mission change for a medical facility shall consist of any of the following:

(1) Closure of the facility.

(2) Consolidation of the facility.

(3) An administrative reorganization of the facility covered by section 510(b) of title 38, United States Code.

(e) REQUIRED CONTENT OF NOTICE OF MISSION CHANGE.—Written notice of a mission change for a medical facility under subsection (a) shall include the following:

(1) An assessment of the effect of the mission change on the population of veterans served by the facility.

(2) A description of the availability and quality of health care, including long-term care, mental health care, and substance abuse programs, available in the area served by the facility.

(3) An assessment of the effect of the mission change on the economy of the community in which the facility is located.

(4) An analysis of any alternatives to the mission change proposed by—

(A) the community in which the facility is located;

(B) organizations recognized by the Secretary under section 5902 of title 38, United States Code;

(C) organizations that represent Department employees in such community; or

(D) the Department.

(f) MEDICAL FACILITY CONSOLIDATION.—For the purposes of subsection (d)(2), the term ''consolidation'' means an action that closes one or more medical facilities within a geographic service area for the purpose of relocating those activities to another medical facility or facilities.

(g) COORDINATION OF PROVISIONS.—In the case of a mission change covered by subsection (a) that is also an administrative reorganization covered by section 510(b) of title 38, United States Code, both this section and such section 510(b) shall apply with respect to the implementation of that mission change.

SEC. 415. AUTHORITY TO USE PROJECT FUNDS TO CONSTRUCT OR RELOCATE SURFACE PARKING INCIDENTAL TO A CONSTRUCTION OR NONRECURRING MAINTENANCE PROJECT.

Section 8109 is amended by adding at the end the following new subsection:

''(j) Funds in a construction account or capital account that are available for a construction project or a nonrecurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to that project.''.

SEC. 416. INAPPLICABILITY OF LIMITATION ON USE OF ADVANCE PLANNING FUNDS TO AUTHORIZED MAJOR MEDICAL FACILITY PROJECTS.

Section 8104 is amended by adding at the end the following new subsection:

''(g) The limitation in subsection (f) does not apply to a project for which funds have been authorized by law in accordance with subsection (a)(2).''.

SEC. 417. IMPROVEMENTS TO ENHANCED-USE LEASE AUTHORITY.

Section 8166(a) is amended by inserting ''land use,'' in the second sentence after ''relating to''.

SEC. 418. FIRST OPTION FOR COMMONWEALTH OF KENTUCKY ON DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, LOUISVILLE, KENTUCKY.

(a) REQUIREMENT.—Upon determining to convey, lease, or otherwise dispose of the Department of Veterans Affairs Medical Center, Louisville, Kentucky, or any portion thereof, the Secretary of Veterans Affairs shall engage in negotiations for the conveyance, lease, or other disposal of the Medical Center or portion thereof solely with the Commonwealth of Kentucky.

(b) DURATION OF REQUIREMENT.—The requirement for negotiations under subsection (a) shall remain in effect for one year after the date of the determination referred to in that subsection.

(c) SCOPE OF NEGOTIATIONS.—The negotiations under subsection (a) shall address the use of the medical center referred to in subsection (a), or portion thereof, by the Commonwealth of Kentucky for the primary purpose of the provision of services for veterans and related activities, including use for a State veterans' home.

SEC. 419. TRANSFER OF JURISDICTION, GENERAL SERVICES ADMINISTRATION PROPERTY, BOISE, IDAHO.

(a) TRANSFER.—The Administrator of General Services shall transfer to the Secretary of Veterans Affairs, under such terms and conditions as the Administrator and the Secretary agree, jurisdiction, custody, and control over the parcel of real property, including any improvements thereon, consisting of approximately 2.3 acres located at the General Services Administration facility immediately north of the Army Reserve facility in Boise, Idaho.

(b) UTILIZATION.—The Secretary of Veterans Affairs shall utilize the property transferred under subsection (a) for purposes relating to the delivery of benefits to veterans.

Subtitle C—Designation of Facilities

SEC. 421. THOMAS E. CREEK DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

(a) IN GENERAL.—The Department of Veterans Affairs medical center in Amarillo, Texas, shall after the date of the enactment of this Act be known and designated as the ''Thomas E. Creek Department of Veterans Affairs Medical Center''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the medical center referred to in subsection (a) shall be considered to be a reference to the Thomas E. Creek Department of Veterans Affairs Medical Center.

SEC. 422. JAMES J. PETERS DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

(a) IN GENERAL.—The Department of Veterans Affairs medical center in the Bronx, New York, shall after the date of the enactment of this Act be known and designated as the ''James J. Peters Department of Veterans Affairs Medical Center''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the medical center referred to in subsection (a) shall be considered to be a reference to the James J. Peters Department of Veterans Affairs Medical Center.

SEC. 423. BOB MICHEL DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC.

(a) IN GENERAL.—The Department of Veterans Affairs outpatient clinic located in Peoria, Illinois, shall after the date of the enactment of this Act be known and designated as the ''Bob Michel Department of Veterans Affairs Outpatient Clinic''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Bob Michel Department of Veterans Affairs Outpatient Clinic.

SEC. 424. CHARLES WILSON DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC.

(a) IN GENERAL.—The Department of Veterans Affairs outpatient clinic located in Lufkin, Texas, shall after the date of the enactment of this Act be known and designated as the ''Charles Wilson Department of Veterans Affairs Outpatient Clinic''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Charles Wilson Department of Veterans Affairs Outpatient Clinic.

SEC. 425. THOMAS P. NOONAN, JR. DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC.

(a) IN GENERAL.—The Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York, shall after the date of the enactment of this Act be known and designated as the ''Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic''.

(b) REFERENCES.—Any reference in any law, map, regulation, document, paper, or other record of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic.

TITLE V—PERSONNEL ADMINISTRATION

SEC. 501. PILOT PROGRAM TO STUDY INNOVATIVE RECRUITMENT TOOLS TO ADDRESS NURSING SHORTAGES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES.

(a) PILOT PROGRAM.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall designate a health care service region, or a section within such a region, in which health care facilities of the Department of Veterans Affairs are adversely affected by a shortage of qualified nurses.

(2) The Secretary shall conduct a pilot program in the region or section designated under paragraph (1) to determine the effectiveness of the use of innovative human capital tools and techniques in the recruitment of qualified nurses for positions at Department health care facilities in such region or section and for the retention of nurses at such facilities. In carrying out the pilot program, the Secretary shall enter into a contract with a private sector entity for services under the pilot program for recruitment of qualified nurses.

(b) PRIVATE SECTOR RECRUITMENT PRACTICES.—For purposes of the pilot program under this section, the Secretary shall identify and use recruitment practices that have proven effective for placing qualified individuals in positions that are difficult to fill due to shortages of qualified individuals or other factors. Recruitment practices to be reviewed by the Secretary for use in the pilot program shall include—

(1) employer branding and interactive advertising strategies;

(2) Internet technologies and automated staffing systems; and

(3) the use of recruitment, advertising, and communication agencies.

(c) STREAMLINED HIRING PROCESS.—In carrying out the pilot program under this section, the Secretary shall, at health care facilities of the Department in the region or section in which the pilot program is conducted, revise procedures and systems for selecting and hiring qualified nurses to reduce the length of the hiring process. If the Secretary identifies measures to streamline and automate the hiring process that can only be implemented if authorized by law, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives recommendations for such changes in law as may be necessary to enable such measures to be implemented.

(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the extent to which the pilot program achieved the goal of improving the recruitment and retention of nurses in Department of Veterans Affairs health care facilities.

SEC. 502. TECHNICAL CORRECTION TO LISTING OF CERTAIN HYBRID POSITIONS IN VETERANS HEALTH ADMINISTRATION.

Section 7401(3) is amended—

(1) by striking ''and dental technologists'' and inserting ''technologists, dental hygienists, dental assistants''; and

(2) by striking ''technicians, therapeutic radiologic technicians, and social workers'' and inserting ''technologists, therapeutic radiologic technologists, social workers, blind rehabilitation specialists, and blind rehabilitation outpatient specialists''.

SEC. 503. UNDER SECRETARY FOR HEALTH.

Section 305(a)(2) is amended—

(1) in the matter preceding subparagraph (A), by striking ''shall be a doctor of medicine and''; and

(2) in subparagraph (A), by striking ''and in health-care'' and inserting ''or in health-care''.

TITLE VI—OTHER MATTERS

SEC. 601. EXTENSION AND CODIFICATION OF AUTHORITY FOR RECOVERY AUDITS.

Section 1703 is amended by adding at the end the following new subsection:

''(d)(1) The Secretary shall conduct a program of recovery audits for fee basis contracts and other medical services contracts for the care of veterans under this section, and for beneficiaries under sections 1781, 1782, and 1783 of this title, with respect to overpayments resulting from processing or billing errors or fraudulent charges in payments for non-Department care and services. The program shall be conducted by contract.

''(2) Amounts collected, by setoff or otherwise, as the result of an audit under the program conducted under this subsection shall be available for the purposes for which funds are currently available to the Secretary for medical care and for payment to a contractor of a percentage of the amount collected as a result of an audit carried out by the contractor.

''(3) The Secretary shall allocate all amounts collected under this subsection with respect to a designated geographic service area of the Veterans Health Administration, net of payments to the contractor, to that region.

''(4) The authority of the Secretary under this subsection terminates on September 30, 2008.''.

SEC. 602. INVENTORY OF MEDICAL WASTE MANAGEMENT ACTIVITIES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES.

(a) INVENTORY.—The Secretary of Veterans Affairs shall establish and maintain a national inventory of medical waste management activities in the health care facilities of the Department of Veterans Affairs. The inventory shall include the following:

(1) A statement of the current national policy of the Department on managing and disposing of medical waste, including regulated medical waste in all its forms.

(2) A description of the program of each geographic service area of the Department to manage and dispose of medical waste, including general medical waste and regulated medical waste, with a description of the primary methods used in those programs and the associated costs of those programs, with cost information shown separately for in-house costs (including full-time equivalent employees) and contract costs.

(b) REPORT.—Not later than June 30, 2005, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on medical waste management activities in the facilities of the Department of Veterans Affairs. The report shall include the following:

(1) The inventory established under subsection (a), including all the matters specified in that subsection.

(2) A listing of each violation of medical waste management and disposal regulations reported at any health care facility of the Department over the preceding five years by any Federal or State agency, along with an explanation of any remedial or other action taken by the Secretary in response to each such reported violation.

(3) A description of any plans to modernize, consolidate, or otherwise improve the management of medical waste and disposal programs at health care facilities of the Department, including the projected costs associated with such plans and any barriers to achieving goals associated with such plans.

(4) An assessment or evaluation of the available methods of disposing of medical waste and identification of which of those methods are more desirable from an environmental perspective in that they would be least likely to result in contamination of air or water or otherwise cause future cleanup problems.

SEC. 603. INCLUSION OF ALL ENROLLED VETERANS AMONG PERSONS ELIGIBLE TO USE CANTEENS OPERATED BY VETERANS' CANTEEN SERVICE.

The text of section 7803 is amended to read as follows:

''(a) PRIMARY BENEFICIARIES.—Canteens operated by the Service shall be primarily for the use and benefit of—

''(1) veterans hospitalized or domiciled at the facilities at which canteen services are provided; and

''(2) other veterans who are enrolled under section 1705 of this title.

''(b) OTHER AUTHORIZED USERS.—Service at such canteens may also be furnished to—

''(1) personnel of the Department and recognized veterans' organizations who are employed at a facility at which canteen services are provided and to other persons so employed;

''(2) the families of persons referred to in paragraph (1) who reside at the facility; and

''(3) relatives and other persons while visiting a person specified in this section.''.

SEC. 604. ANNUAL REPORTS ON WAITING TIMES FOR APPOINTMENTS FOR SPECIALTY CARE.

(a) ANNUAL REPORTS.—Not later than January 31 each year through 2007, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on waiting times for appointments for specialty health care from the Department of Veterans Affairs under chapter 17 of title 38, United States Code, during the preceding year.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall specify, for the year covered by the report, the following:

(1) A tabulation of the number of veterans whose appointment for specialty health care furnished by the Department was more than three months after the date of the scheduling of such appointment, and the waiting times of such veterans for such appointments, for each category of specialty care furnished by the Department, broken out by Veterans Integrated Service Network.

(2) An identification of the categories of specialty care furnished by the Department for which there were delays of more than three months between the scheduling date of appointments and appointments in each Veterans Integrated Service Network.

(3) A discussion of the reasons for the delays identified under paragraph (2) for each category of care for each Veterans Integrated Service Network so identified, including lack of personnel, financial resources, or other resources.

(c) CERTIFICATION ON REPORT INFORMATION.—The Comptroller General of the United States shall certify to the committees of Congress referred to in subsection (a) whether or not each report under this section is accurate.

SEC. 605. TECHNICAL CLARIFICATION.

Section 8111(d)(2) is amended by inserting before the period at the end of the last sentence the following: ''and shall be available for any purpose authorized by this section''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey (Mr. SMITH) and the gentleman from Texas (Mr. RODRIGUEZ) each will control 20 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in very strong support of H.R. 3936, the Veterans Health Programs Improvement Act of 2004. The bill, as amended, represents a compromise agreement between the House Committee on Veterans' Affairs and the Senate on these matters.

Mr. Speaker, I want to thank the gentleman from Illinois (Mr. EVANS), the committee's ranking member, for his work on this. I especially want to thank the gentleman from Connecticut (Mr. SIMMONS) for his admirable leadership as chairman of the Subcommittee on Health, where most of these measures originated. He has done a tremendous job as chairman. As a 37-year Army veteran, he has put veterans first and has done so in a way that is extraordinary.

Again, I want to thank him for his work and his meticulous attention to detail. It has made the difference. This bill, regrettably, went through a lot of difficulties and travail, and yet he persevered. And I want to thank our chairman of that subcommittee for his leadership. It has been extraordinary.

I also want to thank the gentleman from Texas (Mr. RODRIGUEZ), the ranking member of that subcommittee. Again, these bills are bipartisan. We have worked together very closely, and it is a pleasure to bring this before the body today.

Mr. Speaker, H.R. 3936 contains more than 33 measures that would improve the management and the administration of veterans health care programs. I want to highlight just a few of those provisions that are contained in the bill.

The VA's homeless grant and per diem program is an economical, flexible, and innovative approach to housing and supportive services for thousands of homeless veterans. The compromise agreement would increase the

fiscal year 2005 authorization level for VA's grant and per diem program from $75 million to $99 million. The Department requested this increase because it has received far more requests for funding from meritorious potential grantees than it can support under existing funding limits.

Another important provision compromise would direct the Secretary to make payments to assist the 128 State-operated nursing homes in hiring and retaining nursing personnel. These homes provide long-term care to over 38,000 veterans annually in an excellent partnership with the VA, and this provision encourages their efforts to keep highly qualified staff caring for these veterans.

Mr. Speaker, today we are at war overseas. We know war can produce terrible physical injuries, and we must do everything possible for wounded servicemembers. This compromise agreement would authorize the VA to establish, in conjunction with the Department of Defense, a limited number of new centers for research, education, and clinical care to improve rehabilitative services for complex traumatic injuries, such as those being suffered by our brave soldiers and Marines in Iraq. These centers will be a Godsend for these wounded war veterans and for their families.

This bill provides VA authority to enter into a 75-year lease to acquire a medical facility on the new Fitzsimons Campus of the University of Colorado. It is anticipated this Federal-State health sciences campus would share many high-cost specialized services and provide expanded access for Air Force beneficiaries at the nearby Buckley Air Force Base.

I want to recognize and thank the gentleman from Colorado (Mr. BEAUPREZ) for his leadership on this important provision and the chairman of the Committee on Standards of Official Conduct, who has also done yeoman's work on this as well.

Mr. Speaker, our compromise agreement would improve the process for disposing of unneeded VA properties and authorize the proceeds from property transfers to be deposited into a new VA capital asset fund.

□ 1445

The new fund would facilitate transfers, leases and adaptive uses of VA properties, including historic properties. This compromise agreement also includes authorization for naming five VA medical centers, including one in Illinois to be named for the distinguished House minority leader, Bob Michel. Having served with Bob and having great respect for him, I am grateful that this provision is in here, and I want to thank my colleagues for their support for it. It also names facilities in Texas and New York for two heroic Marines who gave their lives for freedom in Vietnam.

Mr. Speaker, the staff of the Committee on Veterans Affairs has worked hard in this Congress to examine ways to provide the best possible health care to those who have earned the honored title of ''veteran.'' I would like to recognize the staff of the Subcommittee on Health: John Bradley, staff director; Dolores Dunn and Kathleen Greve, professional staff members; Susan Edgerton, Democratic staff director; and VA detailee Rosalind Howard. I would also like to thank our full committee staff, Pat Ryan to my left, chief counsel and staff director; Kingston Smith, deputy chief counsel; Jeannie McNally, legislative coordinator; and Jim Holley, Democratic staff director.

I also thank the Senate committee staff director, Bill Tuerk, and Bill Cahill, III, professional staff member. I also thank Kim Lipsky, Alexandra Sardegna and Amanda Krohn of the Democratic professional staff for their contributions. This has been a true collaborative effort.

Again, I thank all who have participated in shaping, crafting and making this an extremely valuable bill that will soon be on the desk of President Bush for his signature.

Mr. Speaker, I move that the House suspend the rules and concur in the Senate amendments to H.R. 3936.

Mr. Speaker, I rise in strong support of H.R. 3936, the Veterans Health Programs Improvement Act of 2004.

H.R. 3936, as amended, represents a compromise agreement between the Committees on Veterans' Affairs of the House and Senate.

Mr. Speaker, I want to thank the gentleman from Illinois, Mr. EVANS, Ranking Member of the Veterans' Affairs Committee, who has helped to shape this particular legislation. Also, I want to thank the gentleman from Connecticut, Mr. SIMMONS, for his outstanding leadership as Chairman of the Subcommittee on Health, where most of these measures originated. Finally, I thank the gentleman from Texas, Mr. RODRIGUEZ, the Ranking Member, who has worked in a bipartisan effort to help craft this and numerous other important veterans' health bills during his time in Congress.

Chairman SPECTER and Ranking Member GRAHAM of the Senate Veterans' Affairs Committee also contributed to the legislation before the House today.

Mr. Speaker, VA's homeless grant and per diem program provides competitive grants to community and faith-based organizations that offer transitional housing or comprehensive service centers for homeless veterans. This program is an economical, flexible and innovative approach to housing and supportive services for homeless veterans in all 50 States and in the District. Over 6,000 beds are now available nationally to veterans through this vital community network. In 2003, 66 percent of the veterans discharged from these VA-funded programs went on to either independent living or residential-program housing. The compromise agreement will increase the fiscal year 2005 authorization level for this key program from $75 million to $99 million. The department requested this increase because it has received far more requests for funding from meritorious potential grantees than it can support under existing funding limits.

Another important provision in this compromise agreement would direct the Secretary to make payments to assist states in hiring and retaining nursing personnel at State-operated nursing homes for veterans. The 128 State veterans' homes collectively represent the largest institutional provider of long-term care to elderly veterans, now caring for over 38,000 veterans annually in 47 States. I am personally aware of staffing difficulties that the three New Jersey State veterans' homes in Vineland, Paramus and Menlo Park have faced over the past several years in their efforts to recruit and retain quality nursing staff to those homes. We need this new incentives program all across the country. It would allow State homes currently receiving per diem payments from VA with established employee-incentive programs to apply for assistance to retain and recruit their nurses. This provision encourages their efforts to keep highly-qualified staff caring for veterans.

Another provision affecting the State home programs would specify that per diem payments made by VA to States for the care of veterans in these homes may not be used to offset or reduce third party payments made to assist veterans, whether from private, State or other Federal sources.

There is well established history of partnership between the Federal and State governments providing care for veterans. This originated with the first Federal law in 1888, providing $100 per year in aid to States to help alleviate the burden of caring for sick and disabled soldiers. This partnership and the first annual payments preceded the advent of the Veterans Administration and the State Home program as we know them today—but Congressional intent has remained constant and clear. Since 1960, Congress has taken an active role in expanding the State home programs to include four levels of care, increased per diem payments and grant funding for construction of facilities. The Congress and its Veterans' Committees are adamant that this partnership and the mutual reliance by VA and the States should not be inadvertently affected by the rules of any other program which is not specifically targeted at caring for aged and infirmed veterans.

Mr. Speaker, 12 years ago, with Public Law 102–585, it was acknowledged that women who experienced sexual trauma while on active military duty may undergo a variety of psychological and physical health effects requiring special counseling. This law authorized VA to provide mental health counseling for these women veterans. Two years later, eligibility for VA sexual trauma counseling and treatment was broadened in Public Law 103–452 to include veterans of either gender who experience sexual trauma while serving on active duty. H.R. 3936 would make permanent VA's authority to provide sexual trauma counseling to veterans.

Mr. Speaker, the shortage of nurses throughout the United States is well documented and VA must position itself to take advantage of all opportunities available to deal with this shortage. H.R. 3936 would establish a pilot program to evaluate the use of proven private sector techniques, such as employer branding, interactive advertising, automated staffing systems and the use of outside recruitment agencies and online technologies to improve VA's program for recruiting nursing personnel.

Mr. Speaker, how well we know that we are at war overseas. We know war can produce

terrible physical injuries. In previous wars, many soldiers did not survive the very serious injuries of the kind being seen in Iraq and Afghanistan today. The means were not available for quick evacuation to sophisticated medical treatment. Today military medical treatment capabilities have greatly improved for complex traumatic injuries.

However, Mr. Speaker, this success creates new challenges for the caregivers who have patients with complex traumatic injuries. The compromise agreement will authorize VA to establish in cooperation with the Department of Defense a limited number of new centers for research, education and clinical activities to improve rehabilitative services for these veterans. I particularly want to thank Senator BOB GRAHAM, Ranking Member of the Senate Veterans' Affairs Committee, for his work in helping us reach agreement on this provision. These centers will be a godsend for these wounded war veterans and their families.

Mr. Speaker, the delivery of health care in this country and in the VA system has undergone a profound transformation over the last decade. Once a hospital based health care system, today's VA has made a significant shift from inpatient to outpatient services, with tremendous growth in the number of enrolled veterans. Yet, much of VA health care bricks-and-mortar infrastructure was designed and built decades ago—some parts of it over a century ago—in a bygone era of health care delivery when long stays in the hospital were the norm.

In 1999, a General Accounting Office report not surprisingly found that VA's cost of operating and maintaining its large inventory of old buildings was a huge and avoidable drain on resources. In the years since that GAO report, VA has undergone a major initiative referred to as the Capital Asset Realignment for Enhanced Services (CARES) initiative, to assess the best use of VA's capital assets for the veteran population to be served, and to use resources more effectively to improve health care delivery to these veterans.

While awaiting the CARES recommendations, little was done by the Department to upgrade VA's physical plants. This legislation is consistent with the CARES recommendations and would provide VA the needed authority to execute leases for 16 community-based outpatient clinics at a cost of approximately $24.4 million, in fiscal year 2005, in the States of California, Colorado, Florida, Indiana, North Carolina, Ohio, Tennessee, Texas and Virginia. Most of these leases will upgrade existing clinic locations. All of these leases were requested by the VA.

Mr. Speaker, this bill also provides VA authority to enter into a 75-year lease to acquire a medical facility on the Fitzsimons Campus of the University of Colorado in Aurora. It is anticipated that a new federal-state health sciences campus would share many high cost and specialized services, and also would provide expanded access to care for Air Force beneficiaries from nearby Buckley Air Force Base. I want to recognize and thank the gentleman from Colorado, Mr. BEAUPREZ, for his leadership in developing this good Federal health policy to serve the people of Colorado.

Mr. Speaker, our compromise agreement would improve the process for disposing of unneeded VA properties and authorize the proceeds from these property transfers to be deposited into a new VA Capital Asset Fund. The new fund would defray VA's cost of transferring property including demolition, environmental restoration, historic preservation and establishment of new health facilities. This bill would authorize appropriations of $10 million in seed money to launch the fund to support these initiatives.

Mr. Speaker, the VA has one of the largest federal inventories of properties with significant historic value. In fact, 24 VA medical center campuses are already listed on the National Register of Historic Places, and even more are eligible for this designation. This compromise agreement would allow the Secretary to enter into new partnerships or agreements with entities dedicated to historic preservation, and to use the funds in the Capital Asset Fund to facilitate transfers, leases or adaptive uses of those historic properties that are no longer useful for VA health care. Thus, this compromise agreement would protect history and at the same time the way to new uses of structures that have served their purposes for veterans.

Mr. Speaker, this compromise agreement includes authorization to name VA facilities to honor two heroic Marines who gave this country the greatest measure of their personal devotion, giving their lives in combat to save others in Vietnam. Lance Corporals Thomas E. Creek of Texas and Thomas P. Noonan, Jr. of New York were each posthumously awarded the Nation's highest military decoration, the Congressional Medal of Honor, for their selfless deeds.

The late James J. Peters of New York, a war hero in Vietnam, and a leader of paralyzed veterans after his service, would also be honored by our naming a VA outpatient clinic in the Bronx in his memory.

Further, Mr. Speaker, a VA facility in Illinois will be named in honor of our distinguished former House Minority Leader, Bob Michel, and a facility in Texas will be named in honor of the public service of another former Member of this House, Charles Wilson.

Mr. Speaker, under current law, VA must comply with a variety of Federal, state and local laws and regulations relating to the collecting, handling and disposing of medical waste. Failure to adhere to these laws and regulations could place patients, VA employees and their communities in hazardous situations, as well as subject VA to civil or criminal penalties. This bill would provide a means for Congress to evaluate the effectiveness of VA's medical waste management policies and determine whether additional procedures are needed to reduce environmental and heath risks. The costs of waste disposal would be assessed as well. The bill would require VA to establish and maintain an inventory of medical waste management activities in VA facilities and report to Congress on its inventory, regulatory compliance, and violations of record, along with plans for management improvements.

Mr. Speaker, the staff of the Veterans' Affairs Committee has worked hard in this Congress to examine ways of providing the best possible health care for those who have earned the honored title of "veteran." I would like to recognize the staff of the Subcommittee on Health: John Bradley, Staff Director, Dolores Dunn and Kathleen Greve, professional staff members; Susan Edgerton, Democratic Staff Director, and VA detailee Rosalind Howard. I'd also like to thank our full Committee staff: Patrick Ryan, Chief Counsel and Staff Director; Kingston Smith, Deputy Chief Counsel; Jeannie McNally, our Legislative Coordinator; and Jim Holley, Democratic Staff Director.

Finally, I want to compliment the Senate Veterans' Affairs Committee staff: Bill Tuerk, Staff Director and Chief Counsel; and Bill Cahill III, professional staff member. I also want to recognize Kim Lipsky, Alexandra Sardegna and Amanda Krohn, of the Democratic professional staff, for their contributions to this bill.

For the benefit of my colleagues, I include at this point in the record a joint explanatory statement describing the compromise agreement we have reached with the other body.

Mr. Speaker, I ask unanimous consent to revise and extend my remarks and that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous material on H.R. 3936, as amended.

Mr. Speaker, one final word on homeless veterans: these veterans who need services and a place to lay their heads have difficult problems. VA's programs and the hundreds of community and faith-based programs that serve in partnership with VA work miracles with many of them. The continuation and expansion of these programs with the goal of eradicating chronic homelessness in the veteran population has been one of my top goals as Chairman of this Committee. I intend to further address this program in the next Congress, so that those who once wore the nation's military uniform and who are now homeless. These veterans need a hand up to turn their lives around, and we should provide that hand.

I urge my colleagues to support this measure to enhance health care for veterans.

Mr. Speaker, I reserve the balance of my time.

Mr. RODRIGUEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 3936, the Veterans Health Programs Improvement Act of 2004. I want to take this opportunity to thank the gentleman from New Jersey (Mr. SMITH) for his efforts, the ranking member, the gentleman from Illinois (Mr. EVANS) also, as well as the gentleman from Connecticut (Mr. SIMMONS) of the Subcommittee on Health, and the House and Senate committee staffs for addressing some of the concerns raised in earlier pieces of this legislation. We now have a bill which I am pleased to lend my support to.

The bill includes provisions from a bill I introduced, H.R. 3849, the Military Sexual Trauma Counseling Act of 2004 to permanently extend VA's authority to provide counseling and treatment for the women and men who have experienced sexual trauma during their service in the military. Current authority for the program expires at the end of this year. Therefore, it is critical that we pass this legislation today.

Overwhelming demand has been demonstrated for this program. Thousands of veterans, in addition to Reservists and National Guardsmen, have taken

advantage of the resources available to them.

As the number of women serving in the military continue to grow, the need for the program is sadly more evident. Already we hear media reports that more than 100 troops returning from both Iraq and Afghanistan have stated that they were raped during their service.

Although it is unfortunate that we need this particular program, I am pleased we are now on the road to ensuring that we will have these services for current and future veterans.

Again, I would like to thank the gentleman from Connecticut (Mr. SIMMONS) for his leadership and cooperation in including the Military Sexual Trauma Program in this bill. I also thank the gentleman from New Jersey (Mr. SMITH) and the gentleman from Illinois (Mr. EVANS), the ranking member, for their support.

I am also supportive of the provisions to increase the funding levels available for the homeless grant and the per diem programs from $75 million to $99 million for 2005. We still have a very long way to go in meeting the Congress's goals to eliminating chronic homelessness by 2011, and this bill can help us get there.

This particular legislation also includes a provision that will require the Secretary of the VA to establish and maintain an inventory of the medical waste management activities in VA facilities, including inventory, regulatory violations and plans for management improvements. We believe the VA should be on the frontline of environmental protection policies, and these provisions help to make that happen.

There are provisions also from our Senate counterparts in this bill, including a requirement that the VA report annually through 2007 on veterans waiting more than 3 months for scheduled appointments in specialty care and the reasons for these delays.

This measure also requires the Secretary of the VA to establish a pilot program to study innovative recruitment tools to address the nursing shortage within the VA. We must be able to recruit and retain well-qualified nurses to care for our veterans. This pilot will help the VA Health Administration identify and adopt the best practices of private industries in hiring of well-qualified nurses.

Now the largest provider of long-term care to our Nation's veterans, the State veterans' home system plays a vital role in caring for the growing number of aging veterans.

This bill will authorize VA to make payments to assist State veterans' homes in hiring and retaining nurses, to help care for our aging veterans, and adds a clarification that per diem payments made by the VA to State veterans' homes are not to be used to offset or reduce third-party payments, such as Medicaid, made to assist veterans.

There are a high number of veterans returning home that have injuries from the war in both Iraq and Afghanistan. This measure authorizes the establishment of four cooperative centers for research, education and clinical activities to improve the rehabilitation services available to veterans suffering from complex multi-trauma associated with combat injuries. These centers build on the Veterans Health Administration's nationally recognized care for special populations such as post-traumatic stress disorders, spinal cord injuries, traumatic brain injuries, as well as visual impairment, and will prove to be most valuable in providing future combat injury rehabilitation.

While the CARES process was under way, the VA health care system has managed within infrastructure that is in sore need of repair and upgrade. This bill establishes a VA Capital Asset Fund that will help strengthen our funding flow to assist the VA in developing and improving its properties. These funds will allow the VA to improve properties for disposal as well as future disposal and for minor construction. These funds also will allow the VA to use funds for improving properties.

The Secretary of Veterans Affairs will be given the flexibility in using funds to develop advance planning for major construction projects previously authorized and additional authority to transfer unneeded real property and retain the proceeds from the transfer. The bill authorizes $10 million to be appropriated to the Capital Asset Fund where it can be used for these purposes.

Mr. Speaker, 16 major new leases are authorized in this bill, including leases throughout this country. Because many of the VA important historic buildings are poorly maintained or falling apart, I am pleased that the Committee on Veterans' Affairs concluded that the VA should use funds to preserve historic properties. It is the committee's intent for VA to provide a series of reports to address its large inventory of these registered assets.

This legislation will extend the VA authority to provide care to the veterans participating in long-term care pilot programs which were previously authorized until December, 2005.

This is a bill that we all should be very proud of.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of New Jersey. Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut (Mr. SIMMONS).

Mr. SIMMONS. Mr. Speaker, I rise to add my strong support to H.R. 3936, the Veterans Health Programs Improvement Act of 2004.

I want to acknowledge what some of my colleagues have already said. I want to acknowledge the committee leadership for its commitment to our veterans under the direction of our very able and very courageous chairman, the gentleman from New Jersey (Mr. SMITH). The gentleman from New Jersey has been a remarkable leader over the last 2 years. He has been a courageous leader. He has stood up in this body and leadership councils for our veterans, and I look forward to his continued leadership as our chairman in the 109th Congress.

I also recognize the work of the ranking member, the gentleman from Illinois (Mr. EVANS), who also serves with me as co-chairmen of the U.S. Vietnam Caucus. He has made extraordinary contributions to our veterans in this legislation and in other bills we have taken up before this body.

Finally, I want to express very special words of gratitude to my colleague and ranking member on the Subcommittee on Health, the gentleman from San Antonio, Texas (Mr. RODRIGUEZ).

Let me just share with the body two anecdotes. One, I traveled to San Antonio to chair a field hearing with the gentleman from Texas (Mr. RODRIGUEZ), and we studied how the Department of Defense in that community and how the Veterans' Administration interact to provide health services not only for active troops but for our veterans. What was immediately apparent to me was the warmth with which his local constituents treated him because of his long interest in veterans, an interest that extends back at least 8 years as a member of this body.

But then I invited the gentleman from Texas up to the lovely, warm, pleasant weather of Connecticut, where we spent some time at Newington, Connecticut, at a VA facility. Not only did we have a hearing at that facility but then the gentleman from Texas (Mr. RODRIGUEZ) went to the State Veterans Home at Rocky Hill and spent many hours looking at that facility to see how the VA and the Connecticut State Department of Veteran Affairs interacted once again to provide these services. This shows a very genuine interest on his part in veterans not only in his own State but in Connecticut and elsewhere throughout the country.

We are going to miss that genuine interest in our veterans. I thank the gentleman for his service to the subcommittee, to the committee and to our Nation's veterans.

Our chairman has summarized many of the provisions of this bill. What I would like to do is just point out a couple of features that I think are particularly important.

First and foremost, America has a tradition of caring for her veterans dating back to the Plymouth Colony where the Pilgrims enacted laws to assist sick and disabled soldiers. In 1811, our young country established the first domiciliary and medical facility for veterans that was authorized by the national government and today the Veterans' Administration has stewardship over the fourth largest real estate inventory in the Federal Government, over 20,000 buildings and tens of thousands of acres of land.

One of the provisions of this bill allows the Secretary of the Veterans' Administration to get his arms around

this huge inventory through the CARES project, a master plan for realigning the VA's inventory of capital assets in response to GAO findings and our committee oversight that some of these facilities were underutilized and that some dollars could be saved.

In addition, what this legislation does is provide language for the reuse of historic properties. On the one hand, properties that can be adopted to new uses but, secondly, properties that are truly historic and ought to be preserved and protected, for example, the Eisenhower Recovery Room at the Fitzsimmons Hospital in Colorado. We are engaged in a major effort to build a state-of-the-art facility at Fitzsimmons. It will be co-located with the State university hospital system, but that historic room in Fitzsimmons will be preserved and protected into the future.

Furthermore, the hiring and retraining of nursing staff in VA and State veterans homes, this legislation provides provisions that will address that challenge, the challenge of the almost 100,000 vacant nursing positions and a growing need for health care workers nationwide. It allows the VA to look outside for recruiting and advertising these positions and using interactive and online technologies to improve their exposure in today's recruiting market.

□ 1500

It also allows the State veterans homes to apply for a new grant program to serve as an incentive to attract nurses to State homes for their employment there with a 50–50 split between the VA and the State homes.

I have spent a long time at the Connecticut State home at Rocky Hill. This is a successor to the first State home built in America which was built just after the Civil War. They provide a wonderful service, but if they could work interactively with the VA in Connecticut, they could enhance that service, both in providing more nurses and also in providing better services for our veterans. That is what this legislation attempts to do.

Mr. Speaker, H.R. 3936 was carefully crafted to give the VA the flexibility and authority it needs to manage its capital assets. At the same time, it holds VA accountable for protecting the public interest of the United States as stewards of the valuable inventory of structures and lands held in trust by the VA. Finally, it provides the VA with the resources needed to enhance nurses and other professionals within the system so that they can better provide the services that we need. I urge my colleagues to support this legislation.

Mr. RODRIGUEZ. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EVANS), ranking member of the Committee on Veterans' Affairs.

Mr. EVANS. Mr. Speaker, I rise in support of H.R. 3936, the Veterans Health Programs Improvement Act of 2004. I want to thank the gentleman from New Jersey (Mr. SMITH) again for his leadership on these issues. Every time we try to do something good, his name is always in the forefront of the action. I want to thank the gentleman from Texas (Mr. RODRIGUEZ) who came to our committee, has done great work as the subcommittee ranking member obviously through helping not only the gentleman from Connecticut (Mr. SIMMONS) but all veterans across the board. If we gave Medal of Honor awards to Members, he would certainly be given one.

I want to thank everybody for developing this legislation. We have accomplished a lot. Of particular interest to me is the establishment of the capital asset fund to help renovate some of the VA's most underutilized facilities. The VA needs to meet construction priorities in order to maintain a health care system infrastructure that will be called on increasingly as our service men and women return from Iraq with physical and psychological disabilities.

I am also pleased that the legislation will permanently allow the VA to provide sexual trauma counseling to those men and women who have experienced such trauma. The VA should continue to be available to veterans who need help picking up the pieces after these tragic events.

This measure also includes a requirement for VA to develop a pilot to examine the effectiveness of interactive and online recruiting techniques. This pilot program is just one step to update VA's recruitment tools to what are now commonplace recruitment practices in the private sector.

I support this legislation, and I urge my colleagues to do the same.

Mr. SMITH of New Jersey. Mr. Speaker, for the benefit of my colleagues, I include at this point in the RECORD a joint explanatory statement describing the compromise agreement we have reached with the other body.

EXPLANATORY STATEMENT ON SENATE AMENDMENTS TO H.R. 3936

H.R. 3936, as amended, the Veterans Health Programs Improvement Act of 2004, (Compromise Agreement) reflects a negotiated agreement reached by the House and Senate Committees on Veterans' Affairs (the Committees) concerning provisions in a number of bills considered by the House and the Senate during the 2nd Session of the 108th Congress. The measures considered in this compromise are: H.R. 1318, passed the House on September 13, 2004; H.R. 2786, as introduced in the House on July 17, 2003, H.R. 4231, as amended, passed the House on September 30, 2004; H.R. 4248, as amended, passed the House on October 7, 2004; H.R. 4317, passed the House on June 1, 2004; H.R. 4608, passed the House on July 21, 2004; H.R. 4658, as amended, passed the House on October 7, 2004; H.R. 4768, as amended, passed the House on September 29, 2004; H.R. 4836, passed the House on September 13, 2004 (House Bills); and S. 2485, as amended, reported by the Senate Committee on Veterans' Affairs on September 27, 2004; and S. 2596, as introduced in the Senate on June 24, 2004 (Senate Bills).

The House and Senate Committees on Veterans' Affairs have prepared the following explanation of the Compromise Agreement. Differences between the provisions of the Compromise Agreement and the related provisions of the House and Senate bills are noted, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—ASSISTANCE TO HOMELESS VETERANS

SEC. 101—AUTHORIZATION OF APPROPRIATIONS

Current law

Section 2013 of title 38, United States Code, authorizes appropriations of $60 million for fiscal year 2002, and $75 million per year for fiscal years 2003 through 2005, for a program to make grants to providers of comprehensive services for homeless veterans.

House bill

Section 2 of H.R. 4248 would increase the annual authorized appropriation for this program to $99 million for fiscal year 2005.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 203 of the Compromise Agreement follows the House language.

TITLE II—VETERANS LONG-TERM CARE PROGRAMS

SEC. 201—ASSISTANCE FOR HIRING AND RETENTION OF NURSES AT STATE VETERANS HOMES

Current law

Subchapter V, chapter 17 of title 38, United States Code, authorizes VA to make payments to States for the care of veterans in a State veterans' home.

House bill

Section 5 of H.R. 4231 would amend subchapter V, chapter 17 of title 38, United States Code, to add a new section 1744 to authorize the Secretary to make payments to States for the purpose of assisting State veterans' homes in the hiring and retention of registered nurses through the use of an approved incentive program.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 201 of the Compromise Agreement follows the House language.

SEC. 202—TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS PER DIEM PAYMENTS TO STATE HOMES FOR VETERANS

Current law

Section 1741 of title 38, United States Code, establishes criteria for VA payments to States for the care of veterans in a State veterans' home.

House bill

The House Bills contain no comparable provision.

Senate bill

Section 203 of S. 2485 would amend section 1741 of title 38, United States Code, to add a new subsection (e) to clarify that per diem payments made by VA to States for the care of veterans in a State veterans' home would not be used to offset or reduce other third party payments made to assist veterans.

Compromise agreement

Section 202 of the Compromise Agreement follows the Senate language.

SEC. 203—EXTENSION OF AUTHORITY TO PROVIDE CARE UNDER LONG-TERM CARE PILOT PROGRAMS

Current law

Section 102 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act, directed VA to carry out three pilot programs over a three-year period to determine the feasibility and practicability of different models for providing long-term care.

The authority for the pilot program expires December 31, 204.

House bill

Section 107 of H.R. 4768 would extend VA's authority to provide health care services under the long-term care pilot programs authorized in Public Law 106–117 through December 31, 2005.

Senate bill

Section 206 of S. 2485 contains a similar provision.

Compromise agreement

Section 203 of the Compromise Agreement contains this provision.

SEC. 204—PROHIBITION ON COLLECTION OF COPAYMENTS FOR HOSPICE CARE

Current law

Section 1710B(c) of title 38, United States Code, requires certain veterans to pay a copayment for extended care services furnished under that section.

House bill

The House Bills contain no comparable provision.

Senate bill

Section 201 of S. 2485 would exempt veterans receiving hospice care under Section 1710B from copayment obligations.

Compromise agreement

Section 204 of the Compromise Agreement follows the Senate language.

TITLE III—MEDICAL CARE

SEC. 301—SEXUAL TRAUMA COUNSELING PROGRAM

Current law

Section 1720(D)(a) of title 38, United States Code, authorizes VA to provide counseling services to veterans who may have experienced sexual trauma while serving on active duty through December 31, 2004.

House bill

Section 3 of H.R. 4248 would make this authority permanent.

Senate bill

Section 202 of S. 2485 would make this authority permanent and broaden the authority to include the treatment of former Reservists who may have experienced sexual trauma while not serving on active duty.

Compromise agreement

Section 301 of the Compromise Agreement follows the House language with a modification. The modification broadens the authority to provide counseling services to individuals who may have experienced sexual trauma while on active duty for training.

SEC. 302—CENTERS FOR RESEARCH, EDUCATION, AND CLINICAL ACTIVITIES ON COMPLEX MULTI-TRAUMA ASSOCIATED WITH COMBAT INJURIES

Current law

There is no comparable provision in current law.

House bill

The House Bills contain no comparable provision.

Senate bill

Section 205 of S. 2485 would establish, in collaboration with the Department of Defense, at least one, but not more than three, VA ''War-Related Blast Injury Centers'', and establish procedures for the Secretary's designation of such centers. These centers would provide comprehensive rehabilitation programs, targeted education and outreach programs, and research initiatives for veterans injured by explosive blasts in combat theaters.

Compromise agreement

Section 203 of the Compromise Agreement authorizes, and authorized the appropriations to support, the Secretary to establish an appropriate number of centers for research, education, and clinical activities to improve and coordinate rehabilitative services for veterans suffering from complex multi-trauma from combat injuries. The Compromise Agreement consolidates a number of current VA clinical, research and other practices for traumatic brain injuries, blind rehabilitation and VA's concepts for combat-injury rehabilitation. The Compromise Agreement requires this authority be coordinated between the Departments of Veterans Affairs and Defense under section 8111 of title 38, United States Code.

SEC. 303—ENHANCEMENT OF MEDICAL PREPAREDNESS OF DEPARTMENT OF VETERANS AFFAIRS

Current law

Section 7325 of title 38, United States Code, requires the Secretary to establish four Medical Emergency Preparedness Research Centers.

House bill

Section 202 of H.R. 4768 would amend chapter 73, of title 38, United States Code to add a new section 7327, to direct the Secretary to take a series of actions by dates certain to establish four Medical Emergency Preparedness Research Centers.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 303 of the Compromise Agreement follows section 202(a) through (c) of the House language.

TITLE IV—MEDICAL FACILITIES MANAGEMENT AND ADMINISTRATION SUBTITLE A—MAJOR MEDICAL FACILITY LEASES

SEC. 401—MAJOR MEDICAL FACILITY LEASES

Current law

Section 8104(a)(2) of title 38, United States Code, prohibits VA from obligating or expending more than $600,000 per year for a lease unless that lease has been specifically authorized by law.

House bill

Section 101(a) of H.R. 4768 would authorize major medical facility leases in the following locations: (1) Wilmington, North Carolina, Outpatient Clinic, $1,320,000; (2) Greenville, North Carolina, Outpatient Clinic, $1,220,000; (3) Norfolk, Virginia, Outpatient Clinic, $1,250,000; (4) Summerfield, Florida, Marion County Outpatient, Clinic, $1,230,000; (5) Knoxville, Tennessee, Outpatient Clinic, $850,000; (6) Toledo, Ohio, Outpatient, Clinic, $1,200,000; (7) Crown Point, Indiana, Outpatient Clinic, $850,000; (8) Forth Worth, Texas, Tarrant County Outpatient Clinic, $3,900,000; (9) Plano, Texas, Collin County Outpatient Clinic, $3,300,000; (10) San Antonio, Texas, Northeast Central Bexar County Outpatient Clinic, $1,400,000; (11) Corpus Christi, Texas, Outpatient Clinic, $1,200,000; (12) Harlingen, Texas, Outpatient Clinic, $650,000; (13) Denver, Colorado, Health Administration Center, $1,950,000; (14) Oakland, California, Outpatient Clinic, $1,700,000; (15) San Diego, California, North County Outpatient Clinic, $1,300,000; and (16) San Diego, California, South County Outpatient Clinic, $1,100,000.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 401 of the Compromise Agreement follows the House language.

SEC. 402—AUTHORIZATION OF APPROPRIATIONS

Current law

Section 8104(a)(2) of title 38, United States Code, prohibits funds from being appropriated for a VA major medical facility lease, unless that appropriation has been specifically authorized by law.

House bill

Section 101(b) of H.R. 4768 would authorize $24,420,000 to carry out major medical facility leases specified location in the bill.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 402 of the Compromise Agreement follows the House language.

SEC. 403—AUTHORITY FOR LONG-TERM LEASE OF CERTAIN LANDS OF UNIVERSITY OF COLORADO

Current law

Section 490(h) of title 40, United States Code, limits lease agreements between the Federal Government and any person, copartnership, corporation, or other public or private entity to periods not exceeding twenty years.

House bill

Section 101(c) of H.R. 4768 would authorize VA to enter into a long-term lease of up to 75 years for land to construct a new VA medical facility at the Fitzsimons Campus of the University of Colorado, Aurora, Colorado.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 403 of the Compromise Agreement follows the House language. The authority provided in this section is permissive and intended by the Committees to foster good-faith negotiations between the partners to this lease agreement. In the event that the Secretary of Veterans Affairs determines the terms or conditions of the lease not to be in the best interest of the United States, the Secretary should propose an alternative strategy to Congress. The Committees not that the Administrator of General Services has delegated to the Secretary of Veterans Affairs the authority to enter into lease agreements for VA major medical facility leases.

SUBTITLE B—FACILITIES MANAGEMENT

SEC. 411—DEPARTMENT OF VETERANS AFFAIRS CAPITAL ASSET FUND

Current law

Section 8122 of title 38, United States Code, authorizes the Secretary to dispose of real property administered by VA and retain the proceeds from such a disposal, but only if the property is considered excess to any need, there is no use for the property in providing services to homeless veterans, and the property is valued at less than $50,000. In cases where a property carries value in excess of $50,000, any disposal must be proposed in the President's budget. In the event such property is so disposed of, proceeds are deposited into the Nursing Home Revolving Fund for construction, acquisition, or alteration of VA nursing homes.

House bill

Section 102 of H.R. 4768 would amend chapter 81 of title 38, United States Code, to add a new section 8118 to provide the Secretary authority to transfer by sale, exchange or lease unneeded real properties. It would establish a Department of Veterans Affairs Capital Asset Fund to finance these transfers, as well as to construct new and improved VA health care facilities. The Fund could also be used for demolition, environmental restoration, maintenance, repair, historic preservation, and administrative expenses. Section 102 would establish fair market value as the basis for property transfers.

It would require the Secretary to include in each budget submission to Congress a report of the uses of the Capital Asset Fund and descriptive information on each transfer completed, pending, and planned. The section would also repeal the Nursing Home Revolving Fund in section 8116 of title 38, United States Code, and transfer remaining balances from that fund to the new Fund. The authority of Section 102 would be contingent upon the Secretary's certifying to Congress that VA facilities maintain long-term care capacity as required by section 1710B(b) of title 38, United States Code.

Senate bill

Section 101 of S. 2485 contains a similar proposal.

Compromise agreement

Section 411 of the Compromise Agreement follows the House language with modification. The Compromise Agreement modified the contingency authority to pertain to repeal of the Nursing Home Revolving Fund and its remainder deposits. All other authority of section 411 is effective on enactment.

SEC. 412—ANNUAL REPORT TO CONGRESS ON INVENTORY OF DEPARTMENT OF VETERANS AFFAIRS HISTORIC PROPERTY

Current law

No similar provision exists under current law.

House bill

Section 103 of H.R. 4768 would require VA to establish a national inventory of historic VA properties and would require two subsequent annual reports to Congress on the status and plans associated with any VA property listed on the National Register of Historic Places.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 412 of the Compromise Agreement follows the House language.

SEC. 413—AUTHORITY TO ACQUIRE AND TRANSFER REAL PROPERTY FOR USE FOR HOMELESS VETERANS

Current law

Section 8103 of title 38, United States Code, authorizes the Secretary to acquire such land or interest in land as necessary for the purpose of providing medical services.

House bill

The House Bills contain no comparable provision.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 413 of the Compromise Agreement authorizes the Secretary to acquire property in the District of Columbia that the Secretary determines is suitable for providing services to homeless veterans, if the Secretary identifies a provider of homeless services that is prepared to acquire the property from the Secretary. The Compromise Agreement requires the Secretary, having so identified a provider, to promptly transfer the acquired property to that provider of homeless services. The Compromise Agreement provides a reverter power to the Secretary if the provider of homeless services discontinues providing services to homeless veterans.

SEC. 414—LIMITATION ON IMPLEMENTATION OF MISSION CHANGES FOR SPECIFIED VETERANS HEALTH ADMINISTRATION FACILITIES

Current law

Section 401 of Public Law 108–170, the ''Veterans Health Care, Capital Asset, and Business Improvement Act of 2003'', requires VA to notify Congress of facility closings proposed under the Capital Asset Realignment for Enhanced Services initiative, and prohibits such closings until the lapse of 60 days following the notification or 30 days of continuous session of Congress, whichever is longer.

House bill

The House Bills contained no comparable provision.

Senate bill

Section 104 of S. 2485 would prohibit the Secretary from implementing a mission change for a medical facility (other than a mission change prescribed by the Secretary in the Capital Asset Realignment for Enhanced Services (CARES) initiative) until 90 days after the date on which the Secretary submits to the Committees written notice of the mission change.

Compromise agreement

Section 414 of the Compromise Agreement prohibits the Secretary from implementing a mission change until the lapse of 60 days following the notification or 30 days of continuous session of Congress, whichever is longer, at VA Medical Centers in the following locations: Boston, Massachusetts; New York City, New York; Big Springs, Texas; Dublin, Georgia; Montgomery, Alabama; Louisville, Kentucky; Muskogee (and the outpatient clinic in Tulsa), Oklahoma; Poplar Bluff, Missouri; Ft. Wayne, Indiana; Waco, Texas; and Walla Walla, Washington.

SEC. 415—AUTHORITY TO USE PROJECT FUNDS TO CONSTRUCT OR RELOCATE SURFACE PARKING INCIDENTAL TO A CONSTRUCTION OR NON-RECURRING MAINTENANCE PROJECT

Current law

Section 8109 of title 38, United States Code, limits the funding of construction, alteration or acquisition of VA parking facilities to the collections made from parking fees at VA facilities and deposited into the Parking Revolving Fund.

House bill

Section 104 of H.R. 4768 would authorize the use of funds in a construction or capital account for the relocation of a surface parking facility if the relocation is necessitated by a construction or non-recurring maintenance project.

Senate bill

Section 103 of S. 2485 would authorize the use of funds in a construction or capital account for the relocation of a surface parking facility if the relocation is necessitated by a construction or non-recurring maintenance project.

Compromise agreement

Section 415 of the Compromise Agreement contains this provision.

SEC. 416—INAPPLICABILITY OF LIMITATION ON USE OF ADVANCE PLANNING FUNDS TO AUTHORIZED MAJOR MEDICAL FACILITY PROJECTS

Current law

Section 8104 of title 38, United States Code, limits the amount VA may obligate for the design and development of a major construction proposal to $500,000, unless VA notifies Congress and waits for a period of 30 days.

House bill

Section 105 of H.R. 4768 would provide more flexibility to VA by eliminating the ''notice and wait'' provision if the project VA is planning has already been authorized by law.

Senate bill

Section 106 of S. 2485 contains a similar provision.

Compromise agreement

Section 416 of the Compromise Agreement contains this provision.

SEC. 417—IMPROVEMENTS TO ENHANCE-USE LEASE AUTHORITY

Current law

Section 8162 of title 38, United States Code, authorizes VA to lease real property within its jurisdiction to non-Federal entities provided the lease contributes to the mission of VA and enhance the use of the property. The enhanced-use lease authority in this section restricts the projects the Secretary may consider to those plans set forth by the Under Secretary for Health. Section 8166, of title 38, United States Code, provides the Secretary permissive authority to disregard State and local laws relating to building codes, permits or inspections that would regulate or restrict construction, alteration, repair, remodeling or improvement of VA property associated with an enhanced-use lease.

House bill

Section 106 of H.R. 4768 would add to existing exemptions from State and local laws for enhanced-use leases, any land-use laws and ordinances.

Senate bill

Section 102 of S. 2485 would extend the enhanced-use lease authority to the Veterans Benefits Administration and the National Cemetery Administration.

Compromise agreement

Section 417 of the Compromise Agreement follows the House language.

SEC. 418—FIRST OPTION FOR COMMONWEALTH OF KENTUCKY ON DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, LOUISVILLE, KENTUCKY

Current law

Section 8122 of title 38, United States Code, requires VA to transfer real property for fair market value and describe the transfer in its annual budget to Congress. This section includes an exception for the transfer of VA property to a State for use as the site of a State nursing home or domiciliary.

House bill

The House Bills contain no comparable provision.

Senate bill

Section 131 of S. 2485 would require VA for one year, if it determines that it will convey, lease, or otherwise dispose of all or part of the VA Medical Center in Louisville, Kentucky, to negotiate for the conveyance, lease, or other disposal of the property to the Commonwealth of Kentucky to provide services for veterans or for other purposes. The bill would require the Commonwealth to pay fair market value for the property if VA transfers such property to the Commonwealth.

Compromise agreement

Section 418 of the Compromise Agreement follows the Senate language, with a modification to include use of the property as a State veterans' home.

SEC. 419—TRANSFER OF JURISDICTION, GENERAL SERVICES ADMINISTRATION PROPERTY, BOISE, IDAHO

Current law

No similar provision exists under current law.

House bill

The House Bills contain no comparable provision.

Senate bill

Section 111 of S. 2485 would direct the Administrator of General Services to transfer to the Secretary of Veterans Affairs certain property in Boise, Idaho, for the purpose of use in providing veterans benefits services.

Compromise agreement

Section 419 of the Compromise Agreement follows the Senate language.

SUBTITLE C—DESIGNATION OF FACILITIES

SEC. 421—THOMAS E. CREEK DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Current law

Section 531 of title 38, United States Code, prohibits the naming of VA facilities other than for the geographic area in which they are located, unless expressly provided by law.

House bill

H.R. 4836 would designate the Department of Veterans Affairs Medical Center in Amarillo, Texas as the ''Thomas E. Creek Department of Veterans Affairs Medical Center''.

Senate bill

The Senate Bills contain no comparable provision

Compromise agreement.

Section 421 of the Compromise Agreement follows the House language.

SEC. 422—JAMES J. PETERS DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Current law

Section 531 of title 38, United States Code, prohibits the naming of VA facilities other than for the geographic area in which they are located, unless expressly provided by law.

House bill

H.R. 2786 would designate the Department of Veterans Affairs Medical Center in the Bronx, New York as the ''James J. Peters Department of Veterans Affairs Medical Center''.

Senate bill

Section 121 of S. 2485 contains a similar provision.

Compromise agreement

Section 422 of the Compromise Agreement contains this provision.

SEC. 423—BOB MICHEL DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC

Current law

Section 531 of title 38, United States Code, prohibits the naming of VA facilities other than for the geographic area in which they are located, unless expressly provided by law.

House bill

H.R. 4608 would designate the Department of Veterans Affairs outpatient clinic in Peoria, Illinois as the ''Bob Michel Department of Veterans Affairs Outpatient Clinic''.

Senate bill

S. 2596 contains a similar provision.

Compromise agreement

Section 423 of the Compromise Agreement contains this provision.

SEC. 424—CHARLES WILSON DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC

Current law

Section 531 of title 38, United States Code, prohibits the naming of VA facilities other than for the geographic area in which they are located, unless expressly provided by law.

House bill

H.R. 4317 would designate the Department of Veterans Affairs outpatient clinic in Lufkin, Texas as the ''Charles Wilson Department of Veterans Affairs Outpatient Clinic''.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 424 of the Compromise Agreement follows the House language.

SEC. 425—THOMAS P. NOONAN, JR. DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC

Current law

Section 531 of title 38, United States Code, prohibits the naming of VA facilities other than for the geographic area in which they are located, unless expressly provided by law.

House bill

H.R. 1318 would designate the Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York as the ''Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic''.

Senate bill

The Senate Bills contain no comparable provision.

Compromise bill

Section 425 of the Compromise Agreement follows the House language.

TITLE V—PERSONNEL ADMINISTRATION

SEC. 501—PILOT PROGRAM TO STUDY INNOVATIVE RECRUITMENT TOOLS TO ADDRESS NURSING SHORTAGES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES

Current law

No similar provision exists under current law.

House bill

Section 2 of H.R. 4231 would establish a pilot program within VA to study the use of outside recruitment, advertising and communications agencies and the use of interactive and online technologies to improve VA's program for recruiting nursing personnel.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 501 of the Compromise Agreement follows the House language.

SEC. 502—TECHNICAL CORRECTION TO LISTING OF CERTAIN HYBRID POSITIONS IN VETERANS HEALTH ADMINISTRATION

Current law

Section 7401 of title 38, United States Code, authorizes VA to appoint in a hybrid manner under title 5, United States Code and title 38, United States Code, certain scientific and professional medical care personnel.

House bill

Section 4 of H.R. 4231 would make technical corrections to the description of certain occupations included in section 7401 treatable as hybrid appointments, and add blind rehabilitation specialists and blind rehabilitation outpatient specialists to these hybrid appointment categories.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 502 of the Compromise Agreement follows the House language.

SEC. 503—UNDER SECRETARY FOR HEALTH

Current law

Section 305(A)(2) of title 38, United States Code, requires that the Under Secretary for Health be a ''doctor of medicine.''

House bill

Section 7 of H.R. 4231 would repeal the requirement that VA's Under Secretary for Health be a medical doctor.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 503 of the Compromise Agreement follows the House language.

TITLE VI—OTHER MATTERS

SEC. 601—EXTENSION AND CODIFICATION OF AUTHORITY FOR RECOVERY AUDITS

Current law

Section 116 of Public Law 108–199, ''Consolidated Appropriations Act, 2004'', requires the Secretary to conduct a program of recovery audits to recoup overpayments for fee basis and other medical services contracts for the care of veterans.

House bill

The House Bills contain no comparable provision.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 601 of the Compromise Agreement requires the Secretary of Veterans Affairs to contract to conduct a program of recovery audits for fee basis and other contract care of veterans. The requirement expires on September 30, 2008.

The Committees are encouraged by the Department's increased third party collection in 2003, as a result of more aggressive efforts to improve VA business practices. The Committees expect the Department to assist third party health insurers to process disputed VA claims by using an automated system to download information in standardized formats and to ensure compliance with rules governing dispute resolution through the appeals process.

SEC. 602—INVENTORY OF MEDICAL WASTE MANAGEMENT ACTIVITIES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES

Current law

No similar provision exists under current law.

House bill

Section 401 of H.R. 4658 would require the Secretary to establish and maintain an inventory of medical waste management activities in VA medical facilities and submit a report on such activities by April 15, 2005. The VA would be required to report on plans to modernize or improve the management of medical waste and evaluate the most desirable methods of disposal from an environmental perspective.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 602 of the Compromise Agreement follows the House language with a modification to change the report date to June 30, 2005.

SEC. 603—INCLUSION OF ALL ENROLLED VETERANS AMONG PERSONS ELIGIBLE TO USE CANTEENS OPERATED BY VETERANS' CANTEEN SERVICE

Current law

Section 7803 of title 38, United States Code, defines those persons eligible to use the Veterans' Canteen Service.

House bill

Section 201 of H.R 4768 would expand the definition of persons eligible to use the Veterans' Canteen Service to include all individuals enrolled in VA health care under section 1705 of title 38, United States Code, or employed at VA facilities, as well as families and relatives of veteran patients.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 603 of the Compromise Agreement follows the House language.

SEC. 604—ANNUAL REPORTS ON WAITING TIMES FOR APPOINTMENTS FOR SPECIALTY CARE

Current law

No similar provision exists under current law.

House bill

The House Bills contain no comparable provision.

Senate bill

Section 207 of S. 2485 would require VA to report annually on patient appointment waiting times, including specialty and primary care services, and separate the data by facility and network.

Compromise agreement

Section 604 of the Compromise Agreement requires the Secretary to report, not later than January 31 of each year through 2007, on veterans waiting more than 3 months for scheduled appointments in specialty care clinics and on any reasons for such delays. Further, the Compromise Agreement requires the Comptroller General to certify the accuracy of the report submitted under this section.

SEC. 605—TECHNICAL CLARIFICATION

Current law

Section 8111 of title 38, United States Code, requires the Secretary and the Secretary of Defense to enter into agreements and contracts for the mutually beneficial sharing of health care resources and establishes a fund, known as the ''DOD-VA Health Care Sharing Incentive Fund'' to provide incentives to enter into such sharing initiatives.

House bill

Section 6 of H.R. 4231 would make the established DOD-VA Health Care Sharing Incentive Fund available for any purpose authorized by section 8111.

Senate bill

The Senate Bills contain no comparable provision.

Compromise agreement

Section 605 of the Compromise Agreement follows the House language.

Mr. SMITH of New Jersey. Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. STEARNS), the author of the law, the Millennium Health Care Act, which has made a tremendous difference on behalf of our seniors who are veterans who need long-term health care.

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, I thank the distinguished chairman of the Committee on Veterans' Affairs, and also I want to thank the gentleman from Connecticut who chairs the Subcommittee on Health for what an outstanding job he has done, having served as the chairman of that committee with the very, very good staff that he has. I think it is a credit to him what we are accomplishing.

I think all of my colleagues know that Florida has one of the largest growing populations of veterans. So many of us in Florida have to be particularly sensitive. We need new facilities down there. That is why I am very supportive of H.R. 3936, the Veterans Health Programs Improvement Act. I especially appreciate that it incorporates provisions of H.R. 4768, the Facilities Management Act of 2004, of which I was an original cosponsor. I thank the chairman for including that in H.R. 3936. This will authorize projects which the CARES (Capital Asset Realignment for Enhanced Services) Commission recommended to the Secretary of Veterans Affairs. He based his recommendations last May upon that, and that is included in this bill.

Mr. Speaker, under CARES, the VA reviewed all of its facilities systematically to consider where resources might be reallocated for optimal service to veterans. I think the veterans should realize that this was a systematic study. As more veterans have relocated to the Southeast over the years, it appears the VA has insufficient clinic room in the Southeast, particularly in my State of Florida. Accordingly, the majority of the leases which this legislation would authorize are facilities to be located in the South. The aim has been to match the assets with the veterans, and this bill does just that. Florida, as we know, has the second largest veterans population and the number one oldest.

Obviously, I am pleased to see a lease for a regional health care facility in South Marion County, my home county, Summerfield, Florida. The plans are for this clinic to offer comprehensive services to veterans, including audiology, which is very important; ophthalmology; dermatology, particularly in Florida; minor surgery; and complete imaging services. It is going to be housed in a 75,000-square-foot building and provide more services and greater resources for the veterans than the existing VA outpatient clinics that we have throughout my congressional district. Even better, while this clinic is predicted to be opened in the summer of 2007, appropriations willing, the generous, resourceful people of north central Florida have indeed offered the VA the use of free space for an interim clinic, so that should expedite it. So our ever-increasing veterans population can see immediate relief for their long health-care waits in the winter when they come down will be decreased, and this more comprehensive specialty clinic which the act authorizes will be built and in the long run will help everybody. I am very enthusiastically supporting this bill.

I want to thank both the Democrats and Republicans on the Committee on Veterans' Affairs and particularly the gentleman from Connecticut (Mr. SIMMONS) and the gentleman from New Jersey (Mr. SMITH) for their support.

Mr. RODRIGUEZ. Mr. Speaker, I yield 4½ minutes to the gentleman from California (Mr. FILNER), a member of the Committee on Veterans' Affairs and an activist in pushing forward on issues regarding veterans.

Mr. FILNER. Mr. Speaker, as a member of the VA Subcommittee on Health, I also rise in support of H.R. 3936 which includes, as we have heard, a lot of provisions to enhance services to our Nation's veterans. We have thanked the gentleman from New Jersey (Mr. SMITH), the gentleman from Illinois (Mr. EVANS) and the gentleman from Connecticut (Mr. SIMMONS).

I would particularly like to just thank the gentleman from Texas (Mr. RODRIGUEZ), the ranking member, for his service. I always say, when I get to the committee meetings, ''Ciro, you're my hero.'' The gentleman from Texas, for the 8 years he has been here, has fought steadfastly for his veterans not only in San Antonio but in the United States as a whole. He has done a tremendous amount for health care for our veterans in this Nation, and we thank him for his service. We are going to miss him.

One of the important provisions of this bill is to set up a pilot program to study new and innovative ways to improve the recruitment and retention of nurses at the VA. We all know about the shortage of nurses in our Nation, and we cannot rely on the old methods of recruitment. The use of online technology, for example, can be a valuable tool in finding nurses who are interested in serving the country through their work at a VA medical facility.

Likewise, we have to find ways to keep the nurses that we recruit. A second bill that is before us after this has a provision in fact for alternative work schedules for nurses. Allowing nurses to work these flexible hours to accommodate personal and family needs is a sure way to improve their lives and to encourage them to continue working at the VA center. In addition, this bill provides payments to States to assist State veterans homes in their hiring and retention of nurses.

I think we all know that funding for grants is vital for homeless veterans. That program will be authorized in this bill at a level of $99 million, an increase of $24 million. Although we all know that even more funding is needed to assist the homeless veterans of our Nation, this authorization is a welcome increase. Homelessness among veterans is a national disgrace. I know we are all firmly behind the gentleman from New Jersey's goal of eliminating chronic homelessness within the veterans population in 10 years. This bill will help us reach that goal.

The bill also gives permanent authority to the VA Secretary to continue the military sexual trauma counseling program that was established in 1992. As we have heard, this program provides counseling and treatment for the men and women who have experienced sexual trauma or harassment while in the military service. Again, the gentleman from Texas was a major supporter of this program, and we thank him for his leadership once again.

Funding to open several new outpatient clinics is included in this bill, including two in San Diego County, a portion of which I represent. The VA's move to open clinics near veterans' homes has been overwhelmingly successful.

I will also continue work for a full outpatient health clinic in Imperial

County, which is also in my congressional district.

I should add that, as we look at the ways we fund outpatient clinics, the formulas used involve only population. We ought to also, I think, include ''isolation'' of a county or an area because that is also important, not just the numbers.

These are a few of the provisions in H.R. 3936. Health care of our veterans has to be a priority all the time but especially at this time when we have so many active duty soldiers fighting for this Nation. Whether they are from World War II or from the present conflicts in Afghanistan and Iraq, they are looking to us to meet their needs. Morale in active duty depends on how we are going to treat our soldiers when they come home, so I hope everyone supports H.R. 3936.

Mr. SMITH of New Jersey. Mr. Speaker, I yield 3½ minutes to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Speaker, I first want to thank the gentleman from New Jersey (Mr. SMITH) for his leadership and advocacy on behalf of veterans. No one has worked harder for veterans than he has. I appreciate his commitment not only on this bill but across the board in working to improve veterans health care and the benefits for veterans in the United States. I also want to specifically thank John Bradley on the gentleman from New Jersey's committee staff for his willingness to work with my staff on matters of concern to veterans in my district.

The bill before us contains many important provisions related to veterans health care and facilities management. Particularly, section 414 is of specific interest to veterans in my district, and I appreciate the inclusion of this language to force additional reporting to Congress as far as informing us of changes or closure of veterans hospitals.

In May of this year, Secretary Principi issued his decision on the CARES Commission recommendations for veterans health care. Among the slated changes was a mission change for the Fort Wayne veterans hospital located in my district. The decision called for closure of the hospital's inpatient beds and a transfer of those patients to either a community hospital in the local area or the Indianapolis veterans hospital. Fort Wayne is the largest veterans hospital and city in the United States affected by this bill. It is the second largest city in Indiana. The northern Indiana hospital covers an area larger than 2 million people who live 2 to 4 hours from Indianapolis and have no desire to go to Indianapolis, especially for continuing outpatient care; or for some inpatient care; or far away from their doctors where they have to get motels, where their spouses have to come, far away from their families, where their children will not visit them. They have no interest in this process.

Fort Wayne is one of the top military recruiting areas in the United States. In addition, our Guard and Reserve units are regularly serving on the front lines. Currently, I have a Reserve unit of over 200 men and women in Afghanistan for a year. I just had an Air Guard unit return to Fort Wayne from the Middle East. I have another large Reserve unit that just returned from a year down in Guantanamo. This spring, I had an Army Guard unit of 700 return from 14 months in Iraq. None of this was considered in the CARES Commission report.

In Congress, we are asked to repeatedly support, which I support as well, actions in Afghanistan, actions in Iraq and other parts of the world. But we cannot ask men and women in our Guard and Reserve to repeatedly be called up and then not have health care in the districts that they live in.

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The CARES Commission assumed retirement communities, and where the military bases were, were where the future demand was going to be. But if we are going to use the Guard and Reserve in the way we are using them, we are going to provide them health care because if they are on the frontline in combat, they are going to be treated like other military personnel. And if they get called up a second time and third time around, the health care system is going to be revolutionized in the United States, and these people do not retire in Florida. They do not live there. They do not go where the bases are. They live in the communities they work in, in the Guard and the Reserve. And we have to factor this in as we look at the health care system.

Obviously, population shifts have occurred. Obviously, modernization is needed in our veterans hospitals. Obviously, outpatient services are the growing category in all kinds of health care, and we do not need more input. But what I fear when we look at the obvious trends that are occurring is, this is a back-door way to actually reduce benefits for many veterans and people in the Guard and Reserve in areas where they have been loyal patriotic Americans risking and dying, as many have in my district already in these wars, and they do not deserve to have their health care diminished dramatically.

Mr. RODRIGUEZ. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WATERS).

Ms. WATERS. Mr. Speaker, I would like to thank my colleagues on both sides of the aisle: The gentleman from New Jersey (Chairman SMITH); the gentleman from Connecticut (Mr. SIMMONS), subcommittee chairman; the gentleman from Illinois (Mr. EVANS), our ranking member; and the gentleman from Texas (Mr. RODRIGUEZ), ranking member of the subcommittee. They have done a fabulous job in putting together this legislation.

And this is a good day for veterans. It is a good day for veterans because, again, we are beginning to address some of the issues that we should have addressed a long time ago. Let me just say the gentleman from Texas (Mr. RODRIGUEZ) has done a very wonderful job. I am very proud of the work he has done, and I really do commend him to the care and attention that he has given.

And to the gentleman from Illinois (Mr. EVANS), I served with the gentleman from Illinois (Mr. EVANS) when I first came to the House, and I had the opportunity even to vote for him to be Chair. Sonny Montgomery has never forgiven me. But he is the best advocate the veterans have ever had, and I appreciate him each and every day.

Mr. Speaker, this bill is important for a number of reasons. Someone mentioned earlier that homelessness among the veterans of this country is a disgrace, and it really is. I was at the U.S. Vets again on Veterans Day, and that program fed over 600 or 700 veterans off the street who were homeless. Some of them were fortunate enough to be in the program; others just off the street who were fed that day. But any place that one goes in America and particularly in our cities, when they go to the areas where the homeless congregate, whether they are in the downtowns or wherever they are, disproportionately those will be veterans. So this bill increases the overall authorization for the Grant and Per Diem Homeless Veterans Assistance Program from $75 million to $99 million in funding year 2005, and I hope that each year it will continue to go up.

It is a good bill. It has a lot of good things that are covered in the bill. And so I am pleased that I am here to support it, and I would ask my colleagues to do so.

Mr. SMITH of New Jersey. Mr. Speaker, I reserve the balance of my time.

Mr. RODRIGUEZ. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. SOLIS).

Ms. SOLIS. Mr. Speaker, I would also like to rise in support of the Veterans Health Program Improvement Act and to the gentleman from Texas (Mr. RODRIGUEZ), the distinguished manager of this particular legislation, who has been a strong advocate for many years on the health care of our veterans.

I would also like to recognize the gentleman from Illinois (Mr. EVANS), the ranking Democrat on this committee, also and thank him for allowing me the opportunity to speak.

As a Member here, this is now going on my third term. But L.A. County in the area that I represent has one of the largest concentrations of veterans, a large number of Vietnam veterans, but in particular, many that are now serving in Iraq and Afghanistan.

And I am very delighted to see that there has been an extension of the sexual trauma counseling program, and this has been made permanent, and I would like to commend those that worked on this in particular because this has been a subject for the Women's

Caucus. We actually had an informal hearing here and brought forward individuals to talk to us about how we could remedy this problem. It is something we have to work on, and sexual assault in the military is something that we all know is unacceptable. The counseling program is one step towards helping victims access services that they deserve. And studies, as we know, have shown that three-fourths of the female veterans who are raped did not report the incident to a ranking officer. Many did not know how to, and some even thought that rape was somehow expected in the military. Since August of 2002 until November 1 of this year, there has been an estimated 261 cases of sexual assault in Iraq, Kuwait, Afghanistan and Bahrain.

We must enforce a zero-tolerance policy within the Armed Forces and protect all of our veterans, women and men, from having to cope with these injustices. And I urge the Congress to support this piece of vital legislation and also want to thank those who worked on this legislation to increase the health care services for our veterans.

Mr. RODRIGUEZ. Mr. Speaker, I yield myself such time as I may consume.

Let me say that this particular piece of legislation is extremely important. I know, as has been mentioned, the importance of the number of veterans that are still estimated to be homeless, some 299,000 veterans out there that sleep under the bridges, and I know that our efforts in this area will help begin to continue to decrease the number of those homeless veterans that are out there.

According to the VA, 45 percent of the homeless veterans also suffer from mental health disorders. We know the importance of coming forth on post-traumatic stress disorder and how critical that is. And I also want to just emphasize how key and how important it is for the sexual trauma situations where we have improved in increasing the number of women in the military, and as we do that, we need to make sure that we have a good safe place for a work environment where they can feel comfortable in addition to the services that are needed.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise as a strong supporter of H.R. 3936 the Veterans Health Programs Improvement Act of 2004 which would increase the authorization of appropriations for grants to benefit homeless veterans, would improve programs for management and administration of veterans' facilities and health care programs. I want to thank Chairman SMITH and Ranking Member EVANS for bringing this necessary piece of legislation before this entire body.

Veterans are some of America's most valued members of society. These are people who served our Nation in a time of need, people who risked their lives to protect our own. Yet, it pains me to say that many of these same veterans who fought so bravely and risked so much in lands far abroad have come back to their nation and are now homeless. The problem of homeless veterans is far more prevalent than we would like to believe. About one-third of the entire adult homeless population has served their country in the Armed Services. On any given day, as many as 250,000 veterans, both male and female, are living on the streets or in shelters, and perhaps twice as many experience hopelessness at some point during the course of a year. Many other veterans are considered near homeless or at risk because of their poverty, lack of support from family and friends, and dismal living conditions in cheap hotels or in overcrowded or substandard housing.

This legislation is necessary not only because this problem is so devastating and prevalent, but also because homeless veterans have special needs that are unique from those faced by the rest of the homeless population. Almost all homeless veterans are male, with three percent being female, the vast majority are single, and most come from poor, disadvantaged backgrounds. Homeless veterans tend to be older and more educated than homeless non-veterans. But similar to the general population of homeless adult males, about 45% of homeless veterans suffer from mental illness and slightly more than 70% suffer from alcohol or other drug abuse problems. Roughly 56% are African American or Hispanic.

I believe that the Veterans Health Programs Improvement Act will help make an impact in helping homeless veterans and ensuring that they have a viable future. This legislation has a number of important provisions, but in my mind none is more important than the issue of homeless veterans. If we cannot even provide our brave veterans with basic necessities then where are we as a Nation? Our Nation's veterans did not risk their lives abroad so that they could come home and feel a cold shoulder. We must all have outrage that so many of our Nation's veterans live this way; only then can we find a way to correct this injustice.

Mr. REYES. Mr. Speaker, I rise today in support of H.R. 3936, the Veterans Health Programs Improvement Act of 2004. I would like to thank the sponsors of this legislation, Chairman CHRIS SMITH and Ranking Member LANE EVANS for their work to bring it through the House Veterans Affairs Committee and to the floor expeditiously.

Among other important actions, H.R. 3936 would provide the needed funding to assist our homeless veterans. As a Vietnam veteran and Member of Congress, I know the importance of addressing and appropriately funding programs to end homelessness among our veteran population. I feel this legislation is a step in the right direction to meet this need.

Sadly, today's homeless veteran population are men and women who have resorted to living out in the streets of the very same country they committed to serve. In addition, nearly half of this population consists of veterans who served with me in Vietnam.

Mr. Speaker, I can't stress enough the importance of this legislation, especially at a time of conflict that is increasing the veteran population. We should not forget the sacrifices made by our Nation's veterans. Instead, we need to uphold our promise to care for those who have answered the call to duty.

Mr. Speaker, I strongly urge my colleagues to support the passage of this important bill.

Mr. BEAUPREZ. Mr. Speaker, I rise today in support of H.R. 3936, the Veterans Health Programs Improvement Act of 2004. Today, more than ever, it is imperative that we address the benefits we provide to our Nation's veterans. Over the past few decades, the needs of veterans have evolved, and it is incumbent upon us to ensure the benefits they have so dutifully earned will sufficiently meet those changing needs.

Included in this bill is language to allow the Department of Veterans Affairs to begin negotiations with the University of Colorado for the land on which to build a new, state-of-the-art veterans medical facility on the Fitzsimons Campus in Aurora, CO. This landmark veterans hospital will be capable of providing services that were previously unthinkable in many of the unequipped, outdated VA hospitals of the past.

Through a collaboration between the VA, the DOD, and the University of Colorado, veterans in the Rocky Mountain region will gain access to a higher quality of health care made possible thanks to 21st century innovations and the synergy of this unique partnership.

Mr. Speaker, I applaud the efforts of everyone involved in bringing this bill to the floor for a vote today. It is a paramount piece of legislation not only for the veterans in my district, but for all of our Nation's veterans, and I strongly support its intent.

Mr. RODRIGUEZ. Mr. Speaker, I yield back the balance of my time.

Mr. SMITH of New Jersey. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. TERRY). The question is on the motion offered by the gentleman from New Jersey (Mr. SMITH) that the House suspend the rules and concur in the Senate amendments to the bill, H.R. 3936.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendments were concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of New Jersey. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3936.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE PERSONNEL ENHANCEMENT ACT OF 2004

Mr. SIMMONS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2484) to amend title 38, United States Code, to simplify and improve pay provisions for physicians and dentists and to authorize alternate work schedules and executive pay for nurses, and for other purposes.

The Clerk read as follows:

S. 2484

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 ''Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004''.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 3. SIMPLIFICATION AND IMPROVEMENT OF GRADE AND PAY PROVISIONS FOR PHYSICIANS AND DENTISTS.

(a) SIMPLIFICATION OF GRADES AND GRADE REQUIREMENTS.—(1) Subsection (b) of section 7404 is amended—

(A) by striking ''(1)'' after ''(b)'';

(B) in the Physician and Dentist Schedule, by striking the items relating to the grades and inserting the following:

''Physician grade.

''Dentist grade.''; and

(C) by striking paragraph (2).

(2) Subsection (a) of such section is amended by adding at the end the following: ''The pay of physicians and dentists serving in positions to which an Executive order applies under the preceding sentence shall be determined under subchapter III of this chapter instead of such Executive order.''.

(b) SIMPLIFICATION AND IMPROVEMENT OF PAY AUTHORITIES.—Subchapter III of chapter 74 is amended to read as follows:

''SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS

''§ 7431. Pay

''(a) ELEMENTS OF PAY.—Pay of physicians and dentists in the Veterans Health Administration shall consist of three elements as follows:

''(1) Base pay as provided for under subsection (b).

''(2) Market pay as provided for under subsection (c).

''(3) Performance pay as provided under subsection (d).

''(b) BASE PAY.—One element of pay for physicians and dentists shall be base pay. Base pay shall meet the following requirements:

''(1) Each physician and dentist is entitled to base pay determined under the Physician and Dentist Base and Longevity Pay Schedule.

''(2) The Physician and Dentist Base and Longevity Pay Schedule is composed of 15 rates of base pay designated, from the lowest rate of pay to the highest rate of pay, as base pay steps 1 through 15.

''(3) The rate of base pay payable to a physician or dentist is based on the total number of the years of the service of the physician or dentist in the Veterans Health Administration as follows:

''For a physician or dentist with total service of:	**The rate of base pay is the rate payable for:**
two years or less	step 1
more than 2 years and not more than 4 years	step 2
more than 4 years and not more than 6 years	step 3
more than 6 years and not more than 8 years	step 4
more than 8 years and not more than 10 years	step 5
more than 10 years and not more than 12 years	step 6
more than 12 years and not more than 14 years	step 7
more than 14 years and not more than 16 years	step 8
more than 16 years and not more than 18 years	step 9
more than 18 years and not more than 20 years	step 10
more than 20 years and not more than 22 years	step 11
more than 22 years and not more than 24 years	step 12
more than 24 years and not more than 26 years	step 13
more than 26 years and not more than 28 years	step 14
more than 28 years	step 15.

''(4) At the same time as rates of basic pay are increased for a year under section 5303 of title 5, the Secretary shall increase the amount of base pay payable under this subsection for that year by a percentage equal to the percentage by which rates of basic pay are increased under such section for that year.

''(c) MARKET PAY.—One element of pay for physicians and dentists shall be market pay. Market pay shall meet the following requirements:

''(1) Each physician and dentist is eligible for market pay.

''(2) Market pay shall consist of pay intended to reflect the recruitment and retention needs for the specialty or assignment (as defined by the Secretary) of a particular physician or dentist in a facility of the Department of Veterans Affairs.

''(3) The annual amount of the market pay payable to a physician or dentist shall be determined by the Secretary on a case-by-case basis.

''(4)(A) In determining the amount of market pay for physicians or dentists, the Secretary shall consult two or more national surveys of pay for physicians or dentists, as applicable, whether prepared by private, public, or quasi-public entities in order to make a general assessment of the range of pays payable to physicians or dentists, as applicable.

''(B)(i) In determining the amount of the market pay for a particular physician or dentist under this subsection, and in determining a tier (if any) to apply to a physician or dentist under subsection (e)(1)(B), the Secretary shall consult with and consider the recommendations of an appropriate panel or board composed of physicians or dentists (as applicable).

''(ii) A physician or dentist may not be a member of the panel or board that makes recommendations under clause (i) with respect to the market pay of such physician or dentist, as the case may be.

''(iii) The Secretary should, to the extent practicable, ensure that a panel or board consulted under this subparagraph includes physicians or dentists (as applicable) who are practicing clinicians and who do not hold management positions in the medical facility of the Department at which the physician or dentist subject to the consultation is employed.

''(5) The determination of the amount of market pay of a physician or dentist shall take into account—

''(A) the level of experience of the physician or dentist in the specialty or assignment of the physician or dentist;

''(B) the need for the specialty or assignment of the physician or dentist at the medical facility of the Department concerned;

''(C) the health care labor market for the specialty or assignment of the physician or dentist, which may cover any geographic area the Secretary considers appropriate for the specialty or assignment;

''(D) the board certifications, if any, of the physician or dentist;

''(E) the prior experience, if any, of the physician or dentist as an employee of the Veterans Health Administration; and

''(F) such other considerations as the Secretary considers appropriate.

''(6) The amount of market pay of a physician or dentist shall be evaluated by the Secretary not less often than once every 24 months. The amount of market pay may be adjusted as the result of an evaluation under this paragraph. A physician or dentist whose market pay is evaluated under this paragraph shall receive written notice of the results of such evaluation in accordance with procedures prescribed under section 7433 of this title.

''(7) No adjustment of the amount of market pay of a physician or dentist under paragraph (6) may result in a reduction of the amount of market pay of the physician or dentist while in the same position or assignment at the medical facility of the Department concerned.

''(d) PERFORMANCE PAY.—(1) One element of pay for physicians and dentists shall be performance pay.

''(2) Performance pay shall be paid to a physician or dentist on the basis of the physician's or dentist's achievement of specific goals and performance objectives prescribed by the Secretary.

''(3) The Secretary shall ensure that each physician and dentist of the Department is advised of the specific goals or objectives that are to be measured by the Secretary in determining the eligibility of that physician or dentist for performance pay.

''(4) The amount of the performance pay payable to a physician or dentist may vary annually on the basis of individual achievement or attainment of the goals or objectives applicable to the physician or dentist under paragraph (2).

''(5) The amount of performance pay payable to a physician or dentist in a fiscal year shall be determined in accordance with regulations prescribed by the Secretary, but may not exceed the lower of—

''(A) $15,000; or

''(B) the amount equal to 7.5 percent of the sum of the base pay and the market pay payable to such physician or dentist in that fiscal year.

''(6) A failure to meet goals or objectives applicable to a physician or dentist under paragraph (2) may not be the sole basis for an adverse personnel action against that physician or dentist.

''(e) REQUIREMENTS AND LIMITATIONS ON TOTAL PAY.—(1)(A) Not less often than once every two years, the Secretary shall prescribe for Department-wide applicability the minimum and maximum amounts of annual pay that may be paid under this section to physicians and the minimum and maximum amounts of annual pay that may be paid under this section to dentists.

''(B) The Secretary may prescribe for Department-wide applicability under this paragraph separate minimum and maximum amounts of pay for a specialty or assignment. If the Secretary prescribes separate minimum and maximum amounts for a specialty or assignment, the Secretary may establish up to four tiers of minimum and maximum amounts for such specialty or assignment and prescribe for each tier a minimum amount and a maximum amount that the Secretary determines appropriate for the professional responsibilities, professional achievements, and administrative duties of the physicians or dentists (as the case may be) whose pay is set within that tier.

''(C) Amounts prescribed under this paragraph shall be published in the Federal Register, and shall not take effect until at least 60 days after the date of publication.

''(2) Except as provided in paragraph (3) and subject to paragraph (4), the sum of the

total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may not be less than the minimum amount, nor more than the maximum amount, applicable to specialty or assignment of the physician or dentist under paragraph (1).

''(3) The sum of the total amount of the annual rate of base pay payable to a physician or dentist under subsection (b) and the market pay determined for the physician or dentist under subsection (c) may exceed the maximum amount applicable to the specialty or assignment of the physician or dentist under paragraph (1) as a result of an adjustment under paragraph (3) or (4) of subsection (b).

''(4) In no case may the total amount of compensation paid to a physician or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

''(f) TREATMENT OF PAY.—Pay under subsections (b) and (c) of this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

''(g) ANCILLARY EFFECTS OF DECREASES IN PAY.—(1) A decrease in pay of a physician or dentist resulting from an adjustment in the amount of market pay of the physician or dentist under subsection (c) shall not be treated as an adverse action.

''(2) If the pay of a physician or dentist is reduced under this subchapter as a result of an involuntary reassignment in connection with a disciplinary action taken against the physician or dentist, the involuntary reassignment shall be subject to appeal under subchapter V of this chapter.

''(h) DELEGATION OF RESPONSIBILITIES.—The Secretary may delegate to an appropriate officer or employee of the Department any responsibility of the Secretary under subsection (c), (d), or (e) except for the responsibilities of the Secretary under subsection (e)(1).

"§ 7432. Pay of Under Secretary for Health

''(a) BASE PAY.—The base pay of the Under Secretary for Health shall be the annual rate of basic pay for positions at Level III of the Executive Schedule under section 5314 of title 5.

''(b) MARKET PAY.—(1) In the case of an Under Secretary for Health who is also a physician or dentist, in addition to the base pay specified in subsection (a) the Under Secretary for Health may also be paid the market pay element of pay of physicians and dentists under section 7431(c) of this title.

''(2) The amount of market pay of the Under Secretary for Health under this subsection shall be established by the Secretary.

''(3) In establishing the amount of market pay of the Under Secretary for Health under this subsection, the Secretary shall utilize an appropriate health care labor market selected by the Secretary for purposes of this subsection.

''(c) TREATMENT OF PAY.—Pay under this section shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5 and other benefits.

"§ 7433. Administrative matters

''(a) REGULATIONS.—(1) The Secretary shall prescribe regulations relating to the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

''(2) In prescribing the regulations, the Secretary shall take into account the recommendations of the Under Secretary for Health on the administration of this subchapter. In formulating recommendations for the purpose of this paragraph, the Under Secretary shall request the views of representatives of labor organizations that are exclusive representatives of physicians and dentists of the Department and the views of representatives of professional organizations of physicians and dentists of the Department.

''(b) REPORTS.—(1) Not later than 18 months after the Secretary prescribes the regulations required by subsection (a), and annually thereafter for the next 5 years, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the pay of physicians and dentists in the Veterans Health Administration under this subchapter.

''(2) Each report under this subsection shall include the following:

''(A) A description of the rates of pay in effect during the current fiscal year with a comparison to the rates in effect during the fiscal year preceding the current fiscal year, set forth by facility and by specialty.

''(B) The number of physicians and dentists who left the Veterans Health Administration during the preceding fiscal year.

''(C) The number of unfilled physician positions and dentist positions in each specialty in the Veterans Health Administration, the average and maximum lengths of time that such positions have been unfilled, and an assessment of the reasons that such positions remain unfilled.

''(D) An assessment of the impact of implementation of this subchapter on efforts to recruit and retain physicians and dentists in the Veterans Health Administration.

''(3) The first two annual reports under this subsection shall also include a comparison of staffing levels, contract expenditures, and average salaries of physicians and dentists in the Veterans Health Administration for the current fiscal year and for the fiscal year preceding the current fiscal year, set forth by facility and by specialty.''.

(c) INITIAL RATES OF BASE PAY FOR PHYSICIANS AND DENTISTS.—The initial rates of base pay established for the base pay steps under the Physician and Dentist Base and Longevity Pay Schedule provided in section 7431(b) of title 38, United States Code (as added by subsection (b)), are as follows:

Base Pay Step:	Rate of Pay:
1	$90,000
2	$93,000
3	$96,000
4	$99,000
5	$102,000
6	$105,000
7	$108,000
8	$111,000
9	$114,000
10	$117,000
11	$120,000
12	$123,000
13	$126,000
14	$129,000
15	$132,000

(d) EFFECTIVE DATE.—(1) Notwithstanding the 60-day waiting requirement in section 7431(e)(1)(C) of title 38, United States Code (as amended by subsection (b)), pay provided for a physician or dentist under subchapter III of chapter 74 of such title, as amended by subsection (b), shall take effect on the first day of the first pay period applicable to such physician or dentist that begins on or after January 1, 2006.

(2) Pay provided for the Under Secretary for Health under subchapter III of chapter 74 of title 38, United States Code, as amended by this section shall take effect on the first day of the first pay period applicable to the Under Secretary that begins on or after January 1, 2006.

(e) TRANSITION PROVISIONS.—

(1) PHYSICIANS AND DENTISTS.—

(A) PAY.—(i) The amount of the pay payable on and after the date of the enactment of this Act to a physician or dentist in receipt of pay under section 7404 or 7405 of title 38, United States Code, as of the day before such date shall continue to be determined under such section (as in effect on the day before such date) until the effective date that is applicable under subsection (d) to such physician or dentist, as the case may be.

(ii) A physician or dentist appointed or reassigned on or after the date of the enactment of this Act, but before the effective date applicable under subsection (d) to such physician or dentist, shall be compensated in accordance with applicable provisions of section 7404 or 7405 of title 38, United States Code (as in effect on the day before date of the enactment of this Act), until such effective date.

(B) SPECIAL PAY.—(i) A special pay agreement entered into by a physician or dentist under subchapter III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act shall terminate on the date of the enactment of this Act. However, a physician or dentist in receipt of special pay pursuant to such an agreement on that date shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) to such physician or dentist.

(ii) A physician or dentist described in subparagraph (A)(ii) may be paid special pay under applicable provisions of section 7433, 7434, 7435, or 7436 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of the appointment or reassignment of such physician or dentist, as the case may be, and ending on the effective date applicable under subsection (d) to such physician or dentist. However, no special pay agreement shall be required for the payment of special pay under this clause.

(C) TREATMENT OF SPECIAL PAY.—(i) Special pay paid under subparagraph (B) to a physician or dentist during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to such physician or dentist shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act).

(ii) Special pay paid to a physician or dentist under section 7438 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

(D) PRESERVATION OF PAY.—The amount of pay paid to a physician or dentist after the effective date of this Act shall not be less than the amount of pay paid to such physician or dentist on the day before the effective date of this Act while such physician or dentist remains in the same position or assignment.

(2) UNDER SECRETARY FOR HEALTH.—

(A) SPECIAL PAY.—(i) The current special pay agreement entered into by the Under Secretary for Health under subchapters I and III of chapter 74 of title 38, United States Code, before the date of the enactment of this Act shall terminate on the date of the enactment of this Act. However, the Under Secretary shall continue to receive special pay under the terms of such agreement until the effective date that is applicable under subsection (d) to the Under Secretary.

(ii) An individual appointed as Under Secretary for Health on or after the date of the

enactment of this Act and before the effective date applicable under subsection (d) to the Under Secretary shall be paid special pay in accordance with the provisions of sections 7432(d)(2) and 7433 of title 38, United States Code (as in effect on the day before the date of the enactment of this Act), during the period beginning on the date of appointment and ending on such effective date. However, no special pay agreement shall be required for the payment of special pay under this clause.

(B) TREATMENT OF SPECIAL PAY.—Special pay paid under subparagraph (A) during the period beginning on the date of the enactment of this Act and ending on the effective date applicable under subsection (d) to the Under Secretary—

(i) shall be subject to the provisions of paragraphs (1), (2), (4), (5), and (6) of section 7438(b) of title 38, United States Code (as in effect on the day before the date of the enactment of this Act); and

(ii) shall be fully creditable for purposes of computing benefits under chapters 83 and 84 of title 5, United States Code.

(f) CONFORMING AMENDMENTS.—Section 7404 is amended—

(1) in subsection (c), by striking ''special pay'' and inserting ''pay''; and

(2) in subsection (d), by striking ''pay may not be paid'' and all that follows and inserting ''pay for positions for which basic pay is paid under this section may not be paid at a rate in excess of the rate of basic pay authorized by section 5316 of title 5 for positions in Level V of the Executive Schedule.''.

(g) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 74 is amended by striking the items relating to subchapter III and inserting the following new items:

''SUBCHAPTER III—PAY FOR PHYSICIANS AND DENTISTS

''Sec. 7431. Pay.

''Sec. 7432. Pay of Under Secretary for Health.

''Sec. 7433. Administrative matters.''.

SEC. 4. ALTERNATE WORK SCHEDULES FOR REGISTERED NURSES.

(a) IN GENERAL.—(1) Chapter 74 is amended by inserting after section 7456 the following new section:

''§ 7456A. Nurses: alternate work schedules

''(a) APPLICABILITY.—This section applies to registered nurses appointed under this chapter.

''(b) 36/40 WORK SCHEDULE.—(1)(A) Subject to paragraph (2), if the Secretary determines it to be necessary in order to obtain or retain the services of registered nurses at any Department health-care facility, the Secretary may provide, in the case of nurses employed at such facility, that such nurses who work three regularly scheduled 12-hour tours of duty within a work week shall be considered for all purposes to have worked a full 40-hour basic work week.

''(B) A nurse who works under the authority in subparagraph (A) shall be considered a 0.90 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

''(2)(A) Basic and additional pay for a nurse who is considered under paragraph (1) to have worked a full 40-hour basic work week shall be subject to subparagraphs (B) and (C).

''(B) The hourly rate of basic pay for a nurse covered by this paragraph for service performed as part of a regularly scheduled 36-hour tour of duty within the work week shall be derived by dividing the nurse's annual rate of basic pay by 1,872.

''(C) The Secretary shall pay overtime pay to a nurse covered by this paragraph who—

''(i) performs a period of service in excess of such nurse's regularly scheduled 36-hour tour of duty within an administrative work week;

''(ii) for officially ordered or approved service, performs a period of service in excess of 8 hours on a day other than a day on which such nurse's regularly scheduled 12-hour tour of duty falls;

''(iii) performs a period of service in excess of 12 hours for any day included in the regularly scheduled 36-hour tour of duty work week; or

''(iv) performs a period of service in excess of 40 hours during an administrative work week.

''(D) The Secretary may provide a nurse to whom this subsection applies with additional pay under section 7453 of this title for any period included in a regularly scheduled 12-hour tour of duty.

''(3) A nurse who works a work schedule described in this subsection who is absent on approved sick leave or annual leave during a regularly scheduled 12-hour tour of duty shall be charged for such leave at a rate of ten hours of leave for every nine hours of absence.

''(c) HOLIDAY PAY.—A nurse working a work schedule under subsection (b) that includes a holiday designated by law or Executive order shall be eligible for holiday pay under section 7453(d) of this title for any service performed by the nurse on such holiday under such section.

''(d) 9-MONTH WORK SCHEDULE FOR CERTAIN NURSES.—(1) The Secretary may authorize a registered nurse appointed under section 7405 of this title, with the nurse's written consent, to work full time for nine months with 3 months off duty, within a fiscal year, and be paid at 75 percent of the full-time rate for such nurse's grade for each pay period of such fiscal year.

''(2) A nurse who works under the authority in paragraph (1) shall be considered a 0.75 full-time equivalent employee in computing full-time equivalent employees for the purposes of determining compliance with personnel ceilings.

''(3) Work under this subsection shall be considered part-time service for purposes of computing benefits under chapters 83 and 84 of title 5.

''(4) A nurse who works under the authority in paragraph (1) shall be considered a full-time employee for purposes of chapter 89 of title 5.

''(e) NOTIFICATION OF MODIFICATION OF BENEFITS.—The Secretary shall provide each employee with respect to whom an alternate work schedule under this section may apply written notice of the effect, if any, that the alternate work schedule will have on the employee's health care premium, retirement, life insurance premium, probationary status, or other benefit or condition of employment. The notice shall be provided not later than 14 days before the employee consents to the alternate work schedule.

''(f) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section.''.

(2) The table of sections at the beginning of chapter 74 is amended by inserting after the item relating to section 7456 the following new item:

''Sec. 7456A. Nurses: alternate work schedules.''.

(b) POLICY AGAINST CERTAIN WORK HOURS.—(1) It is the sense of Congress to encourage the Secretary of Veterans Affairs to prevent work hours by nurses providing direct patient care in excess of 12 consecutive hours or in excess of 60 hours in any 7-day period, except in the case of nurses providing emergency care.

(2) Not later than one year after the date of the enactment of this Act and every year thereafter for the next two years, the Secretary shall certify to Congress whether or not each Veterans Health Administration facility has in place, as of the date of such certification, a policy designed to prevent work hours by nurses providing direct patient care (other than nurses providing emergency care) in excess of 12 consecutive hours or in excess of 60 hours in any 7-day period.

SEC. 5. NURSE EXECUTIVE SPECIAL PAY.

Section 7452 is amended by adding at the end the following new subsection:

''(g)(1) In order to recruit and retain highly qualified Department nurse executives, the Secretary may, in accordance with regulations prescribed by the Secretary, pay special pay to the nurse executive at each location as follows:

''(A) Each Department health care facility.

''(B) The Central Office.

''(2) The amount of special pay paid to a nurse executive under paragraph (1) shall be not less than $10,000 or more than $25,000.

''(3) The amount of special pay paid to a nurse executive under paragraph (1) shall be based on factors such as the grade of the nurse executive position, the scope and complexity of the nurse executive position, the personal qualifications of the nurse executive, the characteristics of the health care facility concerned, the nature and number of specialty care units at the health care facility concerned, demonstrated difficulties in recruitment and retention of nurse executives at the health care facility concerned, and such other factors as the Secretary considers appropriate.

''(4) Special pay paid to a nurse executive under paragraph (1) shall be in addition to any other pay (including basic pay) and allowances to which the nurse executive is entitled, and shall be considered pay for all purposes, including retirement benefits under chapters 83 and 84 of title 5, and other benefits, but shall not be considered basic pay for purposes of adverse actions under subchapter V of this chapter.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Connecticut (Mr. SIMMONS) and the gentleman from Texas (Mr. RODRIGUEZ) each will control 20 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. SIMMONS).

Mr. SIMMONS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. SIMMONS asked and was given permission to revise and extend his remarks.)

Mr. SIMMONS. Mr. Speaker, today the House considers S. 2484, the Department of Veterans Affairs Personnel Enhancement Act of 2004. This legislation is designed to improve VA's ability to recruit and retain physicians and nurses. The bill represents a compromise agreement between the two bodies and is supported by the administration.

The Department of Veterans Affairs has almost 1,000 vacancies for full-time physicians, particularly specialists. Inadequate salaries are one of the biggest obstacles to filling these physician vacancies. Because VA is not able to hire the physician it needs, it will spend over a billion dollars this year for non-VA physicians to care for veterans under contractual agreements.

Thirteen years have passed since Congress last made changes to the VA

physician and dentist compensation system. Last year, VA submitted a legislative proposal to allow VA to be more competitive in physician recruitment. After receiving that proposal, we worked with our Senate counterparts, the VA and interested organizations to craft the compromise legislation before the House today.

The largest component of physician compensation for most physicians would be fixed in statute and adjusted annually. A second component, market pay, would be determined through an open three-step process. VA's Under Secretary for Health in formulating recommendations on pay to the Secretary would solicit the views of concerned employee representatives and professional organizations. The Secretary would then provide notice in the Federal Register with a 60-day waiting period before adjustments to pay bans would be finalized.

Further, the compromise agreement would require VA to provide each physician and dentist written notice of any decisions made by the VA concerning their pay.

This compromise agreement would also provide a third component of compensation that addresses the issue of performance pay for physicians and dentists. Any award of performance pay would be made on the basis of an individual physician's or dentist's achievement of specific goals agreed upon in advance. This provision is very important because it would ensure that performance payments serve as incentives for good performance rather than as penalties for lack of performance.

The compromise we are considering today is supported by the VA employee representatives and professional organizations and is a very much needed change that should enhance health care for our veterans. The compromise agreement also includes provisions that would ensure proper retirement credits to physicians and dentists during the transition from the current pay system to the new system. It provides a total VA compensation paid to a physician or dentist in a given year would not exceed the salary of the President, and the compromise agreement would also make the new compensation system effective the first pay period following January 1, 2006.

Our compromise agreement includes several provisions from H.R. 4231, which was a bill I introduced earlier this year, to authorize alternative tours of duty for VA registered nurses. This bill passed the House on September 30, 2004, and the provisions are intended to make VA's scheduling of nurse duty hours more flexible and more family-friendly while enabling VA nurses to pursue their careers in VA health care.

Mr. Speaker, this is a good bill that ought to pass.

Mr. Speaker, I reserve the balance of my time.

Mr. RODRIGUEZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 2484, the Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004. I am pleased that this bill is the result of the collaboration of the House and Senate Committee on Veterans' Affairs' staff working with the representatives from the VA, the National Association of VA Physicians and Dentists, and the American Federation of Government Employees.

This legislation has been a long time coming and provides much needed updated improvements in how the VA physicians and dentists are compensated. The VA's current system of pay for physicians and dentists has not been modified since 1991 and has not kept up with the compensation for doctors in the private and academic sectors. According to the testimony from the VA in June of this year, the effects of the noncompetitive pay and benefits are reflected in the dramatic increases in the VA's reliance on expensive, scarce medical specialist contracts and fee-based care.

This bill establishes two components that make up the physician's total salary and also incorporates additional performance pay.

□ 1530

Under this new system, base pay for doctors is comprised of 15 steps.

Physicians automatically move up one step every 2 years, so a doctor's base pay is based on the number of years he or she has worked in the VA health care system. Step increases in base pay are another way of rewarding the VA doctors for their long-term commitment to caring for our veterans.

The second component of this particular bill is market pay as set by the Secretary of Veterans Affairs and will be determined according to geographic areas, specialty or assignment, board certifications, and experience.

The VA will rely on national surveys to establish market pay comparable bands, which are then to be published in the Federal Register. Market pay helps the VA achieve comparability with the private sector.

Performance pay makes up the final tier of this new system and is a result of the VA physicians' annual performance reviews measuring achievement as well as attainment of VA ''corporate'' goals. This bipartisan bill also contains special pay for the VA nurse executives, a bonus of between $10,000 and $25,000, which is based on several descriptive factors.

This will also help further the VA's ability to recruit and retain highly qualified nurse executives and adds incentive for those nurses to move into managerial positions within the VA health care system.

Since one of the major causes of dissatisfaction in the nursing workforce is inflexible work schedules, a more flexible work schedule for VA nurses is also provided in this piece of legislation.

This new system of pay for VA physicians and dentists and the provisions for the nurses greatly improves the VA's ability not only to recruit, but also to retain top-quality doctors and nurses to care for our veterans.

I ask my colleagues to join me in supporting this piece of legislation.

I also want to take this opportunity to thank the gentleman from Connecticut (Mr. SIMMONS) for his leadership in this area and also personally thank him for his kind words. It has been rewarding working with him on this particular piece of legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. SIMMONS. Mr. Speaker, I yield such time as he may wish to consume to the gentleman from New Jersey (Mr. SMITH), my friend and colleague and the distinguished chairman of the Committee on Veterans' Affairs.

Mr. SMITH of New Jersey. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, after 22 years on the House Committee on Veterans' Affairs, Pat Ryan, our chief counsel and staff director, is retiring from government service. I want to take this opportunity to pay tribute to his extraordinary career and his many, many accomplishments.

For over 2 decades, Pat Ryan has made tremendous contributions to many of the most important new veterans laws that have been approved by Congress. He worked on numerous bills to expand services for aging veterans and those in need of long-term health care.

He was instrumental in helping to establish domiciliaries for homeless veterans and was the principal drafter of legislation to authorize VA's transitional housing guarantee program to benefit homeless veterans. Pat played an essential role in helping to establish the Department of Veterans Affairs and in creating the Court of Appeals for Veterans Claims.

Pat has been deeply involved in numerous successful committee initiatives that expanded and strengthened programs to assist surviving spouses and children of servicemembers killed in action or who later died of service-related causes. Over the past 20 years, Pat has helped to increase the Montgomery GI Bill benefit for qualified veterans from $300 per month when he joined the committee to over $1,000 per month today.

Using his budget expertise gained from 10 years working for the VA early in his career, Pat has been an extraordinarily valuable person in helping the Congress to ensure that the VA's budget has been both appropriate and responsive and that all funds are well spent. His extensive knowledge of the law and the inner workings of the VA greatly aided our committee in its work to create exemplary oversight of veterans programs.

From managing the committee's professional staff, to drafting legislation, to overseeing VA's programs and services, Patrick Ryan is the consummate

professional. I consider him to be a great friend and a great partner in all that this committee has accomplished during our time together, and it has been an honor to work side by side with him.

On a personal level, Pat Ryan has lived his life in a way that has truly made a difference and has walked to the beat of our Lord's drummer when He said whatever you do to the least of my brethren, you do likewise to me. For Pat, that means always looking out for the little guy. I have such respect and admiration for that character trait, and it is very strong in Patrick Ryan. What motivates him more than anything else, and it is first and foremost in his life, is his love for his wife, Kathy, and their three children: Kerry, Dan, and Julia. For Pat Ryan, family always comes first.

Pat is ever proud of his father who has passed, William Everest Ryan, who was a proud Marine and who saw combat during World War II in the South Pacific where he was wounded and won the Purple Heart award. He later joined the Justice Department while continuing in the Marine reserves as an officer in the JAG, retiring with the rank of colonel in 1964. Pat Ryan has spent his entire career in Congress, defending the same values his father defended on the battlefield and in the courtroom.

Mr. Speaker, on behalf of his colleagues in the House and members of the Committee on Veterans' Affairs who know and admire him so much, and other Members who have known and worked with him, and on behalf of millions of veterans who have benefited from his work, but have never known his name, I want to thank Pat Ryan for a distinguished career of faithful public service. It has been an honor to work with him.

Mr. RODRIGUEZ. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. EVANS), our ranking member.

Mr. EVANS. Mr. Speaker, I rise in support of S. 2484, the Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004.

There are now over 14,000 physicians and dentists who work in the VA health care system. Unfortunately, the pay system that the VA uses to pay our doctors has not been updated since 1991, and it is not helping the VA's efforts to recruit and retain high-quality providers for our veterans.

The current system is very complex and does not offer the flexibility needed to respond to the changes of competitive markets, especially for the highest paid subspecialties.

This legislation offers the VA the opportunity to award its physicians and dentists for tenure within the VA health care system, and even adds a performance pay section which acts as a bonus for those doctors who achieved specific goals and performance objectives outlined by the Secretary of Veterans Affairs.

Thanks to the efforts of the Senate and House Committee on Veterans' Affairs, we will have legislation that will greatly enhance the VA's ability to recruit and retain high-quality physicians and dentists.

I support this legislation, and I ask my colleagues to do the same.

Mr. SIMMONS. Mr. Speaker, I yield myself such time as I may consume.

I want to thank Chairman SPECTER and Ranking Member GRAHAM of the Senate Committee on Veterans' Affairs for their diligence on this important piece of legislation. Again, I thank our very distinguished chairman, the gentleman from New Jersey (Mr. SMITH); our committee ranking member, the gentleman from Illinois (Mr. EVANS); and my colleague and ranking member on the Subcommittee on Health Care, the gentleman from Texas (Mr. RODRIGUEZ), for all of their hard work on bringing this legislation to fruition.

I would also like to recognize the Senate Committee on Veterans' Affairs Staff Director Bill Tuerk and Bill Cahill, health counsel to the Senate committee, without whose hard work this compromise simply would not have been possible. Finally, I want to acknowledge the excellent staff work conducted by our own committee staff, Pat Ryan, our committee chief counsel; staff director Kingston Smith, Jeannie McNally, John Bradley, and Dolores Dunn of the committee staff.

Finally, I would like to associate myself with the remarks made by the chairman on Pat Ryan. I had the honor a number of years ago to serve as staff director of a committee, regrettably on the Senate side; but what I learned from those 4 years was how difficult it is sometimes to accommodate the differing views of Members, all of whom argue in good faith for their points of view; and observing Pat over the 4 years that I have served on this committee, I think he has done an excellent job. He has been very professional. He has kept his cool under some difficult circumstances. I wish him all the best in his future endeavors.

Again, Mr. Speaker, I urge my colleagues to support this reform.

Mr. RODRIGUEZ. Mr. Speaker, I yield myself such time as I may consume.

Let me take this opportunity also just to thank the gentleman from New Jersey (Chairman SMITH) for his leadership and the bipartisan manner in which we have conducted this piece of legislation and during the last 8 years. I want to personally thank the gentleman from New Jersey (Chairman SMITH) for his hard work and for reaching out on behalf of all veterans in this country. I also wanted to take this opportunity to thank the gentleman from Connecticut (Mr. SIMMONS), whom I have enjoyed working with, and I want to personally thank him also for all his hard work and for coming down to San Antonio also.

In the same light, I also want to thank Pat Ryan. I know that a lot of times the Members get all the credit and the staff does all the work. And I do want to thank the staff from both sides of the aisle and thank them for their hard work in a bipartisan manner.

Mr. Speaker, I also want to take this opportunity to thank our ranking member, the gentleman from Illinois (Mr. EVANS). From the very beginning when I first got elected, he came forth to my district in San Antonio and was there with my veterans, one of the first times; and he has helped to educate me on a lot of the issues in my district. So I want to personally thank the gentleman from Illinois (Mr. EVANS) for the opportunity of working with him, and thank him, as well as all the other veterans here for their service to our country.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today as a strong supporter of S. 2484 the Department of Veterans Affairs Health Care Personnel Enhancement Act of 2004 which received unanimous approval in the Senate and is now before this body for passage. The Veterans Affairs Health Care Personnel Enhancement Act would set forth important new pay provisions for physicians and dentists employed by the Veterans Health Administration.

These physicians and dentists represent the lifeblood of the services provided by the Veterans Health Administration. There are over 26,550,000 veterans in the United States, the great majority of whom rely upon these services to maintain a healthy standard of living. In the 18th Congressional District alone there are more than 38,000 veterans and they make up almost ten percent of the district's civilian population over the age of 18. These veterans rely upon the great services offered at the Michael E. DeBakey VA Medical Center in Houston. Of course any great medical facility is only as good as its health care personnel, which is why this legislation is so necessary to correct any pay inequities.

The Veterans Affairs Health Care Personnel Enhancement Act includes three different components. The first calls for base pay that is uniform nationwide; which will ensure that entry level personnel will not be taken advantage and paid lower wages than their counterparts in other facilities. The second component institutes market pay that varies based on geographic area, specialty, assignment, personal qualifications, and individual experience. This component will allow for varying pay grades based on each individuals experience and circumstance as opposed to fixed pay rates that do not properly reflect each individual's contribution to the Veterans Health Administration. The final component calls for performance pay linked to the achievement of specific corporate goals and individual performance objectives. Again, this component will allow individual health care personnel to be rewarded based on their level of service and it will encourage others to raise their level of performance in order to collect performance bonuses. These three components as a whole will provide a more equitable and just pay scale physicians and dentists employed by the Veterans Health Administration. As a Member in this body I have always insisted on our brave veterans receiving the best of care in the finest health care facilities that we can provide. The Veterans Affairs Health Care Personnel Enhancement Act will allow those who provide these

vital health care services to be properly compensated and motivated to stay within the Veterans Health Administration.

Mr. RODRIGUEZ. Mr. Speaker, I yield back the balance of my time.

Mr. SIMMONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. TERRY). The question is on the motion offered by the gentleman from Connecticut (Mr. SIMMONS) that the House suspend the rules and pass the Senate bill, S. 2484.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SIMMONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2484.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

ARIZONA WATER SETTLEMENTS ACT

Mr. HAYWORTH. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 437) to provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes.

The Clerk read as follows:

S. 437

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 ''Arizona Water Settlements Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Arbitration.
Sec. 4. Antideficiency.

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

Sec. 101. Short title.
Sec. 102. Findings.
Sec. 103. General permissible uses of the Central Arizona Project.
Sec. 104. Allocation of Central Arizona Project water.
Sec. 105. Firming of Central Arizona Project Indian water.
Sec. 106. Acquisition of agricultural priority water.
Sec. 107. Lower Colorado River Basin Development Fund.
Sec. 108. Effect.
Sec. 109. Repeal.
Sec. 110. Authorization of appropriations.
Sec. 111. Repeal on failure of enforceability date under title II.

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

Sec. 201. Short title.
Sec. 202. Purposes.
Sec. 203. Approval of the Gila River Indian Community Water Rights Settlement Agreement.
Sec. 204. Water rights.
Sec. 205. Community water delivery contract amendments.
Sec. 206. Satisfaction of claims.
Sec. 207. Waiver and release of claims.
Sec. 208. Gila River Indian Community Water OM&R Trust Fund.
Sec. 209. Subsidence remediation program.
Sec. 210. After-acquired trust land.
Sec. 211. Reduction of water rights.
Sec. 212. New Mexico Unit of the Central Arizona Project.
Sec. 213. Miscellaneous provisions.
Sec. 214. Authorization of appropriations.
Sec. 215. Repeal on failure of enforceability date.

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

Sec. 301. Southern Arizona water rights settlement.
Sec. 302. Southern Arizona water rights settlement effective date.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

Sec. 401. Effect of titles I, II, and III.
Sec. 402. Annual report.
Sec. 403. Authorization of appropriations.

SEC. 2. DEFINITIONS.

In titles I and II:

(1) ACRE-FEET.—The term ''acre-feet'' means acre-feet per year.

(2) AFTER-ACQUIRED TRUST LAND.—The term ''after-acquired trust land'' means land that—

(A) is located—

(i) within the State; but

(ii) outside the exterior boundaries of the Reservation; and

(B) is taken into trust by the United States for the benefit of the Community after the enforceability date.

(3) AGRICULTURAL PRIORITY WATER.—The term ''agricultural priority water'' means Central Arizona Project non-Indian agricultural priority water, as defined in the Gila River agreement.

(4) ALLOTTEE.—The term ''allottee'' means a person who holds a beneficial real property interest in an Indian allotment that is—

(A) located within the Reservation; and

(B) held in trust by the United States.

(5) ARIZONA INDIAN TRIBE.—The term ''Arizona Indian tribe'' means an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) that is located in the State.

(6) ASARCO.—The term ''Asarco'' means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

(7) CAP CONTRACTOR.—The term ''CAP contractor'' means a person or entity that has entered into a long-term contract (as that term is used in the repayment stipulation) with the United States for delivery of water through the CAP system.

(8) CAP OPERATING AGENCY.—The term ''CAP operating agency'' means the entity or entities authorized to assume responsibility for the care, operation, maintenance, and replacement of the CAP system.

(9) CAP REPAYMENT CONTRACT.—

(A) IN GENERAL.—The term ''CAP repayment contract'' means the contract dated December 1, 1988 (Contract No. 14–0906–09W–09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

(B) INCLUSIONS.—The term ''CAP repayment contract'' includes all amendments to and revisions of that contract.

(10) CAP SUBCONTRACTOR.—The term ''CAP subcontractor'' means a person or entity that has entered into a long-term subcontract (as that term is used in the repayment stipulation) with the United States and the Central Arizona Water Conservation District for the delivery of water through the CAP system.

(11) CAP SYSTEM.—The term ''CAP system'' means—

(A) the Mark Wilmer Pumping Plant;

(B) the Hayden-Rhodes Aqueduct;

(C) the Fannin-McFarland Aqueduct;

(D) the Tucson Aqueduct;

(E) the pumping plants and appurtenant works of the Central Arizona Project aqueduct system that are associated with the features described in subparagraphs (A) through (D); and

(F) any extensions of, additions to, or replacements for the features described in subparagraphs (A) through (E).

(12) CENTRAL ARIZONA PROJECT.—The term ''Central Arizona Project'' means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

(13) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term ''Central Arizona Water Conservation District'' means the political subdivision of the State that is the contractor under the CAP repayment contract.

(14) CITIES.—The term ''Cities'' means the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, and Scottsdale, Arizona.

(15) COMMUNITY.—The term ''Community'' means the Gila River Indian Community, a government composed of members of the Pima Tribe and the Maricopa Tribe and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

(16) COMMUNITY CAP WATER.—The term ''Community CAP water'' means water to which the Community is entitled under the Community water delivery contract.

(17) COMMUNITY REPAYMENT CONTRACT.—

(A) IN GENERAL.—The term ''Community repayment contract'' means Contract No. 6–0907–0903–09W0345 between the United States and the Community dated July 20, 1998, providing for the construction of water delivery facilities on the Reservation.

(B) INCLUSIONS.—The term ''Community repayment contract'' includes any amendments to the contract described in subparagraph (A).

(18) COMMUNITY WATER DELIVERY CONTRACT.—

(A) IN GENERAL.—The term ''Community water delivery contract'' means Contract No. 3–0907–0930–09W0284 between the Community and the United States dated October 22, 1992.

(B) INCLUSIONS.—The term ''Community water delivery contract'' includes any amendments to the contract described in subparagraph (A).

(19) CRR PROJECT WORKS.—

(A) IN GENERAL.—The term ''CRR project works'' means the portions of the San Carlos Irrigation Project located on the Reservation.

(B) INCLUSION.—The term ''CRR Project works'' includes the portion of the San Carlos Irrigation Project known as the ''Southside Canal'', from the point at which the Southside Canal connects with the Pima Canal to the boundary of the Reservation.

(20) DIRECTOR.—The term ''Director'' means—

(A) the Director of the Arizona Department of Water Resources; or

(B) with respect to an action to be carried out under this title, a State official or agency designated by the Governor or the State legislature.

(21) ENFORCEABILITY DATE.—The term ''enforceability date'' means the date on which the Secretary publishes in the Federal Register the statement of findings described in section 207(c).

(22) FEE LAND.—The term ''fee land'' means land, other than off-Reservation trust land, owned by the Community outside the exterior boundaries of the Reservation as of December 31, 2002.

(23) FIXED OM&R CHARGE.—The term ''fixed OM&R charge'' has the meaning given the term in the repayment stipulation.

(24) FRANKLIN IRRIGATION DISTRICT.—The term ''Franklin Irrigation District'' means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(25) GILA RIVER ADJUDICATION PROCEEDINGS.—The term ''Gila River adjudication proceedings'' means the action pending in the Superior Court of the State of Arizona in and for the County of Maricopa styled ''In Re the General Adjudication of All Rights To Use Water In The Gila River System and Source'' W–091 (Salt), W–092 (Verde), W–093 (Upper Gila), W–094 (San Pedro) (Consolidated).

(26) GILA RIVER AGREEMENT.—

(A) IN GENERAL.—The term ''Gila River agreement'' means the agreement entitled the ''Gila River Indian Community Water Rights Settlement Agreement'', dated February 4, 2003.

(B) INCLUSIONS.—The term ''Gila River agreement'' includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation Agreement, which is also an exhibit to the UVD Agreement); and

(ii) any amendment to that agreement or to an exhibit to that agreement made or added pursuant to that agreement consistent with section 203(a) or as approved by the Secretary.

(27) GILA VALLEY IRRIGATION DISTRICT.—The term ''Gila Valley Irrigation District'' means the entity of that name that is a political subdivision of the State and organized under the laws of the State.

(28) GLOBE EQUITY DECREE.—

(A) IN GENERAL.—The term ''Globe Equity Decree'' means the decree dated June 29, 1935, entered in United States of America v. Gila Valley Irrigation District, Globe Equity No. 59, et al., by the United States District Court for the District of Arizona.

(B) INCLUSIONS.—The term ''Globe Equity Decree'' includes all court orders and decisions supplemental to that decree.

(29) HAGGARD DECREE.—

(A) IN GENERAL.—The term ''Haggard Decree'' means the decree dated June 11, 1903, entered in United States of America, as guardian of Chief Charley Juan Saul and Cyrus Sam, Maricopa Indians and 400 other Maricopa Indians similarly situated v. Haggard, et al., Cause No. 19, in the District Court for the Third Judicial District of the Territory of Arizona, in and for the County of Maricopa.

(B) INCLUSIONS.—The term ''Haggard Decree'' includes all court orders and decisions supplemental to that decree.

(30) INCLUDING.—The term ''including'' has the same meaning as the term ''including, but not limited to''.

(31) INJURY TO WATER QUALITY.—The term ''injury to water quality'' means any contamination, diminution, or deprivation of water quality under Federal, State, or other law.

(32) INJURY TO WATER RIGHTS.—

(A) IN GENERAL.—The term ''injury to water rights'' means an interference with, diminution of, or deprivation of water rights under Federal, State, or other law.

(B) INCLUSION.—The term ''injury to water rights'' includes a change in the underground water table and any effect of such a change.

(C) EXCLUSION.—The term ''injury to water rights'' does not include subsidence damage or injury to water quality.

(33) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term ''Lower Colorado River Basin Development Fund'' means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

(34) MASTER AGREEMENT.—The term ''master agreement'' means the agreement entitled ''Arizona Water Settlement Agreement'' among the Director, the Central Arizona Water Conservation District, and the Secretary, dated August 16, 2004.

(35) NM CAP ENTITY.—The term ''NM CAP entity'' means the entity or entities that the State of New Mexico may authorize to assume responsibility for the design, construction, operation, maintenance, and replacement of the New Mexico Unit.

(36) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(A) IN GENERAL.—The term ''New Mexico Consumptive Use and Forbearance Agreement'' means that agreement entitled the ''New Mexico Consumptive Use and Forbearance Agreement,'' entered into by and among the United States, the Community, the San Carlos Irrigation and Drainage District, and all of the signatories to the UVD Agreement, and approved by the State of New Mexico, and authorized, ratified, and approved by section 212(b).

(B) INCLUSIONS.—The ''New Mexico Consumptive Use and Forbearance Agreement'' includes—

(i) all exhibits to that agreement (including the New Mexico Risk Allocation agreement, which is also an exhibit to the UVD agreement); and

(ii) any amendment to that agreement made or added pursuant to that agreement.

(37) NEW MEXICO UNIT.—The term ''New Mexico Unit'' means that unit or units of the Central Arizona Project authorized by sections 301(a)(4) and 304 of the Colorado River Basin Project Act (43 U.S.C. 1521(a)(4), 1524) (as amended by section 212).

(38) NEW MEXICO UNIT AGREEMENT.—

(A) IN GENERAL.—The term ''New Mexico Unit Agreement'' means that agreement entitled the ''New Mexico Unit Agreement,'' to be entered into by and between the United States and the NM CAP entity upon notice to the Secretary from the State of New Mexico that the State of New Mexico intends to have the New Mexico Unit constructed or developed.

(B) INCLUSIONS.—The ''New Mexico Unit Agreement'' includes—

(i) all exhibits to that agreement; and

(ii) any amendment to that agreement made or added pursuant to that agreement.

(39) OFF-RESERVATION TRUST LAND.—The term ''off-Reservation trust land'' means land outside the exterior boundaries of the Reservation that is held in trust by the United States for the benefit of the Community as of the enforceability date.

(40) PHELPS DODGE.—The term ''Phelps Dodge'' means the Phelps Dodge Corporation, a New York corporation of that name, and Phelps Dodge's subsidiaries (including Phelps Dodge Morenci, Inc., a Delaware corporation of that name), and Phelps Dodge's successors or assigns.

(41) REPAYMENT STIPULATION.—The term ''repayment stipulation'' means the Revised Stipulation Regarding a Stay of Litigation, Resolution of Issues During the Stay, and for Ultimate Judgment Upon the Satisfaction of Conditions, filed with the United States District Court for the District of Arizona in Central Arizona Water Conservation District v. United States, et al., No. CIV 95–09625–09TUC–09WDB(EHC), No. CIV 95–091720–09PHX–09EHC (Consolidated Action), and that court's order dated April 28, 2003, and any amendments or revisions thereto.

(42) RESERVATION.—

(A) IN GENERAL.—Except as provided in sections 207(d) and 210(d), the term ''Reservation'' means the land located within the exterior boundaries of the reservation created under sections 3 and 4 of the Act of February 28, 1859 (11 Stat. 401, chapter LXVI) and Executive Orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915.

(B) EXCLUSION.—The term ''Reservation'' does not include the land located in sections 16 and 36, Township 4 South, Range 4 East, Salt and Gila River Base and Meridian.

(43) ROOSEVELT HABITAT CONSERVATION PLAN.—The term ''Roosevelt Habitat Conservation Plan'' means the habitat conservation plan approved by the United States Fish and Wildlife Service under section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(B)) for the incidental taking of endangered, threatened, and candidate species resulting from the continued operation by the Salt River Project of Roosevelt Dam and Lake, near Phoenix, Arizona.

(44) ROOSEVELT WATER CONSERVATION DISTRICT.—The term ''Roosevelt Water Conservation District'' means the entity of that name that is a political subdivision of the State and an irrigation district organized under the law of the State.

(45) SAFFORD.—The term ''Safford'' means the city of Safford, Arizona.

(46) SALT RIVER PROJECT.—The term ''Salt River Project'' means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State, and the Salt River Valley Water Users' Association, an Arizona Territorial corporation.

(47) SAN CARLOS APACHE TRIBE.—The term ''San Carlos Apache Tribe'' means the San Carlos Apache Tribe, a tribe of Apache Indians organized under Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 987 (25 U.S.C. 476).

(48) SAN CARLOS IRRIGATION AND DRAINAGE DISTRICT.—The term ''San Carlos Irrigation and Drainage District'' means the entity of that name that is a political subdivision of the State and an irrigation and drainage district organized under the laws of the State.

(49) SAN CARLOS IRRIGATION PROJECT.—

(A) IN GENERAL.—The term ''San Carlos Irrigation Project'' means the San Carlos irrigation project authorized under the Act of June 7, 1924 (43 Stat. 475).

(B) INCLUSIONS.—The term ''San Carlos Irrigation Project'' includes any amendments and supplements to the Act described in subparagraph (A).

(50) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(51) SPECIAL HOT LANDS.—The term ''special hot lands'' has the meaning given the term in subparagraph 2.34 of the UVD agreement.

(52) STATE.—The term ''State'' means the State of Arizona.

(53) SUBCONTRACT.—

(A) IN GENERAL.—The term ''subcontract'' means a Central Arizona Project water delivery subcontract.

(B) INCLUSION.—The term ''subcontract'' includes an amendment to a subcontract.

(54) SUBSIDENCE DAMAGE.—The term ''subsidence damage'' means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the Earth of any length or depth, which settling or cracking is caused by the pumping of underground water.

(55) TBI ELIGIBLE ACRES.—The term ''TBI eligible acres'' has the meaning given the

term in subparagraph 2.37 of the UVD agreement.

(56) UNCONTRACTED MUNICIPAL AND INDUSTRIAL WATER.—The term ''uncontracted municipal and industrial water'' means Central Arizona Project municipal and industrial priority water that is not subject to subcontract on the date of enactment of this Act.

(57) UV DECREED ACRES.—

(A) IN GENERAL.—The term ''UV decreed acres'' means the land located upstream and to the east of the Coolidge Dam for which water may be diverted pursuant to the Globe Equity Decree.

(B) EXCLUSION.—The term ''UV decreed acres'' does not include the reservation of the San Carlos Apache Tribe.

(58) UV DECREED WATER RIGHTS.—The term ''UV decreed water rights'' means the right to divert water for use on UV decreed acres in accordance with the Globe Equity Decree.

(59) UV IMPACT ZONE.—The term ''UV impact zone'' has the meaning given the term in subparagraph 2.47 of the UVD agreement.

(60) UV SUBJUGATED LAND.—The term ''UV subjugated land'' has the meaning given the term in subparagraph 2.50 of the UVD agreement.

(61) UVD AGREEMENT.—The term ''UVD agreement'' means the agreement among the Community, the United States, the San Carlos Irrigation and Drainage District, the Franklin Irrigation District, the Gila Valley Irrigation District, Phelps Dodge, and other parties located in the upper valley of the Gila River, dated September 2, 2004.

(62) UV SIGNATORIES PARTIES.—The term ''UV signatories'' means the parties to the UVD agreement other than the United States, the San Carlos Irrigation and Drainage District, and the Community.

(63) WATER OM&R FUND.—The term ''Water OM&R Fund'' means the Gila River Indian Community Water OM&R Trust Fund established by section 208.

(64) WATER RIGHT.—The term ''water right'' means any right in or to groundwater, surface water, or effluent under Federal, State, or other law.

(65) WATER RIGHTS APPURTENANT TO NEW MEXICO 381 ACRES.—The term ''water rights appurtenant to New Mexico 381 acres'' means the water rights—

(A) appurtenant to the 380.81 acres described in the decree in Arizona v. California, 376 U.S. 340, 349 (1964); and

(B) appurtenant to other land, or for other uses, for which the water rights described in subparagraph (A) may be modified or used in accordance with that decree.

(66) WATER RIGHTS FOR NEW MEXICO DOMESTIC PURPOSES.—The term ''water rights for New Mexico domestic purposes'' means the water rights for domestic purposes of not more than 265 acre-feet of water for consumptive use described in paragraph IV(D)(2) of the decree in Arizona v. California, 376 U.S. 340, 350 (1964).

(67) 1994 BIOLOGICAL OPINION.—The term ''1994 biological opinion'' means the biological opinion, numbered 2–21–90–F–119, and dated April 15, 1994, relating to the transportation and delivery of Central Arizona Project water to the Gila River basin.

(68) 1996 BIOLOGICAL OPINION.—The term ''1996 biological opinion'' means the biological opinion, numbered 2–21–95–F–462 and dated July 23, 1996, relating to the impacts of modifying Roosevelt Dam on the southwestern willow flycatcher.

(69) 1999 BIOLOGICAL OPINION.—The term ''1999 biological opinion'' means the draft biological opinion numbered 2–21–91–F–706, and dated May 1999, relating to the impacts of the Central Arizona Project on Gila Topminnow in the Santa Cruz River basin through the introduction and spread of nonnative aquatic species.

SEC. 3. ARBITRATION.

(a) NO PARTICIPATION BY THE UNITED STATES.—

(1) IN GENERAL.—No arbitration decision rendered pursuant to subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River agreement (including the joint control board agreement attached to exhibit 20.1) shall be considered invalid solely because the United States failed or refused to participate in such arbitration proceedings that resulted in such arbitration decision, so long as the matters in arbitration under subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River Agreement concern aspects of the water rights of the Community, the San Carlos Irrigation Project, or the Miscellaneous Flow Lands (as defined in subparagraph 2.18A of the UVD agreement) and not the water rights of the United States in its own right, any other rights of the United States, or the water rights or any other rights of the United States acting on behalf of or for the benefit of another tribe.

(2) ARBITRATION INEFFECTIVE.—If an issue otherwise subject to arbitration under subparagraph 12.1 of the UVD agreement or exhibit 20.1 of the Gila River Agreement cannot be arbitrated or if an arbitration decision will not be effective because the United States cannot or will not participate in the arbitration, then the issue shall be submitted for decision to a court of competent jurisdiction, but not a court of the Community.

(b) PARTICIPATION BY THE SECRETARY.—Notwithstanding any provision of any agreement, exhibit, attachment, or other document ratified by this Act, if the Secretary is required to enter arbitration pursuant to this Act or any such document, the Secretary shall follow the procedures for arbitration established by chapter 5 of title 5, United States Code.

SEC. 4. ANTIDEFICIENCY.

The United States shall not be liable for failure to carry out any obligation or activity required by this Act, including all titles and all agreements or exhibits ratified or confirmed by this Act, funded by—

(1) the Lower Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543), if there are not enough monies in that fund to fulfill those obligations or carry out those activities; or

(2) appropriations, if appropriations are not provided by Congress.

TITLE I—CENTRAL ARIZONA PROJECT SETTLEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the ''Central Arizona Project Settlement Act of 2004''.

SEC. 102. FINDINGS.

Congress finds that—

(1) the water provided by the Central Arizona Project to Maricopa, Pinal, and Pima Counties in the State of Arizona, is vital to citizens of the State; and

(2) an agreement on the allocation of Central Arizona Project water among interested persons, including Federal and State interests, would provide important benefits to the Federal Government, the State of Arizona, Arizona Indian Tribes, and the citizens of the State.

SEC. 103. GENERAL PERMISSIBLE USES OF THE CENTRAL ARIZONA PROJECT.

In accordance with the CAP repayment contract, the Central Arizona Project may be used to transport nonproject water for—

(1) domestic, municipal, fish and wildlife, and industrial purposes; and

(2) any purpose authorized under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.).

SEC. 104. ALLOCATION OF CENTRAL ARIZONA PROJECT WATER.

(a) NON-INDIAN AGRICULTURAL PRIORITY WATER.—

(1) REALLOCATION TO ARIZONA INDIAN TRIBES.—

(A) IN GENERAL.—The Secretary shall reallocate 197,500 acre-feet of agricultural priority water made available pursuant to the master agreement for use by Arizona Indian tribes, of which—

(i) 102,000 acre-feet shall be reallocated to the Gila River Indian Community;

(ii) 28,200 acre-feet shall be reallocated to the Tohono O'odham Nation; and

(iii) subject to the conditions specified in subparagraph (B), 67,300 acre-feet shall be reallocated to Arizona Indian tribes.

(B) CONDITIONS.—The reallocation of agricultural priority water under subparagraph (A)(iii) shall be subject to the conditions that—

(i) such water shall be used to resolve Indian water claims in Arizona, and may be allocated by the Secretary to Arizona Indian Tribes in fulfillment of future Arizona Indian water rights settlement agreements approved by an Act of Congress. In the absence of an Arizona Indian water rights settlement that is approved by an Act of Congress after the date of enactment of this Act, the Secretary shall not allocate any such water until December 31, 2030. Any allocations made by the Secretary after such date shall be accompanied by a certification that the Secretary is making the allocation in order to assist in the resolution of an Arizona Indian water right claim. Any such water allocated to an Arizona Indian Tribe pursuant to a water delivery contract with the Secretary under this clause shall be counted on an acre-foot per acre-foot basis against any claim to water for that Tribe's reservation;

(ii) notwithstanding clause (i), the Secretary shall retain 6,411 acre-feet of water for use for a future water rights settlement agreement approved by an Act of Congress that settles the Navajo Nation's claims to water in Arizona. If Congress does not approve this settlement before December 31, 2030, the 6,411 acre-feet of CAP water shall be available to the Secretary under clause (i); and

(iii) the agricultural priority water shall not, without specific authorization by Act of Congress, be leased, exchanged, forborne, or otherwise transferred by an Arizona Indian tribe for any direct or indirect use outside the reservation of the Arizona Indian tribe.

(C) REPORT.—The Secretary, in consultation with Arizona Indian tribes and the State, shall prepare a report for Congress by December 31, 2016, that assesses whether the potential benefits of subparagraph (A) are being conveyed to Arizona Indian tribes pursuant to water rights settlements enacted subsequent to this Act. For those Arizona Indian tribes that have not yet settled water rights claims, the Secretary shall describe whether any active negotiations are taking place, and identify any critical water needs that exist on the reservation of each such Arizona Indian tribe. The Secretary shall also identify and report on the use of unused quantities of agricultural priority water made available to Arizona Indian tribes under subparagraph (A).

(2) REALLOCATION TO THE ARIZONA DEPARTMENT OF WATER RESOURCES.—

(A) IN GENERAL.—Subject to subparagraph (B) and subparagraph 9.3 of the master agreement, the Secretary shall reallocate up to 96,295 acre-feet of agricultural priority water made available pursuant to the master agreement to the Arizona Department of Water Resources, to be held under contract in trust for further allocation under subparagraph (C).

(B) REQUIRED DOCUMENTATION.—The reallocation of agricultural priority water under subparagraph (A) is subject to the condition that the Secretary execute any appropriate documents to memorialize the reallocation, including—

(i) an allocation decision; and

(ii) a contract that prohibits the direct use of the agricultural priority water by the Arizona Department of Water Resources.

(C) FURTHER ALLOCATION.—With respect to the allocation of agricultural priority water under subparagraph (A)—

(i) before that water may be further allocated—

(I) the Director shall submit to the Secretary, and the Secretary shall receive, a recommendation for reallocation;

(II) as soon as practicable after receiving the recommendation, the Secretary shall carry out all necessary reviews of the proposed reallocation, in accordance with applicable Federal law; and

(III) if the recommendation is rejected by the Secretary, the Secretary shall—

(aa) request a revised recommendation from the Director; and

(bb) proceed with any reviews required under subclause (II); and

(ii) as soon as practicable after the date on which agricultural priority water is further allocated, the Secretary shall offer to enter into a subcontract for that water in accordance with paragraphs (1) and (2) of subsection (d).

(D) MASTER AGREEMENT.—The reallocation of agricultural priority water under subparagraphs (A) and (C) is subject to the master agreement, including certain rights provided by the master agreement to water users in Pinal County, Arizona.

(3) PRIORITY.—The agricultural priority water reallocated under paragraphs (1) and (2) shall be subject to the condition that the water retain its non-Indian agricultural delivery priority.

(b) UNCONTRACTED CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL PRIORITY WATER.—

(1) REALLOCATION.—The Secretary shall, on the recommendation of the Director, reallocate 65,647 acre-feet of uncontracted municipal and industrial water, of which—

(A) 285 acre-feet shall be reallocated to the town of Superior, Arizona;

(B) 806 acre-feet shall be reallocated to the Cave Creek Water Company;

(C) 1,931 acre-feet shall be reallocated to the Chaparral Water Company;

(D) 508 acre-feet shall be reallocated to the town of El Mirage, Arizona;

(E) 7,211 acre-feet shall be reallocated to the city of Goodyear, Arizona;

(F) 147 acre-feet shall be reallocated to the H2O Water Company;

(G) 7,115 acre-feet shall be reallocated to the city of Mesa, Arizona;

(H) 5,527 acre-feet shall be reallocated to the city of Peoria, Arizona;

(I) 2,981 acre-feet shall be reallocated to the city of Scottsdale, Arizona;

(J) 808 acre-feet shall be reallocated to the AVRA Cooperative;

(K) 4,986 acre-feet shall be reallocated to the city of Chandler, Arizona;

(L) 1,071 acre-feet shall be reallocated to the Del Lago (Vail) Water Company;

(M) 3,053 acre-feet shall be reallocated to the city of Glendale, Arizona;

(N) 1,521 acre-feet shall be reallocated to the Community Water Company of Green Valley, Arizona;

(O) 4,602 acre-feet shall be reallocated to the Metropolitan Domestic Water Improvement District;

(P) 3,557 acre-feet shall be reallocated to the town of Oro Valley, Arizona;

(Q) 8,206 acre-feet shall be reallocated to the city of Phoenix, Arizona;

(R) 2,876 acre-feet shall be reallocated to the city of Surprise, Arizona;

(S) 8,206 acre-feet shall be reallocated to the city of Tucson, Arizona; and

(T) 250 acre-feet shall be reallocated to the Valley Utilities Water Company.

(2) SUBCONTRACTS.—

(A) IN GENERAL.—As soon as practicable after the date of enactment of this Act, and in accordance with paragraphs (1) and (2) of subsection (d) and any other applicable Federal laws, the Secretary shall offer to enter into subcontracts for the delivery of the uncontracted municipal and industrial water reallocated under paragraph (1).

(B) REVISED RECOMMENDATION.—If the Secretary is precluded under applicable Federal law from entering into a subcontract with an entity identified in paragraph (1), the Secretary shall—

(i) request a revised recommendation from the Director; and

(ii) on receipt of a recommendation under clause (i), reallocate and enter into a subcontract for the delivery of the water in accordance with subparagraph (A).

(c) LIMITATIONS.—

(1) AMOUNT.—

(A) IN GENERAL.—The total amount of entitlements under long-term contracts (as defined in the repayment stipulation) for the delivery of Central Arizona Project water in the State shall not exceed 1,415,000 acre-feet, of which—

(i) 650,724 acre-feet shall be—

(I) under contract to Arizona Indian tribes; or

(II) available to the Secretary for allocation to Arizona Indian tribes; and

(ii) 764,276 acre-feet shall be under contract or available for allocation to—

(I) non-Indian municipal and industrial entities;

(II) the Arizona Department of Water Resources; and

(III) non-Indian agricultural entities.

(B) EXCEPTION.—Subparagraph (A) shall not apply to Central Arizona Project water delivered to water users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

(2) TRANSFER.—

(A) IN GENERAL.—Except pursuant to the master agreement, Central Arizona Project water may not be transferred from—

(i) a use authorized under paragraph (1)(A)(i) to a use authorized under paragraph (1)(A)(ii); or

(ii) a use authorized under paragraph (1)(A)(ii) to a use authorized under paragraph (1)(A)(i).

(B) EXCEPTIONS.—

(i) LEASES.—A lease of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) under an Indian water rights settlement approved by an Act of Congress shall not be considered to be a transfer for purposes of subparagraph (A).

(ii) EXCHANGES.—An exchange of Central Arizona Project water by an Arizona Indian tribe to an entity described in paragraph (1)(A)(ii) shall not be considered to be a transfer for purposes of subparagraph (A).

(iii) Notwithstanding subparagraph (A), up to 17,000 acre-feet of CAP municipal and industrial water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, subcontract No. 3–07–30–W0307, dated November 7, 1993, may be reallocated to the Community on execution of an exchange and lease agreement among the Community, the United States, and Asarco.

(d) CENTRAL ARIZONA PROJECT CONTRACTS AND SUBCONTRACTS.—

(1) IN GENERAL.—Notwithstanding section 6 of the Reclamation Project Act of 1939 (43 U.S.C. 485e), and paragraphs (2) and (3) of section 304(b) of the Colorado River Basin Project Act (43 U.S.C. 1524(b)), as soon as practicable after the date of enactment of this Act, the Secretary shall offer to enter into subcontracts or to amend all Central Arizona Project contracts and subcontracts in effect as of that date in accordance with paragraph (2).

(2) REQUIREMENTS.—All subcontracts and amendments to Central Arizona Project contracts and subcontracts under paragraph (1)—

(A) shall be for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d));

(B) shall have an initial delivery term that is the greater of—

(i) 100 years; or

(ii) a term—

(I) authorized by Congress; or

(II) provided under the appropriate Central Arizona Project contract or subcontract in existence on the date of enactment of this Act;

(C) shall conform to the shortage sharing criteria described in paragraph 5.3 of the Tohono O'odham settlement agreement;

(D) shall include the prohibition and exception described in subsection (e); and

(E) shall not require—

(i) that any Central Arizona Project water received in exchange for effluent be deducted from the contractual entitlement of the CAP contractor or CAP subcontractor; or

(ii) that any additional modification of the Central Arizona Project contracts or subcontracts be made as a condition of acceptance of the subcontract or amendments.

(3) APPLICABILITY.—This subsection does not apply to—

(A) a subcontract for non-Indian agricultural use; or

(B) a contract executed under paragraph 5(d) of the repayment stipulation.

(e) PROHIBITION ON TRANSFER.—

(1) IN GENERAL.—Except as provided in paragraph (2), no Central Arizona Project water shall be leased, exchanged, forborne, or otherwise transferred in any way for use directly or indirectly outside the State.

(2) EXCEPTIONS.—Central Arizona Project water may be—

(A) leased, exchanged, forborne, or otherwise transferred under an agreement with the Arizona Water Banking Authority that is in accordance with part 414 of title 43, Code of Federal Regulations; and

(B) delivered to users in Arizona in exchange for Gila River water used in New Mexico as provided in section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524) (as amended by section 212).

(3) EFFECT OF SUBSECTION.—Nothing in this subsection prohibits any entity from entering into a contract with the Arizona Water Banking Authority or a successor of the Authority under State law.

SEC. 105. FIRMING OF CENTRAL ARIZONA PROJECT INDIAN WATER.

(a) FIRMING PROGRAM.—The Secretary and the State shall develop a firming program to ensure that 60,648 acre-feet of the agricultural priority water made available pursuant to the master agreement and reallocated to Arizona Indian tribes under section 104(a)(1), shall, for a 100-year period, be delivered during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

(b) DUTIES.—

(1) SECRETARY.—The Secretary shall—

(A) firm 28,200 acre-feet of agricultural priority water reallocated to the Tohono O'odham Nation under section 104(a)(1)(A)(ii); and

(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).

(2) STATE.—The State shall—

(A) firm 15,000 acre-feet of agricultural priority water reallocated to the Community under section 104(a)(1)(A)(i);

(B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii); and

(C) assist the Secretary in carrying out obligations of the Secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the duties of the Secretary under subsection (b)(1).

SEC. 106. ACQUISITION OF AGRICULTURAL PRIORITY WATER.

(a) APPROVAL OF AGREEMENT.—

(1) IN GENERAL.—Except to the extent that any provision of the master agreement conflicts with any provision of this title, the master agreement is authorized, ratified, and confirmed. To the extent that amendments are executed to make the master agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(2) EXHIBITS.—The Secretary is directed to and shall execute the master agreement and any of the exhibits to the master agreement that have not been executed as of the date of enactment of this Act.

(3) DEBT COLLECTION.—For any agricultural priority water that is not relinquished under the master agreement, the subcontractor shall continue to pay, consistent with the master agreement, the portion of the debt associated with any retained water under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and the Secretary shall apply such revenues toward the reimbursable section 9(d) debt of that subcontractor.

(4) EFFECTIVE DATE.—The provisions of subsections (b) and (c) shall take effect on the date of enactment of this Act.

(b) NONREIMBURSABLE DEBT.—

(1) IN GENERAL.—In accordance with the master agreement, the portion of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), and identified in the master agreement as nonreimbursable to the United States, shall be nonreimbursable and nonreturnable to the United States in an amount not to exceed $73,561,337.

(2) EXTENSION.—In accordance with the master agreement, the Secretary may extend, on an annual basis, the repayment schedule of debt incurred under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)) by CAP subcontractors.

(c) EXEMPTION.—The Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.) and any other acreage limitation or full cost pricing provisions of Federal law shall not apply to—

(1) land within the exterior boundaries of the Central Arizona Water Conservation District or served by Central Arizona Project water;

(2) land within the exterior boundaries of the Salt River Reservoir District;

(3) land held in trust by the United States for an Arizona Indian tribe that is—

(A) within the exterior boundaries of the Central Arizona Water Conservation District; or

(B) served by Central Arizona Project water; or

(4) any person, entity, or land, solely on the basis of—

(A) receipt of any benefits under this Act;

(B) execution or performance of the Gila River agreement; or

(C) the use, storage, delivery, lease, or exchange of Central Arizona Project water.

SEC. 107. LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.

(a) IN GENERAL.—Section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543) is amended by striking subsection (f) and inserting the following:

''(f) ADDITIONAL USES OF REVENUE FUNDS.—

''(1) CREDITING AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—Funds credited to the development fund pursuant to subsection (b) and paragraphs (1) and (3) of subsection (c), the portion of revenues derived from the sale of power and energy for use in the State of Arizona pursuant to subsection (c)(2) in excess of the amount necessary to meet the requirements of paragraphs (1) and (2) of subsection (d), and any annual payment by the Central Arizona Water Conservation District to effect repayment of reimbursable Central Arizona Project construction costs, shall be credited annually against the annual payment owed by the Central Arizona Water Conservation District to the United States for the Central Arizona Project.

''(2) FURTHER USE OF REVENUE FUNDS CREDITED AGAINST PAYMENTS OF CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—After being credited in accordance with paragraph (1), the funds and portion of revenues described in that paragraph shall be available annually, without further appropriation, in order of priority—

''(A) to pay annually the fixed operation, maintenance, and replacement charges associated with the delivery of Central Arizona Project water held under long-term contracts for use by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act) in accordance with clause 8(d)(i)(1)(i) of the Repayment Stipulation (as defined in section 2 of the Arizona Water Settlements Act);

''(B) to make deposits, totaling $53,000,000 in the aggregate, in the Gila River Indian Community Water OM&R Trust Fund established by section 208 of the Arizona Water Settlements Act;

''(C) to pay $147,000,000 for the rehabilitation of the San Carlos Irrigation Project, of which not more than $25,000,000 shall be available annually consistent with attachment 6.5.1 of exhibit 20.1 of the Gila River agreement, except that the total amount of $147,000,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

''(D) in addition to amounts made available for the purpose through annual appropriations, as reasonably allocated by the Secretary without regard to any trust obligation on the part of the Secretary to allocate the funding under any particular priority and without regard to priority (except that payments required by clause (i) shall be made first)—

''(i) to make deposits totaling $66,000,000, adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, into the New Mexico Unit Fund as provided by section 212(i) of the Arizona Water Settlements Act in 10 equal annual payments beginning in 2012;

''(ii) upon satisfaction of the conditions set forth in subsections (j) and (k) of section 212, to pay certain of the costs associated with construction of the New Mexico Unit, in addition to any amounts that may be expended from the New Mexico Unit Fund, in a minimum amount of $34,000,000 and a maximum amount of $62,000,000, as provided in section 212 of the Arizona Water Settlements Act, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit;

''(iii) to pay the costs associated with the construction of distribution systems required to implement the provisions of—

''(I) the contract entered into between the United States and the Gila River Indian Community, numbered 6–07–03–W0345, and dated July 20, 1998;

''(II) section 3707(a)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4747); and

''(III) section 304 of the Southern Arizona Water Rights Settlement Amendments Act of 2004;

''(iv) to pay $52,396,000 for the rehabilitation of the San Carlos Irrigation Project as provided in section 203(d)(4) of the Arizona Water Settlements Act, of which not more than $9,000,000 shall be available annually, except that the total amount of $52,396,000 shall be increased or decreased, as appropriate, based on ordinary fluctuations since January 1, 2000, in construction cost indices applicable to the types of construction involved in the rehabilitation;

''(v) to pay other costs specifically identified under—

''(I) sections 213(g)(1) and 214 of the Arizona Water Settlements Act; and

''(II) the Southern Arizona Water Rights Settlement Amendments Act of 2004;

''(vi) to pay a total of not more than $250,000,000 to the credit of the Future Indian Water Settlement Subaccount of the Lower Colorado Basin Development Fund, for use for Indian water rights settlements in Arizona approved by Congress after the date of enactment of this Act, subject to the requirement that, notwithstanding any other provision of this Act, any funds credited to the Future Indian Water Settlement Subaccount that are not used in furtherance of a congressionally approved Indian water rights settlement in Arizona by December 31, 2030, shall be returned to the main Lower Colorado Basin Development Fund for expenditure on authorized uses pursuant to this Act, provided that any interest earned on funds held in the Future Indian Water Settlement Subaccount shall remain in such subaccount until disbursed or returned in accordance with this section;

''(vii) to pay costs associated with the installation of gages on the Gila River and its tributaries to measure the water level of the Gila River and its tributaries for purposes of the New Mexico Consumptive Use and Forbearance Agreement in an amount not to exceed $500,000; and

''(viii) to pay the Secretary's costs of implementing the Central Arizona Project Settlement Act of 2004;

''(E) in addition to amounts made available for the purpose through annual appropriations—

''(i) to pay the costs associated with the construction of on-reservation Central Arizona Project distribution systems for the Yavapai Apache (Camp Verde), Tohono O'odham Nation (Sif Oidak District), Pascua Yaqui, and Tonto Apache tribes; and

''(ii) to make payments to those tribes in accordance with paragraph 8(d)(i)(1)(iv) of the repayment stipulation (as defined in section 2 of the Arizona Water Settlements Act), except that if a water rights settlement Act of Congress authorizes such construction, payments to those tribes shall be made from funds in the Future Indian Water Settlement Subaccount; and

''(F) if any amounts remain in the development fund at the end of a fiscal year, to be carried over to the following fiscal year for use for the purposes described in subparagraphs (A) through (E).

''(3) REVENUE FUNDS IN EXCESS OF REVENUE FUNDS CREDITED AGAINST CENTRAL ARIZONA WATER CONSERVATION DISTRICT PAYMENTS.—The funds and portion of revenues described in paragraph (1) that are in excess of amounts credited under paragraph (1) shall be available, on an annual basis, without further appropriation, in order of priority—

''(A) to pay annually the fixed operation, maintenance and replacement charges associated with the delivery of Central Arizona Project water under long-term contracts held by Arizona Indian tribes (as defined in section 2 of the Arizona Water Settlements Act);

''(B) to make the final outstanding annual payment for the costs of each unit of the projects authorized under title III that are to be repaid by the Central Arizona Water Conservation District;

''(C) to reimburse the general fund of the Treasury for fixed operation, maintenance, and replacement charges previously paid under paragraph (2)(A);

''(D) to reimburse the general fund of the Treasury for costs previously paid under subparagraphs (B) through (E) of paragraph (2);

''(E) to pay to the general fund of the Treasury the annual installment on any debt relating to the Central Arizona Project under section 9(d) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(d)), made nonreimbursable under section 106(b) of the Arizona Water Settlements Act;

''(F) to pay to the general fund of the Treasury the difference between—

''(i) the costs of each unit of the projects authorized under title III that are repayable by the Central Arizona Water Conservation District; and

''(ii) any costs allocated to reimbursable functions under any Central Arizona Project cost allocation undertaken by the United States; and

''(G) for deposit in the general fund of the Treasury.

''(4) INVESTMENT OF AMOUNTS.—

''(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the development fund as is not, in the judgment of the Secretary of the Interior, required to meet current needs of the development fund.

''(B) PERMITTED INVESTMENTS.—

''(i) IN GENERAL.—Notwithstanding any other provision of law, including any provision requiring the consent or concurrence of any party, the investments referred to in subparagraph (A) shall include 1 or more of the following:

''(I) Any investments referred to in the Act of June 24, 1938 (25 U.S.C. 162a).

''(II) Investments in obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds.

''(III) The obligations referred to in section 201 of the Social Security Act (42 U.S.C. 401).

''(ii) LAWFUL INVESTMENTS.—For purposes of clause (i), obligations of government corporations and government-sponsored entities whose charter statutes provide that their obligations are lawful investments for federally managed funds includes any of the following securities or securities with comparable language concerning the investment of federally managed funds:

''(I) Obligations of the United States Postal Service as authorized by section 2005 of title 39, United States Code.

''(II) Bonds and other obligations of the Tennessee Valley Authority as authorized by section 15d of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4).

''(III) Mortgages, obligations, or other securities of the Federal Home Loan Mortgage Corporation as authorized by section 303 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452).

''(IV) Bonds, notes, or debentures of the Commodity Credit Corporation as authorized by section 4 of the Act of March 4, 1939 (15 U.S.C. 713a–4).

''(C) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

''(i) on original issue at the issue price; or

''(ii) by purchase of outstanding obligations at the market price.

''(D) SALE OF OBLIGATIONS.—Any obligation acquired by the development fund may be sold by the Secretary of the Treasury at the market price.

''(E) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the development fund shall be credited to and form a part of the development fund.

''(5) AMOUNTS NOT AVAILABLE FOR CERTAIN FEDERAL OBLIGATIONS.—None of the provisions of this section, including paragraphs (2)(A) and (3)(A), shall be construed to make any of the funds referred to in this section available for the fulfillment of any Federal obligation relating to the payment of OM&R charges if such obligation is undertaken pursuant to Public Law 95–328, Public Law 98–530, or any settlement agreement with the United States (or amendments thereto) approved by or pursuant to either of those acts.''.

(b) LIMITATION.—Amounts made available under the amendment made by subsection (a)—

(1) shall be identified and retained in the Lower Colorado River Basin Development Fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543); and

(2) shall not be expended or withdrawn from that fund until the later of—

(A) the date on which the findings described in section 207(c) are published in the Federal Register; or

(B) January 1, 2010.

(c) TECHNICAL AMENDMENTS.—The Colorado River Basin Project Act (43 U.S.C. 1501 et seq.) is amended—

(1) in section 403(g), by striking ''clause (c)(2)'' and inserting ''subsection (c)(2)''; and

(2) in section 403(e), by deleting the first word and inserting ''Except as provided in subsection (f), revenues''.

SEC. 108. EFFECT.

Except for provisions relating to the allocation of Central Arizona Project water and the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), nothing in this title affects—

(1) any treaty, law, or agreement governing the use of water from the Colorado River; or

(2) any rights to use Colorado River water existing on the date of enactment of this Act.

SEC. 109. REPEAL.

Section 11(h) of the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (102 Stat. 2559) is repealed.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to comply with—

(1) the 1994 biological opinion, including any funding transfers required by the opinion;

(2) the 1996 biological opinion, including any funding transfers required by the opinion; and

(3) any final biological opinion resulting from the 1999 biological opinion, including any funding transfers required by the opinion.

(b) CONSTRUCTION COSTS.—Amounts made available under subsection (a) shall be treated as Central Arizona Project construction costs.

(c) AGREEMENTS.—

(1) IN GENERAL.—Any amounts made available under subsection (a) may be used to carry out agreements to permanently fund long-term reasonable and prudent alternatives in accepted biological opinions relating to the Central Arizona Project.

(2) REQUIREMENTS.—To ensure that long-term environmental compliance may be met without further appropriations, an agreement under paragraph (1) shall include a provision requiring that the contractor manage the funds through interest-bearing investments.

SEC. 111. REPEAL ON FAILURE OF ENFORCEABILITY DATE UNDER TITLE II.

(a) IN GENERAL.—Except as provided in subsection (b), if the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void; and

(2) any amounts appropriated under section 110 that remain unexpended shall immediately revert to the general fund of the Treasury.

(b) EXCEPTION.—No subcontract amendment executed by the Secretary under the notice of June 18, 2003 (67 Fed. Reg. 36578), shall be considered to be a contract entered into by the Secretary for purposes of subsection (a)(1).

TITLE II—GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Gila River Indian Community Water Rights Settlement Act of 2004''.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to resolve permanently certain damage claims and all water rights claims among the United States on behalf of the Community, its members, and allottees, and the Community and its neighbors;

(2) to authorize, ratify, and confirm the Gila River agreement;

(3) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under the Gila River agreement;

(4) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under the Gila River agreement and this title; and

(5) to authorize and direct the Secretary to execute the New Mexico Consumptive Use and Forbearance Agreement to allow the Secretary to exercise the rights authorized by subsections (d) and (f) of section 304 of the Colorado River Basin Project Act (43 U.S.C. 1524).

SEC. 203. APPROVAL OF THE GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT.

(a) IN GENERAL.—Except to the extent that any provision of the Gila River agreement conflicts with any provision of this title, the Gila River agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the Gila River agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(b) EXECUTION OF AGREEMENT.—To the extent that the Gila River agreement does not conflict with this title, the Secretary is directed to and shall execute the Gila River

agreement, including all exhibits to the Gila River agreement requiring the signature of the Secretary and any amendments necessary to make the Gila River agreement consistent with this title, after the Community has executed the Gila River agreement and any such amendments.

(c) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—In implementing the Gila River agreement, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE GILA RIVER AGREEMENT.—Execution of the Gila River agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the Gila River agreement.

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance.

(d) REHABILITATION AND OPERATION, MAINTENANCE, AND REPLACEMENT OF CERTAIN WATER WORKS.—

(1) IN GENERAL.—In addition to any obligations of the Secretary with respect to the San Carlos Irrigation Project, including any operation or maintenance responsibility existing on the date of enactment of this Act, the Secretary shall—

(A) in accordance with exhibit 20.1 to the Gila River agreement, provide for the rehabilitation of the San Carlos Irrigation Project water diversion and delivery works with the funds provided for under section 403(f)(2) of the Colorado River Basin Project Act; and

(B) provide electric power for San Carlos Irrigation Project wells and irrigation pumps at the Secretary's direct cost of transmission, distribution, and administration, using the least expensive source of power available.

(2) JOINT CONTROL BOARD AGREEMENT.—

(A) IN GENERAL.—Except to the extent that it is in conflict with this title, the Secretary shall execute the joint control board agreement described in exhibit 20.1 to the Gila River agreement, including all exhibits to the joint control board agreement requiring the signature of the Secretary and any amendments necessary to the joint control board agreement consistent with this title.

(B) CONTROLS.—The joint control board agreement shall contain the following provisions, among others:

(i) The Secretary, acting through the Bureau of Indian Affairs, shall continue to be responsible for the operation and maintenance of Picacho Dam and Coolidge Dam and Reservoir, and for scheduling and delivering water to the Community and the District through the San Carlos Irrigation Project joint works.

(ii) The actions and decisions of the joint control board that pertain to construction and maintenance of those San Carlos Irrigation Project joint works that are the subject of the joint control board agreement shall be subject to the approval of the Secretary, acting through the Bureau of Indian Affairs within 30 days thereof, or sooner in emergency situations, which approval shall not be unreasonably withheld. Should a required decision of the Bureau of Indian Affairs not be received by the joint control board within 60 days following an action or decision of the joint control board, the joint control board action or decision shall be deemed to have been approved by the Secretary.

(3) REHABILITATION COSTS ALLOCABLE TO THE COMMUNITY.—The rehabilitation costs allocable to the Community under exhibit 20.1 to the Gila River agreement shall be paid from the funds available under paragraph (2)(C) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(4) REHABILITATION COSTS NOT ALLOCABLE TO THE COMMUNITY.—

(A) IN GENERAL.—The rehabilitation costs not allocable to the Community under exhibit 20.1 to the Gila River agreement shall be provided from funds available under paragraph (2)(D)(iv) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(B) SUPPLEMENTARY REPAYMENT CONTRACT.—Prior to the advance of any funds made available to the San Carlos Irrigation and Drainage District pursuant to the provisions of this Act, the Secretary shall execute a supplementary repayment contract with the San Carlos Irrigation and Drainage District in the form provided for in exhibit 20.1 to the Gila River agreement which shall, among other things, provide that—

(i) in accomplishing the work under the supplemental repayment contract—

(I) the San Carlos Irrigation and Drainage District—

(aa) may use locally accepted engineering standards and the labor and contracting authorities that are available to the District under State law; and

(bb) shall be subject to the value engineering program of the Bureau of Reclamation established pursuant to OMB Circular A–131; and

(II) in accordance with FAR Part 48.101(b), the incentive returned to the contractor through this ''Incentive Clause'' shall be 55 percent after the Contractor is reimbursed for the allowable costs of developing and implementing the proposal and the Government shall retain 45 percent of such savings in the form of reduced expenditures;

(ii) up to 18,000 acre-feet annually of conserved water will be made available by the San Carlos Irrigation and Drainage District to the United States pursuant to the terms of exhibit 20.1 to the Gila River agreement; and

(iii) a portion of the San Carlos Irrigation and Drainage District's share of the rehabilitation costs specified in exhibit 20.1 to the Gila River agreement shall be nonreimbursable.

(5) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency for oversight of the construction and rehabilitation of the San Carlos Irrigation Project authorized by this section.

(6) FINANCIAL RESPONSIBILITY.—Except as expressly provided by this section, nothing in this Act shall affect—

(A) any responsibility of the Secretary under the provisions of the Act of June 7, 1924 (commonly known as the ''San Carlos Irrigation Project Act of 1924'') (43 Stat. 475); or

(B) any other financial responsibility of the Secretary relating to operation and maintenance of the San Carlos Irrigation Project existing on the date of enactment of this Act.

SEC. 204. WATER RIGHTS.

(a) RIGHTS HELD IN TRUST; ALLOTTEES.—

(1) INTENT OF CONGRESS.—It is the intent of Congress to provide allottees with benefits that are equal to or that exceed the benefits that the allottees currently possess, taking into account—

(A) the potential risks, cost, and time delay associated with the litigation that will be resolved by the Gila River agreement;

(B) the availability of funding under title I for the rehabilitation of the San Carlos Irrigation Project and for other benefits;

(C) the availability of water from the CAP system and other sources after the enforceability date, which will supplement less secure existing water supplies; and

(D) the applicability of section 7 of the Act of February 8, 1887 (25 U.S.C. 381), and this title to protect the interests of allottees.

(2) HOLDING IN TRUST.—The water rights and resources described in the Gila River agreement shall be held in trust by the United States on behalf of the Community and the allottees as described in this section.

(3) ALLOTTED LAND.—As specified in and provided for under this Act—

(A) agricultural allottees, other than allottees with rights under the Globe Equity Decree, shall be entitled to a just and equitable allocation of water from the Community for irrigation purposes from the water resources described in the Gila River agreement;

(B) allotted land with rights under the Globe Equity Decree shall be entitled to receive—

(i) a similar quantity of water from the Community to the quantity historically delivered under the Globe Equity Decree; and

(ii) the benefit of the rehabilitation of the San Carlos Irrigation Project as provided in this Act, a more secure source of water, and other benefits under this Act;

(C) the water rights and resources and other benefits provided by this Act are a complete substitution of any rights that may have been held by, or any claims that may have been asserted by, the allottees before the date of enactment of this Act for land within the exterior boundaries of the Reservation;

(D) any entitlement to water of allottees for land located within the exterior boundaries of the Reservation shall be satisfied by the Community using the water resources described in subparagraph 4.1 in the Gila River agreement;

(E) before asserting any claim against the United States under section 1491(a) of title 28, United States Code, or under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), an allottee shall first exhaust remedies available to the allottee under the Community's water code and Community law; and

(F) following exhaustion of remedies on claims relating to section 7 of the Act of February 8, 1887 (25 U.S.C. 381), a claimant may petition the Secretary for relief.

(4) ACTIONS, CLAIMS, AND LAWSUITS.—

(A) IN GENERAL.—Nothing in this Act authorizes any action, claim, or lawsuit by an allottee against any person, entity, corporation, or municipal corporation, under Federal, State, or other law.

(B) THE COMMUNITY AND THE UNITED STATES.—Except as provided in subparagraphs (E) and (F) of paragraph (3) and subsection (e)(2)(C), nothing in this Act either authorizes any action, claim, or lawsuit by an allottee against the Community under Federal, State, or other law, or alters available actions pursuant to section 1491(a) of title 28, of the United States Code, or section 381 of title 25, of the United States Code.

(b) REALLOCATION.—

(1) IN GENERAL.—In accordance with this title and the Gila River agreement, the Secretary shall reallocate and contract with the Community for the delivery in accordance with this section of—

(A) an annual entitlement to 18,600 acre-feet of CAP agricultural priority water in accordance with the agreement among the Secretary, the Community, and Roosevelt Water Conservation District dated August 7, 1992;

(B) an annual entitlement to 18,100 acre-feet of CAP Indian priority water, which was

permanently relinquished by Harquahala Valley Irrigation District in accordance with Contract No. 3–0907–0930–09W0290 among the Central Arizona Water Conservation District, the Harquahala Valley Irrigation District, and the United States, and converted to CAP Indian priority water under the Fort McDowell Indian Community Water Rights Settlement Act of 1990 (104 Stat. 4480);

(C) on execution of an exchange and lease agreement among the Community, the United States, and Asarco, an annual entitlement of up to 17,000 acre-feet of CAP municipal and industrial priority water under the subcontract among the United States, the Central Arizona Water Conservation District, and Asarco, Subcontract No. 3–07–30–W0307, dated November 7, 1993; and

(D) as provided in section 104(a)(1)(A)(i), an annual entitlement to 102,000 acre-feet of CAP agricultural priority water acquired pursuant to the master agreement.

(2) SOLE AUTHORITY.—In accordance with this section, the Community shall have the sole authority, subject to the Secretary's approval pursuant to section 205(a)(2), to lease, distribute, exchange, or allocate the CAP water described in this subsection, except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land. Nothing in this paragraph shall affect the validity of any lease or exchange ratified in section 205(c) or 205(d).

(c) WATER SERVICE CAPITAL CHARGES.—The Community shall not be responsible for water service capital charges for CAP water.

(d) ALLOCATION AND REPAYMENT.—For the purpose of determining the allocation and repayment of costs of any stages of the Central Arizona Project constructed after the date of enactment of this Act, the costs associated with the delivery of water described in subsection (b), whether that water is delivered for use by the Community or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Community—

(1) shall be nonreimbursable; and

(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

(e) APPLICATION OF PROVISIONS.—

(1) IN GENERAL.—The water rights recognized and confirmed to the Community and allottees by the Gila River agreement and this title shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

(2) WATER CODE.—

(A) IN GENERAL.—Not later than 18 months after the enforceability date, the Community shall enact a water code, subject to any applicable provision of law (including subsection (a)(3)), that—

(i) manages, regulates, and controls the water resources on the Reservation;

(ii) governs all of the water rights that are held in trust by the United States; and

(iii) provides that, subject to approval of the Secretary—

(I) the Community shall manage, regulate, and control the water resources described in the Gila River agreement and allocate water to all water users on the Reservation pursuant to the water code;

(II) the Community shall establish conditions, limitations, and permit requirements relating to the storage, recovery, and use of the water resources described in the Gila River agreement;

(III) any allocation of water shall be from the pooled water resources described in the Gila River agreement;

(IV) charges for delivery of water for irrigation purposes to water users on the Reservation (including water users on allotted land) shall be assessed on a just and equitable basis without regard to the status of the Reservation land on which the water is used;

(V) there is a process by which any user of or applicant to use water for irrigation purposes (including water users on allotted land) may request that the Community provide water for irrigation use in accordance with this title;

(VI) there is a due process system for the consideration and determination by the Community of any request by any water user on the Reservation (including water users on allotted land), for an allocation of water, including a process for appeal and adjudication of denied or disputed distributions of water and for resolution of contested administrative decisions; and

(VII) there is a requirement that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States or petitioning the Secretary pursuant to subsection (a)(3)(F).

(B) APPROVAL.—Any provision of the water code and any amendments to the water code that affect the rights of the allottees shall be subject to the approval of the Secretary, and no such provision or amendment shall be valid until approved by the Secretary.

(C) INCLUSION OF REQUIREMENT IN WATER CODE.—The Community is authorized to and shall include in the water code the requirement in subparagraph (A)(VII) that any allottee with a claim relating to the enforcement of rights of the allottee under the water code or relating to the amount of water allocated to land of the allottee must first exhaust remedies available to the allottee under Community law and the water code before initiating an action against the United States.

(3) ADMINISTRATION.—The Secretary shall administer all rights to water granted or confirmed to the Community and allottees by the Gila River agreement and this Act until such date as the water code described in paragraph (2) has been enacted and approved by the Secretary, at which time the Community shall have authority, subject to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381), to manage, regulate, and control the water resources described in the Gila River agreement, subject to paragraph (2), except that this paragraph shall not impair the right of an allottee to lease land of the allottee together with the water rights appurtenant to the land.

SEC. 205. COMMUNITY WATER DELIVERY CONTRACT AMENDMENTS.

(a) IN GENERAL.—The Secretary shall amend the Community water delivery contract to provide, among other things, in accordance with the Gila River agreement, that—

(1) the contract shall be—

(A) for permanent service (as that term is used in section 5 of the Boulder Canyon Project Act (43 U.S.C. 617d)); and

(B) without limit as to term;

(2) the Community may, with the approval of the Secretary, including approval as to the Secretary's authority under section 7 of the Act of February 8, 1887 (25 U.S.C. 381)—

(A) enter into contracts or options to lease (for a term not to exceed 100 years) or contracts or options to exchange, Community CAP water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties, Arizona, providing for the temporary delivery to others of any portion of the Community CAP water; and

(B) renegotiate any lease at any time during the term of the lease, so long as the term of the renegotiated lease does not exceed 100 years;

(3)(A) the Community, and not the United States, shall be entitled to all consideration due to the Community under any leases or options to lease and exchanges or options to exchange Community CAP water entered into by the Community; and

(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for—

(i) any funds received by the Community as consideration under any such leases or options to lease and exchanges or options to exchange; or

(ii) the expenditure of such funds;

(4)(A) all Community CAP water shall be delivered through the CAP system; and

(B) if the delivery capacity of the CAP system is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Community shall have the same CAP delivery rights as other CAP contractors and CAP subcontractors, if such CAP contractors or CAP subcontractors are allowed to take delivery of water other than through the CAP system;

(5) the Community may use Community CAP water on or off the Reservation for Community purposes;

(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the CAP operating agency the fixed OM&R charges associated with the delivery of Community CAP water, except for Community CAP water leased by others;

(7) the costs associated with the construction of the CAP system allocable to the Community—

(A) shall be nonreimbursable; and

(B) shall be excluded from any repayment obligation of the Community; and

(8) no CAP water service capital charges shall be due or payable for Community CAP water, whether CAP water is delivered for use by the Community or is delivered under any leases, options to lease, exchanges or options to exchange Community CAP water entered into by the Community.

(b) AMENDED AND RESTATED COMMUNITY WATER DELIVERY CONTRACT.—To the extent it is not in conflict with the provisions of this Act, the Amended and Restated Community CAP Water Delivery Contract set forth in exhibit 8.2 to the Gila River agreement is authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the contract. To the extent amendments are executed to make the Amended and Restated Community CAP Water Delivery Contract consistent with this title, such amendments are also authorized, ratified, and confirmed.

(c) LEASES.—To the extent they are not in conflict with the provisions of this Act, the leases of Community CAP water by the Community to Phelps Dodge, and any of the Cities, attached as exhibits to the Gila River agreement, are authorized, ratified, and confirmed, and the Secretary is directed to and shall execute the leases. To the extent amendments are executed to make such leases consistent with this title, such amendments are also authorized, ratified, and confirmed.

(d) RECLAIMED WATER EXCHANGE AGREEMENT.—To the extent it is not in conflict with the provisions of this Act, the Reclaimed Water Exchange Agreement among the cities of Chandler and Mesa, Arizona, the Community, and the United States, attached

as exhibit 18.1 to the Gila River agreement, is authorized, ratified, and confirmed, and the Secretary shall execute the agreement. To the extent amendments are executed to make the Reclaimed Water Exchange Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(e) PAYMENT OF CHARGES.—Neither the Community nor any recipient of Community CAP water through lease or exchange shall be obligated to pay water service capital charges or any other charges, payments, or fees for the CAP water, except as provided in the lease or exchange agreement.

(f) PROHIBITIONS.—

(1) USE OUTSIDE THE STATE.—None of the Community CAP water shall be leased, exchanged, forborne, or otherwise transferred in any way by the Community for use directly or indirectly outside the State.

(2) USE OFF RESERVATION.—Except as authorized by this section and subparagraph 4.7 of the Gila River agreement, no water made available to the Community under the Gila River agreement, the Globe Equity Decree, the Haggard Decree, or this title may be sold, leased, transferred, or used off the Reservation other than by exchange.

(3) AGREEMENTS WITH THE ARIZONA WATER BANKING AUTHORITY.—Nothing in this Act or the Gila River agreement limits the right of the Community to enter into any agreement with the Arizona Water Banking Authority, or any successor agency or entity, in accordance with State law.

SEC. 206. SATISFACTION OF CLAIMS.

(a) IN GENERAL.—The benefits realized by the Community, Community members, and allottees under this title shall be in complete replacement of and substitution for, and full satisfaction of, all claims of the Community, Community members, and allottees for water rights, injury to water rights, injury to water quality and subsidence damage, except as set forth in the Gila River agreement, under Federal, State, or other law with respect to land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

(b) NO RECOGNITION OF WATER RIGHTS.—Notwithstanding subsection (a) and except as provided in section 204(a), nothing in this title has the effect of recognizing or establishing any right of a Community member or allottee to water on the Reservation.

SEC. 207. WAIVER AND RELEASE OF CLAIMS.

(a) IN GENERAL.—

(1) CLAIMS AGAINST THE STATE AND OTHERS.—

(A) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE COMMUNITY AND THE UNITED STATES ON BEHALF OF THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of their obligations under the Gila River agreement, are authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or State law.

(B) CLAIMS FOR WATER RIGHTS AND INJURY TO WATER RIGHTS BY THE UNITED STATES AS TRUSTEE FOR THE ALLOTTEES.—Except as provided in subparagraph 25.12 of the Gila River agreement, the United States, as trustee for the allottees, as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by allottees, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by allottees or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or State law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II; and

(iv) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation arising from time immemorial through the enforceability date.

(C) CLAIMS FOR INJURY TO WATER QUALITY BY THE COMMUNITY.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of any claims, and to agree to waive its right to request the United States to bring any claims, against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law for—

(i) past and present claims for injury to water quality (other than claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq. as amended) arising from time immemorial through December 31, 2002, for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land;

(ii) past, present, and future claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement), including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq.), arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(iii) claims for injury to water quality (other than claims arising out of actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement) arising after December 31, 2002, including claims for trespass, nuisance, and real property damage and claims under all current and future Federal, State, and other environmental laws and regulations, including claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–9281 et seq.), that result from—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation,

except that the waiver provided in this clause shall extend only to the State (or any agency or political subdivision of the State) or any other person, entity, or municipal or other corporation to the extent that the person, entity, or corporation is engaged in an activity specified in this clause.

(D) PAST AND PRESENT CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of any claims arising from time immemorial through December 31, 2002, for injury to water quality where all of the following conditions are met:

(i) The claims are brought solely on behalf of the Community, members, or allottees.

(ii) The claims are brought against the State (or any agency or political subdivision of the State) or any person, entity, corporation, or municipal corporation.

(iii) The claims arise under Federal, State, or other law, including claims, if any, for trespass, nuisance, and real property damage, and claims, if any, under any current or future Federal, State, or other environmental laws or regulation, including under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Arizona Water Quality Assurance Revolving Fund (Ariz. Rev. Stat. 49–281 et seq.).

(iv) The claimed injury is to land, water, or natural resources located on trust land within the exterior boundaries of the Reservation or on off-Reservation trust land.

(E) FUTURE CLAIMS FOR INJURY TO WATER QUALITY BY THE UNITED STATES.—Except as provided in subparagraph 25.12 of the Gila River agreement and except for any claims arising out of the actions that resulted in the remediations described in exhibit 25.4.1.1 to the Gila River agreement, the United States, in its own right and as trustee for the Community, its members and allottees, as part of the performance of its obligations under the Gila River agreement, to the extent consistent with this section, is authorized to execute a waiver and release of the following claims for injury or threat of injury to water quality arising after December 31, 2002, against the State (or any agency or political subdivision of the State) or any other person, entity, corporation, or municipal corporation under Federal, State, or other law:

(i) All common law claims for injury or threat of injury to water quality where the injury or threat of injury asserted is to the Community's, Community members' or allottees' interests in trust land, water, or natural resources located within the exterior boundaries of the Reservation or within off-Reservation trust lands caused by—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(ii) All natural resource damage claims for injury or threat of injury to water quality where the United States, through the Secretary of the Interior or other designated officials, would act on behalf of the Community, its members or allottees as a natural resource trustee pursuant to the National Contingency Plan, (as currently set forth in section 300.600(b)(2) of title 40, Code of Federal Regulations, or as it may hereafter be amended), and where the claim is based on injury to natural resources or threat of injury to natural resources within the exterior boundaries of the Reservation or off-Reservation trust lands, caused by—

(I) the delivery of water to the Community;

(II) the off-Reservation diversion (other than pumping), or ownership or operation of structures for the off-Reservation diversion (other than pumping), of water;

(III) the off-Reservation pumping, or ownership or operation of structures for the off-Reservation pumping, of water in a manner not in violation of the Gila River agreement or of any applicable pumping limitations under State law;

(IV) the recharge, or ownership or operation of structures for the recharge, of water under a State permit; and

(V) the off-Reservation application of water to land for irrigation.

(F) CLAIMS BY THE COMMUNITY AGAINST THE SALT RIVER PROJECT.—

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community or its, members.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

(III) The claims arise from time immemorial through the enforceability date.

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water quality, or injury to trust property located within the exterior boundaries of the Reservation.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subparagraph is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

(G) CLAIMS BY THE UNITED STATES AGAINST THE SALT RIVER PROJECT.—

(i) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this section, the United States, acting as trustee for the Community, Community members and allottees, and as part of the performance of its obligations under the Gila River agreement, is authorized to execute a waiver and release of claims against the Salt River Project (or its successors or assigns or its officers, governors, directors, employees, agents, or shareholders), where all of the following conditions are met:

(I) The claims are brought solely on behalf of the Community, members, or allottees.

(II) The claims arise from the discharge, transportation, seepage, or other movement of water in, through, or from drains, canals, or other facilities or land in the Salt River Reservoir District to trust land located within the exterior boundaries of the Reservation.

(III) The claims arise from time immemorial through the enforceability date.

(IV) The claims assert a past or present injury to water rights, injury on the Reservation to water quality, or injury to trust property located within the exterior boundaries of the Reservation.

(ii) EFFECT OF WAIVER.—The waiver provided for in this subsection is effective as of December 31, 2002, and shall continue to preclude claims as they may arise until the enforceability date, or until such time as the Salt River Project alters its historical operations of the drains, canals, or other facilities within the Salt River Reservoir District in a manner that would cause significant harm to trust lands within the exterior boundaries of the Reservation, whichever occurs earlier.

(H) UNITED STATES ENFORCEMENT AUTHORITY.—Except as provided in subparagraphs (D), (E), and (G), nothing in this Act or the Gila River agreement affects any right of the United States, or the State, to take any action, including environmental actions, under any laws (including regulations and the common law) relating to human health, safety, or the environment.

(2) CLAIMS FOR SUBSIDENCE BY THE COMMUNITY, ALLOTTEES, AND THE UNITED STATES ON BEHALF OF THE COMMUNITY AND ALLOTTEES.—In accordance with the subsidence remediation program under section 209, the Community, a Community member, or an allottee, and the United States, on behalf of the Community, a Community member, or an allottee, as part of the performance of obligations under the Gila River agreement, are authorized to execute a waiver and release of all claims against the State (or any agency or political subdivision of the State) or any other person, entity, corporation or municipal corporation under Federal, State, or other law for the damage claimed.

(3) CLAIMS AGAINST THE COMMUNITY.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, to the extent consistent with this Act, the United States, in all its capacities (except as trustee for an Indian tribe other than the Community), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any and all claims against the Community, or any agency, official, or employee of the Community, under Federal, State, or any other law for—

(i) past and present claims for subsidence damage to trust land within the exterior boundaries of the Reservation, off-Reservation trust lands, and fee land arising from time immemorial through the enforceability date; and

(ii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II.

(4) CLAIMS AGAINST THE UNITED STATES.—

(A) IN GENERAL.—Except as provided in subparagraph 25.12 of the Gila River agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), as part of the performance of obligations under the Gila River agreement, is authorized to execute a waiver and release of any claim against the United States (or agencies, officials, or employees of the United States) under Federal, State, or other law for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors;

(ii)(I) past and present claims for injury to water rights for land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land arising from time immemorial through the enforceability date;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community and Community members, or their predecessors; and

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land resulting from the off-Reservation diversion or use of water in a manner not in violation of the Gila River agreement or applicable law;

(iii) past, present, and future claims arising out of or relating in any manner to the negotiation or execution of the Gila River agreement or the negotiation or enactment of titles I and II;

(iv)(I) past and present claims for subsidence damage occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land, or fee land arising from time immemorial through the enforceability date; and

(II) claims for subsidence damage arising after the enforceability date occurring to land within the exterior boundaries of the Reservation, off-Reservation trust land or fee land resulting from the diversion of underground water in a manner not in violation of the Gila River agreement or applicable law;

(v) past and present claims for failure to protect, acquire, or develop water rights for or on behalf of the Community and Community members arising before December 31, 2002; and

(vi) past, present, and future claims relating to failure to assert any claims expressly waived pursuant to section 207(a)(1) (C) through (E).

(B) EXHAUSTION OF REMEDIES.—To the extent that members in their capacity as allottees assert that this title impairs or alters their present or future claims to water or constitutes an injury to present or future water rights, the members shall be required to exhaust their remedies pursuant to the tribal water code prior to asserting claims against the United States.

(5) CLAIMS AGAINST CERTAIN PERSONS AND ENTITIES IN THE UPPER GILA VALLEY.—

(A) BY THE COMMUNITY AND THE UNITED STATES.—Except as provided in the UVD agreement, the Community, on behalf of the Community and Community members (but not members in their capacities as allottees), and the United States on behalf of the Community and Community members (but not members in their capacities as allottees), are authorized, as part of the performance of obligations under the UVD agreement, to execute a waiver and release of the following claims against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of the Community or Community members;

(ii)(I) past, present, and future claims for injuries to water rights for land within the exterior boundaries of the Reservation or the San Carlos Irrigation Project arising from time immemorial and, thereafter, forever;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of land by the Community, Community members, or predecessors of Community members, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(III) claims for injury to water rights arising after the enforceability date for land within the exterior boundaries of the Reservation and the San Carlos Irrigation Project, resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement; and

(IV) claims for injury to water rights arising after the enforceability date for water rights transferred to the Project pursuant to section 211 resulting from the diversion, pumping or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of and relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(B) BY THE UNITED STATES ON BEHALF OF ALLOTTEES.—Except as provided in the UVD agreement, to the extent consistent with this section, the United States as trustee for the allottees, as part of the performance under the UVD agreement, is authorized to execute a waiver and release of the following claims under Federal, State, or other law against the UV signatories and the UV Non-signatories (and the predecessors in interest of each) for—

(i)(I) past, present, and future claims for water rights for land within the exterior boundaries of the Reservation arising from time immemorial, and thereafter, forever; and

(II) past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors;

(ii)(I) past and present claims for injury to water rights for lands within the exterior boundaries of the Reservation arising from time immemorial, through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) past, present, and future claims for injury to water rights arising from time immemorial and, thereafter, forever, that are based on aboriginal occupancy of lands by allottees or their predecessors, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement; and

(III) claims for injury to water rights for land within the exterior boundaries of the Reservation arising after the enforceability date resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(C) ADDITIONAL WAIVER OF CERTAIN CLAIMS BY THE UNITED STATES.—Except as provided in the UVD Agreement, the United States (to the extent the waiver and release authorized by this subparagraph is not duplicative of the waiver and release provided in subparagraph (B) and to the extent the United States holds legal title to (but not the beneficial interest in) the water rights as described in article V or VI of the Globe Equity Decree (but not on behalf of the San Carlos Apache Tribe pursuant to article VI(2) of the Globe Equity Decree) on behalf of lands within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands) shall execute a waiver and release of the following claims under Federal, State or other law against the UV signatories and the

UV Non-signatories (and the predecessors of each) for—

(i) past, present, and future claims for water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial, and thereafter, forever;

(ii)(I) past and present claims for injury to water rights for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands arising from time immemorial through the enforceability date, for so long as and to the extent that any individual beneficiary of such waiver is acting in a manner that is consistent with and not in violation of or contrary to the terms, conditions, requirements, limitations, or other provisions of the UVD agreement;

(II) claims for injury to water rights arising after the enforceability date for land within the San Carlos Irrigation and Drainage District and the Miscellaneous Flow Lands resulting from the diversion, pumping, or use of water in a manner that is consistent with and not in violation of or contrary to the terms, conditions, limitations, requirements, or provisions of the UVD agreement;

(iii)(I) past, present, and future claims for injuries to water rights arising out of or relating to the use of water rights appurtenant to New Mexico 381 acres, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(II) past, present, and future claims arising out of or relating to the use of water rights for New Mexico domestic purposes, on the conditions that such water rights remain subject to the oversight and reporting requirements set forth in the decree in Arizona v. California, 376 U.S. 340 (1964), as supplemented, and that the State of New Mexico shall make available on request a copy of any records prepared pursuant to that decree; and

(iv) past, present, and future claims arising out of or relating to the negotiation or execution of the UVD agreement, or the negotiation or enactment of titles I and II.

(6) TRIBAL WATER QUALITY STANDARDS.—The Community, on behalf of the Community and Community members, as part of the performance of its obligations under the Gila River agreement, is authorized to agree never to adopt any water quality standards, or ask the United States to promulgate such standards, that are more stringent than water quality standards adopted by the State if the Community's adoption of such standards could result in the imposition by the State or the United States of more stringent water quality limitations or requirements than those that would otherwise be imposed by the State or the United States on—

(A) any water delivery system used to deliver water to the Community; or

(B) the discharge of water into any such system.

(b) EFFECTIVENESS OF WAIVER AND RELEASES.—

(1) IN GENERAL.—The waivers under paragraphs (1) and (3) through (5) of subsection (a) shall become effective on the enforceability date.

(2) CLAIMS FOR SUBSIDENCE DAMAGE.—The waiver under subsection (a)(2) shall become effective on execution of the waiver by—

(A) the Community, a Community member, or an allottee; and

(B) the United States, on behalf of the Community, a Community member, or an allottee.

(c) ENFORCEABILITY DATE.—

(1) IN GENERAL.—This section takes effect on the date on which the Secretary publishes in the Federal Register a statement of findings that—

(A) to the extent the Gila River agreement conflicts with this title, the Gila River agreement has been revised through an amendment to eliminate the conflict and the Gila River agreement, so revised, has been executed by the Secretary and the Governor of the State;

(B) the Secretary has fulfilled the requirements of—

(i) paragraphs (1)(A)(i) and (2) of subsection (a) and subsections (b) and (d) of section 104; and

(ii) sections 204, 205, and 209(a);

(C) the master agreement authorized, ratified, and confirmed by section 106(a) has been executed by the parties to the master agreement, and all conditions to the enforceability of the master agreement have been satisfied;

(D) $53,000,000 has been identified and retained in the Lower Colorado River Basin Development Fund for the benefit of the Community in accordance with section 107(b);

(E) the State has appropriated and paid to the Community any amount to be paid under paragraph 27.4 of the Gila River agreement;

(F) the Salt River Project has paid to the Community $500,000 under subparagraph 16.9 of the Gila River agreement;

(G) the judgments and decrees attached to the Gila River agreement as exhibits 25.18A (Gila River adjudication proceedings) and 25.18B (Globe Equity Decree proceedings) have been approved by the respective courts;

(H) the dismissals attached to the Gila River agreement as exhibits 25.17.1A and B, 25.17.2, and 25.17.3A and B have been filed with the respective courts and any necessary dismissal orders entered;

(I) legislation has been enacted by the State to—

(i) implement the Southside Replenishment Program in accordance with subparagraph 5.3 of the Gila River agreement;

(ii) authorize the firming program required by section 105; and

(iii) establish the Upper Gila River Watershed Maintenance Program in accordance with subparagraph 26.8.1 of the Gila River agreement;

(J) the State has entered into an agreement with the Secretary to carry out the obligation of the State under section 105(b)(2)(A); and

(K) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–1720PHX–EHC) (Consolidated Action) in accordance with the repayment stipulation.

(2) FAILURE OF ENFORCEABILITY DATE TO OCCUR.—If, because of the failure of the enforceability date to occur by December 31, 2007, this section does not become effective, the Community, Community members, and allottees, and the United States on behalf of the San Carlos Irrigation and Drainage District, the Community, Community members, and allottees, shall retain the right to assert past, present, and future water rights claims, claims for injury to water rights, claims for injury to water quality, and claims for subsidence damage as to all land within the exterior boundaries of the Reservation, off-Reservation trust land, and fee land.

(d) ALL LAND WITHIN EXTERIOR BOUNDARIES OF THE RESERVATION.—Notwithstanding section 2(42), for purposes of this section, section 206, and section 210(d)—

(1) the term ''land within the exterior boundaries of the Reservation'' includes—

(A) land within the Reservation created pursuant to the Act of February 28, 1859, and modified by the executive orders of August 31, 1876, June 14, 1879, May 5, 1882, November 15, 1883, July 31, 1911, June 2, 1913, August 27, 1914, and July 19, 1915; and

(B) land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian; and

(2) the term ''off-Reservation'' refers to land located outside the exterior boundaries of the Reservation (as defined in paragraph (1)).

(e) NO RIGHTS TO WATER.—Upon the occurrence of the enforceability date—

(1) all land held by the United States in trust for the Community, Community members, and allottees and all land held by the Community within the exterior boundaries of the Reservation shall have no rights to water other than those specifically granted to the Community and the United States for the Reservation pursuant to paragraph 4.0 of the Gila River agreement; and

(2) all water usage on land within the exterior boundaries of the Reservation, including the land located in sections 16 and 36, T. 4 S., R. 4 E., Salt and Gila River Baseline and Meridian, upon acquisition by the Community or the United States on behalf of the Community, shall be taken into account in determining compliance by the Community and the United States with the limitations on total diversions specified in subparagraph 4.2 of the Gila River agreement.

SEC. 208. GILA RIVER INDIAN COMMUNITY WATER OM&R TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''Gila River Indian Community Water OM&R Fund'', to be managed and invested by the Secretary, consisting of $53,000,000, the amount made available for this purpose under paragraph (2)(B) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(b) MANAGEMENT.—The Secretary shall manage the Water OM&R Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Community consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), hereafter referred to in this section as the ''Trust Fund Reform Act''.

(c) INVESTMENT OF THE FUND.—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, chapter 41; 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a); and

(3) subsection (b).

(d) EXPENDITURES AND WITHDRAWALS.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Community may withdraw all or part of the Water OM&R Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Community only spend any funds, as provided in the Gila River agreement, to assist in paying operation, maintenance, and replacement costs associated with the delivery of CAP water for Community purposes.

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that the monies withdrawn from the Water OM&R Fund are used in accordance with this Act.

(3) LIABILITY.—If the Community exercises the right to withdraw monies from the Water

OM&R Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Community shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this section that the Community does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Community remaining in the Water OM&R Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act.

(5) ANNUAL REPORT.—The Community shall submit to the Secretary an annual report that describes all expenditures from the Water OM&R Fund during the year covered by the report.

(e) NO DISTRIBUTION TO MEMBERS.—No part of the principal of the Water OM&R Fund, or of the interest or income accruing on the principal, shall be distributed to any Community member on a per capita basis.

(f) FUNDS NOT AVAILABLE UNTIL ENFORCEABILITY DATE.—Amounts in the Water OM&R Fund shall not be available for expenditure or withdrawal by the Community until the enforceability date, or until January 1, 2010, whichever is later.

SEC. 209. SUBSIDENCE REMEDIATION PROGRAM.

(a) IN GENERAL.—Subject to the availability of funds and consistent with the provisions of section 107(a), the Secretary shall establish a program under which the Bureau of Reclamation shall repair and remediate subsidence damage and related damage that occurs after the enforceability date.

(b) DAMAGE.—Under the program, the Community, a Community member, or an allottee may submit to the Secretary a request for the repair or remediation of—

(1) subsidence damage; and

(2) damage to personal property caused by the settling of geologic strata or cracking in the earth's surface of any length or depth, which settling or cracking is caused by pumping of underground water.

(c) REPAIR OR REMEDIATION.—The Secretary shall perform the requested repair or remediation if—

(1) the Secretary determines that the Community has not exceeded its right to withdraw underground water under the Gila River agreement; and

(2) the Community, Community member, or allottee, and the Secretary as trustee for the Community, Community member, or allottee, execute a waiver and release of claim in the form specified in exhibit 25.9.1, 25.9.2, or 25.9.3 to the Gila River agreement, as applicable, to become effective on satisfactory completion of the requested repair or remediation, as determined under the Gila River agreement.

(d) SPECIFIC SUBSIDENCE DAMAGE.—Subject to the availability of funds, the Secretary, acting through the Commissioner of Reclamation, shall repair, remediate, and rehabilitate the subsidence damage that has occurred to land before the enforceability date within the Reservation, as specified in exhibit 30.21 to the Gila River agreement.

SEC. 210. AFTER-ACQUIRED TRUST LAND.

(a) REQUIREMENT OF ACT OF CONGRESS.—The Community may seek to have legal title to additional land in the State located outside the exterior boundaries of the Reservation taken into trust by the United States for the benefit of the Community pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Community.

(b) WATER RIGHTS.—After-acquired trust land shall not include federally reserved rights to surface water or groundwater.

(c) SENSE OF CONGRESS.—It is the sense of Congress that future Acts of Congress authorizing land to be taken into trust under subsection (a) should provide that such land will have only such water rights and water use privileges as would be consistent with State water law and State water management policy.

(d) ACCEPTANCE OF LAND IN TRUST STATUS.—

(1) IN GENERAL.—If the Community acquires legal fee title to land that is located within the exterior boundaries of the Reservation (as defined in section 207(d)), the Secretary shall accept the land in trust status for the benefit of the Community upon receipt by the Secretary of a submission from the Community that provides evidence that—

(A) the land meets the Department of the Interior's minimum environmental standards and requirements for real estate acquisitions set forth in 602 DM 2.6, or any similar successor standards or requirements for real estate acquisitions in effect on the date of the Community's submission; and

(B) the title to the land meets applicable Federal title standards in effect on the date of the Community's submission.

(2) RESERVATION STATUS.—Land taken or held in trust by the Secretary under paragraph (1) shall be deemed part of the Community's reservation.

SEC. 211. REDUCTION OF WATER RIGHTS.

(a) REDUCTION OF TBI ELIGIBLE ACRES.—

(1) IN GENERAL.—Consistent with this title and as provided in the UVD agreement to assist in reducing the total water demand for irrigation use in the upper valley of the Gila River, the Secretary shall provide funds to the Gila Valley Irrigation District and the Franklin Irrigation District (hereafter in this section referred to as ''the Districts'') for the acquisition of UV decreed water rights and the extinguishment of those rights to decrease demands on the Gila River, or severance and transfer of those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District in accordance with applicable law.

(2) ACQUISITIONS.—

(A) REQUIRED PHASE I ACQUISITION.—Not later than December 31 of the third calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands).

(B) REQUIRED PHASE II ACQUISITION.—Not later than December 31 of the sixth calendar year that begins after the enforceability date (or December 31 of the first calendar year that begins after the payment provided by subparagraph (D)(iii), if later), the Districts shall acquire the UV decreed water rights appurtenant to 1,000 acres of land (other than special hot lands). The reduction of TBI eligible acres under this subparagraph shall be in addition to that accomplished under subparagraph (A).

(C) ADDITIONAL ACQUISITION IN CASE OF SETTLEMENT.—If the San Carlos Apache Tribe reaches a comprehensive settlement that is approved by Congress and finally approved by all courts the approval of which is required, the Secretary shall offer to acquire for fair market value the UV decreed water rights associated with not less than 500 nor more than 3,000 TBI eligible acres of land (other than special hot lands).

(D) METHODS OF ACQUISITION FOR RIGHTS ACQUIRED PURSUANT TO SUBPARAGRAPHS (A) AND (B).—

(i) DETERMINATION OF VALUE.—

(I) APPRAISALS.—Not later than December 31 of the first calendar year that begins after the enforceability date in the case of the phase I acquisition, and not later than December 31 of the fourth calendar year that begins after the enforceability date in the case of the phase II acquisition, the Districts shall submit to the Secretary an appraisal of the average value of water rights appurtenant to 1,000 TBI eligible acres.

(II) REVIEW.—The Secretary shall review the appraisal submitted to ensure its consistency with the Uniform Appraisal Standards for Federal Land Acquisition and notify the Districts of the results of the review within 30 days of submission of the appraisal. In the event that the Secretary finds that the appraisal is not consistent with such standards, the Secretary shall so notify the Districts with a full explanation of the reasons for that finding. Within 60 days of being notified by the Secretary that the appraisal is not consistent with such Standards, the Districts shall resubmit an appraisal to the Secretary that is consistent with such standards. The Secretary shall review the resubmitted appraisal to ensure its consistency with nationally approved standards and notify the Districts of the results of the review within 30 days of resubmission.

(III) PETITION.—In the event that the Secretary finds that such resubmitted appraisal is not consistent with those Standards, either the Districts or the Secretary may petition a Federal court in the District of Arizona for a determination of whether the appraisal is consistent with nationally approved Standards. If such court finds the appraisal is so consistent, the value stated in the appraisal shall be final for all purposes. If such court finds the appraisal is not so consistent, the court shall determine the average value of water rights appurtenant to 1,000 TBI eligible acres.

(IV) NO OBJECTION.—If the Secretary does not object to an appraisal within the time periods provided in this clause (i), the value determined in the appraisal shall be final for all purposes.

(ii) APPRAISAL.—In determining the value of water rights pursuant to this paragraph, any court, the Districts, the Secretary, and any appraiser shall take into account the obligations the owner of the land (to which the rights are appurtenant) will have after acquisition for phreatophyle control as provided in the UVD agreement and to comply with environmental laws because of the acquisition and severance and transfer or extinguishment of the water rights.

(iii) PAYMENT.—No more than 30 days after the average value of water rights appurtenant to 1,000 acres of land has been determined in accordance with clauses (i) and (ii), the Secretary shall pay 125 percent of such values to the Districts.

(iv) REDUCTION OF ACREAGE.—No later than December 31 of the first calendar year that begins after each such payment, the Districts shall acquire the UV decreed water rights appurtenant to one thousand (1,000) acres of lands that would have been included in the calculation of TBI eligible acres (other than special hot lands), if the calculation of TBI eligible acres had been undertaken at the time of acquisition. To the extent possible, the Districts shall select the rights to be acquired in compliance with subsection 5.3.7 of the UVD agreement.

(3) REDUCTION OF TBI ELIGIBLE ACRES.—Simultaneously with the acquisition of UV decreed water rights under paragraph (2), the number of TBI eligible acres, but not the number of acres of UV subjugated land, shall be reduced by the number of acres associated with those UV decreed water rights.

(4) ALTERNATIVES TO ACQUISITION.—

(A) SPECIAL HOT LANDS.—After the payments provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with an owner of special hot lands to prohibit permanently future irrigation of the special hot lands if the UVD settling parties simultaneously—

(i) acquire UV decreed water rights associated with a like number of UV decreed acres that are not TBI eligible acres; and

(ii) sever and transfer those rights to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District.

(B) FALLOWING AGREEMENT.—After the payment provided by paragraph (2)(D)(iii), the Districts may fulfill the requirements of paragraphs (2) and (3) in full or in part, by entering into an agreement with 1 or more owners of UV decreed acres and the UV irrigation district in which the acres are located, if any, under which—

(i) the number of TBI eligible acres is reduced; but

(ii) the owner of the UV decreed acres subject to the reduction is permitted to periodically irrigate the UV decreed acres under a fallowing agreement authorized under the UVD agreement.

(5) DISPOSITION OF ACQUIRED WATER RIGHTS.—

(A) IN GENERAL.—Of the UV decreed water rights acquired by the Districts pursuant to subparagraphs (A) and (B) of paragraph (2), the Districts shall, in accordance with all applicable law and the UVD agreement—

(i) sever, and transfer to the San Carlos Irrigation Project for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with up to 900 UV decreed acres; and

(ii) extinguish the balance of the UV decreed water rights so acquired (except and only to the extent that those rights are associated with a fallowing agreement authorized under paragraph (4)(B)).

(B) SAN CARLOS APACHE SETTLEMENT.—With respect to water rights acquired by the Secretary pursuant to paragraph (2)(C), the Secretary shall, in accordance with applicable law—

(i) cause to be severed and transferred to the San Carlos Irrigation Project, for the benefit of the Community and the San Carlos Irrigation and Drainage District, the UV decreed water rights associated with 200 UV decreed acres;

(ii) cause to be extinguished the UV decreed water rights associated with 300 UV decreed acres; and

(iii) cause to be transferred the balance of those acquired water rights to the San Carlos Apache Tribe pursuant to the terms of the settlement described in paragraph (2)(C).

(6) MITIGATION.—To the extent the Districts, after the payments provided by paragraph (2)(D)(iii), do not comply with the acquisition requirements of paragraph (2) or otherwise comply with the alternatives to acquisition provided by paragraph (4), the Districts shall provide mitigation to the San Carlos Irrigation Project as provided by the UVD agreement.

(b) ADDITIONAL REDUCTIONS.—

(1) COOPERATIVE PROGRAM.—In addition to the reduction of TBI eligible acres to be accomplished under subsection (a), not later than 1 year after the enforceability date, the Secretary and the UVD settling parties shall cooperatively establish a program to purchase and extinguish UV decreed water rights associated with UV decreed acres that have not been recently irrigated.

(2) FOCUS.—The primary focus of the program under paragraph (1) shall be to prevent any land that contains riparian habitat from being reclaimed for irrigation.

(3) FUNDS AND RESOURCES.—The program under this subsection shall not require any expenditure of funds, or commitment of resources, by the UVD signatories other than such incidental expenditures of funds and commitments of resources as are required to cooperatively participate in the program.

SEC. 212. NEW MEXICO UNIT OF THE CENTRAL ARIZONA PROJECT.

(a) REQUIRED APPROVALS.—The Secretary shall not execute the Gila River agreement pursuant to section 203(b), and the agreement shall not become effective, unless and until the New Mexico Consumptive Use and Forbearance Agreement has been executed by all signatory parties and approved by the State of New Mexico.

(b) NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT.—

(1) IN GENERAL.—Except to the extent a provision of the New Mexico Consumptive Use and Forbearance Agreement conflicts with a provision of this title, the New Mexico Consumptive Use and Forbearance Agreement is authorized, ratified, and confirmed. To the extent amendments are executed to make the New Mexico Consumptive Use and Forbearance Agreement consistent with this title, such amendments are also authorized, ratified, and confirmed.

(2) EXECUTION.—To the extent the New Mexico Consumptive Use and Forbearance Agreement does not conflict with this title, the Secretary shall execute the New Mexico Consumptive Use and Forbearance Agreement, including all exhibits to which the Secretary is a party to the New Mexico Consumptive Use and Forbearance Agreement and any amendments to the New Mexico Consumptive Use and Forbearance necessary to make it consistent with this title.

(c) NEW MEXICO UNIT AGREEMENT.—The Secretary is authorized to execute the New Mexico Unit Agreement, which agreement shall be executed within 1 year of receipt by the Secretary of written notice from the State of New Mexico that the State of New Mexico intends to build the New Mexico Unit, which notice must be received not later than December 31, 2014. The New Mexico Unit Agreement shall, among other things, provide that—

(1) all funds from the Lower Colorado River Basin Development Fund disbursed in accordance with section 403(f)(2)(D) (i) and (ii) of the Colorado River Basin Project Act (as amended by section 107(a)) shall be nonreimbursable (and such costs shall be excluded from the repayment obligation, if any, of the NM CAP entity under the New Mexico Unit Agreement);

(2) in determining payment for CAP water under the New Mexico Unit Agreement, the NM CAP entity shall be responsible only for its share of operations, maintenance, and replacement costs (and no capital costs attendant to other units or portions of the Central Arizona Project shall be charged to the NM CAP entity);

(3) upon request by the NM CAP entity, the Secretary shall transfer to the NM CAP entity the responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those responsibilities, provided that the Secretary shall not transfer the authority to divert water pursuant to the New Mexico Consumptive Use and Forbearance Agreement, provided further that the Secretary, shall remain responsible to the parties to the New Mexico Consumptive Use and Forbearance Agreement for the NM CAP entity's compliance with the terms and conditions of that agreement;

(4) the Secretary shall divert water and otherwise exercise her rights and authorities pursuant to the New Mexico Consumptive Use and Forbearance Agreement solely for the benefit of the NM CAP entity and for no other purpose;

(5) the NM CAP entity shall own and hold title to all portions of the New Mexico Unit constructed pursuant to the New Mexico Unit Agreement; and

(6) the Secretary shall provide a waiver of sovereign immunity for the sole and exclusive purpose of resolving a dispute in Federal court of any claim, dispute, or disagreement arising under the New Mexico Unit Agreement.

(d) AMENDMENT TO SECTION 304.—Section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)) is amended—

(1) by striking paragraph (1) and inserting the following: ''(1) In the operation of the Central Arizona Project, the Secretary shall offer to contract with water users in the State of New Mexico, with the approval of its Interstate Stream Commission, or with the State of New Mexico, through its Interstate Stream Commission, for water from the Gila River, its tributaries and underground water sources in amounts that will permit consumptive use of water in New Mexico of not to exceed an annual average in any period of 10 consecutive years of 14,000 acre-feet, including reservoir evaporation, over and above the consumptive uses provided for by article IV of the decree of the Supreme Court of the United States in Arizona v. California (376 U.S. 340). Such increased consumptive uses shall continue only so long as delivery of Colorado River water to downstream Gila River users in Arizona is being accomplished in accordance with this Act, in quantities sufficient to replace any diminution of their supply resulting from such diversion from the Gila River, its tributaries and underground water sources. In determining the amount required for this purpose, full consideration shall be given to any differences in the quality of the water involved.'';

(2) by striking paragraph (2); and

(3) by redesignating paragraph (3) as paragraph (2).

(e) COST LIMITATION.—In determining payment for CAP water under the New Mexico Consumptive Use and Forbearance Agreement, the NM CAP entity shall be responsible only for its share of operations, maintenance, and repair costs. No capital costs attendant to other Units or portions of the Central Arizona Project shall be charged to the NM CAP entity.

(f) EXCLUSION OF COSTS.—For the purpose of determining the allocation and repayment of costs of the Central Arizona Project under the CAP Repayment Contract, the costs associated with the New Mexico Unit and the delivery of Central Arizona Project water pursuant to the New Mexico Consumptive Use and Forbearance Agreement shall be nonreimbursable, and such costs shall be excluded from the Central Arizona Water Conservation District's repayment obligation.

(g) NEW MEXICO UNIT CONSTRUCTION AND OPERATIONS.—The Secretary is authorized to design, build, and operate and maintain the New Mexico Unit. Upon request by the State of New Mexico, the Secretary shall transfer to the NM CAP entity responsibility to design, build, or operate and maintain the New Mexico Unit, or all or any combination of those functions.

(h) NATIONAL ENVIRONMENTAL POLICY ACT.—

(1) ENVIRONMENTAL COMPLIANCE.—Upon execution of the New Mexico Consumptive

Use and Forbearance Agreement and the New Mexico Unit Agreement, the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

(2) EXECUTION OF THE NEW MEXICO CONSUMPTIVE USE AND FORBEARANCE AGREEMENT AND THE NEW MEXICO UNIT AGREEMENT.—Execution of the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing the New Mexico Consumptive Use and Forbearance Agreement and the New Mexico Unit Agreement.

(3) LEAD AGENCY.—The Bureau of Reclamation shall be designated as the lead agency with respect to environmental compliance. Upon request by the State of New Mexico to the Secretary, the State of New Mexico shall be designated as joint lead agency with respect to environmental compliance.

(i) NEW MEXICO UNIT FUND.—The Secretary shall deposit the amounts made available under paragraph (2)(D)(i) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) into the New Mexico Unit Fund, a State of New Mexico Fund established and administered by the New Mexico Interstate Stream Commission. Withdrawals from the New Mexico Unit Fund shall be for the purpose of paying costs of the New Mexico Unit or other water utilization alternatives to meet water supply demands in the Southwest Water Planning Region of New Mexico, as determined by the New Mexico Interstate Stream Commission in consultation with the Southwest New Mexico Water Study Group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration.

(j) ADDITIONAL FUNDING FOR NEW MEXICO UNIT.—The Secretary shall pay for an additional portion of the costs of constructing the New Mexico Unit from funds made available under paragraph (2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)) on a construction schedule basis, up to a maximum amount under this subparagraph (j) of $34,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit, upon satisfaction of the conditions that—

(1) the State of New Mexico must provide notice to the Secretary in writing not later than December 31, 2014, that the State of New Mexico intends to have constructed or developed the New Mexico Unit; and

(2) the Secretary must have issued in the Federal Register not later than December 31, 2019, a Record of Decision approving the project based on an environmental analysis required pursuant to applicable Federal law and on a demonstration that construction of a project for the New Mexico Unit that would deliver an average annual safe yield, based on a 50-year planning period, greater than 10,000 acre feet per year, would not cost more per acre foot of water diverted than a project sized to produce an average annual safe yield of 10,000 acre feet per year. If New Mexico exercises all reasonable efforts to obtain the issuance of such Record of Decision, but the Secretary is not able to issue such Record of Decision by December 31, 2019, for reasons outside the control of the State of New Mexico, the Secretary may extend the deadline for a reasonable period of time, not to extend beyond December 31, 2030.

(k) RATE OF RETURN EXCEEDING 4 PERCENT.—If the rate of return on carryover funds held in the Lower Colorado Basin Development Fund on the date that construction of the New Mexico Unit is initiated exceeds an average effective annual rate of 4 percent for the period beginning on the date of enactment of this Act through the date of initiation of construction of the New Mexico Unit, the Secretary shall pay an additional portion of the costs of the construction costs associated with the New Mexico Unit, on a construction schedule basis, using funds made available under paragraph (2)(D)(ii) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)). The amount of such additional payments shall be equal to 25 percent of the total return on the carryover funds earned during the period in question that is in excess of a return on such funds at an annual average effective return of 4 percent, up to a maximum total of not more than $28,000,000, as adjusted to reflect changes since January 1, 2004, in the construction cost indices applicable to the types of construction involved in construction of the New Mexico Unit.

(l) DISCLAIMER.—Nothing in this Act shall affect, alter, or diminish rights to use of water of the Gila River within New Mexico, or the authority of the State of New Mexico to administer such rights for use within the State, as such rights are quantified by article IV of the decree of the United States Supreme Court in Arizona v. California (376 U.S. 340).

(m) PRIORITY OF OTHER EXCHANGES.—The Secretary shall not approve any exchange of Gila River water for water supplied by the CAP that would amend, alter, or conflict with the exchanges authorized by section 304(f) of the Colorado River Basin Project Act (43 U.S.C. 1524(f)).

SEC. 213. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—If any party to the Gila River agreement or signatory to an exhibit executed pursuant to section 203(b) or to the New Mexico Consumptive Use and Forbearance Agreement brings an action in any court of the United States or any State court relating only and directly to the interpretation or enforcement of this title or the Gila River agreement (including enforcement of any indemnity provisions contained in the Gila River agreement) or the New Mexico Consumptive Use and Forbearance Agreement, and names the United States or the Community as a party, or if any other landowner or water user in the Gila River basin in Arizona (except any party referred to in subparagraph 28.1.4 of the Gila River agreement) files a lawsuit relating only and directly to the interpretation or enforcement of subparagraph 6.2, subparagraph 6.3, paragraph 25, subparagraph 26.2, subparagraph 26.8, and subparagraph 28.1.3 of the Gila River agreement, naming the United States or the Community as a party—

(1) the United States, the Community, or both, may be joined in any such action; and

(2) any claim by the United States or the Community to sovereign immunity from the action is waived, but only for the limited and sole purpose of such interpretation or enforcement (including any indemnity provisions contained in the Gila River agreement).

(b) EFFECT OF ACT.—Nothing in this title quantifies or otherwise affects the water rights, or claims or entitlements to water, of any Indian tribe, band, or community, other than the Community.

(c) LIMITATION ON CLAIMS FOR REIMBURSEMENT.—The United States shall not make a claim for reimbursement of costs arising out of the implementation of this title or the Gila River agreement against any Indian-owned land within the Reservation, and no assessment shall be made in regard to those costs against that land.

(d) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Community CAP water under this title shall not affect any future allocation or reallocation of CAP water by the Secretary.

(e) COMMUNITY REPAYMENT CONTRACT.—To the extent it is not in conflict with this Act, the Secretary is directed to and shall execute Amendment No. 1 to the Community repayment contract, attached as exhibit 8.1 to the Gila River agreement, to provide, among other things, that the costs incurred under that contract shall be nonreimbursable by the Community. To the extent amendments are executed to make Amendment No. 1 consistent with this title, such amendments are also authorized, ratified, and confirmed.

(f) SALT RIVER PROJECT RIGHTS AND CONTRACTS.—

(1) IN GENERAL.—Subject to paragraph (2), the agreement between the United States and the Salt River Valley Water Users' Association dated September 6, 1917, as amended, and the rights of the Salt River Project to store water from the Salt River and Verde River at Roosevelt Dam, Horse Mesa Dam, Mormon Flat Dam, Stewart Mountain Dam, Horseshoe Dam, and Bartlett Dam and to deliver the stored water to shareholders of the Salt River Project and others for all beneficial uses and purposes recognized under State law and to the Community under the Gila River agreement, are authorized, ratified, and confirmed.

(2) PRIORITY DATE; QUANTIFICATION.—The priority date and quantification of rights described in paragraph (1) shall be determined in an appropriate proceeding in State court.

(3) CARE, OPERATION, AND MAINTENANCE.—The Salt River Project shall retain authority and responsibility existing on the date of enactment of this Act for decisions relating to the care, operation, and maintenance of the Salt River Project water delivery system, including the Salt River Project reservoirs on the Salt River and Verde River, vested in Salt River Project under the 1917 agreement, as amended, described in paragraph (1).

(g) UV IRRIGATION DISTRICTS.—

(1) IN GENERAL.—As partial consideration for obligations the UV irrigation districts shall be undertaking, the obligation to comply with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) to the New Mexico Consumptive Use and Forbearance Agreement, the Gila Valley Irrigation District, in 2010, shall receive funds from the Secretary in an amount of $15,000,000 (adjusted to reflect changes since the date of enactment of this Act in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(2) RESTRICTION.—The funds to be received by the Gila Valley Irrigation District shall be used solely for the purpose of developing programs or constructing facilities to assist with mitigating the risks and costs associated with compliance with the terms and conditions of term 5 of exhibit 2.30 (New Mexico Risk Allocation Terms) of the New Mexico Consumptive and Forbearance Agreement, and for no other purpose.

(h) LIMITATION ON LIABILITY OF UNITED STATES.—

(1) IN GENERAL.—The United States shall have no trust or other obligation—

(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Community by any party to the Gila River agreement; or

(B) to review or approve the expenditure of those funds.

(2) INDEMNIFICATION.—The Community shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

(i) BLUE RIDGE PROJECT TRANSFER AUTHORIZATION.—

(1) DEFINITIONS.—In this subsection:

(A) BLUE RIDGE PROJECT.—The term ''Blue Ridge Project'' means the water storage reservoir known as ''Blue Ridge Reservoir'' situated in Coconino and Gila Counties, Arizona, consisting generally of—

(i) Blue Ridge Dam and all pipelines, tunnels, buildings, hydroelectric generating facilities, and other structures of every kind, transmission, telephone and fiber optic lines, pumps, machinery, tools, and appliances; and

(ii) all real or personal property, appurtenant to or used, or constructed or otherwise acquired to be used, in connection with Blue Ridge Reservoir.

(B) SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT.—The term ''Salt River Project Agricultural Improvement and Power District'' means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(2) TRANSFER OF TITLE.—The United States, acting through the Secretary of the Interior, shall accept from the Salt River Project Agricultural Improvement and Power District the transfer of title to the Blue Ridge Project. The transfer of title to the Blue Ridge Project from the Salt River Project Agricultural Improvement and Power District to the United States shall be without cost to the United States. The transfer, change of use or change of place of use of any water rights associated with the Blue Ridge Project shall be made in accordance with Arizona law.

(3) USE AND BENEFIT OF SALT RIVER FEDERAL RECLAMATION PROJECT.—

(A) IN GENERAL.—Subject to subparagraph (B), the United States shall hold title to the Blue Ridge Project for the exclusive use and benefit of the Salt River Federal Reclamation Project.

(B) AVAILABILITY OF WATER.—Up to 3,500 acre-feet of water per year may be made available from Blue Ridge Reservoir for municipal and domestic uses in Northern Gila County, Arizona, without cost to the Salt River Federal Reclamation Project.

(4) TERMINATION OF JURISDICTION.—

(A) LICENSING AND REGULATORY AUTHORITY.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Federal Energy Regulatory Commission shall have no further licensing and regulatory authority over Project Number 2304, the Blue Ridge Project, located within the State.

(B) ENVIRONMENTAL LAWS.—All other applicable Federal environmental laws shall continue to apply to the Blue Ridge Project, including the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(5) CARE, OPERATION, AND MAINTENANCE.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District shall be responsible for the care, operation, and maintenance of the project pursuant to the contract between the United States and the Salt River Valley Water Users' Association, dated September 6, 1917, as amended.

(6) C.C. CRAGIN DAM & RESERVOIR.—Upon the transfer of title of the Blue Ridge Project to the United States under paragraph (2), Blue Ridge Dam and Reservoir shall thereafter be known as the ''C.C. Cragin Dam and Reservoir''.

(j) EFFECT ON CURRENT LAW; JURISDICTION OF COURTS.—Nothing in this section—

(1) alters law in effect on the day before the date of enactment of this Act with respect to pre-enforcement review of Federal environmental enforcement actions; or

(2) confers jurisdiction on any State court to interpret subparagraphs (D), (E), and (G) of section 207(a)(1) where such jurisdiction does not otherwise exist.

SEC. 214. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) REHABILITATION OF IRRIGATION WORKS.—

(A) IN GENERAL.—There is authorized to be appropriated $52,396,000, adjusted to reflect changes since January 1, 2000, under subparagraph (B) for the rehabilitation of irrigation works under section 203(d)(4).

(B) ADJUSTMENT.—The amount under subparagraph (A) shall be adjusted by such amounts, if any, as may be required by reason of changes in construction costs as indicated by engineering cost indices applicable to the types of construction required by the rehabilitation.

(2) BUREAU OF RECLAMATION CONSTRUCTION OVERSIGHT.—There are authorized to be appropriated such sums as are necessary for the Bureau of Reclamation to undertake the oversight of the construction projects authorized under section 203.

(3) SUBSIDENCE REMEDIATION PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out the subsidence remediation program under section 209 (including such sums as are necessary, not to exceed $4,000,000, to carry out the subsidence remediation and repair required under section 209(d)).

(4) WATER RIGHTS REDUCTION.—There are authorized to be appropriated such sums as are necessary to carry out the water rights reduction program under section 211.

(5) SAFFORD FACILITY.—There are authorized to be appropriated such sums as are necessary to—

(A) retire $13,900,000, minus any amounts appropriated for this purpose, of the debt incurred by Safford to pay costs associated with the construction of the Safford facility as identified in exhibit 26.1 to the Gila River agreement; and

(B) pay the interest accrued on that amount.

(6) ENVIRONMENTAL COMPLIANCE.—There are authorized to be appropriated—

(A) such sums as are necessary to carry out—

(i) all necessary environmental compliance activities undertaken by the Secretary associated with the Gila River agreement and this title;

(ii) any mitigation measures adopted by the Secretary that are the responsibility of the Community associated with the construction of the diversion and delivery facilities of the water referred to in section 204 for use on the reservation; and

(iii) no more than 50 percent of the cost of any mitigation measures adopted by the Secretary that are the responsibility of the Community associated with the diversion or delivery of the water referred to in section 204 for use on the Reservation, other than any responsibility related to water delivered to any other person by lease or exchange; and

(B) to carry out the mitigation measures in the Roosevelt Habitat Conservation Plan, not more than $10,000,000.

(7) UV IRRIGATION DISTRICTS.—There are authorized to be appropriated such sums as are necessary to pay the Gila Valley Irrigation District an amount of $15,000,000 (adjusted to reflect changes since the date of enactment of the Arizona Water Settlements Act of 2004 in the cost indices applicable to the type of design and construction involved in the design and construction of a pipeline at or upstream from the Ft. Thomas Diversion Dam to the lands farmed by the San Carlos Apache Tribe, together with canal connections upstream from the Ft. Thomas Diversion Dam and connection devices appropriate to introduce pumped water into the Pipeline).

(b) IDENTIFIED COSTS.—

(1) IN GENERAL.—Amounts made available under subsection (a) shall be considered to be identified costs for purposes of paragraph (2)(D)(v)(I) of section 403(f) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)) (as amended by section 107(a)).

(2) EXCEPTION.—Amounts made available under subsection (a)(4) to carry out section 211(b) shall not be considered to be identified costs for purposes of section 403(f)(2)(D)(v)(I) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(v)(I)) (as amended by section 107(a)).

SEC. 215. REPEAL ON FAILURE OF ENFORCEABILITY DATE.

If the Secretary does not publish a statement of findings under section 207(c) by December 31, 2007—

(1) except for section 213(i), this title is repealed effective January 1, 2008, and any action taken by the Secretary and any contract entered under any provision of this title shall be void;

(2) any amounts appropriated under paragraphs (1) through (7) of section 214(a), together with any interest on those amounts, shall immediately revert to the general fund of the Treasury;

(3) any amounts made available under section 214(b) that remain unexpended shall immediately revert to the general fund of the Treasury; and

(4) any amounts paid by the Salt River Project in accordance with the Gila River agreement shall immediately be returned to the Salt River Project.

TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

SEC. 301. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT.

The Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274) is amended to read as follows:

"TITLE III—SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT

"SEC. 301. SHORT TITLE.

''This title may be cited as the 'Southern Arizona Water Rights Settlement Amendments Act of 2004'.

"SEC. 302. PURPOSES.

''The purposes of this title are—

''(1) to authorize, ratify, and confirm the agreements referred to in section 309(h);

''(2) to authorize and direct the Secretary to execute and perform all obligations of the Secretary under those agreements; and

''(3) to authorize the actions and appropriations necessary for the United States to meet obligations of the United States under those agreements and this title.

"SEC. 303. DEFINITIONS.

''In this title:

''(1) ACRE-FOOT.—The term 'acre-foot' means the quantity of water necessary to cover 1 acre of land to a depth of 1 foot.

''(2) AFTER-ACQUIRED TRUST LAND.—The term 'after-acquired trust land' means land that—

''(A) is located—

''(i) within the State; but

''(ii) outside the exterior boundaries of the Nation's Reservation; and

''(B) is taken into trust by the United States for the benefit of the Nation after the enforceability date.

''(3) AGREEMENT OF DECEMBER 11, 1980.—The term 'agreement of December 11, 1980' means the contract entered into by the United States and the Nation on December 11, 1980.

''(4) AGREEMENT OF OCTOBER 11, 1983.—The term 'agreement of October 11, 1983' means the contract entered into by the United States and the Nation on October 11, 1983.

''(5) ALLOTTEE.—The term 'allottee' means a person that holds a beneficial real property interest in an Indian allotment that is—

''(A) located within the Reservation; and

''(B) held in trust by the United States.

''(6) ALLOTTEE CLASS.—The term 'allottee class' means an applicable plaintiff class certified by the court of jurisdiction in—

''(A) the Alvarez case; or

''(B) the Tucson case.

''(7) ALVAREZ CASE.—The term 'Alvarez case' means the first through third causes of action of the third amended complaint in Alvarez v. City of Tucson (Civ. No. 93–09039 TUC FRZ (D. Ariz., filed April 21, 1993)).

''(8) APPLICABLE LAW.—The term 'applicable law' means any applicable Federal, State, tribal, or local law.

''(9) ASARCO.—The term 'Asarco' means Asarco Incorporated, a New Jersey corporation of that name, and its subsidiaries operating mining operations in the State.

''(10) ASARCO AGREEMENT.—The term 'Asarco agreement' means the agreement by that name attached to the Tohono O'odham settlement agreement as exhibit 13.1.

''(11) CAP REPAYMENT CONTRACT.—

''(A) IN GENERAL.—The term 'CAP repayment contract' means the contract dated December 1, 1988 (Contract No. 14–0906–09W–09245, Amendment No. 1) between the United States and the Central Arizona Water Conservation District for the delivery of water and the repayment of costs of the Central Arizona Project.

''(B) INCLUSIONS.—The term 'CAP repayment contract' includes all amendments to and revisions of that contract.

''(12) CENTRAL ARIZONA PROJECT.—The term 'Central Arizona Project' means the reclamation project authorized and constructed by the United States in accordance with title III of the Colorado River Basin Project Act (43 U.S.C. 1521 et seq.).

''(13) CENTRAL ARIZONA PROJECT LINK PIPELINE.—The term 'Central Arizona Project link pipeline' means the pipeline extending from the Tucson Aqueduct of the Central Arizona Project to Station 293+36.

''(14) CENTRAL ARIZONA PROJECT SERVICE AREA.—The term 'Central Arizona Project service area' means—

''(A) the geographical area comprised of Maricopa, Pinal, and Pima Counties, Arizona, in which the Central Arizona Water Conservation District delivers Central Arizona Project water; and

''(B) any expansion of that area under applicable law.

''(15) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—The term 'Central Arizona Water Conservation District' means the political subdivision of the State that is the contractor under the CAP repayment contract.

''(16) COOPERATIVE FARM.—The term 'cooperative farm' means the farm on land served by an irrigation system and the extension of the irrigation system provided for under paragraphs (1) and (2) of section 304(c).

''(17) COOPERATIVE FUND.—The term 'cooperative fund' means the cooperative fund established by section 313 of the 1982 Act and reauthorized by section 310.

''(18) DELIVERY AND DISTRIBUTION SYSTEM.—

''(A) IN GENERAL.—The term 'delivery and distribution system' means—

''(i) the Central Arizona Project aqueduct;

''(ii) the Central Arizona Project link pipeline; and

''(iii) the pipelines, canals, aqueducts, conduits, and other necessary facilities for the delivery of water under the Central Arizona Project.

''(B) INCLUSIONS.—The term 'delivery and distribution system' includes pumping facilities, power plants, and electric power transmission facilities external to the boundaries of any farm to which the water is distributed.

''(19) EASTERN SCHUK TOAK DISTRICT.—The term 'eastern Schuk Toak District' means the portion of the Schuk Toak District (1 of 11 political subdivisions of the Nation established under the constitution of the Nation) that is located within the Tucson management area.

''(20) ENFORCEABILITY DATE.—The term 'enforceability date' means the date on which title III of the Arizona Water Settlements Act takes effect (as described in section 302(b) of the Arizona Water Settlements Act).

''(21) EXEMPT WELL.—The term 'exempt well' means a water well—

''(A) the maximum pumping capacity of which is not more than 35 gallons per minute; and

''(B) the water from which is used for—

''(i) the supply, service, or activities of households or private residences;

''(ii) landscaping;

''(iii) livestock watering; or

''(iv) the irrigation of not more than 2 acres of land for the production of 1 or more agricultural or other commodities for—

''(I) sale;

''(II) human consumption; or

''(III) use as feed for livestock or poultry.

''(22) FEE OWNER OF ALLOTTED LAND.—The term 'fee owner of allotted land' means a person that holds fee simple title in real property on the Reservation that, at any time before the date on which the person acquired fee simple title, was held in trust by the United States as an Indian allotment.

''(23) FICO.—The term 'FICO' means collectively the Farmers Investment Co., an Arizona corporation of that name, and the Farmers Water Co., an Arizona corporation of that name.

''(24) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(25) INJURY TO WATER QUALITY.—The term 'injury to water quality' means any contamination, diminution, or deprivation of water quality under applicable law.

''(26) INJURY TO WATER RIGHTS.—

''(A) IN GENERAL.—The term 'injury to water rights' means an interference with, diminution of, or deprivation of water rights under applicable law.

''(B) INCLUSION.—The term 'injury to water rights' includes a change in the underground water table and any effect of such a change.

''(C) EXCLUSION.—The term 'injury to water rights' does not include subsidence damage or injury to water quality.

''(27) IRRIGATION SYSTEM.—

''(A) IN GENERAL.—The term 'irrigation system' means canals, laterals, ditches, sprinklers, bubblers, and other irrigation works used to distribute water within the boundaries of a farm.

''(B) INCLUSIONS.—The term 'irrigation system', with respect to the cooperative farm, includes activities, procedures, works, and devices for—

''(i) rehabilitation of fields;

''(ii) remediation of sinkholes, sinks, depressions, and fissures; and

''(iii) stabilization of the banks of the Santa Cruz River.

''(28) LOWER COLORADO RIVER BASIN DEVELOPMENT FUND.—The term 'Lower Colorado River Basin Development Fund' means the fund established by section 403 of the Colorado River Basin Project Act (43 U.S.C. 1543).

''(29) M&I PRIORITY WATER.—The term 'M&I priority water' means Central Arizona Project water that has municipal and industrial priority.

''(30) NATION.—The term 'Nation' means the Tohono O'odham Nation (formerly known as the Papago Tribe) organized under a constitution approved in accordance with section 16 of the Act of June 18, 1934 (25 U.S.C. 476).

''(31) NATION'S RESERVATION.—The term 'Nation's Reservation' means all land within the exterior boundaries of—

''(A) the Sells Tohono O'odham Reservation established by the Executive order of February 1, 1917, and the Act of February 21, 1931 (46 Stat. 1202, chapter 267);

''(B) the San Xavier Reservation established by the Executive order of July 1, 1874;

''(C) the Gila Bend Indian Reservation established by the Executive order of December 12, 1882, and modified by the Executive order of June 17, 1909;

''(D) the Florence Village established by Public Law 95–361 (92 Stat. 595);

''(E) all land acquired in accordance with the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798), if title to the land is held in trust by the Secretary for the benefit of the Nation; and

''(F) all other land to which the United States holds legal title in trust for the benefit of the Nation and that is added to the Nation's Reservation or granted reservation status in accordance with applicable Federal law before the enforceability date.

''(32) NET IRRIGABLE ACRES.—The term 'net irrigable acres' means, with respect to a farm, the acreage of the farm that is suitable for agriculture, as determined by the Nation and the Secretary.

''(33) NIA PRIORITY WATER.—The term 'NIA priority water' means Central Arizona Project water that has non-Indian agricultural priority.

''(34) SAN XAVIER ALLOTTEES ASSOCIATION.—The term 'San Xavier Allottees Association' means the nonprofit corporation established under State law for the purpose of representing and advocating the interests of allottees.

''(35) SAN XAVIER COOPERATIVE ASSOCIATION.—The term 'San Xavier Cooperative Association' means the entity chartered under the laws of the Nation (or a successor of that entity) that is a lessee of land within the cooperative farm.

''(36) SAN XAVIER DISTRICT.—The term 'San Xavier District' means the district of that name, 1 of 11 political subdivisions of the Nation established under the constitution of the Nation.

''(37) SAN XAVIER DISTRICT COUNCIL.—The term 'San Xavier District Council' means the governing body of the San Xavier District, as established under the constitution of the Nation.

''(38) SAN XAVIER RESERVATION.—The term 'San Xavier Reservation' means the San Xavier Indian Reservation established by the Executive order of July 1, 1874.

''(39) SCHUK TOAK FARM.—The term 'Schuk Toak Farm' means a farm constructed in the eastern Schuk Toak District served by the irrigation system provided for under section 304(c)(4).

''(40) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(41) STATE.—The term 'State' means the State of Arizona.

''(42) SUBJUGATE.—The term 'subjugate' means to prepare land for agricultural use through irrigation.

''(43) SUBSIDENCE DAMAGE.—The term 'subsidence damage' means injury to land, water, or other real property resulting from the settling of geologic strata or cracking in the surface of the earth of any length or depth, which settling or cracking is caused by the pumping of water.

''(44) SURFACE WATER.—The term 'surface water' means all water that is appropriable under State law.

''(45) TOHONO O'ODHAM SETTLEMENT AGREEMENT.—The term 'Tohono O'odham settlement agreement' means the agreement dated April 30, 2003 (including all exhibits of and attachments to the agreement).

''(46) TUCSON CASE.—The term 'Tucson case' means United States et al. v. City of Tucson, et al. (Civ. No. 75–0939 TUC consol. with Civ. No. 75–0951 TUC FRZ (D. Ariz., filed February 20, 1975)).

''(47) TUCSON INTERIM WATER LEASE.—The term 'Tucson interim water lease' means the lease, and any pre-2004 amendments and extensions of the lease, approved by the Secretary, between the city of Tucson, Arizona, and the Nation, dated October 24, 1992.

''(48) TUCSON MANAGEMENT AREA.—The term 'Tucson management area' means the area in the State comprised of—

''(A) the area—

''(i) designated as the Tucson Active Management Area under the Arizona Groundwater Management Act of 1980 (1980 Ariz. Sess. Laws 1); and

''(ii) subsequently divided into the Tucson Active Management Area and the Santa Cruz Active Management Area (1994 Ariz. Sess. Laws 296); and

''(B) the portion of the Upper Santa Cruz Basin that is not located within the area described in subparagraph (A)(i).

''(49) TURNOUT.—The term 'turnout' means a point of water delivery on the Central Arizona Project aqueduct.

''(50) UNDERGROUND STORAGE.—The term 'underground storage' means storage of water accomplished under a project authorized under section 308(e).

''(51) UNITED STATES AS TRUSTEE.—The term 'United States as Trustee' means the United States, acting on behalf of the Nation and allottees, but in no other capacity.

''(52) VALUE.—The term 'value' means the value attributed to water based on the greater of—

''(A) the anticipated or actual use of the water; or

''(B) the fair market value of the water.

''(53) WATER RIGHT.—The term 'water right' means any right in or to groundwater, surface water, or effluent under applicable law.

''(54) 1982 ACT.—The term '1982 Act' means the Southern Arizona Water Rights Settlement Act of 1982 (96 Stat. 1274; 106 Stat. 3256), as in effect on the day before the enforceability date.

''SEC. 304. WATER DELIVERY AND CONSTRUCTION OBLIGATIONS.

''(a) WATER DELIVERY.—The Secretary shall deliver annually from the main project works of the Central Arizona Project, a total of 37,800 acre-feet of water suitable for agricultural use, of which—

''(1) 27,000 acre-feet shall—

''(A) be deliverable for use to the San Xavier Reservation; or

''(B) otherwise be used in accordance with section 309; and

''(2) 10,800 acre-feet shall—

''(A) be deliverable for use to the eastern Schuk Toak District; or

''(B) otherwise be used in accordance with section 309.

''(b) DELIVERY AND DISTRIBUTION SYSTEMS.—The Secretary shall (without cost to the Nation, any allottee, the San Xavier Cooperative Association, or the San Xavier Allottees Association), as part of the main project works of the Central Arizona Project, design, construct, operate, maintain, and replace the delivery and distribution systems necessary to deliver the water described in subsection (a).

''(c) DUTIES OF THE SECRETARY.—

''(1) COMPLETION OF DELIVERY AND DISTRIBUTION SYSTEM AND IMPROVEMENT TO EXISTING IRRIGATION SYSTEM.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall complete the design and construction of improvements to the irrigation system that serves the cooperative farm.

''(2) EXTENSION OF EXISTING IRRIGATION SYSTEM WITHIN THE SAN XAVIER RESERVATION.—

''(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, in addition to the improvements described in paragraph (1), the Secretary shall complete the design and construction of the extension of the irrigation system for the cooperative farm.

''(B) CAPACITY.—On completion of the extension, the extended cooperative farm irrigation system shall serve 2,300 net irrigable acres on the San Xavier Reservation, unless the Secretary and the San Xavier Cooperative Association agree on fewer net irrigable acres.

''(3) CONSTRUCTION OF NEW FARM.—

''(A) IN GENERAL.—Except as provided in subsection (d), not later than 8 years after the enforceability date, the Secretary shall—

''(i) design and construct within the San Xavier Reservation such additional canals, laterals, farm ditches, and irrigation works as are necessary for the efficient distribution for agricultural purposes of that portion of the 27,000 acre-feet annually of water described in subsection (a)(1) that is not required for the irrigation systems described in paragraphs (1) and (2) of subsection (c); or

''(ii) in lieu of the actions described in clause (i), pay to the San Xavier District $18,300,000 (adjusted as provided in section 317(a)(2)) in full satisfaction of the obligations of the United States described in clause (i).

''(B) ELECTION.—

''(i) IN GENERAL.—The San Xavier District Council may make a nonrevocable election whether to receive the benefits described under clause (i) or (ii) of subparagraph (A) by notifying the Secretary by not later than 180 days after the enforceability date or January 1, 2010, whichever is later, by written and certified resolution of the San Xavier District Council.

''(ii) NO RESOLUTION.—If the Secretary does not receive such a resolution by the deadline specified in clause (i), the Secretary shall pay $18,300,000 (adjusted as provided in section 317(a)(2)) to the San Xavier District in lieu of carrying out the obligations of the United States under subparagraph (A)(i).

''(C) SOURCE OF FUNDS AND TIME OF PAYMENT.—

''(i) IN GENERAL.—Payment of $18,300,000 (adjusted as provided in section 317(a)(2)) under this paragraph shall be made by the Secretary from the Lower Colorado River Basin Development Fund—

''(I) not later than 60 days after an election described in subparagraph (B) is made (if such an election is made), but in no event earlier than the enforceability date or January 1, 2010, whichever is later; or

''(II) not later than 240 days after the enforceability date or January 1, 2010, whichever is later, if no timely election is made.

''(ii) PAYMENT FOR ADDITIONAL STRUCTURES.—Payment of amounts necessary to design and construct such additional canals, laterals, farm ditches, and irrigation works as are described in subparagraph (A)(i) shall be made by the Secretary from the Lower Colorado River Basin Development Fund, if an election is made to receive the benefits under subparagraph (A)(i).

''(4) IRRIGATION AND DELIVERY AND DISTRIBUTION SYSTEMS IN THE EASTERN SCHUK TOAK DISTRICT.—Except as provided in subsection (d), not later than 1 year after the enforceability date, the Secretary shall complete the design and construction of an irrigation system and delivery and distribution system to serve the farm that is constructed in the eastern Schuk Toak District.

''(d) EXTENSION OF DEADLINES.—

''(1) IN GENERAL.—The Secretary may extend a deadline under subsection (c) if the Secretary determines that compliance with the deadline is impracticable by reason of—

''(A) a material breach by a contractor of a contract that is relevant to carrying out a project or activity described in subsection (c);

''(B) the inability of such a contractor, under such a contract, to carry out the contract by reason of force majeure, as defined by the Secretary in the contract;

''(C) unavoidable delay in compliance with applicable Federal and tribal laws, as determined by the Secretary, including—

''(i) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

''(ii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

''(D) stoppage in work resulting from the assessment of a tax or fee that is alleged in any court of jurisdiction to be confiscatory or discriminatory.

''(2) NOTICE OF FINDING.—If the Secretary extends a deadline under paragraph (1), the Secretary shall—

''(A) publish a notice of the extension in the Federal Register; and

''(B)(i) include in the notice an estimate of such additional period of time as is necessary to complete the project or activity that is the subject of the extension; and

''(ii) specify a deadline that provides for a period for completion of the project before the end of the period described in clause (i).

''(e) AUTHORITY OF SECRETARY.—

''(1) IN GENERAL.—In carrying out this title, after providing reasonable notice to the Nation, the Secretary, in compliance with all applicable law, may enter, construct works on, and take such other actions as are related to the entry or construction on land within the San Xavier District and the eastern Schuk Toak District.

''(2) EFFECT ON FEDERAL ACTIVITY.—Nothing in this subsection affects the authority of the United States, or any Federal officer, agent, employee, or contractor, to conduct official Federal business or carry out any Federal duty (including any Federal business or duty under this title) on land within the eastern Schuk Toak District or the San Xavier District.

''(f) USE OF FUNDS.—

''(1) IN GENERAL.—With respect to any funds received under subsection (c)(3)(A), the San Xavier District—

''(A) shall hold the funds in trust, and invest the funds in interest-bearing deposits and securities, until expended;

''(B) may expend the principal of the funds, and any interest and dividends that accrue on the principal, only in accordance with a budget that is—

''(i) authorized by the San Xavier District Council; and

''(ii) approved by resolution of the Legislative Council of the Nation; and

''(C) shall expend the funds—

''(i) for any subjugation of land, development of water resources, or construction, operation, maintenance, or replacement of facilities within the San Xavier Reservation that is not required to be carried out by the United States under this title or any other provision of law;

''(ii) to provide governmental services, including—

''(I) programs for senior citizens;

''(II) health care services;

''(III) education;

''(IV) economic development loans and assistance; and

''(V) legal assistance programs;

''(iii) to provide benefits to allottees;

''(iv) to pay the costs of activities of the San Xavier Allottees Association; or

''(v) to pay any administrative costs incurred by the Nation or the San Xavier District in conjunction with any of the activities described in clauses (i) through (iv).

''(2) NO LIABILITY OF SECRETARY; LIMITATION.—

''(A) IN GENERAL.—The Secretary shall not—

''(i) be responsible for any review, approval, or audit of the use and expenditure of the funds described in paragraph (1); or

''(ii) be subject to liability for any claim or cause of action arising from the use or expenditure, by the Nation or the San Xavier District, of those funds.

''(B) LIMITATION.—No portion of any funds described in paragraph (1) shall be used for per capita payments to any individual member of the Nation or any allottee.

''SEC. 305. DELIVERIES UNDER EXISTING CONTRACT; ALTERNATIVE WATER SUPPLIES.

''(a) DELIVERY OF WATER.—

''(1) IN GENERAL.—The Secretary shall deliver water from the main project works of the Central Arizona Project, in such quantities, and in accordance with such terms and conditions, as are contained in the agreement of December 11, 1980, the 1982 Act, the agreement of October 11, 1983, and the Tohono O'odham settlement agreement (to the extent that the settlement agreement does not conflict with this Act), to 1 or more of—

''(A) the cooperative farm;

''(B) the eastern Schuk Toak District;

''(C) turnouts existing on the enforceability date; and

''(D) any other point of delivery on the Central Arizona Project main aqueduct that is agreed to by—

''(i) the Secretary;

''(ii) the operator of the Central Arizona Project; and

''(iii) the Nation.

''(2) DELIVERY.—The Secretary shall deliver the water covered by sections 304(a) and 306(a), or an equivalent quantity of water from a source identified under subsection (b)(1), notwithstanding—

''(A) any declaration by the Secretary of a water shortage on the Colorado River; or

''(B) any other occurrence affecting water delivery caused by an act or omission of—

''(i) the Secretary;

''(ii) the United States; or

''(iii) any officer, employee, contractor, or agent of the Secretary or United States.

''(b) ACQUISITION OF LAND AND WATER.—

''(1) DELIVERY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), if the Secretary, under the terms and conditions of the agreements referred to in subsection (a)(1), is unable, during any year, to deliver annually from the main project works of the Central Arizona Project any portion of the quantity of water covered by sections 304(a) and 306(a), the Secretary shall identify, acquire and deliver an equivalent quantity of water from, any appropriate source.

''(B) EXCEPTION.—The Secretary shall not acquire any water under subparagraph (A) through any transaction that would cause depletion of groundwater supplies or aquifers in the San Xavier District or the eastern Schuk Toak District.

''(2) PRIVATE LAND AND INTERESTS.—

''(A) ACQUISITION.—

''(i) IN GENERAL.—Subject to subparagraph (B), the Secretary may acquire, for not more than market value, such private land, or interests in private land, that include rights in surface or groundwater recognized under State law, as are necessary for the acquisition and delivery of water under this subsection.

''(ii) COMPLIANCE.—In acquiring rights in surface water under clause (i), the Secretary shall comply with all applicable severance and transfer requirements under State law.

''(B) PROHIBITION ON TAKING.—The Secretary shall not acquire any land, water, water rights, or contract rights under subparagraph (A) without the consent of the owner of the land, water, water rights, or contract rights.

''(C) PRIORITY.—In acquiring any private land or interest in private land under this paragraph, the Secretary shall give priority to the acquisition of land on which water has been put to beneficial use during any 1-year period during the 5-year period preceding the date of acquisition of the land by the Secretary.

''(3) DELIVERIES FROM ACQUIRED LAND.—Deliveries of water from land acquired under paragraph (2) shall be made only to the extent that the water may be transported within the Tucson management area under applicable law.

''(4) DELIVERY OF EFFLUENT.—

''(A) IN GENERAL.—Except on receipt of prior written consent of the Nation, the Secretary shall not deliver effluent directly to the Nation under this subsection.

''(B) NO SEPARATE DELIVERY SYSTEM.—The Secretary shall not construct a separate delivery system to deliver effluent to the San Xavier Reservation or the eastern Schuk Toak District.

''(C) NO IMPOSITION OF OBLIGATION.—Nothing in this paragraph imposes any obligation on the United States to deliver effluent to the Nation.

''(c) AGREEMENTS AND CONTRACTS.—To facilitate the delivery of water to the San Xavier Reservation and the eastern Schuk Toak District under this title, the Secretary may enter into a contract or agreement with the State, an irrigation district or project, or entity—

''(1) for—

''(A) the exchange of water; or

''(B) the use of aqueducts, canals, conduits, and other facilities (including pumping plants) for water delivery; or

''(2) to use facilities constructed, in whole or in part, with Federal funds.

''(d) COMPENSATION AND DISBURSEMENTS.—

''(1) COMPENSATION.—If the Secretary is unable to acquire and deliver sufficient quantities of water under section 304(a), this section, or section 306(a), the Secretary shall provide compensation in accordance with paragraph (2) in amounts equal to—

''(A)(i) the value of such quantities of water as are not acquired and delivered, if the delivery and distribution system for, and the improvements to, the irrigation system for the cooperative farm have not been completed by the deadline required under section 304(c)(1); or

''(ii) the value of such quantities of water as—

''(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the irrigation system; but

''(II) are not delivered in any calendar year;

''(B)(i) the value of such quantities of water as are not acquired and delivered, if the extension of the irrigation system is not completed by the deadline required under section 304(c)(2); or

''(ii) the value of such quantities of water as—

''(I) are ordered by the Nation for use by the San Xavier Cooperative Association in the extension to the irrigation system; but

''(II) are not delivered in any calendar year; and

''(C)(i) the value of such quantities of water as are not acquired and delivered, if the irrigation system is not completed by the deadline required under section 304(c)(4); or

''(ii) except as provided in clause (i), the value of such quantities of water as—

''(I) are ordered by the Nation for use in the irrigation system, or for use by any person or entity (other than the San Xavier Cooperative Association); but

''(II) are not delivered in any calendar year.

''(2) DISBURSEMENT.—Any compensation payable under paragraph (1) shall be disbursed—

''(A) with respect to compensation payable under subparagraphs (A) and (B) of paragraph (1), to the San Xavier Cooperative Association; and

''(B) with respect to compensation payable under paragraph (1)(C), to the Nation for retention by the Nation or disbursement to water users, under the provisions of the water code or other applicable laws of the Nation.

''(e) NO EFFECT ON WATER RIGHTS.—Nothing in this section authorizes the Secretary to acquire or otherwise affect the water rights of any Indian tribe.

''SEC. 306. ADDITIONAL WATER DELIVERY.

''(a) IN GENERAL.—In addition to the delivery of water described in section 304(a), the Secretary shall deliver annually from the main project works of the Central Arizona Project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which—

''(1) 23,000 acre-feet shall—

''(A) be delivered to, and used by, the San Xavier Reservation; or

''(B) otherwise be used by the Nation in accordance with section 309; and

''(2) 5,200 acre-feet shall—

''(A) be delivered to, and used by, the eastern Schuk Toak District; or

''(B) otherwise be used by the Nation in accordance with section 309.

''(b) STATE CONTRIBUTION.—To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute $3,000,000—

''(1) in accordance with a schedule that is acceptable to the Secretary and the State; and

''(2) in the form of cash or in-kind goods and services.

''SEC. 307. CONDITIONS ON CONSTRUCTION, WATER DELIVERY, REVENUE SHARING.

''(a) CONDITIONS ON ACTIONS OF SECRETARY.—The Secretary shall carry out section 304(c), subsections (a), (b), and (d) of section 305, and section 306, only if—

''(1) the Nation agrees—

''(A) except as provided in section 308(f)(1), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the San Xavier Reservation to not more than 10,000 acre-feet;

''(B) except as provided in section 308(f)(2), to limit the quantity of groundwater withdrawn by nonexempt wells from beneath the eastern Schuk Toak District to not more than 3,200 acre-feet;

''(C) to comply with water management plans established by the Secretary under section 308(d);

''(D) to consent to the San Xavier District being deemed a tribal organization (as defined in section 900.6 of title 25, Code of Federal Regulations (or any successor regulations)) for purposes identified in subparagraph (E)(iii)(I), as permitted with respect to tribal organizations under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.);

''(E) subject to compliance by the Nation with other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations), to consent to contracting by the San Xavier District under section 311(b), on the conditions that—

''(i)(I) the plaintiffs in the Alvarez case and Tucson case have stipulated to the dismissal, with prejudice, of claims in those cases; and

''(II) those cases have been dismissed with prejudice;

''(ii) the San Xavier Cooperative Association has agreed to assume responsibility, after completion of each of the irrigation systems described in paragraphs (1), (2), and (3) of section 304(c) and on the delivery of water to those systems, for the operation, maintenance, and replacement of those systems in accordance with the first section of the Act of August 1, 1914 (25 U.S.C. 385); and

''(iii) with respect to the consent of the Nation to contracting—

''(I) the consent is limited solely to contracts for—

''(aa) the design and construction of the delivery and distribution system and the rehabilitation of the irrigation system for the cooperative farm;

''(bb) the extension of the irrigation system for the cooperative farm;

''(cc) the subjugation of land to be served by the extension of the irrigation system;

''(dd) the design and construction of storage facilities solely for water deliverable for use within the San Xavier Reservation; and

''(ee) the completion by the Secretary of a water resources study of the San Xavier Reservation and subsequent preparation of a water management plan under section 308(d);

''(II) the Nation shall reserve the right to seek retrocession or reassumption of contracts described in subclause (I), and recontracting under subpart P and other applicable provisions of part 900 of title 25, Code of Federal Regulations (or any successor regulations);

''(III) the Nation, on granting consent to such contracting, shall be released from any responsibility, liability, claim, or cost from and after the date on which consent is given, with respect to past action or inaction by the Nation, and subsequent action or inaction by the San Xavier District, relating to the design and construction of irrigation systems for the cooperative farm or the Central Arizona Project link pipeline; and

''(IV) the Secretary shall, on the request of the Nation, execute a waiver and release to carry out subclause (III);

''(F) to subjugate, at no cost to the United States, the land for which the irrigation systems under paragraphs (2) and (3) of section 304(c) will be planned, designed, and constructed by the Secretary, on the condition that—

''(i) the obligation of the Nation to subjugate the land in the cooperative farm that is to be served by the extension of the irrigation system under section 304(c)(2) shall be determined by the Secretary, in consultation with the Nation and the San Xavier Cooperative Association; and

''(ii) subject to approval by the Secretary of a contract with the San Xavier District executed under section 311, to perform that subjugation, a determination by the Secretary of the subjugation costs under clause (i), and the provision of notice by the San Xavier District to the Nation at least 180 days before the date on which the San Xavier District Council certifies by resolution that the subjugation is scheduled to commence, the Nation pays to the San Xavier District, not later than 90 days before the date on which the subjugation is scheduled to commence, from the trust fund under section 315, or from other sources of funds held by the Nation, the amount determined by the Secretary under clause (i); and

''(G) subject to business lease No. H54–16–72 dated April 26, 1972, of San Xavier Reservation land to Asarco and approved by the United States on November 14, 1972, that the Nation—

''(i) shall allocate as a first right of beneficial use by allottees, the San Xavier District, and other persons within the San Xavier Reservation—

''(I) 35,000 acre-feet of the 50,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1), including the use of the allocation—

''(aa) to fulfill the obligations prescribed in the Asarco agreement; and

''(bb) for groundwater storage, maintenance of instream flows, and maintenance of riparian vegetation and habitat;

''(II) the 10,000 acre-feet of groundwater identified in subsection (a)(1)(A);

''(III) the groundwater withdrawn from exempt wells;

''(IV) the deferred pumping storage credits authorized by section 308(f)(1)(B); and

''(V) the storage credits resulting from a project authorized in section 308(e) that cannot be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation;

''(ii) subject to section 309(b)(2), has the right—

''(I) to use, or authorize other persons or entities to use, any portion of the allocation of 35,000 acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) outside the San Xavier Reservation for any period during which there is no identified actual use of the water within the San Xavier Reservation;

''(II) as a first right of use, to use the remaining acre-feet of water deliverable under sections 304(a)(1) and 306(a)(1) for any purpose and duration authorized by this title within or outside the Nation's Reservation; and

''(III) subject to section 308(e), as an exclusive right, to transfer or otherwise dispose of the storage credits that may be lawfully transferred or otherwise disposed of to persons for recovery outside the Nation's Reservation;

''(iii) shall issue permits to persons or entities for use of the water resources referred to in clause (i);

''(iv) shall, on timely receipt of an order for water by a permittee under a permit for Central Arizona Project water referred to in clause (i), submit the order to—

''(I) the Secretary; or

''(II) the operating agency for the Central Arizona Project;

''(v) shall issue permits for water deliverable under sections 304(a)(2) and 306(a)(2), including quantities of water reasonably necessary for the irrigation system referred to in section 304(c)(3);

''(vi) shall issue permits for groundwater that may be withdrawn from nonexempt wells in the eastern Schuk Toak District; and

''(vii) shall, on timely receipt of an order for water by a permittee under a permit for water referred to in clause (v), submit the order to—

''(I) the Secretary; or

''(II) the operating agency for the Central Arizona Project; and

''(2) the Alvarez case and Tucson case have been dismissed with prejudice.

''(b) RESPONSIBILITIES ON COMPLETION.—On completion of an irrigation system or extension of an irrigation system described in paragraph (1) or (2) of section 304(c), or in the case of the irrigation system described in section 304(c)(3), if such irrigation system is constructed on individual Indian trust allotments, neither the United States nor the Nation shall be responsible for the operation, maintenance, or replacement of the system.

''(c) PAYMENT OF CHARGES.—The Nation shall not be responsible for payment of any water service capital charge for Central Arizona Project water delivered under section 304, subsection (a) or (b) of section 305, or section 306.

"SEC. 308. WATER CODE; WATER MANAGEMENT PLAN; STORAGE PROJECTS; STORAGE ACCOUNTS; GROUNDWATER.

''(a) WATER RESOURCES.—Water resources described in clauses (i) and (ii) of section 307(a)(1)(G)—

''(1) shall be subject to section 7 of the Act of February 8, 1887 (25 U.S.C. 381); and

''(2) shall be apportioned pursuant to clauses (i) and (ii) of section 307(a)(1)(G).

''(b) WATER CODE.—Subject to this title and any other applicable law, the Nation shall—

''(1) manage, regulate, and control the water resources of the Nation and the water resources granted or confirmed under this title;

''(2) establish conditions, limitations, and permit requirements, and promulgate regulations, relating to the storage, recovery, and use of surface water and groundwater within the Nation's Reservation;

''(3) enact and maintain—

''(A) an interim allottee water rights code that—

''(i) is consistent with subsection (a);

''(ii) prescribes the rights of allottees identified in paragraph (4); and

''(iii) provides that the interim allottee water rights code shall be incorporated in the comprehensive water code referred to in subparagraph (B); and

''(B) not later than 3 years after the enforceability date, a comprehensive water code applicable to the water resources granted or confirmed under this title;

''(4) include in each of the water codes enacted under subparagraphs (A) and (B) of paragraph (3)—

''(A) an acknowledgement of the rights described in subsection (a);

''(B) a process by which a just and equitable distribution of the water resources referred to in subsection (a), and any compensation provided under section 305(d), shall be provided to allottees;

''(C) a process by which an allottee may request and receive a permit for the use of any water resources referred to in subsection (a), except the water resources referred to in section 307(a)(1)(G)(ii)(III) and subject to the Nation's first right of use under section 307(a)(1)(G)(ii)(II);

''(D) provisions for the protection of due process, including—

''(i) a fair procedure for consideration and determination of any request by—

''(I) a member of the Nation, for a permit for use of available water resources granted or confirmed by this title; and

''(II) an allottee, for a permit for use of—

''(aa) the water resources identified in section 307(a)(1)(G)(i) that are subject to a first right of beneficial use; or

''(bb) subject to the first right of use of the Nation, available water resources identified in section 307(a)(1)(G)(i)(II);

''(ii) provisions for—

''(I) appeals and adjudications of denied or disputed permits; and

''(II) resolution of contested administrative decisions; and

''(iii) a waiver by the Nation of the sovereign immunity of the Nation only with respect to proceedings described in clause (ii) for claims of declaratory and injunctive relief; and

''(E) a process for satisfying any entitlement to the water resources referred to in section 307(a)(1)(G)(i) for which fee owners of allotted land have received final determinations under applicable law; and

''(5) submit to the Secretary the comprehensive water code, for approval by the Secretary only of the provisions of the water code (and any amendments to the water code), that implement, with respect to the allottees, the standards described in paragraph (4).

''(c) WATER CODE APPROVAL.—

''(1) IN GENERAL.—On receipt of a comprehensive water code under subsection (b)(5), the Secretary shall—

''(A) issue a written approval of the water code; or

''(B) provide a written notification to the Nation that—

''(i) identifies such provisions of the water code that do not conform to subsection (b) or other applicable Federal law; and

''(ii) recommends specific corrective language for each nonconforming provision.

''(2) REVISION BY NATION.—If the Secretary identifies nonconforming provisions in the water code under paragraph (1)(B)(i), the Nation shall revise the water code in accordance with the recommendations of the Secretary under paragraph (1)(B)(ii).

''(3) INTERIM AUTHORITY.—Until such time as the Nation revises the water code of the Nation in accordance with paragraph (2) and the Secretary subsequently approves the water code, the Secretary may exercise any lawful authority of the Secretary under section 7 of the Act of February 8, 1887 (25 U.S.C. 381).

''(4) LIMITATION.—Except as provided in this subsection, nothing in this title requires the approval of the Secretary of the water code of the Nation (or any amendment to that water code).

''(d) WATER MANAGEMENT PLANS.—

''(1) IN GENERAL.—The Secretary shall establish, for the San Xavier Reservation and the eastern Schuk Toak District, water management plans that meet the requirements described in paragraph (2).

''(2) REQUIREMENTS.—Water management plans established under paragraph (1)—

''(A) shall be developed under contracts executed under section 311 between the Secretary and the San Xavier District for the San Xavier Reservation, and between the Secretary and the Nation for the eastern Schuk Toak District, as applicable, that permit expenditures, exclusive of administrative expenses of the Secretary, of not more than—

''(i) with respect to a contract between the Secretary and the San Xavier District, $891,200; and

''(ii) with respect to a contract between the Secretary and the Nation, $237,200;

''(B) shall, at a minimum—

''(i) provide for the measurement of all groundwater withdrawals, including withdrawals from each well that is not an exempt well;

''(ii) provide for—

''(I) reasonable recordkeeping of water use, including the quantities of water stored underground and recovered each calendar year; and

''(II) a system for the reporting of withdrawals from each well that is not an exempt well;

''(iii) provide for the direct storage and deferred storage of water, including the implementation of underground storage and recovery projects, in accordance with this section;

''(iv) provide for the annual exchange of information collected under clauses (i) through (iii)—

''(I) between the Nation and the Arizona Department of Water Resources; and

''(II) between the Nation and the city of Tucson, Arizona;

''(v) provide for—

''(I) the efficient use of water; and

''(II) the prevention of waste;

''(vi) except on approval of the district council for a district in which a direct storage project is established under subsection (e), provide that no direct storage credits earned as a result of the project shall be recovered at any location at which the recovery would adversely affect surface or groundwater supplies, or lower the water table at any location, within the district; and

''(vii) provide for amendments to the water plan in accordance with this title;

''(C) shall authorize the establishment and maintenance of 1 or more underground storage and recovery projects in accordance with subsection (e), as applicable, within—

''(i) the San Xavier Reservation; or

''(ii) the eastern Schuk Toak District; and

''(D) shall be implemented and maintained by the Nation, with no obligation by the Secretary.

''(e) UNDERGROUND STORAGE AND RECOVERY PROJECTS.—The Nation is authorized to establish direct storage and recovery projects in accordance with the Tohono O'odham settlement agreement. The Secretary shall have no responsibility to fund or otherwise administer such projects.

''(f) GROUNDWATER.—

''(1) SAN XAVIER RESERVATION.—

''(A) IN GENERAL.—In accordance with section 307(a)(1)(A), 10,000 acre-feet of groundwater may be pumped annually within the San Xavier Reservation.

''(B) DEFERRED PUMPING.—

''(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 10,000 acre-feet of water not pumped under subparagraph (A) in a year—

''(I) may be withdrawn in a subsequent year; and

''(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O'odham settlement agreement as a debit to the deferred pumping storage account.

''(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

''(I) 50,000 acre-feet for any 10-year period; or

''(II) 10,000 acre-feet in any year.

''(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the San Xavier Reservation all or a portion of the credits for water stored under a project described in subsection (e).

''(2) EASTERN SCHUK TOAK DISTRICT.—

''(A) IN GENERAL.—In accordance with section 307(a)(1)(B), 3,200 acre-feet of groundwater may be pumped annually within the eastern Schuk Toak District.

''(B) DEFERRED PUMPING.—

''(i) IN GENERAL.—Subject to clause (ii), all or any portion of the 3,200 acre-feet of water not pumped under subparagraph (A) in a year—

''(I) may be withdrawn in a subsequent year; and

''(II) if any of that water is withdrawn, shall be accounted for in accordance with the Tohono O'odham settlement agreement as a debit to the deferred pumping storage account.

''(ii) LIMITATION.—The quantity of water authorized to be recovered as deferred pumping storage credits under this subparagraph shall not exceed—

''(I) 16,000 acre-feet for any 10-year period; or

''(II) 3,200 acre-feet in any year.

''(C) RECOVERY OF ADDITIONAL WATER.—In addition to the quantity of groundwater authorized to be pumped under subparagraphs (A) and (B), the Nation may annually recover within the eastern Schuk Toak District all or a portion of the credits for water stored under a project described in subsection (e).

''(3) INABILITY TO RECOVER GROUNDWATER.—

''(A) IN GENERAL.—The authorizations to pump groundwater in paragraphs (1) and (2) neither warrant nor guarantee that the groundwater—

''(i) physically exists; or

''(ii) is recoverable.

''(B) CLAIMS.—With respect to groundwater described in subparagraph (A)—

''(i) subject to paragraph 8.8 of the Tohono O'odham settlement agreement, the inability of any person to pump or recover that groundwater shall not be the basis for any claim by the United States or the Nation against any person or entity withdrawing or using the water from any common supply; and

''(ii) the United States and the Nation shall be barred from asserting any and all claims for reserved water rights with respect to that groundwater.

''(g) EXEMPT WELLS.—Any groundwater pumped from an exempt well located within the San Xavier Reservation or the eastern Schuk Toak District shall be exempt from all pumping limitations under this title.

''(h) INABILITY OF SECRETARY TO DELIVER WATER.—The Nation is authorized to pump additional groundwater in any year in which the Secretary is unable to deliver water required to carry out sections 304(a) and 306(a) in accordance with the Tohono O'odham settlement agreement.

''(i) PAYMENT OF COMPENSATION.—Nothing in this section affects any obligation of the Secretary to pay compensation in accordance with section 305(d).

''SEC. 309. USES OF WATER.

''(a) PERMISSIBLE USES.—Subject to other provisions of this section and other applicable law, the Nation may devote all water supplies granted or confirmed under this title, whether delivered by the Secretary or pumped by the Nation, to any use (including any agricultural, municipal, domestic, industrial, commercial, mining, underground storage, instream flow, riparian habitat maintenance, or recreational use).

''(b) USE AREA.—

''(1) USE WITHIN NATION'S RESERVATION.—Subject to subsection (d), the Nation may use at any location within the Nation's Reservation—

''(A) the water supplies acquired under sections 304(a) and 306(a);

''(B) groundwater supplies; and

''(C) storage credits acquired as a result of projects authorized under section 308(e), or deferred storage credits described in section 308(f), except to the extent that use of those storage credits causes the withdrawal of groundwater in violation of applicable Federal law.

''(2) USE OUTSIDE THE NATION'S RESERVATION.—

''(A) IN GENERAL.—Water resources granted or confirmed under this title may be sold, leased, transferred, or used by the Nation outside of the Nation's Reservation only in accordance with this title.

''(B) USE WITHIN CERTAIN AREA.—Subject to subsection (c), the Nation may use the Central Arizona Project water supplies acquired under sections 304(a) and 306(a) within the Central Arizona Project service area.

''(C) STATE LAW.—With the exception of Central Arizona Project water and groundwater withdrawals under the Asarco agreement, the Nation may sell, lease, transfer, or use any water supplies and storage credits acquired as a result of a project authorized under section 308(e) at any location outside of the Nation's Reservation, but within the State, only in accordance with State law.

''(D) LIMITATION.—Deferred pumping storage credits provided for in section 308(f) shall not be sold, leased, transferred, or used outside the Nation's Reservation.

''(E) PROHIBITION ON USE OUTSIDE THE STATE.—No water acquired under section 304(a) or 306(a) shall be leased, exchanged, forborne, or otherwise transferred by the Nation for any direct or indirect use outside the State.

''(c) EXCHANGES AND LEASES; CONDITIONS ON EXCHANGES AND LEASES.—

''(1) IN GENERAL.—With respect to users outside the Nation's Reservation, the Nation may, for a term of not to exceed 100 years, assign, exchange, lease, provide an option to lease, or otherwise temporarily dispose of to the users, Central Arizona Project water to which the Nation is entitled under sections 304(a) and 306(a) or storage credits acquired under section 308(e), if the assignment, exchange, lease, option, or temporary disposal is carried out in accordance with—

''(A) this subsection; and

''(B) subsection (b)(2).

''(2) LIMITATION ON ALIENATION.—The Nation shall not permanently alienate any water right under paragraph (1).

''(3) AUTHORIZED USES.—The water described in paragraph (1) shall be delivered within the Central Arizona Project service area for any use authorized under applicable law.

''(4) CONTRACT.—An assignment, exchange, lease, option, or temporary disposal described in paragraph (1) shall be executed only in accordance with a contract that—

''(A) is accepted by the Nation;

''(B) is ratified under a resolution of the Legislative Council of the Nation;

''(C) is approved by the United States as Trustee; and

''(D) with respect to any contract to which the United States or the Secretary is a party, provides that an action may be maintained by the contracting party against the United States and the Secretary for a breach of the contract by the United States or Secretary, as appropriate.

''(5) TERMS EXCEEDING 25 YEARS.—The terms and conditions established in paragraph 11 of the Tohono O'odham settlement agreement shall apply to any contract under paragraph (4) that has a term of greater than 25 years.

''(d) LIMITATIONS ON USE, EXCHANGES, AND LEASES.—The rights of the Nation to use water supplies under subsection (a), and to assign, exchange, lease, provide options to lease, or temporarily dispose of the water supplies under subsection (c), shall be exercised on conditions that ensure the availability of water supplies to satisfy the first right of beneficial use under section 307(a)(1)(G)(i).

''(e) WATER SERVICE CAPITAL CHARGES.—In any transaction entered into by the Nation and another person under subsection (c) with respect to Central Arizona Project water of the Nation, the person shall not be obligated to pay to the United States or the Central Arizona Water Conservation District any water service capital charge.

''(f) WATER RIGHTS UNAFFECTED BY USE OR NONUSE.—The failure of the Nation to make use of water provided under this title, or the use of, or failure to make use of, that water by any other person that enters into a contract with the Nation under subsection (c) for the assignment, exchange, lease, option for lease, or temporary disposal of water, shall not diminish, reduce, or impair—

''(1) any water right of the Nation, as established under this title or any other applicable law; or

''(2) any water use right recognized under this title, including—

''(A) the first right of beneficial use referred to in section 307(a)(1)(G)(i); or

''(B) the allottee use rights referred to in section 308(a).

''(g) AMENDMENT TO AGREEMENT OF DECEMBER 11, 1980.—The Secretary shall amend the agreement of December 11, 1980, to provide that—

''(1) the contract shall be—

''(A) for permanent service (within the meaning of section 5 of the Boulder Canyon Project Act of 1928 (43 U.S.C. 617d)); and

''(B) without limit as to term;

''(2) the Nation may, with the approval of the Secretary—

''(A) in accordance with subsection (c), assign, exchange, lease, enter into an option to lease, or otherwise temporarily dispose of water to which the Nation is entitled under sections 304(a) and 306(a); and

''(B) renegotiate any lease at any time during the term of the lease if the term of the renegotiated lease does not exceed 100 years;

''(3)(A) the Nation shall be entitled to all consideration due to the Nation under any leases and any options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation; and

''(B) the United States shall have no trust obligation or other obligation to monitor, administer, or account for any consideration received by the Nation under those leases or options to lease and exchanges or options to exchange;

''(4)(A) all of the Nation's Central Arizona Project water shall be delivered through the Central Arizona Project aqueduct; and

''(B) if the delivery capacity of the Central Arizona Project aqueduct is significantly reduced or is anticipated to be significantly reduced for an extended period of time, the Nation shall have the same Central Arizona Project delivery rights as other Central Arizona Project contractors and Central Arizona Project subcontractors, if the Central Arizona Project contractors or Central Arizona Project subcontractors are allowed to take delivery of water other than through the Central Arizona Project aqueduct;

''(5) the Nation may use the Nation's Central Arizona Project water on or off of the Nation's Reservation for the purposes of the Nation consistent with this title;

''(6) as authorized by subparagraph (A) of section 403(f)(2) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)) (as amended by section 107(a)) and to the extent that funds are available in the Lower Colorado River Basin Development Fund established by section 403 of that Act (43 U.S.C. 1543), the United States shall pay to the Central Arizona Project operating agency the fixed operation, maintenance, and replacement charges associated with the delivery of the Nation's Central Arizona Project water, except for the Nation's Central Arizona Project water leased by others;

''(7) the allocated costs associated with the construction of the delivery and distribution system—

''(A) shall be nonreimbursable; and

''(B) shall be excluded from any repayment obligation of the Nation;

''(8) no water service capital charges shall be due or payable for the Nation's Central Arizona Project water, regardless of whether the Central Arizona Project water is delivered for use by the Nation or is delivered pursuant to any leases or options to lease or exchanges or options to exchange the Nation's Central Arizona Project water entered into by the Nation;

''(9) the agreement of December 11, 1980, conforms with section 104(d) and section 306(a) of the Arizona Water Settlements Act; and

''(10) the amendments required by this subsection shall not apply to the 8,000 acre feet of Central Arizona Project water contracted by the Nation in the agreement of December 11, 1980, for the Sif Oidak District.

''(h) RATIFICATION OF AGREEMENTS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, each agreement described in paragraph (2), to the extent that the agreement is not in conflict with this Act—

''(A) is authorized, ratified, and confirmed; and

''(B) shall be executed by the Secretary.

''(2) AGREEMENTS.—The agreements described in this paragraph are—

''(A) the Tohono O'odham settlement agreement, to the extent that—

''(i) the Tohono O'odham settlement agreement is consistent with this title; and

''(ii) parties to the Tohono O'odham settlement agreement other than the Secretary have executed that agreement;

''(B) the Tucson agreement (attached to the Tohono O'odham settlement agreement as exhibit 12.1); and

''(C)(i) the Asarco agreement (attached to the Tohono O'odham settlement agreement as exhibit 13.1 to the Tohono O'odham settlement agreement);

''(ii) lease No. H54–0916–0972, dated April 26, 1972, and approved by the United States on November 14, 1972; and

''(iii) any new well site lease as provided for in the Asarco agreement; and

''(D) the FICO agreement (attached to the Tohono O'odham settlement agreement as Exhibit 14.1).

''(3) RELATION TO OTHER LAW.—

''(A) ENVIRONMENTAL COMPLIANCE.—In implementing an agreement described in paragraph (2), the Secretary shall promptly comply with all aspects of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and all other applicable environmental Acts and regulations.

''(B) EXECUTION OF AGREEMENT.—Execution of an agreement described in paragraph (2) by the Secretary under this section shall not constitute a major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.). The Secretary is directed to carry out all necessary environmental compliance required by Federal law in implementing an agreement described in paragraph (2).

''(C) LEAD AGENCY.—The Bureau of Reclamation shall be the lead agency with respect to environmental compliance under the agreements described in paragraph (2).

''(i) DISBURSEMENTS FROM TUCSON INTERIM WATER LEASE.—The Secretary shall disburse to the Nation, without condition, all proceeds from the Tucson interim water lease.

''(j) USE OF GROSS PROCEEDS.—

''(1) DEFINITION OF GROSS PROCEEDS.—In this subsection, the term 'gross proceeds' means all proceeds, without reduction, received by the Nation from—

''(A) the Tucson interim water lease;

''(B) the Asarco agreement; and

''(C) any agreement similar to the Asarco agreement to store Central Arizona Project water of the Nation, instead of pumping groundwater, for the purpose of protecting water of the Nation; provided, however, that gross proceeds shall not include proceeds from the transfer of Central Arizona Project water in excess of 20,000 acre feet annually pursuant to any agreement under this subparagraph or under the Asarco agreement referenced in subparagraph (B).

''(2) ENTITLEMENT.—The Nation shall be entitled to receive all gross proceeds.

''(k) STATUTORY CONSTRUCTION.—Nothing in this title establishes whether reserved water may be put to use, or sold for use, off any reservation to which reserved water rights attach.

''SEC. 310. COOPERATIVE FUND.

''(a) REAUTHORIZATION.—

''(1) IN GENERAL.—Congress reauthorizes, for use in carrying out this title, the cooperative fund established in the Treasury of the United States by section 313 of the 1982 Act.

''(2) AMOUNTS IN COOPERATIVE FUND.—The cooperative fund shall consist of—

''(A)(i) $5,250,000, as appropriated to the cooperative fund under section 313(b)(3)(A) of the 1982 Act; and

''(ii) such amount, not to exceed $32,000,000, as the Secretary determines, after providing notice to Congress, is necessary to carry out this title;

''(B) any additional Federal funds deposited to the cooperative fund under Federal law;

''(C) $5,250,000, as deposited in the cooperative fund under section 313(b)(1)(B) of the 1982 Act, of which—

''(i) $2,750,000 was contributed by the State;

''(ii) $1,500,000 was contributed by the city of Tucson; and

''(iii) $1,000,000 was contributed by—

''(I) the Anamax Mining Company;

''(II) the Cyprus-Pima Mining Company;

''(III) the American Smelting and Refining Company;

''(IV) the Duval Corporation; and

''(V) the Farmers Investment Company;

''(D) all interest accrued on all amounts in the cooperative fund beginning on October 12, 1982, less any interest expended under subsection (b)(2); and

''(E) all revenues received from—

''(i) the sale or lease of effluent received by the Secretary under the contract between the United States and the city of Tucson to provide for delivery of reclaimed water to the Secretary, dated October 11, 1983; and

''(ii) the sale or lease of storage credits derived from the storage of that effluent.

''(b) EXPENDITURES FROM FUND.—

''(1) IN GENERAL.—Subject to paragraph (2), upon request by the Secretary, the Secretary of the Treasury shall transfer from the cooperative fund to the Secretary such amounts as the Secretary determines are necessary to carry out obligations of the Secretary under this title, including to pay—

''(A) the variable costs relating to the delivery of water under sections 304 through 306;

''(B) fixed operation maintenance and replacement costs relating to the delivery of water under sections 304 through 306, to the extent that funds are not available from the Lower Colorado River Basin Development Fund to pay those costs;

''(C) the costs of acquisition and delivery of water from alternative sources under section 305; and

''(D) any compensation provided by the Secretary under section 305(d).

''(2) EXPENDITURE OF INTEREST.—Except as provided in paragraph (3), the Secretary may expend only interest income accruing to the cooperative fund, and that interest income may be expended by the Secretary, without further appropriation.

''(3) EXPENDITURE OF REVENUES.—Revenues described in subsection (a)(2)(E) shall be available for expenditure under paragraph (1).

''(c) INVESTMENT OF AMOUNTS.—

''(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the cooperative fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals determined by the Secretary. Investments may be made only in interest-bearing obligations of the United States.

''(2) CREDITS TO COOPERATIVE FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the cooperative fund shall be credited to and form a part of the cooperative fund.

''(d) TRANSFERS OF AMOUNTS.—

''(1) IN GENERAL.—The amounts required to be transferred to the cooperative fund under this section shall be transferred at least monthly from the general fund of the Treasury to the cooperative fund on the basis of estimates made by the Secretary of the Treasury.

''(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

''(e) DAMAGES.—Damages arising under this title or any contract for the delivery of water recognized by this title shall not exceed, in any given year, the amounts available for expenditure in that year from the cooperative fund.

''SEC. 311. CONTRACTING AUTHORITY; WATER QUALITY; STUDIES; ARID LAND ASSISTANCE.

''(a) FUNCTIONS OF SECRETARY.—Except as provided in subsection (f), the functions of the Secretary (or the Commissioner of Reclamation, acting on behalf of the Secretary) under this title shall be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) to the same extent as if those functions were carried out by the Assistant Secretary for Indian Affairs.

''(b) SAN XAVIER DISTRICT AS CONTRACTOR.—

''(1) IN GENERAL.—Subject to the consent of the Nation and other requirements under section 307(a)(1)(E), the San Xavier District shall be considered to be an eligible contractor for purposes of this title.

''(2) TECHNICAL ASSISTANCE.—The Secretary shall provide to the San Xavier District technical assistance in carrying out the contracting requirements under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

''(c) GROUNDWATER MONITORING PROGRAMS.—

''(1) SAN XAVIER INDIAN RESERVATION PROGRAM.—

''(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the San Xavier Reservation.

''(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $215,000.

''(2) EASTERN SCHUK TOAK DISTRICT PROGRAM.—

''(A) IN GENERAL.—Not later than 180 days after the enforceability date, the Secretary shall develop and initiate a comprehensive groundwater monitoring program (including the drilling of wells and other appropriate actions) to test, assess, and provide for the long-term monitoring of the quality of groundwater withdrawn from exempt wells and other wells within the eastern Schuk Toak District.

''(B) LIMITATION ON EXPENDITURES.—In carrying out this paragraph, the Secretary shall expend not more than $175,000.

''(3) DUTIES OF SECRETARY.—

''(A) CONSULTATION.—In carrying out paragraphs (1) and (2), the Secretary shall consult with representatives of—

''(i) the Nation;

''(ii) the San Xavier District and Schuk Toak District, respectively; and

''(iii) appropriate State and local entities.

''(B) LIMITATION ON OBLIGATIONS OF SECRETARY.—With respect to the groundwater monitoring programs described in paragraphs (1) and (2), the Secretary shall have no continuing obligation relating to those programs beyond the obligations described in those paragraphs.

''(d) WATER RESOURCES STUDY.—To assist the Nation in developing sources of water, the Secretary shall conduct a study to determine the availability and suitability of water resources that are located—

''(1) within the Nation's Reservation; but

''(2) outside the Tucson management area.

''(e) ARID LAND RENEWABLE RESOURCES.—If a Federal entity is established to provide financial assistance to carry out arid land renewable resources projects and to encourage and ensure investment in the development of domestic sources of arid land renewable resources, the entity shall—

''(1) give first priority to the needs of the Nation in providing that assistance; and

''(2) make available to the Nation, San Xavier District, Schuk Toak District, and San Xavier Cooperative Association price guarantees, loans, loan guarantees, purchase agreements, and joint venture projects at a level that the entity determines will—

''(A) facilitate the cultivation of such minimum number of acres as is determined by the entity to be necessary to ensure economically successful cultivation of arid land crops; and

''(B) contribute significantly to the economy of the Nation.

''(f) ASARCO LAND EXCHANGE STUDY.—

''(1) IN GENERAL.—Not later than 2 years after the enforceability date, the Secretary, in consultation with the Nation, the San Xavier District, the San Xavier Allottees' Association, and Asarco, shall conduct and submit to Congress a study on the feasibility of a land exchange or land exchanges with Asarco to provide land for future use by—

''(A) beneficial landowners of the Mission Complex Mining Leases of September 18, 1959; and

''(B) beneficial landowners of the Mission Complex Business Leases of May 12, 1959.

''(2) COMPONENTS.—The study under paragraph (1) shall include—

''(A) an analysis of the manner in which land exchanges could be accomplished to maintain a contiguous land base for the San Xavier Reservation; and

''(B) a description of the legal status exchanged land should have to maintain the political integrity of the San Xavier Reservation.

''(3) LIMITATION ON EXPENDITURES.—In carrying out this subsection, the Secretary shall expend not more than $250,000.

''SEC. 312. WAIVER AND RELEASE OF CLAIMS.

''(a) WAIVER OF CLAIMS BY THE NATION.—Except as provided in subsection (d), the Tohono O'odham settlement agreement shall provide that the Nation waives and releases—

''(1) any and all past, present, and future claims for water rights (including claims

based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area, against—

''(A) the State (or any agency or political subdivision of the State);

''(B) any municipal corporation; and

''(C) any other person or entity;

''(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation and the eastern Schuk Toak District from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

''(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

''(A) the United States;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity; and

''(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

''(A) the United States;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity.

''(b) WAIVER OF CLAIMS BY THE ALLOTTEE CLASSES.—The Tohono O'odham settlement agreement shall provide that each allottee class waives and releases—

''(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date for land within the San Xavier Reservation, against—

''(A) the State (or any agency or political subdivision of the State);

''(B) any municipal corporation; and

''(C) any other person or entity (other than the Nation);

''(2) any and all claims for water rights arising from time immemorial and, thereafter, forever, claims for injuries to water rights arising from time immemorial through the enforceability date, and claims for failure to protect, acquire, or develop water rights for land within the San Xavier Reservation from time immemorial through the enforceability date, against the United States (including any agency, officer, and employee of the United States);

''(3) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

''(A) the United States;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity;

''(4) any and all past, present, and future claims arising out of or relating to the negotiation or execution of the Tohono O'odham settlement agreement or the negotiation or enactment of this title, against—

''(A) the United States;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity; and

''(5) any and all past, present, and future claims for water rights arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees and fee owners of allotted land shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement with respect to uses within the San Xavier Reservation).

''(c) WAIVER OF CLAIMS BY THE UNITED STATES.—Except as provided in subsection (d), the Tohono O'odham settlement agreement shall provide that the United States as Trustee waives and releases—

''(1) any and all past, present, and future claims for water rights (including claims based on aboriginal occupancy) arising from time immemorial and, thereafter, forever, and claims for injuries to water rights arising from time immemorial through the enforceability date, for land within the Tucson management area against—

''(A) the Nation;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity;

''(2) any and all claims for injury to water rights arising after the enforceability date for land within the San Xavier Reservation and the eastern Schuk Toak District resulting from the off-Reservation diversion or use of water in a manner not in violation of the Tohono O'odham settlement agreement or State law against—

''(A) the Nation;

''(B) the State (or any agency or political subdivision of the State);

''(C) any municipal corporation; and

''(D) any other person or entity;

''(3) on and after the enforceability date, any and all claims on behalf of the allottees for injuries to water rights against the Nation (except that under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement with respect to uses within the San Xavier Reservation); and

''(4) claims against Asarco on behalf of the allottee class for the fourth cause of action in Alvarez v. City of Tucson (Civ. No. 93–039 TUC FRZ (D. Ariz., filed April 21, 1993)), in accordance with the terms and conditions of the Asarco agreement.

''(d) CLAIMS RELATING TO GROUNDWATER PROTECTION PROGRAM.—The Nation and the United States as Trustee—

''(1) shall have the right to assert any claims granted by a State law implementing the groundwater protection program described in paragraph 8.8 of the Tohono O'odham settlement agreement; and

''(2) if, after the enforceability date, the State law is amended so as to have a material adverse effect on the Nation, shall have a right to relief in the State court having jurisdiction over Gila River adjudication proceedings and decrees, against an owner of any nonexempt well drilled after the effective date of the amendment (if the well actually and substantially interferes with groundwater pumping occurring on the San Xavier Reservation), from the incremental effect of the groundwater pumping that exceeds that which would have been allowable had the State law not been amended.

''(e) SUPPLEMENTAL WAIVERS OF CLAIMS.—Any party to the Tohono O'odham settlement agreement may waive and release, prohibit the assertion of, or agree not to assert, any claims (including claims for subsidence damage or injury to water quality) in addition to claims for water rights and injuries to water rights on such terms and conditions as may be agreed to by the parties.

''(f) RIGHTS OF ALLOTTEES; PROHIBITION OF CLAIMS.—

''(1) IN GENERAL.—As of the enforceability date—

''(A) the water rights and other benefits granted or confirmed by this title and the Tohono O'odham settlement agreement shall be in full satisfaction of—

''(i) all claims for water rights and claims for injuries to water rights of the Nation; and

''(ii) all claims for water rights and injuries to water rights of the allottees;

''(B) any entitlement to water within the Tucson management area of the Nation, or of any allottee, shall be satisfied out of the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement; and

''(C) any rights of the allottees to groundwater, surface water, or effluent shall be limited to the water rights granted or confirmed under this title and the Tohono O'odham settlement agreement.

''(2) LIMITATION OF CERTAIN CLAIMS BY ALLOTTEES.—No allottee within the San Xavier Reservation may—

''(A) assert any past, present, or future claim for water rights arising from time immemorial and, thereafter, forever, or any claim for injury to water rights (including future injury to water rights) arising from time immemorial and thereafter, forever, against—

''(i) the United States;

''(ii) the State (or any agency or political subdivision of the State);

''(iii) any municipal corporation; or

''(iv) any other person or entity; or

''(B) continue to assert a claim described in subparagraph (A), if the claim was first asserted before the enforceability date.

''(3) CLAIMS BY FEE OWNERS OF ALLOTTED LAND.—

''(A) IN GENERAL.—No fee owner of allotted land within the San Xavier Reservation may assert any claim to the extent that—

''(i) the claim has been waived and released in the Tohono O'odham settlement agreement; and

''(ii) the fee owner of allotted land asserting the claim is a member of the applicable allottee class.

''(B) OFFSET.—Any benefits awarded to a fee owner of allotted land as a result of a successful claim shall be offset by benefits received by that fee owner of allotted land under this title.

''(4) LIMITATION OF CLAIMS AGAINST THE NATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no allottee may assert against the Nation any claims for water rights arising from time immemorial and, thereafter, forever, claims for injury to water rights arising from time immemorial and thereafter forever.

''(B) EXCEPTION.—Under section 307(a)(1)(G) and subsections (a) and (b) of section 308, the allottees shall retain rights to share in the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement.

''(g) CONSENT.—

''(1) GRANT OF CONSENT.—Congress grants to the Nation and the San Xavier Cooperative Association under section 305(d) consent

to maintain civil actions against the United States in the courts of the United States under section 1346, 1491, or 1505 of title 28, United States Code, respectively, to recover damages, if any, for the breach of any obligation of the Secretary under those sections.

''(2) REMEDY.—

''(A) IN GENERAL.—Subject to subparagraph (B), the exclusive remedy for a civil action maintained under this subsection shall be monetary damages.

''(B) OFFSET.—An award for damages for a claim under this subsection shall be offset against the amount of funds—

''(i) made available by any Act of Congress; and

''(ii) paid to the claimant by the Secretary in partial or complete satisfaction of the claim.

''(3) NO CLAIMS ESTABLISHED.—Except as provided in paragraph (1), nothing in the subsection establishes any claim against the United States.

''(h) JURISDICTION; WAIVER OF IMMUNITY; PARTIES.—

''(1) JURISDICTION.—

''(A) IN GENERAL.—Except as provided in subsection (i), the State court having jurisdiction over Gila River adjudication proceedings and decrees, shall have jurisdiction over—

''(i) civil actions relating to the interpretation and enforcement of—

''(I) this title;

''(II) the Tohono O'odham settlement agreement; and

''(III) agreements referred to in section 309(h)(2); and

''(ii) civil actions brought by or against the allottees or fee owners of allotted land for the interpretation of, or legal or equitable remedies with respect to, claims of the allottees or fee owners of allotted land that are not claims for water rights, injuries to water rights or other claims that are barred or waived and released under this title or the Tohono O'odham settlement agreement.

''(B) LIMITATION.—Except as provided in subparagraph (A), no State court or court of the Nation shall have jurisdiction over any civil action described in subparagraph (A).

''(2) WAIVER.—

''(A) IN GENERAL.—The United States and the Nation waive sovereign immunity solely for claims for—

''(i) declaratory judgment or injunctive relief in any civil action arising under this title; and

''(ii) such claims and remedies as may be prescribed in any agreement authorized under this title.

''(B) LIMITATION ON STANDING.—If a governmental entity not described in subparagraph (A) asserts immunity in any civil action that arises under this title (unless the entity waives immunity for declaratory judgment or injunctive relief) or any agreement authorized under this title (unless the entity waives immunity for the claims and remedies prescribed in the agreement)—

''(i) the governmental entity shall not have standing to initiate or assert any claim, or seek any remedy against the United States or the Nation, in the civil action; and

''(ii) the waivers of sovereign immunity under subparagraph (A) shall have no effect in the civil action.

''(C) MONETARY RELIEF.—A waiver of immunity under this paragraph shall not extend to any claim for damages, costs, attorneys' fees, or other monetary relief.

''(3) NATION AS A PARTY.—

''(A) IN GENERAL.—Not later than 60 days before the date on which a civil action under paragraph (1)(A)(ii) is filed by an allottee or fee owner of allotted land, the allottee or fee owner, as the case may be, shall provide to the Nation a notice of intent to file the civil action, accompanied by a request for consultation.

''(B) JOINDER.—If the Nation is not a party to a civil action as originally commenced under paragraph (1)(A)(ii), the Nation shall be joined as a party.

''(i) REGULATION AND JURISDICTION OVER DISPUTE RESOLUTION.—

''(1) REGULATION.—The Nation shall have jurisdiction to manage, control, permit, administer, and otherwise regulate the water resources granted or confirmed under this title and the Tohono O'odham settlement agreement—

''(A) with respect to the use of those resources by—

''(i) the Nation;

''(ii) individual members of the Nation;

''(iii) districts of the Nation; and

''(iv) allottees; and

''(B) with respect to any entitlement to those resources for which a fee owner of allotted land has received a final determination under applicable law.

''(2) JURISDICTION.—Subject to a requirement of exhaustion of any administrative or other remedies prescribed under the laws of the Nation, jurisdiction over any disputes relating to the matters described in paragraph (1) shall be vested in the courts of the Nation.

''(3) APPLICABLE LAW.—The regulatory and remedial procedures referred to in paragraphs (1) and (2) shall be subject to all applicable law.

''(j) FEDERAL JURISDICTION.—The Federal Courts shall have concurrent jurisdiction over actions described in subsection 312(h) to the extent otherwise provided in Federal law.

''SEC. 313. AFTER-ACQUIRED TRUST LAND.

''(a) IN GENERAL.—Except as provided in subsection (b)—

''(1) the Nation may seek to have taken into trust by the United States, for the benefit of the Nation, legal title to additional land within the State and outside the exterior boundaries of the Nation's Reservation only in accordance with an Act of Congress specifically authorizing the transfer for the benefit of the Nation;

''(2) lands taken into trust under paragraph (1) shall include only such water rights and water use privileges as are consistent with State water law and State water management policy; and

''(3) after-acquired trust land shall not include Federal reserved rights to surface water or groundwater.

''(b) EXCEPTION.—Subsection (a) shall not apply to land acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798).

''SEC. 314. NONREIMBURSABLE COSTS.

''(a) CENTRAL ARIZONA WATER CONSERVATION DISTRICT.—For the purpose of determining the allocation and repayment of costs of any stage of the Central Arizona Project, the costs associated with the delivery of Central Arizona Project water acquired under sections 304(a) and 306(a), whether that water is delivered for use by the Nation or in accordance with any assignment, exchange, lease, option to lease, or other agreement for the temporary disposition of water entered into by the Nation—

''(1) shall be nonreimbursable; and

''(2) shall be excluded from the repayment obligation of the Central Arizona Water Conservation District.

''(b) CLAIMS BY UNITED STATES.—The United States shall—

''(1) make no claim against the Nation or any allottee for reimbursement or repayment of any cost associated with—

''(A) the construction of facilities under the Colorado River Basin Project Act (43 U.S.C. 1501 et seq.);

''(B) the delivery of Central Arizona Project water for any use authorized under this title; or

''(C) the implementation of this title;

''(2) make no claim against the Nation for reimbursement or repayment of the costs associated with the construction of facilities described in paragraph (1)(A) for the benefit of and use on land that—

''(A) is known as the 'San Lucy Farm'; and

''(B) was acquired by the Nation under the Gila Bend Indian Reservation Lands Replacement Act (100 Stat. 1798); and

''(3) impose no assessment with respect to the costs referred to in paragraphs (1) and (2) against—

''(A) trust or allotted land within the Nation's Reservation; or

''(B) the land described in paragraph (2).

''SEC. 315. TRUST FUND.

''(a) REAUTHORIZATION.—Congress reauthorizes the trust fund established by section 309 of the 1982 Act, containing an initial deposit of $15,000,000 made under that section, for use in carrying out this title.

''(b) EXPENDITURE AND INVESTMENT.—Subject to the limitations of subsection (d), the principal and all accrued interest and dividends in the trust fund established under section 309 of the 1982 Act may be—

''(1) expended by the Nation for any governmental purpose; and

''(2) invested by the Nation in accordance with such policies as the Nation may adopt.

''(c) RESPONSIBILITY OF SECRETARY.—The Secretary shall not—

''(1) be responsible for the review, approval, or audit of the use and expenditure of any funds from the trust fund reauthorized by subsection (a); or

''(2) be subject to liability for any claim or cause of action arising from the use or expenditure by the Nation of those funds.

''(d) CONDITIONS OF TRUST.—

''(1) RESERVE FOR THE COST OF SUBJUGATION.—The Nation shall reserve in the trust fund reauthorized by subsection (a)—

''(A) the principal amount of at least $3,000,000; and

''(B) interest on that amount that accrues during the period beginning on the enforceability date and ending on the earlier of—

''(i) the date on which full payment of such costs has been made; or

''(ii) the date that is 10 years after the enforceability date.

''(2) PAYMENT.—The costs described in paragraph (1) shall be paid in the amount, on the terms, and for the purposes prescribed in section 307(a)(1)(F).

''(3) LIMITATION ON RESTRICTIONS.—On the occurrence of an event described in clause (i) or (ii) of paragraph (1)(B)—

''(A) the restrictions imposed on funds from the trust fund described in paragraph (1) shall terminate; and

''(B) any of those funds remaining that were reserved under paragraph (1) may be used by the Nation under subsection (b)(1).

''SEC. 316. MISCELLANEOUS PROVISIONS.

''(a) IN GENERAL.—Nothing in this title—

''(1) establishes the applicability or inapplicability to groundwater of any doctrine of Federal reserved rights;

''(2) limits the ability of the Nation to enter into any agreement with the Arizona Water Banking Authority (or a successor agency) in accordance with State law;

''(3) prohibits the Nation, any individual member of the Nation, an allottee, or a fee owner of allotted land in the San Xavier Reservation from lawfully acquiring water rights for use in the Tucson management area in addition to the water rights granted or confirmed under this title and the Tohono O'odham settlement agreement;

''(4) abrogates any rights or remedies existing under section 1346 or 1491 of title 28, United States Code;

''(5) affects the obligations of the parties under the Agreement of December 11, 1980, with respect to the 8,000 acre feet of Central Arizona Project water contracted by the Nation for the Sif Oidak District;

''(6)(A) applies to any exempt well;

''(B) prohibits or limits the drilling of any exempt well within—

''(i) the San Xavier Reservation; or

''(ii) the eastern Schuk Toak District; or

''(C) subjects water from any exempt well to any pumping limitation under this title; or

''(7) diminishes or abrogates rights to use water under—

''(A) contracts of the Nation in existence before the enforceability date; or

''(B) the well site agreement referred to in the Asarco agreement and any well site agreement entered into under the Asarco agreement.

''(b) NO EFFECT ON FUTURE ALLOCATIONS.—Water received under a lease or exchange of Central Arizona Project water under this title does not affect any future allocation or reallocation of Central Arizona Project water by the Secretary.

''(c) LIMITATION ON LIABILITY OF UNITED STATES.—

''(1) IN GENERAL.—The United States shall have no trust or other obligation—

''(A) to monitor, administer, or account for, in any manner, any of the funds paid to the Nation or the San Xavier District under this Act; or

''(B) to review or approve the expenditure of those funds.

''(2) INDEMNIFICATION.—The Nation shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described in paragraph (1)(A).

''SEC. 317. AUTHORIZED COSTS.

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to construct features of irrigation systems described in paragraphs (1) through (4) of section 304(c) that are not authorized to be constructed under any other provision of law, an amount equal to the sum of—

''(A) $3,500,000; and

''(B) such additional amount as the Secretary determines to be necessary to adjust the amount under subparagraph (A) to account for ordinary fluctuations in the costs of construction of irrigation features for the period beginning on October 12, 1982, and ending on the date on which the construction of the features described in this subparagraph is initiated, as indicated by engineering cost indices applicable to the type of construction involved;

''(2) $18,300,000 in lieu of construction to implement section 304(c)(3)(B), including an adjustment representing interest that would have been earned if this amount had been deposited in the cooperative fund during the period beginning on January 1, 2008, and ending on the date the amount is actually paid to the San Xavier District;

''(3) $891,200 to develop and initiate a water management plan for the San Xavier Reservation under section 308(d);

''(4) $237,200 to develop and initiate a water management plan for the eastern Schuk Toak District under section 308(d);

''(5) $4,000,000 to complete the water resources study under section 311(d);

''(6) $215,000 to develop and initiate a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1);

''(7) $175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2);

''(8) $250,000 to complete the Asarco land exchange study under section 311(f); and

''(9) such additional sums as are necessary to carry out the provisions of this title other than the provisions referred to in paragraphs (1) through (8).

''(b) TREATMENT OF APPROPRIATED AMOUNTS.—Amounts made available under subsection (a) shall be considered to be authorized costs for purposes of section 403(f)(2)(D)(iii) of the Colorado River Basin Project Act (43 U.S.C. 1543(f)(2)(D)(iii)) (as amended by section 107(a) of the Arizona Water Settlements Act).''.

SEC. 302. SOUTHERN ARIZONA WATER RIGHTS SETTLEMENT EFFECTIVE DATE.

(a) DEFINITIONS.—The definitions under section 301 of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) shall apply to this title.

(b) EFFECTIVE DATE.—This title and the amendments made by this title take effect as of the enforceability date, which is the date the Secretary publishes in the Federal Register a statement of findings that—

(1)(A) to the extent that the Tohono O'odham settlement agreement conflicts with this title or an amendment made by this title, the Tohono O'odham settlement agreement has been revised through an amendment to eliminate those conflicts; and

(B) the Tohono O'odham settlement agreement, as so revised, has been executed by the parties and the Secretary;

(2) the Secretary and other parties to the agreements described in section 309(h)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301) have executed those agreements;

(3) the Secretary has approved the interim allottee water rights code described in section 308(b)(3)(A) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(4) final dismissal with prejudice has been entered in each of the Alvarez case and the Tucson case on the sole condition that the Secretary publishes the findings specified in this section;

(5) the judgment and decree attached to the Tohono O'odham settlement agreement as exhibit 17.1 has been approved by the State court having jurisdiction over the Gila River adjudication proceedings, and that judgment and decree have become final and nonappealable;

(6) implementation costs have been identified and retained in the Lower Colorado River Basin Development Fund, specifically—

(A) $18,300,000 to implement section 304(c)(3);

(B) $891,200 to implement a water management plan for the San Xavier Reservation under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(C) $237,200 to implement a water management plan for the eastern Schuk Toak District under section 308(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(D) $4,000,000 to complete the water resources study under section 311(d) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(E) $215,000 to develop and implement a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(F) $175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301); and

(G) $250,000 to complete the Asarco land exchange study under section 311(f) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(7) the State has enacted legislation that—

(A) qualifies the Nation to earn long-term storage credits under the Asarco agreement;

(B) implements the San Xavier groundwater protection program in accordance with paragraph 8.8 of the Tohono O'odham settlement agreement;

(C) enables the State to carry out section 306(b); and

(D) confirms the jurisdiction of the State court having jurisdiction over Gila River adjudication proceedings and decrees to carry out the provisions of sections 312(d) and 312(h) of the Southern Arizona Water Rights Settlement Amendments Act of 2004 (as contained in the amendment made by section 301);

(8) the Secretary and the State have agreed to an acceptable firming schedule referred to in section 105(b)(2)(C); and

(9) a final judgment has been entered in Central Arizona Water Conservation District v. United States (No. CIV 95–625–TUC–WDB(EHC), No. CIV 95–1720–PHX–EHC) (Consolidated Action) in accordance with the repayment stipulation as provided in section 207.

(c) FAILURE TO PUBLISH STATEMENT OF FINDINGS.—If the Secretary does not publish a statement of findings under subsection (a) by December 31, 2007—

(1) the 1982 Act shall remain in full force and effect;

(2) this title shall not take effect; and

(3) any funds made available by the State under this title that are not expended, together with any interest on those funds, shall immediately revert to the State.

TITLE IV—SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT

SEC. 401. EFFECT OF TITLES I, II, AND III.

None of the provisions of title I, II, or III or the agreements, attachments, exhibits, or stipulations referenced in those titles shall be construed to—

(1) amend, alter, or limit the authority of—

(A) the United States to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its capacity as trustee for the San Carlos Apache Tribe, its members and allottees, or in any other capacity on behalf of the San Carlos Apache Tribe, its members, and allottees, in any judicial, administrative, or legislative proceeding; or

(B) the San Carlos Apache Tribe to assert any claim against any party, including any claim for water rights, injury to water rights, or injury to water quality in its own behalf or on behalf of its members and allottees in any judicial, administrative, or legislative proceeding consistent with title XXXVII of Public Law 102–575 (106 Stat. 4600, 4740); or

(2) amend or alter the CAP Contract for the San Carlos Apache Tribe dated December 11, 1980, as amended April 29, 1999.

SEC. 402. ANNUAL REPORT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act and

annually thereafter, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the status of efforts to reach a negotiated agreement covering the Gila River water rights claims of the San Carlos Apache Tribe.

(b) TERMINATION.—This section shall be of no effect after the later of—

(1) the date that is 3 years after the date of enactment of this Act; or

(2) the date on which the Secretary submits a third annual report under this section.

SEC. 403. AUTHORIZATION OF APPROPRIATIONS.

(a) SAN CARLOS APACHE TRIBE.—There is authorized to be appropriated to assist the San Carlos Apache Tribe in completing comprehensive water resources negotiations leading to a comprehensive Gila River water settlement for the Tribe, including soil and water technical analyses, legal, paralegal, and other related efforts, $150,000 for fiscal year 2006.

(b) WHITE MOUNTAIN APACHE TRIBE.—There is authorized to be appropriated to assist the White Mountain Apache Tribe in completing comprehensive water resources negotiations leading to a comprehensive water settlement for the Tribe, including soil and water technical analyses, legal, paralegal, and other related efforts, $150,000 for fiscal year 2006.

(c) OTHER ARIZONA INDIAN TRIBES.—There is authorized to be appropriated to the Secretary to assist Arizona Indian tribes (other than those specified in subsections (a) and (b)) in completing comprehensive water resources negotiations leading to a comprehensive water settlement for the Arizona Indian tribes, including soil and water technical analyses, legal, paralegal, and other related efforts, $300,000 for fiscal year 2006.

(d) NO LIMITATION ON OTHER FUNDING.—Amounts made available under subsections (a), (b), and (c) shall not limit, and shall be in addition to, other amounts available for Arizona tribal water rights negotiations leading to comprehensive water settlements.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona (Mr. HAYWORTH) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. HAYWORTH).

GENERAL LEAVE

Mr. HAYWORTH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 437, the Senate bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. HAYWORTH. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 437, sponsored by Senator JOHN KYLE and supported by a bipartisan group of our House colleagues in Arizona and New Mexico, represents years of negotiations among representatives of the Federal Government, the States of Arizona and New Mexico, the Gila River Indian community, as well as various communities in the region.

This bill offers a comprehensive approach to resolving certain Indian water claims and settles long-standing litigation. It also provides long-term water use certainty for non-Indian water users and allows New Mexico to develop long-promised water supplies.

I commend my colleague, Senator KYL, the sponsor of this bill, and so many others for helping foster the historic agreements in this legislation.

Mr. Speaker, this legislation offers most everyone something, but not everything to anyone. It represents hard-fought compromise that deserves passage. I would urge my colleagues to support this bipartisan bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

Mrs. CHRISTENSEN. Mr. Speaker, it is with pleasure that I join my colleagues in support of S. 437. The bill includes several important revisions, including new language in title 4 that will assist the San Carlos Apache Tribe, the White Mountain Apache Tribe, and other tribes in Arizona, as they work to complete their own comprehensive water settlements. I am grateful for the cooperation shown by everyone who participated in this effort.

As I express my support for S. 437, I also wish to remind my colleagues that this legislation is the most significant and far-reaching water settlement legislation ever considered by this House.

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Certainly, the benefits to all parties including the United States will be significant. But this legislation will also be very expensive, and many of the costs will be off-budget, avoiding the annual appropriations process.

The legislation, in effect, will settle claims of the Gila River Indian Community by dramatically restructuring the payments for the Central Arizona Project. However, I am satisfied that, on balance, the benefits of this legislation will significantly outweigh the costs on the taxpayers.

We support the passage of S. 437.

Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona (Mr. GRIJALVA).

Mr. GRIJALVA. Mr. Speaker, I want to thank the ranking member, the gentleman from West Virginia (Mr. RAHALL), and the chairman of the Committee on Resources, my esteemed colleague, the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) for her support on the Committee on Resources for assuring that we would have an opportunity to consider this legislation today.

This important piece of legislation, S. 437, H.R. 885, will begin the process of settling major issues related to water in Arizona today. While I agree this legislation is not perfect, it does provide the opportunity to resolve Indian water rights claims in Arizona and secure water for their future use.

But the benefits of this legislation are not restricted to Indian tribes. The bill will also provide certainty for municipal governments such as the City of Tucson and my district, which will now have assurances as to water supply.

Under this legislation nearly half of the benefits provided by the Central Arizona Project will be available to support economic development within Indian reservations. Two tribes within my district, the Gila River Indian Community and the Tohono o'Odham, are among the beneficiaries of this enhanced opportunity.

In Indian Country today, one of the most difficult hurdles to tribes utilizing their water rights is the high cost of water project development. While the Federal government over the years has helped facilitate and pay for non-Indian water projects, Indian tribes have been left without such assistance. This legislation, however, provides a reliable funding source which will help pay the operation, maintenance and replacement costs associated with each acre foot of water.

Funding will also be available to underwrite the cost of two tribal water settlements provided by this legislation, approved by this legislation. In addition, a new source of funding will be available to underwrite the costs of new Indian water rights settlements. By making the CAP water and unappropriated funding available, this legislation makes it much more likely that all the remaining Indian water right disputes in Arizona can and will be resolved in the near future.

Finally, the sponsors and the Resources staff members have worked hard to include language in this bill to protect other tribes' future settlements, in particular, White Mountain Apache and San Carlos Apache Tribes. Title IV of this bill provides funding for these tribes and others to work on their own settlements and also makes it clear that the San Carlos Apache Tribe will not be prejudiced in settling their water claims. In addition, the Secretary of Interior is required to report to us annually on efforts to settle the Apache claims that were not settled by the partial San Carlos water settlement in 1992.

I hope all of my colleagues will support this legislation and the innovative effort it represents to resolve some of the most difficult and pressing water management issues in Arizona.

Mr. HAYWORTH. Mr. Speaker, I yield two minutes to the gentleman from New Mexico (Mr. PEARCE).

Mr. PEARCE. Mr. Speaker, I rise in support of S. 437. Mr. Speaker, I want to thank the gentleman from California (Mr. POMBO) and the ranking member, the gentleman from West Virginia (Mr. RAHALL), along with the subcommittee chairman, the gentleman from California (Mr. CALVERT), and the ranking member, the gentlewoman from California (Mrs. NAPOLITANO), for

their hard work in getting an agreement that allows us to vote on this important water settlement bill today.

I would also like to pay tribute to the gentleman from Arizona (Mr. HAYWORTH) and the Arizona delegation in anticipation of receiving the same from them in this bill.

In the 1968 Colorado River Basin Project Act, New Mexico was apportioned 18,000 acre feet of Gila River water. The Gila River's headwaters are in New Mexico and, therefore, New Mexicans always felt like they had claim to some of this water. However, we had not been able to use any of it, and it has simply been paper water.

New Mexicans have long sought to develop this water and because of their willingness to negotiate in good faith and compromise with the State of Arizona and downstream water users, we have now reached an agreement. That agreement is a bipartisan solution which I feel represents the best interests of both States.

This historic water bill will not only provide a settlement to long-standing Indian water rights in Arizona, but it will also ensure Southwestern New Mexico gets the water it was apportioned in the 1968 Act. New Mexico was not able to develop this water because the 1968 Act required New Mexico to keep whole senior water uses in Arizona. After many long months of negotiation, all the necessary agreements between Arizona and New Mexico are in place to allow this bill to move forward.

It is Congress's role to codify agreed-upon settlements, especially where almost every part has been negotiated in good faith for a number of years on very difficult and contentious issues. Without the agreements negotiated between the two States and which are reflected in the amendments to the 2004 Arizona Water Settlements Act, the New Mexico unit could not be developed. However, with this agreement, after nearly 40 years New Mexico water users will be able to develop water that they were promised in 1968.

Mr. Speaker, I urge all of my colleagues to support S. 437.

Mrs. CHRISTENSEN. Mr. Speaker, I yield such time as he may consume to the gentleman from Arizona (Mr. PASTOR).

(Mr. PASTOR asked and was given permission to revise and extend his remarks.)

Mr. PASTOR. Mr. Speaker, I rise in support of this critical legislation, which is co-sponsored by the entire Arizona delegation.

Since before the founding of Arizona as a State, we have, like most other Western States, struggled to meet the water demands of our inhabitants. It has not been easy. In 1968, in hopes of resolving these problems, the Central Arizona Project was authorized by the Federal Government and charged with distributing water from the Colorado River to communities and tribes in the central and southern parts of Arizona. However, for decades there have been disputes on the appropriate distribution of these waters, resulting in litigation.

I believe this legislation will resolve most of these disputes. The entire Arizona delegation, both my Democratic and Republican colleagues as well as our two senators and our governor, all believe this is the best possible solution to this water issue. The people, municipalities, Native American tribes and nations and agricultural and environmental organizations within the State also agree.

This legislation represents a significant step forward in Arizona's continuing effort to resolve Native American water rights claims for the benefit of all of the people of Arizona. This bill will resolve the claims of the Gila River Indian community and the remaining claims of the Tohono o'Odham Nation, while laying the groundwork for resolving the other outstanding water right claims of Arizona's Native American communities and nations.

The bill approves and ratifies the Gila River Indian Community Water Rights Settlement Act, amends the Southern Arizona Water Rights Settlement Act of 1982, and affirms the right of the San Carlos Apache Tribe to make future claims for water rights. The Senate has approved this bill unanimously and has passed the House Committee on Resources, which I would like to thank the ranking member, the gentleman from West Virginia (Mr. RAHALL), for bringing this bill to the floor.

It is critical to our State that we approve it here today and move it forward to the President for enactment. I urge my colleagues to follow the lead of all eight Arizona representatives and support its passage.

Mr. BACA. Mr. Speaker, today, I rise in support of S. 437, the Arizona Water Settlements Act.

I am a cosponsor of H.R. 885, the House version of this landmark bill that resolves critical water issues facing Arizona and Arizona tribes today.

Congress authorized the Central Arizona project 35 years ago.

Today, S. 347 offers resolution for water use in Arizona, providing additional water supplies to resolve tribal claims and accommodate rapid population growth.

Among other improvements, this bill designs a solid system and infrastructure to provide Arizona tribes with affordable water.

After many years, tribes in this region, such as the Gila River Indian Community, will be able to retain and maintain their water rights without continuous years of court battles.

Everyone has the right to clean, abundant and affordable water—and our first Americans are no exception.

The Arizona Water Settlements Act will be considered the largest Indian water settlement in U.S. history, and this was obviously no small task.

The bill is strongly supported by appropriate state agencies, the entire Arizona delegation, the Gila River Community, the Tohono O'odham tribe, and a number of diverse Arizona interests.

I commend the Arizona delegation and the Democratic and Republican staff for working through their differences for a polished bill.

I look forward to seeing this bill become law, and the positive changes it will make for Arizona's water supply in the future.

Mr. HAYWORTH. Mr. Speaker, I would simply comment that I welcome the statements of my two colleagues from Arizona on the other side of the aisle. I thank my friend from the Virgin Islands for managing on the minority side.

Mr. Speaker, we have no further requests for time, and I yield back the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. TERRY). The question is on the motion offered by the gentleman from Arizona (Mr. HAYWORTH) that the House suspend the rules and pass the Senate bill, S. 437.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

LINCOLN COUNTY CONSERVATION, RECREATION, AND DEVELOPMENT ACT OF 2004

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4593) to establish wilderness areas, promote conservation, improve public land, and provide for the high quality development in Lincoln County, Nevada, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SEC. 2. SHORT TITLE.

This Act may be cited as the ''Lincoln County Conservation, Recreation, and Development Act of 2004''.

TITLE I—LAND DISPOSAL

SEC. 101. DEFINITIONS.

In this title:

(1) COUNTY.—The term ''County'' means Lincoln County, Nevada.

(2) MAP.—The term ''map'' means the map entitled ''Lincoln County Conservation, Recreation, and Development Act Map'' and dated October 1, 2004.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) SPECIAL ACCOUNT.—The term ''special account'' means the special account established under section 103(b)(3).

SEC. 102. CONVEYANCE OF LINCOLN COUNTY LAND.

(a) IN GENERAL.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712), the Secretary, in cooperation with the County, in accordance with that Act, this title, and other applicable law and subject to valid existing rights, shall conduct sales of—

(1) the land described in subsection (b)(1) to qualified bidders not later than 75 days after the date of the enactment of this Act; and

(2) the land described in subsection (b)(2) to qualified bidders as such land becomes available for disposal.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of—

(1) the land identified on the map as Tract A and Tract B totaling approximately 13,328 acres; and

(2) not more than 90,000 acres of Bureau of Land Management managed public land in Lincoln County that is not segregated or withdrawn on the date of enactment of this Act or thereafter, and that is identified for disposal by the BLM either through—

(A) the Ely Resource Management Plan (intended to be finalized in 2005); or

(B) a subsequent amendment to that land use plan undertaken with full public involvement.

(c) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(1) the Office of the Director of the Bureau of Land Management;

(2) the Office of the Nevada State Director of the Bureau of Land Management;

(3) the Ely Field Office of the Bureau of Land Management; and

(4) the Caliente Field Station of the Bureau of Land Management.

(d) JOINT SELECTION REQUIRED.—The Secretary and the County shall jointly select which parcels of land described in subsection (b)(2) to offer for sale under subsection (a).

(e) COMPLIANCE WITH LOCAL PLANNING AND ZONING LAWS.—Before a sale of land under subsection (a), the County shall submit to the Secretary a certification that qualified bidders have agreed to comply with—

(1) County and city zoning ordinances; and

(2) any master plan for the area approved by the County.

(f) METHOD OF SALE; CONSIDERATION.—The sale of land under subsection (a) shall be—

(1) consistent with section 203(d) and 203(f) of the Federal Land Management Policy Act of 1976 (43 U.S.C. 1713(d) and (f));

(2) through a competitive bidding process unless otherwise determined by the Secretary; and

(3) for not less than fair market value.

(g) WITHDRAWAL.—

(1) IN GENERAL.—Subject to valid existing rights and except as provided in paragraph (2), the land described in subsection (b) is withdrawn from—

(A) all forms of entry and appropriation under the public land laws, including the mining laws;

(B) location, entry, and patent under the mining laws; and

(C) operation of the mineral leasing and geothermal leasing laws.

(2) EXCEPTION.—Paragraph (1)(A) shall not apply to a competitive sale or an election by the County to obtain the land described in subsection (b) for public purposes under the Act of June 14, 1926 (43 U.S.C. 869 et seq; commonly known as the ''Recreation and Public Purposes Act'').

(h) DEADLINE FOR SALE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall—

(A) notwithstanding the Lincoln County Land Act of 2000 (114 Stat. 1046), not later than 75 days after the date of the enactment of this Act, offer by sale the land described in subsection (b)(1) if there is a qualified bidder for such land; and

(B) offer for sale annually lands identified for sale in subsection (b)(2) until such lands are disposed of or unless the county requests a postponement under paragraph (2).

(2) POSTPONEMENT; EXCLUSION FROM SALE.—

(A) REQUEST BY COUNTY FOR POSTPONEMENT OR EXCLUSION.—At the request of the County, the Secretary shall postpone or exclude from the sale all or a portion of the land described in subsection (b)(2).

(B) INDEFINITE POSTPONEMENT.—Unless specifically requested by the County, a postponement under subparagraph (A) shall not be indefinite.

SEC. 103. DISPOSITION OF PROCEEDS.

(a) INITIAL LAND SALE.—Section 5 of the Lincoln County Land Act of 2000 (114 Stat. 1047) shall apply to the disposition of the gross proceeds from the sale of land described in section 102(b)(1).

(b) DISPOSITION OF PROCEEDS.—Proceeds from sales of lands described in section 102(b)(2) shall be disbursed as follows—

(1) 5 percent shall be paid directly to the state for use in the general education program of the State;

(2) 10 percent shall be paid to the County for use for fire protection, law enforcement, public safety, housing, social services, and transportation; and

(3) the remainder shall be deposited in a special account in the Treasury of the United States and shall be available without further appropriation to the Secretary until expended for—

(A) the reimbursement of costs incurred by the Nevada State office and the Ely Field Office of the Bureau of Land Management for preparing for the sale of land described in section 102(b) including surveys appraisals, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and compliance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1712);

(B) the inventory, evaluation, protection, and management of unique archaeological resources (as defined in section 3 of the Archaeological Resources Protection Act of 19792 (16 U.S.C. 470bb)) of the County;

(C) the development and implementation of a multispecies habitat conservation plan for the County;

(D) processing of public land use authorizations and rights-of-way relating to the development of land conveyed under section 102(a) of this Act;

(E) processing the Silver State OHV trail and implementing the management plan required by section 151(c)(2) of this Act; and

(F) processing wilderness designation, including but not limited to, the costs of appropriate fencing, signage, public education, and enforcement for the wilderness areas designated.

(c) INVESTMENT OF SPECIAL ACCOUNT.—Any amounts deposited in the special account shall earn interest in an amount determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities, and may be expended according to the provisions of this section.

TITLE II—WILDERNESS AREAS

SEC. 111. FINDINGS.

Congress finds that—

(1) public land in the County contains unique and spectacular natural resources, including—

(A) priceless habitat for numerous species of plants and wildlife; and

(B) thousands of acres of land that remain in a natural state; and

(2) continued preservation of those areas would benefit the County and all of the United States by—

(A) ensuring the conservation of ecologically diverse habitat;

(B) protecting prehistoric cultural resources;

(C) conserving primitive recreational resources; and

(D) protecting air and water quality.

SEC. 112. DEFINITIONS.

In this title:

(1) COUNTY.—The term ''County'' means Lincoln County, Nevada.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) STATE.—The term ''State'' means the State of Nevada.

SEC. 113. ADDITIONS TO NATIONAL WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following land in the State is designated as wilderness and as components of the National Wilderness Preservation System:

(1) MORMON MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 157,938 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Mormon Mountains Wilderness''.

(2) MEADOW VALLEY RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 123,488 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Meadow Valley Range Wilderness''.

(3) DELAMAR MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 111,328 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Delamar Mountains Wilderness''.

(4) CLOVER MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 85,748 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Clover Mountains Wilderness''.

(5) SOUTH PAHROC RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 25,800 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''South Pahroc Range Wilderness''.

(6) WORTHINGTON MOUNTAINS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 30,664 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Worthington Mountains Wilderness''.

(7) WEEPAH SPRING WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 51,480 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Weepah Spring Wilderness''.

(8) PARSNIP PEAK WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 43,693 acres, as generally depicted on the map entitled ''Northern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Parsnip Peak Wilderness''.

(9) WHITE ROCK RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 24,413 acres, as generally depicted on the map entitled ''Northern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''White Rock Range Wilderness''.

(10) FORTIFICATION RANGE WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 30,656 acres, as generally depicted on the map entitled ''Northern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Fortification Range Wilderness''.

(11) FAR SOUTH EGANS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 36,384 acres, as generally depicted on the map entitled ''Northern Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Far South Egans Wilderness''.

(12) TUNNEL SPRING WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 5,371 acres, as generally depicted on the map entitled ''Southern Lincoln County Wilderness Map'',

dated October 1, 2004, which shall be known as the ''Tunnel Spring Wilderness''.

(13) BIG ROCKS WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 12,997 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Big Rocks Wilderness''.

(14) MT. IRISH WILDERNESS.—Certain Federal land managed by the Bureau of Land Management, comprising approximately 28,334 acres, as generally depicted on the map entitled ''Western Lincoln County Wilderness Map'', dated October 1, 2004, which shall be known as the ''Mt. Irish Wilderness''.

(b) BOUNDARY.—The boundary of any portion of a wilderness area designated by subsection (a) that is bordered by a road shall be at least 100 feet from the edge of the road to allow public access.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file a map and legal description of each wilderness area designated by subsection (a) with the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(2) EFFECT.—Each map and legal description shall have the same force and effect as if included in this section, except that the Secretary may correct clerical and typographical errors in the map or legal description.

(3) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(A) the Office of the Director of the Bureau of Land Management;

(B) the Office of the Nevada State Director of the Bureau of Land Management;

(C) the Ely Field Office of the Bureau of Land Management; and

(D) the Caliente Field Station of the Bureau of Land Management.

(d) WITHDRAWAL.—Subject to valid existing rights, the wilderness areas designated by subsection (a) are withdrawn from—

(1) all forms of entry, appropriation, and disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing and geothermal leasing laws.

SEC. 114. ADMINISTRATION.

(a) MANAGEMENT.—Subject to valid existing rights, each area designated as wilderness by this title shall be administered by the Secretary in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), except that—

(1) any reference in that Act to the effective date shall be considered to be a reference to the date of the enactment of this Act; and

(2) any reference in that Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior.

(b) LIVESTOCK.—Within the wilderness areas designated under this title that are administered by the Bureau of Land Management, the grazing of livestock in areas in which grazing is established as of the date of enactment of this Act shall be allowed to continue, subject to such reasonable regulations, policies, and practices that the Secretary considers necessary, consistent with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)), including the guidelines set forth in Appendix A of House Report 101–405.

(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS.—Any land or interest in land within the boundaries of an area designated as wilderness by this title that is acquired by the United States after the date of the enactment of this Act shall be added to and administered as part of the wilderness area within which the acquired land or interest is located.

(d) WATER RIGHTS.—

(1) FINDINGS.—Congress finds that—

(A) the land designated as Wilderness by this title is within the Northern Mojave and Great Basin Deserts, is arid in nature, and includes ephemeral streams;

(B) the hydrology of the land designated as wilderness by this title is predominantly characterized by complex flow patterns and alluvial fans with impermanent channels;

(C) the subsurface hydrogeology of the region is characterized by ground water subject to local and regional flow gradients and unconfined and artesian conditions;

(D) the land designated as wilderness by this title is generally not suitable for use or development of new water resource facilities; and

(E) because of the unique nature and hydrology of the desert land designated as wilderness by this title, it is possible to provide for proper management and protection of the wilderness and other values of lands in ways different from those used in other legislation.

(2) STATUTORY CONSTRUCTION.—Nothing in this title—

(A) shall constitute or be construed to constitute either an express or implied reservation by the United States of any water or water rights with respect to the land designated as wilderness by this title;

(B) shall affect any water rights in the State existing on the date of the enactment of this Act, including any water rights held by the United States;

(C) shall be construed as establishing a precedent with regard to any future wilderness designations;

(D) shall affect the interpretation of, or any designation made pursuant to, any other Act; or

(E) shall be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State and other States.

(3) NEVADA WATER LAW.—The Secretary shall follow the procedural and substantive requirements of the law of the State in order to obtain and hold any water rights not in existence on the date of enactment of this Act with respect to the wilderness areas designated by this title.

(4) NEW PROJECTS.—

(A) WATER RESOURCE FACILITY.—As used in this paragraph, the term ''water resource facility''—

(i) means irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, and transmission and other ancillary facilities, and other water diversion, storage, and carriage structures; and

(ii) does not include wildlife guzzlers.

(B) RESTRICTION ON NEW WATER RESOURCE FACILITIES.—Except as otherwise provided in this Act, on and after the date of the enactment of this Act, neither the President nor any other officer, employee, or agent of the United States shall fund, assist, authorize, or issue a license or permit for the development of any new water resource facility within the wilderness areas designated by this Act.

SEC. 115. ADJACENT MANAGEMENT.

(a) IN GENERAL.—Congress does not intend for the designation of wilderness in the State pursuant to this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area.

(b) NONWILDERNESS ACTIVITIES.—The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness designated under this title shall not preclude the conduct of those activities or uses outside the boundary of the wilderness area.

SEC. 116. MILITARY OVERFLIGHTS.

Nothing in this title restricts or precludes—

(1) low-level overflights of military aircraft over the areas designated as wilderness by this title, including military overflights that can be seen or heard within the wilderness areas;

(2) flight testing and evaluation; or

(3) the designation or creation of new units of special use airspace, or the establishment of military flight training routes, over the wilderness areas.

SEC. 117. NATIVE AMERICAN CULTURAL AND RELIGIOUS USES.

Nothing in this title shall be construed to diminish the rights of any Indian tribe. Nothing in this title shall be construed to diminish tribal rights regarding access to Federal land for tribal activities, including spiritual, cultural, and traditional food-gathering activities.

SEC. 118. RELEASE OF WILDERNESS STUDY AREAS.

(a) FINDING.—Congress finds that, for the purposes of section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782), the public land in the County administered by the Bureau of Land Management in the following areas has been adequately studied for wilderness designation:

(1) The Table Mountain Wilderness Study Area.

(2) Evergreen A, B, and C Wilderness Study Areas.

(3) Any portion of the wilderness study areas—

(A) not designated as wilderness by section 114(a); and

(B) depicted as released on—

(i) the map entitled ''Northern Lincoln County Wilderness Map'' and dated October 1, 2004;

(ii) the map entitled ''Southern Lincoln County Wilderness Map'' and dated October 1, 2004; or

(iii) the map entitled ''Western Lincoln County Wilderness Map'' and dated October 1, 2004.

(b) RELEASE.—Any public land described in subsection (a) that is not designated as wilderness by this title—

(1) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c));

(2) shall be managed in accordance with—

(A) land management plans adopted under section 202 of that Act (43 U.S.C. 1712); and

(B) existing cooperative conservation agreements; and

(3) shall be subject to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 119. WILDLIFE MANAGEMENT.

(a) IN GENERAL.—In accordance with section 4(d)(7) of the Wilderness Act (16 U.S.C. 1133(d)(7)), nothing in this title affects or diminishes the jurisdiction of the State with respect to fish and wildlife management, including the regulation of hunting, fishing, and trapping, in the wilderness areas designated by this title.

(b) MANAGEMENT ACTIVITIES.—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title where consistent with relevant wilderness management plans, in accordance with appropriate policies such as those set forth in Appendix B of House Report 101–405, including the occasional and temporary use of motorized vehicles, if such use, as determined by the Secretary, would promote healthy, viable, and more naturally distributed wildlife populations that would enhance wilderness values and accomplish those purposes with the minimum impact necessary to reasonably accomplish the task.

(c) EXISTING ACTIVITIES.—Consistent with section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)) and in accordance with appropriate policies such as those set forth in Appendix B of House Report 101–405, the State may continue to use aircraft, including helicopters, to survey, capture, transplant, monitor, and provide water for wildlife populations, including bighorn sheep, and feral stock, horses, and burros.

(d) WILDLIFE WATER DEVELOPMENT PROJECTS.—Subject to subsection (f), the Secretary shall authorize structures and facilities,

including existing structures and facilities, for wildlife water development projects, including guzzlers, in the wilderness areas designated by this Act if—

(1) the structures and facilities will, as determined by the Secretary, enhance wilderness values by promoting healthy, viable, and more naturally distributed wildlife populations; and

(2) the visual impacts of the structures and facilities on the wilderness areas can reasonably be minimized.

(e) HUNTING, FISHING, AND TRAPPING.—In consultation with the appropriate State agency (except in emergencies), the Secretary may designate by regulation areas in which, and establish periods during which, for reasons of public safety, administration, or compliance with applicable laws, no hunting, fishing, or trapping will be permitted in the wilderness areas designated by this Act.

(f) COOPERATIVE AGREEMENT.—The terms and conditions under which the State, including a designee of the State, may conduct wildlife management activities in the wilderness areas designated by this title are specified in the cooperative agreement between the Secretary and the State, entitled ''Memorandum of Understanding between the Bureau of Land Management and the Nevada Department of Wildlife Supplement No. 9,'' and signed November and December 2003, including any amendments to that document agreed upon by the Secretary and the State and subject to all applicable laws and regulations. Any references to Clark County in that document shall also be deemed to be referred to and shall apply to Lincoln County, Nevada.

SEC. 120. WILDFIRE MANAGEMENT.

Consistent with section 4 of the Wilderness Act (16 U.S.C. 1133), nothing in this title precludes a Federal, State, or local agency from conducting wildfire management operations (including operations using aircraft or mechanized equipment) to manage wildfires in the wilderness areas designated by this title.

SEC. 121. CLIMATOLOGICAL DATA COLLECTION.

Subject to such terms and conditions as the Secretary may prescribe, nothing in this title precludes the installation and maintenance of hydrologic, meteorologic, or climatological collection devices in the wilderness areas designated by this title if the facilities and access to the facilities are essential to flood warning, flood control, and water reservoir operation activities.

TITLE III—UTILITY CORRIDORS

SEC. 131. UTILITY CORRIDOR AND RIGHTS-OF-WAY.

(a) UTILITY CORRIDOR.—

(1) IN GENERAL.—Consistent with title II and notwithstanding sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1763), the Secretary of the Interior (referred to in this section as the ''Secretary'') shall establish on public land a 2,640-foot wide corridor for utilities in Lincoln County and Clark County, Nevada, as generally depicted on the map entitled ''Lincoln County Conservation, Recreation, and Development Act'', and dated October 1, 2004.

(2) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(A) the Office of the Director of the Bureau of Land Management;

(B) the Office of the Nevada State Director of the Bureau of Land Management;

(C) the Ely Field Office of the Bureau of Land Management; and

(D) the Caliente Field Station of the Bureau of Land Management.

(b) RIGHTS-OF-WAY.—

(1) IN GENERAL.—Notwithstanding sections 202 and 503 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1711, 1763), and subject to valid and existing rights, the Secretary shall grant to the Southern Nevada Water Authority and the Lincoln County Water District nonexclusive rights-of-way to Federal land in Lincoln County and Clark County, Nevada, for any roads, wells, well fields, pipes, pipelines, pump stations, storage facilities, or other facilities and systems that are necessary for the construction and operation of a water conveyance system, as depicted on the map.

(2) APPLICABLE LAW.—A right-of-way granted under paragraph (1) shall be granted in perpetuity and shall not require the payment of rental.

(3) COMPLIANCE WITH NEPA.—Before granting a right-of-way under paragraph (1), the Secretary shall comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including the identification and consideration of potential impacts to fish and wildlife resources and habitat.

(c) WITHDRAWAL.—Subject to valid existing rights, the utility corridors designated by subsection (a) are withdrawn from—

(1) all forms of entry, appropriation, and disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing and geothermal leasing laws.

(d) STATE WATER LAW.—Nothing in this title shall—

(1) prejudice the decisions or abrogate the jurisdiction of the Nevada or Utah State Engineers with respect to the appropriation, permitting, certification, or adjudication of water rights;

(2) preempt Nevada or Utah State water law; or

(3) limit or supersede existing water rights or interest in water rights under Nevada or Utah State law.

(e) WATER RESOURCES STUDY.—

(1) IN GENERAL.—The Secretary, acting through the United States Geological Survey, the Desert Research Institute, and a designee from the State of Utah shall conduct a study to investigate ground water quantity, quality, and flow characteristics in the deep carbonate and alluvial aquifers of White Pine County, Nevada, and any groundwater basins that are located in White Pine County, Nevada, or Lincoln County, Nevada, and adjacent areas in Utah. The study shall—

(A) focus on a review of existing data and may include new data;

(B) determine the approximate volume of water stored in aquifers in those areas;

(C) determine the discharge and recharge characteristics of each aquifer system;

(D) determine the hydrogeologic and other controls that govern the discharge and recharge of each aquifer system; and

(E) develop maps at a consistent scale depicting aquifer systems and the recharge and discharge areas of such systems.

(2) TIMING; AVAILABILITY.—The Secretary shall complete a draft of the water resources report required under paragraph (1) not later than 30 months after the date of the enactment of this Act. The Secretary shall then make the draft report available for public comment for a period of not less than 60 days. The final report shall be submitted to the Committee on Resources in the House of Representatives and the Committee on Energy and Natural Resources in the Senate and made available to the public not later than 36 months after the date of the enactment of this Act.

(3) AGREEMENT.—Prior to any transbasin diversion from ground-water basins located within both the State of Nevada and the State of Utah, the State of Nevada and the State of Utah shall reach an agreement regarding the division of water resources of those interstate ground-water flow system(s) from which water will be diverted and used by the project. The agreement shall allow for the maximum sustainable beneficial use of the water resources and protect existing water rights.

(4) FUNDING.—Section 4(e)(3)(A) of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2346; 116 Stat. 2007; 117 Stat. 1317) is amended—

(A) in clauses (ii), (iv), and (v), by striking ''County'' each place it appears and inserting ''and Lincoln Counties'';

(B) in clause (vi), by striking ''and'' at the end;

(C) by redesignating clause (vii) as clause (viii); and

(D) by inserting after clause (vi) the following:

''(vii) for development of a water study for Lincoln and White Pine Counties, Nevada, in an amount not to exceed $6,000,000; and''.

SEC. 132. RELOCATION OF RIGHT-OF-WAY AND UTILITY CORRIDORS LOCATED IN CLARK AND LINCOLN COUNTIES IN THE STATE OF NEVADA.

(a) DEFINITIONS.—In this section:

(1) AGREEMENT.—The term ''Agreement'' means the land exchange agreement between Aerojet-General Corporation and the United States, dated July 14, 1988.

(2) CORRIDOR.—The term ''corridor'' means—

(A) the right-of-way corridor that is—

(i) identified in section 5(b)(1) of the Nevada-Florida Land Exchange Authorization Act of 1988 (102 Stat. 55); and

(ii) described in section 14(a) of the Agreement;

(B) such portion of the utility corridor identified in the 1988 Las Vegas Resource Management Plan located south of the boundary of the corridor described in subparagraph (A) as is necessary to relocate the right-of-way corridor to the area described in subsection (c)(2); and

(C) such portion of the utility corridor identified in the 2000 Caliente Management Framework Plan Amendment located north of the boundary of the corridor described in subparagraph (A) as is necessary to relocate the right-of-way corridor to the area described in subsection (c)(2).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(b) RELINQUISHMENT AND FAIR MARKET VALUE.—

(1) IN GENERAL.—The Secretary shall, in accordance with this section, relinquish all right, title, and interest of the United States in and to the corridor on receipt of a payment in an amount equal to the fair market value of the corridor (plus any costs relating to the right-of-way relocation described in this title).

(2) FAIR MARKET VALUE.—

(A) The fair market value of the corridor shall be equal to the amount by which the value of the discount described in the 1988 appraisal of the corridor that was applied to the land underlying the corridor has increased, as determined by the Secretary using the multiplier determined under subparagraph (B).

(B) Not later than 60 days after the date of the enactment of this Act, the Appraisal Services Directorate of the Department of the Interior shall determine an appropriate multiplier to reflect the change in the value of the land underlying the corridor between—

(i) the date of which the corridor was transferred in accordance with the Agreement; and

(ii) the date of enactment of this Act.

(3) PROCEEDS.—Proceeds under this subsection shall be deposited in the account established under section 103(b)(3)

(c) RELOCATION.—

(1) IN GENERAL.—The Secretary shall relocate to the area described in paragraph (2), the portion of IDI–26446 and UTU–73363 identified as NVN–49781 that is located in the corridor relinquished under subsection (b)(1).

(2) DESCRIPTION OF AREA.—The area referred to in paragraph (1) is the area located on public land west of United States Route 93.

(3) REQUIREMENTS.—The relocation under paragraph (1) shall be conducted in a manner that—

(A) minimizes engineering design changes; and

(B) maintains a gradual and smooth interconnection of the corridor with the area described in paragraph (2).

(4) AUTHORIZED USES.—The Secretary may authorize the location of any above ground or underground utility facility, transmission lines, gas pipelines, natural gas pipelines, fiber optics, telecommunications, water lines, wells (including monitoring wells), cable television, and any related appurtenances in the area described in paragraph (1).

(d) EFFECT.—The relocation of the corridor under this section shall not require the Secretary to update the 1998 Las Vegas Valley Resource Management Plan or the 2000 Caliente Management Framework Plan Amendment.

(e) WAIVER OF CERTAIN REQUIREMENTS.—The Secretary shall waive the requirements of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) that would otherwise be applicable to the holders of the right-of-way corridor described in subsection (a)(2)(A) with respect to an amendment to the legal description of the right-of-way corridor.

TITLE IV—SILVER STATE OFF-HIGHWAY VEHICLE TRAIL

SEC. 141. SILVER STATE OFF-HIGHWAY VEHICLE TRAIL.

(a) DEFINITIONS.—In this section:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(2) MAP.—The term ''Map'' means the map entitled ''Lincoln County Conservation, Recreation and Development Act Map'' and dated October 1, 2004.

(3) TRAIL.—The term ''Trail'' means the system of trails designated in subsection (b) as the Silver State Off-Highway Vehicle Trail.

(b) DESIGNATION.—The trails that are generally depicted on the Map are hereby designated as the ''Silver State Off-Highway Vehicle Trail''.

(c) MANAGEMENT.—

(1) IN GENERAL.—The Secretary shall manage the Trail in a manner that—

(A) is consistent with motorized and mechanized use of the Trail that is authorized on the date of the enactment of this Act pursuant to applicable Federal and State laws and regulations;

(B) ensures the safety of the people who use the Trail; and

(C) does not damage sensitive habitat or cultural resources.

(2) MANAGEMENT PLAN.—

(A) IN GENERAL.—Not later than 3 years after the date of the enactment of this Act, the Secretary, in consultation with the State, the County, and any other interested persons, shall complete a management plan for the Trail.

(B) COMPONENTS.—The management plan shall—

(i) describe the appropriate uses and management of the Trail;

(ii) authorize the use of motorized and mechanized vehicles on the Trail; and

(iii) describe actions carried out to periodically evaluate and manage the appropriate levels of use and location of the Trail to minimize environmental impacts and prevent damage to cultural resources from the use of the Trail.

(3) MONITORING AND EVALUATION.—

(A) ANNUAL ASSESSMENT.—The Secretary shall annually assess the effects of the use of off-highway vehicles on the Trail and, in consultation with the Nevada Division of Wildlife, assess the effects of the Trail on wildlife and wildlife habitat to minimize environmental impacts and prevent damage to cultural resources from the use of the Trail.

(B) CLOSURE.—The Secretary, in consultation with the State and the County, may temporarily close or permanently reroute, subject to subparagraph (C), a portion of the Trail if the Secretary determines that—

(i) the Trail is having an adverse impact on—

(I) natural resources; or

(II) cultural resources;

(ii) the Trail threatens public safety;

(iii) closure of the Trail is necessary to repair damage to the Trail; or

(iv) closure of the Trail is necessary to repair resource damage.

(C) REROUTING.—Portions of the Trail that are temporarily closed may be permanently rerouted along existing roads and trails on public lands currently open to motorized use if the Secretary determines that such rerouting will not significantly increase or decrease the length of the Trail.

(D) NOTICE.—The Secretary shall provide information to the public regarding any routes on the Trail that are closed under subparagraph (B), including by providing appropriate signage along the Trail.

(4) NOTICE OF OPEN ROUTES.—The Secretary shall ensure that visitors to the Trail have access to adequate notice regarding the routes on the Trail that are open through use of appropriate signage along the Trail and through the distribution of maps, safety education materials, and other information considered appropriate by the Secretary.

(d) NO EFFECT ON NON-FEDERAL LAND AND INTERESTS IN LAND.—Nothing in this section shall be construed to affect ownership, management, or other rights related to non-Federal land or interests in land.

(e) MAP ON FILE.—The Map shall be kept on file at the appropriate offices of the Secretary.

TITLE V—OPEN SPACE PARKS

SEC. 151. OPEN SPACE PARK CONVEYANCE TO LINCOLN COUNTY, NEVADA.

(a) CONVEYANCE.—Notwithstanding sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1171, 1712), not later than 1 year after lands are identified by the County, the Secretary shall convey to the County, subject to valid existing rights, for no consideration, all right title, and interest of the United States in and to the parcels of land described in subsection (b).

(b) DESCRIPTION OF LAND.—Up to 15,000 acres of Bureau of Land Management-managed public land in Lincoln County identified by the county in consultation with the Bureau of Land Management.

(c) COSTS.—Any costs relating to any conveyance under subsection (a), including costs for surveys and other administrative costs, shall be paid by the County, or in accordance with section 103(b)(2) of this Act.

(d) USE OF LAND.—

(1) IN GENERAL.—Any parcel of land conveyed to the County under subsection (a) shall be used only for—

(A) the conservation of natural resources; or

(B) public parks.

(2) FACILITIES.—Any facility on a parcel of land conveyed under subsection (a) shall be constructed and managed in a manner consistent with the uses described in paragraph (1).

(e) REVERSION.—If a parcel of land conveyed under subsection (a) is used in a manner that is inconsistent with the uses specified in subsection (d), the parcel of land shall, at the discretion of the Secretary, revert to the United States.

SEC. 152. OPEN SPACE PARK CONVEYANCE TO THE STATE OF NEVADA.

(a) CONVEYANCE.—Notwithstanding section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712), the Secretary shall convey to the State of Nevada, subject to valid existing rights, for no consideration, all right, title, and interest of the United States in and to the parcels of land described in subsection (b), if there is a written agreement between the State and Lincoln County, Nevada, supporting such a conveyance.

(b) DESCRIPTION OF LAND.—The parcels of land referred to in subsection (a) are the parcels of land depicted as ''NV St. Park Expansion Proposal'' on the map entitled ''Lincoln County Conservation, Recreation, and Development Act Map'' and dated October 1, 2004.

(c) COSTS.—Any costs relating to any conveyance under subsection (a), including costs for surveys and other administrative costs, shall be paid by the State.

(d) USE OF LAND.—

(1) IN GENERAL.—Any parcel of land conveyed to the State under subsection (a) shall be used only for—

(A) the conservation of natural resources; or

(B) public parks.

(2) FACILITIES.—Any facility on a parcel of land conveyed under subsection (a) shall be constructed and managed in a manner consistent with the uses described in paragraph (1).

(e) REVERSION.—If a parcel of land conveyed under subsection (a) is used in a manner that is inconsistent with the uses specified in subsection (d), the parcel of land shall, at the discretion of the Secretary, revert to the United States.

TITLE VI—JURISDICTION TRANSFER

SEC. 161. TRANSFER OF ADMINISTRATIVE JURISDICTION BETWEEN THE FISH AND WILDLIFE SERVICE AND THE BUREAU OF LAND MANAGEMENT.

(a) IN GENERAL.—Administrative jurisdiction over the land described in subsection (b) is transferred from the United States Bureau of Land Management to the United States Fish and Wildlife Service for inclusion in the Desert National Wildlife Range and the administrative jurisdiction over the land described in subsection (c) is transferred from the United States Fish and Wildlife Service to the United States Bureau of Land Management.

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the approximately 8,503 acres of land administered by the United States Bureau of Land Management as generally depicted on the map entitled ''Lincoln County Conservation, Recreation, and Development Act Map'' and identified as ''Lands to be transferred to the Fish and Wildlife Service'' and dated October 1, 2004.

(c) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the approximately 8,382 acres of land administered by the United States Fish and Wildlife Service as generally depicted on the map entitled ''Lincoln County Conservation, Recreation, and Development Act Map'' and identified as ''Lands to be transferred to the Bureau of Land Management'' and dated October 1, 2004.

(d) AVAILABILITY.—Each map and legal description shall be on file and available for public inspection in (as appropriate)—

(1) the Office of the Director of the Bureau of Land Management;

(2) the Office of the Nevada State Director of the Bureau of Land Management;

(3) the Ely Field Station of the Bureau of Land Management;

(4) the Caliente Field Office of the Bureau of Land Management;

(5) the Office of the Director of the United States Fish and Wildlife Service; and

(6) the Office of the Desert National Wildlife Complex.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4593.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4593 introduced by me and passed in this House on October 4, 2004, was subsequently amended and passed by the Senate.

H.R. 4593 is a broad and complex piece of legislation that, among other things, responsibly deals with the issues of wilderness in Lincoln County, Nevada, through both codification and release of lands currently being managed as wilderness study areas. The bill would also create a 260-mile off-highway vehicle trail, establish roughly 450 miles of utility corridors within the County, and privatize roughly 90,000 acres of public land deemed disposable by the Bureau of Land Management within the County, while conveying roughly 15,000 acres of public land to the State and Lincoln County for use as parks and open space. It is important to note that this proposal enjoys the support of the entire Nevada Congressional delegation and is the product of exhaustive public participation, which is vital in a comprehensive bill such as this.

I urge my colleagues to adopt this bill.

Mr. Speaker, I reserve the balance of my time.

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 4593 has been returned to the House with Senate amendments that both add and detract from the bill that originally passed the House last month. The additions to the bill involve modifications that the Senate made to the Lincoln County, Nevada, public land provisions. These changes bring the bill's language more in line with what has been done previously on public land sales in Nevada.

This refinement has been tempered, however, by the fact that the Senate deleted the designation of the Ojito wilderness in New Mexico that was included in the original House-passed version of H.R. 4593. The gentleman from New Mexico (Mr. UDALL), the sponsor of the Ojito wilderness language, had developed a bipartisan proposal that has significant local, State and national support, and it is regrettable that his language is not this bill before us today.

Mr. Speaker, the amendments made by the Senate to the Lincoln County public lands provisions are an improvement, and notwithstanding the dropping of the Ojito wilderness land designation, we have no objection to the consideration of H.R. 4593 by the House today.

Mr. Speaker, I yield such time as she might consume to the gentlewoman from Nevada (Ms. BERKLEY).

Ms. BERKLEY. Mr. Speaker, I would like to thank the Congresswoman for her courtesy and her help with this legislation.

I rise today in strong support of the Lincoln County Conservation, Recreation, and Development Act of 2004. I would like to thank Senator REID and Senator ENSIGN and my House colleagues, the gentleman from Nevada (Mr. GIBBONS), and the gentleman from Nevada (Mr. PORTER) for their tireless efforts in reaching a compromise on this bipartisan legislation that is important to all Nevadans.

I would also like to thank the gentleman from California (Mr. POMBO) for his leadership and especially acknowledge the gentleman from West Virginia (Mr. RAHALL), a truly good friend who worked with the Nevada delegation to reach this compromise.

The Nevada delegation worked diligently with the people of Lincoln County, the environmental community, wilderness groups, ranchers and officials in southern Nevada to carefully craft this piece of legislation. While every group did not get every provision they wanted in the bill, this is a compromise we are all proud of.

This bill is well-balanced. It will help Lincoln County flourish and create economic opportunities for its citizens. Lincoln County officials and residents will be able to develop their community and expand their financial base. Protecting Nevada's environment is very important to me, and this allows for development without jeopardizing Nevada's precious resources.

The Federal Government owns over 98 percent of the land in Lincoln County. This restricts vital economic growth for the area. Allowing for private development will give the people of Lincoln County a way to increase prosperity for themselves and their children.

The Bureau of Land Management will only auction off approved lands. Lincoln County will use the proceeds from land sales to preserve parks, trails and natural resources Nevadans utilize and the natural beauty Nevadans have grown to love.

Nearly 770,000 acres of land will be designated as wilderness. This will protect treasured sites important to Native Americans in Nevada and rich in archaeological artifacts such as petroglyphs. The Nevada desert is also home to many species of wildlife, such as the sage grouse and desert tortoise.

Nevada is facing an unprecedented challenge as a result of a 5-year drought affecting the Colorado River Basin. This bill provides for additional water resources in southern Nevada which are desperately needed.

I urge all of my colleagues to support this legislation. I appreciate their support and their help.

Mr. PORTER. Mr. Speaker, I rise today to speak in support of H.R. 4593, the Lincoln County Conservation, Recreation, and Development Act of 2004.

I appreciate the opportunity to speak in favor of this valuable legislation and I am proud to be an original co-sponsor.

I applaud the local governments of Clark and Lincoln Counties along with the Nevada Delegation and local officials that have helped with this collaborative legislation.

This is the result of many years of work with many parties and I am proud to be part of this legislation.

H.R. 4593 represents an important compromise between the Department of Interior and the State of Nevada. It enjoys strong bipartisan support from the entire Nevada Congressional Delegation.

Nevada's Third District, located in Clark County, is one of the fastest growing areas in the country. The growth has provided many positive opportunities for jobs and created a strong economic climate, but it has also placed an increased strain on our water supply and resources.

The fact is, the State of Nevada, and my congressional district in particular, continue to lead the Nation in population growth, yet we have access to the smallest water allocation of the seven States using the Colorado River.

As drought continues in the West and our State continues to grow, the development of in-state water resources grows increasingly important.

This new legislation will help the development and economy of both Lincoln and Clark Counties while continuing to preserve and protect Nevada's precious lands.

It will help us maintain a balance between land management and public use.

In Clark County we have enjoyed the benefits of improved parks, trails, and recreational areas using the proceeds from Federal land sales.

H.R. 4593 would provide similar opportunities for Lincoln County, located just north of Clark County. It offers a comprehensive plan that will contribute to the proposed development of Nevada's in-state resources intended to diversify southern Nevada's water supply and supplement the area's water entitlement from the Colorado River.

This legislation will help to expedite a solution to southern Nevada's current water situation without compromising public involvement and environmental compliance.

H.R. 4593 will also create utility corridors, resolve wilderness study issues, provide for competitive Federal land sales, and provide for the conveyance of Federal land to the State of Nevada and Lincoln County for use as public parks.

For the past decade Clark County's use of the Colorado River and an emphasis on water conservation have helped us in southern Nevada balance our growth and our need for water; however, as we plan for the future we realize we need additional water resources and planning.

I would like to urge my colleagues in the House to support this important bipartisan legislation and join with me in voting for this amendment.

Mrs. CHRISTENSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 4593.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

FORT FREDERICA NATIONAL MONUMENT LAND EXCHANGE

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1113) to authorize an exchange of land at Fort Frederica National Monument, and for other purposes.

The Clerk read as follows:

Senate amendment:

Page 2, line 2 strike out ''any other provision of law'' and insert ''section 5(b) of Public Law 90–401 (16 U.S.C. 4601–22(b))''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1113.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

□ 1600

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1113, as amended, was introduced by the gentleman from Georgia (Mr. KINGSTON) and would authorize the Secretary of the Interior to convey 6 acres of land within the boundaries of the Fort Frederica National Monument on St. Simons Island, Georgia, to the Christ Church, also located on St. Simons Island. In return, the National Park Service would receive 8.7 acres of nearby property that would be acquired by the church from the Sea Island Company and then exchanged with the Park Service. The exchange is viewed by all parties as a win-win.

Christ Church has doubled in size in the last 9 years, and the additional land is needed for its expansion. In return, the monument would receive lands that are known to contain valuable archaeological remains from the colonial period.

I urge adoption of the bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

Mrs. CHRISTENSEN. Mr. Speaker, H.R. 1113, which authorizes a land exchange at Fort Frederica National Monument in Georgia, has been amended by the Senate to clarify that the proposed land exchange is only exempt from a narrow and specific provision of law.

Even with the passage of this legislation, there is much work left to be done with this proposed exchange. Appraisals and archaeological surveys of the lands in question have not been completed. As such, the value and historic significance of the proposed lands have not been established.

Furthermore, the National Park Service testified that the noncontiguous parcel that would be acquired through the exchange will likely increase the administrative and operational costs of the national monument necessitating an evaluation of this question as well.

It is important to note that H.R. 1113 authorizes but does not require a land exchange at Fort Frederica National Monument. Before any exchange could occur, the National Park Service would be required to complete appraisals and historical surveys, as well as comply with the requirements of NEPA and the National Park Service management standards. These legal and administrative procedures are in place to ensure that the exchange, if it does go forward, is in the public interest.

Mr. Speaker, that being the case, we do not object to consideration of H.R. 1113, as amended.

Mr. Speaker, I have no further speakers at this time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. TERRY). The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 1113.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the House by Mr. Sherman Williams, one of his secretaries.

HIGHLANDS CONSERVATION ACT

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1964) to assist the States of Connecticut, New Jersey, New York, and Pennsylvania in conserving priority lands and natural resources in the Highlands region, and for other purposes.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Highlands Conservation Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to recognize the importance of the water, forest, agricultural, wildlife, recreational, and cultural resources of the Highlands region, and the national significance of the Highlands region to the United States;

(2) to authorize the Secretary of the Interior to work in partnership with the Secretary of Agriculture to provide financial assistance to the Highlands States to preserve and protect high priority conservation land in the Highlands region; and

(3) to continue the ongoing Forest Service programs in the Highlands region to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of land and natural resources in the Highlands region.

SEC. 3. DEFINITIONS.

In this Act:

(1) HIGHLANDS REGION.—The term ''Highlands region'' means the area depicted on the map entitled ''The Highlands Region'', dated June 2004, including the list of municipalities included in the Highlands region, and maintained in the headquarters of the Forest Service in Washington, District of Columbia.

(2) HIGHLANDS STATE.—The term ''Highlands State'' means—

(A) the State of Connecticut;

(B) the State of New Jersey;

(C) the State of New York; and

(D) the State of Pennsylvania.

(3) LAND CONSERVATION PARTNERSHIP PROJECT.—The term ''land conservation partnership project'' means a land conservation project—

(A) located in the Highlands region;

(B) identified by the Forest Service in the Study, the Update, or any subsequent Pennsylvania and Connecticut Update as having high conservation value; and

(C) in which a non-Federal entity acquires land or an interest in land from a willing seller to permanently protect, conserve, or preserve the land through a partnership with the Federal Government.

(4) NON-FEDERAL ENTITY.—The term ''non-Federal entity'' means—

(A) any Highlands State; or

(B) any agency or department of any Highlands State with authority to own and manage land for conservation purposes, including the Palisades Interstate Park Commission.

(5) STUDY.—The term ''Study'' means the New York-New Jersey Highlands Regional Study conducted by the Forest Service in 1990.

(6) UPDATE.—The term ''Update'' means the New York-New Jersey Highlands Regional Study: 2002 Update conducted by the Forest Service.

(7) PENNSYLVANIA AND CONNECTICUT UPDATE.—The term ''Pennsylvania and Connecticut Update'' means a report to be completed by the Forest Service that identifies areas having high conservation values in the States of Connecticut and Pennsylvania in a manner similar to that utilized in the Study and Update.

SEC. 4. LAND CONSERVATION PARTNERSHIP PROJECTS IN THE HIGHLANDS REGION.

(a) SUBMISSION OF PROPOSED PROJECTS.—Each year, the governors of the Highlands States, with input from pertinent units of local government and the public, may—

(1) jointly identify land conservation partnership projects in the Highlands region from land identified as having high conservation values in the Study, the Update, or the Pennsylvania and Connecticut Update that shall be proposed for Federal financial assistance; and

(2) submit a list of those projects to the Secretary of the Interior.

(b) CONSIDERATION OF PROJECTS.—Each year, the Secretary of the Interior, in consultation with the Secretary of Agriculture, shall submit to Congress a list of the land conservation partnership projects submitted under subsection (a)(2) that are eligible to receive financial assistance under this section.

(c) ELIGIBILITY CONDITIONS.—To be eligible for financial assistance under this section for a land conservation partnership project, a non-Federal entity shall enter into an agreement with the Secretary of the Interior that—

(1) identifies the non-Federal entity that shall own or hold and manage the land or interest in land;

(2) identifies the source of funds to provide the non-Federal share under subsection (d);

(3) describes the management objectives for the land that will ensure permanent protection and use of the land for the purpose for which the assistance will be provided;

(4) provides that, if the non-Federal entity converts, uses, or disposes of the land conservation partnership project for a purpose inconsistent with the purpose for which the assistance was provided, as determined by the Secretary of the Interior, the United States—

(A) may seek specific performance of the conditions of financial assistance in accordance with paragraph (3) in Federal court; and

(B) shall be entitled to reimbursement from the non-Federal entity in an amount that is, as determined at the time of conversion, use, or disposal, the greater of—

(i) the total amount of the financial assistance provided for the project by the Federal Government under this section; or

(ii) the amount by which the financial assistance increased the value of the land or interest in land; and

(5) provides that land conservation partnership projects will be consistent with areas identified as having high conservation value in—

(A) the Important Areas portion of the Study;

(B) the Conservation Focal Areas portion of the Update;

(C) the Conservation Priorities portion of the Update;

(D) land identified as having higher or highest resource value in the Conservation Values Assessment portion of the Update; and

(E) land identified as having high conservation value in the Pennsylvania and Connecticut Update.

(d) NON-FEDERAL SHARE REQUIREMENT.—The Federal share of the cost of carrying out a land conservation partnership project under this section shall not exceed 50 percent of the total cost of the land conservation partnership project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of the Interior $10,000,000 for each of fiscal years 2005 through 2014, to remain available until expended.

SEC. 5. FOREST SERVICE AND USDA PROGRAMS IN THE HIGHLANDS REGION.

(a) IN GENERAL.—To meet the land resource goals of, and the scientific and conservation challenges identified in, the Study, Update, and any future study that the Forest Service may undertake in the Highlands region, the Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with the Chief of the National Resources Conservation Service, shall continue to assist the Highlands States, local units of government, and private forest and farm landowners in the conservation of land and natural resources in the Highlands region.

(b) DUTIES.—The Forest Service shall—

(1) in consultation with the Highlands States, undertake other studies and research in the Highlands region consistent with the purposes of this Act, including a Pennsylvania and Connecticut Update;

(2) communicate the findings of the Study and Update and maintain a public dialogue regarding implementation of the Study and Update; and

(3) assist the Highland States, local units of government, individual landowners, and private organizations in identifying and using Forest Service and other technical and financial assistance programs of the Department of Agriculture.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Agriculture to carry out this section $1,000,000 for each of fiscal years 2005 through 2014.

SEC. 6. PRIVATE PROPERTY PROTECTION AND LACK OF REGULATORY EFFECT.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—

(1) requires a private property owner to permit public access (including Federal, State, or local government access) to private property; or

(2) modifies any provision of Federal, State, or local law with regard to public access to, or use of, private land.

(b) LIABILITY.—Nothing in this Act creates any liability, or has any effect on liability under any other law, of a private property owner with respect to any persons injured on the private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies any authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS.—Nothing in this Act requires the owner of any private property located in the Highlands region to participate in the land conservation, financial, or technical assistance or any other programs established under this Act.

(e) PURCHASE OF LAND OR INTERESTS IN LAND FROM WILLING SELLERS ONLY.—Funds appropriated to carry out this Act shall be used to purchase land or interests in land only from willing sellers.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

H.R. 1964, introduced by the gentleman from New Jersey (Mr. FRELINGHUYSEN), our friend and colleague, passed this House on November 11, 2003. It was subsequently amended and passed by the Senate.

H.R. 1964 would authorize the Secretaries of the Interior and Agriculture to provide financial assistance to the States of New York, New Jersey, Connecticut and Pennsylvania to preserve and protect high-priority conservation lands in the Highlands region. This geographic region encompasses over 3 million acres of land stretching from western Connecticut across the lower Hudson River Valley and northern New Jersey into northeastern Pennsylvania.

Not only has the U.S. Forest Service documented the national significance of the Highlands area in two extensive studies in 1990 and 2002, but the administration in its 2004 budget recognized the New York-New Jersey Highlands forest area as one of nine priority forest areas in the country that are currently threatened by urbanization.

I urge adoption of the bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

Mrs. CHRISTENSEN. Mr. Speaker, H.R. 1964 originally passed the House last November and has been returned to the House with amendments by the Senate to clarify the scope of the legislation. Even with the Senate changes, the legislation remains a sweeping conservation and preservation mandate for a large area across four States.

Mr. Speaker, we support the goals of H.R. 1964 and do not object to its consideration by the House today.

Mr. Speaker, I reserve the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield as much time as he may consume to the gentleman from New Jersey (Mr. FRELINGHUYSEN).

(Mr. FRELINGHUYSEN asked and was given permission to revise and extend his remarks.)

Mr. FRELINGHUYSEN. Mr. Speaker, I thank the gentleman from Nevada and all members of the House Committee on Resources for their support and guidance on this bill, particularly the gentleman from California (Chairman POMBO) who has been with me every step of the way over the last couple of years, and this has been a work in progress for over 4 years.

I would also like to take this opportunity to thank the gentleman from Virginia (Mr. GOODLATTE), chairman of the Committee on Agriculture, for his support of this legislation, as well as the staffs of both committees and the many cosponsors from the four mentioned States for their hard work and, particularly, the gentleman from California (Mr. RADANOVICH), the chairman of the Subcommittee on National Parks, Recreation and Public Lands, as well.

A special kudos to my colleague from New Jersey (Mr. SAXTON) who is a member of the Committee on Resources, for his particular guidance and support and his ability to articulate with his committee colleagues the case for this bill.

The leadership of all of these individuals has been extremely invaluable.

The Highlands Conservation Act represents a major Federal commitment to preserve more open space and protect water supplies in the northeastern part of these United States. While remaining mindful of property rights, this bill compliments ongoing State, local and private partnerships to preserve open space.

Federal support and the passage of this Act this afternoon presents a unique substantive and symbolic opportunity for our government once again to express its commitment to preserving our natural resources.

Mr. Speaker, the Highlands, as was said earlier, is one of last open space treasures in the most densely populated area of the United States. In New Jersey alone, my home State, it includes more than a million acres of forest, farms, streams, wetlands, lakes, reservoirs and historic sites.

Mr. Speaker, the Highlands Conservation Act is a national priority, as has been mentioned, and a major imperative. Passage of this Act will give the people of New Jersey, New York, Connecticut and Pennsylvania more of the tools they need to preserve and protect these remarkable resources and assets.

I thank the gentleman from California (Mr. POMBO), the chairman, and the gentleman from Nevada (Mr. GIBBONS) for their support and the work of their committee and staff and urge adoption of the bill.

Mrs. CHRISTENSEN. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I rise in strong support of H.R. 1964. I thank the chairs and ranking members of the Committee on Resources who ushered this bill through the process, and I want to thank the author of this bill, the gentleman from New Jersey (Mr. FRELINGHUYSEN) for his stalwart support.

The Highlands is a vast area of land which stretches from Connecticut to Pennsylvania, and my district is smack in the middle of it in New York. The Highlands run through Rockland County, which is home to some of New York's great history, scenic areas and wildlife, too. In fact, 1.4 million people live within the Highlands area. The Highlands adjoin a metropolitan area with a population of more than 20 million people, and more than 11 million people rely on the Highlands drinking water resources, which serves at least half of New York City's water supply.

More than 14 million people visit the Highlands each year for recreational opportunities as well. Over 240 species of birds, mammals, amphibians, and reptiles depend on Highlands habitat. More than 160 historical and cultural sites have been identified in the region. Thus, I thank my colleagues for their support in preserving this important resource for our constituents and visitors as well.

Mr. HOLT. Mr. Speaker, I rise today in support of the Highlands Conservation Act.

My constituents, like most people around the state of New Jersey, have seen the ills of sprawl and the consequences of poor planning and meager preservation efforts. Most of us are surrounded by rampant commercial and industrial development in New Jersey.

Despite the overdevelopment of our state, unique areas of beauty and open space remain. One such tract of land, the Highlands Region, will be saved through today's legislation.

The Highlands is an incredible 2 million acre swath across four states—New Jersey, New York, Connecticut, and Pennsylvania. This tract is home to nearly one and a half million people and is still a quick drive away from New York City and other major metropolitan areas.

Even more importantly, the Highlands provides and protects the drinking water supplies for over 15 million people who live in the Philadelphia-New York-Hartford metropolitan area, which cuts right through my central New Jersey district. Protecting these valuable water sources now will save the Federal government untold millions in future costs associated with building more treatment plants for the nation's most densely populated metropolitan area.

The Highlands Conservation Act authorizes the use of federal Land and Water Conservation Fund money to preserve and protect this area. This legislation fosters community involvement in the future of this region by allowing the governors of the four Highlands states to identify which lands are best eligible for conservation efforts. This act also increases local and state investment in this project by requiring that federal funds be matched dollar for dollar by local, state, and private funding sources. I am confident that the governor and the residents of New Jersey are eager to begin identifying and planning for the future of this green space in New Jersey.

In addition to monetary assistance to preserve the Highlands, this bill will provide technical assistance to communities and organizations involved in conservation efforts in the region. So many people have already done so much to help preserve this area, and they will now get the added benefit of assistance and expertise from the federal government.

I would like to take this opportunity to recognize Mr. FRELINGHUYSEN for his leadership on this issue and his hard work in getting this legislation to the floor. His tireless effort will ensure that future generations will have the opportunity to enjoy the beauty of region.

I am pleased that the House of Representatives is considering this legislation today. This bill means a lot to New Jersey, and I urge my colleagues to support it.

Mrs. CHRISTENSEN. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 1964.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

CALIFORNIA MISSIONS PRESERVATION ACT

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1446) to support the efforts of the California Missions Foundation to restore and repair the Spanish colonial and mission-era missions in the State of California and to preserve the artworks and artifacts of these missions, and for other purposes.

The Clerk read as follows:

Senate amendment: Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''California Missions Preservation Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CALIFORNIA MISSION.—The term ''California mission'' means each of the 21 historic Spanish missions and 1 asistencia that—

(A) are located in the State;

(B) were built between 1769 and 1798; and

(C) are designated as California Registered Historic Landmarks.

(2) FOUNDATION.—The term ''Foundation'' means the California Missions Foundation, a nonsectarian charitable corporation that—

(A) was established in the State in 1998 to fund the restoration and repair of the California missions; and

(B) is operated exclusively for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(4) STATE.—The term ''State'' means the State of California.

SEC. 3. COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary may enter into a cooperative agreement with the Foundation to provide technical and financial assistance to the Foundation to restore and repair—

(1) the California missions; and

(2) the artwork and artifacts associated with the California missions.

(b) FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The cooperative agreement may authorize the Secretary to make grants to the Foundation to carry out the purposes described in subsection (a).

(2) ELIGIBILITY.—To be eligible to receive a grant or other form of financial assistance under this Act, a California mission must be listed on the National Register of Historic Places.

(3) APPLICATION.—To receive a grant or other form of financial assistance under this Act, the Foundation shall submit to the Secretary an application that—

(A) includes a status report on the condition of the infrastructure and associated artifacts of each of the California missions for which the Foundation is seeking financial assistance; and

(B) describes a comprehensive program for the restoration, repair, and preservation of the infrastructure and artifacts referred to in subparagraph (A), including—

(i) a description of the prioritized preservation activities to be conducted over a 5-year period; and

(ii) an estimate of the costs of the preservation activities.

(4) APPLICABLE LAW.—Consistent with section 101(e)(4) of the National Historic Preservation Act (16 U.S.C. 470a(e)(4)), the Secretary shall ensure that the purpose of any grant or other financial assistance provided by the Secretary to the Foundation under this Act—

(A) is secular;

(B) does not promote religion; and

(C) seeks to protect qualities that are historically significant.

(c) REVIEW AND DETERMINATION.—

(1) IN GENERAL.—The Secretary shall submit a proposed agreement to the Attorney General for review.

(2) DETERMINATION.—A cooperative agreement entered into under subsection (a) shall not take effect until the Attorney General issues a finding that the proposed agreement submitted

under paragraph (1) does not violate the establishment clause of the first amendment of the Constitution.

(d) REPORT.—As a condition of receiving financial assistance under this Act, the Foundation shall annually submit to the Secretary and to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the status of the preservation activities carried out using amounts made available under this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this Act $10,000,000 for the period of fiscal years 2004 through 2009.

(b) MATCHING REQUIREMENT.—Any amounts made available to carry out this Act shall be matched on not less than a 1-to-1 basis by the Foundation.

(c) OTHER AMOUNTS.—Any amounts made available to carry out this Act shall be in addition to any amounts made available for preservation activities in the State under the National Historic Preservation Act (16 U.S.C. 470 et seq.).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1446, as amended, authorizes the Secretary of the Interior to enter into a cooperative agreement with the California Missions Foundation to support their effort to resolve and repair the California missions and to preserve the artworks and artifacts associated with the California missions.

Currently, the 21 California missions of the El Camino Real, or Royal Highway, have had to rely on nominal entrance fees, sales from gift shops, donations and special events to cover their operating expenses. Unfortunately, these sources of income have not been enough to keep up with the increasing structural needs of these aging missions that date back to 1769, when Fray Junipero Serra founded Alta, California, the first Spanish mission in California.

Today, over 5 million people annually visit the mission system, and it is obvious to many that outside financial help is needed.

The California Missions Foundation, a charitable corporation established in California in 1998, is dedicated to raising funds for the ongoing preservation, restoration and maintenance needs of the California missions to ensure that their historical legacy is kept alive for future generations.

As part of the cooperative agreement process, the Secretary must submit a proposed agreement to the Attorney General for a finding that the agreement does not violate the establishment clause of the First Amendment of the Constitution.

With that, Mr. Speaker, I urge adoption by all our colleagues of this bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

(Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.)

Mrs. CHRISTENSEN. Mr. Speaker, H.R. 1446 is a bipartisan proposal which was introduced by the gentleman from California (Mr. FARR), our colleague, which originally passed the House on October 20, 2003.

This bill has been returned to the House with a Senate amendment that makes a number of changes to the bill. These changes do not detract from the overall goal and direction of the legislation, and we do not object to them.

The California missions are important historical and cultural resources that preserve and interpret a rich and varied history of exploration, conquest and settlement. The small grant program authorized by H.R. 1446 will be used for secular purposes which preserve those qualities of the missions that are historically and culturally significant.

Mr. Speaker, we support the passage of H.R. 1446 as amended by the House today.

Mr. Speaker, I reserve the balance of my time.

□ 1615

Mr. GIBBONS. Mr. Speaker, I yield myself 5 minutes to enter into and engage in a colloquy with the author of the bill, the gentleman from California (Mr. FARR).

While I remain very supportive of this legislation and do support its adoption, Mr. Speaker, I believe it is important to remember that we are preserving buildings and structures that bring up uneasy memories for many who live today in California. As was noted in a recent letter to the editor which appeared in the San Francisco Chronicle, with the help of Spain's soldiers, thousands of California's Indians became slaves, directed by the friars to build the missions. After the missions were built, beginning in 1769, the Indians were forbidden to leave the mission boundaries. It is estimated that California's Indian population was about 310,000 at the beginning of Spanish rule. At the close of the 19th century, their population shrunk to approximately 100,000, largely due to the inhumane conditions under which the Indians were forced to live while serving as slaves.

I would encourage the gentleman from California to request that the Department of the Interior not lose sight of these facts when awarding the grants authorized under this legislation. I believe it is important that when the missions are refurbished that it is not just the bricks and mortar which are restored, but also the truth. These facilities are deserving of our help, but they also must be restored with the acknowledgment of all those who suffered so that the missions themselves could survive.

Mr. Speaker, I submit for the RECORD one of the letters to the editor to which I earlier referred:

[From the San Francisco Chronicle, November 8, 2004]

THE DARK, TERRIBLE SECRET OF CALIFORNIA'S MISSION

(By Elias Castillo)

Sometime soon, the House will give final consideration to the California Mission Preservation Act, sponsored by Sen. Barbara Boxer, D–Calif., providing $10 million to help restore California's Roman Catholic Missions—those historic sites where Franciscan friars and California's Indians supposedly existed in gentle harmony.

In part, the act describes how ''the knowledge and cultural influence of native California Indians made a lasting contribution to the early settlements of California and the development of the California missions.'' What the bill utterly omits is that locked within the missions is a terrible truth—that they were little more than concentration camps where California's Indians were beaten, whipped, maimed, burned, tortured and virtually exterminated by the friars.

The California Indians, as the proposal says, did have a culture, but they never got a chance to contribute it to California. The Spanish crown decreed in the 1760s that the Indians were to be rounded up, baptized into Christianity and their culture destroyed. It was the same policy that Spain had followed in eradicating the complex and advanced cultures of the Mayans, Incas and Aztecs in Latin America.

In 1769, that near-genocidal policy was launched, under the direction of Father Junipero Serra, with the founding of California's first mission. One scholar, Robert Archibald, has written that the missions were akin to the ''forced movement of black people from Africa to the American South.'' With the help of Spain's soldiers, the Indians were herded to the sites of the missions. Once there, they became slaves, directed by the friars to build the missions. Once within the mission boundaries, they were forever forbidden to leave. No less an authority than the U.S. National Park Service has documented and described the hellish and tragic fate of the California Indians, especially the coastal tribes. They were not warring tribes, but instead gentle harvesters who lived in equilibrium with their land and seashore.

Their terrible fate at the hands of the Spanish and friars was described by Jean François de Galaup de la Perouse, a French explorer and sea voyager hired by the French government to report on the western coastal areas of North America. In 1786 he visited Mission San Carlos Borromeo in the Monterey area and described the severe punishments inflicted on the Indians. The friars, he determined, considered the Indians ''too much a child, too much a slave, too little a man.'' California historians Walton Bean and James J. Rawls, described La Perouse as likening the missions to the slave plantations of Santo Domingo.

Yet, the Indians did not easily accede to the cruel mission life. They rebelled several times, in one instance burning nearly all of

the buildings of Mission La Purisima in Santa Ynez. Historian Robert F. Heizer attributed the flare-up to the ''flogging of a La Purisma neophyte'' (as the Indians were called in the missions).

In the late 1820s, Mexico rebelled against Spain and won its independence. Within a decade, it also declared that the missions had to vest half their property to the Indians while the other half went to the friars and government officials. It was the beginning of the end for the missions. By the late 19th century, the missions were in ruins, abandoned by the friars who could not continue operating them without the slave labor of the Indians, whose numbers had been decimated by hard labor, starvation and disease. It is estimated that California's Indian population was about 310,000 at the beginning of Spanish rule. At the close of the 19th century, they had been reduced to approximately 100,000.

Restoration of the missions was started at the beginning of the 20th century by well-meaning persons who either ignored the cruelties inflicted on the Indians or simply were unaware of the horrors that had occurred within them. While enough historians have accurately documented those terrible ordeals, however, their findings are not well known. Visit any of the missions and there is no mention of Indians being put in stocks, whipped or chained. Instead, the usual description is of friars and Indians living side by side in peaceful harmony and happily helping each other.

The California Missions Preservation Act is expected to be voted on soon. Besides the potential and obvious conflict of its violating the constitutional separation of church and state, there is the moral responsibility that if government funds are to be used in restoring the missions, the granting of those funds must be dependent on memorializing the suffering of California's native people in the missions.

This nation has recently opened the National Museum of the American Indian in Washington, D.C. It is a monument to the Native Americans of North, Central and South America. The existence of the museum mandates that the ordeal of California's Indians cannot continue to be largely ignored and forgotten. Too many Native Americans died within the missions, which were supposed to be monuments to God's mercy, forgiveness and benevolence.

The act must require that descriptions of the enslavement of California's Indians within the missions and the horrible ordeals they endured be clearly and visibly provided to all visitors, America has not buried the shameful history of slavery in its Southern states; instead, books have been written and museums opened so that all may forever know of the cruelties of that practice. Why then, should the shameful history of the missions be hidden and ignored?

Additionally, the act must also require that funds be set aside for research to be conducted on mission grounds for the purpose of determining if mass graves of Indians exist within them. While some missions have clearly marked graveyards set aside for the friars, little knowledge exists of what happened to the thousands of deceased Indians who toiled within the missions. If sites are found containing the remains of those Indians, those areas must then be clearly marked for visitors and declared hallowed ground.

California and the nation cannot continue to look the other way at what happened in the missions; it must confront that awful specter and unveil it as a dark chapter of the state's history. It does not matter that those vicious practices occurred during Spanish rule. The missions are now revered as beloved monuments. Their continued restoration must also bring to light the most frightful chamber of their history.

Mr. FARR. Mr. Speaker, will the gentleman yield?

Mr. GIBBONS. I yield to the gentleman from California.

Mr. FARR. Mr. Speaker, I thank the gentleman for his comments, and I agree with the serious issues raised by the gentleman from Nevada and will contact the Secretary of the Interior by letter requesting that the Department consider these facts when awarding a grant authorized by this bill.

It is a sad fact that slavery has played such a role in our American history, whether it be Native American or imported men and women who were taken from their native lands. I find it refreshing, for example, that the National Museum of the American Indian, our newest addition to the Smithsonian system, is addressing the issue towards Native Americans and making the public aware of what occurred as the United States grew into a Nation. Until we come to grips with the issues and all the various peoples affected by it, slavery will remain a dark cloud in our history.

If the gentleman would indulge me further, I want to make sure that our colleagues understand that there have been many positive editorials in support of rehabilitating the California missions nationwide, and I submit them for inclusion in the RECORD.

[From The Fresno Bee, Sept. 26, 2004]

SAVING HISTORY: CALIFORNIA'S AGING MISSIONS NEED AND DESERVE FEDERAL ASSISTANCE

(Editorial)

In 1883, Walt Whitman wrote, ''We American have yet to really learn our own antecedents. . . . Thus far, impress'd by New England writers and schoolmasters, we tacitly abandon ourselves to the notion that our United States have been fashion'd from the British Islands only . . . which is a very great mistake.''

He could have written that with California in mind.

The most obvious symbols of California's early history are the 21 missions stretching from San Diego to Sonoma. The first was founded at San Diego in 1769, the last in 1823. More than 5 million people a year visit the missions, making them California's most visited landmarks.

San Diego, Monterey, Los Angeles, Carmel, San Luis Obispo, San Francisco, Santa Barbara, Santa Cruz, San Jose and others began as missions.

Yet few know the history of Spain's New World venture. Today it is literally crumbling from natural disasters such as earthquakes, neglect and lack of funding, and even thievery. In August 2003, a 205-year-old Indian-made violin disappeared from the 1771 mission at San Antonio de Padua.

If we don't make a public commitment to preserve the national heritage the missions represent, we'll lose them.

In Congress, the California Missions Preservation Act (H.R. 1446 S. 1306) is a start. After emerging from key Senate committee, it appears headed for final approval. (The House passed the bill last October, but it languished in the Senate committee for unknown reasons.) The bill would provide $10 million in matching funds over five years to help restore and repair California's Spanish missions and to preserve artwork and artifacts. So far, the California Missions Foundation has raised $3.4 million of the needed $10 million match.

Spain set about settling California in earnest after 1768 to prevent Russian and English encroachment.

Mountains and deserts made overland access difficult, so the Spanish settled the coast. They raised horses, cattle and sheep and tended orchards, and vineyards. Interaction with Indians was marked by dynamic confrontation, conflict and exchange—different in character from the westward expansion of British eastern colonies.

California became a province of Mexico in 1821. The new government secularized the missions, selling off some and using others as barns and saloons. By the time the Untied States won California in the war with Mexico, the missions were decaying. President Lincoln returned them to the Catholic Church, which still owns 19 of the 21.

Why can't California's 21 missions get status and a public commitment like the San Antonio Missions National Historical Park, established in Texas in 1978? Like California's missions, San Antonio's remain active places of worship, but their significance to the nation's heritage and use by the general public are vital as well.

It's time California's missions are afforded the same respect. Congress, along with private donors in the community, can make that preservation happen—and not a minute too soon.

[From The Modesto Bee, Oct. 5, 2004]

STATE'S MISSIONS DESERVE FEDERAL SUPPORT

(Editorial)

The most obvious symbols of California's early history are the 21 missions stretching from San Diego to Sonoma. The first was founded at San Diego in 1769, the last in 1823. More than 5 million people a year visit the missions, making them the most visited historic landmarks in California.

Today, some of that precious history is literally crumbling—damaged by natural disasters, such as earthquakes; neglect and lack of funding; and, worst of all, thievery. In August 2003, a 205-year-old Indian-made violin disappeared from the 1771 mission at San Antonio de Padua. If we don't want to lose the national heritage represented by the missions, we've got to make a public commitment to preserve them.

In Congress, the California Missions Preservation Act (H.R. 1446/S. 1306) is a start. After emerging from a key Senate committee, it appears headed for final approval. The bill would provide $10 million in matching funds over five years to help restore and repair California's Spanish missions and to preserve artwork and artifacts. So far, the California Missions Foundation has raised $3.4 million of the needed $10 million match.

Why can't California's chain of 21 missions get status and a public commitment like the San Antonio Missions National Historical Park, established in Texas in 1978? Like California's missions, San Antonio's mission churches remain active places of worship, but their significance to the nation's heritage and use by the general public are vital as well.

It's time California's missions are afforded the same respect. Congress, along with private donors in the community, can make that preservation happen—and not a minute too soon.

[From the Sacramento Bee, Sept. 24, 2004]

RESTORING HISTORY; PASS CALIFORNIA MISSIONS PRESERVATION ACT

(Editorial)

What is California's most defining historic landmark? Sutter's Mill, the site of the gold discovery that led to the 1849 Gold Rush? Perhaps. But think again.

In 1883, Walt Whitman wrote, ''We Americans have yet to really learn our own antecedents. . . . Thus far, impress'd by New England writers and schoolmasters, we tacitly abandon ourselves to the notion that our United States have been fashion'd from the British Islands only . . . which is a very great mistake.''

He could have written that with California in mind.

The most obvious symbols of California's early history are the 21 missions stretching from San Diego to Sonoma. The first was founded at San Diego in 1769, the last in 1823. More than 5 million people a year visit the missions, making them the most visited historic landmarks in California.

Today's coastal cities, from San Diego, Monterey, Los Angeles, Carmel, San Luis Obispo, San Francisco, Santa Barbara, Santa Cruz, San Jose and others began as Spanish missions.

Yet few know the history of Spain's vast New World venture—begun long before English settlement in America. Today that history is literally crumbling—from natural disasters such as earthquakes, neglect and lack of funding, and, worst of all, thievery. In August 2003, a 205-year-old Indian-made violin disappeared from the 1771 mission at San Antonio de Padua.

If we don't want to lose the national heritage represented by the missions, we've got to make a public commitment to preserve them.

In Congress, the California Missions Preservation Act (H.R. 1446/S. 1306) is a start. After emerging from a key Senate committee, it appears headed for final approval. (The House passed the bill last October, but it languished in the Senate committee for unknown reasons.) The bill would provide $10 million in matching funds over five years to help restore and repair California's Spanish missions and to preserve artwork and artifacts. So far, the California Missions Foundation has raised $3.4 million of the needed $10 million match.

Spain set about settling California in earnest after 1768 to prevent Russian and English encroachment.

Mountains and deserts made overland access difficult, so the Spanish settled the coast. They raised horses, cattle and sheep and tended fruit orchards and vineyards. The interaction between the Spanish and Indians was marked by dynamic confrontation, conflict and exchange—different in character from the westward expansion of British eastern seabroad colonies.

When Spain lost its empire, California became a province of independent Mexico in 1821. The new government secularized the missions, selling off some of them and using others as barns and saloons. By the time the United States won California in the war with Mexico, the missions were decaying. President Abraham Lincoln returned the missions to the Catholic Church, which still owns 19 of the 21.

Why can't California's chain of 21 missions get status and a public commitment like the San Antonio Missions National Historical Park, established in Texas in 1978? Like California's missions, San Antonio's mission churches remain active places of worship, but their significance to the nation's heritage and use by the general public are vital as well.

It's time California's missions are afforded the same respect. Congress, along with private donors in the community, can make that preservation happen—and not a minute too soon.

[From the Wall Street Journal, Sept. 9, 2004]

THE MISSION IS CLEAR

(By Taylor Holliday)

SAN MIGUEL, CA—''Unsafe. Peligroso.'' This building ''has been found to be seriously damaged and is unsafe to occupy, says the sign on the door of Mission San Miguel Arcangel.

A small group of us don our hardhats and tiptoe inside one of the most lovely of the 21 Spanish colonial missions that gave birth to California coastal towns from San Diego to Sonoma. It's the mission with the most authentic, intact interior, its adobe walls adorned with colorful frescoes—trompe l'oeil marble columns and the eye of god—painted by the Salinan Indians in 1821 and untouched through the years due to the mission's remote location 200 miles north of Los Angeles.

It's also the mission—especially since the December earthquake in nearby Paso Robles—most likely to come crashing down at any moment. Chunks of adobe mingle with rat droppings on the floor; water damage mars the painted wood ceiling; centuries-old statues lie in pieces; and, most ominously, makeshift braces hold up windows, archways and walls.

''We were lucky that it didn't collapse,'' said Tina Foss, museum director of Mission Santa Barbara and vice president of the California Missions Foundation. ''Even before the earthquake, [an engineer] told me that the walls were holding up just by force of habit.''

San Miguel is the California mission in the worst shape. Each mission must rely on its own resources—parishioner contributions, bake sales—to meet expenses, and they have little left over for major repairs, especially the painstaking kind required for historic preservation. So despite the fact that the missions attract more than five million tourists a year, many have yet to be retrofitted to withstand an earthquake; most operate as historical sites and churches in varying states of disrepair and structural decay; and none have the resources for safeguarding their priceless collections of Spanish colonial and mission-era artworks and artifacts.

Realizing how dire the situation is, a group led by Stephen Hearst first started the nonprofit, nonsectarian California Missions Foundation in 1998. (Great grandfather William Randolph Hearst first came to the aid of the missions a hundred years earlier.) Since then the foundation has been struggling to raise the $50 million needed to rescue, repair and preserve the structures and their art.

Founded between 1769 and 1823, the missions were Spain's effort to colonize Alta California and Christianize the Indians. With the missions came the farming, ranching, winemaking, architecture and Hispanic culture that help define the state to this day. Through two centuries, they have survived disease (which killed many early Indian converts who lived at the missions), earthquakes (which necessitated extensive rebuilding in the early parts of both the 19th and 20th centuries) and heavy use—as well as misuse during a period when they were sold off by the newly independent Mexico and used as barns, homes and saloons. (Not long after California became part of the U.S. in 1848, President Lincoln returned the missions to the Catholic Church, which still owns 19 of them.)

Now they just have to survive the modern American political process.

''The mind of preservation that buildings like this require is so costly that it is beyond the reasonable expectation of private owners, the Catholic Church, or even state parks [which own two missions],'' says Ms. Foss. ''But if a building is historically important enough to be a landmark—all of the missions are California landmarks and seven are national landmarks—then we are all responsible for its preservation.''

''Public funding is critical,'' adds Knox Mellon, executive director of the foundation, which so far has raised only $3 million from private sources. ''It will be the shot in the arm that allows us to bring in matching funds from private donors.''

Forty-nine of California's 53 U.S. representatives agreed, sponsoring the bipartisan California Missions Preservation Act, which passed the House in October 2003. In June of that year, Barbara Boxer and Dianne Feinstein introduced the same legislation in the Senate, calling for $10 million in matching grants over five years to be administered by the California Missions Foundation.

But the bill has since faced unexpected hurdles and is now considered a ''controversial measure.'' At an Energy and Natural Resources subcommittee hearing in March, first the Americans United for Separation of Church and State objected on the grounds that 19 of the 21 missions are active churches—even though the bill clearly states that the foundation will ensure that none of the money goes toward religious operations. Then the Bush administration (the National Park Service) went on record saying it does not support earmarking limited historic preservation funds for these specific purposes.

The bill's sponsors came back with an amendment stipulating that the act would not take effect until the attorney general ruled on the constitutionality of providing federal funds to these landmark churches. Still the bill has gone nowhere, unable to get a hearing in the full committee for reasons known only to its chairman, Sen. Pete Domenici. And with this session of Congress scheduled to adjourn Oct. 1, those who care about the missions are holding their breath: If it doesn't pass this Congress, they're back to square one.

And so the missions wait. For San Miguel, the earthquake may turn out to be ''a blessing in disguise,'' says Father Ray Tintle, the parish priest. FEMA did not come to its aid—even though, as he notes, ''for every one hour the local parish uses the facilities here, the public uses it 10 [for nonreligious activities].'' But Mission San Miguel will at least receive some insurance money—roughly $8 million of the $20 million it needs to restore its church, museum and adjacent quadrangle buildings, including a wing with (mostly) original early 1800s living quarters.

As for other missions, all they can do at the moment is hope for divine intervention. Despite having the ''finest collections of Spanish colonial art in California,'' according to Ms. Foss—mostly Baroque and Neoclassical paintings and statutes imported from Mexico and South America, as well as silk vestments and historical documents—mission museums can't provide the lighting, climate-control or security the items need, much less the art conservation they deserve.

So rare artworks will continue to deteriorate. And treasures, like the 200-year-old Indian-made violin stolen from Mission San Antonio de Padua, or the 30-pound handcarved tabernacle door taken from San Miguel, or the painting cut out of its frame and the collection of Indian baskets carried off from Mission Santa Barbara, will continue to disappear, taking a little bit of California history with them each time they do.

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentlewoman for yielding me this time.

California's 21 missions, which run along a 600-mile stretch of highway from San Diego to Sonoma, are indeed historically significant and contribute tremendously to the rich historical, cultural, and architectural heritage of California and this country's westward growth. At the same time we strive to preserve these historical landmarks, we must also be careful to preserve religious liberty and honor the establishment clause of the first amendment of the Constitution.

Nineteen of the 21 missions that comprise California's historic mission trail are currently owned by the Roman Catholic Church; they operate as active parishes and hold regularly scheduled religious services. There is a clear line of Supreme Court cases that address government funding of improvement of real property for the direct benefit of buildings used for religious purposes including worship, sectarian service, or instruction.

Three Supreme Court decisions, Tilton v. Richardson in 1971, Hunt v. McNair in 1973, and Committee For Public Education v. Nyquist in 1973, make it clear that no government funds may be used to construct, maintain, restore, or make capital improvements to physical structures that are used as houses of worship, even if religious services are infrequent.

H.R. 1446 contains a provision which requires that the purpose of any grant under this act is secular, does not promote religion, and seeks to protect qualities that are historically significant. It is therefore clear that any grant or assistance provided under this act must also be consistent with the Supreme Court decisions in this area of the law.

Mr. Speaker, I am submitting for inclusion in the RECORD at this point a letter from Americans United for Separation of Church and State, which raises questions about the issue I have just raised.

PRESERVE RELIGIOUS LIBERTY: OPPOSE THE CALIFORNIA MISSIONS PRESERVATION ACT (H.R. 1446)

NOVEMBER 17, 2004.

DEAR REPRESENTATIVE: Americans United for Separation of Church and State urges you to oppose the California Missions Preservation Act, H.R. 1446, which we understand will be on the floor of the House of Representatives today. Americans United represents more than 70,000 individual members throughout the fifty states and in the District of Columbia, as well as cooperating houses of worship and other religious bodies committed to preservation of religious liberty. This bill is unconstitutional and would significantly erode key church-state separation protections.

H.R. 1446 would authorize the Secretary of the Interior to enter into agreements and make grants to the California Missions Foundation to ''restore and repair'' the California missions and the religious artwork and artifacts associated with the missions. The bill would authorize a $10,000,000 appropriation for the 2004–2009 period to fund these goals.

The 21 missions comprising California's historic mission trail were founded between 1769 and 1823. 19 of the 21 missions are owned by the Roman Catholic Church, operate as active parishes, and have regularly scheduled religious services. There is no doubt that California's 21 missions are historically significant, and contribute greatly to the rich historical, cultural and architectural heritage of California and the American West. Although we recognize that preservation of these historic buildings is important, we strongly believe that the preservation of Americans' constitutional rights is vital. In short, the California Missions Preservation Act would violate the First Amendment by forcing taxpayers nationwide to pay for church repairs, even repairs and restoration of facilities with active congregations.

Under the bill, government funding will flow to houses of worship for capital improvements in violation of the Constitution. Time after time, the United states Supreme Court has required that no government funds be used to maintain, restore, or make capital improvements to physical structures that are used as houses of worship, even if religious services are infrequent. Three Supreme Court decisions (*Tilton* v. *Richardson*, 403 U.S. 672 (1971), *Hunt* v. *McNair*, 413 U.S. 734 (1973), *Committee for Public Education* v. *Nyquist*, 413 U.S. 756 (1973)) make clear that it is unconstitutional to allow federal grants for capital improvements of structures devoted to worship or religious instruction, and all three of these decisions remain binding law on all government entities.

The illegality of the proposal to fund the California missions is exacerbated when one considers the issue of government directly funding religious icons. Because one of the objectives of the California Missions Foundation is to preserve the Spanish colonial and mission-era artworks and artifacts of the California missions, and because the bill specifically authorizes federal funds to be used to preserve the artworks and artifacts associated with the California missions, the Secretary of the Interior would be empowered to provide government money specifically to maintain or restore religious artifacts and icons associated with devotional and worship activities at the missions, a result that would be clearly unconstitutional.

We are fully aware of the historical and cultural significance of the California missions. However, it is essential for Congress to maintain our nation's commitment to safeguarding religious liberty for all Americans. Nineteen of the 21 California missions are churches, not just museums, and are still used for religious services. The repair and upkeep of the missions, therefore, must be paid for by those who worship there or by other interested individuals or private organizations through voluntary contributions. The House of Representatives should refrain from passing this blatantly unconstitutional bill.

If you have any questions regarding this legislation or would like further information on any other issue of importance to Americans United, please contact Aaron D. Schuham, Legislative Director, at (202) 466–3234, extension 240.

Sincerely,

REV. BARRY W. LYNN,
Executive Director.

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield 6 minutes to the gentleman from California (Mr. FARR), the sponsor of the bill.

Mr. FARR. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I thank my colleagues for speaking in support.

I want to respond first of all to the comments of the gentleman from Virginia (Mr. SCOTT). In the bill it says: ''The Secretary shall ensure that the purpose of any grant or financial assistance provided by the Secretary to the Foundation under this Act is secular, does not promote religion, and seeks to protect qualities that are historically significant.''

This is a private foundation separate from the church and raises money separately from the church, so we are trying to assure here there is no benefit to the church from the restoration efforts.

Let me rise in support of this bill, the California Missions Preservation Act. Interestingly enough, one of the statues in Statuary Hall is that of Father Serra, and in his hand is a replica of the Carmel mission, just a few blocks from my home.

This legislation has been cosponsored by 48 of my California colleagues in the House of Representatives. Both Senators sponsored similar legislation on their side of the Capitol. I again want to thank the efforts of the chairman of the committee, the gentleman from California (Mr. POMBO), and the gentleman from West Virginia (Mr. RAHALL) for moving this legislation today, as well as the principal cosponsors, the gentleman from California (Mr. DREIER).

Mr. Speaker, H.R. 1446 passed the House under suspension by a voice vote on October 20, 2003, and then passed the Senate almost a full year later after it was amended by unanimous consent on October 10, 2004. All 21 missions are California registered historical landmarks. Seven of the missions have Federal status as national historic places. And one of the two changes made by the other body is that the remaining 14 must be recognized before that particular mission would be eligible for receiving funding.

The second change made by the other body was that the Secretary of the Interior must enter into a cooperative agreement with the California Missions Foundation, and the U.S. Attorney General must issue a finding that the proposed agreement does not violate the establishment clause of the first amendment of the Constitution regarding the separation of church and state.

I am fortunate to have five of the 21 missions in my district, extending along the coast of California on the El Camino Real: Santa Cruz; San Juan Bautista; La Soledad; San Antonio de Padua; and in my hometown of Carmel, San Carlos Borromeo del Rio Carmelo, known as the Cathedral in the Wilderness.

The California missions represent a historic vein running through our State from south to north. They also symbolize the east to the west, the exploration that expanded our Nation to its four corners.

Mr. Speaker, as I mentioned when this bill was originally brought to the floor, so much of the west coast's earliest expansion has been overshadowed in history. In 1768, King Carlos III saw Russia and England as threats to Spain's claim of Alta California, and ordered troops and missionaries to colonize new territory. In 1769, Commander Don Gaspar de Portola, Sergeant Jose Francisco de Ortega, and Fray Junipero Serra departed with troops and supplies for San Diego from Baja California, on May 13, and established on July 16 Alta California's first mission, San Diego de Alcala.

Twenty missions followed, with the final missions in the chain established in Sonoma in 1823. Of all the institutions that define California's heritage, none has the historic significance and emotional impact of the chain of Spanish missions that stretches from San Diego to Sonoma.

The missions are an important part of the State's cultural fabric and must be preserved as priceless historic monuments. They are a living link to our past. The missions stand as landmarks of more than 2 centuries and are recognized for the important impact they have had on the development of California, including art, architecture, agriculture, food, music, language, apparel, and recreation.

The missions help drive tourism, the State's third largest industry. These iconic symbols of California are the most visited historic attractions in the State, attracting over 5.3 million visitors a year. They account for a sizable contribution to the State's economy from millions of tourists, including a large number of international visitors.

They have become synonymous with the State's fourth grade curriculum. Students build mission models and write research reports as part of California history lessons. This serves as an important education function in teaching young students about the role of missions in the history of our State and our Nation.

Four 230 years, the missions have stood as symbols of Western exploration and settlement. Time, natural deterioration, and neglect have taken a heavy toll on the missions. Some are crumbling and at risk of full destruction. Most need preservation and seismic work to restore their antique beauty and bring them up to modern safety. Without immediate repairs, these centuries-old structures could be lost. The need is urgent and near crisis proportions.

Mr. Speaker, I rise in support of H.R. 1446, the California Missions Preservation Act. This bipartisan legislation has been cosponsored by 48 of my California colleagues in the House of Representatives and both Senators sponsored similar legislation on their side of the Capitol.

I again want to thank the efforts of Chairman POMBO and Mr. RAHALL for moving this legislation today, as well as, the principal cosponsor Chairman DREIER.

Mr. Speaker, H.R. 1446 passed the House under suspension by voice vote October 20th 2003 and then passed in the Senate almost a full year later after it was amended by Unanimous Consent on October 10th 2004.

All 21 missions are California Registered Historical Landmarks; seven of the missions have the federal status of National Historical Places and as one of two changes made by the other body the remaining 14 must be recognized before that particular Mission will be eligible to receive funding.

The second change made in the other body was that the Secretary of Interior must enter into a cooperative agreement with the California Missions Foundation and the U.S. Attorney General must issue a finding that the proposed agreement does not violate the establishment clause of the first amendment of the Constitution regarding the separation of church and state.

I am fortunate to have five of the 21 Missions in my district, extending along the coast of California on the El Camino Real: Santa Cruz, San Juan Bautista, La Soledad, San Antonio de Padua, and in my hometown of Carmel, San Carlos Borromeo del Rio Carmelo known as the "Cathedral in the Wilderness".

The California missions represent an historic vein running through our state, from south to north. And, they also symbolize the east to west exploration that expanded our nation to its four corners.

Mr. Speaker, as I mentioned when this bill was originally brought to the floor so much of the west coast's earliest expansion has been overshadowed in history.

In 1768 King Carlos III saw Russia and England as threats to Spain's claim on Alta California and Ordered troops and missionaries to colonize the new territory.

In 1769 Commander Don Gaspar de Portolá, Sergeant José Francisco de Ortega, and Fray Junípero Serra departed with troops and supplies for San Diego from Baja California May 13 and established on July 16th Alta California's first mission—San Diego de Alcalá.

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Of all the institutions that define California's heritage, none has the historic significance and emotional impact of the chain of Spanish missions that stretch from San Diego to Sonoma.

The missions are an important part of the state's cultural fabric and must be preserved as priceless historic monuments; they are a living link to our past.

The missions stand as landmarks of more than two centuries and are recognized for their important impact they have had on the development of California including art, architecture, agriculture, food, music, language, apparel and recreation.

The missions help drive tourism—the state's third largest industry. These iconic symbols of California are the most visited historic attractions in the state, attracting over 5.3 million visitors a year. They account for a sizable contribution to the state economy from millions of tourists, including a large number of international visitors.

And they have become synonymous with the state's fourth grade curriculum: Students build mission models and write research reports as part of California history lessons. This serves as an important education function in teaching young students about the role of the missions in the history of our state and our nation.

For 230 years, the missions have stood as symbols of Western exploration and settlement. Time, natural deterioration and neglect have taken a heavy toll on the missions. Some are Rotting roofs. Cracking tiles. Crumbling adobe. The backlog of needed repairs is long. The price tag is high. And the message is clear. The California missions need our help. Now.

H.R. 1446 will provide an important step toward addressing some of the most severe problems the missions are facing. This legislation provides authorization for funding of $10 million over five years, in partnership with the State of California and the California Missions Foundation's statewide funding campaign.

Under this legislation, the process requires that each mission submit a list to the Foundation of its most urgent preservation needs. All mission repairs and restoration projects are reviewed, approved and supervised by professionals qualified in the disciplines of history, history archeology, architectural history, planning, architecture, folklore, cultural anthropology, curation, conservation, landscape architecture or related fields.

Projects must be accomplished in accordance with the applicable Secretary of Interior's Standards for the Treatment of Historical Properties.

All repairs and capital improvements must have competitive bids which the Foundation's Funding Review Committee reviews. The Foundation Board of Directors assesses the proposals and has final approval of all restoration projects funded. The missions are required to submit timely progress reports and accounting to the Foundation on all projects funded.

Since the Spanish friars and native peoples joined together in the building of these settlements, the land we call California has been shaped and influenced by what they accomplished in that most ambitious undertaking.

From the vineyards of Sonoma to the ranches of Santa Barbara to the adobe arcades and red tile roofs of San Diego, the California missions have left their mark on who we are and what we have become.

Passage today presents us with the opportunity to address the needs of the missions and to preserve an integral part of our nation's history and the heritage of the west that combines with the east to make these truly united states.

Mr. GIBBONS. Mr. Speaker, I continue to reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Mrs. CAPPS).

Mrs. CAPPS. Mr. Speaker, I thank my colleague for yielding me this time, and I rise today to support the California Missions Preservation Act. I also want to thank our colleague, the gentleman from California (Mr. FARR), the gentleman from California (Mr. DREIER), and the gentleman from California (Mr. POMBO) for their assistance, and the leadership of our chairman as well in moving this legislation. I also want to thank our Senators, BARBARA BOXER and DIANE FEINSTEIN, for helping to get this bill successfully through the Senate.

Mr. Speaker, California's missions are instantly recognizable as symbols of our States's rich history and cultural heritage, but they are also some of the oldest structures in North America and an integral part of our Nation's heritage, and so they deserve our Federal support.

Our State's missions are in dire need of structural attention and major rehabilitation. Natural deterioration and neglect have taken a heavy toll on these missions. Some are crumbling and are at risk. Most need preservation and seismic work to restore their antique beauty and to bring them up to modern safety standards. Without immediate repairs, centuries-old buildings and artifacts could be lost to a major earthquake or a flood.

For example, at Mission Santa Barbara in my congressional district, often called the Queen of the Missions, $1.5 million is needed now to repair adobe columns that are turning to salt.

Keeping California's missions together will require about $50 million in structural repair work and another $11 million to renovate art works and accommodate visitors. The primary goal of this legislation is to restore and repair the missions and to preserve the art works and artifacts associated with them.

Mr. Speaker, I thank my colleague, the gentleman from California (Mr. FARR), for giving us the history of what the missions have meant to our State. As every California school child learns, the missions have shaped the future of California. They were among the first European settlements in our region and formed a chain along the coast from San Diego to Sonoma.

With respect to our colleague from Nevada and his concerns about chapters of history that the missions were associated with, I would submit that preserving the missions gives us an opportunity to preserve that sorry chapter of our Nation's history and to learn from those lessons so that we do not repeat them.

The missions are also among the State's most frequently visited historic sites, attracting more than 5.5 million tourists each year, contributing greatly to our State's economy.

Mr. Speaker, I am pleased to be part of this important effort on behalf of California's missions. This long overdue effort is encouraging in that the entire California congressional delegation has responded with such enthusiasm about this bill.

Again, I want to thank my colleagues for supporting it and urge its immediate passage.

Mrs. CHRISTENSEN. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. WOOLSEY).

□ 1630

Ms. WOOLSEY. Mr. Speaker, I rise in support of H.R. 1446, the California Missions Preservation Act. I would like to thank the gentleman from California (Mr. FARR) for introducing this bill, and I am proud to be an original cosponsor.

The California missions provide an important part of California's past, and their history can be traced to 1493. The Sixth District of California, located across the Golden Gate Bridge from San Francisco, is the district I am so pleased to represent. We are fortunate to have one of these missions, the San Raphael Mission and another, the Sonoma Mission, is just outside of my district.

The San Raphael Mission was originally built in 1817 as an outpost chapel of the San Francisco Mission. Named for Saint Raphael, the angel of bodily healing, it was thought that the sunny hillside on the north side of the bay would be a good place for the sick to convalesce. In only 5 years, it became a healthy settlement, and on October 19, 1822, it became an independent mission. After it was secularized, the mission fell into ruin, and 32 years later the original mission was torn down. But in 1947 a new mission was built near the original site, based on a painting of the old mission.

The San Francisco Solano Mission, founded in 1823 in Sonoma County, was the last and most northerly of the 21 Franciscan missions of Alta California. Sonoma Mission, as it is properly called, was the dedicated goal of the young and zealous Padre Jose Altimira. He headed into the northern wilderness to find a more healthy location for a mission than the crowded San Francisco area. In Sonoma Valley he found his ideal location, with fertile soil and mild, sunny climate.

Secularization of the mission in 1834 was followed by neglect and decay. In 1881, the church and padres' quarters were sold and used as a hay barn, winery and blacksmith shop. However, the mission was rescued from disintegration in 1903 when it was bought by the Historic Landmarks League and turned over to the State. Full restoration began in 1911.

There is still so much more to do to restore these historic treasures. Mr. Speaker, it is important that we save these missions so they can pass on their history to future generations. I urge my colleagues to join me in support of this bill.

Mr. SCHIFF. Mr. Speaker, I rise today in support of the Senate Amendments to the California Missions Preservation Act. I am a co-sponsor of this bill, and I am pleased that we are sending it to the White House before we adjourn.

Because of this legislation, important historical sites in California will be better preserved for future generations of Americans to enjoy and learn about our state's rich heritage.

I am proud to represent in my district the Mission San Gabriel Arcángel. This is the fourth of twenty-one missions established in California during the Spanish colonial era.

Orginally founded in 1771 in present-day Montebello, it was moved in 1776 to what is now San Gabriel. Built by the Franciscans and Native American Gabrielenos, the Mission San Gabriel Arcángel would become what famed Spanish missionary Junipero Serra would call "The Pride of the Missions."

The government eventually changed from Spanish to Mexican, then from Mexican to American. In the early 20th Century, control of the Mission would eventually go to the Claretian Missionaries with the Dominican Sisters of Mission San Jose providing education at the parish school. Yet the Mission would always be an integral part of the community, a jewel of the southland, a wondrous remnant from the first of many who built the greater Los Angeles area into a world-class destination.

Today, the Mission is set amount a large, diverse and gracious community. Local residents still seek spiritual guidance there, and cactus garden. The Mission thrives as a source of pride among residents of the San Gabriel Valley, and I pleased that Congress is recognizing the importance of protecting this and other Missions.

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I rise today in strong support of H.R. 1446, the California Missions Protection Act. I thank my colleague from California, Mr. FARR, for his continued role in preserving the Golden State's wonderful treasures. I also thank our distinguished California colleagues in the other chamber for their leadership and support in pushing this bill through the Senate.

The missions inspired by Father Junipero Serra are a favorite destination for millions of people around the world. These historical monuments are a symbol of Catholicism, and the early efforts to unify Native Americans with the Spanish settlers. We admire the missions as a sanctuary, a place of worship, and a symbol of American History.

In 1769, Father Serra erected Mission San Diego Alcala. This would be the first of 21 historic missions built along the beautiful Pacific coastline. The missions have been a significance part of California's culture for over two centuries. Even Pope John Paul II, recognizing the significance of Father Serra, blessed these missions in his visit to the San Carlos Borromeo de Carmelo Mission in 1987.

The citizens of Orange County treasure our local mission, Mission San Juan Capistrano. Created in 1776, it continues to be used as a place of peace and worship. We consider ourselves fortunate to experienced the Serra Chapel, the only building left in which Father Serra gave mass. We watch in delight every year as the world famous swallows return to their summer home.

Unfortunately, after two centuries of wear and tear, as well as numerous earthquakes, much of the infrastructure of these buildings is deteriorating. It is our interest,for the sake of preservinga piece of American History, that we put forth the effort to restore these elegant buildings and artifacts.

Again, I thank the Honorable SAM FARR for his efforts to restore California's treasures. I am proud to support his efforts, and the efforts of so many others to protect and preserve the Missions of California.

Mrs. CHRISTENSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. TERRY). The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 1446.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

KATE MULLANY NATIONAL HISTORIC SITE ACT

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1241) to establish the Kate Mullany National Historic Site in the State of New York, and for other purposes.

The Clerk read as follows:

S. 1241

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 ''Kate Mullany National Historic Site Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CENTER.—The term ''Center'' means the American Labor Studies Center.

(2) HISTORIC SITE.—The term ''historic site'' means the Kate Mullany National Historic Site established by section 3(a).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. KATE MULLANY NATIONAL HISTORIC SITE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established as an affiliated area of the National Park System the Kate Mullany National Historic Site in the State of New York.

(2) COMPONENTS.—The historic site shall consist of the home of Kate Mullany, located at 350 Eighth Street in Troy, New York.

(b) ADMINISTRATION.—

(1) IN GENERAL.—The Center shall own, administer, and operate the historic site.

(2) APPLICABILITY OF NATIONAL PARK SYSTEM LAWS.—The historic site shall be administered in accordance with—

(A) this Act; and

(B) the laws generally applicable to units of the National Park System, including—

(i) the Act of August 25, 1916 (commonly known as the ''National Park Service Organic Act'') (16 U.S.C. 1 et seq.); and

(ii) the Act of August 21, 1935 (16 U.S.C. 461 et seq.).

(c) COOPERATIVE AGREEMENTS.—(1) The Secretary may enter into cooperative agreements with the Center under which the Secretary may provide to the Center technical, planning, interpretive, construction, and preservation assistance for—

(A) the preservation of the historic site; and

(B) educational, interpretive, and research activities relating to the historic site and any related sites.

(2) The Secretary may provide to the Center financial assistance in an amount equal to not more than $500,000 to assist the Center in acquiring from a willing seller the structure adjacent to the historic site, located at 350 Eighth Street in Troy, New York. On acquisition of the structure, the Secretary shall revise the boundary of the historic site to reflect the acquisition. The non-Federal share of the total cost of acquiring the structure shall be at least 50 percent.

(d) GENERAL MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 3 full fiscal years after the date on which funds are made available to carry out this Act, the Secretary, in cooperation with the Center, shall develop a general management plan for the historic site.

(2) CONTENTS.—The general management plan shall define the role and responsibilities of the Secretary with respect to the interpretation and preservation of the historic site.

(3) APPLICABLE LAW.—The general management plan shall be prepared in accordance with section 12(b) of the Act of August 18, 1970 (16 U.S.C. 1a–7(b)).

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1241 would authorize the Secretary of the Interior to establish the Kate Mullany National Historic Site as an affiliated site in the State of New York. The site would consist of the home of Kate Mullany, an existing national historic landmark located in Troy, New York.

Kate Mullany organized and led the first all-female labor union at the Nation's first commercial laundry. When employers installed new machinery that stepped up production but made the working conditions worse, Kate Mullany led 300 workers in a week-long labor strike in February, 1864, that resulted in the owners conceding to all of their demands. Unlike many other unions of the day, the ''Collar Laundry Union'' stayed organized long after their initial battle, helping other unions along the way. I urge my colleagues to support S. 1241.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the majority has already explained the purpose of S. 1241, and it is altogether fitting that we proceed with this legislative designation.

Kate Mullany was an early female labor organizer and leader. In the 1860s, at a time when there were few labor unions and even fewer women involved in the labor movement, she organized and led the first all-female union for laundry workers. She achieved national recognition in 1868 when she was appointed assistant secretary of the National Labor Union, making her the first woman appointed to a national union office.

I want to commend the gentleman from New York (Mr. MCNULTY) for his sponsorship and tireless work on behalf of the companion legislation he introduced in the House. I would also note the contributions of the ranking member of the Committee on Resources, the gentleman from West Virginia (Mr. RAHALL), who guided this designation through the Committee on Resources both this Congress and last Congress.

Mr. Speaker, the Kate Mullany House is on the National Register of Historic Places and was designated a National Historic Landmark in 1998. Designation as a National Historic Site will enhance the preservation and interpretation of the work of this pioneering woman, and thus I support the passage of S. 1241 by the House today.

Mr. Speaker, I reserve the balance of my time.

Mr. GIBBONS. Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. MCNULTY), the sponsor of the bill in the House.

(Mr. MCNULTY asked and was given permission to revise and extend his remarks.)

Mr. MCNULTY. Mr. Speaker, I thank my colleagues for their explanation of the bill, and I also thank Senator HILLARY RODHAM CLINTON for her dedication to the memory of Kate Mullany. I also thank the gentleman from California (Chairman RADANOVICH), the gentleman from California (Chairman POMBO), and the ranking members, the gentleman from West Virginia (Mr. RAHALL) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), for their tremendous help.

Special thanks goes to my constituents, Paul Cole, Rachel Bliven, and Paul Bray for their years of work on this project. Most of all, I thank Kate Mullany for her courageous and daring leadership which forever changed the labor movement in America.

Mr. Speaker, I thank the gentleman for yielding me this time to comment on S. 1241, which will establish the Kate Mullany National Historic Site in Troy, New York, in my congressional district.

I was pleased to introduce the House companion to this legislation, H.R. 305. The bill before us today, S. 1241, was introduced by my good friend from New York, Senator HILLARY RODHAM CLINTON. As First Lady of the United States, HILLARY CLINTON came to Troy in 1998 to unveil the National Historic Landmark designation at the Mullany House during her "Save America's Treasures" tour. I am incredibly grateful to Senator CLINTON for her

tireless efforts on this legislation, and on behalf of American workers throughout the Nation.

I must thank the gentleman from California, Mr. RADANOVICH, Chairman of the Resources Subcommittee on National Parks, Recreation and Public Lands, and ranking Member CHRISTENSEN, for holding a hearing on this bill.

And I must certainly thank the gentleman from California, Mr. POMBO, Chairman of the Resources Committee, and the Ranking Member, the gentleman from West Virginia, Mr. RAHALL, for receiving this bill and moving it swiftly to the floor today.

Today we will finally and appropriately recognize a remarkable American and her legacy—as a determined immigrant, a tireless working women, a pioneer of the American labor movement, and a central figure in the rich industrial history of our country.

In its heyday, the city of Troy was a prosperous industrial city known around the world for its large iron works and textile factories. It was home to the world's first commercial laundry and had earned the nickname, ''The Collar City,'' for the many thousands of shirts, detachable shirt collars, and cuffs produced there.

Kate Mullany emigrated to America from Ireland in the mid-nineteenth century. She made her way to Upstate New York and settled in the city of Troy, eventually making her home at 350 Eighth Street. Like many women of the time, Kate Mullany found work in one of Troy's shirt factories. On a daily basis, she undertook physically demanding work steaming and pressing collars, earning minimal wages of just 3 to 4 dollars a day.

Kate quickly became a leader among her peers in the factory—among the women who felt as though they had no choice but to endure 12 to 14 hour workdays in awful conditions while receiving very little pay. These women who had no voice soon found one, and it belonged to Kate Mullany. In 1864, Kate led over 200 fellow female workers on strike, demanding better wages and improved working conditions—and they won. Kate secured a 25 percent wage increase—a remarkable figure at the time, particularly for a group of women.

This bargaining success led to the formation of the Collar Laundry Union—the first all-female labor union in the United States—with Kate Mullany in charge.

Kate's record of individual accomplishment continued as well. In 1868, she was elected a 2nd vice president of the National Labor Union—becoming the first woman ever to hold a national position in any labor organization. Kate became a national figure. Her death in 1906 was noted in newspapers around the Nation, a testament to her amazing story and groundbreaking accomplishments.

The bill before us, S. 1241, designates the Mullany House as a national historic site and as an ''Affiliated Site,'' authorizing the National Park Service to provide technical, planning, and financial assistance to the site's local cooperative partners. This approach responds to the concerns of, and relieves any potential burden placed upon, the Park Service.

I am pleased that the relevant House and Senate committees have recognized the great advantages of having the Park Service, the guardian and protector of our Nation's most treasured sites, involved with this project. This plan enjoys broad bipartisan support from our two Senators; my colleagues in the New York delegation, including Mr. SWEENEY, Mr. BOEHLERT, and Mr. QUINN; the Majority Leader of the New York State Senate, Joe Bruno; and the present and past Mayors of the City of Troy.

The Mullany House is now part of the American Labor Studies Center, a not-for-profit corporation which will continue to own, manage, and operate the site on a daily basis. Plans and funding are in place for the establishment of Kate Mullany Park on the adjacent lot.

Today, we ensure that the Mullany Home will continue to serve as a resource for students, researchers, and tourists for decades to come. This site will be an outstanding addition to the National Park System. I am so pleased to see this long effort and the hard work of so many—such as Paul Cole, Paul Bray, and Rachel Bliven come to a successful conclusion.

Mrs. CHRISTENSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and pass the Senate bill, S. 1241.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

AUTHORIZING ADDITIONAL APPROPRIATIONS FOR RECLAMATION SAFETY OF DAMS ACT OF 1978

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1727) to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978.

The Clerk read as follows:

S. 1727

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

SECTION 1. ADDITIONAL AUTHORIZATION OF APPROPRIATIONS FOR THE RECLAMATION SAFETY OF DAMS ACT OF 1978.

(a) REIMBURSEMENT OF CERTAIN MODIFICATION COSTS.—Section 4(c) of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508(c)) is amended by striking ''(c) With respect to'' and all that follows through ''2001'' and inserting the following:

''(c) REIMBURSEMENT OF CERTAIN MODIFICATION COSTS.—With respect to the additional amounts authorized to be appropriated by section 5''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 5 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 509) is amended in the first sentence—

(1) by inserting ''and, effective October 1, 2003, not to exceed an additional $540,000,000 (October 1, 2003, price levels),'' after ''(October 1, 2001, price levels),''; and

(2) by striking ''$750,000'' and inserting ''$1,250,000 (October 1, 2003, price levels), as adjusted to reflect any ordinary fluctuations in construction costs indicated by applicable engineering cost indexes,''.

SEC. 2. PARTICIPATION BY PROJECT BENEFICIARIES.

(a) COST CONTAINMENT; MODIFICATION STATUS.—Section 4 of the Reclamation Safety of Dams Act of 1978 (43 U.S.C. 508) is amended by adding at the end the following:

''(e)(1) During the construction of the modification, the Secretary shall consider cost containment measures recommended by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.

''(2) The Secretary shall provide to project beneficiaries on a periodic basis notice regarding the costs and status of the modification.''.

(b) PROJECT BENEFICIARIES.—The Reclamation Safety of Dams Act of 1978 is amended by inserting after section 5 (43 U.S.C. 509) the following:

''SEC. 5A. (a) On identifying a Bureau of Reclamation facility for modification, the Secretary shall provide to the project beneficiaries written notice—

''(1) describing the need for the modification and the process for identifying and implementing the modification; and

''(2) summarizing the administrative and legal requirements relating to the modification.

''(b) The Secretary shall—

''(1) provide project beneficiaries an opportunity to consult with the Bureau of Reclamation on the planning, design, and construction of the proposed modification; and

''(2) in consultation with project beneficiaries, develop and provide timeframes for the consultation described in paragraph (1).

''(c)(1) Prior to submitting the reports required under section 5, the Secretary shall consider any alternative submitted in writing, in accordance with the timeframes established under subsection (b), by a project beneficiary that has elected to consult with the Bureau of Reclamation on a modification.

''(2) The Secretary shall provide to the project beneficiary a timely written response describing proposed actions, if any, to address the recommendation.

''(3) The response of the Secretary shall be included in the reports required by section 5.

''(d) The Secretary may waive 1 or more of the requirements of subsections (a), (b), and (c), if the Secretary determines that implementation of the requirement could have an adverse impact on dam safety or security.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the Senate bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1727, sponsored by Senator PETE DOMENICI, increases the authorization ceiling on the Federal Safety of Dams Program. This important program allows the U.S. Bureau of Reclamation to make necessary structural modifications on aging dams and helps protect the public and our natural resources. The House companion

bill is sponsored by the gentlewoman from California (Mrs. NAPOLITANO) and the gentleman from California (Mr. CALVERT).

Approximately 50 percent of the Bureau of Reclamation's dams were built between 1900 and 1950 before the state-of-the-art design practices were used. With more aging dams needing corrective action, the authorization level for the Safety of Dams Program will soon be exhausted. This bill not only gives the Bureau of Reclamation added financial tools to fix these structural problems for the next 10 years but requires the agency to consult with local beneficiaries on implementing these projects. I urge my colleagues to support this bipartisan bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is with pleasure that I join my colleagues in full support of S. 1727.

Farming communities and urban areas who benefit from Bureau of Reclamation projects will now be ensured that ongoing dam safety work will continue. In addition, the Bureau will now be required to consider ways of reducing cost for new dam safety projects.

We support the passage of S. 1727.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and pass the Senate bill, S. 1727.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

AMENDING RECLAMATION PROJECTS AUTHORIZATION AND ADJUSTMENT ACT OF 1992

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1284) to amend the Reclamation Projects Authorization and Adjustment Act of 1992 to increase the Federal share of the cost of the San Gabriel Basin demonstration project.

The Clerk read as follows:

Senate amendment:

Page 2, line 15, strike out ''$12,500,000'' and insert ''$6,500,000''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1284 introduced by the gentlewoman from California (Mrs. NAPOLITANO) increases the authorized Federal cost ceiling for the San Gabriel Demonstration Project by $12.5 million. The bill, as amended, reduces the Federal share from $12.5 million to $6.5 million.

Local project sponsors have expressed a desire to expand the Demonstration Project, which treats contaminated groundwater and then delivers the effluent to nearby localities to justify the Federal cost ceiling increase. I urge my colleagues to support this measure.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 1284, legislation to increase the spending cap imposed on the San Gabriel Basin Demonstration Project. The funding level for this program was capped at $38 million in 1996. With the increase authorized by H.R. 1284, communities in southeast Los Angeles County are assured of continued financial support for their groundwater cleanup projects.

I extend my compliments to the gentlewoman from California for her tireless work on this bill and also wish to recognize the gentleman from California (Chairman POMBO), the ranking member, the gentleman from West Virginia (Mr. RAHALL), Senator FEINSTEIN and Senator BOXER for their assistance. I urge my colleagues to support this bill.

Mrs. NAPOLITANO. Mr. Speaker, I rise today in support of H.R. 1284, legislation to increase the spending cap imposed on the San Gabriel Basin Demonstration Project. Funding level for this program authorized in 1992 was capped at $38 million in 1996.

I want to thank my California colleagues on the other side of the aisle—Chairman DREIER, Chairman CALVERT and Chairman POMBO—for their continued assistance to me and other Members who are working to ensure a clean and reliable water supply for their local communities. I would also like to thank Ranking Member RAHALL and Congresswoman SOLIS for their support of this bill.

H.R. 1284, if enacted, would simply allow cities of Industry, El Monte and South El Monte located in and near my district throughout Southeast Los Angeles County to have the ability to request an additional $6.5 million in funding for assistance from the U.S. Bureau of Reclamation for cleanup of volatile organic compounds or VOC's once they are able to secure 75 percent State and local matching fund.

Although the authorizing amount under this bill was decreased from $12.5 million to $6.5 million by the Senate, local water agencies and municipalities serving residents throughout my district in the San Gabriel Valley remain supportive of this bill, and they are eager to continue their aggressive groundwater cleanup efforts with the assurance of continued Federal funding.

I urge my House colleagues to support this bill, and I reserve the balance of my time.

Ms. SOLIS. Mr. Speaker, I rise today in support of H.R. 1284, additional funding for the San Gabriel Valley Basin Demonstration Project.

The San Gabriel Valley is facing serious water quality and public health problems. The aquifer is contaminated with volatile organic compounds and perchlorate, or rocket-fuel. Water providers in the San Gabriel Valley draw water from the Basin, home to Superfund sites that span more than 170 square miles. Despite its contamination, the Basin is needed to provide water to more than 1.5 million people.

Our water agencies have done a wonderful job working to maintain a reliable, dependable and safe source of water, but they can not do it alone. This bill authorizes an additional $6.5 million to expand the Basin Demonstration Project to El Monte, South El Monte, and Puente Valley.

I am proud to represent a community working so diligently to ensure long term reliability of its water supply, and I am proud that, together with Congresswoman NAPOLITANO and Congressman DREIER, that we could secure these funds to help ensure a safe, reliable and dependable source of water for southern California.

Mrs. CHRISTENSEN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 1284.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

□ 1645

IDAHO PANHANDLE NATIONAL FOREST IMPROVEMENT ACT OF 2003

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 434) to authorize the Secretary of Agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for National Forest System purposes.

The Clerk read as follows:

S. 434

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 ''Idaho Panhandle National Forest Improvement Act of 2003''.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term ''Secretary'' means the Secretary of Agriculture.

SEC. 3. SALE OR EXCHANGE OF ADMINISTRATIVE SITES.

(a) IN GENERAL.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any or all right, title, and interest of the United States in and to the following National Forest System land and improvements:

(1) Granite/Reeder Bay, Priest Lake Parcel, T61N, R4E, Boise Principal Meridian, section 17, S½NE¼ (80 acres, more or less).

(2) North South Ski area, T43N, R3W, Boise Principal Meridian, section 13, SE¼SE¼SW¼, S½SW¼SE¼, NE¼SW¼SE¼, and SW¼SE¼SE¼ (50 acres, more or less).

(3) Shoshone work camp (including easements for utilities), T50N, R4E, Boise Principal Meridian, section 5, a portion of the S½SE¼ (19 acres, more or less).

(b) DESCRIPTIONS.—The Secretary may modify the descriptions in subsection (a) to correct errors or to make minor adjustments to the parcels in order to facilitate the conveyance of the parcels.

(c) CONSIDERATION.—Consideration for a sale or exchange of land under subsection (a)—

(1) shall be equal to the fair market value of the land; and

(2) may include cash or improved or unimproved land.

(d) APPLICABLE LAW.—Except as otherwise provided in this Act, any sale or exchange of National Forest System land under subsection (a) shall be subject to the laws applicable to the conveyance and acquisition of land for the National Forest System.

(e) VALUATION.—The market value of the land and the improvements to be sold or exchanged under this Act shall be determined by an appraisal that is acceptable to the Secretary and conforms with the Uniform Appraisal Standards for Federal Land Acquisitions.

(f) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may accept a cash equalization payment in excess of 25 percent of the value of land exchanged under subsection (a).

(g) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—The Secretary may solicit offers for the sale or exchange of land under this section on such terms and conditions as the Secretary may prescribe.

(2) REJECTION OF OFFERS.—The Secretary may reject any offer made under this section if the Secretary determines that the offer is not adequate or not in the public interest.

(h) METHODS OF SALE.—The Secretary may sell land under subsection (a) at public or private sale (including at auction), in accordance with any terms, conditions, and procedures that the Secretary determines to be in the best interests of the United States.

SEC. 4. DISPOSITION OF FUNDS.

(a) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of a sale or the cash equalization proceeds, if any, from an exchange under section 3(a) in the fund established under Public Law 90–171 (commonly known as the ''Sisk Act'') (16 U.S.C. 484a).

(b) USE OF PROCEEDS.—Amounts deposited under subsection (a) shall be available to the Secretary, without further appropriation—

(1) for the acquisition of, construction of, or rehabilitation of existing facilities for, a new ranger station in the Silver Valley portion of the Panhandle National Forest; or

(2) to the extent that the amount of funds deposited exceeds the amount needed for the purpose described in paragraph (1), for the acquisition, construction, or rehabilitation of other facilities in the Panhandle National Forest.

(c) NONDISTRIBUTION OF PROCEEDS.—Proceeds from the sale or exchange of land under this Act shall not be paid or distributed to States or counties under any provision of law, or otherwise treated as money received from a national forest, for purposes of—

(1) the Act of May 23, 1908 (16 U.S.C. 500);

(2) section 13 of the Act of March 1, 1911 (commonly known as the ''Weeks Law'') (16 U.S.C. 500); or

(3) the Act of March 4, 1913 (16 U.S.C. 501).

SEC. 5. ADMINISTRATION.

(a) IN GENERAL.—Land transferred to or otherwise acquired by the Secretary under this Act shall be managed in accordance with—

(1) the Act of March 1, 1911 (commonly known as the ''Weeks Law'') (16 U.S.C. 480 et seq.); and

(2) other laws relating to the National Forest System.

(b) EXEMPTION FROM PROPERTY MANAGEMENT REGULATIONS.—Part 1955 of title 7, Code of Federal Regulations (or any successor regulation), shall not apply to any actions taken under this Act.

(c) WITHDRAWALS AND REVOCATIONS.—

(1) WITHDRAWAL.—Subject to valid existing rights, all land described in section 3(a) is withdrawn from—

(A) location, entry, and patent under the mining laws; and

(B) the operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(2) REVOCATION OF PUBLIC LAND ORDERS.—As of the date of this Act, any public land order withdrawing land described in section 3(a) from all forms of appropriation under the public land laws is revoked with respect to any portion of the land conveyed by the Secretary under this section.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The SPEAKER pro tempore (Mr. TERRY). Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate 434, introduced by Senator LARRY CRAIG, would authorize the Secretary of Agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for national forest purposes.

This legislation would sell or exchange roughly 150 acres, comprised of three separate parcels, and deposit the proceeds in the fund established under the Sisk Act. The bill promotes good stewardship by consolidating scattered parcels of public land while generating revenue for property improvements rather than using taxpayer dollars.

Additionally, it will finally allow for the construction of a public sewer system in the area that has been contingent on the land acquisition authorized in Senate 434.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have no objection to S. 434 and support the passage of this bill by the House today.

Mr. Speaker, I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and pass the Senate bill, S. 434.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

ALASKA LAND TRANSFER ACCELERATION ACT

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1466) to facilitate the transfer of land in the State of Alaska, and for other purposes.

The Clerk read as follows:

S. 1466

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Alaska Land Transfer Acceleration Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—STATE SELECTIONS AND CONVEYANCES

Sec. 101. Community grant selections and conveyances.
Sec. 102. Prioritization of land to be conveyed.
Sec. 103. Selection of certain reversionary interests held by the United States.
Sec. 104. Effect of hydroelectric withdrawals.
Sec. 105. Entitlement for the University of Alaska.
Sec. 106. Settlement of remaining entitlement.
Sec. 107. Effect of Federal mining claims.
Sec. 108. Land mistakenly relinquished or omitted.

TITLE II—ALASKA NATIVE CLAIMS SETTLEMENT ACT

Sec. 201. Land available after selection period.
Sec. 202. Combined entitlements.
Sec. 203. Authority to convey by whole section.
Sec. 204. Conveyance of cemetery sites and historical places.

Sec. 205. Allocations based on population.
Sec. 206. Authority to withdraw land.
Sec. 207. Report on withdrawals.
Sec. 208. Automatic segregation of land for underselected Village Corporations.
Sec. 209. Settlement of remaining entitlement.

TITLE III—NATIVE ALLOTMENTS

Sec. 301. Correction of conveyance documents.
Sec. 302. Title recovery of Native allotments.
Sec. 303. Native allotment revisions on land selected by or conveyed to a Native Corporation.
Sec. 304. Compensatory acreage.
Sec. 305. Reinstatements and reconstructions.
Sec. 306. Amendments to section 41 of the Alaska Native Claims Settlement Act.

TITLE IV—FINAL PRIORITIES; CONVEYANCE AND SURVEY PLANS

Sec. 401. Deadline for establishment of regional plans.
Sec. 402. Deadline for establishment of village plans.
Sec. 403. Final prioritization of ANCSA selections.
Sec. 404. Final prioritization of State selections.

TITLE V—ALASKA LAND CLAIMS HEARINGS AND APPEALS

Sec. 501. Alaska land claims hearings and appeals.

TITLE VI—REPORT AND AUTHORIZATION OF APPROPRIATIONS

Sec. 601. Report.
Sec. 602. Authorization of appropriations.

SEC. 2. DEFINITIONS.

In this Act:

(1) NATIVE ALLOTMENT.—The term ''Native allotment'' means an allotment claimed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) STATE.—The term ''State'' means the State of Alaska.

TITLE I—STATE SELECTIONS AND CONVEYANCES

SEC. 101. COMMUNITY GRANT SELECTIONS AND CONVEYANCES.

(a) IN GENERAL.—Section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) is amended by adding at the end the following:

''(n) The minimum tract selection size is waived with respect to a selection made by the State of Alaska under subsection (a) for the following selections:

National Forest Community Grant Application Number	Area Name	Est. Acres
209	Yakutat Airport Addition	111
264	Bear Valley (Portage)	120
284	Hyder-Fish Creek	61
310	Elfin Cove	37
384	Edna Bay Admin Site	37
390	Point Hilda	29.''.

(b) COMMUNITY GRANT SELECTIONS.—Section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) (as amended by subsection (a)) is amended by adding at the end the following:

''(o)(1) The State of Alaska may elect to convert a selection filed under subsection (b) to a selection under subsection (a) by notifying the Secretary of the Interior in writing.

''(2) If the State of Alaska makes an election under paragraph (1), the entire selection shall be converted to a selection under subsection (a).

''(3) The Secretary of the Interior shall not convey a total of more than 400,000 acres of public domain land selected under subsection (a) or converted under paragraph (1) to a public domain selection under subsection (a).

''(4) Conversion of a selection under paragraph (1) shall not increase the survey obligation of the United States with respect to the land converted.

''(p) All selection applications of the State of Alaska that are on file with the Secretary of the Interior under the public domain provisions of subsection (a) on the date of enactment of this subsection and any selection applications that are converted to a subsection (a) selection under subsection (o)(1) are approved as suitable for community or recreational purposes.''.

SEC. 102. PRIORITIZATION OF LAND TO BE CONVEYED.

Section 906(h)(2) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(h)(2)) is amended—

(1) by striking ''(2) As soon as practicable'' and inserting the following:

''(2)(A) As soon as practicable'';

(2) by striking ''The sequence of'' and inserting the following:

''(B)(i) The sequence of''; and

(3) by adding at the end the following:

''(ii) In establishing the priorities for tentative approval under clause (i), the State shall—

''(I) in the case of a selection under section 6(a) of Public Law 85–508 (commonly known as the 'Alaska Statehood Act') (72 Stat. 340), include all land selected; or

''(II) in the case of a selection under section 6(b) of that Act—

''(aa) include at least 5,760 acres; or

''(bb) if a waiver has been granted under section 6(g) of that Act or less than 5,760 acres of the entitlement remains, prioritize the selection in such increments as are available for conveyance.''.

SEC. 103. SELECTION OF CERTAIN REVERSIONARY INTERESTS HELD BY THE UNITED STATES.

(a) IN GENERAL.—All reversionary interests held by the United States in land owned by the State or any political subdivision of the State and any Federal land leased by the State under the Act of August 23, 1950 (25 U.S.C. 293b), or the Act of June 4, 1953 (25 U.S.C. 293a), that is prioritized for conveyance by the State under section 906(h)(2) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(h)(2))—

(1) are deemed to be selected; and

(2) may, with the concurrence of the Secretary or the head of the Federal agency with administrative jurisdiction over the land, be conveyed under section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340).

(b) EFFECT ON ENTITLEMENT.—If, before the date of enactment of this Act, the entitlement of the State has not been charged with respect to a parcel for which a reversionary interest is conveyed under subsection (a), the total acreage of the parcel shall be charged against the remaining entitlement of the State.

(c) MINIMUM ACREAGE REQUIREMENT NOT APPLICABLE.—The minimum acreage requirement under subsections (a) and (b) of section 6 of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340) shall not apply to the selection of reversionary interests under subsection (a).

(d) STATE WAIVER.—On conveyance to the State of any reversionary interest selected under subsection (a), the State shall be deemed to have waived all right to any future credit should the reversion not occur.

(e) LIMITATION.—This section shall not apply to—

(1) reversionary interests in land acquired by the United States through the use of amounts from the Exxon Valdez Oil Spill Trust Fund; or

(2) reversionary interests in any land conveyed to the State as a result of the ''Terms and Conditions for Land Consolidation and Management in Cook Inlet Area'' as ratified by section 12 of Public Law 94–204 (43 U.S.C. 1611 note).

SEC. 104. EFFECT OF HYDROELECTRIC WITHDRAWALS.

(a) LAND WITHDRAWN, RESERVED, OR CLASSIFIED FOR POWER SITE OR POWER PROJECT PURPOSES.—If the State has filed a future selection application under section 906(e) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(e)) for land withdrawn, reserved, or classified for power site or power project purposes, notwithstanding the withdrawal, reservation, or classification for power site or power project purposes, the following parcels of land shall be deemed to be vacant, unappropriated, and unreserved within the meaning of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 339):

Serial Number	Area Name	General Selection Application Number
AKAA 058747	Bradley Lake	GS 5141
AKAA 058848	Bradley Lake	GS 44
AKAA 058266	Eagle River/ Ship Creek/ Peters Creek	GS 1429
AKAA 058265	Eagle River/ Ship Creek/ Peters Creek	GS 1209
AKAA 058374	Salmon Creek	GS 327
AKF 031321	Nenana River	GS 2182
AKAA 059056	Solomon Gulch at Valdez	GS 86
AKFF 085798	Kruzgamepa River Pass Creek	GS 4096.

(b) LIMITATION.—Subsection (a) does not apply to any land that is—

(1) located within the boundaries of a conservation system unit (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)); or

(2) otherwise unavailable for conveyance under Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 339).

(c) REQUIREMENT APPLICABLE TO NATIONAL FOREST SYSTEM LAND.—Any land described in subsection (a) that is in a unit of the National Forest System shall not be conveyed unless the Secretary of Agriculture approved the State selection before January 3, 1994.

(d) REQUIREMENTS APPLICABLE TO HYDROELECTRIC APPLICATIONS AND LICENSED PROJECTS.—

(1) HYDROELECTRIC APPLICATIONS.—Any selection of land described in subsection (a) that is included in a hydroelectric application—

(A) shall be subject to the jurisdiction of the Federal Energy Regulatory Commission; and

(B) shall not be conveyed while the hydroelectric application is pending.

(2) LICENSED PROJECT.—Any selection of land described in subsection (a) that is included in a licensed project shall be subject to—

(A) the jurisdiction of the Federal Energy Regulatory Commission;

(B) the rights of third parties; and

(C) the right of reentry under section 24 of the Federal Power Act (16 U.S.C. 818).

(e) EFFECT OF SECTION.—Nothing in this section negates or diminishes any right of an applicant to petition for restoration and opening of land withdrawn or classified for power purposes under section 24 of the Federal Power Act (16 U.S.C. 818).

SEC. 105. ENTITLEMENT FOR THE UNIVERSITY OF ALASKA.

(a) IN GENERAL.—As of January 1, 2003, the remaining State entitlement for the benefit of the University of Alaska under the Act of

January 21, 1929 (45 Stat. 1091, chapter 92), is 456 acres.

(b) REVERSIONARY INTERESTS.—The Act of January 21, 1929 (45 Stat. 1091, chapter 92), is amended by adding at the end the following:

''SEC. 3. (a) The State of Alaska (referred to in this Act as the 'State'), acting on behalf of, and with the approval of, the University of Alaska, may select—

''(1) any mineral interest (including an interest in oil or gas) in land located in the State, the unreserved portion of which is owned by the University of Alaska; or

''(2) any reversionary interest held by the United States in land located in the State, the unreserved portion of which is owned by the University of Alaska.

''(b) The total acreage of any parcel of land for which a partial interest is conveyed under subsection (a) shall be charged against the remaining entitlement of the State under this Act.

''(c) In taking title to a reversionary interest, the State, with the approval of the University of Alaska, waives all right to any future acreage credit if the reversion does not occur.

''SEC. 4. The Secretary may survey any vacant, unappropriated, and unreserved land in the State for purposes of allowing selections under this Act.

''SEC. 5. The authorized outstanding selections under this Act shall be not more than—

''(1) 125 percent of the remaining entitlement; plus

''(2) the number of acres of land that are in conflict with land owned by the University of Alaska, as identified in Native allotment applications on record with the Bureau of Land Management.''.

SEC. 106. SETTLEMENT OF REMAINING ENTITLEMENT.

(a) IN GENERAL.—The Secretary may enter into a binding written agreement with the State with respect to—

(1) the exact number and location of acres of land remaining to be conveyed under each entitlement established or confirmed by Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340), from—

(A) the land selected by the State as of January 3, 1994; and

(B) selections under the Act of January 21, 1929 (45 Stat. 1091, chapter 92);

(2) the priority in which the land is to be conveyed;

(3) the relinquishment of selections which are not to be conveyed; and

(4) the survey of the exterior boundaries of the land to be conveyed.

(b) CONSULTATION.—Before entering into an agreement under subsection (a), the Secretary shall ensure that any concerns or issues identified by any Federal agency potentially affected are given consideration.

(c) ERRORS.—The State, by entering into an agreement under subsection (a), shall receive any gain or bear any loss that results from errors in prior surveys, protraction diagrams, or the computation of the ownership of third parties on any land conveyed under an agreement entered into under subsection (a).

(d) AVAILABILITY OF AGREEMENTS.—Agreements entered into under subsection (a) shall be available for public inspection in the appropriate offices of the Department of the Interior.

(e) EFFECT.—Nothing in this section increases the entitlement provided to the State under Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340), or the Act of January 21, 1929 (45 Stat. 1091, chapter 92).

SEC. 107. EFFECT OF FEDERAL MINING CLAIMS.

(a) CONDITIONAL RELINQUISHMENTS.—

(1) IN GENERAL.—To facilitate the conversion of Federal mining claims to State mining claims on land selected or topfiled by the State, a Federal mining claimant may file with the Secretary a voluntary relinquishment of the Federal mining claim conditioned on conveyance of the land to the State.

(2) CONVEYANCE OF RELINQUISHED CLAIM.—The Secretary may convey the land described in the relinquished Federal mining claim to the State if, with respect to the land—

(A) the State has filed as of January 3, 1994—

(i) a selection application under Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 339); or

(ii) a future selection application under section 906(e) of the Alaska National Interest Lands Conservation Act 43 U.S.C. 1635(e)); and

(B) the land addressed by the selection application or future selection application is conveyed to the State.

(3) OBLIGATIONS UNDER FEDERAL LAW.—Until the date on which the land is conveyed under paragraph (2), a Federal mining claimant shall be subject to any obligations relating to the land under Federal law.

(4) NO RELINQUISHMENT.—If the land previously encumbered by the relinquished Federal mining claim is not conveyed to the State under paragraph (2), the relinquishment of land under paragraph (1) shall be of no effect.

(b) RIGHTS-OF-WAY; OTHER INTEREST.—On conveyance to the State of a relinquished Federal mining claim under this section, the State shall assume authority over any leases, licenses, permits, rights-of-way, operating plans, other land use authorizations, or reclamation obligations applicable to the relinquished Federal mining claim on the date of conveyance.

SEC. 108. LAND MISTAKENLY RELINQUISHED OR OMITTED.

Notwithstanding the selection deadlines under section 6(a) of Public Law 85–508 (commonly known as the ''Alaska Statehood Act'') (72 Stat. 340)—

(1) the State selection application AA–17607 NFCG 75, located in the Chugach National Forest, is reinstated to the parcels of land originally selected in 1978, which are more particularly described as—

(A) S½ sec. 14, T. 11 S., R. 11 W., of the Copper River Meridian;

(B) S½ sec. 15, T. 11 S., R. 11 W., of the Copper River Meridian;

(C) E½SE¼ sec. 16, T. 11 S., R. 11 W., of the Copper River Meridian;

(D) E½, E½W½, SW¼SW¼ sec. 21, T. 11 S., R. 11 W., of the Copper River Meridian;

(E) N½, SW¼, N½SE¼ sec. 22, T. 11 S., R. 11 W., of the Copper River Meridian;

(F) N½, SW¼, N½SE¼ sec. 23, T. 11 S., R. 11 W., of the Copper River Meridian;

(G) NW¼ sec. 27, T. 11 S., R. 11 W., of the Copper River Meridian; and

(H) N½N½, SE¼NE¼ sec. 28, T. 11 S., R. 11 W., of the Copper River Meridian; and

(2) the following parcels of land are considered topfiled under section 906(e) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 1635(e)):

(A) The parcels of land omitted from the State's topfiling of the Utility and Transportation Corridor, and other parcels of land encompassing the Trans-Alaska Pipeline System, withdrawn by Public Land Order No. 5150 (except for any land within the boundaries of a conservation system unit), which are more particularly described as—

(i) secs. 1–30, 32–36, T. 27 N., R. 11 W., of the Fairbanks Meridian;

(ii) secs. 10, 13—18, 21–28, and 33–36, T. 20 N., R. 13 W., of the Fairbanks Meridian;

(iii) secs. 13, 14, and 15, T. 20 N., R. 14 W., of the Fairbanks Meridian;

(iv) secs. 1–5, 8–17, and 20–28, T. 19 N., R. 13 W., of the Fairbanks Meridian;

(v) secs. 29–32, T. 20 N., R. 16 W., of the Fairbanks Meridian;

(vi) secs. 5–11, 14–23, and 25–36, T. 19 N., R. 16 W., of the Fairbanks Meridian;

(vii) secs. 30 and 31, T. 19 N., R. 15 W., of the Fairbanks Meridian;

(viii) secs. 5 and 6, T. 18 N., R. 15 W., of the Fairbanks Meridian;

(ix) secs. 1–2 and 7–34, T. 16 N., R. 14 W., of the Fairbanks Meridian; and

(x) secs. 4–9, T. 15 N., R. 14 W., of the Fairbanks Meridian.

(B) Secs. 1, 2, 11–14, T. 10 S., R. 42 W., of the Seward Meridian.

TITLE II—ALASKA NATIVE CLAIMS SETTLEMENT ACT

SEC. 201. LAND AVAILABLE AFTER SELECTION PERIOD.

(a) IN GENERAL.—To make certain Federal land available for conveyance to a Native Corporation that has sufficient remaining entitlement, the Secretary may waive the filing deadlines under sections 12 and 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611, 1615) if—

(1) the Federal land is—

(A) located in a township in which all or any part of a Native Village is located; or

(B) surrounded by—

(i) land that is owned by the Native Corporation; or

(ii) selected land that will be conveyed to the Native Corporation;

(2) the Federal land—

(A) became available after the end of the original selection period;

(B)(i) was not selected by the Native Corporation because the Federal land was subject to a competing claim or entry; and

(ii) the competing claim or entry has lapsed; or

(C) was previously an unavailable Federal enclave within a Native selection withdrawal area;

(3)(A) the Secretary provides the Native Corporation with a specific time period in which to decline the Federal land; and

(B) the Native Corporation does not submit to the Secretary written notice declining the land within the period established under subparagraph (A); and

(4) the State has voluntarily relinquished any valid State selection or top-filing for the Federal land.

(b) CONGRESSIONAL ACTION.—Subsection (a) shall not apply to a parcel of Federal land if Congress has specifically made other provisions for disposition of the parcel of Federal land.

SEC. 202. COMBINED ENTITLEMENTS.

Section 12 of the Alaska Native Claims Settlement Act (43 U.S.C. 1611) is amended—

(1) in the second sentence of subsection (b), by striking ''Regional Corporation shall'' and inserting ''Regional Corporation shall, not later than October 1, 2005,''; and

(2) by adding at the end the following:

''(f)(1) The entitlements received by any Village Corporation under subsection (a) and the reallocations made to the Village Corporation under subsection (b) may be combined, at the discretion of the Secretary, without—

''(A) increasing or decreasing the combined entitlement; or

''(B) increasing the limitation on selections of Wildlife Refuge System land, National Forest System land, or State-selected land under subsection (a).

''(2) The combined entitlement under paragraph (1) may be fulfilled from selections under subsection (a) or (b) without regard to the entitlement specified in the selection application.

''(3) All selections under a combined entitlement under paragraph (1) shall be adjudicated and conveyed in compliance with this Act.

''(4) Except in a case in which a survey has been contracted for before the date of enactment of this subsection, the combination of entitlements under paragraph (1) shall not require separate patents or surveys, to distinguish between conveyances made to a Village Corporation under subsections (a) and (b).''.

SEC. 203. AUTHORITY TO CONVEY BY WHOLE SECTION.

Section 14(d) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(d)) is amended—

(1) by striking ''(d) the Secretary'' and inserting the following:

''(d)(1) The Secretary''; and

(2) by adding at the end the following:

''(2) For purposes of applying the rule of approximation under this section, the largest legal subdivision that may be conveyed in excess of the applicable acreage limitation specified in subsection (a) shall be—

''(A) in the case of land managed by the Bureau of Land Management that is not within a conservation system unit, the next whole section;

''(B) in the case of land managed by an agency other than the Bureau of Land Management that is not within a conservation system unit, the next quarter-section and only with concurrence of the agency; or

''(C) in the case of land within a conservation system unit, a quarter of a quarter section, and if the land is managed by an agency other than the Bureau of Land Management, only with the concurrence of that agency.

''(3)(A) If the Secretary determines pursuant to paragraph (2) that an entitlement of a Village Corporation (other than a Village Corporation listed in section 16(a)) or a Regional Corporation may be fulfilled by conveying a specific tract of surveyed or unsurveyed land, the Secretary and the affected Village or Regional Corporation may enter into an agreement providing that all land entitlements under this Act shall be deemed satisfied by conveyance of the specifically identified and agreed upon tract of land.

''(B) An agreement entered into under subparagraph (A) shall be—

''(i) in writing;

''(ii) executed by the Secretary and the Village or Regional Corporation; and

''(iii) authorized by a corporate resolution adopted by the affected Village or Regional Corporation.

''(C) After execution of an agreement under subparagraph (A) and conveyance of the agreed upon tract to the affected Village or Regional Corporation—

''(i) the Secretary shall not make any further adjustments to calculations relating to acreage entitlements of the Village or Regional Corporation; and

''(ii) the Village or Regional Corporation shall not be entitled to any further conveyances under this Act.

''(D) A Village or Regional Corporation shall not be eligible to receive land under subparagraph (A) if the Village or Regional Corporation has received the full land entitlement of the Village or Regional Corporation through—

''(i) an actual conveyance of land; or

''(ii) a previous agreement.

''(E) If the calculations of the Secretary indicate that the final survey boundaries for any Village or Regional Corporation entitlement for which an agreement has not been entered into under this paragraph include acreage in a quantity that exceeds the statutory entitlement of the corporation by 1/10 of 1 percent or less, but not more than the applicable acreage limitation specified in paragraph (2)—

''(i) the entitlement shall be considered satisfied by the conveyance of the surveyed area; and

''(ii) the Secretary shall not change the survey for the sole purpose of an acreage adjustment.

''(F) This paragraph does not limit or otherwise affect the ability of a Village or Regional Corporation to enter into land exchanges with the United States.''.

SEC. 204. CONVEYANCE OF CEMETERY SITES AND HISTORICAL PLACES.

Section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) is amended—

(1) by striking ''(1) The Secretary'' and inserting the following:

''(1)(A) The Secretary'';

(2) by striking ''Only title'' and inserting the following:

''(B) Only title''; and

(3) by adding at the end the following:

''(C)(i) Notwithstanding acreage allocations made before the date of enactment of this subparagraph, the Secretary may convey any cemetery site or historical place—

''(I) with respect to which there is an application on record with the Secretary on the date of enactment of this paragraph; and

''(II) that is eligible for conveyance.

''(ii) Clause (i) shall also apply to any of the 188 closed applications that are determined to be eligible and reinstated under Secretarial Order No. 3220 dated January 5, 2001.

''(D) No applications submitted for the conveyance of land under subparagraph (A) that were closed before the date of enactment of this paragraph may be reinstated other than those specified in subparagraph (C)(ii).

''(E) After the date of enactment of this paragraph—

''(i) no application may be filed for the conveyance of land under subparagraph (A); and

''(ii) no pending application may be amended, except as necessary to conform the application to the description in the certification of eligibility of the Bureau of Indian Affairs.

''(F) Unless, not later than 1 year after the date of enactment of this paragraph, a Regional Corporation that has filed an application for a historic place submits to the Secretary a statement on the significance of and the location of the historic place—

''(i) the application shall not be valid; and

''(ii) the Secretary shall reject the application.

''(G) The State and the head of the Federal agency with administrative jurisdiction over the land shall have 30 days to provide written comments to the Secretary—

''(i) identifying any third party interest to which a conveyance under subparagraph (A) should be made subject; and

''(ii) describing any easements recommended for reservation.''.

SEC. 205. ALLOCATIONS BASED ON POPULATION.

Section 14(h)(8) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(8)) is amended by adding at the end the following:

''(C)(i) Notwithstanding any other provision of this subsection, as soon as practicable after enactment of this subparagraph, the Secretary shall allocate to a Regional Corporation eligible for an allocation under subparagraph (A) the Regional Corporation's share of 200,000 acres from lands withdrawn under this subsection, to be credited against acreage to be allocated to the Regional Corporation under subparagraph (A).

''(ii) Clause (i) shall apply to Chugach Alaska Corporation pursuant to the terms of the 1982 CNI Settlement Agreement.

''(iii) With respect to Cook Inlet Region, Inc., or Koniag, Inc.—

''(I) clause (i) shall not apply; and

''(II) the portion of the 200,000 acres allocated to Cook Inlet Region Inc. or Koniag, Inc., shall be retained by the United States.

''(iv) This subparagraph shall not affect any prior agreement entered into by a Regional Corporation other than the agreements specifically referred to in this subparagraph.''.

SEC. 206. AUTHORITY TO WITHDRAW LAND.

Section 14(h)(10) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(10)) is amended—

(1) by striking ''(10) Notwithstanding'' and inserting the following:

''(10)(A) Notwithstanding''; and

(2) by adding at the end the following:

''(B) If a Regional Corporation does not have enough valid selections on file to fulfill the remaining entitlement of the Regional Corporation under paragraph (8), the Secretary may use the withdrawal authority under subparagraph (A) to withdraw land that is vacant, unappropriated, and unreserved on the date of enactment of this subparagraph for selection by, and conveyance to, the Regional Corporation to fulfill the entitlement.''.

SEC. 207. REPORT ON WITHDRAWALS.

Not later than 18 months after the date of enactment of this Act, the Secretary shall—

(1) review the withdrawals made pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1616(d)(1)) to determine if any portion of the lands withdrawn pursuant to that provision can be opened to appropriation under the public land laws or if their withdrawal is still needed to protect the public interest in those lands;

(2) provide an opportunity for public notice and comment, including recommendations with regard to lands to be reviewed under paragraph (1); and

(3) submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that identifies any portion of the lands so withdrawn that can be opened to appropriation under the public land laws consistent with the protection of the public interest in these lands.

SEC. 208. AUTOMATIC SEGREGATION OF LAND FOR UNDERSELECTED VILLAGE CORPORATIONS.

Section 22(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1621(j)) is amended by adding at the end the following:

''(3) In lieu of withdrawal under paragraph (2), land may be segregated from all other forms of appropriation for the purposes described in that paragraph if—

''(A) the Secretary and the Village Corporation enter into an agreement identifying the land for selection; and

''(B) the Village Corporation files an application for selection of the land.''.

SEC. 209. SETTLEMENT OF REMAINING ENTITLEMENT.

(a) IN GENERAL.—The Secretary may enter into a binding written agreement with a Native Corporation relating to—

(1) the land remaining to be conveyed to the Native Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) from land selected as of September 1, 2004, or land made available under section 201, 206, or 208 of this Act;

(2) the priority in which the land is to be conveyed;

(3) the relinquishment of selections which are not to be conveyed;

(4) the selection entitlement to which selections are to be charged, regardless of the entitlement under which originally selected;

(5) the survey of the exterior boundaries of the land to be conveyed;

(6) the additional survey to be performed under section 14(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(c)); and

(7) the resolution of conflicts with Native allotment applications.

(b) REQUIREMENTS.—An agreement under subsection (a)—

(1) shall be authorized by a resolution of the Native Corporation entering into the agreement; and

(2) shall include a statement that the entitlement of the Native Corporation shall be considered complete on execution of the agreement.

(c) CORRECTION OF CONVEYANCE DOCUMENTS.—In an agreement under subsection (a), the Secretary and the Native Corporation may agree to make technical corrections to the legal description in the conveyance documents for easements previously reserved so that the easements provide the access intended by the original reservation.

(d) CONSULTATION.—Before entering into an agreement under subsection (a), the Secretary shall ensure that the concerns or issues identified by the State and all Federal agencies potentially affected by the agreement are given consideration.

(e) ERRORS.—Any Native Corporation entering into an agreement under subsection (a) shall receive any gain or bear any loss resulting from errors in prior surveys, protraction diagrams, or computation of the ownership of third parties on any land conveyed.

(f) EFFECT.—

(1) IN GENERAL.—An agreement under subsection (a) shall not—

(A) affect the obligations of Native Corporations under prior agreements; or

(B) result in a Native Corporation relinquishing valid selections of land in order to qualify for the withdrawal of other tracts of land.

(2) EFFECT ON SUBSURFACE RIGHTS.—The terms of an agreement entered into under subsection (a) shall be binding on a Regional Corporation with respect to the location and quantity of subsurface rights of the Regional Corporation under section 14(f) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(f)).

(3) EFFECT ON ENTITLEMENT.—Nothing in this section increases the entitlement provided to any Native Corporation under—

(A) the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); or

(B) the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

(g) BOUNDARIES OF A NATIVE VILLAGE.—An agreement entered into under subsection (a) may not define the boundaries of a Native Village.

(h) AVAILABILITY OF AGREEMENTS.—An agreement entered into under subsection (a) shall be available for public inspection in the appropriate offices of the Department of the Interior.

TITLE III—NATIVE ALLOTMENTS

SEC. 301. CORRECTION OF CONVEYANCE DOCUMENTS.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) is amended by adding at the end the following:

''(d)(1) If an allotment application is valid or would have been approved under section 905 of the Alaska National Interests Lands Conservation Act (43 U.S.C. 1634) had the land described in the application been in Federal ownership on December 2, 1980, the Secretary may correct a conveyance to a Native Corporation or to the State that includes land described in the allotment application to exclude the described allotment land with the written concurrence of the Native Corporation or the State.

''(2) A written concurrence shall—

''(A) include a finding that the land description proposed by the Secretary is acceptable; and

''(B) attest that the Native Corporation or the State has not—

''(i) granted any third party rights or taken any other action that would affect the ability of the United States to convey full title under the Act of May 17, 1906 (34 Stat. 197, chapter 2469); and;

''(ii) stored or allowed the deposit of hazardous waste on the land.

''(3) On receipt of an acceptable written concurrence, the Secretary, shall—

''(A) issue a corrected conveyance document to the State or Native Corporation, as appropriate; and

''(B) issue a certificate of allotment to the allotment applicant.

''(4) No documents of reconveyance from the State or an Alaska Native Corporation or evidence of title, other than the written concurrence and attestation described in paragraph (2), are necessary to use the procedures authorized by this subsection.''.

SEC. 302. TITLE RECOVERY OF NATIVE ALLOTMENTS.

(a) IN GENERAL.—In lieu of the process for the correction of conveyance documents available under subsection (d) of section 18 of the Alaska Native Claims Settlement Act (as added by section 301), any Native Corporation may elect to reconvey all of the land encompassed by an allotment claim or a portion of the allotment claim agreeable to the applicant in satisfaction of the entire claim by tendering a valid and appropriate deed to the United States.

(b) CERTIFICATE OF ALLOTMENT.—If the United States determines that the allotment application is valid or would have been approved under section 905 of the Alaska National Interests Lands Conservation Act (42 U.S.C. 1634) had the land described in the allotment application been in Federal ownership on December 2, 1980, and obtains title evidence acceptable under the Department of Justice title standards, the United States shall accept the deed from the Native Corporation and issue a certificate of allotment to the allotment applicant.

(c) PROBATE NOT REQUIRED.—If the Native Corporation reconveys the entire interest of the Native Corporation in the allotment claim of a deceased applicant, the United States may accept the deed and issue the certificate of allotment without waiting for a determination of heirs or the approval of a will.

(d) NO LIABILITY.—The United States shall not be subject to liability under Federal or State law for the presence of any hazardous substance in land or an interest in land solely as a result of any reconveyance to, and transfer by, the United States of land or interests in land under this section.

SEC. 303. NATIVE ALLOTMENT REVISIONS ON LAND SELECTED BY OR CONVEYED TO A NATIVE CORPORATION.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) (as amended by section 301) is amended by adding at the end the following:

''(e)(1) An allotment applicant who had an application pending before the Department of the Interior on December 18, 1971, and whose application is still open on the records of the Department of the Interior as of the date of enactment of this subsection may revise the land description in the application to describe land other than the land that the applicant originally intended to claim if—

''(A) the application—

''(i) describes land selected by or conveyed by interim conveyance or patent to a Native Corporation formed to receive benefits under this Act; or

''(ii) otherwise conflicts with an interest in land granted to a Native Corporation by the United States;

''(B) the revised land description describes land selected by or conveyed by interim conveyance or patent to a Native Corporation of approximately equal acreage in substitution for the land described in the original application;

''(C) the Director of the Bureau of Land Management has not adopted a final plan of survey for the final entitlement of the Native Corporation or its successor in interest; and

''(D) the Native Corporation that selected the land or its successor in interest provides a corporate resolution authorizing reconveyance or relinquishment to the United States of the land, or interest in land, described in the revised application.

''(2) The land description in an allotment application may not be revised under this section unless the Secretary has determined—

''(A) that the allotment application is valid or would have been approved under section 905 of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1634) had the land in the allotment application been in Federal ownership on December 2, 1980;

''(B) in consultation with the administering agency, that the proposed revision would not create an isolated inholding within a conservation system unit (as defined in section 102 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102)); and

''(C) that the proposed revision will facilitate completion of a land transfer in the State.

''(3)(A) On obtaining title evidence acceptable under Department of Justice title standards and acceptance of a reconveyance or relinquishment from a Native Corporation under paragraph (1), the Secretary shall issue a Native allotment certificate to the applicant for the land reconveyed or relinquished by the Native Corporation.

''(B) Any allotment revised under this section shall, when allotted, be made subject to any easement, trail, right-of-way, or any third-party interest (other than a fee interest) in existence on the revised allotment land on the date of revision.''.

SEC. 304. COMPENSATORY ACREAGE.

(a) IN GENERAL.—The Secretary shall adjust the acreage entitlement computation records for the State or an affected Native Corporation to account for any difference in the amount of acreage between the corrected description and the previous description in any conveyance document as a result of actions taken under section 18(d) of the Alaska Native Claims Settlement Act (as added by section 301) or section 18(e) of the Alaska Native Claims Settlement Act (as added by section 303), or for other voluntary reconveyances to the United States for the purpose of facilitating land transfers in the State.

(b) LIMITATION.—No adjustment to the acreage conveyance computations shall be made where the State or an affected Native Corporation retains a partial estate in the described allotment land.

(c) AVAILABILITY OF ADDITIONAL LAND.—If, as a result of implementation under section 18(d) of the Alaska Native Claims Settlement Act (as added by section 301) or any voluntary reconveyance to facilitate a land transfer, a Village Corporation has insufficient remaining selections from which to receive its full entitlement under the Alaska Native Claims Settlement Act, the Secretary may use the authority and procedures available under paragraph (3) of section 22(j) of

the Alaska Native Claims Settlement Act (43 U.S.C. 1621(j)) (as added by section 208) to make additional land available for selection by the Village Corporation.

SEC. 305. REINSTATEMENTS AND RECONSTRUCTIONS.

Section 18 of the Alaska Native Claims Settlement Act (43 U.S.C. 1617) (as amended by section 303) is amended by adding at the end the following:

''(f)(1) If an applicant for a Native allotment filed under the Act of May 17, 1906 (34 Stat. 197, chapter 2469) petitions the Secretary to reinstate a previously closed Native allotment application or to accept a reconstructed copy of an application claimed to have been timely filed with an agency of the Department of the Interior, the United States—

''(A) may seek voluntary reconveyance of any land described in the application that is reinstated or reconstructed after the date of enactment of this subsection; but

''(B) shall not file an action in any court to recover title from a current landowner.

''(2) A certificate of allotment that is issued for any allotment application for which a request for reinstatement or reconstruction is received or accepted after the date of enactment of this subsection shall be made subject to any Federal appropriation, trail, right-of-way, easement, or existing third party interest of record, including third party interests created by the State, without regard to the date on which the Native allotment applicant initiated use and occupancy.''.

SEC. 306. AMENDMENTS TO SECTION 41 OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT.

Section 41(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1629g(b)) is amended—

(1) in paragraph (1)(A), by inserting before the semicolon at the end the following: ''(except that the term 'nonmineral', as used in that Act, shall for the purpose of this subsection be defined as provided in section 905(a)(3) of the Alaska National Interest Lands Conservation Act (42 U.S.C. 1634(a)(3)), except that such definition shall not apply to land within a conservation system unit)''; and

(2) in paragraph (2)—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and indenting the clauses appropriately;

(B) by inserting ''(A)'' after ''(2)'';

(C) in clause (ii) (as redesignated by subparagraph (A)), by inserting after ''Department of Veterans Affairs'' the following: ''or based on other evidence acceptable to the Secretary''; and

(D) by adding at the end the following:

''(B)(i) If the Secretary requests that the Secretary of Veterans Affairs make a determination whether a veteran died as a direct consequence of a wound received in action, the Secretary of Veterans Affairs shall, within 60 days of receipt of the request—

''(I) provide a determination to the Secretary if the records of the Department of Veterans Affairs contain sufficient information to support such a determination; or

''(II) notify the Secretary that the records of the Department of Veterans Affairs do not contain sufficient information to support a determination and that further investigation will be necessary.

''(ii) Not later than 1 year after notification to the Secretary that further investigation is necessary, the Department of Veterans Affairs shall complete the investigation and provide a determination to the Secretary.''.

TITLE IV—FINAL PRIORITIES; CONVEYANCE AND SURVEY PLANS

SEC. 401. DEADLINE FOR ESTABLISHMENT OF REGIONAL PLANS.

(a) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Secretary, in coordination and consultation with Native Corporations, other Federal land management agencies, and the State, shall update and revise the 12 preliminary Regional Conveyance and Survey Plans.

(b) INCLUSIONS.—The updated and revised plans under subsection (a) shall identify any conflicts to be resolved and recommend any actions that should be taken to facilitate the finalization of land conveyances in a region by 2009.

SEC. 402. DEADLINE FOR ESTABLISHMENT OF VILLAGE PLANS.

Not later than 30 months after the date of enactment of this Act, the Secretary, in coordination with affected Federal land management agencies, the State, and Village Corporations, shall complete a final closure plan with respect to the entitlements for each Village Corporation under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

SEC. 403. FINAL PRIORITIZATION OF ANCSA SELECTIONS.

(a) IN GENERAL.—Any Native Corporation that has not received its full entitlement or entered into a voluntary, negotiated settlement of final entitlement shall submit the final, irrevocable priorities of the Native Corporation—

(1) in the case of a Village, Group, or Urban Corporation entitlement, not later than 36 months after the date of enactment of this Act; and

(2) in the case of a Regional Corporation entitlement, not later than 42 months after the date of enactment of this Act.

(b) ACREAGE LIMITATIONS.—The priorities submitted under subsection (a) shall not exceed land that is the greater of—

(1) not more than 125 percent of the remaining entitlement; or

(2) not more than 640 acres in excess of the remaining entitlement.

(c) CORRECTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the priorities submitted under subsection (a) may not be revoked, rescinded, or modified by the Native Corporation.

(2) TECHNICAL CORRECTIONS.—Not later than 90 days after the date of receipt of a notification by the Secretary that there appears to be a technical error in the priorities, the Native Corporation may correct the technical error in accordance with any recommendations of, and in a manner prescribed by or acceptable to, the Secretary.

(d) RELINQUISHMENT.—

(1) IN GENERAL.—As of the date on which the Native Corporation submits its final priorities under subsection (a)—

(A) any unprioritized, remaining selections of the Native Corporation—

(i) are relinquished, but any part of the selections may be reinstated for the purpose of correcting a technical error; and

(ii) have no further segregative effect; and

(B) all withdrawals under sections 11 and 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1610, 1615) under the relinquished selections are terminated.

(2) RECORDS.—All relinquishments under paragraph (1) shall be included in Bureau of Land Management land records.

(e) FAILURE TO SUBMIT PRIORITIES.—If a Native Corporation fails to submit priorities by the deadline specified in subsection (a)—

(1) with respect to a Native Corporation that has priorities on file with the Secretary, the Secretary—

(A) shall convey to the Native Corporation the remaining entitlement of the Native Corporation, as determined based on the most recent priorities of the Native Corporation on file with the Secretary and in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and

(B) may reject any selections not needed to fulfill the entitlement; or

(2) with respect to a Native Corporation that does not have priorities on file with the Secretary, the Secretary shall satisfy the entitlement by conveying land selected by the Secretary, in consultation with the appropriate Native Corporation, the Federal land managing agency with administrative jurisdiction over the land to be conveyed, and the State, that, to the maximum extent practicable, is—

(A) compact;

(B) contiguous to land previously conveyed to the Native Corporation; and

(C) consistent with the applicable preliminary Regional Conveyance and Survey Plan referred to in section 401.

(f) PLAN OF CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall—

(A) identify any Native Corporation that does not have sufficient priorities on file;

(B) develop priorities for the Native Corporation in accordance with subsection (e); and

(C) provide to the Native Corporation a plan of conveyance based on the priorities developed under subparagraph (B).

(2) FINALIZED SELECTIONS.—Not later than 180 days after the date on which the Secretary provides a plan of conveyance to the affected Village, Group, or Urban Corporation and the Regional Corporation, the Regional Corporation shall finalize any Regional selections that are in conflict with land selected by the Village, Group, or Urban Corporation that has not been prioritized by the deadline under subsection (a)(1).

(g) DISSOLVED OR LAPSED CORPORATIONS.—

(1)(A) If a Native Corporation is lapsed or dissolved at the time final priorities are required to be filed under this section and does not have priorities on file with the Secretary, the Secretary shall establish a deadline for the filing of priorities that shall be one year from the provisions of notice of the deadline.

(B) To fulfill the notice requirement under paragraph (1), the Secretary shall—

(i) publish notice of the deadline to a lapsed or dissolved Native Corporation in a newspaper of general circulation nearest the locality where the affected land is located; and

(ii) seek to notify in writing the last known shareholders of the lapsed or dissolved corporation.

(C) If a Native Corporation does not file priorities with the Secretary before the deadline set pursuant to subparagraph (A), the Secretary shall notify Congress.

(2) If a Native Corporation with final priorities on file with the Bureau of Land Management is lapsed or dissolved, the United States—

(A) shall continue to administer the prioritized selected land under applicable law; but

(B) may reject any selections not needed to fulfill the lapsed or dissolved Native Corporation's entitlement.

SEC. 404. FINAL PRIORITIZATION OF STATE SELECTIONS.

(a) FILING OF FINAL PRIORITIES.—

(1) IN GENERAL.—The State shall, not later than the date that is 4 years after the date of enactment of this Act, in accordance with section 906(f)(1) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(f)(1)), file final priorities with the Secretary for all land grant entitlements to the

State which remain unsatisfied on the date of the filing.

(2) RANKING.—All selection applications on file with the Secretary on the date specified in paragraph (1) shall—

(A) be ranked on a Statewide basis in order of priority; and

(B) include an estimate of the acreage included in each selection.

(3) INCLUSIONS.—The State shall include in the prioritized list land which has been top-filed under section 906(e) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(e)).

(4) ACREAGE LIMITATION.—

(A) IN GENERAL.—Acreage for top-filings shall not be counted against the 125 percent limitation established under section 906(f)(1) of the Alaska National Interest Lands Conservation Act (43 U.S.C. 1635(f)(1)).

(B) RELINQUISHMENT.—

(i) IN GENERAL.—The State shall relinquish any selections that exceed the 125 percent limitation.

(ii) FAILURE TO RELINQUISH.—If the State fails to relinquish a selection under clause (i), the Secretary shall reject the selection.

(5) LOWER-PRIORITY SELECTIONS.—Notwithstanding the prioritization of selection applications under paragraph (1), if the Secretary reserves sufficient entitlements for the top-filed selections, the Secretary may continue to convey lower-priority selections.

(b) DEADLINE FOR PRIORITIZATION.—

(1) IN GENERAL.—The State shall irrevocably prioritize sufficient selections to allow the Secretary to complete transfer of 101,000,000 acres by September 30, 2009.

(2) REPRIORITIZATION.—Any selections remaining after September 30, 2009, may be reprioritized.

(c) FINANCIAL ASSISTANCE.—The Secretary may, using amounts made available to carry out this Act, provide financial assistance to other Federal agencies, the State, and Native Corporations and entities to assist in completing the transfer of land by September 30, 2009.

TITLE V—ALASKA LAND CLAIMS HEARINGS AND APPEALS

SEC. 501. ALASKA LAND CLAIMS HEARINGS AND APPEALS.

(a) ESTABLISHMENT.—The Secretary may establish a field office of the Office of Hearings and Appeals in the State to decide matters within the jurisdiction of the Department of the Interior involving hearings and appeals, and other review functions of the Secretary regarding land transfer decisions and Indian probates in the State.

(b) APPOINTMENTS.—For purposes of carrying out subsection (a), the Secretary shall appoint administrative law judges selected in accordance with section 3105 of title 5, United States Code, and members of the Interior Board of Land Appeals.

TITLE VI—REPORT AND AUTHORIZATION OF APPROPRIATIONS

SEC. 601. REPORT.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report on the status of the implementation of this Act.

(b) CONTENTS.—The report shall—

(1) describe the status of conveyances to Alaska Natives, Native Corporations, and the State; and

(2) include recommendations for completing the conveyances required by this Act.

SEC. 602. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out the purposes of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate 1466 accelerates the process of conveying public land in Alaska under the Native Allotment Act of 1906, the Alaska Statehood Act of 1958, and the Alaska Native Claims Settlement Act of 1971.

Ninety million acres of Federal land entitlements intended for Alaska natives, the State of Alaska, and native corporations under these three acts are yet to be surveyed. While such lands may be selected or conveyed on an interim basis, full ownership of the lands is not enjoyed until the final conveyance. Existing procedures for transferring the lands affected by this bill are highly complex. Lawsuits and delays are inevitable as competing claims attempt to sort out the confusion. Senate 1466 enhances the ability of the Federal Government, the State, and Alaska natives to speed up the conveyance process through a more flexible process of negotiation and through authorization of appropriations to finish the necessary surveys of the land.

Mr. Speaker, I urge my colleagues to adopt this bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 1466 is intended to accelerate the transfer of millions of acres of Federal lands to Alaska natives, the State of Alaska, and to native corporations. Those individuals and entities are entitled to receive lands from the public domain under past acts of Congress.

As described by the sponsor's floor statement when the bill was introduced in July 2003, the land conveyance program in Alaska is the largest and most complex of any in United States history. Yet notwithstanding the complexity of this subject matter, there is very little legislative history concerning S. 1466. The bill was not reported by the Senate Energy Committee. An amendment was adopted on the Senate floor on October 10, but there is no statement or debate to explain what changes were made. And the House Resources Committee has neither held hearings nor a markup on this legislation.

Despite the curious absence of regular order, the majority has brought S. 1466 before the House today and intends to pass it along to the President without further scrutiny. S. 1466 is exclusively the product of the other body and apparently we have little choice but to hope that they got it right.

Mr. Speaker, I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and pass the Senate bill, S. 1466.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

THREE AFFILIATED TRIBES HEALTH FACILITY COMPENSATION ACT

Mr. GIBBONS. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 1146) to implement the recommendations of the Garrison Unit Joint Tribal Advisory Committee by providing authorization for the construction of a rural health care facility on the Fort Berthold Indian Reservation, North Dakota.

The Clerk read as follows:

S. 1146

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 ''Three Affiliated Tribes Health Facility Compensation Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) in 1949, the United States assumed jurisdiction over more than 150,000 prime acres on the Fort Berthold Indian Reservation, North Dakota, for the construction of the Garrison Dam and Reservoir;

(2) the reservoir flooded and destroyed vital infrastructure on the reservation, including a hospital of the Indian Health Service;

(3) the United States made a commitment to the Three Affiliated Tribes of the Fort Berthold Indian Reservation to replace the lost infrastructure;

(4) on May 10, 1985, the Secretary of the Interior established the Garrison Unit Joint Tribal Advisory Committee to examine the effects of the Garrison Dam and Reservoir on the Fort Berthold Indian Reservation;

(5) the final report of the Committee issued on May 23, 1986, acknowledged the obligation of the Federal Government to replace the infrastructure destroyed by the Federal action;

(6) the Committee on Indian Affairs of the Senate—

(A) acknowledged the recommendations of the final report of the Committee in Senate Report No. 102–250; and

(B) stated that every effort should be made by the Administration and Congress to provide additional Federal funding to replace the lost infrastructure; and

(7) on August 30, 2001, the Chairman of the Three Affiliated Tribes testified before the Committee on Indian Affairs of the Senate that the promise to replace the lost infrastructure, particularly the hospital, still had not been kept.

SEC. 3. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

The Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act is amended—

(1) in section 3504 (106 Stat. 4732), by adding at the end the following:

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.''; and

(2) by striking section 3511 (106 Stat. 4739) and inserting the following:

''SEC. 3511. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

''There are authorized to be appropriated to the Secretary of Health and Human Services $20,000,000 for the construction of, and such sums as are necessary for other expenses relating to, a rural health care facility on the Fort Berthold Indian Reservation of the Three Affiliated Tribes, North Dakota.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nevada (Mr. GIBBONS) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from Nevada (Mr. GIBBONS).

GENERAL LEAVE

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nevada?

There was no objection.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Senate 1146 was sponsored by the gentleman from North Dakota, Senator KENT CONRAD. It was reported by unanimous consent of the House Resources Committee on June 3, 2004.

This legislation fulfills a government commitment to replace a U.S. Public Health Service hospital serving the members of the Three Affiliated Tribes of the Fort Berthold Reservation. In the late 1940s, the hospital was destroyed in a flood resulting from the construction of the Garrison Dam and Reservoir Project by the U.S. Army Corps of Engineers and the Bureau of Reclamation. The flood forced the relocation of many Indian families, and it is long overdue that Congress fulfills all components of its pledge to compensate the tribe. I urge the speedy adoption of this bill.

Mr. Speaker, I reserve the balance of my time.

Mrs. CHRISTENSEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in 1948, then Chairman George Gillette of the Three Affiliated Tribes of Fort Berthold, North Dakota, wept as a contract was signed to sell over 150,000 acres of tribal land to the U.S. Government to build the Garrison Dam. Through his grief, Chairman Gillette stated, ''We will sign this contract with a heavy heart. With a few scratches of the pen, we will sell the best part of our reservation. Right now, the future does not look good for us.''

Chairman Gillette was correct as 80 percent of the tribe was forcibly relocated, 94 percent of their agricultural land was destroyed and their hospital flooded. Today, 56 years later, Chairman Gillette can now smile as we finally authorize this health care facility.

Over this period of time, there has been one reason or another not to fulfill this promise made to the tribes. In fact, we are only here today because of the hard work and determined persistence of several people. The North Dakota delegation, led by Senator CONRAD, the sponsor of this bill, has worked tirelessly to get this passed. Senators CONRAD and DORGAN and our colleague, the gentleman from North Dakota (Mr. POMEROY), deserve much of the credit. I also want to thank the gentleman from California (Mr. POMBO) for allowing this bill to come to the floor today.

I would truly be remiss, however, if I did not credit Tex Hall, chairman of the Three Affiliated Tribes of Fort Berthold, and Ranking Member RAHALL of the Committee on Resources for all of their efforts to get us here today. Certainly there is a connection through the years from Chairman Gillette to Chairman Hall which has kept the drumbeat alive and steady not to give up the fight for this facility. Ranking Member RAHALL heard that drum and took heed, making this bill a high priority. You see, Mr. Speaker, the gentleman from West Virginia knows all too well how promises made when resources are desired can quickly turn into devastated lands and broken promises. With that empathy, the gentleman from West Virginia kept pushing to get this bill heard today and I thank him.

Mr. Speaker, I urge my colleagues to support this bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. I thank my colleague for yielding me this time.

Mr. Speaker, this bill corrects a long overdue problem. When the Missouri River was dammed in North Dakota as part of the Pick-Sloan water project, the resulting flood created a lake about the size of Rhode Island. The lake is still with us. A number of communities were flooded out in the course of creating the reservoir. One of them, Elbowoods, was a community that was part of the Three Affiliated Tribes Reservation in western North Dakota. Elbowoods had a hospital, a 28-bed, 35,000 square foot hospital, a most significant medical facility in that rural part of North Dakota, certainly the most significant medical facility serving the reservation.

In order to persuade the Three Affiliated Tribes, Mandan, Hidatsa and Arikare nations, to vote in favor of the dam and give up 156,000 acres under this reservoir, the Federal Government made a commitment to replace the hospital. The tribes in western North Dakota are still waiting. This authorization will authorize up to $20 million for the construction of this medical facility.

My colleagues, I am very familiar with this area. I have been there many, many times. I am acquainted with their medical facilities. They are grossly inadequate. This is an area where there are significant health needs and grossly inadequate facilities in which to meet them and a 50-year promise unmet by the Federal Government.

I certainly want to thank those that have made it possible for this bill to come to the floor, the gentleman from California (Mr. POMBO) and, of course, as was mentioned by the preceding speaker, the very aggressive, ongoing efforts by the gentleman from West Virginia (Mr. RAHALL) to get this matter considered.

As I told the gentleman from California (Mr. POMBO), this matter is deeply important to me as a representative of North Dakota because I feel so strongly about the injustice of what was done with the flooding out of this hospital, promising another one and then never getting it done; so I am really deeply grateful that this has been allowed for consideration under the suspension calendar. I urge the unanimous adoption of it in the course of our deliberations.

Mrs. CHRISTENSEN. Mr. Speaker, I yield back the balance of my time.

Mr. GIBBONS. Mr. Speaker, I yield myself such time as I may consume.

It marks a historic point in the Committee on Resources, having just passed its more than 200th piece of legislation under suspension in the House for the year which sets a record for not only the committee but I believe for the House in terms of legislation passed.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nevada (Mr. GIBBONS) that the House suspend the rules and pass the Senate bill, S. 1146.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

CORRECTING ENROLLMENT OF H.R. 1417

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and concur in the Senate concurrent resolution (S. Con. Res. 145) to correct the enrollment of H.R. 1417.

The Clerk read as follows:

S. CON. RES. 145

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of H.R. 1417, an Act to amend title 17,

United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes (the Copyright Royalty and Distribution Reform Act of 2004), the Clerk of the House of Representatives shall make the following corrections:

(1) In section 801 of title 17, United States Code, as amended by section 3(a) of H.R. 1417—

(A) in subsection (b)(7)(A)—

(i) in clause (i), strike ''the other participants'' and insert ''participants''; and

(ii) in clause (ii), strike ''any other participant described in subparagraph (A)'' and insert ''any participant described in clause (i)'';

(B) in subsection (b)(7)(B), strike ''118(b) (2) or (3)'' and insert ''118(b)(2)'';

(C) in subsection (b)(8), insert a comma after ''802(g)''; and

(D) in subsection (c), strike ''As provided in section 801(f)(1), the'' and insert ''The''.

(2) In section 802 of title 17, United States Code, as amended by section 3(a) of H.R. 1417—

(A) in subsection (a)(1), in the second sentence—

(i) strike ''two Copyright'' and insert ''2 Copyright''; and

(ii) strike ''one shall'' and insert ''1 shall'';

(B) in subsection (c)—

(i) strike ''appointed the Chief Copyright'' and insert ''appointed as the Chief Copyright''; and

(ii) strike ''appointed Copyright'' and insert ''appointed as Copyright''; and

(C) in subsection (f)—

(i) in paragraph (1)(A)(ii), strike ''14 days of receipt by the Register of Copyrights of all'' and insert ''14 days after the Register of Copyrights receives all'';

(ii) in paragraph (1)(B)(i)—

(I) strike ''The Register shall'' and insert ''The Register of Copyrights shall'';

(II) strike ''30 days of receipt by the Register of Copyrights of all'' and insert ''30 days after the Register of Copyrights receives all''; and

(III) in the last sentence, insert ''to the Copyright Royalty Judges'' after ''is timely delivered'';

(iii) in paragraph (1)(D)—

(I) insert after the second sentence the following: ''The Register of Copyrights shall issue such written decision not later than 60 days after the date on which the final determination by the Copyright Royalty Judges is issued.'';

(II) in the following sentence, insert a comma after ''such written decision'';

(III) strike ''section 802(f)(1)(D)'' and insert ''this subparagraph'';

(IV) strike ''notification and undertakes to consult with'' and insert ''notification to, and undertakes to consult with,''; and

(V) strike ''fails within reasonable period after receipt of such notification'' and insert ''fails, within a reasonable period after receiving such notification,''.

(3) In section 803 of title 17, United States Code, as amended by section 3(a) of H.R. 1417—

(A) in subsection (a)(1), strike ''Librarian of Congress, copyright arbitration royalty panels,'' and insert ''the Librarian of Congress,'';

(B) in subsection (b)—

(i) in paragraph (1), amend subparagraph (A)(i) to read as follows:

''(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) The Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter, calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be—

''(I) promptly upon a determination made under section 804(a);

''(II) by no later than January 5 of a year specified in paragraph (2) of section 804(b) for the commencement of proceedings;

''(III) by no later than January 5 of a year specified in subparagraph (A) or (B) of paragraph (3) of section 804(b) for the commencement of proceedings, or as otherwise provided in subparagraph (A) or (C) of such paragraph for the commencement of proceedings;

''(IV) as provided under section 804(b)(8); or

''(V) by no later than January 5 of a year specified in any other provision of section 804(b) for the filing of petitions for the commencement of proceedings, if a petition has not been filed by that date.'';

(ii) in clause (ii) of paragraph (1)(A)—

(I) strike ''proceeding, under clause (i)'' and insert ''proceeding under clause (i)''; and

(II) strike ''section 803(b)(3)'' and insert ''paragraph (3)'';

(iii) in paragraph (4)(A), strike ''a participant in the proceeding asserts a claim in the amount of'' and insert ''the contested amount of a claim is'';

(iv) in paragraph (6)(C)—

(I) in clause (iv), insert a comma after ''orders'';

(II) in clause (v), strike ''according to'' and insert ''in accordance with''; and

(III) in clause (vi)(I), strike ''absent the discovery sought'' and insert '', absent the discovery sought,'';

(v) in clause (vii), strike ''interrogatories and'' and insert ''interrogatories, and''; and

(vi) in clause (ix)—

(I) in the first sentence, insert a comma after ''give testimony'' and insert a comma after ''inspection of documents or tangible things''; and

(II) in the last sentence, strike ''subparagraph'' and insert ''clause'';

(C) in subsection (c)—

(i) in paragraph (1), strike ''(b)(3)(C)(x)'' and insert ''(b)(6)(C)(x)'';

(ii) in paragraph (2)—

(I) in subparagraph (A)—

(aa) insert ''in a proceeding'' after ''a participant''; and

(bb) strike ''a proceeding is issued'' and insert ''the proceeding is issued'';

(II) in subparagraph (B), strike ''their initial determination concerning rates and terms to the participants in the proceeding'' and insert ''to the participants in the proceeding their initial determination concerning rates and terms''; and

(III) in subparagraph (C), strike ''except as provided under subsection (d)(1)'' and insert ''except that nonparticipation may give rise to the limitations with respect to judicial review provided for in subsection (d)(1)''; and

(iii) in paragraph (6), strike ''Following review of the determination by the Register of Copyrights under section 802(f)(1)(D)'' and insert ''By no later than the end of the 60-day period provided in section 802(f)(1)(D)''; and

(D) in the second sentence of subsection (d)(2)(A), strike ''transmission service'' and insert ''licensee''.

(4) In section 5(b)(1)—

(A) in subparagraph (A), strike ''and'' at the end;

(B) strike subparagraph (B); and

(C) redesignate subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(5) In the amendment made by section 5(b)(1)(A)—

(A) strike ''5-year periods'' and insert ''5-year period''; and

(B) strike ''such other periods'' and insert ''such other period''.

(6) Strike paragraph (3) of section 5(b) and insert the following:

(3) in paragraph (5), by striking ''determination by a copyright arbitration royalty panel or decision by the Librarian of Congress'' and inserting ''decision by the Librarian of Congress or determination by the Copyright Royalty Judges'';

(7) In the amendment made by section 5(c)(1)(A)(i)—

(A) strike ''5-year periods'' and insert ''the 5-year period''; and

(B) strike ''different transitional periods are provided in section 804(b), or such periods'' and insert ''a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period''.

(8) In the amendment made by section 5(c)(1)(B)(i), strike 'in section 804(b)'' and insert ''under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004''.

(9) In the amendment made by section 5(c)(2)(A)—

(A) strike ''5-year periods'' and insert ''the 5-year period''; and

(B) strike ''different transitional periods are provided in section 804(b), or such periods'' and insert ''a different transitional period is provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period''.

(10) In the amendment made by section 5(c)(2)(B)(i), strike 'in section 804(b)'' and insert ''under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004''.

(11) Strike paragraph (3) of section 5(c) and insert the following:

(3) in paragraph (3), by striking ''determination by a copyright arbitration royalty panel or decision by the Librarian of Congress'' and inserting ''decision by the Librarian of Congress or determination by the Copyright Royalty Judges''; and

(12) In section 5(c)(4)(B), insert ''of subparagraph (A) the following:'' after ''by adding after the first sentence''.

(13) In the amendment made by section 5(d)(3)(A), strike ''during periods'' and insert ''during the period''.

(14) In section 5(d)(4)—

(A) strike ''and'' at the end of subparagraph (B);

(B) add ''and'' after the semicolon at the end of subparagraph (C); and

(C) add after subparagraph (C) the following:

(D) in the last sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

(15) In the amendment made by section 5(d)(5)(A)(i), strike '', Copyright Royalty Judges, or a copyright arbitration royalty panel to the extent those determinations were accepted by the Librarian of Congress'' and insert ''or Copyright Royalty Judges''.

(16) In the amendment made by section 5(f)(1)(B)—

(A) strike '', a copyright arbitration royalty panel,''; and

(B) strike ''to the extent that they were accepted by the Librarian of Congress,''.

(17) In section 5, insert the following after subsection (g) and redesignate succeeding subsections accordingly:

(h) RATEMAKING FOR SATELLITE CARRIERS.—Section 119(c) of title 17, United States Code, is amended—

(1) in paragraph (2)—

(A) in subparagraph (B), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(B) in subparagraph (C), by striking ''Register of Copyrights shall prescribe'' and inserting ''Copyright Royalty Judges shall prescribe as provided in section 803(b)(6); and

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking ''arbitration proceedings'' and inserting ''proceedings''; and

(ii) by striking ''arbitration proceeding'' and inserting ''proceedings'';

(B) in subparagraph (B)—

(i) by striking ''copyright arbitration royalty panel appointed under chapter 8'' and inserting ''Copyright Royalty Judges''; and

(ii) by striking ''panel shall base its decision'' and inserting ''Copyright Royalty Judges shall base their determination''; and

(C) in subparagraph (C)—

(i) in the heading, by striking ''DECISION OF ARBITRATION PANEL OR ORDER OF LIBRARIAN'' and inserting ''DETERMINATION UNDER CHAPTER 8''; and

(ii) by striking clauses (i) and (ii) and inserting the following:

''(i) is made by the Copyright Royalty Judges pursuant to this paragraph and becomes final, or

''(ii) is made by the court on appeal under section 803(d)(3),''.

(18) In the first sentence of section 6(b)(1)—

(A) strike ''date of enactment of this Act'' and insert ''effective date provided in subsection (a)''; and

(B) strike ''such date of enactment'' and insert ''such effective date''.

(19) Strike paragraph (2) of section 6(b) and insert the following:

(2) CERTAIN ROYALTY RATE PROCEEDINGS.—Notwithstanding paragraph (1), the amendments made by this Act shall not affect proceedings to determine royalty rates pursuant to section 119(c) of title 17, United States Code, that are commenced before January 31, 2006.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on Senate Concurrent Resolution 145 currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, prior to our last recess, the other body was frantically applying their finishing touches to H.R. 1417, a bill to reform the copyright royalty arbitration process which we will consider in a few minutes. When we get to that bill, I will describe the core amendments that were developed there. For now, I will just state that they are acceptable to the House Committee on the Judiciary.

Unfortunately, in the rush to send the amended bill back to the House, some inadvertent drafting errors were included in the text. The purpose of this concurrent resolution which passed the other body yesterday is to correct these provisions before the fact in the enrollment of the bill. In other words, the concurrent resolution will automatically make the appropriate changes to H.R. 1417, thereby ensuring that the measure will work as intended.

□ 1700

The most expeditious way to address this matter is by concurring in the Senate concurrent resolution. Because we cannot approve H.R. 1417 conditionally, it is important that we consider and support the enrolling resolution first.

The concurrent resolution is especially important because of the interaction of the present language in H.R. 1417 with that of H.R. 4518, the Satellite Home Viewer Extension and Reauthorization Act of 2004, which passed the House on October 6. Among other things, that measure extends the copyright compulsory license for satellite broadcasts for another 5 years.

As the Committee on the Judiciary moved H.R. 4518 through the legislative process, the major developers of copyrighted programming and the satellite carriers arrived at a voluntary agreement on the use and compensation of this programming.

However, the relevant Senate text in H.R. 1417 inadvertently required rate-making proceedings under the satellite license to be conducted pursuant to the rules and practices in place prior to the enactment of the CARP performed bill. This conflicts with those provisions in the satellite bill that take into account the voluntary agreement. In other words, unless the error is corrected, the voluntary agreement will not work as intended once the satellite bill is adopted.

Senate Concurrent Resolution 145 will ensure that the voluntary agreement and the text of the satellite bill will operate as intended by Congress and the parties to the rate-making negotiations.

This major fix aside, the concurrent resolution makes other noncontroversial tweaks to additional drafting errors. These tweaks include developing language that clarifies certain definitions; imposing time deadlines on the Copyright Office when reviewing legal matters; and tightening those rules that prevent claimants from ''gaming'' small-claim proceedings.

Finally, the concurrent resolution eliminates typographical errors and adopts other grammatical and stylistic changes where appropriate.

Mr. Speaker, after 3 years of the excruciating process, it is time to put CARP reform to bed. I urge Members to support this concurrent resolution and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I ask my colleagues to join me in supporting Senate Concurrent Resolution 145. It is a critical adjunct to H.R. 1417, the next bill to be considered on the suspension calendar today. S. Con. Res. 145 will correct a number of drafting errors within H.R. 1417 prior to enrollment of that bill. While many of these drafting errors are purely technical in nature, some may have significant negative repercussions. So it is critical that we concur in S. Con. Res. 145 now and thus ensure these errors will be corrected before H.R. 1417 becomes law.

I am not going to bore my colleagues with an explanation of all the technical changes made by S. Con. Res. 145, but I would like to bore my colleagues with a few of the changes that have the most substantive effect.

S. Con. Res. 145 ensures that H.R. 1417 will not create a major conflict with H.R. 4518, the satellite bill now pending before the Senate. Section 6(b)(2) of H.R. 1417 states that, notwithstanding any other provision of law, satellite license rate-setting proceedings will be conducted pursuant to the law, rules and practices in place prior to enactment of H.R. 1417. Thus, even if H.R. 4518 is enacted after H.R. 1417, section 6(b)(2) would take precedence over the provisions of H.R. 4518. Such an outcome would undo provisions of H.R. 4518 that created an expedited procedure for submitting and adopting voluntary section 119 rate agreements and thus undo language critical to the viability of H.R. 4518. S. Con. Res. 145 fixes this problem by ensuring that the process H.R. 4518 may later establish for determining satellite TV royalties will not be preempted by the terms of H.R. 1417.

S. Con. Res. 145 also addresses the concern that the Senate amendments to H.R. 1417 will render it impossible for decisions of copyright royalty judges to take effect.

The Senate amendments to H.R. 1417 state that the Librarian of Congress shall cause a copyright royalty judge determination to be published in the Federal Register following the Register's review of the CRJ's determination. However, the Register's review is both permissive and unlimited in time. If the Register never undertakes such a review, H.R. 1417 would appear to prohibit the Librarian from publishing the CRJ's determination.

S. Con. Res. 145 addresses this problem by establishing a time frame within which the Register must complete its review for legal error. As a result, the Librarian will, after a date certain, be authorized to publish the determinations of CRJs.

S. Con. Res. 145 addresses concerns that, as structured in Senate-passed H.R. 1417, the small claims process in distribution proceedings would not work. H.R. 1417 allows a distribution proceeding participant, who has a legitimate claim of $6 to avoid being forced into a small claims proceeding if he asserts a claim of $10,005. However, under H.R. 1417, that same participant cannot be sanctioned for bad faith inflation of a claim because the amount in controversy is less than $10,000. This anomaly allows participants to game the system and force full-blown distribution proceedings, exactly the problem small claim proceedings were designed to address.

S. Con. Res. 145 addresses this problem by hewing to the approach taken in the House-passed version of H.R. 1417. This approach ensures that participants are forced into small claims proceedings if the contested amount of their claim is $10,000 or less. Thus, a participant who asserts a claim of $10,005 could still be forced into a small claims proceeding if other participants asserted they were willing to pay $6, and thus the contested amount is less than $10,000. If the participant attempts to game the system by asserting a claim of $10,007, then the participant would face fines for asserting in bad faith an amount in controversy in excess of $10,000.

And, finally, S. Con. Res. 145 addresses one further substantive problem created by the Senate amendments to H.R. 1417. H.R. 1417 unintentionally removed the current legal requirement that voluntary agreements submitted to establish rates and terms under the section 112 compulsory license must include a minimum payment for uses of copyrighted works covered by section 112. S. Con. Res. 145 would ensure that H.R. 1417 does not alter this current legal obligation.

In conclusion, Mr. Speaker, adoption of S. Con. Res. 145 is critical to ensuring that H.R. 1417, which we will take up next, will operate as intended. Thus, I urge its adoption by my colleagues.

Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS), ranking member of the Committee on the Judiciary.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, I thank the gentleman from California (Mr. BERMAN), ranking member of this very important Subcommittee on Courts, the Internet, and Intellectual Property, for yielding me this time.

His explanation has been more than sufficient in which we make sure that what we are doing with the Copyright Arbitration Royalty Panel is done correctly. And with H.R. 1417, with which I was pleased to join him and the gentleman from Wisconsin (Chairman SENSENBRENNER) and gentleman from Texas (Mr. SMITH), subcommittee chairman, on, with the gentleman from California (Mr. BERMAN), does it.

Mr. Speaker, I rise in support of this legislation. Those of us in Congress and the private sector who follow how the government sets copyright royalty rates agree that the current system needs change. It is expensive, unwieldy, and too unpredictable. Based on that, subcommittee Chairman SMITH, subcommittee Ranking Member BERMAN, and I introduced legislation, H.R. 1417, that would make substantial procedural changes.

We heard the current system is costly because the copyright owners and users have to pay for the arbitrators. Because copyright law subjects copyright owners and users to a compulsory process, we believe the law should not place this additional financial burden on them. Our bill creates 3 Copyright Royalty Judges who would be paid from appropriated funds to set royalty rates and distribute royalty fees.

Another complaint was that the CARP does not have adequate rules on how to address hearsay evidence. This bill explicitly requires that the judges treat hearsay evidence in the same manner that it is treated in Federal court. This will bring uniformity to the proceedings for parties on both sides of royalty disputes.

This bill also alters the terms for which certain royalty rates are in effect. Rates that are determined by the Judges will be in effect for 5 years. This should create some predictability and uniformity for those who rely on the Judges' determinations.

I urge my colleagues to vote "yes" on this bill as amended.

Mr. BERMAN. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. STEARNS). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and concur in the Senate concurrent resolution, S. Con. Res. 145.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

COPYRIGHT ROYALTY AND DISTRIBUTION REFORM ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 1417) to amend title 17, United States Code, to replace copyright arbitration royalty panels with Copyright Royalty Judges, and for other purposes.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Copyright Royalty and Distribution Reform Act of 2004''.

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 17, United States Code.

SEC. 3. COPYRIGHT ROYALTY JUDGE AND STAFF.

(a) IN GENERAL.—Chapter 8 is amended to read as follows:

"CHAPTER 8—PROCEEDINGS BY COPYRIGHT ROYALTY JUDGES

''Sec.
''801. Copyright Royalty Judges; appointment and functions.
''802. Copyright Royalty Judgeships; staff.
''803. Proceedings of Copyright Royalty Judges.
''804. Institution of proceedings.
''805. General rule for voluntarily negotiated agreements.

"§ 801. Copyright Royalty Judges; appointment and functions

''(a) APPOINTMENT.—The Librarian of Congress shall appoint 3 full-time Copyright Royalty Judges, and shall appoint 1 of the 3 as the Chief Copyright Royalty Judge. The Librarian shall make appointments to such positions after consultation with the Register of Copyrights.

''(b) FUNCTIONS.—Subject to the provisions of this chapter, the functions of the Copyright Royalty Judges shall be as follows:

''(1) To make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004. The rates applicable under sections 114(f)(1)(B), 115, and 116 shall be calculated to achieve the following objectives:

''(A) To maximize the availability of creative works to the public.

''(B) To afford the copyright owner a fair return for his or her creative work and the copyright user a fair income under existing economic conditions.

''(C) To reflect the relative roles of the copyright owner and the copyright user in the product made available to the public with respect to relative creative contribution, technological contribution, capital investment, cost, risk, and contribution to the opening of new markets for creative expression and media for their communication.

''(D) To minimize any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

''(2) To make determinations concerning the adjustment of the copyright royalty rates under section 111 solely in accordance with the following provisions:

''(A) The rates established by section 111(d)(1)(B) may be adjusted to reflect—

''(i) national monetary inflation or deflation; or

''(ii) changes in the average rates charged cable subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar level of the royalty fee per subscriber which existed as of the date of October 19, 1976,

except that—

''(I) if the average rates charged cable system subscribers for the basic service of providing secondary transmissions are changed so that the average rates exceed national monetary inflation, no change in the rates established by section 111(d)(1)(B) shall be permitted; and

''(II) no increase in the royalty fee shall be permitted based on any reduction in the average number of distant signal equivalents per subscriber.

The Copyright Royalty Judges may consider all factors relating to the maintenance of such level of payments, including, as an extenuating factor, whether the industry has been restrained by subscriber rate regulating authorities from increasing the rates for the basic service of providing secondary transmissions.

''(B) In the event that the rules and regulations of the Federal Communications Commission are amended at any time after April 15, 1976, to permit the carriage by cable systems of additional television broadcast signals beyond the local service area of the primary transmitters of such signals, the royalty rates established by section 111(d)(1)(B) may be adjusted to ensure that the rates for the additional distant signal equivalents resulting from such carriage are reasonable in the light of the changes effected by the amendment to such rules and regulations. In determining the reasonableness of rates proposed following an amendment of Federal Communications Commission rules and regulations, the Copyright Royalty Judges shall consider, among other factors, the economic impact on copyright owners and users; except that no adjustment in royalty rates shall be made under this subparagraph with respect to any distant signal equivalent or fraction thereof represented by—

''(i) carriage of any signal permitted under the rules and regulations of the Federal Communications Commission in effect on April 15, 1976, or the carriage of a signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal; or

''(ii) a television broadcast signal first carried after April 15, 1976, pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules and regulations were in effect on April 15, 1976.

''(C) In the event of any change in the rules and regulations of the Federal Communications Commission with respect to syndicated and sports program exclusivity after April 15, 1976, the rates established by section 111(d)(1)(B) may be adjusted to assure that such rates are reasonable in light of the changes to such rules and regulations, but any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change.

''(D) The gross receipts limitations established by section 111(d)(1) (C) and (D) shall be adjusted to reflect national monetary inflation or deflation or changes in the average rates charged cable system subscribers for the basic service of providing secondary transmissions to maintain the real constant dollar value of the exemption provided by such section, and the royalty rate specified therein shall not be subject to adjustment.

''(3)(A) To authorize the distribution, under sections 111, 119, and 1007, of those royalty fees collected under sections 111, 119, and 1005, as the case may be, to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy.

''(B) In cases where the Copyright Royalty Judges determine that controversy exists, the Copyright Royalty Judges shall determine the distribution of such fees, including partial distributions, in accordance with section 111, 119, or 1007, as the case may be.

''(C) The Copyright Royalty Judges may make a partial distribution of such fees during the pendency of the proceeding under subparagraph (B) if all participants under section 803(b)(2) in the proceeding that are entitled to receive those fees that are to be partially distributed—

''(i) agree to such partial distribution;

''(ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);

''(iii) file the agreement with the Copyright Royalty Judges; and

''(iv) agree that such funds are available for distribution.

''(D) The Copyright Royalty Judges and any other officer or employee acting in good faith in distributing funds under subparagraph (C) shall not be held liable for the payment of any excess fees under subparagraph (C). The Copyright Royalty Judges shall, at the time the final determination is made, calculate any such excess amounts.

''(4) To accept or reject royalty claims filed under sections 111, 119, and 1007, on the basis of timeliness or the failure to establish the basis for a claim.

''(5) To accept or reject rate adjustment petitions as provided in section 804 and petitions to participate as provided in section 803(b) (1) and (2).

''(6) To determine the status of a digital audio recording device or a digital audio interface device under sections 1002 and 1003, as provided in section 1010.

''(7)(A) To adopt as a basis for statutory terms and rates or as a basis for the distribution of statutory royalty payments, an agreement concerning such matters reached among some or all of the participants in a proceeding at any time during the proceeding, except that—

''(i) the Copyright Royalty Judges shall provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement and shall provide to the other participants in the proceeding under section 803(b)(2) that would be bound by the terms, rates, or other determination set by the agreement an opportunity to comment on the agreement and object to its adoption as a basis for statutory terms and rates; and

''(ii) the Copyright Royalty Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement, if any other participant described in subparagraph (A) objects to the agreement and the Copyright Royalty Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.

''(B) License agreements voluntarily negotiated pursuant to section 112(e)(5), 114(f)(3), 115(c)(3)(E)(i), 116(c), or 118(b) (2) or (3) that do not result in statutory terms and rates shall not be subject to clauses (i) and (ii) of subparagraph (A).

''(C) Interested parties may negotiate and agree to, and the Copyright Royalty Judges may adopt, an agreement that specifies as terms notice and recordkeeping requirements that apply in lieu of those that would otherwise apply under regulations.

''(8) To perform other duties, as assigned by the Register of Copyrights within the Library of Congress, except as provided in section 802(g) at times when Copyright Royalty Judges are not engaged in performing the other duties set forth in this section.

''(c) RULINGS.—As provided in section 802(f)(1), the Copyright Royalty Judges may make any necessary procedural or evidentiary rulings in any proceeding under this chapter and may, before commencing a proceeding under this chapter, make any such rulings that would apply to the proceedings conducted by the Copyright Royalty Judges.

''(d) ADMINISTRATIVE SUPPORT.—The Librarian of Congress shall provide the Copyright Royalty Judges with the necessary administrative services related to proceedings under this chapter.

''(e) LOCATION IN LIBRARY OF CONGRESS.—The offices of the Copyright Royalty Judges and staff shall be in the Library of Congress.

''§ 802. Copyright Royalty Judgeships; staff

''(a) QUALIFICATIONS OF COPYRIGHT ROYALTY JUDGES.—

''(1) IN GENERAL.—Each Copyright Royalty Judge shall be an attorney who has at least 7 years of legal experience. The Chief Copyright Royalty Judge shall have at least 5 years of experience in adjudications, arbitrations, or court trials. Of the other two Copyright Royalty Judges, one shall have significant knowledge of copyright law, and the other shall have significant knowledge of economics. An individual may serve as a Copyright Royalty Judge only if the individual is free of any financial conflict of interest under subsection (h).

''(2) DEFINITION.—In this subsection, the term 'adjudication' has the meaning given that term in section 551 of title 5, but does not include mediation.

''(b) STAFF.—The Chief Copyright Royalty Judge shall hire 3 full-time staff members to assist the Copyright Royalty Judges in performing their functions.

''(c) TERMS.—The individual first appointed the Chief Copyright Royalty Judge shall be appointed to a term of 6 years, and of the remaining individuals first appointed Copyright Royalty Judges, 1 shall be appointed to a term of 4 years, and the other shall be appointed to a term of 2 years. Thereafter, the terms of succeeding Copyright Royalty Judges shall each be 6 years. An individual serving as a Copyright Royalty Judge may be reappointed to subsequent terms. The term of a Copyright Royalty Judge shall begin when the term of the predecessor of that Copyright Royalty Judge ends. When the term of office of a Copyright Royalty Judge ends, the individual serving that term may continue to serve until a successor is selected.

''(d) VACANCIES OR INCAPACITY.—

''(1) VACANCIES.—If a vacancy should occur in the position of Copyright Royalty Judge, the Librarian of Congress shall act expeditiously to fill the vacancy, and may appoint an interim Copyright Royalty Judge to serve until another Copyright Royalty Judge is appointed under this section. An individual appointed to fill the vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed shall be appointed for the remainder of that term.

''(2) INCAPACITY.—In the case in which a Copyright Royalty Judge is temporarily unable to perform his or her duties, the Librarian of Congress may appoint an interim Copyright Royalty Judge to perform such duties during the period of such incapacity.

''(e) COMPENSATION.—

''(1) JUDGES.—The Chief Copyright Royalty Judge shall receive compensation at the rate of basic pay payable for level AL–1 for administrative law judges pursuant to section 5372(b) of title 5, and each of the other two Copyright Royalty Judges shall receive compensation at the rate of basic pay payable for level AL–2 for administrative law judges pursuant to such section. The compensation of the Copyright Royalty Judges shall not be subject to any regulations adopted by the Office of Personnel Management pursuant to its authority under section 5376(b)(1) of title 5.

''(2) STAFF MEMBERS.—Of the staff members appointed under subsection (b)—

''(A) the rate of pay of 1 staff member shall be not more than the basic rate of pay payable for level 10 of GS–15 of the General Schedule;

''(B) the rate of pay of 1 staff member shall be not less than the basic rate of pay payable for GS–13 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS–14 of such Schedule; and

''(C) the rate of pay for the third staff member shall be not less than the basic rate of pay payable for GS–8 of the General Schedule and not more than the basic rate of pay payable for level 10 of GS–11 of such Schedule.

''(3) LOCALITY PAY.—All rates of pay referred to under this subsection shall include locality pay.

''(f) INDEPENDENCE OF COPYRIGHT ROYALTY JUDGE.—

''(1) IN MAKING DETERMINATIONS.—

''(A) IN GENERAL.—(i) Subject to clause (ii) of this subparagraph and subparagraph (B), the Copyright Royalty Judges shall have full independence in making determinations concerning adjustments and determinations of copyright royalty rates and terms, the distribution of copyright royalties, the acceptance or rejection of royalty claims, rate adjustment petitions, and petitions to participate, and in issuing other rulings under this title, except that the Copyright Royalty Judges may consult with the Register of Copyrights on any matter other than a question of fact.

''(ii) A Copyright Royalty Judge or Judges, or, by motion to the Copyright Royalty Judge or Judges, any participant in a proceeding may request an interpretation by the Register of Copyrights concerning any material question of substantive law (not including questions of procedure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate) concerning an interpretation or construction of those provisions of this title that are the subject of the proceeding. Any such request for a written interpretation by the Register of Copyrights shall be on the record. Reasonable provision shall be made for comment by the participants in the proceeding on the material question of substantive law in such a way as to minimize

duplication and delay. Except as provided in subparagraph (B), the Register of Copyrights shall deliver to the Copyright Royalty Judges a response within 14 days of receipt by the Register of Copyrights of all of the briefs or comments of the participants. Such decision shall be in writing and shall be included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered to the Copyright Royalty Judges, the Copyright Royalty Judges shall apply the legal interpretation embodied in the response of the Register of Copyrights in resolving material questions of substantive law.

''(B) NOVEL QUESTIONS.—(i) In any case in which a novel material question of substantive law concerning an interpretation of those provisions of this title that are the subject of the proceeding is presented, the Copyright Royalty Judges shall request a decision of the Register of Copyrights, in writing, to resolve such novel question. Reasonable provision shall be made for comment on such request by the participants in the proceeding, in such a way as to minimize duplication and delay. The Register shall transmit his or her decision to the Copyright Royalty Judges within 30 days of receipt by the Register of Copyrights of all of the briefs or comments of the participants. Such decision shall be in writing and included by the Copyright Royalty Judges in the record that accompanies their final determination. If such a decision is timely delivered, the Copyright Royalty Judges shall apply the legal determinations embodied in the decision of the Register of Copyrights in resolving material questions of substantive law.

''(ii) In clause (i), a 'novel question of law' is a question of law that has not been determined in prior decisions, determinations, and rulings described in section 803(a).

''(C) CONSULTATION.—Notwithstanding the provisions of subparagraph (A), the Copyright Royalty Judges shall consult with the Register of Copyrights with respect to any determination or ruling that would require that any act be performed by the Copyright Office, and any such determination or ruling shall not be binding upon the Register of Copyrights.

''(D) REVIEW OF LEGAL CONCLUSIONS BY THE REGISTER OF COPYRIGHTS.—The Register of Copyrights may review for legal error the resolution by the Copyright Royalty Judges of a material question of substantive law under this title that underlies or is contained in a final determination of the Copyright Royalty Judges. If the Register of Copyrights concludes, after taking into consideration the views of the participants in the proceeding, that any resolution reached by the Copyright Royalty Judges was in material error, the Register of Copyrights shall issue a written decision correcting such legal error, which shall be made part of the record of the proceeding. Additionally, the Register of Copyrights shall cause to be published in the Federal Register such written decision together with a specific identification of the legal conclusion of the Copyright Royalty Judges that is determined to be erroneous. As to conclusions of substantive law involving an interpretation of the statutory provisions of this title, the decision of the Register of Copyrights shall be binding as precedent upon the Copyright Royalty Judges in subsequent proceedings under this chapter. When a decision has been rendered pursuant to section 802(f)(1)(D), the Register of Copyrights may, on the basis of and in accordance with such decision, intervene as of right in any appeal of a final determination of the Copyright Royalty Judges pursuant to section 803(d) in the United States Court of Appeals for the District of Columbia Circuit. If, prior to intervening in such an appeal, the Register of Copyrights gives notification and undertakes to consult with the Attorney General with respect to such intervention, and the Attorney General fails within reasonable period after receipt of such notification to intervene in such appeal, the Register of Copyrights may intervene in such appeal in his or her own name by any attorney designated by the Register of Copyrights for such purpose. Intervention by the Register of Copyrights in his or her own name shall not preclude the Attorney General from intervening on behalf of the United States in such an appeal as may be otherwise provided or required by law.

''(E) EFFECT ON JUDICIAL REVIEW.—Nothing in this section shall be interpreted to alter the standard applied by a court in reviewing legal determinations involving an interpretation or construction of the provisions of this title or to affect the extent to which any construction or interpretation of the provisions of this title shall be accorded deference by a reviewing court.

''(2) PERFORMANCE APPRAISALS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law or any regulation of the Library of Congress, and subject to subparagraph (B), the Copyright Royalty Judges shall not receive performance appraisals.

''(B) RELATING TO SANCTION OR REMOVAL.—To the extent that the Librarian of Congress adopts regulations under subsection (h) relating to the sanction or removal of a Copyright Royalty Judge and such regulations require documentation to establish the cause of such sanction or removal, the Copyright Royalty Judge may receive an appraisal related specifically to the cause of the sanction or removal.

''(g) INCONSISTENT DUTIES BARRED.—No Copyright Royalty Judge may undertake duties that conflict with his or her duties and responsibilities as a Copyright Royalty Judge.

''(h) STANDARDS OF CONDUCT.—The Librarian of Congress shall adopt regulations regarding the standards of conduct, including financial conflict of interest and restrictions against ex parte communications, which shall govern the Copyright Royalty Judges and the proceedings under this chapter.

''(i) REMOVAL OR SANCTION.—The Librarian of Congress may sanction or remove a Copyright Royalty Judge for violation of the standards of conduct adopted under subsection (h), misconduct, neglect of duty, or any disqualifying physical or mental disability. Any such sanction or removal may be made only after notice and opportunity for a hearing, but the Librarian of Congress may suspend the Copyright Royalty Judge during the pendency of such hearing. The Librarian shall appoint an interim Copyright Royalty Judge during the period of any such suspension.

''§ 803. Proceedings of Copyright Royalty Judges

''(a) PROCEEDINGS.—

''(1) IN GENERAL.—The Copyright Royalty Judges shall act in accordance with regulations issued by the Copyright Royalty Judges and the Librarian of Congress, and on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, copyright arbitration royalty panels, the Register of Copyrights, and the Copyright Royalty Judges (to the extent those determinations are not inconsistent with a decision of the Register of Copyrights that was timely delivered to the Copyright Royalty Judges pursuant to section 802(f)(1) (A) or (B), or with a decision of the Register of Copyrights pursuant to section 802(f)(1)(D)), under this chapter, and decisions of the court of appeals under this chapter before, on, or after the effective date of the Copyright Royalty and Distribution Reform Act of 2004.

''(2) JUDGES ACTING AS PANEL AND INDIVIDUALLY.—The Copyright Royalty Judges shall preside over hearings in proceedings under this chapter en banc. The Chief Copyright Royalty Judge may designate a Copyright Royalty Judge to preside individually over such collateral and administrative proceedings, and over such proceedings under paragraphs (1) through (5) of subsection (b), as the Chief Judge considers appropriate.

''(3) DETERMINATIONS.—Final determinations of the Copyright Royalty Judges in proceedings under this chapter shall be made by majority vote. A Copyright Royalty Judge dissenting from the majority on any determination under this chapter may issue his or her dissenting opinion, which shall be included with the determination.

''(b) PROCEDURES.—

''(1) INITIATION.—

''(A) CALL FOR PETITIONS TO PARTICIPATE.—(i) Promptly upon a determination made under section 804(a), or no later than January 5 of a year specified in section 804(b) (2) or (3), or as provided under section 804(b)(8), or by no later than January 5 of a year specified in section 804 for the commencement of a proceeding if a petition has not been filed by that date, the Copyright Royalty Judges shall cause to be published in the Federal Register notice of commencement of proceedings under this chapter calling for the filing of petitions to participate in a proceeding under this chapter for the purpose of making the relevant determination under section 111, 112, 114, 115, 116, 118, 119, 1004, or 1007, as the case may be.

''(ii) Petitions to participate shall be filed by no later than 30 days after publication of notice of commencement of a proceeding, under clause (i), except that the Copyright Royalty Judges may, for substantial good cause shown and if there is no prejudice to the participants that have already filed petitions, accept late petitions to participate at any time up to the date that is 90 days before the date on which participants in the proceeding are to file their written direct statements. Notwithstanding the preceding sentence, petitioners whose petitions are filed more than 30 days after publication of notice of commencement of a proceeding are not eligible to object to a settlement reached during the voluntary negotiation period under section 803(b)(3), and any objection filed by such a petitioner shall not be taken into account by the Copyright Royalty Judges.

''(B) PETITIONS TO PARTICIPATE.—Each petition to participate in a proceeding shall describe the petitioner's interest in the subject matter of the proceeding. Parties with similar interests may file a single petition to participate.

''(2) PARTICIPATION IN GENERAL.—Subject to paragraph (4), a person may participate in a proceeding under this chapter, including through the submission of briefs or other information, only if—

''(A) that person has filed a petition to participate in accordance with paragraph (1) (either individually or as a group under paragraph (1)(B)), together with a filing fee of $150;

''(B) the Copyright Royalty Judges have not determined that the petition to participate is facially invalid; and

''(C) the Copyright Royalty Judges have not determined, sua sponte or on the motion of another participant in the proceeding, that the person lacks a significant interest in the proceeding.

''(3) VOLUNTARY NEGOTIATION PERIOD.—

''(A) IN GENERAL.—Promptly after the date for filing of petitions to participate in a proceeding, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants and shall initiate a voluntary negotiation period among the participants.

''(B) LENGTH OF PROCEEDINGS.—The voluntary negotiation period initiated under subparagraph (A) shall be 3 months.

''(C) DETERMINATION OF SUBSEQUENT PROCEEDINGS.—At the close of the voluntary negotiation proceedings, the Copyright Royalty Judges shall, if further proceedings under this chapter are necessary, determine whether and to what extent paragraphs (4) and (5) will apply to the parties.

''(4) SMALL CLAIMS PROCEDURE IN DISTRIBUTION PROCEEDINGS.—

''(A) IN GENERAL.—If, in a proceeding under this chapter to determine the distribution of royalties, a participant in the proceeding asserts a

claim in the amount of $10,000 or less, the Copyright Royalty Judges shall decide the controversy on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and 1 additional response by each such party. The participant asserting the claim shall not be required to pay the filing fee under paragraph (2).

''(B) BAD FAITH INFLATION OF CLAIM.—If the Copyright Royalty Judges determine that a participant asserts in bad faith an amount in controversy in excess of $10,000 for the purpose of avoiding a determination under the procedure set forth in subparagraph (A), the Copyright Royalty Judges shall impose a fine on that participant in an amount not to exceed the difference between the actual amount distributed and the amount asserted by the participant.

''(5) PAPER PROCEEDINGS.—The Copyright Royalty Judges in proceedings under this chapter may decide, sua sponte or upon motion of a participant, to determine issues on the basis of the filing of the written direct statement by the participant, the response by any opposing participant, and one additional response by each such participant. Prior to making such decision to proceed on such a paper record only, the Copyright Royalty Judges shall offer to all parties to the proceeding the opportunity to comment on the decision. The procedure under this paragraph—

''(A) shall be applied in cases in which there is no genuine issue of material fact, there is no need for evidentiary hearings, and all participants in the proceeding agree in writing to the procedure; and

''(B) may be applied under such other circumstances as the Copyright Royalty Judges consider appropriate.

''(6) REGULATIONS.—

''(A) IN GENERAL.—The Copyright Royalty Judges may issue regulations to carry out their functions under this title. All regulations issued by the Copyright Royalty Judges are subject to the approval of the Librarian of Congress. Not later than 120 days after Copyright Royalty Judges or interim Copyright Royalty Judges, as the case may be, are first appointed after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, such judges shall issue regulations to govern proceedings under this chapter.

''(B) INTERIM REGULATIONS.—Until regulations are adopted under subparagraph (A), the Copyright Royalty Judges shall apply the regulations in effect under this chapter on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, to the extent such regulations are not inconsistent with this chapter, except that functions carried out under such regulations by the Librarian of Congress, the Register of Copyrights, or copyright arbitration royalty panels that, as of such date of enactment, are to be carried out by the Copyright Royalty Judges under this chapter, shall be carried out by the Copyright Royalty Judges under such regulations.

''(C) REQUIREMENTS.—Regulations issued under subparagraph (A) shall include the following:

''(i) The written direct statements of all participants in a proceeding under paragraph (2) shall be filed by a date specified by the Copyright Royalty Judges, which may be not earlier than 4 months, and not later than 5 months, after the end of the voluntary negotiation period under paragraph (3). Notwithstanding the preceding sentence, the Copyright Royalty Judges may allow a participant in a proceeding to file an amended written direct statement based on new information received during the discovery process, within 15 days after the end of the discovery period specified in clause (iii).

''(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements by the participants in a proceeding under paragraph (2), the judges shall meet with the participants for the purpose of setting a schedule for conducting and completing discovery. Such schedule shall be determined by the Copyright Royalty Judges.

''(II) In this chapter, the term 'written direct statements' means witness statements, testimony, and exhibits to be presented in the proceedings, and such other information that is necessary to establish terms and rates, or the distribution of royalty payments, as the case may be, as set forth in regulations issued by the Copyright Royalty Judges.

''(iii) Hearsay may be admitted in proceedings under this chapter to the extent deemed appropriate by the Copyright Royalty Judges.

''(iv) Discovery in such proceedings shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders and disputes pending at the end of such period.

''(v) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may request of an opposing participant nonprivileged documents directly related to the written direct statement or written rebuttal statement of that participant. Any objection to such a request shall be resolved by a motion or request to compel production made to the Copyright Royalty Judges according to regulations adopted by the Copyright Royalty Judges. Each motion or request to compel discovery shall be determined by the Copyright Royalty Judges, or by a Copyright Royalty Judge when permitted under subsection (a)(2). Upon such motion, the Copyright Royalty Judges may order discovery pursuant to regulations established under this paragraph.

''(vi)(I) Any participant under paragraph (2) in a proceeding under this chapter to determine royalty rates may, by means of written motion or on the record, request of an opposing participant or witness other relevant information and materials if absent the discovery sought the Copyright Royalty Judges' resolution of the proceeding would be substantially impaired. In determining whether discovery will be granted under this clause, the Copyright Royalty Judges may consider—

''(aa) whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues;

''(bb) whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive; and

''(cc) whether the participant seeking discovery has had ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

''(II) This clause shall not apply to any proceeding scheduled to commence after December 31, 2010.

''(vii) In a proceeding under this chapter to determine royalty rates, the participants entitled to receive royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories and the participants obligated to pay royalties shall collectively be permitted to take no more than 10 depositions and secure responses to no more than 25 interrogatories. The Copyright Royalty Judges shall resolve any disputes among similarly aligned participants to allocate the number of depositions or interrogatories permitted under this clause.

''(viii) The rules and practices in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004, relating to discovery in proceedings under this chapter to determine the distribution of royalty fees, shall continue to apply to such proceedings on and after such effective date.

''(ix) In proceedings to determine royalty rates, the Copyright Royalty Judges may issue a subpoena commanding a participant or witness to appear and give testimony or to produce and permit inspection of documents or tangible things if the Copyright Royalty Judges' resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents or tangible things. Such subpoena shall specify with reasonable particularity the materials to be produced or the scope and nature of the required testimony. Nothing in this subparagraph shall preclude the Copyright Royalty Judges from requesting the production by a nonparticipant of information or materials relevant to the resolution by the Copyright Royalty Judges of a material issue of fact.

''(x) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the end of the discovery period and shall take place outside the presence of the Copyright Royalty Judges.

''(xi) No evidence, including exhibits, may be submitted in the written direct statement or written rebuttal statement of a participant without a sponsoring witness, except where the Copyright Royalty Judges have taken official notice, or in the case of incorporation by reference of past records, or for good cause shown.

''(c) DETERMINATION OF COPYRIGHT ROYALTY JUDGES.—

''(1) TIMING.—The Copyright Royalty Judges shall issue their determination in a proceeding not later than 11 months after the conclusion of the 21-day settlement conference period under subsection (b)(3)(C)(x), but, in the case of a proceeding to determine successors to rates or terms that expire on a specified date, in no event later than 15 days before the expiration of the then current statutory rates and terms.

''(2) REHEARINGS.—

''(A) IN GENERAL.—The Copyright Royalty Judges may, in exceptional cases, upon motion of a participant under subsection (b)(2), order a rehearing, after the determination in a proceeding is issued under paragraph (1), on such matters as the Copyright Royalty Judges determine to be appropriate.

''(B) TIMING FOR FILING MOTION.—Any motion for a rehearing under subparagraph (A) may only be filed within 15 days after the date on which the Copyright Royalty Judges deliver their initial determination concerning rates and terms to the participants in the proceeding.

''(C) PARTICIPATION BY OPPOSING PARTY NOT REQUIRED.—In any case in which a rehearing is ordered, any opposing party shall not be required to participate in the rehearing, except as provided under subsection (d)(1).

''(D) NO NEGATIVE INFERENCE.—No negative inference shall be drawn from lack of participation in a rehearing.

''(E) CONTINUITY OF RATES AND TERMS.—(i) If the decision of the Copyright Royalty Judges on any motion for a rehearing is not rendered before the expiration of the statutory rates and terms that were previously in effect, in the case of a proceeding to determine successors to rates and terms that expire on a specified date, then—

''(I) the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion shall be effective as of the day following the date on which the rates and terms that were previously in effect expire; and

''(II) in the case of a proceeding under section 114(f)(1)(C) or 114(f)(2)(C), royalty rates and terms shall, for purposes of section 114(f)(4)(B), be deemed to have been set at those rates and terms contained in the initial determination of the Copyright Royalty Judges that is the subject of the rehearing motion, as of the date of that determination.

''(ii) The pendency of a motion for a rehearing under this paragraph shall not relieve persons obligated to make royalty payments who would be affected by the determination on that

motion from providing the statements of account and any reports of use, to the extent required, and paying the royalties required under the relevant determination or regulations.

''(iii) Notwithstanding clause (ii), whenever royalties described in clause (ii) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the motion for rehearing is resolved or, if the motion is granted, within 60 days after the rehearing is concluded, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates by the Copyright Royalty Judges. Any underpayment of royalties resulting from a rehearing shall be paid within the same period.

''(3) CONTENTS OF DETERMINATION.—A determination of the Copyright Royalty Judges shall be supported by the written record and shall set forth the findings of fact relied on by the Copyright Royalty Judges. Among other terms adopted in a determination, the Copyright Royalty Judges may specify notice and recordkeeping requirements of users of the copyrights at issue that apply in lieu of those that would otherwise apply under regulations.

''(4) CONTINUING JURISDICTION.—The Copyright Royalty Judges may, with the approval of the Register of Copyrights, issue an amendment to a written determination to correct any technical or clerical errors in the determination or to modify the terms, but not the rates, of royalty payments in response to unforeseen circumstances that would frustrate the proper implementation of such determination. Such amendment shall be set forth in a written addendum to the determination that shall be distributed to the participants of the proceeding and shall be published in the Federal Register.

''(5) PROTECTIVE ORDER.—The Copyright Royalty Judges may issue such orders as may be appropriate to protect confidential information, including orders excluding confidential information from the record of the determination that is published or made available to the public, except that any terms or rates of royalty payments or distributions may not be excluded.

''(6) PUBLICATION OF DETERMINATION.—Following review of the determination by the Register of Copyrights under section 802(f)(1)(D), the Librarian of Congress shall cause the determination, and any corrections thereto, to be published in the Federal Register. The Librarian of Congress shall also publicize the determination and corrections in such other manner as the Librarian considers appropriate, including, but not limited to, publication on the Internet. The Librarian of Congress shall also make the determination, corrections, and the accompanying record available for public inspection and copying.

''(7) LATE PAYMENT.—A determination of Copyright Royalty Judges may include terms with respect to late payment, but in no way shall such terms prevent the copyright holder from asserting other rights or remedies provided under this title.

''(d) JUDICIAL REVIEW.—

''(1) APPEAL.—Any determination of the Copyright Royalty Judges under subsection (c) may, within 30 days after the publication of the determination in the Federal Register, be appealed, to the United States Court of Appeals for the District of Columbia Circuit, by any aggrieved participant in the proceeding under subsection (b)(2) who fully participated in the proceeding and who would be bound by the determination. Any participant that did not participate in a rehearing may not raise any issue that was the subject of that rehearing at any stage of judicial review of the hearing determination. If no appeal is brought within that 30-day period, the determination of the Copyright Royalty Judges shall be final, and the royalty fee or determination with respect to the distribution of fees, as the case may be, shall take effect as set forth in paragraph (2).

''(2) EFFECT OF RATES.—

''(A) EXPIRATION ON SPECIFIED DATE.—When this title provides that the royalty rates and terms that were previously in effect are to expire on a specified date, any adjustment or determination by the Copyright Royalty Judges of successor rates and terms for an ensuing statutory license period shall be effective as of the day following the date of expiration of the rates and terms that were previously in effect, even if the determination of the Copyright Royalty Judges is rendered on a later date. A transmission service shall be obligated to continue making payments under the rates and terms previously in effect until such time as rates and terms for the successor period are established. Whenever royalties pursuant to this section are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final determination of the Copyright Royalty Judges establishing rates and terms for a successor period or the exhaustion of all rehearings or appeals of such determination, if any, return any excess amounts previously paid to the extent necessary to comply with the final determination of royalty rates. Any underpayment of royalties by a copyright user shall be paid to the entity designated by the Copyright Royalty Judges within the same period.

''(B) OTHER CASES.—In cases where rates and terms have not, prior to the inception of an activity, been established for that particular activity under the relevant license, such rates and terms shall be retroactive to the inception of activity under the relevant license covered by such rates and terms. In other cases where rates and terms do not expire on a specified date, successor rates and terms shall take effect on the first day of the second month that begins after the publication of the determination of the Copyright Royalty Judges in the Federal Register, except as otherwise provided in this title, or by the Copyright Royalty Judges, or as agreed by the participants in a proceeding that would be bound by the rates and terms. Except as otherwise provided in this title, the rates and terms, to the extent applicable, shall remain in effect until such successor rates and terms become effective.

''(C) OBLIGATION TO MAKE PAYMENTS.—

''(i) The pendency of an appeal under this subsection shall not relieve persons obligated to make royalty payments under section 111, 112, 114, 115, 116, 118, 119, or 1003, who would be affected by the determination on appeal, from—

''(I) providing the statements of account and any report of use; and

''(II) paying the royalties required under the relevant determination or regulations.

''(ii) Notwithstanding clause (i), whenever royalties described in clause (i) are paid to a person other than the Copyright Office, the entity designated by the Copyright Royalty Judges to which such royalties are paid by the copyright user (and any successor thereto) shall, within 60 days after the final resolution of the appeal, return any excess amounts previously paid (and interest thereon, if ordered pursuant to paragraph (3)) to the extent necessary to comply with the final determination of royalty rates on appeal. Any underpayment of royalties resulting from an appeal (and interest thereon, if ordered pursuant to paragraph (3)) shall be paid within the same period.

''(3) JURISDICTION OF COURT.—If the court, pursuant to section 706 of title 5, modifies or vacates a determination of the Copyright Royalty Judges, the court may enter its own determination with respect to the amount or distribution of royalty fees and costs, and order the repayment of any excess fees, the payment of any underpaid fees, and the payment of interest pertaining respectively thereto, in accordance with its final judgment. The court may also vacate the determination of the Copyright Royalty Judges and remand the case to the Copyright Royalty Judges for further proceedings in accordance with subsection (a).

''(e) ADMINISTRATIVE MATTERS.—

''(1) DEDUCTION OF COSTS OF LIBRARY OF CONGRESS AND COPYRIGHT OFFICE FROM FILING FEES.—

''(A) DEDUCTION FROM FILING FEES.—The Librarian of Congress may, to the extent not otherwise provided under this title, deduct from the filing fees collected under subsection (b) for a particular proceeding under this chapter the reasonable costs incurred by the Librarian of Congress, the Copyright Office, and the Copyright Royalty Judges in conducting that proceeding, other than the salaries of the Copyright Royalty Judges and the 3 staff members appointed under section 802(b).

''(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to pay the costs incurred under this chapter not covered by the filing fees collected under subsection (b). All funds made available pursuant to this subparagraph shall remain available until expended.

''(2) POSITIONS REQUIRED FOR ADMINISTRATION OF COMPULSORY LICENSING.—Section 307 of the Legislative Branch Appropriations Act, 1994, shall not apply to employee positions in the Library of Congress that are required to be filled in order to carry out section 111, 112, 114, 115, 116, 118, or 119 or chapter 10.

''§ 804. Institution of proceedings

''(a) FILING OF PETITION.—With respect to proceedings referred to in paragraphs (1) and (2) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 111, 112, 114, 115, 116, 118, 119, and 1004, during the calendar years specified in the schedule set forth in subsection (b), any owner or user of a copyrighted work whose royalty rates are specified by this title, or are established under this chapter before or after the enactment of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests a determination or adjustment of the rate. The Copyright Royalty Judges shall make a determination as to whether the petitioner has such a significant interest in the royalty rate in which a determination or adjustment is requested. If the Copyright Royalty Judges determine that the petitioner has such a significant interest, the Copyright Royalty Judges shall cause notice of this determination, with the reasons for such determination, to be published in the Federal Register, together with the notice of commencement of proceedings under this chapter. With respect to proceedings under paragraph (1) of section 801(b) concerning the determination or adjustment of royalty rates as provided in sections 112 and 114, during the calendar years specified in the schedule set forth in subsection (b), the Copyright Royalty Judges shall cause notice of commencement of proceedings under this chapter to be published in the Federal Register as provided in section 803(b)(1)(A).

''(b) TIMING OF PROCEEDINGS.—

''(1) SECTION 111 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (A) or (D) of section 801(b)(2) applies may be filed during the year 2005 and in each subsequent fifth calendar year.

''(B) In order to initiate proceedings under section 801(b)(2) concerning the adjustment of royalty rates under section 111 to which subparagraph (B) or (C) of section 801(b)(2) applies, within 12 months after an event described in either of those subsections, any owner or user of a copyrighted work whose royalty rates are specified by section 111, or by a rate established under this chapter before or after the enactment

of the Copyright Royalty and Distribution Reform Act of 2004, may file a petition with the Copyright Royalty Judges declaring that the petitioner requests an adjustment of the rate. The Copyright Royalty Judges shall then proceed as set forth in subsection (a) of this section. Any change in royalty rates made under this chapter pursuant to this subparagraph may be reconsidered in the year 2005, and each fifth calendar year thereafter, in accordance with the provisions in section 801(b)(3) (B) or (C), as the case may be. A petition for adjustment of rates established by section 111(d)(1)(B) as a result of a change is the rules and regulations of the Federal Communications Commission shall set forth the change on which the petition is based.

''(C) Any adjustment of royalty rates under section 111 shall take effect as of the first accounting period commencing after the publication of the determination of the Copyright Royalty Judges in the Federal Register, or on such other date as is specified in that determination.

''(2) CERTAIN SECTION 112 PROCEEDINGS.—Proceedings under this chapter shall be commenced in the year 2007 to determine reasonable terms and rates of royalty payments for the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv), to become effective on January 1, 2009. Such proceedings shall be repeated in each subsequent fifth calendar year.

''(3) SECTION 114 AND CORRESPONDING 112 PROCEEDINGS.—

''(A) FOR ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES.—Proceedings under this chapter shall be commenced as soon as practicable after the effective date of the Copyright Royalty and Distribution Reform Act of 2004 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of eligible nonsubscription transmission services and new subscription services, to be effective for the period beginning on January 1, 2006, and ending on December 31, 2010. Such proceedings shall next be commenced in January 2009 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2011. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

''(B) FOR PREEXISTING SUBSCRIPTION AND SATELLITE DIGITAL AUDIO RADIO SERVICES.—Proceedings under this chapter shall be commenced in January 2006 to determine reasonable terms and rates of royalty payments under sections 114 and 112 for the activities of preexisting subscription services, to be effective during the period beginning on January 1, 2008, and ending on December 31, 2012, and preexisting satellite digital audio radio services, to be effective during the period beginning on January 1, 2007, and ending on December 31, 2012. Such proceedings shall next be commenced in 2011 to determine reasonable terms and rates of royalty payments, to become effective on January 1, 2013. Thereafter, such proceedings shall be repeated in each subsequent fifth calendar year.

''(C)(i) Notwithstanding any other provision of this chapter, this subparagraph shall govern proceedings commenced pursuant to section 114(f)(1)(C) and 114(f)(2)(C) concerning new types of services.

''(ii) Not later than 30 days after a petition to determine rates and terms for a new type of service that is filed by any copyright owner of sound recordings, or such new type of service, indicating that such new type of service is or is about to become operational, the Copyright Royalty Judges shall issue a notice for a proceeding to determine rates and terms for such service.

''(iii) The proceeding shall follow the schedule set forth in such subsections (b), (c), and (d) of section 803, except that—

''(I) the determination shall be issued by not later than 24 months after the publication of the notice under clause (ii); and

''(II) the decision shall take effect as provided in subsections (c)(2) and (d)(2) of section 803 and section 114(f)(4)(B)(ii) and (C).

''(iv) The rates and terms shall remain in effect for the period set forth in section 114(f)(1)(C) or 114(f)(2)(C), as the case may be.

''(4) SECTION 115 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment or determination of royalty rates as provided in section 115 may be filed in the year 2006 and in each subsequent fifth calendar year, or at such other times as the parties have agreed under section 115(c)(3) (B) and (C).

''(5) SECTION 116 PROCEEDINGS.—(A) A petition described in subsection (a) to initiate proceedings under section 801(b) concerning the determination of royalty rates and terms as provided in section 116 may be filed at any time within 1 year after negotiated licenses authorized by section 116 are terminated or expire and are not replaced by subsequent agreements.

''(B) If a negotiated license authorized by section 116 is terminated or expires and is not replaced by another such license agreement which provides permission to use a quantity of musical works not substantially smaller than the quantity of such works performed on coin-operated phonorecord players during the 1-year period ending March 1, 1989, the Copyright Royalty Judges shall, upon petition filed under paragraph (1) within 1 year after such termination or expiration, commence a proceeding to promptly establish an interim royalty rate or rates for the public performance by means of a coin-operated phonorecord player of nondramatic musical works embodied in phonorecords which had been subject to the terminated or expired negotiated license agreement. Such rate or rates shall be the same as the last such rate or rates and shall remain in force until the conclusion of proceedings by the Copyright Royalty Judges, in accordance with section 803, to adjust the royalty rates applicable to such works, or until superseded by a new negotiated license agreement, as provided in section 116(b).

''(6) SECTION 118 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the determination of reasonable terms and rates of royalty payments as provided in section 118 may be filed in the year 2006 and in each subsequent fifth calendar year.

''(7) SECTION 1004 PROCEEDINGS.—A petition described in subsection (a) to initiate proceedings under section 801(b)(1) concerning the adjustment of reasonable royalty rates under section 1004 may be filed as provided in section 1004(a)(3).

''(8) PROCEEDINGS CONCERNING DISTRIBUTION OF ROYALTY FEES.—With respect to proceedings under section 801(b)(3) concerning the distribution of royalty fees in certain circumstances under section 111, 119, or 1007, the Copyright Royalty Judges shall, upon a determination that a controversy exists concerning such distribution, cause to be published in the Federal Register notice of commencement of proceedings under this chapter.

''§ 805. General rule for voluntarily negotiated agreements

''Any rates or terms under this title that—

''(1) are agreed to by participants to a proceeding under section 803(b)(3),

''(2) are adopted by the Copyright Royalty Judges as part of a determination under this chapter, and

''(3) are in effect for a period shorter than would otherwise apply under a determination pursuant to this chapter,

shall remain in effect for such period of time as would otherwise apply under such determination, except that the Copyright Royalty Judges shall adjust the rates pursuant to the voluntary negotiations to reflect national monetary inflation during the additional period the rates remain in effect.''.

(b) CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by striking the item relating to chapter 8 and inserting the following:

''8. Proceedings by Copyright Royalty Judges ..... 801''.

SEC. 4. DEFINITION.

Section 101 is amended by inserting after the definition of ''copies'' the following:

''A 'Copyright Royalty Judge' is a Copyright Royalty Judge appointed under section 802 of this title, and includes any individual serving as an interim Copyright Royalty Judge under such section.''.

SEC. 5. TECHNICAL AMENDMENTS.

(a) CABLE RATES.—Section 111(d) is amended—

(1) in paragraph (2), in the second sentence, by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges.''; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges'';

(B) in subparagraph (B)—

(i) in the first sentence, by striking ''Librarian of Congress shall, upon the recommendation of the Register of Copyrights,'' and inserting ''Copyright Royalty Judges shall'';

(ii) in the second sentence, by striking ''Librarian determines'' and inserting ''Copyright Royalty Judges determine''; and

(iii) in the third sentence—

(I) by striking ''Librarian'' each place it appears and inserting ''Copyright Royalty Judges''; and

(II) by striking ''convene a copyright arbitration royalty panel'' and inserting ''conduct a proceeding''; and

(C) in subparagraph (C), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

(b) EPHEMERAL RECORDINGS.—Section 112(e) is amended—

(1) in paragraph (3)—

(A) by amending the first sentence to read as follows: ''Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by paragraph (1) during the 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, or such other periods as the parties may agree.''; and

(B) by striking the second sentence;

(C) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(D) in the fourth sentence, by striking ''negotiation'';

(2) in paragraph (4)—

(A) by amending the first sentence to read as follows: ''The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (5), be binding on all copyright owners of sound recordings and transmitting organizations entitled to a statutory license under this subsection during the 5-year period specified in paragraph (3), or such other period as the parties may agree.'';

(B) by striking ''copyright arbitration royalty panel'' each subsequent place it appears and inserting ''Copyright Royalty Judges'';

(C) in the fourth sentence, by striking ''its decision'' and inserting ''their decision'';

(D) in the fifth sentence, by striking ''negotiated as provided'' and inserting ''described''; and

(E) in the last sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges'';

(3) in paragraph (5), by striking ''or decision by the Librarian of Congress'' and inserting '', decision by the Librarian of Congress, or determination by the Copyright Royalty Judges'';

(4) by striking paragraph (6) and redesignating paragraphs (7), (8), and (9), as paragraphs (6), (7), and (8), respectively; and

(5) in paragraph (6)(A), as so redesignated, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''.

(c) SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.—Section 114(f) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by amending the first sentence to read as follows: ''Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by preexisting subscription services and transmissions by preexisting satellite digital audio radio services specified by subsection (d)(2) during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where different transitional periods are provided in section 804(b), or such periods as the parties may agree.'';

(ii) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(iii) in the fourth sentence, by striking ''negotiation'';

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: ''The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), a transitional period provided in section 804(b), or such other period as the parties may agree.'';

(ii) in the second sentence, by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

(iii) in the second sentence, by striking ''negotiated as provided'' and inserting ''described''; and

(C) by amending subparagraph (C) to read as follows:

''(C) The procedures under subparagraphs (A) and (B) also shall be initiated pursuant to a petition filed by any copyright owners of sound recordings, any preexisting subscription services, or any preexisting satellite digital audio radio services indicating that a new type of subscription digital audio transmission service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of transmission service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for subscription digital audio transmission services most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.'';

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by amending the first paragraph to read as follows: ''Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for subscription transmissions by eligible nonsubscription transmission services and transmissions by new subscription services specified by subsection (d)(2) during 5-year periods beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except where different transitional periods are provided in section 804(b), or such periods as the parties may agree.'';

(ii) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(iii) in the fourth sentence, by striking ''negotiation'';

(B) in subparagraph (B)—

(i) by amending the first sentence to read as follows: ''The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to paragraph (3), be binding on all copyright owners of sound recordings and entities performing sound recordings affected by this paragraph during the 5-year period specified in subparagraph (A), a transitional period provided in section 804(b), or such other period as the parties may agree.'';

(ii) by striking ''copyright arbitration royalty panel'' each subsequent place it appears and inserting ''Copyright Royalty Judges''; and

(iii) in the last sentence by striking ''negotiated as provided'' and inserting ''described in''; and

(C) by amending subparagraph (C) to read as follows:

''(C) The procedures under subparagraphs (A) and (B) shall also be initiated pursuant to a petition filed by any copyright owners of sound recordings or any eligible nonsubscription service or new subscription service indicating that a new type of eligible nonsubscription service or new subscription service on which sound recordings are performed is or is about to become operational, for the purpose of determining reasonable terms and rates of royalty payments with respect to such new type of service for the period beginning with the inception of such new type of service and ending on the date on which the royalty rates and terms for preexisting subscription digital audio transmission services or preexisting satellite digital radio audio services, as the case may be, most recently determined under subparagraph (A) or (B) and chapter 8 expire, or such other period as the parties may agree.'';

(3) in paragraph (3), by striking ''or decision by the Librarian of Congress'' and inserting '', decision by the Librarian of Congress, or determination by the Copyright Royalty Judges''; and

(4) in paragraph (4)—

(A) by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''; and

(B) by adding after the first sentence ''The notice and recordkeeping rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 shall remain in effect unless and until new regulations are promulgated by the Copyright Royalty Judges. If new regulations are promulgated under this subparagraph, the Copyright Royalty Judges shall take into account the substance and effect of the rules in effect on the day before the effective date of the Copyright Royalty and Distribution Reform Act of 2004 and shall, to the extent practicable, avoid significant disruption of the functions of any designated agent authorized to collect and distribute royalty fees.''.

(d) PHONORECORDS OF NONDRAMATIC MUSICAL WORKS.—Section 115(c)(3) is amended—

(1) in subparagraph (A)(ii), by striking ''(F)'' and inserting ''(E)'';

(2) in subparagraph (B)—

(A) by striking ''under this paragraph'' and inserting ''under this section'';

(B) by inserting ''on a nonexclusive basis'' after ''common agents''; and

(C) by striking ''subparagraphs (C) through (F)'' and inserting ''this subparagraph and subparagraphs (C) through (E)''; and

(3) in subparagraph (C)—

(A) by amending the first sentence to read as follows: ''Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for the activities specified by this section during periods beginning with the effective date of such rates and terms, but not earlier than January 1 of the second year following the year in which the petition requesting the proceeding is filed, and ending on the effective date of successor rates and terms, or such other period as the parties may agree.'';

(B) in the third sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(C) in the fourth sentence, by striking ''negotiation'';

(4) in subparagraph (D)—

(A) by amending the first sentence to read as follows: ''The schedule of reasonable rates and terms determined by the Copyright Royalty Judges shall, subject to subparagraph (E), be binding on all copyright owners of nondramatic musical works and persons entitled to obtain a compulsory license under subsection (a)(1) during the period specified in subparagraph (C), such other period as may be determined pursuant to subparagraphs (B) and (C), or such other period as the parties may agree.'';

(B) in the third sentence, by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

(C) in the third sentence, by striking ''negotiated as provided in subparagraphs (B) and (C)'' and inserting ''described'';

(5) in subparagraph (E)—

(A) in clause (i)—

(i) in the first sentence, by striking ''Librarian of Congress'' and inserting ''Librarian of Congress, Copyright Royalty Judges, or a copyright arbitration royalty panel to the extent those determinations were accepted by the Librarian of Congress''; and

(ii) in the second sentence, by striking ''(C), (D) or (F) shall be given effect'' and inserting ''(C) or (D) shall be given effect as to digital phonorecord deliveries''; and

(B) in clause (ii)(I), by striking ''(C), (D) or (F)'' each place it appears and inserting ''(C) or (D)''; and

(6) by striking subparagraph (F) and redesignating subparagraphs (G) through (L) as subparagraphs (F) through (K), respectively.

(e) COIN-OPERATED PHONORECORD PLAYERS.—Section 116 is amended—

(1) in subsection (b), by amending paragraph (2) to read as follows:

''(2) CHAPTER 8 PROCEEDING.—Parties not subject to such a negotiation may have the terms and rates and the division of fees described in paragraph (1) determined in a proceeding in accordance with the provisions of chapter 8.''; and

(2) in subsection (c)—

(A) in the subsection heading, by striking ''COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS'' and inserting ''DETERMINATIONS BY COPYRIGHT ROYALTY JUDGES''; and

(B) by striking ''a copyright arbitration royalty panel'' and inserting ''the Copyright Royalty Judges''.

(f) USE OF CERTAIN WORKS IN CONNECTION WITH NONCOMMERCIAL BROADCASTING.—Section 118 is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in the first sentence, by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(ii) by striking the second and third sentences;

(B) in paragraph (2), by striking ''Librarian of Congress:'' and all that follows through the end of the sentence and inserting ''Librarian of Congress, a copyright arbitration royalty panel, or the Copyright Royalty Judges, to the extent that they were accepted by the Librarian of Congress, if copies of such agreements are filed with the Copyright Royalty Judges within 30 days of execution in accordance with regulations that the Copyright Royalty Judges shall issue.''; and

(C) in paragraph (3)—

(i) in the second sentence—

(I) by striking ''copyright arbitration royalty panel'' and inserting ''Copyright Royalty Judges''; and

(II) by striking ''paragraph (2).'' and inserting ''paragraph (2) or (3).'';

(ii) in the last sentence, by striking '''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(iii) by striking ''(3) In'' and all that follows through the end of the first sentence and inserting the following:

''(3) Voluntary negotiation proceedings initiated pursuant to a petition filed under section 804(a) for the purpose of determining a schedule

of terms and rates of royalty payments by public broadcasting entities to copyright owners in works specified by this subsection and the proportionate division of fees paid among various copyright owners shall cover the 5-year period beginning on January 1 of the second year following the year in which the petition is filed. The parties to each negotiation proceeding shall bear their own costs.

''(4) In the absence of license agreements negotiated under paragraph (2) or (3), the Copyright Royalty Judges shall, pursuant to chapter 8, conduct a proceeding to determine and publish in the Federal Register a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Copyright Royalty Judges.'';

(2) by striking subsection (c) and redesignating subsections (d) through (g) as subsections (c) through (f), respectively;

(3) in subsection (c), as so redesignated, in the matter preceding paragraph (1)—

(A) by striking ''(b)(2)'' and inserting ''(b)(2) or (3)'';

(B) by striking ''(b)(3)'' and inserting ''(b)(4)''; and

(C) by striking ''a copyright arbitration royalty panel under subsection (b)(3)'' and inserting ''the Copyright Royalty Judges under subsection (b)(3), to the extent that they were accepted by the Librarian of Congress'';

(4) in subsection (d), as so redesignated—

(A) by striking ''in the Copyright Office'' and inserting ''with the Copyright Royalty Judges''; and

(B) by striking ''Register of Copyrights shall prescribe'' and inserting ''Copyright Royalty Judges shall prescribe as provided in section 803(b)(6)''; and

(5) in subsection (f), as so redesignated, by striking ''(d)'' and inserting ''(c)''.

(g) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—Section 119(b) is amended—

(1) in paragraph (3), by striking ''Librarian of Congress'' and inserting ''Copyright Royalty Judges''; and

(2) in paragraph (4)—

(A) in subparagraph (A), by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''; and

(B) by amending subparagraphs (B) and (C) to read as follows:

''(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, after deducting reasonable administrative costs under this paragraph, distribute such fees to the copyright owners entitled to receive them, or to their designated agents. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

''(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall have the discretion to proceed to distribute any amounts that are not in controversy.''.

(h) DIGITAL AUDIO RECORDING DEVICES.—

(1) ROYALTY PAYMENTS.—Section 1004(a)(3) is amended by striking ''Librarian of Congress'' each place it appears and inserting ''Copyright Royalty Judges''.

(2) ENTITLEMENT TO ROYALTY PAYMENTS.—Section 1006(c) is amended by striking ''Librarian of Congress shall convene a copyright arbitration royalty panel which'' and inserting ''Copyright Royalty Judges''.

(3) PROCEDURES FOR DISTRIBUTING ROYALTY PAYMENTS.—Section 1007 is amended—

(A) in subsection (a), by amending paragraph (1) to read as follows:

''(1) FILING OF CLAIMS.—During the first 2 months of each calendar year, every interested copyright party seeking to receive royalty payments to which such party is entitled under section 1006 shall file with the Copyright Royalty Judges a claim for payments collected during the preceding year in such form and manner as the Copyright Royalty Judges shall prescribe by regulation.''; and

(B) by amending subsections (b) and (c) to read as follows:

''(b) DISTRIBUTION OF PAYMENTS IN THE ABSENCE OF A DISPUTE.—After the period established for the filing of claims under subsection (a), in each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty payments under section 1006(c). If the Copyright Royalty Judges determine that no such controversy exists, the Librarian of Congress shall, within 30 days after such determination, authorize the distribution of the royalty payments as set forth in the agreements regarding the distribution of royalty payments entered into pursuant to subsection (a). The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.

''(c) RESOLUTION OF DISPUTES.—If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty payments. During the pendency of such a proceeding, the Copyright Royalty Judges shall withhold from distribution an amount sufficient to satisfy all claims with respect to which a controversy exists, but shall, to the extent feasible, authorize the distribution of any amounts that are not in controversy. The Librarian of Congress shall, before such royalty payments are distributed, deduct the reasonable administrative costs incurred by the Librarian under this section.''.

(4) DETERMINATION OF CERTAIN DISPUTES.—(A) Section 1010 is amended to read as follows:

''§ 1010. Determination of certain disputes

''(a) SCOPE OF DETERMINATION.—Before the date of first distribution in the United States of a digital audio recording device or a digital audio interface device, any party manufacturing, importing, or distributing such device, and any interested copyright party may mutually agree to petition the Copyright Royalty Judges to determine whether such device is subject to section 1002, or the basis on which royalty payments for such device are to be made under section 1003.

''(b) INITIATION OF PROCEEDINGS.—The parties under subsection (a) shall file the petition with the Copyright Royalty Judges requesting the commencement of a proceeding. Within 2 weeks after receiving such a petition, the Chief Copyright Royalty Judge shall cause notice to be published in the Federal Register of the initiation of the proceeding.

''(c) STAY OF JUDICIAL PROCEEDINGS.—Any civil action brought under section 1009 against a party to a proceeding under this section shall, on application of one of the parties to the proceeding, be stayed until completion of the proceeding.

''(d) PROCEEDING.—The Copyright Royalty Judges shall conduct a proceeding with respect to the matter concerned, in accordance with such procedures as the Copyright Royalty Judges may adopt. The Copyright Royalty Judges shall act on the basis of a fully documented written record. Any party to the proceeding may submit relevant information and proposals to the Copyright Royalty Judges. The parties to the proceeding shall each bear their respective costs of participation.

''(e) JUDICIAL REVIEW.—Any determination of the Copyright Royalty Judges under subsection (d) may be appealed, by a party to the proceeding, in accordance with section 803(d) of this title. The pendency of an appeal under this subsection shall not stay the determination of the Copyright Royalty Judges. If the court modifies the determination of the Copyright Royalty Judges, the court shall have jurisdiction to enter its own decision in accordance with its final judgment. The court may further vacate the determination of the Copyright Royalty Judges and remand the case for proceedings as provided in this section.''.

(B) The item relating to section 1010 in the table of sections for chapter 10 is amended to read as follows:

''1010. Determination of certain disputes.''.

SEC. 6. EFFECTIVE DATE AND TRANSITION PROVISIONS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect 6 months after the date of enactment of this Act, except that the Librarian of Congress shall appoint 1 or more interim Copyright Royalty Judges under section 802(d) of title 17, United States Code, as amended by this Act, within 90 days after such date of enactment to carry out the functions of the Copyright Royalty Judges under title 17, United States Code, to the extent that Copyright Royalty Judges provided for in section 801(a) of title 17, United States Code, as amended by this Act, have not been appointed before the end of that 90-day period.

(b) TRANSITION PROVISIONS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by this Act shall not affect any proceedings commenced, petitions filed, or voluntary agreements entered into before the date of enactment of this Act under the provisions of title 17, United States Code, as amended by this Act, and pending on such date of enactment. Such proceedings shall continue, determinations made in such proceedings, and appeals taken therefrom, as if this Act had not been enacted, and shall continue in effect until modified under title 17, United States Code, as amended by this Act. Such petitions filed and voluntary agreements entered into shall remain in effect as if this Act had not been enacted. For purposes of this paragraph, the Librarian of Congress may determine whether a proceeding has commenced. The Librarian of Congress may terminate any proceeding commenced before the date of enactment of this Act pursuant to chapter 8 of title 17, United States Code, and any proceeding so terminated shall become null and void. In such cases, the Copyright Royalty Judges may initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.

(2) CERTAIN ROYALTY RATES PROCEEDINGS.—Notwithstanding any other provision of law, proceedings to determine royalty rates pursuant to section 119(c) of title 17, United States Code, shall be conducted pursuant to the provisions of title 17, United States Code, and the rules and practices in effect under that chapter on the day before any provision of this Act takes effect.

(3) PENDING PROCEEDINGS.—Notwithstanding paragraph (1), any proceedings to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) or 112(e) of title 17, United States Code, for a statutory period commencing on or after January 1, 2005, shall be terminated upon the date of enactment of this Act and shall be null and void. The rates and terms in effect under section 114(f)(2) or 112(e) of title 17, United States Code, on December 31, 2004, for new subscription services, eligible nonsubscription services, and services exempt under section 114(d)(1)(C)(iv) of such title, and the rates and terms published in the Federal Register under the authority of the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107–321) (including the amendments made by that Act) for the years 2003 through

2004, as well as any notice and recordkeeping provisions adopted pursuant thereto, shall remain in effect until the later of the first applicable effective date for successor terms and rates specified in section 804(b) (2) or (3)(A) of title 17, United States Code, or such later date as the parties may agree or the Copyright Royalty Judges may establish. For the period commencing January 1, 2005, an eligible small webcaster or a noncommercial webcaster, as defined in the regulations published by the Register of Copyrights pursuant to the Small Webcaster Settlement Act of 2002 (17 U.S.C. 114 note; Public Law 107–321) (including the amendments made by that Act), may elect to be subject to the rates and terms published in those regulations by complying with the procedures governing the election process set forth in those regulations not later than the first date on which the webcaster would be obligated to make a royalty payment for such period. Until successor terms and rates have been established for the period commencing January 1, 2006, licensees shall continue to make royalty payments at the rates and on the terms previously in effect, subject to retroactive adjustment when successor rates and terms for such services are established.

(4) INTERIM PROCEEDINGS.—Notwithstanding subsection (a), as soon as practicable after the date of enactment of this Act, the Copyright Royalty Judges or interim Copyright Royalty Judges shall publish the notice described in section 803(b)(1)(A) of title 17, United States Code, as amended by this Act, to initiate a proceeding to establish or adjust rates and terms for the statutory licenses under section 114(f)(2) or 112(e) of title 17, United States Code, for new subscription services and eligible nonsubscription services for the period commencing January 1, 2006. The Copyright Royalty Judges or Interim Copyright Royalty Judges are authorized to cause that proceeding to take place as provided in subsection (b) of section 803 of that title within the time periods set forth in that subsection. Notwithstanding section 803(c)(1) of that title, the Copyright Royalty Judges shall not be required to issue their determination in that proceeding before the expiration of the statutory rates and terms in effect on December 31, 2004.

(c) EXISTING APPROPRIATIONS.—Any funds made available in an appropriations Act to carry out chapter 8 of title 17, United States Code, shall be available to the extent necessary to carry out this section.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 1417, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 1417, legislation to reform the rate-making and royalty distribution system for compulsory and statutory licenses. The House passed its version of the bill on March 3 of this year by a vote of 406 to nothing. The other body subsequently passed H.R. 1417 on October 6 with certain amendments incorporated into a committee substitute. These changes are acceptable to both the majority and minority members of our committee with the adoption of the enrolling resolution just considered.

Mr. Speaker, with the adoption of the three copyright compulsory licenses in 1976, Congress contemplated the need for an administrative body charged with periodically adjusting the rates as well as distributing royalties under the respective licenses. The resulting entity was the Copyright Royalty Tribunal or CRT.

Over the next 17 years, however, CRTs were roundly criticized, prompting Congress to reassess the rate-making and royalty distribution construct. This deliberation produced the current system in 1993 that features copyright royalty arbitration panels or CARPs. Eleven years later we are seeking further improvements in response to existing deficiencies in the CARP system.

Among other things, H.R. 1417 addresses the uniform complaint that CARP decisions are unpredictable and inconsistent. This is generally accomplished by changing the structure from one featuring ad hoc arbitration panels to one comprised of three permanent copyright royalty judges or CRJs. To justify the need for these full-time judges and to alleviate overwhelming workloads associated with multiple proceedings that occur simultaneously, the bill staggers the timing during which individual proceedings can be adjudicated.

The bill also addresses the complaint that the process is unnecessarily expensive by eliminating the costs of the arbitrators upon private parties and by creating a specific process to give small claimants a more balanced ability to participate. The bill discourages persons or entities from disrupting the process at the 11th hour by requiring potential participants to show that they have a significant interest in the proceedings. In furtherance of marketplace negotiations, the measure establishes a cooling-off period during which time parties are to focus on reaching their own agreements.

Mr. Speaker, the amendments adopted by the other body that require our further consideration of the bill today concern the scope of discovery in the role of the copyright office under the new construct.

Briefly, the original House version created greater open-ended discovery of relevant material information over a 60-day period. The changes adopted by the other body make it more difficult for a participant to acquire documents and materials other than statements made by stakeholders and witnesses. In addition, another revision specifically limits the number of interrogatories and depositions that each participant may seek. Both of these changes are consistent with the current trend in administrative law that pares the discovery process. This will save participants time and money.

In addition, the other body strengthened the role of the copyright offices relative to the CRJs. This represents a policy preference that deviates somewhat from the House bill which conferred greater autonomy upon the CRJs to make independent decisions.

□ 1715

I am nonetheless satisfied that the changes adopted were born of a legitimate concern that the proceedings would be fairer and more predictable if the Copyright Office retained plenary authority to offer guidance regarding copyright law. This is especially important when novel questions of law arise.

Mr. Speaker, H.R. 1417 was painstakingly negotiated amongst the various congressional, executive, and industry stakeholders. We have worked in a bipartisan manner and developed a consensus product over a 3-year period that will effectively address an arcane, but important, matter. I urge the adoption of the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 1417. The House passed a substantially identical version of this bill by a vote of 406 to zero on March 3. After making a number of amendments, the Senate passed H.R. 1417 on October 6 by unanimous consent. I think it is safe to say this bill is noncontroversial, and I ask all of my colleagues to once again support it.

Certainly, my colleagues should be aware that the Senate amendments do make some significant changes to the bill as passed by the House. However, I believe those changes are noncontroversial. Further, our passage of Senate Concurrent Resolution 145 just minutes ago ensures that H.R. 1417 will now work as intended.

Since H.R. 1417 already passed the House unanimously, I will spare my colleagues a detailed explanation of the provisions with which they are already familiar. In summary, H.R. 1417 significantly reforms the Copyright Arbitration Royalty Panel, or CARP, system. CARPs establish the rates, terms, and distribution of royalties generated by the half dozen statutory licenses that require copyright owners to make their works available to certain users under government-set rates and terms. There is widespread agreement that the CARP process is broken, and H.R. 1417 is designed to remedy its defects.

After House passage in March, the Senate gave full consideration to H.R. 1417. Following a September markup before the Senate Committee on the Judiciary, the Senate passed its own amendments to H.R. 1417. These amendments largely leave intact the substance and structure of H.R. 1417. Rather than make wholesale changes, the Senate has made a number of focused amendments to several provisions of the House-passed bill. Many of

these changes are distinctive improvements to which I can give my wholehearted support. Others may not reflect the exact policy choices I would prefer, but are still acceptable in the context of this bill.

Perhaps the most significant changes made by the Senate amendments involve the interplay between the new Copyright Royalty Judges and the Copyright Office. The Senate opted to give the CRJs less autonomy and independence from the Copyright Office. For instance, the Senate amendments give the Copyright Office the right to review for legal errors CRJ interpretations of the Copyright Act. Further, the Senate amendments require the CRJs to obtain Copyright Office approval before correcting clerical technical errors in their issued determinations. While I reserve the right to revisit some of these changes in future legislation, I do not think they should prove fatal to the bill before us today.

Another major change implemented by the Senate amendments to H.R. 1417 involves the discovery process that will be utilized in rate-making proceedings. In essence, the Senate amendments more severely limit the discovery that will be available to participants in rate-making proceedings. To my mind, these amendments represent a significant improvement over the analogous provisions in the House-passed version of H.R. 1417. These changes will further reduce the cost of participation in rate-making proceedings and thus advance one of the fundamental goals of H.R. 1417. I commend the Senate for making these improvements.

In addition, the Senate amendments altered to a certain degree the ability of affected parties to object to negotiated settlements of royalty rates. In essence, the Senate amendments give all parties bound by proposed rates the ability to comment, but only allows participants in a proceeding to actually object to the proposed rates.

The Senate amendments also make a number of other changes; but as they are primarily technical, they do not merit discussion in the full House.

In conclusion, Mr. Speaker, I think H.R. 1417, as corrected by Senate Concurrent Resolution 145, will substantially improve the CARP process, and I ask my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. SMITH), the chairman of the subcommittee.

Mr. SMITH of Texas. Mr. Speaker, I thank the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for yielding me this time.

Mr. Speaker, H.R. 1417 passed the House unanimously in March. The bill before us today reflects noncontroversial amendments added by the Senate.

As the gentleman from Wisconsin (Chairman SENSENBRENNER) indicated, the Senate included some inadvertent, but serious, drafting errors when it passed the bill with these amendments in October. It is now necessary to adopt a concurrent resolution that reflects the fixes to those errors.

The Senate passed this resolution yesterday.

H.R. 1417 is a bipartisan effort to reform the process of copyright royalty rate-making and distribution in a way that is fair to all participants. It is important to the artists, songwriters, music publishers, and webcasters caught in a long, laborious, and costly royalty system. It will provide an incentive for the creation and distribution of content.

The copyright royalty rate-making and distribution process is one of the most complicated and arcane areas of our legal system, but it affects an expansive universe of people and industries.

This bill addresses two complaints about the current system: cost and lack of stability and accountability.

Work on reforms to this system has been a long and tough process over the past 3 years. I would like to thank the gentleman from Wisconsin (Chairman SENSENBRENNER) and the gentleman from Michigan (Ranking Member CONYERS) and the gentleman from California (Ranking Member BERMAN) for their commitment to the process.

This legislation is necessary to ensure an efficient and effective system for copyright royalties.

Mr. Speaker, I urge my colleagues to support this bill.

Mr. BERMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Speaker, I rise only to congratulate the House leadership of the Committee on the Judiciary for the really tireless efforts that they brought to the negotiation process to get us to where we are. We have come a considerable way, and I want to start out by thanking our ranking member on the subcommittee, who has been absolutely brilliant in negotiating with the other side, and our chairman and subcommittee chairman as well.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentleman from Michigan (Ranking Member CONYERS) for those comments. But in all fairness, I have to thank the staff of the committee on both sides of the aisle here who deserve great appreciation because this may not be interesting, but it is complicated, and they spent dozens and perhaps hundreds of hours working through the details of what I think is actually a very significant reform of a process that is very important for a select group of people.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. STEARNS). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 1417.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

IMPROVING ACCESS TO PHYSICIANS IN MEDICALLY UNDERSERVED AREAS

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2302) to improve access to physicians in medically underserved areas.

The Clerk read as follows:

S. 2302

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

SECTION 1. MODIFICATION OF VISA REQUIREMENTS WITH RESPECT TO INTERNATIONAL MEDICAL GRADUATES.

(a) EXTENSION OF DEADLINE.—

(1) IN GENERAL.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) (as amended by section 11018 of Public Law 107–273) is amended by striking ''2004.'' and inserting ''2006.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if enacted on May 31, 2004.

(b) EXEMPTION FROM H–1B NUMERICAL LIMITATIONS.—Section 214(l)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(2)(A)) is amended by adding at the end the following: ''The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.''.

(c) LIMITATION ON MEDICAL PRACTICE AREAS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is amended by striking ''agrees to practice medicine'' and inserting ''agrees to practice primary care or specialty medicine''.

(d) EXEMPTIONS.—Section 214(l)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1184(l)(1)(D)) is further amended—

(1) by striking ''except that,'' and all that follows and inserting ''except that—''; and

(2) by adding at the end the following:

''(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;

''(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is

located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B)) in accordance with the conditions of this clause to exceed 5; and

''(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2302, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 2302. This legislation will extend the program under which alien doctors can avoid having to return home for 2 years by agreeing to practice in medically underserved areas here in America.

Aliens who participate in medical residencies in the United States on a ''J'' visa program visa must generally leave the United States after the completion of their residencies to reside abroad for 2 years. The intent behind the policy is to encourage American-trained foreign doctors to return home to improve health conditions that advance the medical profession in their native countries.

In 1994, Congress created a waiver of the 2-year foreign residence requirement. State departments of public health may request a waiver for foreign doctors who commit to practicing medicine for no less than 3 years in geographic areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals. The number of foreign doctors who can receive the waiver is limited to 30 per State each year. The waiver has proven to be an important means of ensuring quality medical care in areas of the United States with physician shortages.

S. 2302 is substantially similar to H.R. 4453, a bill introduced by the gentleman from Kansas (Mr. MORAN) that this body passed by voice vote on October 6. It will extend the waiver program to June 2006. It will also allow each State to place five of the doctors it sponsors each year in areas not designated by HHS as physician shortage areas. The bill continues the practice of allowing foreign doctors receiving waivers to receive H–1B visas regardless of the annual H–1B visa quota. Finally, the bill clarifies that doctors receiving waivers can practice specialty medicine. However, when a doctor works in a specialty, there must exist a shortage of health care professionals able to provide services in that specialty to the patients he or she will serve.

I urge my colleagues to support this bill.

Mr. Speaker, this time I will insert into the RECORD an exchange of jurisdictional letters between the chairman of the Committee on Energy and Commerce, the gentleman from Texas (Mr. BARTON), and myself.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, November 16, 2004.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: This week the House is scheduled to consider S. 2302 under suspension of the rules.

S. 2302, as passed by the Senate, contains language, which provides for exemptions to section 214(l)(1)(D) of the Immigration and Nationality Act, involving the Secretary of Health and Human Services. As you know, Rule X of the Rules of the House of Representatives gives the Committee on Energy and Commerce jurisdiction over public health.

I recognize your desire to bring this legislation before the House in an expeditious manner. Accordingly, I will not exercise my Committee's right to a referral. By agreeing to waive its consideration of the bill, however, the Energy and Commerce Committee does not waive its jurisdiction over S. 2302. In addition, the Energy and Commerce Committee reserves its right to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask for your commitment to support any request by the Energy and Commerce Committee for conferees on S. 2302 or similar legislation.

I request that you include this letter and your response in the RECORD during consideration of the bill. Thank you for your attention to these matters.

Sincerely,

JOE BARTON,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, November 17, 2004.

Hon. JOE BARTON,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR CHAIRMAN BARTON: Thank you for your letter regarding S. 2302, a bill to improve access to physicians in medically underserved areas. Subsection 1(d) of the bill reduces the number of slots assigned to underserved areas that are designated by the Secretary of Health and Human Services. To the extent they affect duties of the Secretary, these provisions fall within the Rule X jurisdiction of the Committee on Energy and Commerce. I appreciate your willingness to forgo consideration of the bill, and I acknowledge that by agreeing to waive its consideration of the bill, the Committee on Energy and Commerce does not waive its jurisdiction over these provisions.

I will include a copy of your letter and this response in the CONGRESSIONAL RECORD during consideration of S. 2032 on the House floor.

Thank you for your assistance in this matter.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the distinguished chairman. This might be the last time the Subcommittee on Immigration is on the floor, possibly, in the 108th Congress; and I want to thank the full Committee on the Judiciary staff, and I want to particularly offer my appreciation to the Democratic staff of the Committee on the Judiciary for their very fine work during this Congress and their efforts toward bipartisanship, and thank Nolan Rappaport on the Subcommittee on Immigration for his work on this legislation and others dealing with immigration concerns.

Let me share with my colleagues from an Associated Press article dated August 24: ''Before doctors like Mircea Rachita from Romania arrived in town, patients in this small town had to wait months for doctors' appointments. Now, underserved communities are finding good doctors easy to come by due to a visa waiver program which creates incentives for foreign-born physicians to work in communities American doctors may shun.''

Clearly there is room and need for a bill to improve access to physicians in medically underserved areas, and S. 2302 is the embodiment of that bill, along with a similar House bill.

The purpose of this bill is to make it possible for foreign doctors to provide medical services in geographic areas which have been designated by the Secretary of Health and Human Services as having a shortage of health care professionals. S. 2302 is almost identical to H.R. 4453, which I cosponsored with my colleague, the chairman of the subcommittee, the gentleman from Indiana (Mr. HOSTETTLER).

H.R. 4453 passed the House on October 6 on the Suspension Calendar. The Senate bill has an additional provision which ensures that specialists sponsored by Federal and State agencies are placed in areas that have a shortage in that specialty. The additional provision requires the sponsoring agency to determine criteria for demonstrating a specialist shortage and to meet that criteria in order to sponsor the specialist, a way of broadening access to health care and recognizing the 44 million uninsured Americans who need access to sometimes public facilities that utilize these foreign doctors.

□ 1730

Aliens who attend medical school in the United States on J exchange program visas are required to leave the country afterward and reside abroad for 2 years before they can receive their visas to work here as physicians.

In 1994, Congress created a new temporary waiver of this 2-year foreign residence requirement which allowed States as well as Federal agencies to sponsor the doctors. It applied to foreign doctors who would commit to practicing medicine for no less than 3 years in a geographic area designated by the Secretary of Health and Human Services as having a shortage of health care professionals.

This program has been successful for 10 years in bringing highly qualified physicians to medically underserved areas. It sunsetted on June 1 of this year and created a chasm between the needs of those who need health care and the regulations of the Federal government. We now have brought those pieces together.

The first physician recommended for a waiver in Texas was Dr. Maria Camacho, a pediatric intensivist. Her services to the residents of Harlingen in Cameron County provide a level of health care to children that was previously unavailable in that county.

Dr. K.M. Moorthi is a nephrologist who was recommended for a waiver to serve at a facility in Pecos, Texas, in Reeves County. He works at a dialysis center. Patients requiring dialysis three times per week in that part of Texas used to have to travel more than 70 miles each way for the treatment. Now it is available in this county.

The bill will provide a 2-year extension for this waiver program. We started out with 1 year. I asked for 5 years. We compromised on 2 years. We have made progress.

It will also establish a pilot flexibility program which will allow a State agency to place a doctor at a location that has not been designated as underserved if the doctor, nevertheless, will serve patients from an underserved area. That is a very effective compromise to ensure that the patients, no matter where they are, get served whether they are in an underserved area or those patients that reflect that community.

The exception is limited to five doctors in each State. It targets rural underserved areas that typically get specialty medical care from a major medical facility that is not itself located within an underserved area.

Finally, the doctors who receive a waiver to come here with H–1B visas will not count toward the H–1B cap.

I urge my colleagues to consider this legislation as a very positive step for good health care in America and support it enthusiastically.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield such time as he may consume to the gentleman from Kansas (Mr. MORAN), the author of the House counterpart to this bill.

Mr. MORAN of Kansas. Mr. Speaker, I thank the chairman for yielding me time.

I am here only once again in a series, it seems like, of a number of years in which I have been on the floor to support the provisions contained in this legislation. I commend the chairman and the ranking member in the Committee on the Judiciary for their work in getting this resolved this year.

The J–1 visa program expired on May 31 of this year. It is a program that is so important to many areas of the country. Once again, I am here to express my support for the legislation and indicate that in many places across rural America and the core of our cities, absent this program, Americans will not be served with a physician. It is important. It needs to be passed. I thank the chairman for his leadership in seeing that that occurred.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I am so happy that we are working together on a health care issue. They are critical to the United States where we have so many people without the ability to get health care. Against that background and this positive attitude, someone in this body must say, well, why are we bringing doctors in from out of the country to the most affluent nation on planet Earth, and they are providing very important necessary care? I think that is a question that will be taken up in the following upcoming session, but it is one that is troublesome.

Right now I join with the gentlewoman from Texas (Ms. JACKSON-LEE), our ranking member, in proudly supporting the work that has taken place to expand the boards. There are places where, for example, Indian reservations, technically not within the jurisdiction, will now be able to receive help. And even more important is the ability now to bring in specialists, pediatric specialists, diabetes specialists, to work in areas where, without this intervention, patients would be hundreds and hundreds of miles away from the proper medical treatment.

This is an excellent bill. It is a product of bipartisan work in the committee, and I am happy to be a part of it. I thank the gentlewoman for yielding me time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from North Dakota (Mr. POMEROY), who I think understands the need for health care in rural America.

Mr. POMEROY. Mr. Speaker, I thank the gentlewoman for yielding me time.

I am pleased to associate myself with the ranking member on the Committee on the Judiciary, the gentleman from Michigan (Mr. CONYERS), as well as my former co-chairman with the Rural Health Care Coalition, the gentleman from western Kansas (Mr. MORAN).

Truly, we have a growing problem relative to the delivery of rural health care, and that is we do not have enough professionals to deliver the care required. As we look at the pipeline, those coming along compared to those nearing the end of their practice years, we realize that we are working ourselves into a pretty serious problem here and that is especially so when you consider the aging of the population. So I agree with the gentleman from Michigan (Mr. CONYERS). We need to look at this systemically, why this is happening, and address it. But in the near term, we need to take the step that offers a Band-Aid solution but an important Band-Aid at that, and that is the legislation before us.

North Dakota receives about a dozen doctors a year through this important visa waiver provision. Twenty-six cities in the State I represent have participated in this program. We would have a situation where failure to authorize this would create immediate problems in six or seven small towns. They would face the departure of critical medical personnel under the loss of this visa waiver.

With the passage of it, conversely, we will have opportunities to continue to build capacity. I have one city that has been going through an incredibly expensive proposition of hiring an anesthesiologist on a Locum Tenens basis. This is a temporary hire coming in from other parts of the country, and it costs a fortune. We hope to move through a resident hire through the application of this visa waiver provision.

So, bottom line, while this is an immigration bill, it is all about making sure health care services for peoples' needs in rural areas and underserved communities are available, and I urge its adoption.

Mr. CONYERS. Mr. Speaker, will the gentleman yield?

Mr. POMEROY. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Speaker, I want to commend the gentleman, because it was the senior Senator from North Dakota that put this program together almost a decade ago, and I commend both of the gentlemen.

Mr. POMEROY. I thank the gentleman very much.

Senator CONRAD has done very good work on this, as has the gentleman from Kansas (Mr. MORAN) in the House and others. I am very pleased, as the gentleman mentioned earlier, a bipartisan moment on health care. This is a good bill. Let us pass it.

Ms. JACKSON-LEE of Texas. Mr. Speaker, how much time remains?

The SPEAKER pro tempore (Mr. STEARNS). The gentlewoman from Texas (Ms. JACKSON-LEE) has 9 minutes.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

In conclusion, I am very glad that the point that was made by the distinguished ranking member and the gentleman from North Dakota (Mr. POMEROY) is that this is both a medical

bill, a health care bill, and it is an immigration bill. And is it not interesting that we can find an opportunity for bipartisanship around two very key issues.

I think it is also important to reemphasize the fact that we promote and encourage the education and training of individuals here in America in the medical professions, nurses, nurse practitioners, physicians, physician assistants and others that are the cornerstone of our health care system. But we know our hospital systems are overburdened. We know there are many, many people that are underserved. This bill serves a very valuable purpose.

Might I reemphasize the fact that we will give opportunities to hospitals that are located or designated as not an underserved area? It reaches out to serve the underserved, which is something we try to encourage our teaching hospitals to do, who typically are not in areas that can be considered that, so that the individuals get high-quality service. They will be able to utilize this legislation.

Mr. Speaker, in my concluding remarks, I think it is important to note that we do have before us an immigration bill. I was hoping before the conclusion of the 108th Congress we might be in a better position to really attack the question of comprehensive immigration reform. Many of us have had initiatives that have languished for a very long time. I cite for this body the Comprehensive Immigration Fairness Reform Act that really looked at immigration in a very comprehensive manner.

Probably over the next couple of months we will hear a raging debate on immigration, those for it, those against it. The debate on immigration can be a very tense and conflicted debate. It raises some of the most unpleasant aspects of many of those who are pro and con, in many instances, not being able to find common ground. I would encourage my colleagues to look at this forthrightly and understand that we can no longer turn the lights out and close the curtains on this very important issue.

We can no longer have a temporary guest program, albeit how well-intentioned this administration may be, the Flat Earth Theory that allows people to come in for 3 years and then suggest to them that they must then leave the country in order to, if you will, remain in a position to possibly have another job again. The guest worker program proposed by President Vincente Fox and this administration will not work. You will not get 8 million illegal immigrants in this country to accept that philosophy. Nor will you get to a point where you would like to be, a secure America, because we are not focusing on securing our borders. We are focusing on what I think is misdirected in a temporary guest worker program.

Comprehensive reform allows us to allow individuals to earn access to legalization, to document those who are here, and be able to be safe from terrorists by distinguishing those who have come here for economic opportunity as opposed to those who have come to do us harm. Why can we not understand that in a bipartisan way?

Now, let me say also, if we are going to do anything in the last hours of this session, make sure that we do something that helps legal immigrants who are here who for years who have been trying to reunite their families. We have passed out of the House in a bipartisan manner 245–I which would allow legal immigrants to reunite with mothers and fathers, husbands and wives or children. That would be a fair approach, and the Senate needs to help us, the other body, if I might say, needs to help us in that. Any discussion about H–1Bs clearly should be a discussion in recognizing that we must protect American jobs. We must protect American jobs in order to have an open and adequate discussion on immigration.

In conclusion, let me say this, Mr. Speaker, I would hope that our good friends who are dealing in the conference on issues of immigration reform would not pursue these in the 9/11 intelligence bill. Allow us to have a full, comprehensive debate and a full, comprehensive bipartisan approach to immigration reform that will last and will be invested in America and will make America work and comply with our principles of democracy and empowerment and equality.

Putting poison pills on an intelligence bill that deals with fixing the intelligence system is no way to go forward on a vital question of how we bring America together and answer the questions of those who say, what do you do about those illegal immigrants? Are you just going to affirm them for doing the illegal wrong thing? No, we are not. We are going to give them the opportunity to earn access to legalization while they are already here paying taxes, children in school, building houses and contributing to this economy.

□ 1745

Let us wake up America and stop the divisive debate on immigration and stand up for what we believe in.

This country was founded on immigration. How many of us can forget the early pinnings of this Nation; the turn of the century and the 1900s and immigrants coming from Europe? This is the very same.

Protect the borders, respond to those in Arizona and California and Texas who are concerned about the constant flow of illegal immigrants and the large deaths in the deserts. We do that by securing the borders, working with our friends in South and Central America, providing economic opportunity there, and working on a real immigration reform bill.

It saddens me that we come to the close of the 108th Congress when we could have sat down, looked each other in the eye, sat around the table and done the right thing.

I can only say that I applaud the J–1 visa legislation, a good sign of working together. It will help people in America, and I hope it will help us improve our health care system, but we can also heal a broken immigration system by doing the very same thing, looking each other in the eye and sitting around and putting the doctors to work, the political doctors to work, of good mind and good faith and make this country what it is, a country that believes in the Statue of Liberty's words: Bring us your poor and oppressed.

I thank the distinguished Speaker, and I ask my colleagues to support this legislation, and I hope the charge is that we will face immigration the way it should be, in a fair, equitable and balanced way.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, lest anyone be confused as a result of the previous speaker that this is a wide-ranging, overall immigration bill that deals with amnesty and guest workers and all of those very contentious issues, let me lay that impression to rest. This bill does not do that, and I fear that the previous speaker's statement ends up hurting the support for this bill that is broad and bipartisan.

All this bill does is allow a foreign national who is a graduate of an American medical school and who has completed his residency in an American hospital to practice in a medically-underserved area, somewhere in the United States, and the request would have to be made by a State Department of Public Health and limited to no more than 50 doctors per State.

Now, this is not what the gentlewoman from Texas is talking about. We will deal with that in due course, but let us make sure that this bill is not confused with the other more broad and contentious bills.

This bill has to pass because it extends a program that expired in June of this year, and if we vote this legislation down, then we are not going to have those doctors in the medically-underserved areas.

We should keep the discussion and bills like this confined to what is in the bill, rather than a wide-ranging overall debate on immigration policy.

Ms. BORDALLO. Mr. Speaker, I rise today in support of S. 2302, which would reauthorize the "Conrad 30 J–1 Visa Waiver Program." Reauthorization of this important program will help districts that experience shortages with respect to health care professionals, such as Guam, by allowing certain U.S.-trained foreign doctors to remain in the United States to practice medicine in these underserved areas.

Like many rural and insular areas, Guam experiences great difficulty attracting and retaining qualified health professionals. The cost of providing health care is higher in Guam

than in many areas on the mainland, and incidents of chronic disease are above national averages. The Conrad 30 J–1 visa Waiver Program is an important tool that allows poor, rural and insular areas to meet the health care needs of their communities by permitting International Medical Graduates to maintain their work visas in the United States if they agree to remain in areas defined by the Department of Health and Human Services as Health Professional Shortage Areas or Medically Underserved Areas or Populations. Normally, these foreign physicians would have to return to their respective home countries for 2 years before they could return to the United States to again practice medicine.

While I believe priority should always be given to American doctors and health professionals for local hiring, it is clear that there are simply not enough health care professionals to meet demand in underserved areas such as Guam. Without the services of skilled foreign physicians from countries such as the Philippines, it would be difficult for Guam's public health care system to meet the medical needs of our community. S. 2302 reauthorizes a program that has been successful in addressing the issues of recruitment and retention of qualified health professionals in these areas, and I urge my colleagues to support its passage.

Mr. DAVIS of Illinois. Mr. Speaker, I rise in support of S. 2302. The state of health care is one of the most critical issues facing this Nation. As the world's most powerful and wealthy country, our health care system is unacceptable. According to the Health Resources and Services Administration, there are 62 designated Health Professional Shortage Areas in Cook County, Illinois, alone. It is unacceptable that 49 out of the 102 counties in Illinois lack hospitals with any obstetrical services. It is unacceptable that 49 of the 102 counties in Illinois lack hospitals with any psychiatric services. S. 2302 would help address the Nation's health care crisis by encouraging qualified medical professionals to serve in medically underserved areas. Increasing access to primary care providers and specialists would benefit the citizens of Illinois and the country as a whole.

Therefore, this bill is a step in the right direction. However, much work remains to be done to reform our health care system as a whole. We need to ensure that no American is left behind in preventative care. We need to ensure equal access to medical treatments. We need to ensure affordable health insurance. We need to erase the vast disparities in the incidents of illness and death among minorities compared to the overall U.S. population. African-American and Native-American babies die at a rate that is 2 to 3 times higher than the rate for white Americans. African Americans are 1.7 times as likely as white Americans to have diabetes; Latino Americans are twice as likely to have diabetes as their white counterparts.

Mr. Speaker, the state of one's health sets the precedent for everything else in our lives. If we are not in good health, we cannot perform our jobs well or do well in school. We must work toward making quality healthcare accessible and available to all regardless of age, race, or economic status.

Ms. CHRISTENSEN. Mr. Speaker, I rise today to join my fellow colleagues in support of S. 2302, also known as H.R. 4156. I first would like to thank Senator CONRAD and Congressman JERRY MORAN for sponsoring this important piece of legislation. I would also like to thank the committees jurisdiction for their quick actions in allowing this bill to come to the floor.

Mr. Speaker, over the tenure of my congressional career I have come to the floor repeatedly to demand that Congress act to address the needs of the medically underserved and to ensure that we do everything possible to eliminate arbitrary barriers which give rise to healthcare disparities.

As there is a vast amount of research on the subject of rural physician recruitment and retention, this bill is by no means a comprehensive policy. Rather, the purpose is to be a temporary stop gap measure to allay the crisis of rural health and healthcare providers.

Mr. Speaker, more than 51 million Americans live in areas classified by the U.S. Office of Management and Budget (OMB) as nonmetropolitan. They comprise one-fifth of the U.S. population. Rural populations are found to be older, poorer, sicker, less educated and to have a perception of worse health status than their urban counterparts.

They also have higher infant mortality and injury-related mortality rates, fewer hospital beds and physicians per capita, and are much less likely than urban residents to have private or public health insurance. Moreover, while the number of individuals living below the poverty line is disproportionately high in rural areas, the number receiving Medicaid benefits is disproportionately low.

In a study of the utilization rates of 28 categories of medical services, found that, with the exception of major surgical procedures, urban residents received between 20 percent and 30 percent more of each type of service than did rural residents.

With at least 20 percent of the population living in rural areas, less than 11 percent of the Nation's physicians are practicing in nonmetropolitan areas. Today, more than 2,500 physicians were needed in nonmetropolitan areas to remove all nonmetropolitan health professional shortage area (HPSA) designations for primary care. More than twice that number are needed to achieve a 2,000–1 ratio in those HPSAs. This is the current situation and does not factor in the aging physician population serving rural areas, nor does it factor in the statistical designation dealing with counties as the main reference point.

As a medical doctor, I understand that nonmetropolitan physicians derive a larger share of their gross practice revenue from Medicare and Medicaid patients than metropolitan physicians. These public programs pay physicians at lower rates than private insurers. There is a decreased ability in nonmetropolitan areas to perform economically enhancing procedures (hospitals with decreasing obstetrical and surgical units, etc.), which further decreases relative reimbursement rates. Thus, nonmetropolitan physicians, on average, work more and earn less than their metropolitan counterparts.

Rural Health Clinics (RHCs), Federally Qualified Health Centers (FQHCs) in designated HPSAs and medically underserved areas (MUAs), and differential Medicare payments to qualifying rural areas have helped to enhance reimbursement. But currently, the mandate that States pay RHCs and FQHCs their reasonable costs under Medicaid is being phased out. Medicare managed care program reimbursement to RHCs has threatened to be lower than the current reimbursement. Both of these payment changes will put providers in jeopardy.

Mr. Speaker, I along with my Congressional Black Caucus counterparts have consistently pushed the Congress for more equitable fee reimbursement and to fully fund Title VII and Title VIII health profession training program. We have also called for the strengthening, expansion, and reauthorization of these programs in our minority health bill H.R. 3459, the Healthcare Equality and Accountability Act, which I look forward to moving on the 109th Congress.

S. 2302/H.R. 4156 acknowledges that international medical graduates, through State initiated J–1 visa programs, have initially met some unmet needs of rural areas. But Mr. Speaker, I would like to highlight a recent study published by the Council on Graduate Medical Education that stated that although international medical graduates have made an important contribution to the provision of medical care in some rural areas, training these graduates is an inefficient way to expand physician supply in rural areas. Although many inner city hospitals are dependent on international medical graduates for providing care to underserved urban populations, more direct avenues exist for meeting the needs of these hospitals. The funds would be better targeted to programs that increase the flow of U.S. health professional graduates to underserved rural areas.

Therefore, Mr. Speaker while I strongly support the underlying bill, I again call on Congress to move legislation in the 109th that will do the following.

Increase ORHP funding for research related to physician recruitment, retention and networking should be supported and enhanced.

Reevaluate how designation of HPSAs and MUAs are given so the designated areas accurately reflect underserved status.

Increasing the Title VII funding for AHECs and health education training centers should be supported and enhanced.

Encourage and mandate that medical schools confront their obligation to target admissions and training to underserved populations, both rural and urban, in the primary care professions.

Encourage medical school environments to encourage individuals into primary care and encourage early and long-term rural exposure to positive rural physician role models, and such educational programs should be adequately funded.

Increase scholarship programs to place medical students with mentoring physicians in rural or remote practices during an elective or vacation period should be encouraged.

Support medical schools' and residencies' efforts to integrate community orientation and a team approach to health care. To achieve the full benefit of this effort, there needs to be further infrastructure building of rural allied health teams and rural communities' commitment to meeting the challenges of a changing health care system.

Encourage family practice residencies to offer rural electives, rural emphasis and rural training tracks.

Direct the Bureau of Health Professions (BHP) funding for residencies that are building rural-based programs and funding for those programs that have a history of producing

rural physicians should become a staple rather than be at the mercy of national budget politics. An aggressive plan to increase funding should be sought.

Increase support by the BHP to primary care residencies to be continued and enhanced.

Decrease professional isolation by supporting teleinformatics and outreach education programs of states and by the use of nonphysician providers.

Increase retention through more appropriately rural-trained candidates.

Identify care needs at the community level. Use state and federal funds to assist rural hospitals where access to care would be threatened by hospital closure and physicians would be further deprived of opportunities to utilize their professional skills.

Develop and use innovative delivery systems that emphasize coordination and cooperation among providers, institutions and communities.

Develop programs allowing rural clinicians to undertake periodic rotations through academic hospital services (with locum tenens backup) in order to learn or update procedures.

Provide for those areas that do not qualify for RHC or FQHC status but still are faced with the disproportionate numbers of Medicare and Medicaid patients, there should be enhanced Medicare and Medicaid payments to rural providers.

Evaluate the enhanced reimbursement available through RHC and Community Health Center designations needs to be adequately maintained to retain providers and avoid decertification as the area's needs are met. If the same level of Medicare and Medicaid and uninsured patients persists and the area is decertified because of an adequate supply of physicians, a cycle will develop leading to economic unfeasibility, provider dissatisfaction and lower retention rates.

Mandate the States to pay RHCs and FQHCs reasonable costs under the State's Medicaid program.

Ensure that Medicare managed care reimbursement must equal or exceed the RHC and FQHC Medicare reimbursement.

Increase the supply of primary care providers in rural areas by lessening speciality and geographic differentials in physician income.

Establish relocation grants, especially for remote areas, to defray the costs of moving and setting up a practice.

Mr. Speaker, in the 109th Congress I will introduce a bill that codifies these recommendations among others and will hopefully begin the process of ensuring that we provide healthcare for all Americans within or close to current expenditures.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. STEARNS). The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 2302.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

AUTHORIZATION OF SALARY ADJUSTMENTS FOR FEDERAL JUSTICES AND JUDGES

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5363) to authorize salary adjustments for Justices and judges of the United States for fiscal year 2005.

The Clerk read as follows:

H.R. 5363

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

SECTION 1. AUTHORIZATION OF SALARY ADJUSTMENTS FOR FEDERAL JUSTICES AND JUDGES.

Pursuant to section 140 of Public Law 97–92, Justices and judges of the United States are authorized during fiscal year 2005 to receive a salary adjustment in accordance with section 461 of title 28, United States Code.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5363, the bill currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 5363 to provide a cost-of-living adjustment for Federal judges in fiscal year 2005.

By way of background, Congress enacted the Executive Salary Cost-of-Living Adjustment Act in 1975, which was intended to give judges, Members of Congress and high-ranking executive branch officials automatic COLAs accorded other Federal employees unless rejected by Congress. In 1981, Congress amended the statute by enacting section 140 of Public Law 97–92, which requires specific congressional action to grant judges a COLA.

Mr. Speaker, the legislation before us is based on the template set forth in H.R. 3349, now Public Law 108–167. That law satisfied the section 140 requirement and thereby enabled judges to receive a COLA this past fiscal year. H.R. 5363 accomplishes the same purpose for fiscal year 2005.

H.R. 5363 will ensure that Federal judges receive a COLA when other civil servants, including Members of Congress, receive theirs. The legislation will assist in the administration of justice in our Federal courts and is otherwise noncontroversial. I urge its adoption.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

This is a great day in the Federal system where we on the Committee on the Judiciary have decided to authorize a COLA for the members of the Federal judicial system in America. Now, there are only a couple of problems here, and I, of course, enthusiastically support H.R. 5363.

The first is that those who work in the administrative office of the courts, those who work for the Federal judges, now enjoy greater salaries than the judges themselves.

The second thing is that, under the system that we are implementing, Article III, section 1 of the Constitution, the fact of the matter is that the failure to provide past cost-of-living adjustments to our Federal judiciary has, in the last decade, resulted in an economic reduction in salary in the equivalent amount of $77,000, and so we are now faced with a crisis of dozens, six dozen, judges having left the judiciary in the past several years.

I think it is obvious to all that it is hard to continue to maintain a qualified and independent judiciary if we are not paying them a just wage.

Having said this, we have brought this measure forward, not a moment too soon, to provide for them a cost-of-living adjustment for the present term.

So I enthusiastically join the gentleman from Wisconsin (Chairman SENSENBRENNER) in supporting this measure.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H.R. 5363, a bill authorizing cost-of-living salary adjustments for justices and judges of the federal courts for fiscal year 2005 that has been introduced by Chairman JIM SENSENBRENNER and co-sponsored by Ranking Member JOHN CONYERS of the Judiciary Committee. The bill would provide for a 2.5 percent adjustment of federal judiciary salaries. I thank the Chairman for his leadership in bringing this very important matter to the floor. In 1981, Congress passed a Joint Resolution Making Further Continuing Appropriations for FY 1982, and Section 140 of that legislation read as follows:

Notwithstanding any other provision of law or of this joint resolution [Pub. L. 97–92], none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this joint resolution [Dec. 15, 1981], any salary of any Federal judge or Justice of the Supreme Court, *except as may be specifically authorized by Act of Congress* hereafter enacted: Provided, That nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or of any Justice of the Supreme Court. This section shall

apply to fiscal year 1981 and each fiscal year thereafter. (Emphasis added).

This provision placed a severe limitation on the cost-of-living adjustments—and therefore the financial well-being of judges by requiring specific implementing legislation before a salary increase could be made under the current Section 461 of Title 28 in the United States Code.

Article III, Section 1 of the United States Constitution provides that "The Judges . . . shall . . . receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." Over the past ten years though, this body has failed to provide federal judges with annual cost-of-living adjustments (COLA), and as a result, these officers have faced the economic equivalent of a $77,000 reduction in salary. In the last 30 years, while average pay has increased by 12% for most workers, it has decreased by 25% for federal judges. Federal judges make a lifetime commitment to serve the public. This legislation will help them to plan their financial futures with assurance that their pay is commensurate with the cost-of-living increases for this year.

Under the current pay schedule, federal district court judges earn $150,000 per year. This is far, far less than they could earn in private practice and is even less than an associate right out of law school earns in New York City. Our federal judiciary will not attract the kind of high caliber legal minds that are needed if the compensation is not maintained in a reasonable fashion.

It has gotten so bad that employees of the Administrative Office of Courts—who work for the federal judges—now enjoy greater salaries than the judges themselves. This is the equivalent of congressional staff earning more than Congressmen. It is no wonder that federal judges are leaving in droves, with nearly six dozen judges leaving over the last several years.

There can be no doubt of the value and importance of ensuring that our federal judges are fairly compensated. The federal judiciary is the crux of our democracy. Without the wisdom of some of the great judicial scholars of the past, many of—women, African-Americans and all minorities, immigrants, disabled, and others, would not enjoy the fundamental civil liberties that we do today. We are a long way from a completely fair and equal society, but without the best and brightest legal minds, we will never make it to that goal.

If there is any single idea in the Constitution that has separated our experiment in democracy from all other nations, it is the concept of an independent judiciary.

The Founding Fathers, in their great wisdom, created a system of checks and balances, granting independent judges not only lifetime tenure, but the right to an undiminished salary. It is no surprise that over the years, the federal judiciary, more than any other branch, has served as the protector of our precious civil rights and civil liberties. I agree with Alexander Hamilton that the "independent spirit of judges" enables them to stand against the "ill humors of passing political majorities."

We cannot have a qualified and independent judiciary if we don't pay them a just wage. Chief Justice Rehnquist has declared that "providing adequate compensation for judges is basic to attracting and retaining experienced, well-qualified and diverse men and women." Justice Breyer was even blunter when he stated, "the gulf that separates judicial pay from compensation in the non-profit sector, in academia, and in the private sector grows larger and larger . . . and threatens irreparable harm both to the institution and the public it serves."

The bill before us responds to that problem granting the judiciary a COLA retroactive to the start of the last fiscal year. I consider this to be a modest down payment in developing a more rationale and fair system of compensating our federal judges.

I urge my colleagues to join this Committee in supporting this important legislation. Mr. Speaker, I ask that my colleagues vote "yes" on H.R. 5363.

Mr. CONYERS. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 5363.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF S. 2986, INCREASING THE PUBLIC DEBT LIMIT

Mr. REYNOLDS (during consideration of H.R. 5363), from the Committee on Rules, submitted a privileged report (Rept. No. 108–778) on the resolution (H. Res. 856) providing for consideration of the Senate bill (S. 2986) to amend title 31 of the United States Code to increase the public debt limit, which was referred to the House Calendar and ordered to be printed.

FOR THE RELIEF OF ROCCO A. TRECOSTA

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2042) for the relief of Rocco A. Trecosta of Fort Lauderdale, Florida, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2042

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

SECTION 1. COMPENSATION OF BACK PAY.

(a) IN GENERAL.—The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, to Mr. Rocco A. Trecosta of Fort Lauderdale, Florida, the sum of $10,000 for compensation for back pay not received as an employee of the Department of Defense Overseas Dependent Schools for service performed during the period beginning April 14, 1966, through June 30, 1975. Payment under this subsection is made after the transmission of the applicable report of the United States Court of Federal Claims under section 2509 of title 28, United States Code.

(b) NO INFERENCE OF LIABILITY.—Nothing in this section shall be construed as an inference of liability on the part of the United States.

(c) FULL SATISFACTION OF CLAIMS.—The payment authorized under subsection (a) shall be in full satisfaction of all claims of Rocco A. Trecosta against the United States for back pay in connection with his service in the Department of Defense Overseas Dependent Schools.

(d) LIMITATION ON AGENTS AND ATTORNEYS FEES.—No more than 10 percent of the payment authorized by this Act may be paid to or received by any agent or attorney for services rendered in connection with obtaining such payment, any contract to the contrary notwithstanding. Any person who violates this subsection shall be guilty of a misdemeanor and shall be subject to a fine in the amount provided in title 18, United States Code.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, today S. 2042, for the relief of Rocco Trecosta, is being considered by unanimous consent by the House. I have agreed to move this private bill outside the regular private bill process for two reasons: a substantially similar bill passed the House under regular order in the 104th Congress; and this bill only arrived in the House yesterday from the Senate, making it impossible to move the bill through the normal process before this Congress adjourns. It is only because of these unusual circumstances that I am making this exception to the regular order.

In the 104th Congress, a substantially similar bill, H.R. 2765, was introduced by then Chairman of the Subcommittee on Immigration and Claims, Representative LAMAR SMITH. Pursuant to the Meritorious Claims Act, the Comptroller General recommended that Congress enact legislation to treat Mr. Trecosta as a member of the plaintiff class in March v. United States. According to the GAO: "we believe his situation is extraordinary and contains such elements of equity as to be deserving of the consideration of Congress." Because there is generally no controversy on cases referred under the Meritorious Claims Act, the House quickly passed the bill under the normal private bill process, however, it did not pass the Senate.

This bill pays Mr. Trecosta, a former teacher in the Department of Defense Overseas Dependent Schools, backpay he would have been awarded if he had been a member of the March plaintiff class. In that case, the U.S. Court of Appeals held that DOD had not properly implemented pay-setting procedures established under a law requiring the Secretary of each military department to fix the basic compensation for teachers and teaching positions in his department at rates equal to the average of the range of rates of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the U.S. of 100,000 or more population.

The Court held that DOD violated the statutory requirement and directed DOD to base the salaries on current salaries paid to stateside teachers. The Court also granted the plaintiffs entitlement to recover money damages. A judgment in the District Court on June 30, 1975, provided backpay for the plaintiffs for the period from April 14, 1966, to the date of that judgment.

Out of 23,000 potential plaintiffs, only Mr. Trecosta had previously brought an action in the Court of Claims which was denied. But for his suit, he would have been included in the plaintiff-class in March. Furthermore, he could have been paid administratively. The GAO denied his claim, stating that the matter was res judicata and therefore his final Court of Claims judgment barred any further claim arising out of the matters involved in the case.

No one else is in Mr. Trecosta's position. He was the only teacher who challenged DOD's practices, and was excluded from the class due to that challenge.

When the Senate did not move the House passed bill in the 104th Congress, Mr. Trecosta was encouraged to pursue his bill in the Senate first in subsequent Congresses. In 1999, the Senate referred his claim to the Court of Federal Claims, which determined that he should be paid the back pay as a matter of equity. Only now, after receiving that decision, has the Senate passed S. 2042 for Mr. Trecosta.

First as a private bill objector for many years, and now as the Chairman of the Judiciary Committee, I have always insisted on the processing of private bills through regular order and deviate from that policy in this one instance due to the unique details of the situation. This bill previously passed the House under regular order. It was not only a Meritorious Claims Act referral, but it now also has the blessing of the Court of Federal Claims. This man has already been through a lot, for a long time, to have his claim resolved. I have checked with the Ranking Member of the Judiciary Committee, Mr. CONYERS, and the Republican and Democratic private bill objectors, Mr. COBLE, Mr. CHABOT, Mrs. BLACKBURN, Mr. BOUCHER, Mr. SCHIFF, and Mr. GRIJALVA, and they have all agreed that this procedure is appropriate under these unusual circumstances. I appreciate their cooperation. I urge my colleagues to adopt the bill.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2042, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed. Votes will be taken in the following order:

Concur in Senate amendment to H.R. 1417, by the yeas and nays; and

S. 2302, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. The remaining electronic vote will be conducted as a 5-minute vote.

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The SPEAKER pro tempore. The pending business is the question of suspending the rules and concurring in the Senate amendment to the bill, H.R. 1417.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 1417, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 407, nays 0, not voting 25, as follows:

[Roll No. 532]

YEAS—407

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burns
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCollum
McCotter
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stearns
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—25

Burgess
Burr
Cannon
Cubin
Dooley (CA)
Dunn
Engel
Feeney
Gephardt
Graves
Hill
John
Kilpatrick
Kleczka
McCarthy (NY)
McDermott
Millender-McDonald
Murtha
Musgrave
Norwood
Ortiz
Stark
Stenholm
Tanner
Toomey

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. RENZI) (during the vote). There are 2 minutes remaining in this vote.

□ 1822

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

IMPROVING ACCESS TO PHYSICIANS IN MEDICALLY UNDERSERVED AREAS

The SPEAKER pro tempore (Mr. RENZI). The pending business is the question of suspending the rules and passing the Senate bill, S. 2303.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the Senate bill, S. 2302, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 407, nays 4, not voting 21, as follows:

[Roll No. 533]

YEAS—407

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burns
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Dreier
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goodlatte
Gordon
Granger
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Majette
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCollum
McCotter
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—4

Duncan
Goode
Jones (NC)
Rohrabacher

NOT VOTING—21

Burgess
Burr
Cannon
Cubin
Dooley (CA)
Dunn
Gephardt
Graves
John
Kilpatrick
Kleczka
McCarthy (NY)
McDermott
Millender-McDonald
Murtha
Musgrave
Norwood
Ortiz
Rothman
Stark
Toomey

□ 1831

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Ms. KILPATRICK. Mr. Speaker, personal reasons require me to return to my district, and I am unable to be present for legislative business scheduled after 3 p.m., Wednesday, November 17, 2004. Had I been present, I would have voted "aye" on H.R. 1417, the Copyright Royalty and Distribution Reform Act of 2004 (rollcall Vote No. 532), and "aye" on S. 2302, a bill to improve access to physicians in medically underserved areas (rollcall Vote No. 533).

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 1350, IMPROVING EDUCATION RESULTS FOR CHILDREN WITH DISABILITIES ACT OF 2003

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that the managers on the part of the House on H.R. 1350 be permitted until midnight to file a conference report on H.R. 1350.

The SPEAKER pro tempore (Mr. RENZI). Is there objection to the request of the gentleman from Ohio?

There was no objection.

APPOINTING DAY FOR THE CONVENING OF THE FIRST SESSION OF THE 109TH CONGRESS

Mr. BOEHNER. Mr. Speaker, I offer a joint resolution (H.J. Res. 111) and ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the joint resolution.

The Clerk read as follows:

H.J. RES. 111

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first regular session of the One Hundred Ninth Congress shall begin at noon on Tuesday, January 4, 2005.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

BENJAMIN FRANKLIN COMMEMORATIVE COIN ACT

Mr. CASTLE. Mr. Speaker, I ask unanimous consent that the Committee on Financial Services be discharged from further consideration of the bill (H.R. 3204) to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of

the birth of Benjamin Franklin, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Delaware?

There was no objection.

The Clerk read the bill, as follows:

H.R. 3204

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 ''Benjamin Franklin Commemorative Coin Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Benjamin Franklin made historic contributions to the development of our Nation in a number of fields: government, business, science, communications, and the arts.

(2) Benjamin Franklin was the only Founding Father to sign all of our nation's organizational documents.

(3) Benjamin Franklin spent his career as a successful printer, which included printing the official currency for the colonies of Pennsylvania, Delaware, New Jersey and Maryland.

(4) Franklin's ''Essay on Paper Currency'' of 1741 proposed methods to fix the rate of exchange between the colonies and Great Britain.

(5) Benjamin Franklin, during the American Revolution, designed the first American coin, the ''Continental'' penny.

(6) Franklin made ''A Penny Saved is A Penny Earned'' a household phrase to describe the American virtues of hard work and economical living.

(7) Franklin played a major role in the design of the Great Seal of the United States, which appears on the One Dollar Bill and other major American symbols.

(8) Before 1979 Benjamin Franklin was the only non-president of the United States whose image graced circulating coin and paper currency.

(9) The official United States half dollar from 1948–1963 showed Franklin's portrait, as designed by John Sinnock.

(10) Franklin's ''Way to Wealth'' has come to symbolize America's commitment to free enterprise.

(11) The Franklin Institute Science Museum in Philadelphia houses the first steam printing machine for coinage, used by the United States Mint, which was placed in service in 1836, the 130th anniversary year of Franklin's birth.

(12) In 1976, Franklin Hall in The Franklin Institute Science Museum in Philadelphia was named the Official National Monument to the great patriot, scientist and inventor.

(13) The Franklin Institute and four other major Franklin-related Philadelphia cultural institutions joined hands in 2000 to organize international programs to commemorate the forthcoming 300th anniversary of Franklin's birth in 2006.

(14) The Congress passed the Benjamin Franklin Tercentenary Act in 2002, creating a panel of distinguished Americans, with its Secretariat in Philadelphia, to work with the private sector in recommending appropriate Tercentenary programs,

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATIONS.—The Secretary of the Treasury (hereinafter in this Act referred to as the ''Secretary'') shall mint and issue the following coins:

(1) $1 SILVER COINS WITH YOUNGER FRANKLIN IMAGE ON OBVERSE.—Not more than 250,000 $1 coins bearing the designs specified in section 4(a)(2), each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(2) $1 SILVER COINS WITH OLDER FRANKLIN IMAGE ON OBVERSE.—Not more than 250,000 $1 coins bearing the designs specified in section 4(a)(3), each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of section 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

(d) USE OF THE UNITED STATES MINT AT PHILADELPHIA, PENNSYLVANIA.—It is the sense of the Congress that the coins minted under this Act should be struck at the United States Mint at Philadelphia, Pennsylvania, to the greatest extent possible.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of the life and legacy of Benjamin Franklin.

(2) $1 COINS WITH YOUNGER FRANKLIN IMAGE.—

(A) OBVERSE.—The obverse of the coins minted under section 3(a)(1) shall bear the image of Benjamin Franklin as a young man.

(B) REVERSE.—The reverse of the coins minted under section 3(a)(1) shall bear an image related to Benjamin Franklin's role as a patriot and a statesman.

(3) $1 COINS WITH OLDER FRANKLIN IMAGE.—

(A) OBVERSE.—The obverse of the coins minted under section 3(a)(2) shall bear the image of Benjamin Franklin as an older man.

(B) REVERSE.—The reverse of the coins minted under section 3(a)(2) shall bear an image related to Benjamin Franklin's role in developing the early coins and currency of the new country.

(4) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year ''2006''; and

(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary after consultation with the Commission of Fine Arts; and

(2) reviewed by the Citizens Coin Advisory Committee established under section 5135 of title 31, United States Code.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) COMMENCEMENT OF ISSUANCE.—The Secretary may issue coins minted under this Act beginning January 1, 2006, except that the Secretary may initiate sales of such coins, without issuance, before such date.

(c) TERMINATION OF MINTING AUTHORITY.—No coins shall be minted under this Act after December 31, 2006.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—Notwithstanding any other provision of law, the coins issued under this Act shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, overhead expenses, and marketing).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS AT A DISCOUNT.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(d) SALES OF SINGLE COINS AND SETS OF COINS.—Coins of each design specified under section 4 may be sold separately or as a set containing a coin of each such design.

SEC. 7. SURCHARGES.

(a) SURCHARGE REQUIRED.—All sales shall include a surcharge of $10 per coin.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges which are received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Benjamin Franklin Tercentenary Commission, to be used to educate people everywhere about the important legacy of Benjamin Franklin.

(c) AUDITS.—The Benjamin Franklin Tercentenary Commission shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. CASTLE

Mr. CASTLE. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. CASTLE:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Benjamin Franklin Commemorative Coin Act''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Benjamin Franklin made historic contributions to the development of our Nation in a number of fields: government, business, science, communications, and the arts.

(2) Benjamin Franklin was the only Founding Father to sign all of our Nation's organizational documents.

(3) Benjamin Franklin spent his career as a successful printer, which included printing the official currency for the colonies of Pennsylvania, Delaware, New Jersey and Maryland.

(4) Franklin's ''Essay on Paper Currency'' of 1741 proposed methods to fix the rate of exchange between the colonies and Great Britain.

(5) Benjamin Franklin, during the American Revolution, designed the first American coin, the ''Continental'' penny.

(6) Franklin made ''A Penny Saved is A Penny Earned'' a household phrase to describe the American virtues of hard work and economical living.

(7) Franklin played a major role in the design of the Great Seal of the United States, which appears on the One Dollar Bill and other major American symbols.

(8) Before 1979, Benjamin Franklin was the only non-president of the United States whose image graced circulating coin and paper currency.

(9) The official United States half dollar from 1948–1963 showed Franklin's portrait, as designed by John Sinnock.

(10) Franklin's ''Way to Wealth'' has come to symbolize America's commitment to free enterprise.

(11) The Franklin Institute Science Museum in Philadelphia houses the first steam printing machine for coinage, used by the United States Mint, which was placed in service in 1836, the 130th anniversary year of Franklin's birth.

(12) In 1976, Franklin Hall in The Franklin Institute Science Museum in Philadelphia was named the Official National Monument to the great patriot, scientist and inventor.

(13) The Franklin Institute and four other major Franklin-related Philadelphia cultural institutions joined hands in 2000 to organize international programs to commemorate the forthcoming 300th anniversary of Franklin's birth in 2006.

(14) The Congress passed the Benjamin Franklin Tercentenary Act in 2002, creating a panel of distinguished Americans, with its Secretariat in Philadelphia, to work with the private sector in recommending appropriate Tercentenary programs,

SEC. 3. COIN SPECIFICATIONS.

(a) DENOMINATIONS.—The Secretary of the Treasury (hereinafter in this Act referred to as the ''Secretary'') shall mint and issue the following coins:

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(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(2) $1 SILVER COINS WITH OLDER FRANKLIN IMAGE ON OBVERSE.—Not more than 250,000 $1 coins bearing the designs specified in section 4(a)(3), each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.500 inches; and

(C) contain 90 percent silver and 10 percent copper.

(b) LEGAL TENDER.—The coins minted under this Act shall be legal tender, as provided in section 5103 of title 31, United States Code.

(c) NUMISMATIC ITEMS.—For purposes of section 5136 of title 31, United States Code, all coins minted under this Act shall be considered to be numismatic items.

(d) USE OF THE UNITED STATES MINT AT PHILADELPHIA, PENNSYLVANIA.—It is the sense of the Congress that the coins minted under this Act should be struck at the United States Mint at Philadelphia, Pennsylvania, to the greatest extent possible.

SEC. 4. DESIGN OF COINS.

(a) DESIGN REQUIREMENTS.—

(1) IN GENERAL.—The design of the coins minted under this Act shall be emblematic of the life and legacy of Benjamin Franklin.

(2) $1 COINS WITH YOUNGER FRANKLIN IMAGE.—

(A) OBVERSE.—The obverse of the coins minted under section 3(a)(1) shall bear the image of Benjamin Franklin as a young man.

(B) REVERSE.—The reverse of the coins minted under section 3(a)(1) shall bear an image related to Benjamin Franklin's role as a patriot and a statesman.

(3) $1 COINS WITH OLDER FRANKLIN IMAGE.—

(A) OBVERSE.—The obverse of the coins minted under section 3(a)(2) shall bear the image of Benjamin Franklin as an older man.

(B) REVERSE.—The reverse of the coins minted under section 3(a)(2) shall bear an image related to Benjamin Franklin's role in developing the early coins and currency of the new country.

(4) DESIGNATION AND INSCRIPTIONS.—On each coin minted under this Act there shall be—

(A) a designation of the value of the coin;

(B) an inscription of the year ''2010''; and

(C) inscriptions of the words ''Liberty'', ''In God We Trust'', ''United States of America'', and ''E Pluribus Unum''.

(b) SELECTION.—The design for the coins minted under this Act shall be—

(1) selected by the Secretary after consultation with the Commission of Fine Arts; and

(2) reviewed by the Citizens Coinage Advisory Committee established under section 5135 of title 31, United States Code.

SEC. 5. ISSUANCE OF COINS.

(a) QUALITY OF COINS.—Coins minted under this Act shall be issued in uncirculated and proof qualities.

(b) COMMENCEMENT OF ISSUANCE.—The Secretary may issue coins minted under this Act beginning January 1, 2006, except that the Secretary may initiate sales of such coins, without issuance, before such date.

(c) TERMINATION OF MINTING AUTHORITY.—No coins shall be minted under this Act after December 31, 2006.

SEC. 6. SALE OF COINS.

(a) SALE PRICE.—Notwithstanding any other provision of law, the coins issued under this Act shall be sold by the Secretary at a price equal to the face value, plus the cost of designing and issuing such coins (including labor, materials, dies, use of machinery, overhead expenses, and marketing).

(b) BULK SALES.—The Secretary shall make bulk sales of the coins issued under this Act at a reasonable discount.

(c) PREPAID ORDERS AT A DISCOUNT.—

(1) IN GENERAL.—The Secretary shall accept prepaid orders for the coins minted under this Act before the issuance of such coins.

(2) DISCOUNT.—Sale prices with respect to prepaid orders under paragraph (1) shall be at a reasonable discount.

(d) SALES OF SINGLE COINS AND SETS OF COINS.—Coins of each design specified under section 4 may be sold separately or as a set containing a coin of each such design.

SEC. 7. SURCHARGES.

(a) SURCHARGE REQUIRED.—All sales shall include a surcharge of $10 per coin.

(b) DISTRIBUTION.—Subject to section 5134(f) of title 31, United States Code, all surcharges which are received by the Secretary from the sale of coins issued under this Act shall be promptly paid by the Secretary to the Franklin Institute for purposes of the Benjamin Franklin Tercentenary Commission.

(c) AUDITS.—The Franklin Institute shall be subject to the audit requirements of section 5134(f)(2) of title 31, United States Code, with regard to the amounts received by the Institute pursuant to subsection (b).

(d) LIMITATION.—Notwithstanding subsection (a), no surcharge may be included with respect to the issuance under this Act of any coin during a calendar year if, as of the time of such issuance, the issuance of such coin would result in the number of commemorative coin programs issued during such year to exceed the annual 2 commemorative coin program issuance limitation under section 5112(m)(1) of title 31, United States Code (as in effect on the date of the enactment of this Act). The Secretary of the Treasury may issue guidance to carry out this subsection.

Mr. CASTLE (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Delaware?

There was no objection.

The amendment in the nature of a substitute was agreed to.

Mr. OXLEY. Mr. Speaker, I rise in strong support of H.R. 3204, the Benjamin Franklin Commemorative Coin Act of 2004. I want to thank the gentleman from Delaware (Mr. CASTLE) for his efforts on this bill's behalf and the gentleman from Massachusetts (Mr. FRANK) for allowing us to move forward with this legislation.

I also want to thank the gentleman from California (Mr. THOMAS), the Chairman of the Committee on Ways and Means for his efforts in speeding consideration of the bill. Mr. Speaker, I am inserting at this point an exchange of correspondence between myself and the gentleman from California confirming our understanding regarding the jurisdiction of our two committees.

I urge my colleagues to support this bill.

CONGRESS OF THE UNITED STATES,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, October 8, 2004.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services, Washington, DC.

DEAR CHAIRMAN OXLEY: I am writing concerning H.R. 3204, the ''Benjamin Franklin Commemorative Coin Act,'' which is scheduled for floor consideration today.

As you know, the Committee on Ways and Means has jurisdiction over matters that concern raising revenue. Section 7 of the bill establishes a surcharge for each sale of the commemorative coins that are minted under the bill, and thus falls within the jurisdiction of the Committee on Ways and Means.

However, in order to expedite this legislation for floor consideration, the Committee will forgo action on this bill. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding with respect to H.R. 3204, and would ask that a copy of our exchange of letters on this matter be included in the Congressional Record during floor consideration.

Best regards,

BILL THOMAS,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES
Washington, DC, October 8, 2004.

Hon. WILLIAM M. THOMAS,
Chairman, Committee on Ways and Means, Washington, DC.

DEAR CHAIRMAN THOMAS: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 3204, the Benjamin Franklin Commemorative Coin Act.

I acknowledge your committee's jurisdictional interest in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on Ways and Means with respect to its jurisdictional prerogatives on this or similar legislation, and I would support your request for conferees on those provisions within your committee's jurisdiction should this bill be the subject of a House-Senate conference.

I will include a copy of your letter and this response in the Congressional Record when the legislation is considered by the House.

Thank you again for your assistance.

Sincerely,

MICHAEL G. OXLEY,
Chairman.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CASTLE. Mr. Speaker, I ask unanimous consent that all Members

may have 5 legislative days within which to revise and extend their remarks on H.R. 3204, the measure just passed and to insert extraneous material therein.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Delaware?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

RECORD votes on postponed questions will be taken tomorrow.

DEPARTMENT OF ENERGY HIGH-END COMPUTING REVITALIZATION ACT OF 2004

Mrs. BIGGERT. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 4516) to require the Secretary of Energy to carry out a program of research and development to advance high-end computing.

The Clerk read as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Department of Energy High-End Computing Revitalization Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) CENTER.—The term ''Center'' means a High-End Software Development Center established under section 3(d).

(2) HIGH-END COMPUTING SYSTEM.—The term ''high-end computing system'' means a computing system with performance that substantially exceeds that of systems that are commonly available for advanced scientific and engineering applications.

(3) LEADERSHIP SYSTEM.—The term ''Leadership System'' means a high-end computing system that is among the most advanced in the world in terms of performance in solving scientific and engineering problems.

(4) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Energy, acting through the Director of the Office of Science of the Department of Energy.

SEC. 3. DEPARTMENT OF ENERGY HIGH-END COMPUTING RESEARCH AND DEVELOPMENT PROGRAM.

(a) IN GENERAL.—The Secretary shall—

(1) carry out a program of research and development (including development of software and hardware) to advance high-end computing systems; and

(2) develop and deploy high-end computing systems for advanced scientific and engineering applications.

(b) PROGRAM.—The program shall—

(1) support both individual investigators and multidisciplinary teams of investigators;

(2) conduct research in multiple architectures, which may include vector, reconfigurable logic, streaming, processor-in-memory, and multithreading architectures;

(3) conduct research on software for high-end computing systems, including research on algorithms, programming environments, tools, languages, and operating systems for high-end computing systems, in collaboration with architecture development efforts;

(4) provide for sustained access by the research community in the United States to high-end computing systems and to Leadership Systems, including provision of technical support for users of such systems;

(5) support technology transfer to the private sector and others in accordance with applicable law; and

(6) ensure that the high-end computing activities of the Department of Energy are coordinated with relevant activities in industry and with other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, the National Nuclear Security Administration, the National Security Agency, the National Institutes of Health, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institutes of Standards and Technology, and the Environmental Protection Agency.

(c) LEADERSHIP SYSTEMS FACILITIES.—

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish and operate 1 or more Leadership Systems facilities to—

(A) conduct advanced scientific and engineering research and development using Leadership Systems; and

(B) develop potential advancements in high-end computing system hardware and software.

(2) ADMINISTRATION.—In carrying out this subsection, the Secretary shall provide to Leadership Systems, on a competitive, merit-reviewed basis, access to researchers in United States industry, institutions of higher education, national laboratories, and other Federal agencies.

(d) HIGH-END SOFTWARE DEVELOPMENT CENTER.—

(1) IN GENERAL.—As part of the program carried out under this Act, the Secretary shall establish at least 1 High-End Software Development Center.

(2) DUTIES.—A Center shall concentrate efforts to develop, test, maintain, and support optimal algorithms, programming environments, tools, languages, and operating systems for high-end computing systems.

(3) PROPOSALS.—In soliciting proposals for the Center, the Secretary shall encourage staffing arrangements that include both permanent staff and a rotating staff of researchers from other institutions and industry to assist in coordination of research efforts and promote technology transfer to the private sector.

(4) USE OF EXPERTISE.—The Secretary shall use the expertise of a Center to assess research and development in high-end computing system architecture.

(5) SELECTION.—The selection of a Center shall be determined by a competitive proposal process administered by the Secretary.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts otherwise made available for high-end computing, there are authorized to be appropriated to the Secretary to carry out this Act—

(1) $50,000,000 for fiscal year 2005;

(2) $55,000,000 for fiscal year 2006; and

(3) $60,000,000 for fiscal year 2007.

SEC. 5. ASTRONOMY AND ASTROPHYSICS ADVISORY COMMITTEE.

(a) AMENDMENTS.—Section 23 of the National Science Foundation Authorization Act of 2002 (42 U.S.C. 1862n–9) is amended—

(1) in subsection (a) and paragraphs (1) and (2) of subsection (b), by striking ''and the National Aeronautics and Space Administration'' and inserting '', the National Aeronautics and Space Administration, and the Department of Energy'';

(2) in subsection (b)(3), by striking ''Administration, and'' and inserting ''Administration, the Secretary of Energy, '';

(3) in subsection (c)—

(A) in paragraphs (1) and (2), by striking ''5'' and inserting ''4'';

(B) in paragraph (2), by striking ''and'' at the end;

(C) by redesignating paragraph (3) as paragraph (4), and in that paragraph by striking ''3'' and inserting ''2''; and

(D) by inserting after paragraph (2) the following:

''(3) 3 members selected by the Secretary of Energy; and

(4) in subsection (f), by striking ''the advisory bodies of other Federal agencies, such as the Department of Energy, which may engage in related research activities'' and inserting ''other Federal advisory committees that advise Federal agencies that engage in related research activities''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on March 15, 2005.

SEC. 6. REMOVAL OF SUNSET PROVISION FROM SAVINGS IN CONSTRUCTION ACT OF 1996.

Section 14 of the Metric Conversion Act of 1975 (15 U.S.C. 205l) is amended by striking subsection (e).

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Illinois (Mrs. BIGGERT) and the gentleman from Tennessee (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentlewoman from Illinois (Mrs. BIGGERT).

GENERAL LEAVE

Mrs. BIGGERT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the Senate amendment to H.R. 4516, the bill now under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

Mrs. BIGGERT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, when we think of how computers affect our lives, we probably think of the work we do on our office desktop machines, or maybe the Internet surfing we do in our spare time. We do not normally think of the enormous contribution that supercomputers, also called high-performance computers, make to the world around us.

These powerful machines are used in the development of pharmaceuticals, in modeling the earth's climate, and in applications critical to ensuring our national and homeland security and our economic competitiveness. High-performance computers also are central to maintaining U.S. leadership in many scientific fields. Computational science complements theory and experimentation in fields such as plasma physics and fusion, astrophysics, nuclear physics and genomics.

The bill currently under consideration, H.R. 4516, spells out in detail the research and development the Department of Energy should be doing to help

ensure that America remains a leader in the development and use of supercomputers. More specifically, H.R. 4516 does three things.

First, it requires the Secretary of Energy to establish and operate high-end computing facilities involving leadership-class machines that are among the most elite in the world.

Second, this bill directs the Secretary to conduct advanced scientific and engineering research and development using these leadership class systems, and to continue to advance the capabilities of high-end computing hardware and software.

Finally, the bill requires that these computing facilities be made available on a competitive, peer-reviewed basis to researchers from U.S. industry, institutions of higher learning, national laboratories and other Federal agencies.

Mr. Speaker, dramatic scientific and commercial breakthroughs will require us to increase computing power by a factor of 100 or, in some cases, by a factor of 1,000. While attaining these increases may seem daunting, the history of computer development has taught us that, with a sustained commitment to research, such gains are within our reach.

That is why Energy Secretary Abraham announced last summer the selection of a team, including Argonne National Laboratory, Oak Ridge National Laboratory, IBM, Cray and other partners, to develop and build a new, high-end computing facility.

H.R. 4516 complements and supports this DOE initiative and ensures that the department can fulfill its responsibility to help lead the Federal Government's supercomputing R&D efforts.

The Senate passed this bill by unanimous consent last month, and in July the House passed a similar version by voice vote. I urge my colleagues to support this legislation again and send it to the President's desk so that the United States can maintain its distinction as home to the world's most powerful computer.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Tennessee. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4516, the Department of Energy High-End Computing Revitalization Act of 2004.

I had the pleasure of working on this legislation with my esteemed colleague across the aisle, the gentlewoman from Illinois (Mrs. BIGGERT), who does an excellent job on the Committee on Science, and I look forward to having more opportunities to work with her on other important policy goals that we are able to impact at the Committee on Science.

The bill authorizes research and development activities at the Department of Energy to provide for the design, the development and the deployment of powerful computing systems, including both hardware and software. It will lead to the development of the computational tools needed for solving the most demanding science and engineering problems. The activities authorized will constitute part of the ongoing interagency information technology research and development program established by the High-Performance Computing Act of 1991.

H.R. 4516 will build on the demonstrated expertise of the Department of Energy in advancing the technology needed for designing and building the most powerful scientific computing systems in the world.

Equally important, the bill provides for the development and deployment of leadership-class computing systems, such as the system recently announced for installation at the Oak Ridge National Laboratory, which will provide access on a competitive basis for the research community in the United States.

The effect of the bill will be to put into the hands of researchers the tools they need to attack the most challenging problems in science and engineering, as well as to accelerate the development of the computing tools needed to underpin industrial competitiveness and our national defense.

Finally, H.R. 4516 will help to implement the Federal plan for high-end computing that was released earlier this year by the Office of Science and Technology Policy.

Mr. Speaker, I commend this legislative measure to my colleagues and recommend its passage by the House, as amended by the other body.

Mr. Speaker, I yield back the balance of my time.

Mrs. BIGGERT. Mr. Speaker, I yield myself such time as I may consume.

I want to conclude this debate by recognizing the bill's cosponsors, the gentleman from Tennessee (Mr. DAVIS) and the gentleman from Tennessee (Mr. GORDON), and thank them for their efforts in support of this legislation.

I also would like to thank the gentleman from New York (Mr. BOEHLERT) for holding a Science Committee hearing last May to review our Federal investment in high-end computing. The hearing was a success. We received positive feedback on this legislation from a number of experts on high-performance computing who testified before the committee.

I also would like to acknowledge the U.S. supercomputing industry for its impressive accomplishments. I congratulate IBM for its new Blue Gene/L supercomputer, which was recognized just last week as the fastest computer in the world. The Blue Gene/L is faster than Japan's Earth Simulator, which held the world record in computing speed for nearly 3 years. With passage of this bill, the DOE can work closely with IBM and other industry leaders like Cray and Silicon Graphics Incorporated as well as academia to ensure that the United States continues to be home to the world's fastest supercomputer for years to come.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentlewoman from Illinois (Mrs. BIGGERT) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 4516.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

AMENDING LIVESTOCK MANDATORY PRICE REPORTING ACT OF 1999

Mr. GOODLATTE. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2965) to amend the Livestock Mandatory Price Reporting Act of 1999 to modify the termination date for mandatory price reporting.

The Clerk read as follows:

S. 2965

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

SECTION 1. EXTENSION.

Section 942 of the Livestock Mandatory Price Reporting Act of 1999 (7 U.S.C. 1635 note; Public Law 106–78) is amended by striking ''terminate'' and all that follows and inserting ''terminate on September 30, 2005.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Arkansas (Mr. ROSS) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia (Mr. GOODLATTE).

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this legislation, which extends an important program until September 30, 2005.

As many of my colleagues know, authorization for the U.S. Department of Agriculture's Mandatory Price Reporting Program, which was passed in the 1999 agriculture appropriation, expired on October 23. This program requires USDA to operate a mandatory price reporting system for beef, pork and lamb, which provides useful information for everyone engaged in the buying and selling of these products.

In the absence of authority to enforce mandatory reporting, the USDA has contacted the companies to encourage them to continue reporting data during the gap in program authorization. It is my understanding that everyone has been cooperating. This is because they recognize the important role this data plays in price discovery and in the operation of marketing agreements.

There is also a clear agreement that the current program should be extended for an additional year to provide livestock producers, the packer community and other interested parties additional time to identify and agree upon these technical improvements to the law.

The administration has recently written to the leadership of the House and Senate in support of this simple 1-year extension. In order to extend mandatory price reporting in a timely manner, we need to act today.

Mr. Speaker, I urge the adoption of this measure.

Mr. Speaker, I reserve the balance of my time.

□ 1845

Mr. ROSS. Mr. Speaker, I yield myself such time as I may consume.

I rise today in support of S. 2965, a bill to amend the Livestock Mandatory Price Reporting Act of 1999 in order to modify the termination date for mandatory price reporting.

The current authority for the USDA Livestock Mandatory Price Reporting expired on October 23 of this year. It is important to the U.S. livestock markets that we maintain a dependable flow of information to producers to help them price their products in the marketplace. The bill before us today provides for a simple 1-year reauthorization of the existing program, and I am not aware of any serious opposition to this bill.

I do regret that we have not taken the time to consider a more careful revision of the statute prior to this point. We should have taken up this issue much earlier during the 108th Congress and spent the time to consider corrections to the deficiencies various groups have noted in the program as it currently exists. But since that has not been done, this 1-year extension seems like the best alternative available to maintain a stable flow of information to our producers.

It is my hope that, during this 1-year extension, the Committee on Agriculture of this House will hold hearings on this topic and consider ways it might improve the USDA price reporting system. In the meantime, however, a simple extension seems to be the best way to serve the market information needs for our farmers and ranchers.

I encourage all Members to support passage of this Senate bill.

Mr. LATHAM. Mr. Speaker, today I rise to support passage of S. 2965, a bill to extend for one year the Livestock Mandatory Price Reporting Act of 1999. As the author of the original legislation, I am pleased to see that this important program will continue for one additional year. It is my hope that during that time the program will be improved and, if it is proven cost effective, made permanent.

Four major packers slaughter 80 percent of fed cattle and process about 85 percent of boxed beef. According to producer organizations, because of the high level of concentration, it is very important to maintain a level playing field for all producers.

Mandatory price reporting addresses noncontract livestock producers concerns that the increasing use of contracts prevents complete transparency in livestock prices that, in the past, would've been made public at auction. Additionally, independent livestock producers fear that the increasing use of contracts means that there is less of a market for their product, and the price they will receive will remain low through possible packer collusion. Mandatory price reporting provides market transparency, thus ensuring that our producers get the best prices for their livestock.

Mr. Speaker, I am very supportive of this one-year extension. It will give Congress additional time to determine the efficacy of the program, whether the cost of the program outweighs the benefit, and verify price data problems that arose with USDA's implementation of the program have since been fixed.

Mr. ROSS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I urge my colleagues to adopt this important legislation to extend this program for a year.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. RENZI). The question is on the motion offered by the gentleman from Virginia (Mr. GOODLATTE) that the House suspend the rules and pass the Senate bill, S. 2965.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on S. 2965, the Senate bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

SUPPORTING GOALS AND IDEALS OF NATIONAL TOURETTE SYNDROME AWARENESS MONTH

Mr. BILIRAKIS. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 430) recognizing the importance of early diagnosis, proper treatment, and enhanced public awareness of Tourette Syndrome and supporting the goals and ideals of National Tourette Syndrome Awareness Month.

The Clerk read as follows:

H. CON. RES. 430

Whereas Tourette Syndrome is an inherited neurological disorder characterized by involuntary and sudden movements or repeated vocalizations;

Whereas approximately 200,000 people in the United States have been diagnosed with Tourette Syndrome and many thousands more remain undiagnosed;

Whereas lack of public awareness has increased the social stigma attached to Tourette Syndrome;

Whereas early diagnosis and treatment of Tourette Syndrome can prevent physical and psychological harm;

Whereas there is no known cure for Tourette Syndrome and treatment involves multiple medications and therapies with costs that can be prohibitive;

Whereas the Tourette Syndrome Association is the only national nonprofit membership organization dedicated to identifying the cause, finding the cure, and controlling the effects of Tourette Syndrome; and

Whereas the Tourette Syndrome Association has designated May 15 through June 15 as National Tourette Syndrome Awareness Month, the goal of which is to educate the public about the nature and effects of Tourette Syndrome: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) recognizes the impact that Tourette Syndrome can have on people living with the disorder;

(2) recognizes the importance of an early diagnosis and proper treatment of Tourette Syndrome;

(3) recognizes the need for enhanced public awareness of Tourette Syndrome;

(4) supports the goals and ideals of National Tourette Syndrome Awareness Month, as designated by the Tourette Syndrome Association; and

(5) encourages the President to issue a proclamation calling on the people of the United States and interested organizations to observe National Tourette Syndrome Awareness Month.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Ohio (Mr. BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Florida (Mr. BILIRAKIS).

GENERAL LEAVE

Mr. BILIRAKIS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H. Con. Res. 430.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H. Con. Res. 430 introduced by the gentleman from Florida (Mr. YOUNG), my friend and colleague from my home State of Florida.

This resolution recognizes the importance of early diagnosis, proper treatment and enhanced public awareness of Tourette Syndrome and supports the goals and ideals of National Tourette Syndrome Awareness Month.

Tourette Syndrome, or TS, is a neurological disorder that arises during childhood or adolescence. TS is characterized by repeated and involuntary body movements, tics, and uncontrollable vocal sounds. Tics can include eye blinking, repeated throat clearing or sniffing, arm thrusting, kicking movements or jumping. Although the symptoms of TS vary from person to person and range from very mild to severe, the majority of cases fall into the mild category. Some associated conditions can include attention problems, impulsiveness and learning disabilities.

The National Institutes of Health, NIH, estimates that about 2 percent of Americans are affected by TS. However, these numbers are thought to be

conservative because individuals with varied mild symptoms may never seek medical attention. TS is also four times as likely to occur in boys as in girls.

Most people with TS lead productive lives and participate in all professions. However, lack of public awareness has increased the social stigma attached to TS. Increased public understanding and tolerance of TS symptoms are of extreme importance to people with Tourette Syndrome. With early diagnosis and treatment, as well as increased social understanding and acceptance, much of the physical and psychological harm of TS can be prevented.

I urge my colleagues to support H. Con. Res. 430 today.

Mr. Speaker, I reserve the balance of my time.

Mr. BROWN of Ohio. Mr. Speaker, I yield myself such time as I may consume.

I would like to thank the gentleman from Florida (Chairman YOUNG) for sponsoring this important resolution and thank the gentleman from Florida (Mr. BILIRAKIS) for yielding me this time this evening.

Tourette Syndrome is a neurological disorder characterized by involuntary actions such as physical and vocal tics, as the gentleman from Florida (Mr. BILIRAKIS) said. It is a spectrum disorder, meaning that it manifests in a range of behaviors that occur with varying frequency and severity.

It is estimated that up to 3 percent of children in regular education classrooms and up to 7 percent of children in special ed classrooms have Tourette Syndrome. Most of these cases go undiagnosed. The media's portrayal of Tourette Syndrome has fueled significant misperceptions and misconceptions about this disorder. For example, most patients do not display the frequent involuntary use of violent language and other vocal tics that actors typically draw upon when they play adults with Tourette's. Physical tics are a far more common symptom.

While physical tics may be less dramatic than violent outbursts, they can have the same disruptive effect on the lives of Tourette patients. The gentleman from Florida's (Chairman YOUNG's) concurrent resolution acknowledges the significant impact that Tourette Syndrome has on patients and on their families. Given Tourette's prevalence, given the importance of early detection and treatment in mitigating its symptoms and given the tragic consequences for patients when Tourette's is exploited or trivialized, it is clearly in the public interest to destigmatize Tourette Syndrome and build the necessary support to find its cure. I think this concurrent resolution takes a small step in doing that.

I thank the gentleman from Florida (Mr. BILIRAKIS) and the gentleman from Florida (Mr. YOUNG) for bringing this concurrent resolution to the floor, and I urge my colleagues to support the concurrent resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida (Mr. YOUNG), the author of this legislation.

Mr. YOUNG of Florida. Mr. Speaker, I thank the gentleman from Florida (Mr. BILIRAKIS) for yielding me this time and for bringing this concurrent resolution to the House floor today and also the gentleman from Ohio (Mr. BROWN), the ranking member, for supporting this bill.

This concurrent resolution has been explained by the gentleman from Florida (Chairman BILIRAKIS) very well, and I introduced this because of a friend that I have, a 17-year-old teenager in my district who suffers from Tourette's and has for most of his life. I have learned his personal story of living with Tourette's and what it is like. And like so many children and adults with Tourette's, he faced difficulties, not only in his life but in his classroom because classmates and teachers did not understand the nature of the illness. He faces daily difficulties with the medication he has to take to reduce the symptoms of Tourette's so that he can work and function. Johnny Loder is one of the thousands of Tourette sufferers who bravely seek to lead a normal life with a disease that tries to make that virtually impossible.

Despite coping with the condition, Johnny has been wonderfully successful in his own endeavors, and I wish that there was some magic cure because this kid is such a great young American, and he and so many others that suffer with this disease really do suffer.

Mr. Speaker, I urge the support of this concurrent resolution, and I include the balance of my statement in the RECORD.

Mr. Speaker, last May I introduced House Concurrent Resolution 430 to support the goals and ideals of a National Tourette Syndrome Awareness Month. This issue is very important to me and the other cosponsors of this resolution; we all have many friends and constituents whose lives are affected by Tourette Syndrome. It is quite clear that our country needs more medical research, education and increased public knowledge about this greatly misunderstood and frequently misdiagnosed disease.

The resolution we consider today recognizes the importance of an early and accurate diagnosis of Tourette Syndrome, appropriate treatment, and educational outreach. The resolution will enhance our collective efforts to encourage new awareness, attention and understanding.

Tourette Syndrome, or TS—is a genetic neurobiological disorder characterized by repeated involuntary movements and sounds that are known as "tics." This complex disorder affects children and adults in all racial and ethnic groups. In a large percentage of cases TS is accompanied by other "co-occurring" disorders, the most common of which are Obsessive-Compulsive Disorder, Attention Deficit Hyperactivity Disorder and nonverbal learning disabilities.

Researchers estimate that about 200,000 Americans have what is called substantially impairing Tourette Syndrome, and even more individuals have milder symptoms of the disorder. Largely due to the nature of the disease and the lack of understanding in our society, many individuals with Tourette Syndrome endure the stigma, isolation, and the psychological impact of this chronic disorder on a daily basis.

Mr. Speaker, I am proud to report that the Appropriations Committee which I chair appropriated funds to the Centers for Disease Control for a new research and educational outreach program on TS. This effort is designed to provide intensive training for the public, physicians, allied healthcare workers and teachers. It is our hope that this new effort will begin to educate the public and remove the stigma and other obstacles associated with living with this complex disorder.

Johnny Loder, a 17-year-old teenager from my Congressional District in Pinellas County, Florida, shared with me his personal story of living with Tourette Syndrome. Like so many children and adults with Tourette's, he faced difficulties in the classroom because his classmates and teachers did not understand the nature of his illness. He faces daily difficulties with the medication he takes to reduce the symptoms so that he can work and function. Johnny is one of the thousands of Tourette's sufferers who bravely seek to lead a normal life with a disease that tries to make that virtually impossible. Despite coping with the condition, Johnny has been wonderfully successful in his own endeavors. He and many others with Tourette Syndrome are leading rich, fulfilling lives despite the challenges that may be present along the way. They each provide outstanding examples of determination, perseverance and hope to their families, and to us all.

Mr. Speaker, the Tourette Syndrome Association has designated National Tourette Syndrome Awareness Month for the purposes I have described. I wholeheartedly support its goals and encourage Members to do the same. Passage of House Concurrent Resolution 430 would give all of us an opportunity to participate in the larger effort to familiarize ourselves and our citizens with the condition and the need for more research. It will help us better understand the impact that Tourette Syndrome can have on people living with the disorder, while recognizing the importance of early diagnosis and proper treatment.

Mr. BROWN of Ohio. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BILIRAKIS. Mr. Speaker, I yield myself such time as I may consume.

I, too, want to compliment and thank the gentleman from Ohio (Mr. BROWN) and all of the committee staffers for their work on this and for their cooperation.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 430.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

EARL B. GILLIAM/IMPERIAL AVENUE POST OFFICE BUILDING

Mr. SHAYS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5364) to designate the facility of the United States Postal Service located at 5505 Stevens Way in San Diego, California, as the ''Earl B. Gilliam/Imperial Avenue Post Office Building''.

The Clerk read as follows:

H.R. 5364

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

SECTION 1. EARL B. GILLIAM/IMPERIAL AVENUE POST OFFICE BUILDING.

(a) DESIGNATION.—The facility of the United States Postal Service located at 5505 Stevens Way in San Diego, California, shall be known and designated as the ''Earl B. Gilliam/Imperial Avenue Post Office Building''.

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Earl B. Gilliam/Imperial Avenue Post Office Building.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Connecticut (Mr. SHAYS) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. SHAYS).

GENERAL LEAVE

Mr. SHAYS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. SHAYS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation would establish the Earl B. Gilliam/Imperial Avenue Post Office Building. I want to salute the distinguished gentleman from California (Mr. FILNER), who earned cosponsorship of all 52 of his home State colleagues to comply with a longstanding Committee on Government Reform policy. On behalf of the committee members, I congratulate him on that accomplishment.

Mr. Speaker, Judge Earl Gilliam was appointed to the U.S. District Court for the Southern District of California by President Carter in 1980 and became a senior judge 13 years later in 1993. Prior to joining the Federal bench, Judge Gilliam served as a municipal court judge in San Diego from 1963 to 1975 and as a superior court judge from 1975 to 1980. Judge Gilliam had a long and distinguished judicial record as a prosecutor, private practicing lawyer, and then as a State and Federal judge for over 30 years.

Away from the bench, he mentored many young adults and lawyers. He also taught courses and directed the trial practice at Thomas Jefferson School of Law in San Diego. He was clearly a loved and respected member of his community. Judge Gilliam passed away on January 28, 2001.

I thank the gentleman from California for this bill that commemorates Judge Gilliam's commitment to justice in both our State and Federal courts. Hopefully this post office will be a meaningful tribute to Judge Earl Gilliam's life and career, to his friends, family and the entire San Diego area.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. FILNER), the sponsor of this legislation.

Mr. FILNER. Mr. Speaker, I thank the gentleman for yielding me this time.

I want to thank the gentleman from Connecticut (Chairman SHAYS) and the gentleman from Illinois (Mr. DAVIS), ranking member, for the courtesy rendered to me. This post office is going to open up in 3 days, and I had to try to get this naming on the bill in just the couple days we were here. The committee was very courteous to me.

The 52 members of the California delegation, both Republican and Democrat, were all very prompt in their cosponsorship. The staff that scheduled these things was very accommodating, and I not only want to thank the Democratic staff, but the majority leader and his staff showed me a great deal of courtesy, and I appreciate that very much for getting this on the calendar today.

The gentleman from Connecticut (Mr. SHAYS) highlighted some of the important parts of Judge Gilliam's life. I would just like to add a few things, if I may. He grew up in a very poor section of San Diego, southeast San Diego, where his parents owned a fish market on the very street where this post office will be named after him. He had to work his way all the way through school, whether it was high school or college where he went to San Diego State and then on to law school.

□ 1900

He was appointed deputy district attorney shortly after being admitted to the California bar in 1957, and he became the first African American judge appointed to the San Diego bench just 6 years later in 1963 and was named presiding judge of the San Diego Municipal Court in 1971. Governor Jerry Brown named him a California Superior Court Judge in 1975, and President Jimmy Carter elevated him to the U.S. District Court for the Southern District of California in 1980, where he served for more than 2 decades before passing in 2001.

In his long, distinguished career, Judge Gilliam presided over numerous trials that had regional and even national importance. They dealt with drug trafficking, fraud, tax evasion, bribery, and civil matters; but Judge Gilliam always brought a fair and professional approach to the law and laid the foundation for his solid reputation, both within and outside the legal community.

He made his mark in the classroom also. The Thomas Jefferson School of Law recruited Judge Gilliam as an adjunct professor. With his background in business, economics, and law, he proved to be an inspirational and devoted instructor for the students at the Thomas Jefferson School of Law where he taught for 24 years. The moot courtroom there at the school has been in fact dedicated also to his honor.

Along with being a full-time judge, he gave his time and effort to his community in a whole number of ways. He served on the boards of organizations ranging from the San Diego Urban League to the University of California San Diego to the YMCA; and the community, in turn, honored him with a whole list of awards too numerous to mention here that attest to his unrelenting commitment to making a difference in San Diego.

The San Diego African American Lawyers Organization in 1982 honored the judge by changing its name to the Earl B. Gilliam Bar Association, and they carry on his legacy by working within our community to defend the rights of African Americans, combating racism and poverty, and fostering integrity in the legal community.

I knew Judge Gilliam for more than 30 years. He was a very big man, almost larger than life, full of energy, full of enthusiasm, love of life, great sense of humor, enjoyed life to its maximum. But he also saw the injustices around him in the community in which he was raised, and in the Nation in which he loved; and he fought to right those injustices, both on the bench and in his many community activities.

So Judge Gilliam truly was a hero who worked for all of us in San Diego. I just am so honored to have the privilege of introducing this legislation to name the post office in his old neighborhood in his honor. I hope my colleagues will support this. I once again thank this House and its staff for giving me the courtesy of allowing this bill to be passed today.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

As a member of the House Committee on Government Reform, I am pleased to join with my colleagues in consideration of H.R. 5364, legislation designating the postal facility in San Diego, California, after the late Earl B. Gilliam. This measure, which was introduced by the gentleman from California (Mr. FILNER) on November 16, 2004, enjoys the support and cosponsorship of the entire California State delegation.

Earl B. Gilliam was born in 1931 in New Mexico. He moved to San Diego with his family when he was in the

fifth grade. He attended local public schools and graduated from San Diego State University in 1953. He received his law degree from Hastings College of Law in 1957 and served as a deputy district attorney and private practitioner before joining the State bench.

Judge Gilliam served as a municipal court judge in San Diego from 1963 to 1975, and was a superior court judge from 1975 to 1980. In 1980, President Carter appointed Judge Gilliam to the Federal bench. The honorable Judge Gilliam was the first African American to be appointed as a judge in the San Diego municipal, superior, and district courts.

A noted jurist, Judge Gilliam presided over a number of important cases while serving on the Federal bench. He was the trial judge for the Ponzi scheme fraud trials, a trial judge in cases involving immigration, drug trafficking, and health care fraud.

Judge Gilliam was not only a distinguished jurist; he was also very involved in his community. Beginning in 1965, he was recognized by the San Diego Junior Chamber of Commerce as the Young Man of the Year, Citizen of the Year, and Good Guy Award. In 1981, the Boys' Club of San Diego chose the judge as the Golden Man of the Year. In same year, the San Diego Trial Lawyers Association chose him as the Trial Judge of the Year. He was also awarded the NAACP Civil Rights Pioneer Award, and the San Diego Black Lawyers Organization honored his hard work by changing the name of their organization to the Earl B. Gilliam Bar Association.

Sadly, Judge Gilliam passed away on January 28, 2001, following a long heart-related illness. He is survived by his wife, Rebecca, and son, Derrick,

Mr. Speaker, I commend my colleague for seeking to honor the legacy of the late Judge Earl B. Gilliam and urge swift passage of this bill.

Mr. Speaker, I yield back the balance of my time.

Mr. SHAYS. Mr. Speaker, I yield myself such time as I may consume.

I just want to congratulate the gentleman from California (Mr. FILNER) for such extraordinary work in moving this bill so quickly and just say that I particularly appreciate that we are honoring someone, frankly, who is no longer living who has been so distinguished. We are not honoring someone who is still alive today, but someone who earned this recognition in life and is now being recognized after his death. I would encourage the House to support the passage of H.R. 5364. I would also thank my colleague from Chicago for his work on this legislation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. RENZI). The question is on the motion offered by the gentleman from Connecticut (Mr. SHAYS) that the House suspend the rules and pass the bill, H.R. 5364.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

INTERNATIONALLY KNOWN WILDLIFE ARTIST JOHN RUTHVEN RECEIVES NATIONAL MEDAL OF THE ARTS

(Mr. PORTMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PORTMAN. Mr. Speaker, I rise today to honor a very dear friend and Brown County, Ohio, constituent, John Ruthven, who was selected by President Bush to receive the National Medal of the Arts, the highest award to an artist or patron in the United States. I was honored to join John and his wife, Judy, and members of his family today at the White House for the medal presentation by President Bush.

He is one of the most talented artists in the Nation, and we are proud to know him as one of our neighbors in southern Ohio. We cannot think of anybody more deserving of this honor.

John is an author, lecturer, naturalist, conservationist, and internationally acknowledged master of wildlife art. We consider him a modern day Audubon. His love of nature is infectious. So many, including my own family, have joined John on his naturalist tours of the woods of his beloved farm.

His original paintings have been shown at the White House, the Hermitage Museum in Russia, here at the U.S. Capitol, the Ohio State capitol rotunda, and many other prestigious venues around the world.

The National Medal of Arts, Mr. Speaker, is a very prestigious award. The President may award up to 12 medals per year. There were only seven other individuals to receive the national medal today.

All of us in southern Ohio congratulate John on receiving this most prestigious national award.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND JAPAN ON SOCIAL SECURITY—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 108–234)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Ways and Means and ordered to be printed:

To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (Public Law 95–216, 42 U.S.C. 433(e)(1)), I transmit herewith the Agreement between the United States of America and Japan on Social Security, which consists of two separate instruments: a principal agreement and an administrative agreement. The Agreement was signed at Washington on February 19, 2004.

The United States-Japan Agreement is similar in objective to the social security agreements already in force with Australia, Austria, Belgium, Canada, Chile, Finland, France, Germany, Greece, Ireland, Italy, Korea, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual security coverage and taxation, and to help prevent the lost benefit protection that can occur when workers divide their careers between two countries. The United States-Japan Agreement contains all provisions mandated by section 233 and other provisions which I deem appropriate to carry out the purposes of section 233, pursuant to section 233(c)(4).

I also transmit for the information of the Congress a report prepared by the Social Security Administration explaining the key points of the Agreement, along with a paragraph-by-paragraph explanation of the provisions of the principal agreement and the related administrative arrangement. Annexed to this report is the report required by section 233(e)(1) of the Social Security Act, a report on the effect of the Agreement on income and expenditures of the United States Social Security program and the number of individuals affected by the Agreement.

The Department of State and the Social Security Administration have recommended the Agreement and related documents to me.

I commend to the Congress the United States-Japan Social Security Agreement and related documents.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 17, 2004*.

NONSUITABILITY OF THE SQUIRREL RIVER IN ALASKA AS AN ADDITION TO THE NATIONAL WILD AND SCENIC RIVERS SYSTEM—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 108–235)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Resources and ordered to be printed:

To The Congress of the United States:

I transmit herewith the enclosed study, findings, and report for the Squirrel River in Alaska. The report and my recommendations are submitted pursuant to my authority under Article II, section 3, of the Constitution of the United States, and consistent with section 5(a) of the Wild and Scenic Rivers (WSR) Act, Public

Law 90–542, as amended. The Squirrel River suitability study was authorized by Public Law 96–487 (Alaska National Interest Lands Conservation Act).

The study conducted by the Bureau of Land Management determined that all 100 miles of the river are nonsuitable for inclusion in the National WSR System. Consistent with the study, I recommend that the Congress take no action to designate the river. The withdrawal provided by section 5(a) of the WSR Act would expire within 3 years of the date of this message (unless other action is taken by the Congress). Approximately 81,501 acres of State-selected lands would be opened to mineral entry although mineral potential has been assessed as very low and there are no past or active mining claims.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 17, 2004*.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

□ 1915

SMART SECURITY AND CIA 9/11 REPORT

The SPEAKER pro tempore (Mr. RENZI). Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, the worst attacks on this country's soil took place on September 11, 2001, when planes hijacked by terrorists slammed into the World Trade Center towers and the Pentagon. The last plane which crashed into a field in Pennsylvania was likely headed for the very building in which we are now standing, the U.S. Capitol.

Shortly after these devastating attacks, the House and Senate intelligence committees requested that the Office of the Inspector General at the Central Intelligence Agency provide a comprehensive report on the events surrounding 9/11.

In June, 2004, an 11-member team from the CIA's Office of the Inspector General completed its report after a 17-month investigation. Congress, however, still has not received this important report.

According to several intelligence officials, the CIA report is potentially damaging to the White House because it details pre-9/11 failures by members of the Bush administration. According to one official, ''What all the other reports on 9/11 did not do is point the finger at individuals and give the how and what of their responsibility. This report does that.''

Unfortunately, even though the CIA team finished its exhaustive report in June, it has yet to make its way to the House and Senate intelligence committees here in our Congress.

My colleagues, the gentleman from Michigan (Mr. HOEKSTRA) and the gentlewoman from California (Ms. HARMAN), the chairman and ranking member of the House Permanent Select Committee on Intelligence, wrote to the CIA in early October asking for delivery of this crucial report. They received no reply. Several sources in the intelligence community have stated that the reason for the delay has been the White House itself, which wanted the document released only after the November presidential election.

This should surprise no one.

What should surprise everyone is that the failure to deliver this report on time is unprecedented. The CIA has never failed to submit a report to Congress or delayed a report's submission for purely political reasons.

Mr. Speaker, the truth behind 9/11 is too important for the Bush White House to use for partisan applications. President Bush officially opposed the creation of the independent 9/11 Commission in the first place. Only when public opinion became unwieldy did he relent and allow its creation.

Then, after the Commission was created, the President opposed providing it with enough time to complete its congressionally mandated investigative report. He relented only after public opinion weighed in against him.

President Bush initially refused to allow National Security Advisor Condoleeza Rice to testify before the Commission, then relented under public pressure. Then he refused to testify before the Commission himself but relented under public pressure but only behind closed doors and with Vice President CHENEY by his side the whole time.

Mr. Speaker, there has to be a better way to respond to the threats America faces than by hiding behind closed doors. Instead, our government should depend on openness and transparency. That is why I have introduced H. Con. Res. 3792, a SMART Security Platform for the 21st Century. SMART stands for sensible multi-lateral American response to terrorism. SMART Security embodies a government that is fair, open, and transparent. SMART Security treats war as an absolute last resort. It fights terrorism with stronger intelligence and multi-lateral partnerships, and it controls the spread of weapons of mass destruction with aggressive diplomacy, strong regional security arrangements and vigorous inspection regimes.

SMART Security will defend America from future terrorist attacks by relying on the very best of America, not our nuclear capability but our capacity for multi-national leadership and our commitment to peace and freedom around the world.

If we fail to maintain the democratic principles upon which the country was founded, then we will have lost more than any terrorist could ever have taken away.

SMART Security is tough, pragmatic and safe. It depends on a government that is open, honest and transparent, and it is the right choice to keep Americans truly secure.

CONVENIENT RULE CHANGING

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

Mr. PALLONE. Mr. Speaker, earlier today during the one minutes I got up and admonished the House Republican Conference because we heard at the time that there was a possibility that they would adopt a rule change that would overturn a previous and current GOP rule that requires House leaders to automatically relinquish their post if they are indicted on charges that could carry a sentence of 2 or more years in prison.

Now, according to Congress Daily and several other sources, in fact the Republican conference today did agree by voice vote to overturn this GOP rule, which would mean that it is no longer the case that House leaders, whether it be the Speaker, the majority leader, whatever, would automatically relinquish their post if they face such an indictment.

I said before and I will say again, now that we know the House Republican Conference has indeed adopted this rule change, that it really is inappropriate and that they should be admonished, because for many years they had touted this rule as an example of how they were always going to do the right thing and basically show that they were beyond reproach.

Now I wanted to read, if I could, some sections or quote from some sections of the Washington Post today that explain essentially why this rule change is taking place. It says, ''GOP Pushes Rule Change to Protect DeLay's Post. House Republicans proposed changing their rules last night,'' and it in fact has changed, ''to allow members indicted by State grand juries to remain in a leadership post.

''The proposed rule change, which several leaders predicted would win approval at a closed meeting today,'' and it did, ''comes as House Republicans return to Washington feeling indebted to'' majority leader DELAY for the slightly enhanced majority they won in this month's elections. DELAY led an aggressive redistricting effort in Texas last year that resulted in five Democratic House Members retiring or losing reelection.

''House Republicans adopted the indictment rule in 1993 when they were trying to end four decades of Democratic control of the House . . . They said at the time that they held themselves to higher standards than prominent Democrats.''

Well, obviously, Mr. Speaker, their holding themselves to higher standards is no longer the case, because now when they see it might impact one of their leaders, they simply change the rule.

The Washington Post goes on to say in this front-page article that, ''The GOP rule drew little notice until this fall, when DELAY's associates were indicted and Republican lawmakers began to worry that their majority leader might be forced to step aside.''

''House Republicans recognize that DELAY fought fiercely to widen their majority, and they are eager to protect him from an Austin-based investigation they view as baseless and partisan,'' said one of the Republican Congressmen. He is quoted as saying, ''That's why this (proposed rule change) is going to pass . . . because there is a tremendous recognition that TOM DELAY led on the issue to produce five more seats for the Republicans.'' After emerging from a meeting of the Republican Conference, it was assumed that in fact the rule would pass.

It did, in fact, pass. I think that it is absolutely disgraceful that it did. And I was very pleased also to see in Congress Daily today that the Democrats, who have a similar rule that requires a ranking member to step down in the event of an indictment, are now working to change the caucus rules to include a provision similar to the one that the GOP just overturned.

So what we will have now is the Republicans saying that they never wanted to do this and that if any of their leadership ever was indicted that they would certainly ask them to step down. Now that they face the possibility, they have decided to change their minds. It does not say much about ethical lapses, and it certainly, I think, will get a lot of scrutiny from the American people who will not want to see this change take place.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. SMITH) is recognized for 5 minutes.

(Mr. SMITH of Michigan addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

CARING MORAL VALUES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

Mr. BROWN of Ohio. Mr. Speaker, on November 2, Ohio Democrats took our moral values to the polls. For many of us, our faith guided us, too, and our final vote for President was far too close to declare Ohio as a State full of evangelical fundamentalists.

For many of us, moral values are guided in our religious faith. My Lutheran upbringing instructs me and my fellow Christians in the teachings of Jesus to read and to follow as best we can the words of the Beatitudes, to try to live our lives and practice our politics as Jesus would have wanted us to.

For others of us, those moral values take the form of a faith in our country's greatness to solve our most pressing problems of racial inequality, of inaccessible health care, of the poverty of millions of American children, and of the war in Iraq.

For 3 years I have worn a lapel pin depicting a canary in a cage. A century ago, miners took a canary into the mines to warn them of toxic gasses. Miners were forced to provide for their own protection. No mine safety laws, no trade unions able to help, no real support from their government.

A baby born in those days had a life expectancy of about 47 years. Today, because of public health initiatives, worker safety laws, Medicare, Social Security, protections for children and minorities and the disabled, as a result we live decades longer. Every bit of progress in the struggle for economic and social justice often rooted in our Judeo-Christian beliefs, every bit of progress prevailed over the opposition of society's most privileged and most powerful.

Today, those struggles continue. Our fight for seniors who are forced to choose between medicine and food in our fight against the large pharmaceutical companies' greed comes from our understanding of the holy word.

Our opposition to tax cuts for America's most privileged adults and Head Start cuts afflicting our least privileged children follow from the teachings of Christ.

Our opposition to the death penalty, keep in mind George Bush approved an execution every 2 weeks during his 6 years as governor of Texas, our opposition to the death penalty is grounded in the scriptures.

Our belief that government programs like Medicare and Medicaid and Social Security, not privatized imitations of those programs, those programs should serve all Americans. Our belief that they should serve all Americans bespeaks a faith in the greatness of our country and its ability and willingness to lift up all of God's children.

As we have seen over the last 4 years, Republicans campaign to their religious friends on their moral values, mostly opposition to abortion and gay rights, and then govern for and with their corporate allies and contributors.

On the floor of the House of Representatives in the light of day we hear much talk from our Republican friends about moral values. But in the committee rooms and in the cloakrooms and in the back of the Chamber, choices are so often made and deals are cut that run counter to the teachings of Christ and Mohammed and the Jewish prophets and fly in the face of the values upon which our Nation was founded.

This Congress hurts families by underfunding Leave No Child Behind and college student loans, while giving tax cuts to the wealthiest among us.

This Congress hurts the elderly by defeating legislation to bring down the price of prescription drugs and then passing a Medicare bill that further enriches the drug and insurance industry.

This Congress hurts our God's earth when it caves to the energy and chemical companies.

This Congress hurts our communities when it gives tax breaks to encourage the largest corporations to outsource our jobs.

This Congress hurts our grandchildren when it loads huge burdens of debt on future generations.

Those are not the right moral values.

Tens of thousands of Ohioans worked feverishly for months to help change our Nation's course because of our moral values, because of our faith in God and because of our belief in the Nation's history of taking care of the least among us.

In no way do I question the faith of my political opponents, but I am weary of the far right's claim that they are the only ones guided by the hand of God.

My understanding of the teaching of Christ, my religious upbringing calls me to walk a different path and to express and act upon my faith in the cause of social and economic justice.

□ 1930

The SPEAKER pro tempore (Mr. RENZI). Under a previous order of the House, the gentleman from New Mexico (Mr. PEARCE) is recognized for 5 minutes.

(Mr. PEARCE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

TRIBUTE TO CONGRESSWOMAN DENISE MAJETTE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. CUMMINGS) is recognized for 5 minutes.

Mr. CUMMINGS. Mr. Speaker, the gentlewoman from Georgia (Ms. MAJETTE) is a lifelong public servant who has spent her career fighting for our families and our children.

DENISE MAJETTE was born into a working-class family, her mother, a teacher, and her father, a civil servant, who instilled in her the values of hard work, dedication to public service and strong religious beliefs. It is these childhood lessons that guided her life and her rise from these roots against tremendous odds to become one of the first African American women to attend Yale University and Duke University School of Law.

Upon graduation, DENISE MAJETTE answered the call of public service, joining the Legal Aid in Winston-Salem, North Carolina, as a staff attorney. At Legal Aid, DENISE MAJETTE helped hardworking families who were struggling to make ends meet.

After moving to Georgia in 1983, Ms. MAJETTE continued working for her community, serving as a law clerk for the Georgia Court of Appeals, a special assistant attorney general and an administrative law judge. Then in 1993, Ms. MAJETTE was appointed as a judge on the State court of DeKalb County.

In 2002, DENISE resigned from the bench and was elected to Congress, a talented legislator fighting for our children, our seniors, our veterans, and yes, our families.

DENISE lives the lesson her parents taught her, that to whom much is given, much is required. So when it looked like time was running out for Democrats in Georgia, she put it all on the line. When no one else was willing to take a chance and give up what they had, DENISE made that sacrifice, and we thank her for her courage, her determination and for the thousands of new voters in Georgia.

She made history, the first African American woman in Georgia, and that is the deep south, to become the Democratic nominee for the United States Senate. The Democratic nominee for the United States Senate from Georgia, just think about that. There were a lot of little girls watching this race. They saw DENISE's commercials. They saw DENISE debate time and time again and hold her own. They saw a legitimate, professional campaigner. Those little girls now know about a new option, a new path in life that is open to them.

It is rare these days to meet a politician who is willing to make real sacrifices, someone willing to put it all on the line for the greater good. DENISE MAJETTE serves as a reminder to all of us that this position we hold is not really about us. It is not about how many titles we obtain or how many plaques hang on our walls or how many dollars we raise.

We are here to be of service. We are not celebrities, but we are servants, and I thank DENISE for reminding us of that.

So, Mr. Speaker, we are so proud of DENISE MAJETTE and all that she has accomplished, and I do not have to wish her luck because with her faith in God, who is on her side, a strong conscience and an unshakable will, DENISE MAJETTE will never need it. She will be sorely missed in this body. May God bless her.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed bills and a concurrent resolution of the following titles in which the concurrence of the House is requested:

S. 2986. An act to amend title 31 of the United States Code to increase the public debt limit.

S. 2991. An act to suspend temporarily new shipper bonding privileges.

S. Con. Res. 146. Concurrent Resolution to direct the Secretary of the Senate to make corrections in the enrollment of the bill S. 150.

The message also announced that the Secretary be directed to return to the House of Representatives (S. 1301) ''An Act to amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, and for other purposes.'', in compliance with a request of the House for the return thereof.

The SPEAKER pro tempore (Mr. BEAUPREZ). Under a previous order of the House, the gentleman from Tennessee (Mr. DUNCAN) is recognized for 5 minutes.

(Mr. DUNCAN addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

(Ms. NORTON addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

EXCHANGE OF SPECIAL ORDER TIME

Mr. LAMPSON. Mr. Speaker, I ask to claim the time of the gentlewoman from the District of Columbia (Ms. NORTON).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

THE HOUSE FACES A GRAVE MORAL CRISIS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. LAMPSON) is recognized for 5 minutes.

Mr. LAMPSON. Mr. Speaker, as I reflect on my time as a member of this great institution, my most important concern is to leave the House of Representatives a better place than when I started. Unfortunately, the House faces a grave moral crisis, and we have already heard other Members speak, within the last few speakers, of these morals that we have brought to bear.

Two weeks have barely passed since election day and, the majority party has just perpetrated one of the biggest hypocrisies that this institution and, more importantly, our Nation has seen. Today, just as the Washington Post reported that it would and just as our nightly news reported that it did, the majority amended its own leadership structure, if we can believe it, to allow a Member under felony criminal indictment to hold a position of leadership in this body.

The majority party campaigned on its alleged moral values agenda, but when they got back to Washington, moral values flew right out the window. I am sorely disappointed to see the majority so quickly and so arrogantly turn its back on its biggest promise to America. The proposed leadership rule change is a flagrant and despicable insult to the American public and is firm evidence that the majority party's moral compass is permanently off center.

Indeed, this rule was adopted by the majority in 1993 as an effort to bring accountability to this House's leadership structure, and rightly so. Our elected leaders must be of the highest, utmost moral fiber, and I dare anyone to disagree with that notion.

Now, the majority finds it politically inconvenient to hold congressional leaders accountable and wants to allow Members facing felony criminal charges to continue tarnishing this institution. What sort of moral value does the majority exhibit by allowing those under criminal investigation to infiltrate our highest leadership posts? Can our children ever truly understand moral clarity when the majority allows those facing criminal felony indictments to rule the roost? Has the majority lost so much control of its own moral balance by rewarding Members facing felony criminal indictments with the perquisites of leadership?

Clearly, the majority is struggling, and unsuccessfully at that, to find its own moral balance. The majority is verbally tap dancing around this issue, claiming incredulously that State court criminal indictments carry less weight than Federal court criminal indictments. Instead of supporting State prosecutors, the law enforcement officers who protect our communities against waves of criminal behavior, the majority has attacked them as partisan hacks with hidden agendas.

What sort of moral values does the majority display by declaring local law enforcement efforts irrelevant? Would any of us tell our children to ignore the safety warnings given by our brave police officers, firefighters and other law enforcement figures? For the safety of our Nation, I pray not.

Mr. Speaker, the law is the law, period. If you are suspected of breaking it, then you are the subject of a criminal indictment. This is a simple, basic and fundamental moral lesson anyone can faithfully recite, yet one the majority apparently does not understand.

The Congress is not the place to play fast and loose with the principles of moral clarity nor should any majority exploit its own internal rules and structure for crass political purposes.

When we make excuses to allow anyone under felony indictment to lead Congress, we set ourselves down a slippery slope of immoral activity and scheming. These are not the type of morals and values that the voters thought they were voting for on election day; nor should the majority so brazenly embrace this foundation of corruption.

Absolute power corrupts absolutely. The majority talked about moral values on the campaign trail but clearly blanked on their empty promise once back in Washington. The majority is not about morals. It is not about values but one thing and one thing only,

protecting their majority at any or all costs.

Shame, shame on this House of Representatives and the majority for caring more about protecting their majority than about promoting true moral values for the American people.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. BALLENGER) is recognized for 5 minutes.

(Mr. BALLENGER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Michigan (Mr. STUPAK) is recognized for 5 minutes.

(Mr. STUPAK addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

EXCHANGE OF SPECIAL ORDER TIME

Mr. HINCHEY. Mr. Speaker, I would like to claim the time of the gentleman from Michigan (Mr. STUPAK).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

ELECTION RESULTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York (Mr. HINCHEY) is recognized for 5 minutes.

Mr. HINCHEY. Mr. Speaker, on November 2, George W. Bush was reelected President of the United States, and the Republicans expanded their majorities in both the House and the Senate. I congratulate President Bush and his party on this victory.

I also congratulate the American people for once again proving the brilliance and foresight of our Founding Fathers who designed a system in which those who hold power are replaced or affirmed, peacefully and according to the rule of law.

Never in my lifetime have the American people expressed more emotion over their choice for President. It is a testament to our Founders and to present-day Americans that this passion did not devolve into violence and lawlessness when the results were finally in and the fervent desires of so many of us were rejected.

I remain deeply disappointed by the result of the 2004 election. This election exacerbated the main problem that has been at the root of all the other problems that we have experienced over the past 4 years; that is that our usual system of checks and balances has been replaced by a monolithic Federal Government.

It is not just that the legislative and executive branches are controlled by the same party that I find disturbing. It is that the leaders of the majority party in Congress refuse to even question the judgment and the policies of the Bush administration. While partisan Republicans would view this as admirable party discipline, I see it as an abdication of constitutional responsibility.

Now President Bush is claiming a mandate, saying that he intends to spend political capital he earned during the campaign. He has stated a willingness to reach across party lines, but all his actions and most of his words belie that sentiment.

The President seems determined now to surround himself only with those who share his ideology. An administration already known for marching lockstep behind its leader will now have even fewer dissenting voices.

Neither will alternative viewpoints be found in the Republican congressional leadership. Witness the attacks on Senator SPECTER by the conservative base of the Republican party. The Senator apparently must agree to act merely as a rubber stamp on President Bush's judicial nominees or be denied the committee chairmanship that would otherwise be his.

Some may look at the Republican electoral majority and this victory and see a much diminished role for the Democrats. On the contrary, never has there been a greater need for a strong and vocal opposition.

Considering the closeness of the election that initially brought George W. Bush to the White House in 2000, this administration's lack of regard for dissenting views has been shocking. We can only imagine how much more arrogant the Bush II administration will be on the strength of its 51 percent victory.

Where some see a mandate, I see a country deeply and passionately divided in its opinion of this administration. While we respect the Office of the President and the system through which its occupant is selected, we in the opposition have a duty to continue making our voices heard more enthusiastically and more effectively.

STATUS REPORT ON CURRENT SPENDING LEVELS OF ON-BUDGET SPENDING AND REVENUES FOR FY 2004 AND THE 5-YEAR PERIOD FY 2005 THROUGH FY 2009

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Iowa (Mr. NUSSLE) is recognized for 5 minutes.

Mr. NUSSLE. Mr. Speaker, I am transmitting a status report on the current levels of on-budget spending and revenues for fiscal year 2005 and for the five-year period of fiscal years 2005 through 2009. This report is necessary to facilitate the application of sections 302 and 311 of the Congressional Budget Act and section 401 of the conference report on the concurrent resolution on the budget for fiscal year 2005 (S. Con. Res. 95, which is currently in effect as a concurrent resolution on the budget in the House under H. Res. 649). This status report is current through November 15, 2004.

The term "current level" refers to the amounts of spending and revenues estimated for each fiscal year based on laws enacted or awaiting the President's signature.

The first table in the report compares the current levels of total budget authority, outlays, and revenues with the aggregate levels set forth by S. Con. Res. 95. This comparison is needed to enforce section 311(a) of the Budget Act, which creates a point of order against measures that would breach the budget resolution's aggregate levels. The table does not show budget authority and outlays for years after fiscal year 2005 because appropriations for those years have not yet been considered.

The second table compares the current levels of budget authority and outlays for discretionary action by each authorizing committee with the "section 302(a)" allocations made under S. Con. Res. 95 for fiscal year 2005 and fiscal years 2005 through 2009. "Discretionary action" refers to legislation enacted after the adoption of the budget resolution. This comparison is needed to enforce section 302(f) of the Budget Act, which creates a point of order against measures that would breach the section 302(a) discretionary action allocation of new budget authority for the committee that reported the measure. It is also needed to implement section 311(b), which exempts committees that comply with their allocations from the point of order under section 311(a).

The third table compares the current levels of discretionary appropriations for fiscal year 2005 with the "section 302(b)" suballocations of discretionary budget authority and outlays among Appropriations subcommittees. The comparison is also needed to enforce section 302(f) of the Budget Act because the point of order under the section equally applies to measures that would breach the applicable section 302(b) suballocation.

The fourth table gives the current level for 2006 of accounts identified for advance appropriations under section 401 of S. Con. Res. 95. This list is needed to enforce section 401 of the budget resolution, which creates a point of order against appropriation bills that contain advance appropriations that are: (i) not identified in the statement of managers or (ii) would cause the aggregate amount of such appropriations to exceed the level specified in the resolution.

REPORT TO THE SPEAKER FROM THE COMMITTEE ON THE BUDGET—STATUS OF THE FISCAL YEAR 2005 CONGRESSIONAL BUDGET ADOPTED IN S. CON. RES. 95—REFLECTING ACTION COMPLETED AS OF NOVEMBER 15, 2004

[On-budget amounts, in millions of dollars]

	Fiscal year 2005	Fiscal years 2005–2009
Appropriate Level:		
Budget Authority	2,012,726	n.a.
Outlays	2,010,964	n.a.
Revenues	1,454,637	8,638,287
Current Level:		
Budget Authority	1,983,784	n.a.
Outlays	1,987,695	n.a.
Revenues	1,450,801	8,565,554
Current Level over (+) / under (−) Appropriate Level:		
Budget Authority	−28,942	n.a.
Outlays	−23,269	n.a.
Revenues	−3,836	−72,733

n.a. = Not applicable because annual appropriations Acts for fiscal years 2006 through 2009 will not be considered until future.

BUDGET AUTHORITY

Enactment of measures providing new budget authority for FY 2005 in excess of $28,942,000,000 (if not already included in the current level estimate) would cause FY 2005 budget authority to exceed the appropriate level set by S. Con. Res. 95.

OUTLAYS

Enactment of measures providing new outlays for FY 2005 ion excess of $23,269,000,000 (if not already included in the current level estimate) would cause FY 2005 outlays to exceed the appropriate level set by S. Con. Res. 95.

REVENUES

Enactment of measures that would reduce revenue for FY 2005 (if not already included in the current estimate) would cause revenues to fall further below the appropriate level set by S. Con. Res. 95.

Enactment of measures resulting in revenue reduction for the period of fiscal years 2005 through 2009 (if not already included in the current level estimate) would cause revenues to fall further below the appropriate levels set by S. Con. Res. 95.

DIRECT SPENDING LEGISLATION—COMPARISON OF CURRENT LEVEL WITH AUTHORIZING COMMITTEE 302(A) ALLOCATIONS FOR DISCRETIONARY ACTION—REFLECTING ACTION COMPLETED AS OF NOVEMBER 15, 2004

[Fiscal years, in millions of dollars]

House Committee	2005		2005–2009 Total	
	BA	Outlays	BA	Outlays
Agriculture:				
Allocation	0	0	0	0
Current Level	0	0	0	0
Difference	0	0	0	0
Armed Services:				
Allocation	0	0	0	0
Current Level	−1,530	581	−17	1,659
Difference	−1,530	581	−17	1,659
Education and the Workforce:				
Allocation	68	56	236	230
Current Level	−14	42	230	207
Difference	−82	−14	−6	−23
Energy and Commerce:				
Allocation	576	483	4,350	3,381
Current Level	0	0	0	0
Difference	−576	−438	−4,350	−3,381
Financial Services:				
Allocation	1	1	17	17
Current Level	−6	−6	−5	−5
Difference	−7	−7	−22	−22
Government Reform:				
Allocation	1	1	19	19
Current Level	21	3	39	29
Difference	20	2	20	10
House Administration:				
Allocation	0	0	0	0
Current Level	0	0	0	0
Difference	0	0	0	0
International Relations:				
Allocation	0	0	0	0
Current Level	0	0	0	0
Difference	0	0	0	0
Judiciary:				
Allocation	15	15	35	35
Current Level	0	0	0	0
Difference	−15	−15	−35	−35
Resources:				
Allocation	2	2	10	10
Current Level	0	0	4	4
Difference	−2	−2	−6	−6
Science:				
Allocation	0	0	0	0
Current Level	0	0	0	0
Difference	0	0	0	0
Small Business:				
Allocation	0	0	0	0
Current Level	0	0	0	0
Difference	0	0	0	0
Transportation and Infrastructure:				
Allocation	1,737	4	22,070	12
Current Level	4,615	−2	4,623	17
Difference	2,878	−6	−17,447	5
Veterans' Affairs:				
Allocation	0	0	0	0
Current Level	0	0	0	0
Difference	0	0	0	0
Ways and Means:				
Allocation	1,368	804	3,470	3,244
Current Level	3,444	3,423	19,938	19,970
Difference	2,076	2,619	16,468	16,726
Reconcilation	0	0	4,600	4,600
Current Level	0	0	0	0
Difference	0	0	−4,600	−4,600

DISCRETIONARY APPROPRIATIONS FOR FISCAL YEAR 2005—COMPARISON OF CURRENT LEVEL WITH APPROPRIATIONS COMMITTEE 302(A) ALLOCATION AND APPROPRIATIONS SUBCOMMITTEE 302(B) SUBALLOCATIONS

[In millions of dollars]

Appropriations Subcommittee	302(b) Suballocations as of July 22, 2004 (H. Rpt. 108–633)		Current level reflecting action completed as of November 15, 2004		Current level minus suballocations	
	BA	OT	BA	OT	BA	OT
Agriculture, Rural Development	16,841	18,113	17,120	18,272	279	159
Commerce, Justice, State	39,815	40,463	38,978	39,209	−837	−1,254
National Defense	390,931	415,987	390,931	415,772	0	−215
District of Columbia	560	554	560	541	0	−13
Energy & Water Development	27,993	27,973	27,266	27,464	−727	−509
Foreign Operations	19,386	26,735	38,785	31,797	19,399	5,062
Homeland Security	32,000	29,873	32,000	29,819	0	−54
Interior	20,039	20,214	20,637	20,116	598	−98
Labor, HHS & Education	142,526	141,117	140,005	140,389	−2,521	−728
Legislative Branch	3,575	3,696	3,559	3,597	−16	−99
Military Construction	10,003	10,015	10,003	9,975	0	−40
Transportation-Treasury	25,320	68,993	28,547	70,398	3,227	1,405
VA–HUD–Independent Agencies	92,930	101,732	91,449	96,943	−1,481	−4,789
Unassigned	0	3	0	0	0	−283
Total (Section 302(a) Allocation)	821,919	905,748	839,840	904,292	17,921	−1,456

Statement of FY2006 Advance Appropriations Under Section 401 of S. Con. Res. 95 Reflecting Action Completed as of November 15, 2004

[In millions of dollars]

	Budget Authority
Appropriate Level	23,158
Current Level:	
Interior Subcommittee:	
Elk Hills	0
Labor, Health and Human Services, Education Subcommittee:	
Employment and Training Administration	0
Education for the Disadvantaged	0
School Improvement	0
Children and Family Services (Head Start)	0
Special Education	0
Vocational and Adult Education	0
Transportation and Treasury Subcommittee:	
Payment to Postal Service	0
Veterans, Housing and Urban Development Subcommittee:	
Section 8 Renewals	0
Total	0
Current Level over (+)/under (−) Appropriate Level	−23,158

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 17, 2004.

Hon. JIM NUSSLE,
Chairman, Committee on the Budget, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The enclosed report shows the effects of Congressional action on the fiscal year 2005 budget and is current through November 15, 2004. This report is submitted under section 308(b) and in aid of section 311 of the Congressional Budget Act, as amended.

The estimates of budget authority, outlays, and revenues are consistent with the technical and economic assumptions of S. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2005. The budget resolution figures incorporate revisions submitted by the Committee on the Budget to the House to reflect funding for wildland fire suppression and for technical reasons. These revisions are authorized by sections 312 and 313 of S. Con. Res. 95. In addition, under section 402 of S. Con. Res. 95, amounts designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, the enclosed current level report excludes the Emergency Supplemental Appropriations for Disaster Relief Act of 2004 (Public Law 108–303) since all amounts provided are designated as emergency requirements (see footnote 2 of the report).

Since my last letter, dated September 9, the Congress has cleared and the President has signed the following acts that changed budget authority, outlays, or revenues for fiscal year 2005:

The Emergency Supplemental Appropriations for Disaster Relief Act of 2004 (Public Law 108–303);

The Welfare Reform Extension Act, Part VIII (Public Law 108–308);

The Continuing Resolution, 2005 (Public Law 108–309);

The Surface Transportation Extension Act of 2004, Part V (Public Law 108–310);

The Working Families Tax Relief Act of 2004 (Public Law 108–311);

The Military Construction Appropriations Act, 2005 (Public Law 108–324);

The Homeland Security Appropriations Act, 2005 (Public Law 108–334);

The District of Columbia Appropriations Act, 2005 (Public Law 108–335);

An act to amend the Lease Lot Conveyance Act of 2002 (Public Law 108–351);

The American Jobs Creation Act of 2004 (Public Law 108–357);

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375);

The Provo River Project Transfer Act (Public Law 108–382);

The 2004 District of Columbia Omnibus Authorization Act (Public Law 108–386); and

The Taxpayer-Teacher Protection Act of 2004 (Public Law 108–409).

The effects of the actions listed above are detailed in the accompanying table.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

FISCAL YEAR 2005 HOUSE CURRENT LEVEL REPORT AS OF NOVEMBER 15, 2004

[In millions of dollars]

	Budget authority	Outlays	Revenues
Enacted in previous sessions:			
Revenues	n.a.	n.a.	1,482,831
Permanents and other spending legislation	1,175,519	1,129,536	n.a.
Appropriation legislation [1]	0	391,841	n.a.
Offsetting receipts	−398,008	−398,008	n.a.
Total, enacted in previous sessions	777,511	1,123,369	1,482,831
Enacted this session:			
Authorizing Legislation:			
TANF and Related Programs Continuation Act of 2004 (P.L. 108–262)	122	138	0
Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (P.L. 108–264)	−1	−1	0
Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108–265)	66	57	0
GAO Human Capital Reform Act of 2004 (P.L. 108–271)	1	1	0
An act to renew import restrictions on Burma (P.L. 108–272)	0	0	−10
AGOA Acceleration Act of 2004 (P.L. 108–274)	0	0	−30
Surface Transportation Extension Act of 2004 (P.L. 108–280)	0	−11	0
United States-Australia Free Trade Implementation Act (P.L. 108–286)	0	0	−29
John Marshall Commemorative Coin Act (P.L. 108–290)	−2	−2	0
Marine Corps 230th Anniversary Commemorative Coin Act (P.L. 108–291)	−3	−3	0
Coast Guard and Maritime Transportation Act (P.L. 108–293)	2	2	0
SUTA Dumping Prevention Act of 2004 (P.L. 108–295)	−7	−7	0
Morocco Free Trade Agreement (P.L. 108–302)	0	0	−5
Welfare Reform Extension Act, Part VIII (P.L. 108–308)	416	379	0
Continuing Resolution, 2005 (P.L. 108–309) [2]	143	24	25
Surface Transportation Extension Act of 2004, Part V (P.L. 108–310)	4,493	7	0
Working Families Tax Relief Act of 2004 (P.L. 108–311)	2,126	2,126	−27,054
An act to amend the Lease Lot Conveyance Act of 2002 (P.L. 108–351)	1	1	0
American Jobs Creation Act of 2004 (P.L. 108–357)	764	764	−4,927
Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108–375)	−1,530	581	0
Provo River Project Transfer Act (P.L. 108–382)	−1	−1	0
2004 District of Columbia Omnibus Authorization Act (P.L. 108–386)	20	2	0
Taxpayer-Teacher Protection Act of 2004 (P.L. 108–409)	−80	−15	0
Total, authorizing legislation	6,530	4,042	−32,030
Appropriations Acts:			
Department of Defense Appropriations Act, 2005 (P.L. 108–287) [2]	391,153	266,777	0
Military Construction Appropriations Act, 2005 (P.L. 108–324) [2]	10,003	2,447	0
Homeland Security Appropriations Act, 2005 (P.L. 108–334)	30,557	18,473	0
District of Columbia Appropriations Act, 2005 (P.L. 108–335)	560	481	0
Continuing Resolution Authority:			
Continuing Resolution, 2005 (P.L. 108–309)	384,910	211,130	0
Total, enacted this session	823,713	503,350	−32,030
Entitlements and mandatories:			
Difference between enacted levels and budget resolution estimates for appropriated entitlements and other mandatory programs	382,560	360,976	n.a.
Total Current Level [1 2]	1,983,784	1,987,695	1,450,801
Total Budget Resolution	2,012,726	2,010,964	1,454,637
Current Level Over Budget Resolution	n.a.	n.a.	n.a.
current Level Under Budget Resolution	28,942	23,269	3,836
Memorandum:			
Revenues, 2005–2009:			
House Current Level	n.a.	n.a.	8,565,554
House Budget Resolution	n.a.	n.a.	8,638,287
Current Level Over Budget Resolution	n.a.	n.a.	n.a.
Current Level Under Budget Resolution	n.a.	n.a.	72,733

[1] For purposes of enforcing section 311 of the Congressional Budget Act in the House, the budget resolution does not include Social Security administrative expenses, which are off-budget. As a result, the current level excludes these items.

[2] Per section 402 of S. Con. Res. 95, the Concurrent Resolution on the Budget for Fiscal Year 2005, provisions designated as emergency requirements are exempt from enforcement of the budget resolution. As a result, current level excludes the following amounts: outlays of $19,902 million from 2004 budget authority provided in the Defense Appropriations Act, 2005 (P.L. 108–287); outlays of $622 million from funds provided in the Emergency Supplemental Appropriations for Disaster Relief Act, 2004 (P.L. 108–303); outlays of $444 million from funds provided in the Continuing Resolution, 2005 (P.L. 108–309); and budget authority of $14,528 million and outlays of $6,995 million from the Military Construction Appropriations Act, 2005 (P.L. 108–324).

Source: Congressional Budget Office.

Notes: n.a. = not applicable; P.L. = Public Law. Numbers may not sum to totals because of rounding.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Massachusetts (Mr. FRANK) is recognized for 5 minutes.

(Mr. FRANK of Massachusetts addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

TRIBUTE TO CONGRESSMAN WILLIAM O. LIPINSKI

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Illinois (Mr. COSTELLO) is recognized for 60 minutes as the designee of the minority leader.

GENERAL LEAVE

Mr. COSTELLO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the subject of this Special Order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. COSTELLO. Mr. Speaker, as we come to the final days of this session of Congress, I want to recognize the service of our colleague and dear friend, Congressman BILL LIPINSKI from Chicago.

BILL decided not to seek reelection in this past general election after serving the people of his district for 22 years. BILL LIPINSKI has been a tireless advocate for the people of his district and the people of the Chicago area. BILL has been the go-to person to get things done for the City of Chicago.

As a senior member of the Committee on Transportation and Infrastructure, he has delivered for Chicago and for the State of Illinois. BILL has secured funding for every major transportation project in the Chicago area for the past several years. From the southwest transit line to the Central Avenue bypass to the expansion of Midway and O'Hare airports, it was BILL LIPINSKI who was there to move the projects forward.

□ 1945

BILL has been an effective leader for his district, his city, and his State because he studies the issues and he rolls up his sleeves to get the job done. BILL always worked in a bipartisan manner, and in fact has as many friends on the Republican side of the aisle as he does on his own side of the aisle.

I have been privileged to serve on the Committee on Transportation and Infrastructure with BILL LIPINSKI for the last 16 years. He was always there to help me and to help any other member of the committee seeking his advice and his wisdom.

I have always admired BILL's ability to get things done for his district and the City of Chicago. I appreciate his service not only to the people of his district and the State of Illinois but the people of this great Nation. And, more importantly, I appreciate his friendship.

I wish BILL, his wife, Rose Marie, and their family the very best and know that his successor, his son DAN LIPINSKI, will serve the people of his district very well.

Mr. Speaker, I would now like to yield to my colleague from the City of Chicago, the gentleman from Chicago, Illinois (Mr. RUSH).

Mr. RUSH. Mr. Speaker, I certainly want to concur with the remarks of my friend from the southern part of Illinois (Mr. COSTELLO), and I want to stand here and really speak a few words about a gentleman who comes from a different part of town, of Chicago, but someone who I identify with immeasurably, and someone who has been both a friend and someone who has been a mentor to me since I arrived here in this Congress.

Mr. Speaker, a familiar phrase that sometimes we speak about or we discuss in the city of Chicago, a phrase coined by the first Mayor Richard Daley, Mayor Daley I, Richard J. Daley, went something like: "Don't send me nobody, nobody's sent." And I think that that really kind of captures the attitude, the political attitude of BILL LIPINSKI.

BILL LIPINSKI was a person who cared about people, cared about people not only in his district but about people across this Nation. Even though he rose to heights here in Washington, D.C., in this Congress, he never forgot his role as a Democratic ward committeeman, a ward committeeman who handled the political affairs of the 23rd ward in the City of Chicago. And to a great extent his remarkable career here in this Congress, and the many things he was able to accomplish here not only for his district but for the people of the State of Illinois and also for the City of Chicago, was really a reflection of his true calling as a Democratic ward committeeman there in the City of Chicago. He was an old-time politician who understood how to work a precinct and how to get others to work a precinct and how to deliver a vote in the City of Chicago. And as a result of that, he achieved remarkable success.

Mr. Speaker, BILL LIPINSKI was somebody that was sent. He was sent and he represented the true nature of the people of his district, the Third Congressional District in Illinois. His nickname, which some of us tease him with, was "Bungalow Bill," because he represented the bungalow folks, people who lived in the bungalows in his district. The true grit, or the common, ordinary person. And BILL LIPINSKI never forgot who sent him. So he indeed was somebody who was sent not only to Washington, D.C., but prior to that, he was sent to the Chicago City Council, and prior to that he was sent to work at the Chicago Park District.

When I arrived here in Washington, he befriended me. I did not know what to expect. He and I did not share or come from the same political sector. We competed quite often in terms of local politics. But when I arrived here in Washington, he befriended me, he advised me, he helped me out, he gave me real true counsel, and we shared many stories about our similar activities there in the City of Chicago.

He is somebody who I really call a friend and someone who will always be my friend. Mr. Speaker, I will miss him so much when he retires from this Congress. I will miss him. I will miss his counsel, his friendship, and his advice. I will miss sitting on this floor just reminiscing about some of the good political battles that we engaged in in the inner city of Chicago.

And to BILL: BILL you were sent. You were somebody that was sent, and you made everybody proud. And I am sure your family is proud and DAN is proud and Rose Marie is proud. And I really will miss you and look forward to working with you as a fellow ward committeeman within the City of Chicago.

Mr. Speaker, I yield back to my colleague.

Mr. COSTELLO. Mr. Speaker, I would now like to yield to my friend and colleague, the gentleman from the City of Chicago, Illinois (Mr. DAVIS).

Mr. DAVIS of Illinois. Mr. Speaker, I am pleased to join with my colleagues as we all come to pay tribute to our good friend, BILL LIPINSKI.

BILL has served as a Member of Congress for over 20 years and is the senior Democratic member of the Illinois delegation. Of course, I first met him when we were both members of the Chicago City Council, although he found that a good place to be away from, and he got away just as quickly as he could and came to Congress.

BILL LIPINSKI has earned the well-deserved reputation for fairness among his colleagues in the Illinois delegation and in the House as a whole. He never hesitates to reach out to his colleagues across the aisle to help serve our Nation's interests. He has done much for Illinois' Third Congressional District, the City of Chicago, and our country as a whole.

As a member of the House Committee on Transportation and Infrastructure, he has ensured that Chicago's area transportation system has gotten the funding it needs to continue to serve the residents of the region. He has also

enabled the upgrade of the Chicago Transit Authority's rail lines, as well as the extension and upgrade of a number of metro rail lines.

Mr. LIPINSKI's service on the House Subcommittee on Aviation has been especially important to the residents of Chicago and the area. He has helped to improve the region's currently overburdened airport facilities. He was instrumental in reducing delays at O'Hare International Airport through the elimination of the unnecessary slot rule. Additionally, he has ensured that Chicago's airport facilities remain state-of-the-art.

It is impossible for me to walk through the vastly and beautifully improved terminals at Midway Airport without thinking of BILL LIPINSKI's great contribution to our city.

BILL understands the art and relevance of political organizing and local base-building. As Democrat committeeman of the 23rd ward in Chicago, he leads and commands one of the most loyal and effective political groups in the State. He is a great family man and neighborhood person. He is loyal to both his community and to his family.

BILL, you have been a great friend, and best wishes to you and your wife as you get an opportunity to spend more time together in your beloved southwest side of Chicago. And I also want to take this opportunity to wish your son DAN well as he joins us. And as you go, in the words of an old Irish proverb, let me just say to you: ''May the road rise up to meet you, may the wind always be at your back, may the sun shine warmly upon your face, and the rains fall softly upon your fields. And, until we meet again, may the good Lord hold you in the hollow of his hand.''

Mr. Speaker, I yield back to my colleague.

Mr. COSTELLO. Mr. Speaker, I yield to the gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for organizing this tribute to our friend, BILL LIPINSKI; and I am pleased to join with other members of the Illinois delegation to celebrate the outstanding career of BILL LIPINSKI and to wish him well on his retirement after 22 years in this body.

When I was elected to Congress in 1998, I was fortunate to become part of a delegation that works together in a bipartisan and effective way to meet the needs of our State. BILL LIPINSKI has been the leader and a guiding force in bringing us together in that effort. He has helped us devise ways to make sure that Illinois' interests are protected and that Illinois gets its fair share of Federal dollars.

Over the years, I have attended many meetings where BILL LIPINSKI has kept us focused and shown us opportunities. He has built friendships and coalitions inside the Congress on both sides of the aisle and outside of Congress. He has worked day after day, year after year to make sure that his constituents got the best representation possible.

BILL LIPINSKI has helped me learn about Congress, learn about the government process, and learn how to get things done. He has always been there to give me advice, to give me support, and to answer my questions. And for that, I will always be appreciative.

In particular, BILL has helped me and so many others in this body and around the country learn more about transportation. Whether it is planes, trains, or trucks, BILL LIPINSKI knows transportation. Everyone wants to go somewhere, and BILL LIPINSKI has spent his career making sure that we can get there.

The Chicago Tribune called BILL LIPINSKI the Transit King because of his knowledge and ability to deliver for his district. As a senior member of the Committee on Transportation and Infrastructure, BILL LIPINSKI has worked hard to improve infrastructure, expand the highway system, and modernize the freight rail system. He has helped meet the needs of travelers, commuters, and shippers, creating good jobs at the same time.

Chicago, a transportation hub for the Nation, has benefited tremendously from BILL LIPINSKI's national transportation reputation and experience. He is not just a national expert; he consistently tackles the transportation problems faced by Chicago and surrounding communities. BILL LIPINSKI is the living example of Tip O'Neill's axiom that ''all politics are local.''

Whether it is the reconstruction of the Stevenson Expressway, airport renovation, the CTA's orange line, or helping communities cope with train whistles, BILL LIPINSKI has a hands-on approach to dealing with local issues. He understands the problems his constituents face, whether it is losing a job because of unfair trade policies, struggling to pay for enormous drug bills, or protecting overtime pay.

A life-long Chicagoan, BILL worked for 17 years at the Chicago Park District and served as a Chicago alderman, which in the eyes of many Chicagoans is believed to be the highest of political achievements. And BILL LIPINSKI continued to serve his community as a local ward committeeman, in addition to his work here in Congress. And on election day, his political organization is something to behold, an operation most elected officials would only dream of.

What some of my colleagues may not know is his expertise goes beyond transportation and government to include an exhaustive knowledge of the White Sox and baseball. BILL LIPINSKI has served the people of the Third Congressional District of Illinois with dedication and skill for 11 terms. Now as BILL prepares to leave the House after 22 years of service, those of us in the Illinois delegation wish him only the very, very best and look forward to welcoming his son DAN as part of our delegation.

Mr. Speaker, I yield back to my colleague from Illinois.

Mr. COSTELLO. Mr. Speaker, I yield to another Illinois colleague, the gentleman from Illinois (Mr. EMANUEL).

Mr. EMANUEL. Mr. Speaker, first, I would like to thank my colleague, the gentleman from Illinois (Mr. COSTELLO), for organizing this. I think we will see tonight as other Members speak and those who preceded that we will be bipartisan in our praise. Mo Udall used to say, ''Everything that has ever needed to be said on the subject has been said; it just has not been said by everybody that needs to say it.'' So this is my opportunity.

I want to shed a little light, if I could, on the fact that BILL LIPINSKI has held a series of political and public offices, ward committeeman, alderman, and Congressman. But like all great traditions in Chicago, he also worked at the Chicago Park District, that training ground of great political leaders that has literally been all over our political system in Chicago. Whether it is the county board, whether in the aldermatic or city council, the mayoral office, congressional office, or the U.S. Senate, the Chicago Park District has trained more political leaders than any other position or forum that I know of.

BILL started his career working up from the Park District to where he served as alderman, and also, to this day, as committeeman of the 23rd ward. He also is, obviously, a Congressman for over 20 years. My colleague, the gentleman from Illinois (Mr. RUSH), mentioned he is known as Bungalow BILL. A little over half of the housing stock in Chicago is in bungalows. It is a frame, or an architectural style, that Chicago is known for.

□ 2000

No other city has so much housing in that type of style. BILL LIPINSKI and his wife live in a bungalow. In fact, one piece of legislation I got was making the bungalow an historic site. BILL wanted to make sure that I got the architectural type of the bungalow correct, it was not just any type of architecture, and he was committed to understanding and respecting not only that architecture, but what he understood was the values of those people that lived in those bungalows.

Those people, when you asked them where they lived, they did not tell you Chicago. They told you what parish they went to. That is where they lived. What park their kids played in, what team they were on in the park district.

No matter where BILL went and however many miles he traveled, he never went very far, but he had a world view. Whenever we were going on a plane back home, BILL would pull out one of these 700, 800-pound books on history. I have a common interest in history, especially World War II history, and we usually swapped reading lists. He always read his history.

What I am trying to get at is the quality of an individual. Because this

is a passing in many ways of a generation of a political leader that our city does not produce as it used to. For instance, last year, the gentleman from Illinois (Mr. GUTIERREZ) organized a Congressional Award and recognition for Sammy Sosa. This was at the time Sammy Sosa was, and still is, a hot property. Wrigley Field is in my district. BILL LIPINSKI traveled up for the event. It was the gentleman from Illinois (Mr. DAVIS), the gentleman from Illinois (Mr. GUTIERREZ), myself, and the gentleman from Illinois (Mr. LIPINSKI). BILL said, ''This is the first time in my life I have even been to Wrigley Field.''

If you know anything about Chicago, Bill was from the Southwest Side, Comiskey Park, and would never set foot, if not for Sammy Sosa. I would say BILL still would never have been in Wrigley Field, and he has lived his whole life in Chicago. That was the type of individual he was. He knew where he was from and who he was.

If I could make one note, it is his son who is going to replace him as a congressman. As I know the 23rd Ward, the 11th Ward, the 19th Ward that make up that congressional district, DAN on his first run got a unique and quite impressive 74 percent. In the great tradition of the 19th Ward, 11th Ward, 10th Ward and 13th Ward and 23rd Ward, I am sure they are looking for those people on the 26 percent and who they are and why they voted the other way, and good luck in getting their garbage picked up for the next 2 years.

I know BILL is probably in his office having a cup of coffee or Diet Coke, his cigarette, pizza, and making sure what we say is correct. Because tomorrow he will be down on the floor to correct us if we make a mistake. If I have, BILL, I apologize.

BILL is truly a person who, when you say ''Bungalow Bill'' it is a compliment, because he represents the people, values and interests of the people from the Southwest Side and all its strength because it is that period of time that is our greatest generation and our greatest building blocks.

Mr. Speaker, I thank the gentleman from Illinois (Mr. COSTELLO) for organizing this Special Order.

Mr. COSTELLO. Mr. Speaker, I yield to the gentleman from Illinois (Mr. EVANS).

Mr. EVANS. Mr. Speaker, I join in the salute to BILL LIPINSKI and his retirement. We are going to miss him tremendously. Many people do not understand how a progressive member of the Democratic Caucus would have anything to do with a very conservative member of our caucus, but I came to know BILL because he worked incredibly hard for our fellow citizens. He always could be counted on to live up to the highest ideals of the Democratic Party on the issues that count, and we know that he will continue to be involved on these issues in the future.

I enjoyed serving these last 22 years with BILL. I salute the whole Lipinski family. They are a great Democratic family. I think we will find out how good his son is after he is sworn in and gets involved in this committee, because his son is a college professor by background. We need a few more Members from academics and other people who have insights to things that we lawyers do not always have.

I am pleased to have worked with him and salute him for his work with us. He has been a strong advocate for veterans issues. I will tremendously miss Bill in the future.

Mr. COSTELLO. Mr. Speaker, I yield to the gentleman from Illinois (Mr. MANZULLO).

Mr. MANZULLO. Mr. Speaker, I first had the opportunity to meet my colleague, the gentleman from Illinois (Mr. LIPINSKI), when I became a Member of Congress in 1993. What impressed me is the fact that I could live only 100 miles from the gentleman from Illinois (Mr. LIPINSKI) and he would have an accent and I do not. Some people call that a Chicago accent.

You often wonder why would somebody who lives near Egan, Illinois, a population of 39, very small county, and who raises beef cattle, obviously lives on a farm, what would he have in common with somebody who lives in a big city like Chicago.

I took a look at BILL LIPINSKI when I first came, knew his reputation as somebody very much interested in roads and highways and transportation. BILL and I had a lot of interesting talks, most of them about roads, the significance of highways. In the historical context, BILL would wax eloquent about the significance of commerce, why airports are necessary, why roads are necessary.

In fact, we talked one time that when the convention was called in 1787, it was on adjournment from the Baltimore meeting a year earlier where delegates from the 13 States had met under the Articles of Confederation and in vain could not come up with some kind of a system whereby to standardize the width, length and depth of the locks of the navigable waters. When the delegates met the next year in Philadelphia, the original purpose of the new Constitution, because the Articles of Confederation simply were not strong enough, was to promote commerce by making sure that this Nation had this fluid system of transportation. BILL has always understood that.

Roads do run from Egan, Illinois, to downtown Chicago. BILL always supported whatever road projects we had. I always supported his requests for buses in downtown Chicago because people go from Egan, Illinois, to Chicago.

But most important was the fact that, in the whole area of air transportation, BILL worked with us to help put Rockford, Illinois, on the map with the Greater Rockford Airport, recognizing the fact that here is an airport that needed business and so why not, to the extent possible, use it for transportation to alleviate the congestion in Chicagoland.

He chaired, back when his party was in the majority, several hearings, and I had an opportunity to testify before him. And when the majority changed and he was still on the same subcommittee, I still had an opportunity to testify before him. It really did not make any difference who was in the majority or the minority. BILL was still interested in the fact that roads connect people, they connect towns and, more importantly, they connect lives.

I have never met a person as unusual as BILL LIPINSKI. A Chicago accent? You have to be from rural Illinois to recognize that there is such a thing as a Chicago accent. He in his bungalow in the big city and I in my farmhouse in outside of Egan in the suburbs know this: That the dedication of this man to the people not just in his district but in the entire State, his wisdom in placing emphasis upon infrastructure and transportation as a means to better everybody because of commerce, made him rise above political labels. It was never BILL LIPINSKI, the Democrat. It was always BILL LIPINSKI, my friend.

Mr. COSTELLO. Mr. Speaker, I yield to my friend and neighbor, the gentleman from Illinois (Mr. SHIMKUS).

Mr. SHIMKUS. Mr. Speaker, I thank the gentleman from Illinois (Mr. COSTELLO) for arranging this. He does a lot of work for us throughout the State on transportation issues, but the gentleman's job is about to get a little harder with the departure of the gentleman from Illinois (Mr. LIPINSKI) as the senior ranking member on a subcommittee and one whom we relied upon a lot in Illinois for advice and counsel and to help us fight the fights.

I can speak for the Speaker to thank BILL for his help on those major infrastructure projects in Illinois. To have such a strong ally on the Committee on Transportation and the Infrastructure on the other side of the aisle was critical to us in being able to have the success that we have.

As many people know, we speak from microphones arranged by Democrats on that side and Republicans on this side. Many times, as chairman of the Page Board, I go on the Democrat side as I am talking to the pages and addressing them. But I did not think anything could get the gentleman from Illinois (Mr. MANZULLO) over on the Democratic side, and that is certainly a first, but BILL LIPINSKI did. So if there is ever a credit to BILL LIPINSKI, I think I just saw it tonight.

A lot of stuff has been said about BILL's election to Congress in 1983, serving as a City of Chicago alderman for 8 years and currently the longest-serving Democrat member of the Illinois delegation and has been a leader for Chicago but also for a branch of the Democratic Party, a conservative branch on ideologies and values that I have come to appreciate.

During BILL's 21 years in Congress, he worked tirelessly to rebuild the Nation's transportation infrastructure.

He has fought hard to maintain Illinois' status as a transportation hub. He has worked across party lines, an old Illinois tradition, to pass legislation that would be beneficial for the City of Chicago and the State of Illinois. He was willing to go against his party leaders on issues that were important to him, and when push came to shove, Members always knew they could count on BILL to come through for Illinois.

His way of leadership is a dying breed, and he will be sorely missed by this body. It has been an honor to serve with him. In fact, one of the great benefits of coming to Washington is to meet the great leaders of our time and actually call them colleagues and friends and try to work to solve issues that are important to this Nation. I thank him for the friendship he has shown. He has teased and harassed me a lot, but I take that in the spirit given.

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I want to take this time to thank BILL and his wife Rose Marie for their years of service to this Congress and to the State of Illinois. What I like most about BILL, and it was mentioned earlier, was his allegiance to support any baseball team that was playing the Cubs, even rooting for my St. Louis Cardinals at times. That is a true believer. He is a true White Sox fan. Too bad, I understand, that his son will not be carrying on that same tradition when he succeeds his father in the Third Congressional District.

The people of Chicago's south side should be proud to have had a man like BILL serving as their representative here in Congress, and we in Congress were proud to have him here. Thank you, BILL.

Mr. JACKSON of Illinois. Mr. Speaker, I would like to take this opportunity to recognize and honor my colleague from Illinois Congressman WILLIAM LIPINSKI who is retiring from Congress after 21 years of service.

Mr. LIPINSKI—the congressman from the 3d District—grew up on the southwest side of Chicago and he has remained there as a lifelong resident. He began his political career with the Chicago Parks District, was elected 23rd Ward alderman and ward committeeman in 1975. First elected to Congress in 1983, Mr. LIPINSKI is currently the longest serving Democrat in the Illinois delegation.

Since the beginning of his career as a congressman, Mr. LIPINSKI has been a member of the House Committee on Transportation and Infrastructure—formerly the House Committee on Public Works and Transportation. As a member of this committee, he has served as Ranking Member on the Railroads Subcommittee, Ranking Member on Aviation, and is currently Ranking Member on the powerful Highways, Transit and Pipeline Subcommittee.

I'm glad he's on this side of the aisle. It's easier to go to war with Mr. LIPINSKI on your side than on the other side.

BILL LIPINSKI has worked devotedly and passionately on behalf of his constituents. He has made many important contributions to the City of Chicago and the state of Illinois. I'm thankful for his service to our city, state and nation. And I'm proud to call him my friend.

Mr. Speaker, I join with my colleagues and thank Mr. LIPINSKI for his service and wish him and his family the best in the years to come.

Mr. PETRI. Mr. Speaker, I want to join in this tribute to the many years of public service and the more than 20 years of service here in the House of our colleague BILL LIPINSKI.

I have had the privilege of serving with BILL on the Transportation and Infrastructure Committee for many years. During this Congress, he has served as the ranking Democrat on the Subcommittee on Highways, Transit and Pipelines. Together, we had to navigate through the often frustrating, confusing and twisting course of the transportation bill reauthorization effort this year and last. BILL has always been a steady partner and a strong defender of the program. He certainly hasn't been reluctant to voice his strong support for increased investment in transportation. He is a great fighter, and we have been lucky to have him on our side during this particular fight. I have valued his advice and counsel these past two years as together we have worked to produce a transportation program that moves our country forward.

Beyond our work together on the Subcommittee, we have worked together on other issues, such as the expansion of O'Hare and many years fighting the whistle ban to protect our towns that had developed around the railroad tracks crisscrossing through our districts.

Apart from the Committee activities, BILL has been a tireless advocate for his constituents. He was born on the southwest side of Chicago, and he truly knows and understands his district. Prior to coming to Washington, BILL was a Chicago City alderman and he still is a Ward committeeman—a good education for any member of this House!

So I want to acknowledge BILL's courage, his strength in standing by his convictions, and his love for the City of Chicago. He has had a real impact, and his successes can be seen all over the city—whether riding the "el" or landing on a plane at Midway.

I wish him and his wife, Rose Marie, all the best on his retirement. He has been a valuable member of the House, and we will miss him.

CELEBRATING 35-YEAR CONGRESSIONAL CAREER OF THE HONORABLE PHILIP M. CRANE OF ILLINOIS

The SPEAKER pro tempore (Mr. BEAUPREZ). Under the Speaker's announced policy of January 7, 2003, the gentleman from Illinois (Mr. MANZULLO) is recognized for 60 minutes as the designee of the majority leader.

GENERAL LEAVE

Mr. MANZULLO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on the subject of my special order today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. MANZULLO. Mr. Speaker, it is a real honor to be able to honor my close friend PHIL CRANE, my neighbor, a person with whom I share one of our counties, and others are here to do the same thing. I will reserve my remarks for later.

First I would like to recognize the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, I thank the gentleman from Illinois (Mr. MANZULLO) for leading this special order tonight that I expect will be well attended as we celebrate 35 years of principled, conservative leadership on Capitol Hill.

I have scarcely been in this institution 4 years, Mr. Speaker. The very thought of arriving at a place 31 years from now in my career and still enjoying a reputation for integrity to principle, for personal integrity that Congressman PHIL CRANE enjoys is a lodestar for me. I rise today to speak on behalf of the gentleman from Illinois. I spoke today as the new incoming chairman of the Republican Study Committee, a 96-member caucus of the House of Representatives, with one of our new freshmen who, when I spoke to her about our plans for this evening, said that one of the great thrills of her life 10 years ago in Washington State at the Republican convention as a brand new freshman member of the State legislature was a chance to introduce PHIL CRANE, the keynote speaker at the Washington State Republican convention. She was thrilled at the thought of being able to spend however few days in the same Congress and call PHIL CRANE a colleague.

I rise today to make sure that the CONGRESSIONAL RECORD remembers this principled, conservative man for who he was in totality. Congressman PHIL CRANE was first elected to Congress in a special election held in November of 1969 to fill a vacancy created by the resignation of another noteworthy Illinoisan by the name of Donald Rumsfeld who has gone on to other productive ventures for his Nation.

PHIL CRANE was born on November 3, 1930, the second of five children. His father, Dr. George Crane, was the author of a nationally syndicated newspaper column entitled "Worry Clinic" which ran in papers for over 40 years. His mother, Cora, reared their children on Chicago's south side where my own family grew up. CRANE received his bachelor's degree from Hillsdale College in Michigan, and with that pedigree, after college, he served in the United States military from 1954 to 1956. He continued his education in history by earning a master's and a doctorate degree from Indiana University in Bloomington, Indiana. The career and the life and the legacy of PHIL CRANE, or Dr. CRANE as we like to call him, continues to be a source of enormous pride for Hoosiers.

After graduation, Dr. CRANE served as a professor at both Indiana University and Bradley University in Peoria, Illinois. He also served as the director of schools at Westminster Academy in

Northbrook, Illinois. CRANE also has received three honorary doctorates. In his career, he has authored three books: The Democrats' Dilemma, in 1964; Surrender in Panama, in 1978; and The Sum of Good Government, a classic tome in conservative circles, published in 1976.

He married his wife, Arlene Catherine Johnson, on 14 February 1959. The Cranes have eight children and six grandchildren. In 1997, the Crane family lost Rachel at age 31 following a long battle against non-Hodgkin's disease lymphoma but is blessed by an abundant family that remains.

CRANE also serves as a trustee for Hillsdale College, as a member of the Board of Directors of the Ashbrook Center, as a director of the Intercollegiate Studies Institute, and an advisor to the Young Americans for Freedom. In short, Mr. Speaker, it is impossible to move around even briefly in the landscape of American conservatism or in the American intellectual conservative movement without crossing the shadow and experiencing the wake and wash of the career of Congressman PHIL CRANE. There will be others who will speak about his vice chairmanship of the House Ways and Means Committee, his extraordinary work as a leader expanding the markets all over the globe for American trade and, of course, his extraordinary leadership on taxes.

I choose to focus what remains of my comments tonight, Mr. Speaker, on Congressman PHIL CRANE as a conservative leader. As I said, again, I am the incoming chairman of the largest caucus in the House of Representatives. It is known as the House Republican Study Committee. The relationship of that to PHIL CRANE is personal and poignant because it was in 1974, as a relatively new Member of Congress, that Congressman PHIL CRANE started the Republican Study Committee. And in many respects, as a book written by Ed Feulner, now president of the Heritage Foundation, the most influential conservative think tank in the English-speaking world, as that book indicates, it was the Republican Study Committee that in so many ways created the environment where the ultimate election of Ronald Reagan in 1980 was made more possible and ultimately the Republican revolution manifested itself with the takeover of this institution by a Republican majority governing from a mainstream conservative agenda that was first advocated by a young Congressman PHIL CRANE when he started the Republican Study Committee in 1974.

In fact, as evidence of his impact on the conservative movement, the very first staff level executive director of the Republican Study Committee was the same aforementioned Dr. Ed Feulner who has gone on to lead the Heritage Foundation and himself become an extraordinary leader in our movement.

PHIL CRANE first became active and well known in conservative circles actually earlier in his life, in the 1960s. He campaigned heavily for Barry Goldwater in 1964, and after his election, he became one of the most sought after conservative speakers in the country. It was not just his dashing good looks. It was the soundness of his thinking, advocating free-market values, limited government and traditional moral values with courage and fierceness and compassion.

As I mentioned, he later founded the Republican Study Committee, was involved in other conservative organizations like the American Conservative Union, Americans for Sound Foreign Policy, the Free Congress Foundation, just to name a few. Fearful that Ronald Reagan would not repeat his effort to run for President as 1980 approached, Congressman PHIL CRANE announced in late 1978 his intent to seek the nomination for President of the United States. I will never forget the evening sitting on the House floor when Congressman CRANE told me the story of that night. He said, ''We all just figured that one day Governor Reagan would look at Nancy and say, 'I think, Mommy, we should just go and retire to the ranch.'" Ronald Reagan and history had different intentions, but as he has always been throughout his career, PHIL CRANE was ready to stand in the gap. And when Ronald Reagan made his candidacy a reality, PHIL CRANE stayed in the race to honor his delegates from Illinois who had supported their favorite son, but he was one of the strongest supporters of President Reagan in 1980, enabling and assisting in his election and also being one of the great champions of the Reagan revolution from the minority here on Capitol Hill.

I close with simply a personal reflection. As I shared at several venues since learning that Congressman CRANE was not returning to participate in the 109th Congress, I reflected on the fact that as a new conservative in the House of Representatives over the last 2 years, I have made it my practice just a few feet from where I am standing during the course of long votes to sit to the right hand of PHIL CRANE. I have joked many nights as the gentleman knows about wanting to sit on the PHIL CRANE commemorative row. I did it out of affection. I did it out of admiration, and frankly, I did it out of a deep desire in the 2 years that we served, these past 2 and the 4 in totality, to learn as much as I possibly could from this man.

My only consolation, as Congressman PHIL CRANE goes on to be private citizen PHIL CRANE and no doubt in many respects will become, I suspect, with his newer and freer schedule an even wider influence in American conservatism and, we hope, a more prolific author than he has been in the last 15 years, my hope is however long I serve in this Congress that I will ever do so at the right hand of PHIL CRANE; that however long I serve here, that I will be guided by his example of courage, of integrity, of decency and of fealty to conservative principles.

In so many ways, when we talk of the Reagan revolution, and we rightly credit Ronald Reagan, but I suspect if the President were able to speak tonight and he would if he could, were he still among us, I suspect he would rise to say that one of the great generals in the field who won the hearts and minds of the American people by renewing our Nation, bringing us back to the ideals of our Founders, he would rise and extol the 35-year career of principled, conservative leadership that we celebrate tonight in the life and work and service of Congressman PHIL CRANE.

Mr. MANZULLO. I recognize the gentleman from Illinois (Mr. SHIMKUS).

Mr. SHIMKUS. I thank the gentleman from Illinois (Mr. MANZULLO) for arranging this special order. It is an important time to say thanks to a friend who has been helpful to me and one whom I have gotten to know and appreciate serving together.

As I have said earlier this evening, one of the great benefits of being elected to Congress is to say, ''Gosh, PHIL CRANE's my colleague. I work with him.'' I appreciate that. That is one of the great benefits we have.

PHIL, as has been said, was elected to Congress in 1969 to replace Donald Rumsfeld. He is currently the longest-serving Republican Member in the House of Representatives.

PHIL, you will be sorely missed.

During PHIL's 35 years in Congress, he worked tirelessly to reform our Nation's tax system and expand free trade around the world. Whether it has been to reduce the taxes employers pay or lower the tax burden on hardworking Americans or to expand markets for our Nation's manufacturers and, being from southern Illinois, my farmers, PHIL has been a champion for the American taxpayer.

As a leader in the House on trade issues, PHIL has authored legislation signed into law to open trade barriers for countries in Africa and the Caribbean, led the fight to grant China normal trading relations and helped expand duty-free trade with the Andean nations of Bolivia, Peru, Ecuador and Colombia. In recent years, Congressman CRANE has shepherded other major trade policies to successful passage in Congress, and we all know that is not always easy to do. We say it as if it is easy, but it is not, including the 1994 General Agreement on Tariffs and Trade and the North American Free Trade Agreement.

Prior to Congress, PHIL served in the Army and was a professor at a number of colleges. He has always fought the fight for smaller government, and he has written books on the subject and has voted to reduce the size of government every chance he has gotten. Some believe that PHIL is a vanishing breed, but I think that PHIL will find out tonight, as was said so eloquently by MIKE PENCE and I am sure others, that

there is a shadow cast on the conservative movement, a wake, a wash, these are great terms, that will have the ideas and values of PHIL CRANE live on long after your official departure from the Chamber.

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But I will say one thing. The gentleman from Illinois (Mr. CRANE) will be sorely missed in this Chamber. It has been an honor to serve with him over the last eight years, as I said before, as a friend and a mentor, helpful in my campaign, being another Illinoisan.

I would like to thank him and his wife Arlene, who has always been by his side. And because he has been helpful to me, I want to thank her for allowing him to spend some time with me away from the family.

Few people know that there were actually three presidential candidates from Illinois in the 1980 presidential race: Ronald Reagan, John Anderson, and the gentleman from Illinois (Mr. CRANE). For those people who thought President Reagan was the true conservative, the gentleman from Illinois (Mr. CRANE) actually ran to the right of him. The people of Northern Illinois should be proud to have had a man like the gentleman from Illinois (Mr. CRANE) serving them in Congress, and we in Congress are proud to have him here. I thank him.

Mr. MANZULLO. Mr. Speaker, I yield to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland. Mr. Speaker, I rise today to honor the gentleman from Illinois (Mr. CRANE), a dear personal friend and a great servant to our country and the United States Congress. I am joined tonight in this historic Chamber of the United States House of Representatives in our Nation's Capitol by many colleagues of the 108th Congress. We are all trying to do what is impossible. We want to share with those who listen and with posterity a glimpse of the extraordinary accomplishments of the gentleman from Illinois (Mr. CRANE) as an individual and as a legislator.

The gentleman from Illinois (Mr. CRANE) is a giant. In 40 years of participating in the political life of our country, his ideas, energy and leadership contributed structure, muscle and heart to the ascendancy of conservative philosophy and a Republican majority in the United States Congress. Could this change have been envisioned without the gentleman from Illinois (Mr. CRANE)? I doubt it. Could this change have occurred without the gentleman from Illinois (Mr. CRANE)? I doubt it.

This giant on the American political stage was a mentor and became a friend to me very quickly after I was sworn in as a Member of Congress in January of 1993 as a 66-year-old freshman. That is when I came to know him. This is where I can offer my personal tribute to him.

Indeed, I knew of him and admired him many years before that. I can remember in 1980, in meeting with personal friends and conservatives, when we mentioned the conservative movement and we were looking for an icon, someone who really represented that movement, it was the gentleman from Illinois (Mr. CRANE). I had never seen him. I had never met him. But I knew him through my many friends who had admired him for a number of years before I became politically interested.

And then the gentleman from Illinois (Mr. CRANE) came more than 13 years ago when I was running for Congress. I did not have a chance of winning, but he came anyhow, and he came to a little local town, and he did a fundraiser for me. So I am here partly because of the gentleman from Illinois (Mr. CRANE) and his confidence in me.

For many years here I attended every Wednesday afternoon the ACORNS meetings in his office. What a privilege and an opportunity to meet there some of the Members of Congress, the House and the Senate, who had gone on before and all of the history that they shared, and I remember fondly all of those ACORNS meetings in the gentleman from Illinois's (Mr. CRANE's) big office, and he had an enviable office here in the Congress. He deserved it. He had been here longer than any other Republican Member of the House.

America is different because of the gentleman from Illinois (Mr. CRANE). The most influential think tank in our Nation was started by a protege of the gentleman from Illinois (Mr. CRANE), the Heritage Foundation. His shadow and his legacy is very long indeed. This House will not be the same without the gentleman from Illinois (Mr. CRANE).

My heart has missed a number of friends that I have made here in this House, but I will tell my colleagues I will most fondly remember and most intensely miss my friendship with the gentleman from Illinois (Mr. CRANE). He is indeed a giant. I thank him very much for his service to his country and for his friendship to me.

Mr. MANZULLO. Mr. Speaker, I yield to the gentleman from Arizona (Mr. HAYWORTH).

Mr. HAYWORTH. Mr. Speaker, I thank the gentleman, chairman of the Committee on Small Business, for yielding to me and the chance to again repeat that I hail from the State of Arizona; Arizona and Illinois, with a great symbiotic relationship that extends beyond spring training. I was talking to the gentleman from Illinois (Mr. LIPINSKI), who likewise will leave the Chamber coming up, and we honor his service. And he talked about coming out to be able to watch the White Sox and the Cubs unfettered by the contingencies of the congressional calendar.

Mr. Speaker, I obviously get emotional when I think about the friendship and the example of the gentleman from Illinois (Mr. CRANE). There have been those who have preceded me in the well who have spoken of the gentleman from Illinois' (Mr. CRANE) impressive resume, of the fact that he arrived here as a new Member of Congress to succeed our current Secretary of Defense Don Rumsfeld in 1969, the year which man finally walked on the moon, and at that time, the prevailing sentiment within the body politic was that conservative ideals were almost as distant as the moon to the here and now. And yet the cheerful persistence of this great and good man from the land of Lincoln, offering a clear, constructive example of free minds and free markets and a foreign policy built on freedom was an example day in and day out in this Chamber.

The gentleman from Illinois (Mr. CRANE), a historian, a professor, a citizen, a congressman, a presidential candidate; but always a catalyst, a catalyst for conservatism, an agent for change, yes, only in the sense that change would understand what it is in the American character that made us great, that continues to make us great.

My friend from Illinois (Mr. SHIMKUS) preceded me in the well, as did my friend from Maryland (Mr. BARTLETT). They spoke of 1980, and how I remember that year as a senior in North Carolina State University with more than a casual interest in politics, mindful that in that year no fewer than three Members of the people's House aspired to leave the legislative branch to serve as our chief executive, our friends Jack Kemp of New York and John B. Anderson of Illinois and the gentleman from Illinois (Mr. CRANE), likewise of the land of Lincoln. And as I have shared with the gentleman from Illinois (Chairman CRANE), I remember full well his opening statement in the debate in the Iowa Caucus where he quoted Frederick Douglas and how Frederick Douglas said, ''I am a Republican and I will remain a Republican because of the triumph of freedom and the opportunities that this country represents.''

And, yes, we think of conservative leaders, and we think of Arizona's favorite son, Barry Goldwater, for whom the gentleman from Illinois (Mr. CRANE) worked tirelessly, and we think of Ronald Reagan. And we understand also the seemingly insurmountable challenges that confront a Member of the people's House who would aspire to an address down Pennsylvania Avenue. Indeed, history records that only one among us, only one sitting Member of Congress was elected from this Chamber to serve in the executive mansion, James A. Garfield of Ohio, in 1888.

But perhaps the lesson is best told by another historical name, John Quincy Adams, who followed his father, John Adams, our second President, into the White House in later years, but who, upon losing a bid for reelection, returned home to Massachusetts. And then the people of Braintree came to him and said, ''Mr. President, would you run for Congress?'' And so John Quincy Adams, former President of the United States, ran for and was elected

to this institution where he served to the end of his days. And what he said upon that election I think is a sentiment shared by all of us but especially by our good friend whom we honor tonight. Quoting Congressman John Quincy Adams, ''There is no greater honor than serving in the people's House.'' And as I see my friend nod in agreement, I know through 3½ decades of public service that truth has been reaffirmed. And for the citizens of the land of Lincoln who sent our friend here, beginning in 1969, time and again, we say thank you.

And to our friend, as I look at this color scheme, I am so glad because I remember the button. It was the reverse of this, ''Phil Crane for President.'' Now we say ''Phil Crane for Citizen,'' in a land without title, without distinction, without peerage. The most honored title is not President, is not congressman. It is citizen.

So, Mr. Speaker, to our good friend, to his bride, Arlene, to a remarkable family that has lived the American Dream, we say, ''Thank you, Citizen Crane,'' for what he has done, but more importantly what he is going to do. There is a reality that many of us fail to recognize and embrace, and it is that life continues. There is a life after Congress, and that life is found with friends and family and fellow citizens and an advocacy that never leaves us though we may leave the well of this House, though we may surrender a voting card in this Chamber. There is always the advocacy and the poetic justice of eternal vigilance and continued involvement in a constitutional republic, and that is the gift that the gentleman from Illinois (Mr. CRANE) over 3½ decades fought to preserve. That is the gift that he will continue to enjoy as he leaves this Chamber. And regardless of political affiliation tonight, that is what we recognize, and that is what we celebrate.

One closing purely personal note.

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It has been said that the true measure of a man is how he treats not those born to great wealth or those who enjoy great titles, but how he treats small children. I will never forget when our middle daughter, Hannah, was much younger. Mr. Speaker, for purposes of full disclosure, I should point out that sometimes Mary and I believe we should lobby Dr. Dobson to put Hannah on the cover of the next edition of ''The Strong-Willed Child,'' and I hope that Hannah will forgive me for that candor tonight. But Hannah has a vivacious, rambunctious personality, and her favorite Member in her first trip to the floor when she really understood this place was one PHIL CRANE who would say, well, there is Hannah Banana, what are you doing? And in that gentle, easygoing way of a man blessed with a great family who understands girls and understands children, there PHIL CRANE, right here on CRANE's Row in the people's House, would put a little girl at ease and enchant her and charm her with no great theories of government, but just an easygoing style that said, honey, I am your friend. You come visit with me.

He has been a friend of the people from the land of Lincoln. He has been a friend to this country. He remains one of the foremost founders of the modern conservative movement. His works have inspired so many, but more than his writings, it has been his call to arms. How many sit back, how many offer the dogma and the doctrine on the printed page and yet fail to have the courage to step into the arena. Theodore Roosevelt wrote to the man in the arena. PHIL CRANE has been that man in the arena.

I thank my friend, the gentleman from Illinois (Mr. MANZULLO), for the time; and I thank PHILIP CRANE for his service.

Mr. MANZULLO. Mr. Speaker, I yield to the gentleman from California (Mr. DREIER).

Mr. DREIER. Mr. Speaker, I want to thank my friend from Arizona (Mr. HAYWORTH) for his thoughtful and very emotional eloquence. I have to say that just as was the case for the gentleman from Arizona (Mr. HAYWORTH), PHIL CRANE has been an inspiration to me for a long period of time.

I recalled, hearing some of the things that the gentleman from Arizona (Mr. HAYWORTH) was saying, some of the experiences that we all had in observing PHIL CRANE when he was a Presidential candidate, some of those great events that took place, like that debate. And while the gentleman from Arizona (Mr. HAYWORTH) was quoting some of the Framers, it immediately came to mind one of the Framers who was quoted by Mr. CRANE in one of those debates.

After I saw him in that debate in 1980, I committed to memory the Thomas Jefferson quote, because in fact, one of PHIL's many volumes has centered around that quote. It was Thomas Jefferson who we often like to say was the founder of the Democratic Party, but he clearly outlined what was the real role of government when he said in his first inaugural address in March of 1801, he said, ''My fellow citizens, a wise and frugal government shall restrain men from injuring one another and shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government.''

And those last words are the title of one of PHIL's volumes. There have been so many great things that PHIL has done as a Member of this body and as a Presidential candidate.

I was talking just a few minutes ago to our staff director on the Committee on Rules, Billy Pitts, and I told him I was coming over here to talk about PHIL. And Billy Pitts immediately said to me, he said, PHIL is a decent man and a fine man. And I have to say that I have never in my life met a nicer, more decent human being than PHIL CRANE.

I have had countless experiences with him, traveling internationally and spending time together here with Arlene and PHIL. And this whole notion of being one of the real, over the last several decades, leaders in the conservative movement, I cannot help but think about this cause of freedom. I know that it is often a controversial issue around here. We have pointed to the fact that as Republicans we totally subscribe to this view of freedom, and we talk about the interdependence of political freedom and economic freedom, and that interdependence is something that is very important to note.

PHIL has been in the forefront, long before he got into this Congress, for the issue of free trade. I continue to this day to use PHIL as my model, and I say what one of our former colleagues, Sam Gibbons, often said. He referred to himself as a blind free trader. And PHIL and I are both blind free traders. We had a tendency to harass a couple of our colleagues, one present colleague, one former colleague, the late Gerald Solomon, my predecessor on the Committee on Rules, and we would refer to the Tariff Act, the Smoot-Holly Tariff Act of the 1930s, and we referred to Jerry Solomon as ''Smoot Solomon'' and DUNCAN HUNTER, my California colleague, as ''Hunter Holly.'' Because unfortunately, not everyone in the Republican Party embraces this free trade position. But even when it has been unpopular, PHIL has championed it.

I think about the lead that he has provided in ensuring that we blast our Western values into repressive societies around the world, like the People's Republic of China. PHIL has always been at the forefront in our pursuit of what was Most Favored Nation status and ultimately permanent normal trade relations. If we look at what has taken place today with the kind of political liberalization which is on the rise; no one is an apologist in the government of the People's Republic of China, but the political liberalization which has followed the economic liberalization, and PHIL CRANE has been at the forefront for decades of that cause of ensuring that we get economic freedom to as many people in the world as possible. That is why when we look at the prospect of PHIL's retirement, we think about the wonderful things that he has done, inspiring Americans, and he has also done it all over the world.

On repeated occasions we have been together in Latin America as we pursued what was Ronald Reagan's vision that he outlined on November 6 of 1979 when he announced his candidacy for President of the United States, and he envisaged this accord of free trade among all of the Americas. Right now we are in pursuit, as President Bush wants, of this free trade area of the Americas. We also know that we have just been able to see the benefits of things that PHIL worked on for a long

period of time when we put into place a free trade agreement with Australia. We have had the chance to visit there with PHIL and Arlene and others in our delegation that PHIL led there to talk about the need for us to make sure that we create even greater economic opportunity in our country.

PHIL is someone who understands that trade is a win-win-win all the way around. We know that some people obviously are displaced, and we know that it is a challenge. My friend from Illinois (Mr. MANZULLO) has talked with us regularly about this. But I do believe passionately that creating greater economic opportunity for people here in the United States and other parts of the world helps us in dealing with everything from simply enhancing the quality of life and the standard of living for peoples, but also in dealing with this global war on terrorism.

Because when one thinks about what it is that has led to terrorism, a part of it, not totally, but an important part of it happens to be the fact that there are societies that are economically devastated. I was talking a few months ago to someone in the Pentagon who said, just think about it, if we had a percentage or two of greater economic growth in Afghanistan or Pakistan, that clearly would have diminished the kind of threat that existed, because people are seeking economic opportunity. So PHIL has done that.

Then, of course, there is, as has been mentioned, the very important human side to PHIL CRANE, and that is why when I mentioned Billy Pitts's statement about PHIL being a decent man and a kind man, I listened to the gentleman from Arizona (Mr. HAYWORTH) talk about his daughter, Hannah, and I think about all of the young children who come in here. It is rare that you see someone have the great interaction with children and young people the way PHIL CRANE interacts with young people.

That is why I will join in saying that his leaving this great institution will create a void, a void for the institution itself, because he has regularly stood right here in this well and here in the House of Representatives fighting for his deeply rooted principles. This is one of the things that is so impressive, is that PHIL has always stood by those principles, no matter what. And I think that that is something that is to be admired.

Mr. Speaker, the Burkean view of representative government is one that I think is very important, and PHIL has always followed that edict of Edmond Burke, the Father of Conservatism, a member of the British Parliament who, a couple of hundred years ago made it clear; more than that, in fact, he made it very clear that he believed passionately that a representative owes his judgment to his constituents. That is why those core beliefs of PHIL CRANE's have always come out in his speeches, in his actions, in his votes, and in the legislation that he has pursued.

That kind of model is one that will continue to be there for me. It will continue to be there because as I cast votes, as I talk about issues, as I think about formulating positions, I will be doing everything that I can to continue to try and follow that great model that PHIL CRANE has provided.

I thank my friend for yielding. I will say that it is going to be a very, very difficult time for a lot of us seeing PHIL leave and seeing Arlene depart as well. But I will say that his spirit will still be alive and well in the greatest deliberative body known to man.

Mr. MANZULLO. Mr. Speaker, I yield to the man of the hour, the gentleman from Illinois (Mr. CRANE).

Mr. CRANE. Mr. Speaker, let me thank all of my colleagues, but I want to start with my distinguished neighbor, the gentleman from Illinois (Mr. MANZULLO). The gentleman was a dynamic freshman 12 years ago. I remember when he arrived here and we were impressed with his performance then, but it has escalated through the years. He plays a very important leadership role. But to host this event and to listen to these tributes paid by my dear and close friends through the years here in the House is truly moving.

Mr. Speaker, my colleague from Indiana erred; we just had our seventh grandchild yesterday, so we are up to seven. My wife, Arlene, and I had eight to begin with, and that to me was a good start, but I am pleased that she is here tonight, especially to have the opportunity to hear these tributes paid by colleagues that have been very moving to me. I cannot express my appreciation enough.

One of the things that I reflect on most about my years of service in this body is the personal relationships, and it is that feeling of trust and confidence and the commitment of colleagues to basic principles that I have felt are critically important in the service that we perform here.

I have done things consistently along a path that I believe in.

□ 2100

I have embraced politically all the years I have served, and I know that sometimes constituents do not always believe with those things, but at least I have been predictable. Being predictable along certain lines that I embrace based on our history, and I say that as a former history professor, I think are fundamental values that all of us should be embracing, and that is a commitment to limited constitutional government. It is a commitment to free enterprise and the growth of our economy. It is a commitment to a strong national defense. It is a commitment to advancing free trade.

One of the things that I pointed out when I was teaching is, as the gentleman from California (Mr. DREIER) focused on, is the importance of free trade. To me, it has done more to advance civilized values than anything else in the span of recorded history. And I think that personal contact that the gentleman from California (Mr. DREIER) focused on, especially with China, that personal contact with people, and they get the opportunity to see that there is a better way to live and that a better way to live is advancing those free institutions, that we have been in the vanguard of advancing and promoting here in the United States in the span of recorded history and we will continue to do.

I want to focus on one other point that one of our Founding Fathers noted, and that is that the history of liberty is the history of limitation of governmental power, never the increase of it. When we resist concentration of governmental power, we are resisting the powers of death, for the destruction of human liberty has ever been preceded by concentration of governmental power.

All of us have a responsibility in this Chamber and in the other Chamber as well to make sure that we seek to guarantee that we are living within our means, that government is limited in its intrusion into our lives, and simultaneously we are providing the greatest opportunities imaginable for individuals to realize the fulfillment of their talents and ambitions.

I commend my colleagues on our side of the aisle, but I commend some on the other side of the aisle, too, who have joined in this effort. I salute them, and I am going to miss all of you. The personal relationships that I have developed have been very moving to me. Saying good-bye is something that I am not going to do because I do not plan to say good-bye to you folks. I hope that we can continue to stay in touch.

I have no idea what I will do with the remainder of my life, but my birthday was the day after the election, and I told my wife at the time that my defeat may have been God's birthday present. It may have been an opportunity to get back and relax and reflect and decide what I would like to do yet in the remaining time I have and simultaneously try and continue to make positive contributions. I have talents that are in this Chamber, and we heard a lot of those talents tonight, that can continue to carry on that cause here on the House floor. I will try to help in any way that I can in the time I have remaining.

I will only conclude by saying that I have cherished this opportunity, and I cannot tell my colleagues enough how much I have enjoyed our personal relationships through the years in working on objectives that I have cherished. I will continue to try and maintain personal contact with you. I just want to say God bless you all and God bless this institution and the United States of America. It is in good hands. Bless you all.

Mr. MANZULLO. Mr. Speaker, the honor of being elected to Congress is distinct, singular, as the gentleman from Arizona (Mr. HAYWORTH) so eloquently stated. But I never thought in

my life I would have the opportunity to serve with PHIL CRANE. There are big shadows in the Illinois delegation, the gentleman from Illinois (Mr. HYDE), the gentleman from Illinois (Mr. HASTERT), and PHIL CRANE.

Mom was living when I was elected to Congress in 1992, and I think that one of reasons she was so excited when I was elected is the fact that she would have the opportunity to meet PHIL CRANE and talk to him on a regular basis.

I first met PHIL when I was given the distinction of being awarded the Freedom Foundation Award. The Freedom Foundation is out of Valley Forge, Pennsylvania. The note that came with that was I could have somebody present this to me. I said, oh, my goodness gracious. I called PHIL, and I said, Would you do me the honor of giving me this award? It was as if I needed an excuse to get in to talk to him.

I drove over to I believe it was Arlington Heights. I have got this picture. We were thinner, younger and had darker hair back then; and I keep that. It is on the refrigerator held by magnets that say ''Manzullo for Congress, 1992,'' in a place of great prominence.

I came here in 1992, actually, January of 1993, and he would ask me a simple question, Now, can you tell me the constitutional basis for that bill?

We do not talk about that anymore. We get tied up in so many issues. People do not talk about the underpinnings of liberty. Members do not get together and have discussions about what the Founders would do.

The sense of history of this place often becomes chewed up by the exogenous of the issues. And yet to this man from the 8th district of Illinois who defied logic in getting elected to Congress, I guess I share that same with him, no one ever thought I would be here. He has always understood how important history is. It makes us who we are. I read when PHIL's dad wrote those articles in the newspaper for years. I always read those articles, always heard of PHIL CRANE.

I was the chairman of Young Americans for Freedom at American University here in Washington, D.C., and he was making noise then as a professor before he was elected to Congress. Then throughout law school and before I was elected to Congress and after, of course, he would always associate the sea change in America, the thinking of this country with getting back to roots of free enterprise to somebody called PHIL CRANE, eternally a professor, always the pedagogue, to me a personal mentor.

The manufacturers in this country who struggle have PHIL CRANE to thank for setting the template that lowers the taxes of everybody who manufactures in this country so that we can keep jobs here and be more competitive.

The other side of the coin that says free trade is fair trade, PHIL always believed in that, too. In fact, he would say things such as, ''Corporations do not pay taxes. They collect them.''

It took me a while to understand what he was talking about, but what he was saying is it is the consumer that is going to pay the tax in the increased price of the product that the corporations would be collecting from them. No one has ever said that except PHIL CRANE, because he has always understood that the ultimate power in this republic is in the heart of the people who live here. It is the people who started the revolution in 1776. It is the people to whom government must be accountable, that every individual has worth, deep worth, self-worth, value.

I recall another time when I was running in the primary in 1992, I went to see PHIL at a town meeting in Nunda Township in McHenry County. He very adroitly had scheduled that just as the bingo game ended for the senior citizens at that township, and as PHIL came in the door everybody stood up. I said, wow, do they respect this man.

For about 20 minutes, without notes, he talked about the issues of the day, how they impacted the people he represented. The people would nod in agreement, and some of them got up and asked a question, and he would always be very responsive. If the person disagreed with what he had to say, PHIL would smile and with this huge heart, embracing the fact that everybody is important and everybody has great worth, he would say, I welcome the fact that you disagree with me. Now, let me give you an explanation of why that is.

Where do you find people like this? How many institutions are left in America? How many walking history books are left? How many authors on their feet, mentoring Members of Congress and ask questions such as, do you think government should be this big? Why have we gotten here? Is there really a constitutional basis for what you are trying to do?

Sitting in the CRANE role, the role of significance, he would ponder this place and his 35 years of distinct service and look around at all these young people and place himself in that position and have a sense of envy on his face that if he could exchange bodies and take with him that great mind, how magnificent he would be and even more respected by his colleagues.

You do not find people like that. They are just not there any more. Who are the people that remember the greatness of America? Who are the people that take the time to share the basis of the Constitution? Who talks about liberty anymore? Who talks about freedom?

PHIL's legacy is that his insistence on constitutional government, on the principles of freedom, on the integrity of the individual, the wholesomeness of life, of the honesty of one's word, of a principled devotion to this Chamber. Where do you find people like PHIL CRANE?

PHIL will officially be gone when this Congress ends, but his shadow, his influence, his love for me as a person who overcame insurmountable odds to get elected to Congress, who is this guy from Egan, Illinois, population 42, who never held office before?

□ 2115

He had never held office before and he could always relate to him because he had never held office before, and no one ever gave him a chance of being elected to Congress. He is my brother, he is my friend, he is my teacher, he is my mentor.

His words will always ring in my ears, and though I will not see his face every day, his spirit is impressed upon this place, and I am a better man because of him.

Thank you, Phil. God bless you and thank you for your service to America.

Mr. PAUL. Mr. Speaker, I am pleased to take this opportunity to pay tribute to my friend and colleague PHIL CRANE. During his 35 years in Congress, PHIL has been one of the House's most consistent defenders of low taxes, free-markets, limited government, and individual liberty. I count myself among the numerous elected officials and activists in the free-market movement who have been inspired by his example.

As a conservative professor, author, and activist, PHIL was already a nationally known conservative leader before he ran for Congress. Two of his books, ''The Democrat's Dilemma'' and ''The Sum of Good Government'' stand out as conservative classics that educated and motivated many conservative activists. Among the attributes that have made PHIL a hero to the free-market movement is his understanding of sound economics. PHIL is one of the few members of Congress who is well versed in the teachings of great free-market teachers such as Ludwig von Misses. This country would be much better off if more representatives understood economics as well as PHIL CRANE.

When PHIL CRANE came to Congress in the late sixties, there were only a handful of members supporting free-markets. This was a time when a ''conservative'' President imposed wage and price controls and ''conservative'' Representatives and Senators called for balancing the budget with tax increases rather than spending cuts. Thanks in large part to PHIL's effort; the political and intellectual climate of the Nation became more receptive to free-market ideas. PHIL's work with groups such as the American Conservative Union, the Free Congress Foundation, and the Republican Study Committee, which he founded, played a major role in growing the movement for individual liberty. PHIL's service as an advisor to Young Americans for Freedom and as a director of the Intercollegiate Studies Institute, Hillsdale College, and the Ashbrook Center helped inspire new generations of young people to become active in the movement for liberty.

When I came to Congress in the seventies to fight to limit the size and scope of the Federal Government, I was pleased to find a kindred spirit in the gentleman from Illinois. I had the privilege of working with PHIL on several efforts to cut taxes, reduce regulations, and return the Government to its constitutional

size. I also had the privilege of working with PHIL when we where two of only four members to endorse Ronald Reagan's 1976 primary challenge to President Gerald Ford.

As the number of representatives committed to free-markets and low taxes increased, PHIL's status as a congressional leader and accomplished legislator grew. Thanks in large part to PHIL's leadership; Congress has provided tax relief to American families and businesses during each of the last 4 years.

As his distinguished congressional career draws to a close, I hope all who value free-markets, individual liberty, and limited government will join me in thanking PHIL CRANE for his work on behalf of freedom.

Mr. BILIRAKIS. Mr. Speaker, I rise today to pay tribute to our colleague PHIL CRANE, who will be leaving this hallowed institution after nearly 35 years of service to his constituents in Illinois and the citizens of the United States. I honor him as a patriot, a public servant, and a friend.

The longest-serving Republican in the House of Representatives, PHIL CRANE championed conservative ideals before it was popular to do so, and he continues to be a leader to which many Members turn for guidance. As a former college professor and published author, he always brings thoughtful opinions and ideas to the table. Supporters of free trade certainly owe him a debt of gratitude. The institutional knowledge and prosperity for policy he exhibits demonstrate that he is truly a legislator.

PHIL also is a devoted husband to Arlene, a father and grandfather. My wife Evelyn and I have had the privilege of entertaining the Cranes in my Florida congressional district on a couple of occasions. Both of us will miss PHIL and Arlene as this chapter of their lives draws to a close.

Mr. Speaker, it is fitting that we take time today to honor our friend and colleague. May God bless you, PHIL, as you and Arlene pursue new dreams and challenges throughout the coming years.

IRAQ WATCH

The SPEAKER pro tempore (Mr. BEAUPREZ). Under the Speaker's announced policy of January 7, 2003, the gentleman from Pennsylvania (Mr. HOEFFEL) is recognized for 60 minutes.

Mr. HOEFFEL. Mr. Speaker, we are here to have another week of the Iraq Watch.

Before I start, I want to add my words of congratulations to the gentleman from Illinois (Mr. CRANE) for his outstanding career and what we just witnessed on the floor, a very warm and rare moment of emotion and friendship between two colleagues. I wish we had more of those moments here, but I want to salute the gentleman from Illinois (Mr. CRANE) for his years of service and his dedication to this House.

A year and a half ago, Mr. Speaker, a number of us started what we call Iraq Watch. We began to come to this floor once a week to talk about Iraq, to talk about the problems that we saw with our policy there, to ask questions and to suggest changes in our national policy. Now, a year and a half later, like the gentleman from Illinois (Mr. CRANE), I will be leaving this House, and yet the questions regarding our policy in Iraq remain.

Things have changed in Iraq over the last year and a half, but some of the fundamental problems that were apparent at the beginning of our involvement remain today and plague us today and challenge our best national interest today.

A number of us involved in Iraq Watch, some like me who voted for the military power that the President sought in October of 2002 and some in Iraq Watch who opposed the President's request for military power, all of us were alarmed in the spring of 2003 when the fighting actually began in Iraq, that the President had used what we thought was such an arrogant approach to this challenge, to the diplomacy, to the need to move forward with as many allies as possible to confront what was surely a murderous tyrant, Saddam Hussein.

We saw an arrogant approach. We saw a go-it-alone foreign policy, what many of us thought was a cowboy diplomacy, where we pushed aside our allies, where we told our international institutions, such as the United Nations and NATO and others, that we did not need their help, that we were happy to go alone into the challenge that faced us in Iraq. A lot of us were raising questions about that a year and a half ago.

Unfortunately, that approach has not changed. The President talks about having the coalition of the willing supporting us in Iraq, but it is not the kind of strong international coalition that we truly need to share the burdens and share the costs and share the sacrifices that we have faced in Iraq and not the kind of strong international coalition that his father put together in the early 1990s for the Persian Gulf War.

What the President is now doing since his reelection this November is making changes in his Cabinet and promoting loyal members of his staff to higher positions and to Cabinet positions in a way that, in my judgment, will limit the options brought to the President for his consideration; that he will begin to hear just what he wants to hear from his Cabinet and top officials; that the advice they give him will be the advice they know he already provides to himself; and that he has, instead of turning in a second term to an independent and vigorous Cabinet of obviously loyal Republicans, which is the President's due, instead of building that kind of working relationship, he has decided to build an echo chamber, to create a foreign policy advice and support system in the State Department and in the CIA and in the National Security Adviser that will tell him what he wants to hear.

Well, what he ought to hear, Mr. Speaker, with due respect to the President and with due respect to his victory and the tough decisions he has to make every day, what he ought to hear is that he still needs international support in Iraq. He still needs to internationalize the challenges, the financial challenges, the security challenges, the military challenges in Iraq, and he still needs to Iraq-tize Iraq. We still need to train up the Iraqis so that they can fight for their own future, so they can provide their own security, so that they can be the tip of the spear.

Currently, we are using American forces, brave American forces, courageously led, and brave troops to battle the insurgency in Iraq, door to door, in Fallujah and other urban settings, and our troops are behaving magnificently, performing magnificently.

But it is my view, and I think shared by my colleagues here in Iraq Watch, that we are doing ourselves more harm than good with the reality that it is American troops fighting the insurgency, instead of Iraqi troops, Arab troops, multinational troops with American support; that the fact that we are having to fight door to door, facing the true horrors of urban warfare. That we are doing this virtually alone, without international help, without very much help from the Iraqis, is generating such ill-will in the Muslim world that while Iraq is better off with Saddam Hussein out of power and Iraq has some hope of moving toward a tolerant and pluralistic society with some version of self-government, hopefully a flourishing democracy sooner rather than later, while Iraq is better off, the way we have gone about this has actually done more harm than good to America; that we have created more terrorists than we have killed; that we have created more ill-will than goodwill in the Muslim world; and that the arrogant and go-it-alone policies that we have pursued, the cowboy diplomacy that we pursue to this day, has set back the relations between this country and the Muslim world, while at the same time we do offer clearly hope to the Iraqi people that they can have a flourishing country, free from the abuses of the tyrant and murderer Saddam Hussein.

There is a lot more I would like to say tonight, but I am joined by two of the stalwarts of Iraq Watch, the gentleman from Washington (Mr. INSLEE) and the gentleman from Ohio (Mr. STRICKLAND) who have been here week after week for a year and a half. So let me turn to the gentleman from Washington (Mr. INSLEE) as he was the first on the floor, and I am happy to yield to him.

Mr. INSLEE. Mr. Speaker, I thank the gentleman from Pennsylvania (Mr. HOEFFEL) but not just for this evening.

The Iraq Watch, which has been trying to bring a responsible voice to Iraq policy now for many months, was the brain child of the gentleman from Pennsylvania (Mr. HOEFFEL), and he really did lead this effort, and we are very appreciative of him, and I know his constituents are, too.

I have to tell the gentleman, he has a lot of fans out in the State of Washington that I hear about, why can you not can be as good as Mr. HOEFFEL. I hear that many times.

But seriously, the gentleman from Pennsylvania (Mr. HOEFFEL) did something that does not happen all the time around here. He really led, and he led in an important issue to make sure Americans heard a voice about Iraq other than just from the White House, and that is important we have that debate. This was a creation of his and I think has been useful, and I know a lot of people have appreciated it, and I appreciate his leadership on that. We look forward to when the gentleman is back in public service. So we hope within 2 years, maybe even shorter. Who knows?

But with that, let me turn to the subject here which is a tough one tonight. I have to call a mother and father who lost their 19-year-old Marine in Fallujah this week tomorrow, and it is very difficult because all three of us here this evening voted against this war, and we have all had this experience of talking to families. It is very, very difficult.

What I am going to say is, what I know what we all have said, is no matter what you think of the policy, these are all good Americans who served, and no American has died in vain while serving under the flag of the United States. I am going to do my best to make sure parents appreciate that. No matter what you think of the policy, they died as heroes, and the people who are sitting tonight in Fallujah, that is how I think of them, no matter what you think of the policy. I know we all share that view.

It is difficult because it does inspire some anger sometimes I think in all of us as to what has happened in Iraq, where a war was started based on false assumptions about weapons of mass destruction and false assumptions and statements by the White House about Saddam's connection to 9/11.

The trouble I have tonight is that the same type of source of the mistake was made unfortunately is being perpetuated by the White House. In other words, one would think after the White House started a war based on two major falsehoods, that was given to him by certain people, that the President would be doubly diligent to endeavor to get people who would not perpetuate that same kind of mistake, but in fact, what we have seen since the election on November 2 is sort of like a green light for hubris, a green light to go ahead and actually make stronger in the administration the very voices that fouled up in giving us bad information about this war and making repeated misjudgments about how to perpetuate it.

Just look at the decisions that have been made in the last week. The man who himself admitted responsibility for putting a false statement into the State of the Union address, where the President told people that Saddam was trying to get uranium to build a nuclear weapon, it was a clear falsehood in the State of the Union address, and the man who himself admitted being responsible for telling Americans and the world that falsehood did not get docked pay, did not get fired. He just got a promotion to the National Security Council. So here we have the guy who is responsible for a major failure of American information that led to a war where 1,200 Americans have died. He gets a promotion. This is a perpetuation of this arrogant attitude that has got us into this pickle in Iraq.

What happens to the Defense Secretary who has had running arguments, as we know, with the Secretary of State Colin Powell about whether to go into this war and how to perpetuate it? Who is the one who leaves? It is the guy who, we are told at least, said let us be scrupulous about this, and the Secretary of Defense stays, the one who has been in charge of this since Abu Ghraib and did not give us accurate information, including the U.S. Congress, leading up to this.

Then what do we see happens at the CIA? Well, here's the capper for me. Here we have a man who left this chamber. He is now heading the CIA. What is the first thing he does, almost first thing he does? He writes a memo to all the CIA employees. I have not seen this memo but it is quoted in the paper. It says, he expects all employees that their job is to support the administration and its policies in our work and as agency employees we do not identify with, identify with, support or champion opposition to the administration or its policies.

□ 2130

He sent a very strong message to CIA employees: what the White House wants, it is going to get. And that is language that people understand.

The last thing this President needs is unanimity from his intelligence agencies. He needs debate. He needs to be told some information that may not square with his preordained view of the world. And, in fact, they are going the wrong way at the CIA and firing people who have deigned to give the President information that is different from information he believes to be true.

Mr. STRICKLAND. Mr. Speaker, if the gentleman from Washington will yield just on that point, the last thing this country needs is for our intelligence, our CIA to be politicized, to have decisions made, conclusions reached that are based on political considerations rather than on factual, objective data.

This memo from a newly appointed CIA director, Mr. Goss, is a blatant attempt to politicize our intelligence operations, to politicize the CIA. What that will do is place this country at great risk. Because if we cannot trust the intelligence to be based on actual fact, actual objective data as best we can collect it, but make decisions based on political considerations, then that will put the American people at risk, and it will put our troops at risk.

That is absolutely almost unthinkable, that a newly appointed director of the CIA would be so insensitive and out of touch that he would actually put such a directive into a written memo and have it circulated.

And I yield back to the gentleman.

Mr. INSLEE. I thank the gentleman for his comments, Mr. Speaker, and let me continue.

Later on in the memo, Goss has language that says "We provide the intelligence as we see it and let the facts alone speak to the policymaker." But when you send a memo to your employees suggesting they dare not ever say anything to challenge the President's preassumptions, that sentence does not bear out this memo. The message was sent and I am sure received by the CIA.

And I am very disturbed about something I saw last night, a show I was watching, and I cannot remember the name of it, but a former CIA person who has now left the agency and who was the person in charge of the unit searching for Osama bin Laden was on this program. This was the gentleman whose professional duty it was, for about 6 years, to lead the hunt for Osama bin Laden. In fact, he was so aggressive about it, for about 2 years they took him off the job because he was driving his superiors nuts because he was raising these red flags about Osama bin Laden. After September 11, they put him back on the post because they realized he was right about how serious this issue was.

He has now left the post, but last night he said there was absolutely no credible evidence of a substantive link between Osama bin Laden and Saddam Hussein. The number one guy in the employment of the Central Intelligence Agency last night told Americans there was no link. And for a year or more, the President, the Vice President, you name it, was running around America trying to create this impression in America's mind that there was a link in order to justify this war. That is disturbing to me.

Here is a guy that ought to be in the CIA challenging the White House's political decisions. He needs to be on the job rather than spit out of the agency like a watermelon seed. That is what they are doing. Anyone down there who is challenging the White House orthodoxy is getting kicked out.

This is not a good thing for our future decisions. We have tough decisions to make with regard to Iraq. This offensive in Fallujah, where heroes died, and they were heroic, but it is not the end of the trail. We have some tough, tough decisions.

I yield back to my colleague from Pennsylvania (Mr. HOEFFEL).

Mr. HOEFFEL. Well, Mr. Speaker, I thank my colleagues, and I am very concerned about the problems we are seeing at the CIA. The reality is that this administration, over the last couple of years, has a very sorry record of

spinning the information that the CIA has given them. So we have got a problem with the CIA intelligence not being as accurate as it needs to be for a number of reasons, I guess, listening to each other parroting back what other agencies have said. Not enough human intelligence agencies in Iraq during the Hussein regime. There are a variety of reasons.

The intelligence that they did produce about weapons of mass destruction was incorrect. It was filled with caveats and uncertainties. The reports that were being issued to the White House in the fall of 2002 said we think he has these weapons, we believe he has got these weapons, we have been told he has these weapons. But none of that uncertainty was passed on to the Congress or to the American people.

In fact, I was briefed at the White House with 20 of our colleagues, a bipartisan group, in the Roosevelt Room of the White House on October 2, 2002, by George Tenet, then Director of the CIA, and Condoleezza Rice, then the National Security Adviser to the President, and they spoke with complete certainty: we know that Hussein has weapons of mass destruction, they said to us. We know how many he has got. We know where they are. We know how much those weapons weigh.

It turns out that 7 or 8 months later, when the reports that George Tenet's CIA was giving to him and to Condoleezza Rice in the fall of 2002 finally became public, or actually became available for rank-and-file members to review, those reports were filled with caveats, filled with uncertainties, filled with hesitance; and yet none of that was passed on.

So I would say to the gentleman from Washington (Mr. INSLEE) that there has been spinning at the White House for quite a while. And as my colleague says, the Deputy National Security Adviser has now been promoted and the National Security Adviser is now going to be the Secretary of State. I must say, based upon her intentional misleading of the 20 Members of the Congress who were briefed by her and by George Tenet on October 2, 2002, I do not have confidence in Condoleezza Rice. I am afraid she is going to tell the President what he wants to hear and will not tell the Congress and the American people what we need to hear and will not face up to the President when she needs to.

I yield to the gentleman from Ohio (Mr. STRICKLAND).

Mr. STRICKLAND. Mr. Speaker, I thank my friend for yielding to me, and as we stand here and talk this evening, there may be those listening who wonder why are we talking about the past. I think there is a very good reason for us to talk about the past and to remember what has happened, because the very people who are responsible for having made these erroneous decisions in the past are the same people who are in positions of power and even being promoted in the present. That means that they will be in a position to make decisions about the future.

Now, many of the decisions that have been made have been deadly decisions, and lives have been lost as a result of decisions that were based upon false information or distorted or twisted information; quite frankly, I believe information that was purposefully manipulated in such a way as to try to get the support of the American people for carrying out this President's foreign policy.

I just want to share with my colleagues some human consequences of what has happened. About 3 weeks ago, I received nearly 20 letters from various members of a family support group. This family support group consists of family members whose loved ones are part of a transportation reserve unit that has been activated and is now in Iraq. And at the time they wrote me, they told me their loved ones were around the Fallujah area, which is one of the most dangerous places in which to be in Iraq.

The people who wrote me indicated at the time that they wrote that out of this one reserve unit that is headquartered in Cadiz, Ohio, that they had lost three of their loved ones. They have since lost a fourth. So four soldiers have been lost out of that one reserve unit. It is a transportation unit.

The letters told me that they were getting messages from their loved ones, these troops, telling them that they were not being adequately supplied with proper life-saving equipment. They were driving around in vehicles that were not armed, for example. And we know that if you are a member of a transportation unit and you are on patrols and you are delivering supplies and so on, one of the great dangers in Iraq is driving over these explosives that have been placed in the roadways.

So out of this one unit, four have already been lost. And these letters that I received from the loved ones said to me, when we gave our precious soldiers to go fight this war, we trusted our government to provide them with every protection possible. Now they are deeply, deeply disturbed and concerned that their loved ones are not being adequately cared for.

Now, I believe that part of the problem in the execution of this war has been the fact that it was initially based upon these false assumptions and this false information. We were told basically this was going to be a piece of cake; that we were going to be welcomed as heroes; and there was not adequate planning, not adequate preparation. It took the Pentagon, it took this administration, this President, because he is the Commander in Chief, more than a year to be able to say that all of our troops, each of our troops in Iraq was equipped with basic body armor. Now, I think that is absolutely shameful.

I wonder how many of our troops have lost their lives because they were not properly equipped, and how many of our troops right tonight, as we stand here in the Chamber of the people's House, how many of our troops are in danger tonight simply because this administration has failed to properly plan and provide them with adequate materials. There is a consequence to the kind of behavior that we have been describing. There is a consequence when people use false information or distort information or make such unrealistic assumptions, and it is absolutely tragic.

In my congressional district, the Sixth Congressional District in Ohio, we have lost five soldiers, a 20-year-old, a 21-year-old, and three men who were in their late 30s. One of those men left five children ages 3 through 12. We are talking here about real consequences. We are talking about real people, real families. And there are Americans tonight who are worried sick because they have loved ones over there fighting this war, and they are doing the very best they can under very difficult circumstances, and we honor our troops, but that is one of the reasons that we stand here and advocate that they be cared for in a way that is befitting a great Nation.

We should never send one of our soldiers into harm's way without them having proper armor and equipment. And tonight I can say, based on what I have heard from my constituents and some of the soldiers who are currently in the field, we are not doing all that we can to keep them as safe as they can possibly be kept.

I yield back to the gentleman from Pennsylvania.

Mr. HOEFFEL. Mr. Speaker, I thank the gentleman from Ohio. That is a very human account of what is happening in Iraq.

There is no question that this President knows how to use American power, but what I fear is that he is not aware or willing to use the totality of American power, which certainly starts with military power but is much more than that. We are certainly the strongest military in the world, and we need to stay that way. It is a dangerous world. The war on terror is going to be a challenge for years to come, and we must maintain our military strength. But there is more to American power than the military power that we possess, and this President does not seem to appreciate or understand or value the totality of our power, which includes diplomatic power and economic power, our cultural ties, the powers of moral persuasion.

We are the only superpower left in the world, and I am thankful we are. It gives us an opportunity to lead, inspire, cajole, push, advocate, and pressure. We have the ability through diplomacy and trade and economic ties and cultural ties to bend people to our will, up to a point, if we have a good argument and we are right on the facts and it is in their interest too. Obviously, every situation is different from

the prior. But this President does not seem to put any value in the totality of American power.

The military strength we have needs to be maintained and nurtured, but it has to be used as a last resort, not a first resort.

□ 2145

As strong as we are, we cannot be the world's policemen. We cannot impose our will through military strength alone, and yet that is the circumstance that we face in Iraq. We are trying to do very good things there, and we all share the President's goals of creating a pluralistic society, a tolerant, democratic society. And yet the unilateral, go-it-alone, arrogant strategy, the cowboy diplomacy, the failure to admit mistakes, the inability to train up the Iraqis for them to do their own fighting and provide their own security, and the mistakes that were made. The first thing we did was dismiss the Iraqi Army and the border patrol, and the second thing was dismiss the Iraqi civil service, and there was nobody left to run the country but Americans.

This President does not seem capable of acknowledging error and fixing it. The people he has been promoting in this echo chamber seem unwilling or incapable of standing up and saying, Mr. President, you have to change these policies.

Mr. INSLEE. Mr. Speaker, I want to follow up on what the gentleman said on the failure to successfully pursue any international involvement.

The bad news is that the President's plan is even unraveling with those who originally made some commitments to him. I read in the paper last week that Hungary has just announced that they will withdraw their troops. This was on top of withdrawals, either actual or announced, by Spain, 1,300 troops; Poland, 2,400 troops; the Netherlands, 1,400 troops; Thailand, 450 troops; the Dominican Republic, 322 troops; Nicaragua, 115 troops; Honduras, 370 troops; the Philippines, 51 troops; Norway, 155 troops; and New Zealand, 60. These are relatively small numbers, but I think it is a symptom of some bad decisionmaking. And the reason we talk about the past is the President is perpetuating his decisionmaking that created these conditions. He sees no reason ever to change.

We had a small coalition to start this, and now the small number of troops sent to help us are being withdrawn so our people are having to bear the burden of the fighting.

In Fallujah, this long after the fight, we had token Iraqis with us, and one of the reasons is the administration did not set up an infrastructure for training the Iraqis. Last month, 4 weeks ago, all that time since the original invasion, we still had only 40 percent of the trainers that the plan called for on day one to train Iraqis troops.

This thing has been botched, and the problem is the President is promoting people who are responsible for it, and we are getting deeper. One thing that bothers me, the gentleman mentioned the President knows how to use power. He should not use it in a way that lets politics dictate military decisions. It is pretty clear to any neutral observer that is what happened in Fallujah, because this spring we had an offensive into Fallujah. It was called off. Everybody knew we were going to have to go back in there, and it would seem to me it would make prudent sense to go back in there before we give thousands of insurgents time to build bunkers, accumulate their communications network. What did the President do? It is pretty clear. Not until after the election because there is going to be American blood flow.

One week after the election, all of a sudden we get the attack on Fallujah. Thirty-eight Americans die in the attack. It is pretty clear, and it is sad to say what happened here. There was a political decision to avoid this assault and, as a result, these insurgents had more and more time to fortify Fallujah. That was wrong by a Republican, a Democrat or anybody, to put our men in harm's way, to allow the enemy to consolidate their position, and we had to walk our people into those dens of fire.

Mr. STRICKLAND. Mr. Speaker, I want to reinforce what the gentleman from Washington (Mr. INSLEE) is saying. It was very obvious this decision and the timetable attached to it was influenced by a political clock. The fact is, we telegraphed to the world and the enemy what we were going to do. We gave them time to prepare, and we waited until a few days after the election and then the decision was made to go in.

That is a troubling thing to conclude. It really troubles me to think that a decision like that that would involve a military operation that was going to likely consume American lives would be in any way influenced by a political clock, but the evidence seems quite clear that is what happened. We had to build up for months and then more intensely in the weeks leading up to the election, and the enemy knew we were coming in. That gave them an opportunity to be ready for us, to have supplies and equipment in place. There was no element of surprise in our going into Fallujah. We basically let them know, as soon as the election was over, it was going to happen. That truly troubles me. I think it should trouble every American.

Mr. INSLEE. Mr. Speaker, it troubles me because I am going to call some parents tomorrow who lost their 19-year-old son in that battle. I am not going to broach this with them. I do not know if the thought has crossed their mind, but I cannot reach any other conclusion. What possible reason was there to wait 6 months to go into Fallujah except the fact that there was an election on November 2, and then do it just a few days after the election. What possible reason could there be other than the fact of the election schedule?

We saw how horrendous the fighting was in Fallujah. Some of these tunnels were reinforced with steel, and we gave them 6 months to do that. People's heads should roll in the administration for that.

Again, what we hear tonight is the people responsible for that have been promoted into higher positions of authority. We are not going in the right direction in Iraq.

Unfortunately, let me note a reality in Iraq, we have to some degree obtained some degree of success over Fallujah, but just read what happened everywhere else.

In Samarra, we had a Fallujah-like assault several months ago, and we thought we were successful there, but this week the Iraqi police stations were raided by the insurgents, and 33 Iraqi soldiers and policemen were killed, injured 48.

In Ramadi, a slew of suicide car bombers wounded 20 U.S. Marines. Guerillas raided three police stations, killing 22 officers.

In Diyala Province, a governor's aide and two members of the Provincial Governing Council were killed, and bombs exploded across Baghdad at a Catholic Church and against U.S. convoys along the main road to the airport.

We still cannot secure the main road to the airport in Baghdad. We still are hiring the people responsible for these debacles and giving them promotions. It is wrong.

Mr. ABERCROMBIE. Mr. Speaker, the gentleman mentioned the main road from Baghdad and the gentleman from Pennsylvania (Mr. HOEFFEL) indicated earlier tonight that we have been holding this Iraq Watch special order for some period of months now. Those who have listened to us before may recall that I have mentioned in the past that I was privileged to be in the first delegation of American Congress Members who were able to get into Iraq, leave the Baghdad airport and go into what is now the Green Zone in May after the initial attack on Baghdad.

We were there in late May on the day that Ambassador Bremer took the reins of control from General Garner. Forgive me for going over some past ground, but, unfortunately, what is being cited by the gentleman from Washington (Mr. INSLEE) and by the gentleman from Ohio (Mr. STRICKLAND) and the gentleman from Pennsylvania (Mr. HOEFFEL) tonight requires this for a very simple reason.

When we hear of standing up or creating this Army, creating these forces, that was the goal that was stated to us the very first day that Ambassador Bremer was there, supposedly based on the work that General Garner was supposed to be doing up to that time. And we continue to have reports in the presses as if this is something suddenly just discovered.

On that day, we sat at the table with Ambassador Bremer and General Garner. I recall very clearly saying to

them, we have just been down this road from the airport, the international airport in Baghdad here, and I said to them. You are going to need 10,000 soldiers just to guard that highway. I said. It is a strip of tar going from the airport in the middle of a desert into Baghdad. This is not the Big Dig up in Boston or entering metropolitan Atlanta. This is not finding your way around Philadelphia or New York. This is a strip of tar from another big strip of tar where planes land into Baghdad. I said, there are no lights. There is no possibility of being able to stop people planting mines or coming up with shoulder-held rocket grenade launchers, explosive propellants of all kinds.

And now here we are nearing the end of 2004, and you cannot even go on that road today. This is a debacle. This is a disaster. This is taking place right now in circumstances in which we are observing generals saying to their troops, witnessed by embedded reporters with television cameras, drawing the analogy to Hue in Vietnam.

I am old enough to have been involved in the discussions that took place during the 1960s with what we were doing in Vietnam with a half a million soldiers and an indigenous Army fighting with the South Vietnamese that could fight, that was trained and was equipped. And the analogy was Hue in Vietnam. Fallujah is going to be like Hue. Hue was a disaster for us. A few more wins like that, and we are completely undone.

What we forget is the actual military activity that took place had nothing to do with the war in the sense of whether or not we would be successful politically or militarily. The actual circumstances of the combat and the capabilities of the soldiers, all of which have been cited by us over and over again, that is not the issue. The competency of the American soldier is not the issue. The willingness of the American soldier to fight or the bravery, the professionalism, that is not the issue as such. Whether they are equipped properly, of course, that is an issue for us, but the political reality is this is an unmitigated disaster. We are setting the foundation and groundwork, if you will, for decades, if not centuries, of opposition to us as a result of what is going on right now.

You need only go to look at how it is characterized around the country. I was visiting with my mother in Florida, and I have been to Massachusetts. I have gone all over the country. The Palm Beach Post, the Providence Journal, how is it characterized? Here is what the Providence Journal said on Monday, November 15.

□ 2200

''The absence of insurgent bodies in Fallujah has remained an enduring mystery.'' It is no mystery. This is a guerilla fight.

In the same paper:

''But much of the city lay in smoking ruins. Isolated bands of rebels still harassed American and Iraqi soldiers.'' Rebels against what? ''The military victory appeared to be nearly overshadowed by insurgent violence elsewhere, particularly in the northern city of Mosul.''

Again quoting:

''The Governor of Mosul province, saying he had lost faith in local security forces, called in thousands of Kurdish militiamen for the first time to quell the insurgent uprising there.''

Today a hearing was held on the staffing requirements, the personnel requirements for the Guard and the Reserve, testimony at the Committee on Armed Services today. Happy faces, it was characterized to me by a Republican Member here tonight, a stalwart member of the committee. And I reiterate again with respect to the many times we have appeared on the floor, this is not a Republican versus Democratic issue. The Committee on Armed Services tries not to operate in that kind of a context. We try to operate on the basis of the security interests of the United States. One of our colleagues said to us, ''They put on happy faces today.'' What the gentleman from Washington (Mr. INSLEE) has just quoted, what these other two of my colleagues here have been quoting is that we are living in a fantasy. I was asked by a former Member today, What are you doing over at the Capitol? I said, We're organizing our delusions. We are in the midst of organizing our delusions.

Mr. HOEFFEL. Will the gentleman yield?

Mr. ABERCROMBIE. I would yield with one observation, though, as has been stated by our colleagues here tonight. The thing that I most regret about coming back this evening is that shortly we will be taking leave of the gentleman from Pennsylvania (Mr. HOEFFEL). He is the founder of this opportunity that the rest of us have seized upon week after week. He has been the guiding light and the inspiration for this. I deeply regret that he will not be here next year because, unfortunately, I am afraid we are going to have to be here next year. But I can tell him that the fire that he has lit in us and in others who have come here will not go out, and we will try to carry on the legacy that he has established for us to live up to.

Mr. HOEFFEL. Mr. Speaker, that is very kind of the gentleman from Hawaii, a bit overblown and exaggerated, but very kind of him.

Mr. ABERCROMBIE. Not a bit.

Mr. HOEFFEL. Next year I am going to be watching. I am going to be tuning in. I know my colleagues will be fighting the good fight as they have been for the last year and a half.

I wanted to comment upon your views, that what is virtually a purely military approach to our challenge in Iraq is not working, cannot work in the face of a guerilla opposition that melts away when we attack en masse and comes up and attacks us where we least expect it a few days later in another location. It is consistent with my earlier statement that as strong as our military is and as strong as we have to keep it, we have got to use more than just our military power in our dealings with the rest of the world. We have to use the totality of our power, which includes diplomatic power, economic power, cultural ties, the powers of moral suasion.

One of the things I wish this President would talk about and I hope the next Congress will talk about is the need for economic revitalization in the Middle East and in Eurasia. We need a modern day Marshall Plan. We need to address the challenges in Iraq and the rest of that part of the world not just with a military strategy but we have got to give to those young men and women, mostly young men, although there are now suicide bombers who are women, who are so desperate, who are so hopeless that they would believe it is in their best interests to strap a bomb on and kill innocent civilians rather than have some hope that they can build a better life, that they can find a job, they can improve the quality of life for themselves and their families. We have got to address the economic needs. I do not mean by handing out money. I mean by making the kinds of investments, along with Western Europe and other industrialized societies, the kinds of investments that will build some economic strength.

In the Marshall Plan after World War II, over a period of 4 years we invested $13 billion in 14 countries. That in today's dollars would be $100 billion over 4 years, $25 billion a year. Our total foreign aid now is about $20 billion a year. So if we a little bit more than doubled our foreign aid, we could create a similar economic revitalization plan as we did so successfully in the late 1940s.

It is a different challenge. The countries we are trying to help here are frankly much worse off than the Western European countries were after World War II. Those countries had a labor force that was trained. They had been industrial countries. The Afghanistans, all the Stans, Iraq, Iran, those are countries with much greater needs. But if we try to solve the problems of the world with military solutions only, if we try to keep ourselves safe with military solutions only, if we try to win the war on terror with only a military response, we will not succeed. Our military will perform well, as they always do; but there is not a military solution, a purely military solution, to the challenges that face us.

We have got to pay attention to the hopes and aspirations. It is more than just the poverty these people face. It is the grinding helplessness and hopelessness they must feel. We have got to create a sense of opportunity in this part of the world.

Mr. ABERCROMBIE. In that context, then, you have indicated, yes, a Marshall Plan might be in order, but that

presumes that the fighting has ended. The fighting has not ended. It is nowhere near ending. You cannot make an investment in somewhere, where again I will quote, most of the city lay in smoking ruins.

Another quote: ''Tanks and armored vehicles, their turret guns blazing in all directions, finished the sweep through the city.'' We are destroying everything in our path. And then the only thing that I see is that, well, we will be responsible, the United States is going to have to be responsible for the rebuilding. Who? Another Halliburton? Another series of projects to be laid out? You cannot guarantee that the people who are going to do the building will be safe.

So all of this is a fantasy. It is a delusion, that somehow we are going to succeed with this. My final point on that is that it is the military itself then at that point that will have difficulties because we are not going to be able to recruit. Despite the happy face that has been put on this, the Reserves are falling behind in their recruitment and retention. The Guard is falling behind in their recruitment and retention, and those strains and those stresses are going to become more apparent in the days and months to come, and the stress and strain in the days and months to come will manifest itself in the inability of the United States to have the kinds of deployments under the circumstances that would be most ideal to maximize the efficiency of the Armed Forces.

It is not that they will not try. It is not that they will not do their best. It is not that they will not give their all. It is that we will be letting them down in the first place by requiring something of them that actually is against the protocols and the standards that we have set up in order to have the best possible military capacity.

Mr. STRICKLAND. If the gentleman will yield, just listening to the gentleman, I am reminded of a fact. The fact is this: that the only people sacrificing for this war are the soldiers and the people who love them. The President is not sacrificing for this war. The corporate world is not sacrificing for this war. Those of us who sit in the safety of this Chamber, we are not sacrificing for this war. We do not have sons and daughters and loved ones in Iraq in harm's way.

So who is sacrificing? The taxpayer is not sacrificing for this war, not the current taxpayer, because the President has decided that the cost of this war is just going to be pushed into the future so the children and the children yet to be born will bear the burden for paying for this war. It is a shame that the President is asking nothing of us as a Nation, save the lives and the time, the service of our soldiers and the grief and the worry of the people who love them. It is just almost beyond belief that we find ourselves where we are tonight.

Our country was attacked as a result of Osama bin Laden, the Taliban. We supported going into Afghanistan, obviously, all of us. Out of 535 members of the House and Senate, only one voted against the war in Afghanistan because it was wholly, totally justified and necessary. And then all of a sudden the President and his advisers decided that we were going to go to Iraq. No connection with the attack upon this country. No weapons of mass destruction. No imminent danger to us. Yet we divert resources and intelligence away from Afghanistan, away from the search for Osama bin Laden, and here we find ourselves in Iraq and we all knew that we were going to win the military battle.

There is not a country on the face of this Earth or a combination of countries on the face of this Earth that can stand up to our military and our fighting men and women. We all knew that. And so there is this quick, so-called end of combat, and the President got on the aircraft carrier, there was that sign up there Mission Accomplished, and look what has followed. Thousands of people injured. Well over 1,000 of our soldiers are now dead. Iraq has become a haven for terrorists. They are coming from throughout the world, gathering in Iraq; and we find ourselves bogged down with no plan, continuing death, continuing injuries, continuing expense. And we have got an administration who is wanting to continue to do the same thing they have been doing for the last several months. It is truly alarming, saddening, that our Nation finds itself in this situation tonight.

Mr. HOEFFEL. I yield to the gentleman from Washington.

Mr. INSLEE. I just want to say that there is a future in Iraq. The one thing we should recognize and we are in it together, Democrats and Republicans, whether we voted for this war or not, and we all have responsibilities to try to make tough decisions about what to do now. Our discussion of the past does not mean to suggest that we can walk away in the next 24 hours from Iraq, but I think what we are saying is that we need people that we can trust with decision-making in Iraq, that we will have a rational, decision-making process that is based on the facts rather than just hopes and wishes.

I remember just even 6, 8 months ago listening to the Vice President talking about how things were going so remarkably well in Iraq and we had the Mission Accomplished incident. We had Ambassador Bremer telling us and Wolfowitz telling us that this entire thing was going to be financed with oil revenues from Iraq. He told us, to Congress, I remember this very well. He said, ''There won't be a single taxpayer dollar associated with this project.'' How many billion are we in it now? It is hard to tell.

As the gentleman from Ohio pointed out, the one thing we know about every billion dollars this President has spent, it has been of my grandchildren's money. He has not asked any sacrifice of us. Winston Churchill said, ''All I have to offer you is blood, sweat, toil and tears.'' This President has said, ''Just go shopping.'' That is how he has approached this. So we are asking this horrific sacrifice of our men and women in Fallujah tonight. But this President wants to keep cutting taxes for the wealthiest folks, his friends. That is how he handles it. He is the only President in American history who has insisted that in the middle of war when our warriors are out there risking their lives, he does not want to risk anything except his tax cuts, and he will not even risk that.

He is the only American President who has ever done major tax cuts in a war. I would assert that he is in the panoply of those who are the most economically and morally irresponsible. This is a moral issue to ask our soldiers to go die in Fallujah and go back here in the homestead and try to boost his popularity by giving tax breaks to the rich.

□ 2215

That is a moral issue. And there has been a lot of talk about moral values in this last election.

I want to say, I look at that as a violation of the values that I hold and I think a majority of my constituents hold. We ought to be in this together as Americans, and this President does not want any American to be in it except those on the frontline because he does not want people to know how costly war is. And it is not cheap. And that is a moral failure.

And if we raise our voices on occasion, it is because there is cause for anger here. And there is cause for anger when I hear in the last week that this President gives promotions. There is not a guy who has lost his extra vacation day in this administration as a result of the debacle in Iraq. What kind of message is that to send on personal accountability when a guy who told us that it was not going to cost the taxpayers a dollar is sitting fat and happy as the Secretary of Defense, has never got his hand even slapped, did not even get a memo in his personnel file, and his buddy takes over the National Security Council and had the President tell us something that was a blatant falsehood to start this war? And now we are going to make calls, all four of us, to family members who lost people in Fallujah. That is a moral insult. It is not just bad public policy.

Mr. HOEFFEL. Mr. Speaker, I thank the gentleman for his comments. I believe we are out of time this evening.

Iraq Watch will be back in January, in February and March, as long as these challenges continue, as long as there is a need for debate and for questions to be asked.

Mr. ABERCROMBIE. Would the gentleman yield?

Mr. HOEFFEL. I yield to the gentleman from Hawaii.

Mr. ABERCROMBIE. Mr. Speaker, we may be here a few more days than we expected, and I for one am quite concerned about what is taking place and

would be interested in coming back if the time is available to us before we leave.

Mr. HOEFFEL. Excellent. Mr. Speaker, let me just say it has been a long time coming, but change is going to come.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. KING of Iowa). Members are reminded to refrain from personal references toward the President.

CONFERENCE REPORT ON H.R. 1350

Mr. BOEHNER submitted the following conference report and statement on the bill (H.R. 1350), an Act to reauthorize the Individuals with Disabilities Education Act, and for other purposes.

CONFERENCE REPORT (H. REPT. 108–779)

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1350), an Act to reauthorize the Individuals with Disabilities Education Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Individuals with Disabilities Education Improvement Act of 2004''.

SEC. 2. ORGANIZATION OF THE ACT.

This Act is organized into the following titles:

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

TITLE II—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

TITLE III—MISCELLANEOUS PROVISIONS

TITLE I—AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

Parts A through D of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) are amended to read as follows:

''PART A—GENERAL PROVISIONS

''SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.

''(a) SHORT TITLE.—This title may be cited as the 'Individuals with Disabilities Education Act'.

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

''PART A—GENERAL PROVISIONS

''Sec. 601. Short title; table of contents; findings; purposes.
''Sec. 602. Definitions.
''Sec. 603. Office of Special Education Programs.
''Sec. 604. Abrogation of State sovereign immunity.
''Sec. 605. Acquisition of equipment; construction or alteration of facilities.
''Sec. 606. Employment of individuals with disabilities.
''Sec. 607. Requirements for prescribing regulations.
''Sec. 608. State administration.
''Sec. 609. Paperwork reduction.
''Sec. 610. Freely associated states.

''PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

''Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
''Sec. 612. State eligibility.
''Sec. 613. Local educational agency eligibility.
''Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
''Sec. 615. Procedural safeguards.
''Sec. 616. Monitoring, technical assistance, and enforcement.
''Sec. 617. Administration.
''Sec. 618. Program information.
''Sec. 619. Preschool grants.

''PART C—INFANTS AND TODDLERS WITH DISABILITIES

''Sec. 631. Findings and policy.
''Sec. 632. Definitions.
''Sec. 633. General authority.
''Sec. 634. Eligibility.
''Sec. 635. Requirements for statewide system.
''Sec. 636. Individualized family service plan.
''Sec. 637. State application and assurances.
''Sec. 638. Uses of funds.
''Sec. 639. Procedural safeguards.
''Sec. 640. Payor of last resort.
''Sec. 641. State interagency coordinating council.
''Sec. 642. Federal administration.
''Sec. 643. Allocation of funds.
''Sec. 644. Authorization of appropriations.

''PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

''Sec. 650. Findings.

''SUBPART 1—STATE PERSONNEL DEVELOPMENT GRANTS

''Sec. 651. Purpose; definition of personnel; program authority.
''Sec. 652. Eligibility and collaborative process.
''Sec. 653. Applications.
''Sec. 654. Use of funds.
''Sec. 655. Authorization of appropriations.

''SUBPART 2—PERSONNEL PREPARATION, TECHNICAL ASSISTANCE, MODEL DEMONSTRATION PROJECTS, AND DISSEMINATION OF INFORMATION

''Sec. 661. Purpose; definition of eligible entity.
''Sec. 662. Personnel development to improve services and results for children with disabilities.
''Sec. 663. Technical assistance, demonstration projects, dissemination of information, and implementation of scientifically based research.
''Sec. 664. Studies and evaluations.
''Sec. 665. Interim alternative educational settings, behavioral supports, and systemic school interventions.
''Sec. 667. Authorization of appropriations.

''SUBPART 3—SUPPORTS TO IMPROVE RESULTS FOR CHILDREN WITH DISABILITIES

''Sec. 670. Purposes.
''Sec. 671. Parent training and information centers.
''Sec. 672. Community parent resource centers.
''Sec. 673. Technical assistance for parent training and information centers.
''Sec. 674. Technology development, demonstration, and utilization; and media services.
''Sec. 675. Authorization of appropriations.

''SUBPART 4—GENERAL PROVISIONS

''Sec. 681. Comprehensive plan for subparts 2 and 3.
''Sec. 682. Administrative provisions.

''(c) FINDINGS.—Congress finds the following:

''(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

''(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94–142), the educational needs of millions of children with disabilities were not being fully met because—

''(A) the children did not receive appropriate educational services;

''(B) the children were excluded entirely from the public school system and from being educated with their peers;

''(C) undiagnosed disabilities prevented the children from having a successful educational experience; or

''(D) a lack of adequate resources within the public school system forced families to find services outside the public school system.

''(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this title has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

''(4) However, the implementation of this title has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

''(5) Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by—

''(A) having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to—

''(i) meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children; and

''(ii) be prepared to lead productive and independent adult lives, to the maximum extent possible;

''(B) strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

''(C) coordinating this title with other local, educational service agency, State, and Federal school improvement efforts, including improvement efforts under the Elementary and Secondary Education Act of 1965, in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where such children are sent;

''(D) providing appropriate special education and related services, and aids and supports in the regular classroom, to such children, whenever appropriate;

''(E) supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically based instructional practices, to the maximum extent possible;

''(F) providing incentives for whole-school approaches, scientifically based early reading programs, positive behavioral interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children;

''(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results; and

''(H) supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

''(6) While States, local educational agencies, and educational service agencies are primarily responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a supporting role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

''(7) A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

''(8) Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.

''(9) Teachers, schools, local educational agencies, and States should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

''(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

''(B) America's ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

''(C) Minority children comprise an increasing percentage of public school students.

''(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these students.

''(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

''(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

''(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation's students from non-English language backgrounds.

''(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

''(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

''(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.

''(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

''(E) Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.

''(13)(A) As the number of minority students in special education increases, the number of minority teachers and related services personnel produced in colleges and universities continues to decrease.

''(B) The opportunity for full participation by minority individuals, minority organizations, and Historically Black Colleges and Universities in awards for grants and contracts, boards of organizations receiving assistance under this title, peer review panels, and training of professionals in the area of special education is essential to obtain greater success in the education of minority children with disabilities.

''(14) As the graduation rates for children with disabilities continue to climb, providing effective transition services to promote successful post-school employment or education is an important measure of accountability for children with disabilities.

''(d) PURPOSES.—The purposes of this title are—

''(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;

''(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

''(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

''(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

''(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

''(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

''SEC. 602. DEFINITIONS.

''Except as otherwise provided, in this title:

''(1) ASSISTIVE TECHNOLOGY DEVICE.—

''(A) IN GENERAL.—The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.

''(B) EXCEPTION.—The term does not include a medical device that is surgically implanted, or the replacement of such device.

''(2) ASSISTIVE TECHNOLOGY SERVICE.—The term 'assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

''(A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment;

''(B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child;

''(C) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

''(D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

''(E) training or technical assistance for such child, or, where appropriate, the family of such child; and

''(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.

''(3) CHILD WITH A DISABILITY.—

''(A) IN GENERAL.—The term 'child with a disability' means a child—

''(i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

''(ii) who, by reason thereof, needs special education and related services.

''(B) CHILD AGED 3 THROUGH 9.—The term 'child with a disability' for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

''(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

''(ii) who, by reason thereof, needs special education and related services.

''(4) CORE ACADEMIC SUBJECTS.—The term 'core academic subjects' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

''(5) EDUCATIONAL SERVICE AGENCY.—The term 'educational service agency'—

''(A) means a regional public multiservice agency—

''(i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and

''(ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; and

''(B) includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

''(6) ELEMENTARY SCHOOL.—The term 'elementary school' means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

''(7) EQUIPMENT.—The term 'equipment' includes—

''(A) machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house such machinery, utilities, or equipment; and

''(B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audiovisual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

''(8) EXCESS COSTS.—The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and which shall be computed after deducting—

''(A) amounts received—

''(i) under part B;

''(ii) under part A of title I of the Elementary and Secondary Education Act of 1965; and

''(iii) under parts A and B of title III of that Act; and

''(B) any State or local funds expended for programs that would qualify for assistance under any of those parts.

''(9) FREE APPROPRIATE PUBLIC EDUCATION.—The term 'free appropriate public education' means special education and related services that—

''(A) have been provided at public expense, under public supervision and direction, and without charge;

''(B) meet the standards of the State educational agency;

''(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

''(D) are provided in conformity with the individualized education program required under section 614(d).

''(10) HIGHLY QUALIFIED.—

''(A) IN GENERAL.—For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also—

''(i) includes the requirements described in subparagraph (B); and

''(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

''(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—

''(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

''(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

''(iii) the teacher holds at least a bachelor's degree.

''(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS.—When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either—

''(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

''(ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

''(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS.—When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either—

''(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

''(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

''(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

''(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

''(F) DEFINITION FOR PURPOSES OF THE ESEA.—A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.

''(11) HOMELESS CHILDREN.—The term 'homeless children' has the meaning given the term 'homeless children and youths' in section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a).

''(12) INDIAN.—The term 'Indian' means an individual who is a member of an Indian tribe.

''(13) INDIAN TRIBE.—The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)).

''(14) INDIVIDUALIZED EDUCATION PROGRAM; IEP.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).

''(15) INDIVIDUALIZED FAMILY SERVICE PLAN.—The term 'individualized family service plan' has the meaning given the term in section 636.

''(16) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability' has the meaning given the term in section 632.

''(17) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education'—

''(A) has the meaning given the term in section 101 of the Higher Education Act of 1965; and

''(B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled College or University Assistance Act of 1978.

''(18) LIMITED ENGLISH PROFICIENT.—The term 'limited English proficient' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965.

''(19) LOCAL EDUCATIONAL AGENCY.—

''(A) IN GENERAL.—The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.

''(B) EDUCATIONAL SERVICE AGENCIES AND OTHER PUBLIC INSTITUTIONS OR AGENCIES.—The term includes—

''(i) an educational service agency; and

''(ii) any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

''(C) BIA FUNDED SCHOOLS.—The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this title with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.

''(20) NATIVE LANGUAGE.—The term 'native language', when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child.

''(21) NONPROFIT.—The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by 1 or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

''(22) OUTLYING AREA.—The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

''(23) PARENT.—The term 'parent' means—

''(A) a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);

''(B) a guardian (but not the State if the child is a ward of the State);

''(C) an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

''(D) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent.

''(24) PARENT ORGANIZATION.—The term 'parent organization' has the meaning given the term in section 671(g).

''(25) PARENT TRAINING AND INFORMATION CENTER.—The term 'parent training and information center' means a center assisted under section 671 or 672.

''(26) RELATED SERVICES.—

''(A) IN GENERAL.—The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

''(B) EXCEPTION.—The term does not include a medical device that is surgically implanted, or the replacement of such device.

''(27) SECONDARY SCHOOL.—The term 'secondary school' means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.

''(28) SECRETARY.—The term 'Secretary' means the Secretary of Education.

''(29) SPECIAL EDUCATION.—The term 'special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

''(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

''(B) instruction in physical education.

''(30) SPECIFIC LEARNING DISABILITY.—

''(A) IN GENERAL.—The term 'specific learning disability' means a disorder in 1 or more of the

basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations.

''(B) DISORDERS INCLUDED.—Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

''(C) DISORDERS NOT INCLUDED.—Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

''(31) STATE.—The term 'State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

''(32) STATE EDUCATIONAL AGENCY.—The term 'State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

''(33) SUPPLEMENTARY AIDS AND SERVICES.—The term 'supplementary aids and services' means aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).

''(34) TRANSITION SERVICES.—The term 'transition services' means a coordinated set of activities for a child with a disability that—

''(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

''(B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and

''(C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

''(35) UNIVERSAL DESIGN.—The term 'universal design' has the meaning given the term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

''(36) WARD OF THE STATE.—

''(A) IN GENERAL.—The term 'ward of the State' means a child who, as determined by the State where the child resides, is a foster child, is a ward of the State, or is in the custody of a public child welfare agency.

''(B) EXCEPTION.—The term does not include a foster child who has a foster parent who meets the definition of a parent in paragraph (23).

''SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.

''(a) ESTABLISHMENT.—There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs, which shall be the principal agency in the Department for administering and carrying out this title and other programs and activities concerning the education of children with disabilities.

''(b) DIRECTOR.—The Office established under subsection (a) shall be headed by a Director who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services.

''(c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Secretary is authorized to accept voluntary and uncompensated services in furtherance of the purposes of this title.

''SEC. 604. ABROGATION OF STATE SOVEREIGN IMMUNITY.

''(a) IN GENERAL.—A State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this title.

''(b) REMEDIES.—In a suit against a State for a violation of this title, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as those remedies are available for such a violation in the suit against any public entity other than a State.

''(c) EFFECTIVE DATE.—Subsections (a) and (b) apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

''SEC. 605. ACQUISITION OF EQUIPMENT; CONSTRUCTION OR ALTERATION OF FACILITIES.

''(a) IN GENERAL.—If the Secretary determines that a program authorized under this title will be improved by permitting program funds to be used to acquire appropriate equipment, or to construct new facilities or alter existing facilities, the Secretary is authorized to allow the use of those funds for those purposes.

''(b) COMPLIANCE WITH CERTAIN REGULATIONS.—Any construction of new facilities or alteration of existing facilities under subsection (a) shall comply with the requirements of—

''(1) appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the 'Americans with Disabilities Accessibility Guidelines for Buildings and Facilities'); or

''(2) appendix A of subpart 101–19.6 of title 41, Code of Federal Regulations (commonly known as the 'Uniform Federal Accessibility Standards').

''SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES.

''The Secretary shall ensure that each recipient of assistance under this title makes positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under this title.

''SEC. 607. REQUIREMENTS FOR PRESCRIBING REGULATIONS.

''(a) IN GENERAL.—In carrying out the provisions of this title, the Secretary shall issue regulations under this title only to the extent that such regulations are necessary to ensure that there is compliance with the specific requirements of this title.

''(b) PROTECTIONS PROVIDED TO CHILDREN.—The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this title that—

''(1) violates or contradicts any provision of this title; or

''(2) procedurally or substantively lessens the protections provided to children with disabilities under this title, as embodied in regulations in effect on July 20, 1983 (particularly as such protections related to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines, attendance of evaluation personnel at individualized education program meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of Congress in legislation.

''(c) PUBLIC COMMENT PERIOD.—The Secretary shall provide a public comment period of not less than 75 days on any regulation proposed under part B or part C on which an opportunity for public comment is otherwise required by law.

''(d) POLICY LETTERS AND STATEMENTS.—The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that—

''(1) violate or contradict any provision of this title; or

''(2) establish a rule that is required for compliance with, and eligibility under, this title without following the requirements of section 553 of title 5, United States Code.

''(e) EXPLANATION AND ASSURANCES.—Any written response by the Secretary under subsection (d) regarding a policy, question, or interpretation under part B shall include an explanation in the written response that—

''(1) such response is provided as informal guidance and is not legally binding;

''(2) when required, such response is issued in compliance with the requirements of section 553 of title 5, United States Code; and

''(3) such response represents the interpretation by the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

''(f) CORRESPONDENCE FROM DEPARTMENT OF EDUCATION DESCRIBING INTERPRETATIONS OF THIS TITLE.—

''(1) IN GENERAL.—The Secretary shall, on a quarterly basis, publish in the Federal Register, and widely disseminate to interested entities through various additional forms of communication, a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of this title or the regulations implemented pursuant to this title.

''(2) ADDITIONAL INFORMATION.—For each item of correspondence published in a list under paragraph (1), the Secretary shall—

''(A) identify the topic addressed by the correspondence and shall include such other summary information as the Secretary determines to be appropriate; and

''(B) ensure that all such correspondence is issued, where applicable, in compliance with the requirements of section 553 of title 5, United States Code.

''SEC. 608. STATE ADMINISTRATION.

''(a) RULEMAKING.—Each State that receives funds under this title shall—

''(1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;

''(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and

''(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.

''(b) SUPPORT AND FACILITATION.—State rules, regulations, and policies under this title shall support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging State student academic achievement standards.

''SEC. 609. PAPERWORK REDUCTION.

''(a) PILOT PROGRAM.—

''(1) PURPOSE.—The purpose of this section is to provide an opportunity for States to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of this title, in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.

''(2) AUTHORIZATION.—

''(A) IN GENERAL.—In order to carry out the purpose of this section, the Secretary is authorized to grant waivers of statutory requirements of, or regulatory requirements relating to, part B for a period of time not to exceed 4 years with respect to not more than 15 States based on proposals submitted by States to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.

''(B) EXCEPTION.—The Secretary shall not waive under this section any statutory requirements of, or regulatory requirements relating to, applicable civil rights requirements.

''(C) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to—

''(i) affect the right of a child with a disability to receive a free appropriate public education under part B; and

''(ii) permit a State or local educational agency to waive procedural safeguards under section 615.

''(3) PROPOSAL.—

''(A) IN GENERAL.—A State desiring to participate in the program under this section shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

''(B) CONTENT.—The proposal shall include—

''(i) a list of any statutory requirements of, or regulatory requirements relating to, part B that the State desires the Secretary to waive, in whole or in part; and

''(ii) a list of any State requirements that the State proposes to waive or change, in whole or in part, to carry out a waiver granted to the State by the Secretary.

''(4) TERMINATION OF WAIVER.—The Secretary shall terminate a State's waiver under this section if the Secretary determines that the State—

''(A) needs assistance under section 616(d)(2)(A)(ii) and that the waiver has contributed to or caused such need for assistance;

''(B) needs intervention under section 616(d)(2)(A)(iii) or needs substantial intervention under section 616(d)(2)(A)(iv); or

''(C) failed to appropriately implement its waiver.

''(b) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall include in the annual report to Congress submitted pursuant to section 426 of the Department of Education Organization Act information related to the effectiveness of waivers granted under subsection (a), including any specific recommendations for broader implementation of such waivers, in—

''(1) reducing—

''(A) the paperwork burden on teachers, principals, administrators, and related service providers; and

''(B) noninstructional time spent by teachers in complying with part B;

''(2) enhancing longer-term educational planning;

''(3) improving positive outcomes for children with disabilities;

''(4) promoting collaboration between IEP Team members; and

''(5) ensuring satisfaction of family members.

"SEC. 610. FREELY ASSOCIATED STATES.

''The Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau shall continue to be eligible for competitive grants administered by the Secretary under this title to the extent that such grants continue to be available to States and local educational agencies under this title.

"PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

"SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS; AUTHORIZATION OF APPROPRIATIONS.

''(a) GRANTS TO STATES.—

''(1) PURPOSE OF GRANTS.—The Secretary shall make grants to States, outlying areas, and freely associated States, and provide funds to the Secretary of the Interior, to assist them to provide special education and related services to children with disabilities in accordance with this part.

''(2) MAXIMUM AMOUNT.—The maximum amount of the grant a State may receive under this section—

''(A) for fiscal years 2005 and 2006 is—

''(i) the number of children with disabilities in the State who are receiving special education and related services—

''(I) aged 3 through 5 if the State is eligible for a grant under section 619; and

''(II) aged 6 through 21; multiplied by

''(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; and

''(B) for fiscal year 2007 and subsequent fiscal years is—

''(i) the number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—

''(I) aged 3 through 5 if the State is eligible for a grant under section 619; and

''(II) aged 6 through 21; multiplied by

''(ii) 40 percent of the average per-pupil expenditure in public elementary schools and secondary schools in the United States; adjusted by

''(iii) the rate of annual change in the sum of—

''(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and

''(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III).

''(b) OUTLYING AREAS AND FREELY ASSOCIATED STATES; SECRETARY OF THE INTERIOR.—

''(1) OUTLYING AREAS AND FREELY ASSOCIATED STATES.—

''(A) FUNDS RESERVED.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve not more than 1 percent, which shall be used—

''(i) to provide assistance to the outlying areas in accordance with their respective populations of individuals aged 3 through 21; and

''(ii) to provide each freely associated State a grant in the amount that such freely associated State received for fiscal year 2003 under this part, but only if the freely associated State meets the applicable requirements of this part, as well as the requirements of section 611(b)(2)(C) as such section was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

''(B) SPECIAL RULE.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to funds provided to the outlying areas or the freely associated States under this section.

''(C) DEFINITION.—In this paragraph, the term 'freely associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

''(2) SECRETARY OF THE INTERIOR.—From the amount appropriated for any fiscal year under subsection (i), the Secretary shall reserve 1.226 percent to provide assistance to the Secretary of the Interior in accordance with subsection (h).

''(c) TECHNICAL ASSISTANCE.—

''(1) IN GENERAL.—The Secretary may reserve not more than ½ of 1 percent of the amounts appropriated under this part for each fiscal year to provide technical assistance activities authorized under section 616(i).

''(2) MAXIMUM AMOUNT.—The maximum amount the Secretary may reserve under paragraph (1) for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

''(d) ALLOCATIONS TO STATES.—

''(1) IN GENERAL.—After reserving funds for technical assistance, and for payments to the outlying areas, the freely associated States, and the Secretary of the Interior under subsections (b) and (c) for a fiscal year, the Secretary shall allocate the remaining amount among the States in accordance with this subsection.

''(2) SPECIAL RULE FOR USE OF FISCAL YEAR 1999 AMOUNT.—If a State received any funds under this section for fiscal year 1999 on the basis of children aged 3 through 5, but does not make a free appropriate public education available to all children with disabilities aged 3 through 5 in the State in any subsequent fiscal year, the Secretary shall compute the State's amount for fiscal year 1999, solely for the purpose of calculating the State's allocation in that subsequent year under paragraph (3) or (4), by subtracting the amount allocated to the State for fiscal year 1999 on the basis of those children.

''(3) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this paragraph for the preceding fiscal year, those allocations shall be calculated as follows:

''(A) ALLOCATION OF INCREASE.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall allocate for the fiscal year—

''(I) to each State the amount the State received under this section for fiscal year 1999;

''(II) 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 21 who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education under this part; and

''(III) 15 percent of those remaining funds to States on the basis of the States' relative populations of children described in subclause (II) who are living in poverty.

''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

''(i) PRECEDING YEAR ALLOCATION.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

''(ii) MINIMUM.—No State's allocation shall be less than the greatest of—

''(I) the sum of—

''(aa) the amount the State received under this section for fiscal year 1999; and

''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (i) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1999;

''(II) the sum of—

''(aa) the amount the State received under this section for the preceding fiscal year; and

''(bb) that amount multiplied by the percentage by which the increase in the funds appropriated for this section from the preceding fiscal year exceeds 1.5 percent; or

''(III) the sum of—

''(aa) the amount the State received under this section for the preceding fiscal year; and

''(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated for this section from the preceding fiscal year.

''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

''(I) the amount the State received under this section for the preceding fiscal year; and

''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

''(C) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

''(4) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

''(A) AMOUNTS GREATER THAN FISCAL YEAR 1999 ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1999, each State shall be allocated the sum of—

''(i) the amount the State received under this section for fiscal year 1999; and

''(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1999 bears to the total of all such increases for all States.

''(B) AMOUNTS EQUAL TO OR LESS THAN FISCAL YEAR 1999 ALLOCATIONS.—

''(i) IN GENERAL.—If the amount available for allocations under this paragraph is equal to or less than the amount allocated to the States for fiscal year 1999, each State shall be allocated the amount the State received for fiscal year 1999.

''(ii) RATABLE REDUCTION.—If the amount available for allocations under this paragraph is insufficient to make the allocations described in clause (i), those allocations shall be ratably reduced.

''(e) STATE-LEVEL ACTIVITIES.—

''(1) STATE ADMINISTRATION.—

''(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

''(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this section for fiscal year 2004 or $800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

''(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b)(1) for the fiscal year or $35,000, whichever is greater.

''(B) CUMULATIVE ANNUAL ADJUSTMENTS.—For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust—

''(i) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004; and

''(ii) $800,000,

by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

''(C) CERTIFICATION.—Prior to expenditure of funds under this paragraph, the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.

''(D) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under such part.

''(2) OTHER STATE-LEVEL ACTIVITIES.—

''(A) STATE-LEVEL ACTIVITIES.—

''(i) IN GENERAL.—Except as provided in clause (iii), for the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

''(ii) SMALL STATE ADJUSTMENT.—Notwithstanding clause (i) and except as provided in clause (iii), in the case of a State for which the maximum amount reserved for State administration is not greater than $850,000, the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for each of the fiscal years 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (cumulatively adjusted by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).

''(iii) EXCEPTION.—If a State does not reserve funds under paragraph (3) for a fiscal year, then—

''(I) in the case of a State that is not described in clause (ii), for fiscal year 2005 or 2006, clause (i) shall be applied by substituting '9.0 percent' for '10 percent'; and

''(II) in the case of a State that is described in clause (ii), for fiscal year 2005 or 2006, clause (ii) shall be applied by substituting '9.5 percent' for '10.5 percent'.

''(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

''(i) For monitoring, enforcement, and complaint investigation.

''(ii) To establish and implement the mediation process required by section 615(e), including providing for the cost of mediators and support personnel.

''(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

''(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

''(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

''(iii) To assist local educational agencies in providing positive behavioral interventions and supports and appropriate mental health services for children with disabilities.

''(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

''(v) To support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities.

''(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of children with disabilities to postsecondary activities.

''(vii) To assist local educational agencies in meeting personnel shortages.

''(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

''(ix) Alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools.

''(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

''(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services as defined in 1116(e) of the Elementary and Secondary Education Act of 1965 to children with disabilities, in schools or local educational agencies identified for improvement under section 1116 of the Elementary and Secondary Education Act of 1965 on the sole basis of the assessment results of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet or exceed the objectives established by the State under section 1111(b)(2)(G) the Elementary and Secondary Education Act of 1965.

''(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

''(A) IN GENERAL.—

''(i) RESERVATION OF FUNDS.—For the purpose of assisting local educational agencies (including a charter school that is a local educational agency or a consortium of local educational agencies) in addressing the needs of high need children with disabilities, each State shall have the option to reserve for each fiscal year 10 percent of the amount of funds the State reserves for State-level activities under paragraph (2)(A)—

''(I) to establish and make disbursements from the high cost fund to local educational agencies in accordance with this paragraph during the first and succeeding fiscal years of the high cost fund; and

''(II) to support innovative and effective ways of cost sharing by the State, by a local educational agency, or among a consortium of local educational agencies, as determined by the State in coordination with representatives from local educational agencies, subject to subparagraph (B)(ii).

''(ii) DEFINITION OF LOCAL EDUCATIONAL AGENCY.—In this paragraph the term 'local educational agency' includes a charter school that is a local educational agency, or a consortium of local educational agencies.

''(B) LIMITATION ON USES OF FUNDS.—

''(i) ESTABLISHMENT OF HIGH COST FUND.—A State shall not use any of the funds the State reserves pursuant to subparagraph (A)(i), but may use the funds the State reserves under paragraph (1), to establish and support the high cost fund.

''(ii) INNOVATIVE AND EFFECTIVE COST SHARING.—A State shall not use more than 5 percent of the funds the State reserves pursuant to subparagraph (A)(i) for each fiscal year to support innovative and effective ways of cost sharing among consortia of local educational agencies.

''(C) STATE PLAN FOR HIGH COST FUND.—

''(i) DEFINITION.—The State educational agency shall establish the State's definition of a high need child with a disability, which definition shall be developed in consultation with local educational agencies.

''(ii) STATE PLAN.—The State educational agency shall develop, not later than 90 days after the State reserves funds under this paragraph, annually review, and amend as necessary, a State plan for the high cost fund. Such State plan shall—

''(I) establish, in coordination with representatives from local educational agencies, a definition of a high need child with a disability that, at a minimum—

''(aa) addresses the financial impact a high need child with a disability has on the budget of the child's local educational agency; and

''(bb) ensures that the cost of the high need child with a disability is greater than 3 times the average per pupil expenditure (as defined in section 9101 of the Elementary and Secondary Education Act of 1965) in that State;

''(II) establish eligibility criteria for the participation of a local educational agency that, at a minimum, takes into account the number and percentage of high need children with disabilities served by a local educational agency;

''(III) develop a funding mechanism that provides distributions each fiscal year to local educational agencies that meet the criteria developed by the State under subclause (II); and

''(IV) establish an annual schedule by which the State educational agency shall make its distributions from the high cost fund each fiscal year.

''(iii) PUBLIC AVAILABILITY.—The State shall make its final State plan publicly available not

less than 30 days before the beginning of the school year, including dissemination of such information on the State website.

''(D) DISBURSEMENTS FROM THE HIGH COST FUND.—

''(i) IN GENERAL.—Each State educational agency shall make all annual disbursements from the high cost fund established under subparagraph (A)(i) in accordance with the State plan published pursuant to subparagraph (C).

''(ii) USE OF DISBURSEMENTS.—Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its State plan under subparagraph (C)(ii).

''(iii) APPROPRIATE COSTS.—The costs associated with educating a high need child with a disability under subparagraph (C)(i) are only those costs associated with providing direct special education and related services to such child that are identified in such child's IEP.

''(E) LEGAL FEES.—The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child with a disability to ensure a free appropriate public education for such child.

''(F) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this paragraph shall be construed—

''(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in the least restrictive environment pursuant to section 612(a)(5); or

''(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

''(G) SPECIAL RULE FOR RISK POOL AND HIGH NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2004.—Notwithstanding the provisions of subparagraphs (A) through (F), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost sharing and reimbursement program of high need, low incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to high need students based on eligibility criteria for such programs that were created not later than January 1, 2004, and are currently in operation, if such program serves children that meet the requirement of the definition of a high need child with a disability as described in subparagraph (C)(ii)(I).

''(H) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this paragraph shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

''(I) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) shall be allocated to local educational agencies for the succeeding fiscal year in the same manner as funds are allocated to local educational agencies under subsection (f) for the succeeding fiscal year.

''(4) INAPPLICABILITY OF CERTAIN PROHIBITIONS.—A State may use funds the State reserves under paragraphs (1) and (2) without regard to—

''(A) the prohibition on commingling of funds in section 612(a)(17)(B); and

''(B) the prohibition on supplanting other funds in section 612(a)(17)(C).

''(5) REPORT ON USE OF FUNDS.—As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe how amounts under this section—

''(A) will be used to meet the requirements of this title; and

''(B) will be allocated among the activities described in this section to meet State priorities based on input from local educational agencies.

''(6) SPECIAL RULE FOR INCREASED FUNDS.—A State may use funds the State reserves under paragraph (1)(A) as a result of inflationary increases under paragraph (1)(B) to carry out activities authorized under clause (i), (iii), (vii), or (viii) of paragraph (2)(C).

''(7) FLEXIBILITY IN USING FUNDS FOR PART C.—Any State eligible to receive a grant under section 619 may use funds made available under paragraph (1)(A), subsection (f)(3), or section 619(f)(5) to develop and implement a State policy jointly with the lead agency under part C and the State educational agency to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under section 619 and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten, or elementary school as appropriate.

''(f) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

''(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute any funds the State does not reserve under subsection (e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part.

''(2) PROCEDURE FOR ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES.—For each fiscal year for which funds are allocated to States under subsection (d), each State shall allocate funds under paragraph (1) as follows:

''(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount the local educational agency would have received under this section for fiscal year 1999, if the State had distributed 75 percent of its grant for that year under section 611(d) as section 611(d) was then in effect.

''(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

''(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

''(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

''(3) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities residing in the area served by that local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this part that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other local educational agencies.

''(g) DEFINITIONS.—In this section:

''(1) AVERAGE PER-PUPIL EXPENDITURE IN PUBLIC ELEMENTARY SCHOOLS AND SECONDARY SCHOOLS IN THE UNITED STATES.—The term 'average per-pupil expenditure in public elementary schools and secondary schools in the United States' means—

''(A) without regard to the source of funds—

''(i) the aggregate current expenditures, during the second fiscal year preceding the fiscal year for which the determination is made (or, if satisfactory data for that year are not available, during the most recent preceding fiscal year for which satisfactory data are available) of all local educational agencies in the 50 States and the District of Columbia; plus

''(ii) any direct expenditures by the State for the operation of those agencies; divided by

''(B) the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

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

''(h) USE OF AMOUNTS BY SECRETARY OF THE INTERIOR.—

''(1) PROVISION OF AMOUNTS FOR ASSISTANCE.—

''(A) IN GENERAL.—The Secretary of Education shall provide amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21, inclusive, enrolled in elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior. The amount of such payment for any fiscal year shall be equal to 80 percent of the amount allotted under subsection (b)(2) for that fiscal year. Of the amount described in the preceding sentence—

''(i) 80 percent shall be allocated to such schools by July 1 of that fiscal year; and

''(ii) 20 percent shall be allocated to such schools by September 30 of that fiscal year.

''(B) CALCULATION OF NUMBER OF CHILDREN.—In the case of Indian students aged 3 to 5, inclusive, who are enrolled in programs affiliated with the Bureau of Indian Affairs (referred to in this subsection as the 'BIA') schools and that are required by the States in which such schools are located to attain or maintain State accreditation, and which schools have such accreditation prior to the date of enactment of the Individuals with Disabilities Education Act Amendments of 1991, the school shall be allowed to count those children for the purpose of distribution of the funds provided under this paragraph to the Secretary of the Interior. The Secretary of the Interior shall be responsible for meeting all of the requirements of this part for those children, in accordance with paragraph (2).

''(C) ADDITIONAL REQUIREMENT.—With respect to all other children aged 3 to 21, inclusive, on reservations, the State educational agency shall be responsible for ensuring that all of the requirements of this part are implemented.

''(2) SUBMISSION OF INFORMATION.—The Secretary of Education may provide the Secretary of the Interior amounts under paragraph (1) for a fiscal year only if the Secretary of the Interior submits to the Secretary of Education information that—

''(A) demonstrates that the Department of the Interior meets the appropriate requirements, as determined by the Secretary of Education, of sections 612 (including monitoring and evaluation activities) and 613;

''(B) includes a description of how the Secretary of the Interior will coordinate the provision of services under this part with local educational agencies, tribes and tribal organizations, and other private and Federal service providers;

''(C) includes an assurance that there are public hearings, adequate notice of such hearings, and an opportunity for comment afforded to members of tribes, tribal governing bodies, and affected local school boards before the adoption of the policies, programs, and procedures related to the requirements described in subparagraph (A);

''(D) includes an assurance that the Secretary of the Interior will provide such information as the Secretary of Education may require to comply with section 618;

''(E) includes an assurance that the Secretary of the Interior and the Secretary of Health and Human Services have entered into a memorandum of agreement, to be provided to the Secretary of Education, for the coordination of

services, resources, and personnel between their respective Federal, State, and local offices and with State and local educational agencies and other entities to facilitate the provision of services to Indian children with disabilities residing on or near reservations (such agreement shall provide for the apportionment of responsibilities and costs, including child find, evaluation, diagnosis, remediation or therapeutic measures, and (where appropriate) equipment and medical or personal supplies as needed for a child to remain in school or a program); and

''(F) includes an assurance that the Department of the Interior will cooperate with the Department of Education in its exercise of monitoring and oversight of this application, and any agreements entered into between the Secretary of the Interior and other entities under this part, and will fulfill its duties under this part.

''(3) APPLICABILITY.—The Secretary shall withhold payments under this subsection with respect to the information described in paragraph (2) in the same manner as the Secretary withholds payments under section 616(e)(6).

''(4) PAYMENTS FOR EDUCATION AND SERVICES FOR INDIAN CHILDREN WITH DISABILITIES AGED 3 THROUGH 5.—

''(A) IN GENERAL.—With funds appropriated under subsection (i), the Secretary of Education shall make payments to the Secretary of the Interior to be distributed to tribes or tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act) or consortia of tribes or tribal organizations to provide for the coordination of assistance for special education and related services for children with disabilities aged 3 through 5 on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payments under subparagraph (B) for any fiscal year shall be equal to 20 percent of the amount allotted under subsection (b)(2).

''(B) DISTRIBUTION OF FUNDS.—The Secretary of the Interior shall distribute the total amount of the payment under subparagraph (A) by allocating to each tribe, tribal organization, or consortium an amount based on the number of children with disabilities aged 3 through 5 residing on reservations as reported annually, divided by the total of those children served by all tribes or tribal organizations.

''(C) SUBMISSION OF INFORMATION.—To receive a payment under this paragraph, the tribe or tribal organization shall submit such figures to the Secretary of the Interior as required to determine the amounts to be allocated under subparagraph (B). This information shall be compiled and submitted to the Secretary of Education.

''(D) USE OF FUNDS.—The funds received by a tribe or tribal organization shall be used to assist in child find, screening, and other procedures for the early identification of children aged 3 through 5, parent training, and the provision of direct services. These activities may be carried out directly or through contracts or cooperative agreements with the BIA, local educational agencies, and other public or private nonprofit organizations. The tribe or tribal organization is encouraged to involve Indian parents in the development and implementation of these activities. The tribe or tribal organization shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

''(E) BIENNIAL REPORT.—To be eligible to receive a grant pursuant to subparagraph (A), the tribe or tribal organization shall provide to the Secretary of the Interior a biennial report of activities undertaken under this paragraph, including the number of contracts and cooperative agreements entered into, the number of children contacted and receiving services for each year, and the estimated number of children needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis in the report to the Secretary of Education required under this subsection. The Secretary of Education may require any additional information from the Secretary of the Interior.

''(F) PROHIBITIONS.—None of the funds allocated under this paragraph may be used by the Secretary of the Interior for administrative purposes, including child count and the provision of technical assistance.

''(5) PLAN FOR COORDINATION OF SERVICES.—The Secretary of the Interior shall develop and implement a plan for the coordination of services for all Indian children with disabilities residing on reservations covered under this title. Such plan shall provide for the coordination of services benefiting those children from whatever source, including tribes, the Indian Health Service, other BIA divisions, and other Federal agencies. In developing the plan, the Secretary of the Interior shall consult with all interested and involved parties. The plan shall be based on the needs of the children and the system best suited for meeting those needs, and may involve the establishment of cooperative agreements between the BIA, other Federal agencies, and other entities. The plan shall also be distributed upon request to States, State educational agencies and local educational agencies, and other agencies providing services to infants, toddlers, and children with disabilities, to tribes, and to other interested parties.

''(6) ESTABLISHMENT OF ADVISORY BOARD.—To meet the requirements of section 612(a)(21), the Secretary of the Interior shall establish, under the BIA, an advisory board composed of individuals involved in or concerned with the education and provision of services to Indian infants, toddlers, children, and youth with disabilities, including Indians with disabilities, Indian parents or guardians of such children, teachers, service providers, State and local educational officials, representatives of tribes or tribal organizations, representatives from State Interagency Coordinating Councils under section 641 in States having reservations, and other members representing the various divisions and entities of the BIA. The chairperson shall be selected by the Secretary of the Interior. The advisory board shall—

''(A) assist in the coordination of services within the BIA and with other local, State, and Federal agencies in the provision of education for infants, toddlers, and children with disabilities;

''(B) advise and assist the Secretary of the Interior in the performance of the Secretary of the Interior's responsibilities described in this subsection;

''(C) develop and recommend policies concerning effective inter- and intra-agency collaboration, including modifications to regulations, and the elimination of barriers to inter- and intra-agency programs and activities;

''(D) provide assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention services or educational programming for Indian infants, toddlers, and children with disabilities; and

''(E) provide assistance in the preparation of information required under paragraph (2)(D).

''(7) ANNUAL REPORTS.—

''(A) IN GENERAL.—The advisory board established under paragraph (6) shall prepare and submit to the Secretary of the Interior and to Congress an annual report containing a description of the activities of the advisory board for the preceding year.

''(B) AVAILABILITY.—The Secretary of the Interior shall make available to the Secretary of Education the report described in subparagraph (A).

''(i) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this part, other than section 619, there are authorized to be appropriated—

''(1) $12,358,376,571 for fiscal year 2005;
''(2) $14,648,647,143 for fiscal year 2006;
''(3) $16,938,917,714 for fiscal year 2007;
''(4) $19,229,188,286 for fiscal year 2008;
''(5) $21,519,458,857 for fiscal year 2009;
''(6) $23,809,729,429 for fiscal year 2010;
''(7) $26,100,000,000 for fiscal year 2011; and
''(8) such sums as may be necessary for fiscal year 2012 and each succeeding fiscal year.

"SEC. 612. STATE ELIGIBILITY.

''(a) IN GENERAL.—A State is eligible for assistance under this part for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets each of the following conditions:

''(1) FREE APPROPRIATE PUBLIC EDUCATION.—

''(A) IN GENERAL.—A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

''(B) LIMITATION.—The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children—

''(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

''(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility—

''(I) were not actually identified as being a child with a disability under section 602; or

''(II) did not have an individualized education program under this part.

''(C) STATE FLEXIBILITY.—A State that provides early intervention services in accordance with part C to a child who is eligible for services under section 619, is not required to provide such child with a free appropriate public education.

''(2) FULL EDUCATIONAL OPPORTUNITY GOAL.—The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

''(3) CHILD FIND.—

''(A) IN GENERAL.—All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

''(B) CONSTRUCTION.—Nothing in this title requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

''(4) INDIVIDUALIZED EDUCATION PROGRAM.—An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

''(5) LEAST RESTRICTIVE ENVIRONMENT.—

''(A) IN GENERAL.—To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with

disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

''(B) ADDITIONAL REQUIREMENT.—

''(i) IN GENERAL.—A State funding mechanism shall not result in placements that violate the requirements of subparagraph (A), and a State shall not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability a free appropriate public education according to the unique needs of the child as described in the child's IEP.

''(ii) ASSURANCE.—If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

''(6) PROCEDURAL SAFEGUARDS.—

''(A) IN GENERAL.—Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

''(B) ADDITIONAL PROCEDURAL SAFEGUARDS.—Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities for services under this title will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

''(7) EVALUATION.—Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

''(8) CONFIDENTIALITY.—Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

''(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS.—Children participating in early intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10).

''(10) CHILDREN IN PRIVATE SCHOOLS.—

''(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

''(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

''(I) Amounts to be expended for the provision of those services (including direct services to parentally placed private school children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

''(II) In calculating the proportionate amount of Federal funds, the local educational agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the local educational agency.

''(III) Such services to parentally placed private school children with disabilities may be provided to the children on the premises of private, including religious, schools, to the extent consistent with law.

''(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this subparagraph.

''(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this subparagraph, the number of children determined to be children with disabilities under this paragraph, and the number of children served under this paragraph.

''(ii) CHILD FIND REQUIREMENT.—

''(I) IN GENERAL.—The requirements of paragraph (3) (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary schools and secondary schools.

''(II) EQUITABLE PARTICIPATION.—The child find process shall be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.

''(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for the agency's public school children.

''(IV) COST.—The cost of carrying out this clause, including individual evaluations, may not be considered in determining whether a local educational agency has met its obligations under clause (i).

''(V) COMPLETION PERIOD.—Such child find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

''(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a State educational agency, shall consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children, including regarding—

''(I) the child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

''(II) the determination of the proportionate amount of Federal funds available to serve parentally placed private school children with disabilities under this subparagraph, including the determination of how the amount was calculated;

''(III) the consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such process will operate throughout the school year to ensure that parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services;

''(IV) how, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

''(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

''(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by clause (iii) has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

''(v) COMPLIANCE.—

''(I) IN GENERAL.—A private school official shall have the right to submit a complaint to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

''(II) PROCEDURE.—If the private school official wishes to submit a complaint, the official shall provide the basis of the noncompliance with this subparagraph by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may submit a complaint to the Secretary by providing the basis of the noncompliance with this subparagraph by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

''(vi) PROVISION OF EQUITABLE SERVICES.—

''(I) DIRECTLY OR THROUGH CONTRACTS.—The provision of services pursuant to this subparagraph shall be provided—

''(aa) by employees of a public agency; or

''(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

''(II) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and nonideological.

''(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this subparagraph, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this title, and a public agency shall administer the funds and property.

''(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

''(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

''(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies.

''(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.—

''(i) IN GENERAL.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

''(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

''(iii) LIMITATION ON REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—

''(I) if—

''(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

''(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

''(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(3), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

''(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

''(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

''(I) shall not be reduced or denied for failure to provide such notice if—

''(aa) the school prevented the parent from providing such notice;

''(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); or

''(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

''(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

''(aa) the parent is illiterate or cannot write in English; or

''(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.

''(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION.—

''(A) IN GENERAL.—The State educational agency is responsible for ensuring that—

''(i) the requirements of this part are met;

''(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency—

''(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

''(II) meet the educational standards of the State educational agency; and

''(iii) in carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

''(B) LIMITATION.—Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

''(C) EXCEPTION.—Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

''(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

''(A) ESTABLISHING RESPONSIBILITY FOR SERVICES.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

''(i) AGENCY FINANCIAL RESPONSIBILITY.—An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

''(ii) CONDITIONS AND TERMS OF REIMBURSEMENT.—The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

''(iii) INTERAGENCY DISPUTES.—Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

''(iv) COORDINATION OF SERVICES PROCEDURES.—Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

''(B) OBLIGATION OF PUBLIC AGENCY.—

''(i) IN GENERAL.—If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in section 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(26) relating to related services, 602(33) relating to supplementary aids and services, and 602(34) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subparagraph (A) or an agreement pursuant to subparagraph (C).

''(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

''(C) SPECIAL RULE.—The requirements of subparagraph (A) may be met through—

''(i) State statute or regulation;

''(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

''(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary.

''(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

''(14) PERSONNEL QUALIFICATIONS.—

''(A) IN GENERAL.—The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.

''(B) RELATED SERVICES PERSONNEL AND PARAPROFESSIONALS.—The qualifications under subparagraph (A) include qualifications for related services personnel and paraprofessionals that—

''(i) are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

''(ii) ensure that related services personnel who deliver services in their discipline or profession meet the requirements of clause (i) and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

''(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.

''(C) POLICY.—In implementing this section, a State shall adopt a policy that includes a requirement that local educational agencies in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.

''(D) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this paragraph shall be construed to create a right of action on behalf of an individual student for the failure of a particular State educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the State educational agency as provided for under this part.

''(15) PERFORMANCE GOALS AND INDICATORS.—The State—

''(A) has established goals for the performance of children with disabilities in the State that—

''(i) promote the purposes of this title, as stated in section 601(d);

''(ii) are the same as the State's definition of adequate yearly progress, including the State's objectives for progress by children with disabilities, under section 1111(b)(2)(C) of the Elementary and Secondary Education Act of 1965;

''(iii) address graduation rates and dropout rates, as well as such other factors as the State may determine; and

''(iv) are consistent, to the extent appropriate, with any other goals and standards for children established by the State;

''(B) has established performance indicators the State will use to assess progress toward achieving the goals described in subparagraph (A), including measurable annual objectives for progress by children with disabilities under section 1111(b)(2)(C)(v)(II)(cc) of the Elementary and Secondary Education Act of 1965; and

''(C) will annually report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A), which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education Act of 1965.

''(16) PARTICIPATION IN ASSESSMENTS.—

''(A) IN GENERAL.—All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs.

''(B) ACCOMMODATION GUIDELINES.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed guidelines for the provision of appropriate accommodations.

''(C) ALTERNATE ASSESSMENTS.—

''(i) IN GENERAL.—The State (or, in the case of a districtwide assessment, the local educational agency) has developed and implemented guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments under subparagraph (A) with accommodations as indicated in their respective individualized education programs.

''(ii) REQUIREMENTS FOR ALTERNATE ASSESSMENTS.—The guidelines under clause (i) shall provide for alternate assessments that—

''(I) are aligned with the State's challenging academic content standards and challenging student academic achievement standards; and

''(II) if the State has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, measure the achievement of children with disabilities against those standards.

''(iii) CONDUCT OF ALTERNATE ASSESSMENTS.—The State conducts the alternate assessments described in this subparagraph.

''(D) REPORTS.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

''(i) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments.

''(ii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(I).

''(iii) The number of children with disabilities participating in alternate assessments described in subparagraph (C)(ii)(II).

''(iv) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments.

''(E) UNIVERSAL DESIGN.—The State educational agency (or, in the case of a districtwide assessment, the local educational agency) shall, to the extent feasible, use universal design principles in developing and administering any assessments under this paragraph.

''(17) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS.—

''(A) EXPENDITURES.—Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

''(B) PROHIBITION AGAINST COMMINGLING.—Funds paid to a State under this part will not be commingled with State funds.

''(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY.—Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

''(18) MAINTENANCE OF STATE FINANCIAL SUPPORT.—

''(A) IN GENERAL.—The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

''(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT.—The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

''(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES.—The Secretary may waive the requirement of subparagraph (A) for a State, for 1 fiscal year at a time, if the Secretary determines that—

''(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

''(ii) the State meets the standard in paragraph (17)(C) for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

''(D) SUBSEQUENT YEARS.—If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

''(19) PUBLIC PARTICIPATION.—Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

''(20) RULE OF CONSTRUCTION.—In complying with paragraphs (17) and (18), a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation.

''(21) STATE ADVISORY PANEL.—

''(A) IN GENERAL.—The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

''(B) MEMBERSHIP.—Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including—

''(i) parents of children with disabilities (ages birth through 26);

''(ii) individuals with disabilities;

''(iii) teachers;

''(iv) representatives of institutions of higher education that prepare special education and related services personnel;

''(v) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.);

''(vi) administrators of programs for children with disabilities;

''(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

''(viii) representatives of private schools and public charter schools;

''(ix) not less than 1 representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;

''(x) a representative from the State child welfare agency responsible for foster care; and

''(xi) representatives from the State juvenile and adult corrections agencies.

''(C) SPECIAL RULE.—A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities (ages birth through 26).

''(D) DUTIES.—The advisory panel shall—

''(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

''(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

''(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

''(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and

''(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

''(22) SUSPENSION AND EXPULSION RATES.—

''(A) IN GENERAL.—The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities—

''(i) among local educational agencies in the State; or

''(ii) compared to such rates for nondisabled children within such agencies.

''(B) REVIEW AND REVISION OF POLICIES.—If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this title.

''(23) ACCESS TO INSTRUCTIONAL MATERIALS.—

''(A) IN GENERAL.—The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register.

''(B) RIGHTS OF STATE EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require any State educational agency to coordinate with the National Instructional Materials Access Center. If a State educational agency chooses not to coordinate with the National Instructional Materials Access Center, such agency shall provide an assurance to the Secretary that the agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

''(C) PREPARATION AND DELIVERY OF FILES.—If a State educational agency chooses to coordinate with the National Instructional Materials Access Center, not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to—

''(i) require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or

''(ii) purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

''(D) ASSISTIVE TECHNOLOGY.—In carrying out this paragraph, the State educational agency, to the maximum extent possible, shall work collaboratively with the State agency responsible for assistive technology programs.

''(E) DEFINITIONS.—In this paragraph:

''(i) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—The term 'National Instructional Materials Access Center' means the center established pursuant to section 674(e).

''(ii) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'National Instructional Materials Accessibility Standard' has the meaning given the term in section 674(e)(3)(A).

''(iii) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the term in section 674(e)(3)(D).

''(24) OVERIDENTIFICATION AND DISPROPORTIONALITY.—The State has in effect, consistent with the purposes of this title and with section 618(d), policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in section 602.

''(25) PROHIBITION ON MANDATORY MEDICATION.—

''(A) IN GENERAL.—The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 801 et seq.) as a condition of attending school, receiving an evaluation under subsection (a) or (c) of section 614, or receiving services under this title.

''(B) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under paragraph (3).

''(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES.—If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency—

''(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

''(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

''(c) EXCEPTION FOR PRIOR STATE PLANS.—

''(1) IN GENERAL.—If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

''(2) MODIFICATIONS MADE BY STATE.—Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

''(3) MODIFICATIONS REQUIRED BY THE SECRETARY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, then the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

''(d) APPROVAL BY THE SECRETARY.—

''(1) IN GENERAL.—If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

''(2) NOTICE AND HEARING.—The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State—

''(A) with reasonable notice; and

''(B) with an opportunity for a hearing.

''(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS.—Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

''(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS.—

''(1) IN GENERAL.—If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency was prohibited by law from providing for the equitable participation in special programs of children with disabilities enrolled in private elementary schools and secondary schools as required by subsection (a)(10)(A), or if the Secretary determines that a State educational agency, local educational agency, or other entity has substantially failed or is unwilling to provide for such equitable participation, then the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements that shall be subject to the requirements of such subsection.

''(2) PAYMENTS.—

''(A) DETERMINATION OF AMOUNTS.—If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing—

''(i) the total amount received by the State under this part for such fiscal year; by

''(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

''(B) WITHHOLDING OF CERTAIN AMOUNTS.—Pending final resolution of any investigation or complaint that may result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates will be necessary to pay the cost of services described in subparagraph (A).

''(C) PERIOD OF PAYMENTS.—The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

''(3) NOTICE AND HEARING.—

''(A) IN GENERAL.—The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

''(B) REVIEW OF ACTION.—If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

''(C) REVIEW OF FINDINGS OF FACT.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

''(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.

''(a) IN GENERAL.—A local educational agency is eligible for assistance under this part for a fiscal year if such agency submits a plan that provides assurances to the State educational agency that the local educational agency meets each of the following conditions:

''(1) CONSISTENCY WITH STATE POLICIES.—The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

''(2) USE OF AMOUNTS.—

''(A) IN GENERAL.—Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and—

''(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

''(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

''(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

''(B) EXCEPTION.—Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to—

''(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

''(ii) a decrease in the enrollment of children with disabilities;

''(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child—

''(I) has left the jurisdiction of the agency;

''(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

''(III) no longer needs such program of special education; or

''(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

''(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS.—

''(i) AMOUNTS IN EXCESS.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

''(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA.—If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

''(iii) STATE PROHIBITION.—Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

''(iv) SPECIAL RULE.—The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).

''(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA.—Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed—

''(i) the number of children with disabilities participating in the schoolwide program; multiplied by

''(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

''(II) the number of children with disabilities in the jurisdiction of that agency.

''(3) PERSONNEL DEVELOPMENT.—The local educational agency shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, subject to the requirements of section 612(a)(14) and section 2122 of the Elementary and Secondary Education Act of 1965.

''(4) PERMISSIVE USE OF FUNDS.—

''(A) USES.—Notwithstanding paragraph (2)(A) or section 612(a)(17)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

''(i) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN.—For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

''(ii) EARLY INTERVENING SERVICES.—To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

''(iii) HIGH COST EDUCATION AND RELATED SERVICES.—To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

''(B) ADMINISTRATIVE CASE MANAGEMENT.—A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.

''(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS.—In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency—

''(A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and

''(B) provides funds under this part to those charter schools—

''(i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

''(ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, consistent with the State's charter school law.

''(6) PURCHASE OF INSTRUCTIONAL MATERIALS.—

''(A) IN GENERAL.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to coordinate with the National Instructional Materials Access Center, when purchasing print instructional materials, shall acquire the print instructional materials in the same manner and subject to the same conditions as a State educational agency acquires print instructional materials under section 612(a)(23).

''(B) RIGHTS OF LOCAL EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require a local educational agency to coordinate with the National Instructional Materials Access Center. If a local educational agency chooses not to coordinate with the National Instructional Materials Access Center, the local educational agency shall provide an assurance to the State educational agency that the local educational agency will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

''(7) INFORMATION FOR STATE EDUCATIONAL AGENCY.—The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (15) and (16) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

''(8) PUBLIC INFORMATION.—The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

''(9) RECORDS REGARDING MIGRATORY CHILDREN WITH DISABILITIES.—The local educational agency shall cooperate in the Secretary's efforts under section 1308 of the Elementary and Secondary Education Act of 1965 to ensure the linkage of records pertaining to migratory children with a disability for the purpose of electronically exchanging, among the States, health and educational information regarding such children.

''(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

''(1) IN GENERAL.—If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

''(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY.—Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until the local educational agency submits to the State educational agency such modifications as the local educational agency determines necessary.

''(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY.—If, after the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the provisions of this title are amended (or the regulations developed to carry out this title are amended), there is a new interpretation of this title by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, then the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

''(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the State educational agency determines that a local educational agency or State agency is not eligible under this section, then the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

''(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

''(1) IN GENERAL.—If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

''(2) ADDITIONAL REQUIREMENT.—Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

''(3) CONSIDERATION.—In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

''(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

''(1) JOINT ESTABLISHMENT.—

''(A) IN GENERAL.—A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency will be ineligible under this section because the local educational agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

''(B) CHARTER SCHOOL EXCEPTION.—A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless the charter school is explicitly permitted to do so under the State's charter school law.

''(2) AMOUNT OF PAYMENTS.—If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(f) if such agencies were eligible for such payments.

''(3) REQUIREMENTS.—Local educational agencies that establish joint eligibility under this subsection shall—

''(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

''(B) be jointly responsible for implementing programs that receive assistance under this part.

''(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES.—

''(A) IN GENERAL.—If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall—

''(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

''(ii) be carried out only by that educational service agency.

''(B) ADDITIONAL REQUIREMENT.—Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

''(f) EARLY INTERVENING SERVICES.—

''(1) IN GENERAL.—A local educational agency may not use more than 15 percent of the amount such agency receives under this part for any fiscal year, less any amount reduced by the agency pursuant to subsection (a)(2)(C), if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.

''(2) ACTIVITIES.—In implementing coordinated, early intervening services under this subsection, a local educational agency may carry out activities that include—

''(A) professional development (which may be provided by entities other than local educational agencies) for teachers and other school staff to enable such personnel to deliver scientifically based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

''(B) providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed to limit or create a right to a free appropriate public education under this part.

''(4) REPORTING.—Each local educational agency that develops and maintains coordinated, early intervening services under this subsection shall annually report to the State educational agency on—

''(A) the number of students served under this subsection; and

''(B) the number of students served under this subsection who subsequently receive special education and related services under this title during the preceding 2-year period.

''(5) COORDINATION WITH ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Funds made available to carry out this subsection may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 if such funds are used to supplement, and not supplant, funds made available under the Elementary and Secondary Education Act of 1965 for the activities and services assisted under this subsection.

''(g) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY.—

''(1) IN GENERAL.—A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local educational agency, or for whom that State agency is responsible, if the State educational agency determines that the local educational agency or State agency, as the case may be—

''(A) has not provided the information needed to establish the eligibility of such local educational agency or State agency under this section;

''(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

''(C) is unable or unwilling to be consolidated with 1 or more local educational agencies in order to establish and maintain such programs; or

''(D) has 1 or more children with disabilities who can best be served by a regional or State program or service delivery system designed to meet the needs of such children.

''(2) MANNER AND LOCATION OF EDUCATION AND SERVICES.—The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State educational agency considers appropriate. Such education and services shall be provided in accordance with this part.

''(h) STATE AGENCY ELIGIBILITY.—Any State agency that desires to receive a subgrant for any fiscal year under section 611(f) shall demonstrate to the satisfaction of the State educational agency that—

''(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

''(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

''(i) DISCIPLINARY INFORMATION.—The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from 1 school to another, the transmission of any of the child's records shall include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.

''(j) STATE AGENCY FLEXIBILITY.—

''(1) ADJUSTMENT TO STATE FISCAL EFFORT IN CERTAIN FISCAL YEARS.—For any fiscal year for which the allotment received by a State under section 611 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

''(2) PROHIBITION.—Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

''(3) EDUCATION ACTIVITIES.—If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

''(4) REPORT.—For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

''(5) LIMITATION.—Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency

receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency.

"SEC. 614. EVALUATIONS, ELIGIBILITY DETERMINATIONS, INDIVIDUALIZED EDUCATION PROGRAMS, AND EDUCATIONAL PLACEMENTS.

''(a) EVALUATIONS, PARENTAL CONSENT, AND REEVALUATIONS.—

''(1) INITIAL EVALUATIONS.—

''(A) IN GENERAL.—A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part.

''(B) REQUEST FOR INITIAL EVALUATION.—Consistent with subparagraph (D), either a parent of a child, or a State educational agency, other State agency, or local educational agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

''(C) PROCEDURES.—

''(i) IN GENERAL.—Such initial evaluation shall consist of procedures—

''(I) to determine whether a child is a child with a disability (as defined in section 602) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

''(II) to determine the educational needs of such child.

''(ii) EXCEPTION.—The relevant timeframe in clause (i)(I) shall not apply to a local educational agency if—

''(I) a child enrolls in a school served by the local educational agency after the relevant timeframe in clause (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 602), but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or

''(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

''(D) PARENTAL CONSENT.—

''(i) IN GENERAL.—

''(I) CONSENT FOR INITIAL EVALUATION.—The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602 shall obtain informed consent from the parent of such child before conducting the evaluation. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

''(II) CONSENT FOR SERVICES.—An agency that is responsible for making a free appropriate public education available to a child with a disability under this part shall seek to obtain informed consent from the parent of such child before providing special education and related services to the child.

''(ii) ABSENCE OF CONSENT.—

''(I) FOR INITIAL EVALUATION.—If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

''(II) FOR SERVICES.—If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.

''(III) EFFECT ON AGENCY OBLIGATIONS.—If the parent of such child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent—

''(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

''(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

''(iii) CONSENT FOR WARDS OF THE STATE.—

''(I) IN GENERAL.—If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent (as defined in section 602) of the child for an initial evaluation to determine whether the child is a child with a disability.

''(II) EXCEPTION.—The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if—

''(aa) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;

''(bb) the rights of the parents of the child have been terminated in accordance with State law; or

''(cc) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

''(E) RULE OF CONSTRUCTION.—The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

''(2) REEVALUATIONS.—

''(A) IN GENERAL.—A local educational agency shall ensure that a reevaluation of each child with a disability is conducted in accordance with subsections (b) and (c)—

''(i) if the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

''(ii) if the child's parents or teacher requests a reevaluation.

''(B) LIMITATION.—A reevaluation conducted under subparagraph (A) shall occur—

''(i) not more frequently than once a year, unless the parent and the local educational agency agree otherwise; and

''(ii) at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

''(b) EVALUATION PROCEDURES.—

''(1) NOTICE.—The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.

''(2) CONDUCT OF EVALUATION.—In conducting the evaluation, the local educational agency shall—

''(A) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent, that may assist in determining—

''(i) whether the child is a child with a disability; and

''(ii) the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general education curriculum, or, for preschool children, to participate in appropriate activities;

''(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

''(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

''(3) ADDITIONAL REQUIREMENTS.—Each local educational agency shall ensure that—

''(A) assessments and other evaluation materials used to assess a child under this section—

''(i) are selected and administered so as not to be discriminatory on a racial or cultural basis;

''(ii) are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer;

''(iii) are used for purposes for which the assessments or measures are valid and reliable;

''(iv) are administered by trained and knowledgeable personnel; and

''(v) are administered in accordance with any instructions provided by the producer of such assessments;

''(B) the child is assessed in all areas of suspected disability;

''(C) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided; and

''(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year are coordinated with such children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

''(4) DETERMINATION OF ELIGIBILITY AND EDUCATIONAL NEED.—Upon completion of the administration of assessments and other evaluation measures—

''(A) the determination of whether the child is a child with a disability as defined in section 602(3) and the educational needs of the child shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

''(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

''(5) SPECIAL RULE FOR ELIGIBILITY DETERMINATION.—In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is—

''(A) lack of appropriate instruction in reading, including in the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act of 1965);

''(B) lack of instruction in math; or

''(C) limited English proficiency.

''(6) SPECIFIC LEARNING DISABILITIES.—

''(A) IN GENERAL.—Notwithstanding section 607(b), when determining whether a child has a specific learning disability as defined in section 602, a local educational agency shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical calculation, or mathematical reasoning.

''(B) ADDITIONAL AUTHORITY.—In determining whether a child has a specific learning disability, a local educational agency may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures described in paragraphs (2) and (3).

''(c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS.—

''(1) REVIEW OF EXISTING EVALUATION DATA.—As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team and other qualified professionals, as appropriate, shall—

''(A) review existing evaluation data on the child, including—

''(i) evaluations and information provided by the parents of the child;

''(ii) current classroom-based, local, or State assessments, and classroom-based observations; and

''(iii) observations by teachers and related services providers; and

''(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

''(i) whether the child is a child with a disability as defined in section 602(3), and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

''(ii) the present levels of academic achievement and related developmental needs of the child;

''(iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

''(iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

''(2) SOURCE OF DATA.—The local educational agency shall administer such assessments and other evaluation measures as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).

''(3) PARENTAL CONSENT.—Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(D), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.

''(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.—If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability and to determine the child's educational needs, the local educational agency—

''(A) shall notify the child's parents of—

''(i) that determination and the reasons for the determination; and

''(ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs; and

''(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

''(5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), a local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.

''(B) EXCEPTION.—

''(i) IN GENERAL.—The evaluation described in subparagraph (A) shall not be required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for a free appropriate public education under State law.

''(ii) SUMMARY OF PERFORMANCE.—For a child whose eligibility under this part terminates under circumstances described in clause (i), a local educational agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

''(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

''(1) DEFINITIONS.—In this title:

''(A) INDIVIDUALIZED EDUCATION PROGRAM.—

''(i) IN GENERAL.—The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes—

''(I) a statement of the child's present levels of academic achievement and functional performance, including—

''(aa) how the child's disability affects the child's involvement and progress in the general education curriculum;

''(bb) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities; and

''(cc) for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

''(II) a statement of measurable annual goals, including academic and functional goals, designed to—

''(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

''(bb) meet each of the child's other educational needs that result from the child's disability;

''(III) a description of how the child's progress toward meeting the annual goals described in subclause (II) will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

''(IV) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child—

''(aa) to advance appropriately toward attaining the annual goals;

''(bb) to be involved in and make progress in the general education curriculum in accordance with subclause (I) and to participate in extracurricular and other nonacademic activities; and

''(cc) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this subparagraph;

''(V) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in subclause (IV)(cc);

''(VI)(aa) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16)(A); and

''(bb) if the IEP Team determines that the child shall take an alternate assessment on a particular State or districtwide assessment of student achievement, a statement of why—

''(AA) the child cannot participate in the regular assessment; and

''(BB) the particular alternate assessment selected is appropriate for the child;

''(VII) the projected date for the beginning of the services and modifications described in subclause (IV), and the anticipated frequency, location, and duration of those services and modifications; and

''(VIII) beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter—

''(aa) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills;

''(bb) the transition services (including courses of study) needed to assist the child in reaching those goals; and

''(cc) beginning not later than 1 year before the child reaches the age of majority under State law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m).

''(ii) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require—

''(I) that additional information be included in a child's IEP beyond what is explicitly required in this section; and

''(II) the IEP Team to include information under 1 component of a child's IEP that is already contained under another component of such IEP.

''(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM.—The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of—

''(i) the parents of a child with a disability;

''(ii) not less than 1 regular education teacher of such child (if the child is, or may be, participating in the regular education environment);

''(iii) not less than 1 special education teacher, or where appropriate, not less than 1 special education provider of such child;

''(iv) a representative of the local educational agency who—

''(I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

''(II) is knowledgeable about the general education curriculum; and

''(III) is knowledgeable about the availability of resources of the local educational agency;

''(v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi);

''(vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

''(vii) whenever appropriate, the child with a disability.

''(C) IEP TEAM ATTENDANCE.—

''(i) ATTENDANCE NOT NECESSARY.—A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

''(ii) EXCUSAL.—A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

''(I) the parent and the local educational agency consent to the excusal; and

''(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

''(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED.—A parent's agreement under clause (i) and consent under clause (ii) shall be in writing.

''(D) IEP TEAM TRANSITION.—In the case of a child who was previously served under part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the part C service coordinator or other representatives of the part C system to assist with the smooth transition of services.

''(2) REQUIREMENT THAT PROGRAM BE IN EFFECT.—

''(A) IN GENERAL.—At the beginning of each school year, each local educational agency,

State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program, as defined in paragraph (1)(A).

''(B) PROGRAM FOR CHILD AGED 3 THROUGH 5.—In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2-year-old child with a disability who will turn age 3 during the school year), the IEP Team shall consider the individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, and the individualized family service plan may serve as the IEP of the child if using that plan as the IEP is—

''(i) consistent with State policy; and

''(ii) agreed to by the agency and the child's parents.

''(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—

''(i) IN GENERAL.—

''(I) TRANSFER WITHIN THE SAME STATE.—In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

''(II) TRANSFER OUTSIDE STATE.—In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school, and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to subsection (a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

''(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i)—

''(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and

''(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.

''(3) DEVELOPMENT OF IEP.—

''(A) IN GENERAL.—In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider—

''(i) the strengths of the child;

''(ii) the concerns of the parents for enhancing the education of their child;

''(iii) the results of the initial evaluation or most recent evaluation of the child; and

''(iv) the academic, developmental, and functional needs of the child.

''(B) CONSIDERATION OF SPECIAL FACTORS.—The IEP Team shall—

''(i) in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

''(ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP;

''(iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

''(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

''(v) consider whether the child needs assistive technology devices and services.

''(C) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports, and other strategies, and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(i)(IV).

''(D) AGREEMENT.—In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purposes of making such changes, and instead may develop a written document to amend or modify the child's current IEP.

''(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

''(F) AMENDMENTS.—Changes to the IEP may be made either by the entire IEP Team or, as provided in subparagraph (D), by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

''(4) REVIEW AND REVISION OF IEP.—

''(A) IN GENERAL.—The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team—

''(i) reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

''(ii) revises the IEP as appropriate to address—

''(I) any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate;

''(II) the results of any reevaluation conducted under this section;

''(III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B);

''(IV) the child's anticipated needs; or

''(V) other matters.

''(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER.—A regular education teacher of the child, as a member of the IEP Team, shall, consistent with paragraph (1)(C), participate in the review and revision of the IEP of the child.

''(5) MULTI-YEAR IEP DEMONSTRATION.—

''(A) PILOT PROGRAM.—

''(i) PURPOSE.—The purpose of this paragraph is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

''(ii) AUTHORIZATION.—In order to carry out the purpose of this paragraph, the Secretary is authorized to approve not more than 15 proposals from States to carry out the activity described in clause (i).

''(iii) PROPOSAL.—

''(I) IN GENERAL.—A State desiring to participate in the program under this paragraph shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

''(II) CONTENT.—The proposal shall include—

''(aa) assurances that the development of a multi-year IEP under this paragraph is optional for parents;

''(bb) assurances that the parent is required to provide informed consent before a comprehensive multi-year IEP is developed;

''(cc) a list of required elements for each multi-year IEP, including—

''(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

''(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

''(dd) a description of the process for the review and revision of each multi-year IEP, including—

''(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

''(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved, and a requirement to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

''(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a requirement that the local educational agency shall ensure that the IEP Team carries out a more thorough review of the IEP in accordance with paragraph (4) within 30 calendar days; and

''(DD) at the request of the parent, a requirement that the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

''(B) REPORT.—Beginning 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall submit an annual report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate regarding the effectiveness of the program under this paragraph and any specific recommendations for broader implementation of such program, including—

''(i) reducing—

''(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

''(II) noninstructional time spent by teachers in complying with this part;

''(ii) enhancing longer-term educational planning;

''(iii) improving positive outcomes for children with disabilities;

''(iv) promoting collaboration between IEP Team members; and

''(v) ensuring satisfaction of family members.

''(C) DEFINITION.—In this paragraph, the term 'natural transition points' means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to secondary school grades, and from secondary school grades to post-secondary activities, but in no case a period longer than 3 years.

''(6) FAILURE TO MEET TRANSITION OBJECTIVES.—If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(i)(VIII), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

''(7) CHILDREN WITH DISABILITIES IN ADULT PRISONS.—

''(A) IN GENERAL.—The following requirements shall not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

''(i) The requirements contained in section 612(a)(16) and paragraph (1)(A)(i)(VI) (relating to participation of children with disabilities in general assessments).

''(ii) The requirements of items (aa) and (bb) of paragraph (1)(A)(i)(VIII) (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of such children's age, before such children will be released from prison.

''(B) ADDITIONAL REQUIREMENT.—If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and paragraph (1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

''(e) EDUCATIONAL PLACEMENTS.—Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

''(f) ALTERNATIVE MEANS OF MEETING PARTICIPATION.—When conducting IEP team meetings and placement meetings pursuant to this section, section 615(e), and section 615(f)(1)(B), and carrying out administrative matters under section 615 (such as scheduling, exchange of witness lists, and status conferences), the parent of a child with a disability and a local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

"SEC. 615. PROCEDURAL SAFEGUARDS.

''(a) ESTABLISHMENT OF PROCEDURES.—Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

''(b) TYPES OF PROCEDURES.—The procedures required by this section shall include the following:

''(1) An opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child.

''(2)(A) Procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of—

''(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph; and

''(ii) an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), the local educational agency shall appoint a surrogate in accordance with this paragraph.

''(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

''(3) Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency—

''(A) proposes to initiate or change; or

''(B) refuses to initiate or change,

the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

''(4) Procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so.

''(5) An opportunity for mediation, in accordance with subsection (e).

''(6) An opportunity for any party to present a complaint—

''(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

''(B) which sets forth an alleged violation that occurred not more than 2 years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

''(7)(A) Procedures that require either party, or the attorney representing a party, to provide due process complaint notice in accordance with subsection (c)(2) (which shall remain confidential)—

''(i) to the other party, in the complaint filed under paragraph (6), and forward a copy of such notice to the State educational agency; and

''(ii) that shall include—

''(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

''(II) in the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;

''(III) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

''(IV) a proposed resolution of the problem to the extent known and available to the party at the time.

''(B) A requirement that a party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of subparagraph (A)(ii).

''(8) Procedures that require the State educational agency to develop a model form to assist parents in filing a complaint and due process complaint notice in accordance with paragraphs (6) and (7), respectively.

''(c) NOTIFICATION REQUIREMENTS.—

''(1) CONTENT OF PRIOR WRITTEN NOTICE.—The notice required by subsection (b)(3) shall include—

''(A) a description of the action proposed or refused by the agency;

''(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

''(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

''(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

''(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

''(F) a description of the factors that are relevant to the agency's proposal or refusal.

''(2) DUE PROCESS COMPLAINT NOTICE.—

''(A) COMPLAINT.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of subsection (b)(7)(A).

''(B) RESPONSE TO COMPLAINT.—

''(i) LOCAL EDUCATIONAL AGENCY RESPONSE.—

''(I) IN GENERAL.—If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include—

''(aa) an explanation of why the agency proposed or refused to take the action raised in the complaint;

''(bb) a description of other options that the IEP Team considered and the reasons why those options were rejected;

''(cc) a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

''(dd) a description of the factors that are relevant to the agency's proposal or refusal.

''(II) SUFFICIENCY.— A response filed by a local educational agency pursuant to subclause (I) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

''(ii) OTHER PARTY RESPONSE.—Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, send to the complaint a response that specifically addresses the issues raised in the complaint.

''(C) TIMING.—The party providing a hearing officer notification under subparagraph (A) shall provide the notification within 15 days of receiving the complaint.

''(D) DETERMINATION.—Within 5 days of receipt of the notification provided under subparagraph (C), the hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of subsection (b)(7)(A), and shall immediately notify the parties in writing of such determination.

''(E) AMENDED COMPLAINT NOTICE.—

''(i) IN GENERAL.—A party may amend its due process complaint notice only if—

''(I) the other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to subsection (f)(1)(B); or

''(II) the hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

''(ii) APPLICABLE TIMELINE.—The applicable timeline for a due process hearing under this part shall recommence at the time the party files an amended notice, including the timeline under subsection (f)(1)(B).

''(d) PROCEDURAL SAFEGUARDS NOTICE.—

''(1) IN GENERAL.—

''(A) COPY TO PARENTS.—A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

''(i) upon initial referral or parental request for evaluation;

''(ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and

''(iii) upon request by a parent.

''(B) INTERNET WEBSITE.—A local educational agency may place a current copy of the procedural safeguards notice on its Internet website if such website exists.

''(2) CONTENTS.—The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to—

''(A) independent educational evaluation;

''(B) prior written notice;

''(C) parental consent;

''(D) access to educational records;

''(E) the opportunity to present and resolve complaints, including—

''(i) the time period in which to make a complaint;

''(ii) the opportunity for the agency to resolve the complaint; and

''(iii) the availability of mediation;

''(F) the child's placement during pendency of due process proceedings;

''(G) procedures for students who are subject to placement in an interim alternative educational setting;

''(H) requirements for unilateral placement by parents of children in private schools at public expense;

''(I) due process hearings, including requirements for disclosure of evaluation results and recommendations;

''(J) State-level appeals (if applicable in that State);

''(K) civil actions, including the time period in which to file such actions; and

''(L) attorneys' fees.

''(e) MEDIATION.—

''(1) IN GENERAL.—Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint pursuant to subsection (b)(6), to resolve such disputes through a mediation process.

''(2) REQUIREMENTS.—Such procedures shall meet the following requirements:

''(A) The procedures shall ensure that the mediation process—

''(i) is voluntary on the part of the parties;

''(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and

''(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

''(B) OPPORTUNITY TO MEET WITH A DISINTERESTED PARTY.—A local educational agency or a State agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with—

''(i) a parent training and information center or community parent resource center in the State established under section 671 or 672; or

''(ii) an appropriate alternative dispute resolution entity,

to encourage the use, and explain the benefits, of the mediation process to the parents.

''(C) LIST OF QUALIFIED MEDIATORS.—The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

''(D) COSTS.—The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

''(E) SCHEDULING AND LOCATION.—Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

''(F) WRITTEN AGREEMENT.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that—

''(i) states that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;

''(ii) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and

''(iii) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

''(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

''(f) IMPARTIAL DUE PROCESS HEARING.—

''(1) IN GENERAL.—

''(A) HEARING.—Whenever a complaint has been received under subsection (b)(6) or (k), the parents or the local educational agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

''(B) RESOLUTION SESSION.—

''(i) PRELIMINARY MEETING.—Prior to the opportunity for an impartial due process hearing under subparagraph (A), the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint—

''(I) within 15 days of receiving notice of the parents' complaint;

''(II) which shall include a representative of the agency who has decisionmaking authority on behalf of such agency;

''(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

''(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint,

unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

''(ii) HEARING.—If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence.

''(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i), the parties shall execute a legally binding agreement that is—

''(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

''(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

''(iv) REVIEW PERIOD.—If the parties execute an agreement pursuant to clause (iii), a party may void such agreement within 3 business days of the agreement's execution.

''(2) DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS.—

''(A) IN GENERAL.—Not less than 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations, that the party intends to use at the hearing.

''(B) FAILURE TO DISCLOSE.—A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

''(3) LIMITATIONS ON HEARING.—

''(A) PERSON CONDUCTING HEARING.—A hearing officer conducting a hearing pursuant to paragraph (1)(A) shall, at a minimum—

''(i) not be—

''(I) an employee of the State educational agency or the local educational agency involved in the education or care of the child; or

''(II) a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

''(ii) possess knowledge of, and the ability to understand, the provisions of this title, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal and State courts;

''(iii) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

''(iv) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

''(B) SUBJECT MATTER OF HEARING.—The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under subsection (b)(7), unless the other party agrees otherwise.

''(C) TIMELINE FOR REQUESTING HEARING.—A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.

''(D) EXCEPTIONS TO THE TIMELINE.—The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to—

''(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

''(ii) the local educational agency's withholding of information from the parent that was required under this part to be provided to the parent.

''(E) DECISION OF HEARING OFFICER.—

''(i) IN GENERAL.—Subject to clause (ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

''(ii) PROCEDURAL ISSUES.—In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies—

''(I) impeded the child's right to a free appropriate public education;

''(II) significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents' child; or

''(III) caused a deprivation of educational benefits.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering a local educational agency to comply with procedural requirements under this section.

''(F) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the State educational agency.

''(g) APPEAL.—

''(1) IN GENERAL.—If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the

findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency.

''(2) IMPARTIAL REVIEW AND INDEPENDENT DECISION.—The State educational agency shall conduct an impartial review of the findings and decision appealed under paragraph (1). The officer conducting such review shall make an independent decision upon completion of such review.

''(h) SAFEGUARDS.—Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded—

''(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

''(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

''(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

''(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions, which findings and decisions—

''(A) shall be made available to the public consistent with the requirements of section 617(b) (relating to the confidentiality of data, information, and records); and

''(B) shall be transmitted to the advisory panel established pursuant to section 612(a)(21).

''(i) ADMINISTRATIVE PROCEDURES.—

''(1) IN GENERAL.—

''(A) DECISION MADE IN HEARING.—A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2).

''(B) DECISION MADE AT APPEAL.—A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2).

''(2) RIGHT TO BRING CIVIL ACTION.—

''(A) IN GENERAL.—Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision made under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy.

''(B) LIMITATION.—The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.

''(C) ADDITIONAL REQUIREMENTS.—In any action brought under this paragraph, the court—

''(i) shall receive the records of the administrative proceedings;

''(ii) shall hear additional evidence at the request of a party; and

''(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

''(3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES.—

''(A) IN GENERAL.—The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

''(B) AWARD OF ATTORNEYS' FEES.—

''(i) IN GENERAL.—In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs—

''(I) to a prevailing party who is the parent of a child with a disability;

''(II) to a prevailing party who is a State educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

''(III) to a prevailing State educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

''(ii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.

''(C) DETERMINATION OF AMOUNT OF ATTORNEYS' FEES.—Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

''(D) PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES.—

''(i) IN GENERAL.—Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if—

''(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

''(II) the offer is not accepted within 10 days; and

''(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

''(ii) IEP TEAM MEETINGS.—Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e).

''(iii) OPPORTUNITY TO RESOLVE COMPLAINTS.—A meeting conducted pursuant to subsection (f)(1)(B)(i) shall not be considered—

''(I) a meeting convened as a result of an administrative hearing or judicial action; or

''(II) an administrative hearing or judicial action for purposes of this paragraph.

''(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS.—Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

''(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—Except as provided in subparagraph (G), whenever the court finds that—

''(i) the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

''(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

''(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

''(iv) the attorney representing the parent did not provide to the local educational agency the appropriate information in the notice of the complaint described in subsection (b)(7)(A),

the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

''(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES.—The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

''(j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT.—Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

''(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

''(1) AUTHORITY OF SCHOOL PERSONNEL.—

''(A) CASE-BY-CASE DETERMINATION.—School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

''(B) AUTHORITY.—School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

''(C) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

''(D) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or subparagraph (C) shall—

''(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

''(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

''(E) MANIFESTATION DETERMINATION.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

''(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

''(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

''(ii) MANIFESTATION.—If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for

the child, the conduct shall be determined to be a manifestation of the child's disability.

''(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION.—If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

''(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

''(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

''(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

''(G) SPECIAL CIRCUMSTANCES.—School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

''(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency;

''(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency; or

''(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

''(H) NOTIFICATION.—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

''(2) DETERMINATION OF SETTING.—The interim alternative educational setting in subparagraphs (C) and (G) of paragraph (1) shall be determined by the IEP Team.

''(3) APPEAL.—

''(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

''(B) AUTHORITY OF HEARING OFFICER.—

''(i) IN GENERAL.—A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

''(ii) CHANGE OF PLACEMENT ORDER.—In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

''(I) return a child with a disability to the placement from which the child was removed; or

''(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

''(4) PLACEMENT DURING APPEALS.—When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

''(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

''(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

''(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

''(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

''(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

''(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

''(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

''(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

''(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

''(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

''(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

''(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

''(6) REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES.—

''(A) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

''(B) TRANSMITTAL OF RECORDS.—An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

''(7) DEFINITIONS.—In this subsection:

''(A) CONTROLLED SUBSTANCE.—The term 'controlled substance' means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

''(B) ILLEGAL DRUG.—The term 'illegal drug' means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

''(C) WEAPON.—The term 'weapon' has the meaning given the term 'dangerous weapon' under section 930(g)(2) of title 18, United States Code.

''(D) SERIOUS BODILY INJURY.—The term 'serious bodily injury' has the meaning given the term 'serious bodily injury' under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

''(l) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

''(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.—

''(1) IN GENERAL.—A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)—

''(A) the agency shall provide any notice required by this section to both the individual and the parents;

''(B) all other rights accorded to parents under this part transfer to the child;

''(C) the agency shall notify the individual and the parents of the transfer of rights; and

''(D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

''(2) SPECIAL RULE.—If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

''(n) ELECTRONIC MAIL.—A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

''(o) SEPARATE COMPLAINT.—Nothing in this section shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

"SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

''(a) FEDERAL AND STATE MONITORING.—

''(1) IN GENERAL.—The Secretary shall—

''(A) monitor implementation of this part through—

''(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

''(ii) the State performance plans, described in subsection (b);

''(B) enforce this part in accordance with subsection (e); and

''(C) require States to—

''(i) monitor implementation of this part by local educational agencies; and

''(ii) enforce this part in accordance with paragraph (3) and subsection (e).

''(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

''(A) improving educational results and functional outcomes for all children with disabilities; and

''(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

''(3) MONITORING PRIORITIES.—The Secretary shall monitor the States, and shall require each State to monitor the local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

''(A) Provision of a free appropriate public education in the least restrictive environment.

''(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in sections 602(34) and 637(a)(9).

''(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

''(4) PERMISSIVE AREAS OF REVIEW.—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

''(b) STATE PERFORMANCE PLANS.—

''(1) PLAN.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this part and describes how the State will improve such implementation.

''(B) SUBMISSION FOR APPROVAL.—Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

''(C) REVIEW.—Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

''(2) TARGETS.—

''(A) IN GENERAL.—As a part of the State performance plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

''(B) DATA COLLECTION.—

''(i) IN GENERAL.—Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

''(ii) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this part.

''(C) PUBLIC REPORTING AND PRIVACY.—

''(i) IN GENERAL.—The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

''(ii) REPORT.—

''(I) PUBLIC REPORT.—The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including by posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

''(II) STATE PERFORMANCE REPORT.—The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

''(iii) PRIVACY.—The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

''(c) APPROVAL PROCESS.—

''(1) DEEMED APPROVAL.—The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120-day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

''(2) DISAPPROVAL.—The Secretary shall not finally disapprove a performance plan, except after giving the State notice and an opportunity for a hearing.

''(3) NOTIFICATION.—If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—

''(A) give the State notice and an opportunity for a hearing; and

''(B) notify the State of the finding, and in such notification shall—

''(i) cite the specific provisions in the plan that do not meet the requirements; and

''(ii) request additional information, only as to the provisions not meeting the requirements, needed for the plan to meet the requirements of this section.

''(4) RESPONSE.—If the State responds to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of—

''(A) the expiration of the 30-day period beginning on the date on which the plan is resubmitted; or

''(B) the expiration of the 120-day period described in paragraph (1).

''(5) FAILURE TO RESPOND.—If the State does not respond to the Secretary's notification described in paragraph (3)(B) during the 30-day period beginning on the date on which the State received the notification, such plan shall be deemed to be disapproved.

''(d) SECRETARY'S REVIEW AND DETERMINATION.—

''(1) REVIEW.—The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

''(2) DETERMINATION.—

''(A) IN GENERAL.—Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

''(i) meets the requirements and purposes of this part;

''(ii) needs assistance in implementing the requirements of this part;

''(iii) needs intervention in implementing the requirements of this part; or

''(iv) needs substantial intervention in implementing the requirements of this part.

''(B) NOTICE AND OPPORTUNITY FOR A HEARING.—For determinations made under clause (iii) or (iv) of subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

''(e) ENFORCEMENT.—

''(1) NEEDS ASSISTANCE.—If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(A)(ii) in implementing the requirements of this part, the Secretary shall take 1 or more of the following actions:

''(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to work with appropriate entities. Such technical assistance may include—

''(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

''(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

''(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

''(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

''(B) Direct the use of State-level funds under section 611(e) on the area or areas in which the State needs assistance.

''(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

''(2) NEEDS INTERVENTION.—If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(A)(iii) in implementing the requirements of this part, the following shall apply:

''(A) The Secretary may take any of the actions described in paragraph (1).

''(B) The Secretary shall take 1 or more of the following actions:

''(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

''(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

''(iii) For each year of the determination, withhold not less than 20 percent and not more than 50 percent of the State's funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

''(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

''(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

''(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

''(3) NEEDS SUBSTANTIAL INTERVENTION.—Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this part or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

''(A) Recover funds under section 452 of the General Education Provisions Act.

''(B) Withhold, in whole or in part, any further payments to the State under this part.

''(C) Refer the case to the Office of the Inspector General at the Department of Education.

''(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

''(4) OPPORTUNITY FOR HEARING.—

''(A) WITHHOLDING FUNDS.—Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

''(B) SUSPENSION.—Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

''(5) REPORT TO CONGRESS.—The Secretary shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2), or (3), on the specific action taken and the reasons why enforcement action was taken.

''(6) NATURE OF WITHHOLDING.—

''(A) LIMITATION.—If the Secretary withholds further payments pursuant to paragraph (2) or (3), the Secretary may determine—

''(i) that such withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under subsection (d)(2); or

''(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination under subsection (d)(2).

''(B) WITHHOLDING UNTIL RECTIFIED.—Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

''(i) payments to the State under this part shall be withheld in whole or in part; and

''(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination under subsection (d)(2), as the case may be.

''(7) PUBLIC ATTENTION.—Any State that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

''(8) JUDICIAL REVIEW.—

''(A) IN GENERAL.—If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

''(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

''(C) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

''(f) STATE ENFORCEMENT.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under section 613(a)(2)(C) for any fiscal year.

''(g) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this title.

''(h) DIVIDED STATE AGENCY RESPONSIBILITY.—For purposes of this section, where responsibility for ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the State educational agency pursuant to section 612(a)(11)(C), the Secretary, in instances where the Secretary finds that the failure to comply substantially with the provisions of this part are related to a failure by the public agency, shall take appropriate corrective action to ensure compliance with this part, except that—

''(1) any reduction or withholding of payments to the State shall be proportionate to the total funds allotted under section 611 to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the State educational agency; and

''(2) any withholding of funds under paragraph (1) shall be limited to the specific agency responsible for the failure to comply with this part.

''(i) DATA CAPACITY AND TECHNICAL ASSISTANCE REVIEW.—The Secretary shall—

''(1) review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of this section is collected, analyzed, and accurately reported to the Secretary; and

''(2) provide technical assistance (from funds reserved under section 611(c)), where needed, to improve the capacity of States to meet the data collection requirements.

''SEC. 617. ADMINISTRATION.

''(a) RESPONSIBILITIES OF SECRETARY.—The Secretary shall—

''(1) cooperate with, and (directly or by grant or contract) furnish technical assistance necessary to, a State in matters relating to—

''(A) the education of children with disabilities; and

''(B) carrying out this part; and

''(2) provide short-term training programs and institutes.

''(b) PROHIBITION AGAINST FEDERAL MANDATES, DIRECTION, OR CONTROL.—Nothing in this title shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.

''(c) CONFIDENTIALITY.—The Secretary shall take appropriate action, in accordance with section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State educational agencies and local educational agencies pursuant to this part.

''(d) PERSONNEL.—The Secretary is authorized to hire qualified personnel necessary to carry out the Secretary's duties under subsection (a), under section 618, and under subpart 4 of part D, without regard to the provisions of title 5, United States Code, relating to appointments in the competitive service and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and general schedule pay rates, except that no more than 20 such personnel shall be employed at any time.

''(e) MODEL FORMS.—Not later than the date that the Secretary publishes final regulations under this title, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

''(1) a model IEP form;

''(2) a model individualized family service plan (IFSP) form;

''(3) a model form of the notice of procedural safeguards described in section 615(d); and

''(4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 615 that is consistent with the requirements of this part and is sufficient to meet such requirements.

''SEC. 618. PROGRAM INFORMATION.

''(a) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

''(1)(A) The number and percentage of children with disabilities, by race, ethnicity, limited English proficiency status, gender, and disability category, who are in each of the following separate categories:

''(i) Receiving a free appropriate public education.

''(ii) Participating in regular education.

''(iii) In separate classes, separate schools or facilities, or public or private residential facilities.

''(iv) For each year of age from age 14 through 21, stopped receiving special education and related services because of program completion (including graduation with a regular secondary school diploma), or other reasons, and the reasons why those children stopped receiving special education and related services.

''(v)(I) Removed to an interim alternative educational setting under section 615(k)(1).

''(II) The acts or items precipitating those removals.

''(III) The number of children with disabilities who are subject to long-term suspensions or expulsions.

''(B) The number and percentage of children with disabilities, by race, gender, and ethnicity, who are receiving early intervention services.

''(C) The number and percentage of children with disabilities, by race, gender, and ethnicity, who, from birth through age 2, stopped receiving early intervention services because of program completion or for other reasons.

''(D) The incidence and duration of disciplinary actions by race, ethnicity, limited English proficiency status, gender, and disability category, of children with disabilities, including suspensions of 1 day or more.

''(E) The number and percentage of children with disabilities who are removed to alternative educational settings or expelled as compared to children without disabilities who are removed to alternative educational settings or expelled.

''(F) The number of due process complaints filed under section 615 and the number of hearings conducted.

''(G) The number of hearings requested under section 615(k) and the number of changes in placements ordered as a result of those hearings.

''(H) The number of mediations held and the number of settlement agreements reached through such mediations.

''(2) The number and percentage of infants and toddlers, by race, and ethnicity, who are at risk of having substantial developmental delays (as defined in section 632), and who are receiving early intervention services under part C.

''(3) Any other information that may be required by the Secretary.

''(b) DATA REPORTING.—

''(1) PROTECTION OF IDENTIFIABLE DATA.—The data described in subsection (a) shall be publicly reported by each State in a manner that does not result in the disclosure of data identifiable to individual children.

''(2) SAMPLING.—The Secretary may permit States and the Secretary of the Interior to obtain the data described in subsection (a) through sampling.

''(c) TECHNICAL ASSISTANCE.—The Secretary may provide technical assistance to States to ensure compliance with the data collection and reporting requirements under this title.

''(d) DISPROPORTIONALITY.—

''(1) IN GENERAL.—Each State that receives assistance under this part, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring in the State and the local educational agencies of the State with respect to—

''(A) the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3);

''(B) the placement in particular educational settings of such children; and

''(C) the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

''(2) REVIEW AND REVISION OF POLICIES, PRACTICES, AND PROCEDURES.—In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of such children, in accordance with paragraph (1), the State or the Secretary of the Interior, as the case may be, shall—

''(A) provide for the review and, if appropriate, revision of the policies, procedures, and practices used in such identification or placement to ensure that such policies, procedures, and practices comply with the requirements of this title;

''(B) require any local educational agency identified under paragraph (1) to reserve the maximum amount of funds under section 613(f) to provide comprehensive coordinated early intervening services to serve children in the local educational agency, particularly children in those groups that were significantly overidentified under paragraph (1); and

''(C) require the local educational agency to publicly report on the revision of policies, practices, and procedures described under subparagraph (A).

''SEC. 619. PRESCHOOL GRANTS.

''(a) IN GENERAL.—The Secretary shall provide grants under this section to assist States to provide special education and related services, in accordance with this part—

''(1) to children with disabilities aged 3 through 5, inclusive; and

''(2) at the State's discretion, to 2-year-old children with disabilities who will turn 3 during the school year.

''(b) ELIGIBILITY.—A State shall be eligible for a grant under this section if such State—

''(1) is eligible under section 612 to receive a grant under this part; and

''(2) makes a free appropriate public education available to all children with disabilities, aged 3 through 5, residing in the State.

''(c) ALLOCATIONS TO STATES.—

''(1) IN GENERAL.—The Secretary shall allocate the amount made available to carry out this section for a fiscal year among the States in accordance with paragraph (2) or (3), as the case may be.

''(2) INCREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is equal to or greater than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

''(A) ALLOCATION.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), the Secretary shall—

''(I) allocate to each State the amount the State received under this section for fiscal year 1997;

''(II) allocate 85 percent of any remaining funds to States on the basis of the States' relative populations of children aged 3 through 5; and

''(III) allocate 15 percent of those remaining funds to States on the basis of the States' relative populations of all children aged 3 through 5 who are living in poverty.

''(ii) DATA.—For the purpose of making grants under this paragraph, the Secretary shall use the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

''(B) LIMITATIONS.—Notwithstanding subparagraph (A), allocations under this paragraph shall be subject to the following:

''(i) PRECEDING YEARS.—No State's allocation shall be less than its allocation under this section for the preceding fiscal year.

''(ii) MINIMUM.—No State's allocation shall be less than the greatest of—

''(I) the sum of—

''(aa) the amount the State received under this section for fiscal year 1997; and

''(bb) ⅓ of 1 percent of the amount by which the amount appropriated under subsection (j) for the fiscal year exceeds the amount appropriated for this section for fiscal year 1997;

''(II) the sum of—

''(aa) the amount the State received under this section for the preceding fiscal year; and

''(bb) that amount multiplied by the percentage by which the increase in the funds appropriated under this section from the preceding fiscal year exceeds 1.5 percent; or

''(III) the sum of—

''(aa) the amount the State received under this section for the preceding fiscal year; and

''(bb) that amount multiplied by 90 percent of the percentage increase in the amount appropriated under this section from the preceding fiscal year.

''(iii) MAXIMUM.—Notwithstanding clause (ii), no State's allocation under this paragraph shall exceed the sum of—

''(I) the amount the State received under this section for the preceding fiscal year; and

''(II) that amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated under this section from the preceding fiscal year.

''(C) RATABLE REDUCTIONS.—If the amount available for allocations under this paragraph is insufficient to pay those allocations in full, those allocations shall be ratably reduced, subject to subparagraph (B)(i).

''(3) DECREASE IN FUNDS.—If the amount available for allocations to States under paragraph (1) for a fiscal year is less than the amount allocated to the States under this section for the preceding fiscal year, those allocations shall be calculated as follows:

''(A) ALLOCATIONS.—If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State shall be allocated the sum of—

''(i) the amount the State received under this section for fiscal year 1997; and

''(ii) an amount that bears the same relation to any remaining funds as the increase the State received under this section for the preceding fiscal year over fiscal year 1997 bears to the total of all such increases for all States.

''(B) RATABLE REDUCTIONS.—If the amount available for allocations is equal to or less than the amount allocated to the States for fiscal year 1997, each State shall be allocated the amount the State received for fiscal year 1997, ratably reduced, if necessary.

''(d) RESERVATION FOR STATE ACTIVITIES.—

''(1) IN GENERAL.—Each State may reserve not more than the amount described in paragraph (2) for administration and other State-level activities in accordance with subsections (e) and (f).

''(2) AMOUNT DESCRIBED.—For each fiscal year, the Secretary shall determine and report to the State educational agency an amount that is 25 percent of the amount the State received under this section for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

''(A) the percentage increase, if any, from the preceding fiscal year in the State's allocation under this section; or

''(B) the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

''(e) STATE ADMINISTRATION.—

''(1) IN GENERAL.—For the purpose of administering this section (including the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities) a State may use not more than 20 percent of the maximum amount the State may reserve under subsection (d) for any fiscal year.

''(2) ADMINISTRATION OF PART C.—Funds described in paragraph (1) may also be used for the administration of part C.

''(f) OTHER STATE-LEVEL ACTIVITIES.—Each State shall use any funds the State reserves under subsection (d) and does not use for administration under subsection (e)—

''(1) for support services (including establishing and implementing the mediation process required by section 615(e)), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5;

''(2) for direct services for children eligible for services under this section;

''(3) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15);

''(4) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not more than 1 percent of the amount received by the State under this section for a fiscal year;

''(5) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with part C to children with disabilities who are eligible for services under this section and who previously received services under part C until such children enter, or are eligible under State law to enter, kindergarten; or

''(6) at the State's discretion, to continue service coordination or case management for families who receive services under part C.

''(g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

''(1) SUBGRANTS REQUIRED.—Each State that receives a grant under this section for any fiscal year shall distribute all of the grant funds that the State does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:

''(A) BASE PAYMENTS.—The State shall first award each local educational agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect.

''(B) ALLOCATION OF REMAINING FUNDS.—After making allocations under subparagraph (A), the State shall—

''(i) allocate 85 percent of any remaining funds to those local educational agencies on the basis of the relative numbers of children enrolled in public and private elementary schools and secondary schools within the local educational agency's jurisdiction; and

''(ii) allocate 15 percent of those remaining funds to those local educational agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.

''(2) REALLOCATION OF FUNDS.—If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by the local educational agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local educational agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas the other local educational agencies serve.

''(h) PART C INAPPLICABLE.—Part C does not apply to any child with a disability receiving a free appropriate public education, in accordance with this part, with funds received under this section.

''(i) STATE DEFINED.—In this section, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary.

"PART C—INFANTS AND TODDLERS WITH DISABILITIES

"SEC. 631. FINDINGS AND POLICY.

''(a) FINDINGS.—Congress finds that there is an urgent and substantial need—

''(1) to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life;

''(2) to reduce the educational costs to our society, including our Nation's schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

''(3) to maximize the potential for individuals with disabilities to live independently in society;

''(4) to enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities; and

''(5) to enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, particularly minority, low-income, inner city, and rural children, and infants and toddlers in foster care.

''(b) POLICY.—It is the policy of the United States to provide financial assistance to States—

''(1) to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

''(2) to facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);

''(3) to enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

''(4) to encourage States to expand opportunities for children under 3 years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.

"SEC. 632. DEFINITIONS.

''In this part:

''(1) AT-RISK INFANT OR TODDLER.—The term 'at-risk infant or toddler' means an individual under 3 years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

''(2) COUNCIL.—The term 'council' means a State interagency coordinating council established under section 641.

''(3) DEVELOPMENTAL DELAY.—The term 'developmental delay', when used with respect to an individual residing in a State, has the meaning given such term by the State under section 635(a)(1).

''(4) EARLY INTERVENTION SERVICES.—The term 'early intervention services' means developmental services that—

''(A) are provided under public supervision;

''(B) are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

''(C) are designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family service plan team, in any 1 or more of the following areas:

''(i) physical development;

''(ii) cognitive development;

''(iii) communication development;

''(iv) social or emotional development; or

''(v) adaptive development;

''(D) meet the standards of the State in which the services are provided, including the requirements of this part;

''(E) include—

''(i) family training, counseling, and home visits;

''(ii) special instruction;

''(iii) speech-language pathology and audiology services, and sign language and cued language services;

''(iv) occupational therapy;

''(v) physical therapy;

''(vi) psychological services;

''(vii) service coordination services;

''(viii) medical services only for diagnostic or evaluation purposes;

''(ix) early identification, screening, and assessment services;

''(x) health services necessary to enable the infant or toddler to benefit from the other early intervention services;

''(xi) social work services;

''(xii) vision services;

''(xiii) assistive technology devices and assistive technology services; and

''(xiv) transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;

''(F) are provided by qualified personnel, including—

''(i) special educators;

''(ii) speech-language pathologists and audiologists;

''(iii) occupational therapists;

''(iv) physical therapists;

''(v) psychologists;

''(vi) social workers;

''(vii) nurses;

''(viii) registered dietitians;

''(ix) family therapists;

''(x) vision specialists, including ophthalmologists and optometrists;

''(xi) orientation and mobility specialists; and

''(xii) pediatricians and other physicians;

''(G) to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

''(H) are provided in conformity with an individualized family service plan adopted in accordance with section 636.

''(5) INFANT OR TODDLER WITH A DISABILITY.—The term 'infant or toddler with a disability'—

''(A) means an individual under 3 years of age who needs early intervention services because the individual—

''(i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in 1 or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or

''(ii) has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; and

''(B) may also include, at a State's discretion—

''(i) at-risk infants and toddlers; and

''(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under State law to enter, kindergarten or elementary school, as appropriate, provided that any programs under this part serving such children shall include—

''(I) an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills; and

''(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.

"SEC. 633. GENERAL AUTHORITY.

''The Secretary shall, in accordance with this part, make grants to States (from their allotments under section 643) to assist each State to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.

"SEC. 634. ELIGIBILITY.

''In order to be eligible for a grant under section 633, a State shall provide assurances to the Secretary that the State—

''(1) has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State; and

''(2) has in effect a statewide system that meets the requirements of section 635.

"SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.

''(a) IN GENERAL.—A statewide system described in section 633 shall include, at a minimum, the following components:

''(1) A rigorous definition of the term 'developmental delay' that will be used by the State in carrying out programs under this part in order to appropriately identify infants and toddlers with disabilities that are in need of services under this part.

''(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research,

to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State and infants and toddlers with disabilities who are homeless children and their families.

''(3) A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the State, and a family-directed identification of the needs of each family of such an infant or toddler, to assist appropriately in the development of the infant or toddler.

''(4) For each infant or toddler with a disability in the State, an individualized family service plan in accordance with section 636, including service coordination services in accordance with such service plan.

''(5) A comprehensive child find system, consistent with part B, including a system for making referrals to service providers that includes timelines and provides for participation by primary referral sources and that ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for services under this part that will reduce the need for future services.

''(6) A public awareness program focusing on early identification of infants and toddlers with disabilities, including the preparation and dissemination by the lead agency designated or established under paragraph (10) to all primary referral sources, especially hospitals and physicians, of information to be given to parents, especially to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications, on the availability of early intervention services under this part and of services under section 619, and procedures for assisting such sources in disseminating such information to parents of infants and toddlers with disabilities.

''(7) A central directory that includes information on early intervention services, resources, and experts available in the State and research and demonstration projects being conducted in the State.

''(8) A comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the State that—

''(A) shall include—

''(i) implementing innovative strategies and activities for the recruitment and retention of early education service providers;

''(ii) promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this part; and

''(iii) training personnel to coordinate transition services for infants and toddlers served under this part from a program providing early intervention services under this part and under part B (other than section 619), to a preschool program receiving funds under section 619, or another appropriate program; and

''(B) may include—

''(i) training personnel to work in rural and inner-city areas; and

''(ii) training personnel in the emotional and social development of young children.

''(9) Policies and procedures relating to the establishment and maintenance of qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including the establishment and maintenance of qualifications that are consistent with any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing early intervention services, except that nothing in this part (including this paragraph) shall be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with State law, regulation, or written policy, to assist in the provision of early intervention services under this part to infants and toddlers with disabilities.

''(10) A single line of responsibility in a lead agency designated or established by the Governor for carrying out—

''(A) the general administration and supervision of programs and activities receiving assistance under section 633, and the monitoring of programs and activities used by the State to carry out this part, whether or not such programs or activities are receiving assistance made available under section 633, to ensure that the State complies with this part;

''(B) the identification and coordination of all available resources within the State from Federal, State, local, and private sources;

''(C) the assignment of financial responsibility in accordance with section 637(a)(2) to the appropriate agencies;

''(D) the development of procedures to ensure that services are provided to infants and toddlers with disabilities and their families under this part in a timely manner pending the resolution of any disputes among public agencies or service providers;

''(E) the resolution of intra- and interagency disputes; and

''(F) the entry into formal interagency agreements that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination.

''(11) A policy pertaining to the contracting or making of other arrangements with service providers to provide early intervention services in the State, consistent with the provisions of this part, including the contents of the application used and the conditions of the contract or other arrangements.

''(12) A procedure for securing timely reimbursements of funds used under this part in accordance with section 640(a).

''(13) Procedural safeguards with respect to programs under this part, as required by section 639.

''(14) A system for compiling data requested by the Secretary under section 618 that relates to this part.

''(15) A State interagency coordinating council that meets the requirements of section 641.

''(16) Policies and procedures to ensure that, consistent with section 636(d)(5)—

''(A) to the maximum extent appropriate, early intervention services are provided in natural environments; and

''(B) the provision of early intervention services for any infant or toddler with a disability occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.

''(b) POLICY.—In implementing subsection (a)(9), a State may adopt a policy that includes making ongoing good-faith efforts to recruit and hire appropriately and adequately trained personnel to provide early intervention services to infants and toddlers with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subsection (a)(9).

''(c) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE UNTIL ENTRANCE INTO ELEMENTARY SCHOOL.—

''(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

''(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure that—

''(A) parents of children with disabilities served pursuant to this subsection are provided annual notice that contains—

''(i) a description of the rights of such parents to elect to receive services pursuant to this subsection or under part B; and

''(ii) an explanation of the differences between services provided pursuant to this subsection and services provided under part B, including—

''(I) types of services and the locations at which the services are provided;

''(II) applicable procedural safeguards; and

''(III) possible costs (including any fees to be charged to families as described in section 632(4)(B)), if any, to parents of infants or toddlers with disabilities;

''(B) services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

''(C) the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

''(D) all early intervention services outlined in the child's individualized family service plan under section 636 are continued while any eligibility determination is being made for services under this subsection;

''(E) the parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants or toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to this subsection for such infants or toddlers;

''(F) the requirements under section 637(a)(9) shall not apply with respect to a child who is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference, not more than 9 months) before the time the child will no longer receive those services; and

''(G) there will be a referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence (as defined in section 320 of the Family Violence Prevention and Services Act).

''(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 637(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part.

''(4) AVAILABLE FUNDS.—If a statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 632(4)(B).

''(5) RULES OF CONSTRUCTION.—

''(A) SERVICES UNDER PART B.—If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child with a

disability who is eligible for services under section 619 shall not be required to provide the child with a free appropriate public education under part B for the period of time in which the child is receiving services under this part.

''(B) SERVICES UNDER THIS PART.—Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

''SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.

''(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—A statewide system described in section 633 shall provide, at a minimum, for each infant or toddler with a disability, and the infant's or toddler's family, to receive—

''(1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;

''(2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and

''(3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.

''(b) PERIODIC REVIEW.—The individualized family service plan shall be evaluated once a year and the family shall be provided a review of the plan at 6-month intervals (or more often where appropriate based on infant or toddler and family needs).

''(c) PROMPTNESS AFTER ASSESSMENT.—The individualized family service plan shall be developed within a reasonable time after the assessment required by subsection (a)(1) is completed. With the parents' consent, early intervention services may commence prior to the completion of the assessment.

''(d) CONTENT OF PLAN.—The individualized family service plan shall be in writing and contain—

''(1) a statement of the infant's or toddler's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;

''(2) a statement of the family's resources, priorities, and concerns relating to enhancing the development of the family's infant or toddler with a disability;

''(3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;

''(4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;

''(5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;

''(6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;

''(7) the identification of the service coordinator from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and

''(8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

''(e) PARENTAL CONSENT.—The contents of the individualized family service plan shall be fully explained to the parents and informed written consent from the parents shall be obtained prior to the provision of early intervention services described in such plan. If the parents do not provide consent with respect to a particular early intervention service, then only the early intervention services to which consent is obtained shall be provided.

''SEC. 637. STATE APPLICATION AND ASSURANCES.

''(a) APPLICATION.—A State desiring to receive a grant under section 633 shall submit an application to the Secretary at such time and in such manner as the Secretary may reasonably require. The application shall contain—

''(1) a designation of the lead agency in the State that will be responsible for the administration of funds provided under section 633;

''(2) a certification to the Secretary that the arrangements to establish financial responsibility for services provided under this part pursuant to section 640(b) are current as of the date of submission of the certification;

''(3) information demonstrating eligibility of the State under section 634, including—

''(A) information demonstrating to the Secretary's satisfaction that the State has in effect the statewide system required by section 633; and

''(B) a description of services to be provided to infants and toddlers with disabilities and their families through the system;

''(4) if the State provides services to at-risk infants and toddlers through the statewide system, a description of such services;

''(5) a description of the uses for which funds will be expended in accordance with this part;

''(6) a description of the State policies and procedures that require the referral for early intervention services under this part of a child under the age of 3 who—

''(A) is involved in a substantiated case of child abuse or neglect; or

''(B) is identified as affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

''(7) a description of the procedure used to ensure that resources are made available under this part for all geographic areas within the State;

''(8) a description of State policies and procedures that ensure that, prior to the adoption by the State of any other policy or procedure necessary to meet the requirements of this part, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of infants and toddlers with disabilities;

''(9) a description of the policies and procedures to be used—

''(A) to ensure a smooth transition for toddlers receiving early intervention services under this part (and children receiving those services under section 635(c)) to preschool, school, other appropriate services, or exiting the program, including a description of how—

''(i) the families of such toddlers and children will be included in the transition plans required by subparagraph (C); and

''(ii) the lead agency designated or established under section 635(a)(10) will—

''(I) notify the local educational agency for the area in which such a child resides that the child will shortly reach the age of eligibility for preschool services under part B, as determined in accordance with State law;

''(II) in the case of a child who may be eligible for such preschool services, with the approval of the family of the child, convene a conference among the lead agency, the family, and the local educational agency not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive; and

''(III) in the case of a child who may not be eligible for such preschool services, with the approval of the family, make reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under part B, to discuss the appropriate services that the child may receive;

''(B) to review the child's program options for the period from the child's third birthday through the remainder of the school year; and

''(C) to establish a transition plan, including, as appropriate, steps to exit from the program;

''(10) a description of State efforts to promote collaboration among Early Head Start programs under section 645A of the Head Start Act, early education and child care programs, and services under part C; and

''(11) such other information and assurances as the Secretary may reasonably require.

''(b) ASSURANCES.—The application described in subsection (a)—

''(1) shall provide satisfactory assurance that Federal funds made available under section 643 to the State will be expended in accordance with this part;

''(2) shall contain an assurance that the State will comply with the requirements of section 640;

''(3) shall provide satisfactory assurance that the control of funds provided under section 643, and title to property derived from those funds, will be in a public agency for the uses and purposes provided in this part and that a public agency will administer such funds and property;

''(4) shall provide for—

''(A) making such reports in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this part; and

''(B) keeping such reports and affording such access to the reports as the Secretary may find necessary to ensure the correctness and verification of those reports and proper disbursement of Federal funds under this part;

''(5) provide satisfactory assurance that Federal funds made available under section 643 to the State—

''(A) will not be commingled with State funds; and

''(B) will be used so as to supplement the level of State and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those State and local funds;

''(6) shall provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid under section 643 to the State;

''(7) shall provide satisfactory assurance that policies and procedures have been adopted to ensure meaningful involvement of underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the State, in the planning and implementation of all the requirements of this part; and

''(8) shall contain such other information and assurances as the Secretary may reasonably require by regulation.

''(c) STANDARD FOR DISAPPROVAL OF APPLICATION.—The Secretary may not disapprove such an application unless the Secretary determines, after notice and opportunity for a hearing, that the application fails to comply with the requirements of this section.

''(d) SUBSEQUENT STATE APPLICATION.—If a State has on file with the Secretary a policy, procedure, or assurance that demonstrates that the State meets a requirement of this section, including any policy or procedure filed under this part (as in effect before the date of enactment of

the Individuals with Disabilities Education Improvement Act of 2004), the Secretary shall consider the State to have met the requirement for purposes of receiving a grant under this part.

''(e) MODIFICATION OF APPLICATION.—An application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State determines necessary. This section shall apply to a modification of an application to the same extent and in the same manner as this section applies to the original application.

''(f) MODIFICATIONS REQUIRED BY THE SECRETARY.—The Secretary may require a State to modify its application under this section, but only to the extent necessary to ensure the State's compliance with this part, if—

''(1) an amendment is made to this title, or a Federal regulation issued under this title;

''(2) a new interpretation of this title is made by a Federal court or the State's highest court; or

''(3) an official finding of noncompliance with Federal law or regulations is made with respect to the State.

"SEC. 638. USES OF FUNDS.

''In addition to using funds provided under section 633 to maintain and implement the statewide system required by such section, a State may use such funds—

''(1) for direct early intervention services for infants and toddlers with disabilities, and their families, under this part that are not otherwise funded through other public or private sources;

''(2) to expand and improve on services for infants and toddlers and their families under this part that are otherwise available;

''(3) to provide a free appropriate public education, in accordance with part B, to children with disabilities from their third birthday to the beginning of the following school year;

''(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and

''(5) in any State that does not provide services for at-risk infants and toddlers under section 637(a)(4), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public or private community-based organizations, services, and personnel for the purposes of—

''(A) identifying and evaluating at-risk infants and toddlers;

''(B) making referrals of the infants and toddlers identified and evaluated under subparagraph (A); and

''(C) conducting periodic follow-up on each such referral to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this part.

"SEC. 639. PROCEDURAL SAFEGUARDS.

''(a) MINIMUM PROCEDURES.—The procedural safeguards required to be included in a statewide system under section 635(a)(13) shall provide, at a minimum, the following:

''(1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

''(2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.

''(3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this part in accordance with State law without jeopardizing other early intervention services under this part.

''(4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.

''(5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.

''(6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.

''(7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.

''(8) The right of parents to use mediation in accordance with section 615, except that—

''(A) any reference in the section to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

''(B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be; and

''(C) any reference in the section to the provision of a free appropriate public education to children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

''(b) SERVICES DURING PENDENCY OF PROCEEDINGS.—During the pendency of any proceeding or action involving a complaint by the parents of an infant or toddler with a disability, unless the State agency and the parents otherwise agree, the infant or toddler shall continue to receive the appropriate early intervention services currently being provided or, if applying for initial services, shall receive the services not in dispute.

"SEC. 640. PAYOR OF LAST RESORT.

''(a) NONSUBSTITUTION.—Funds provided under section 643 may not be used to satisfy a financial commitment for services that would have been paid for from another public or private source, including any medical program administered by the Secretary of Defense, but for the enactment of this part, except that whenever considered necessary to prevent a delay in the receipt of appropriate early intervention services by an infant, toddler, or family in a timely fashion, funds provided under section 643 may be used to pay the provider of services pending reimbursement from the agency that has ultimate responsibility for the payment.

''(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

''(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

''(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

''(i) the provision of, and financial responsibility for, services provided under this part; and

''(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

''(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under section 612(a)(12), where appropriate.

''(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

''(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1), the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

''(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

''(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

''(A) State statute or regulation;

''(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

''(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637.

''(c) REDUCTION OF OTHER BENEFITS.—Nothing in this part shall be construed to permit the State to reduce medical or other assistance available or to alter eligibility under title V of the Social Security Act (relating to maternal and child health) or title XIX of the Social Security Act (relating to medicaid for infants or toddlers with disabilities) within the State.

"SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—A State that desires to receive financial assistance under this part shall establish a State interagency coordinating council.

''(2) APPOINTMENT.—The council shall be appointed by the Governor. In making appointments to the council, the Governor shall ensure that the membership of the council reasonably represents the population of the State.

''(3) CHAIRPERSON.—The Governor shall designate a member of the council to serve as the chairperson of the council, or shall require the council to so designate such a member. Any member of the council who is a representative of the lead agency designated under section 635(a)(10) may not serve as the chairperson of the council.

''(b) COMPOSITION.—

''(1) IN GENERAL.—The council shall be composed as follows:

''(A) PARENTS.—Not less than 20 percent of the members shall be parents of infants or toddlers with disabilities or children with disabilities aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. Not less than 1 such member shall be a parent of an infant or toddler with a disability or a child with a disability aged 6 or younger.

''(B) SERVICE PROVIDERS.—Not less than 20 percent of the members shall be public or private providers of early intervention services.

''(C) STATE LEGISLATURE.—Not less than 1 member shall be from the State legislature.

''(D) PERSONNEL PREPARATION.—Not less than 1 member shall be involved in personnel preparation.

''(E) AGENCY FOR EARLY INTERVENTION SERVICES.—Not less than 1 member shall be from each of the State agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families and shall have sufficient authority to engage in policy planning and implementation on behalf of such agencies.

''(F) AGENCY FOR PRESCHOOL SERVICES.—Not less than 1 member shall be from the State educational agency responsible for preschool services to children with disabilities and shall have sufficient authority to engage in policy planning and implementation on behalf of such agency.

''(G) STATE MEDICAID AGENCY.—Not less than 1 member shall be from the agency responsible for the State medicaid program.

''(H) HEAD START AGENCY.—Not less than 1 member shall be a representative from a Head Start agency or program in the State.

''(I) CHILD CARE AGENCY.—Not less than 1 member shall be a representative from a State agency responsible for child care.

''(J) AGENCY FOR HEALTH INSURANCE.—Not less than 1 member shall be from the agency responsible for the State regulation of health insurance.

''(K) OFFICE OF THE COORDINATOR OF EDUCATION OF HOMELESS CHILDREN AND YOUTH.—Not less than 1 member shall be a representative designated by the Office of Coordinator for Education of Homeless Children and Youths.

''(L) STATE FOSTER CARE REPRESENTATIVE.—Not less than 1 member shall be a representative from the State child welfare agency responsible for foster care.

''(M) MENTAL HEALTH AGENCY.—Not less than 1 member shall be a representative from the State agency responsible for children's mental health.

''(2) OTHER MEMBERS.—The council may include other members selected by the Governor, including a representative from the Bureau of Indian Affairs (BIA), or where there is no BIA-operated or BIA-funded school, from the Indian Health Service or the tribe or tribal council.

''(c) MEETINGS.—The council shall meet, at a minimum, on a quarterly basis, and in such places as the council determines necessary. The meetings shall be publicly announced, and, to the extent appropriate, open and accessible to the general public.

''(d) MANAGEMENT AUTHORITY.—Subject to the approval of the Governor, the council may prepare and approve a budget using funds under this part to conduct hearings and forums, to reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives), to pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business, to hire staff, and to obtain the services of such professional, technical, and clerical personnel as may be necessary to carry out its functions under this part.

''(e) FUNCTIONS OF COUNCIL.—

''(1) DUTIES.—The council shall—

''(A) advise and assist the lead agency designated or established under section 635(a)(10) in the performance of the responsibilities set forth in such section, particularly the identification of the sources of fiscal and other support for services for early intervention programs, assignment of financial responsibility to the appropriate agency, and the promotion of the interagency agreements;

''(B) advise and assist the lead agency in the preparation of applications and amendments thereto;

''(C) advise and assist the State educational agency regarding the transition of toddlers with disabilities to preschool and other appropriate services; and

''(D) prepare and submit an annual report to the Governor and to the Secretary on the status of early intervention programs for infants and toddlers with disabilities and their families operated within the State.

''(2) AUTHORIZED ACTIVITY.—The council may advise and assist the lead agency and the State educational agency regarding the provision of appropriate services for children from birth through age 5. The council may advise appropriate agencies in the State with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the State.

''(f) CONFLICT OF INTEREST.—No member of the council shall cast a vote on any matter that is likely to provide a direct financial benefit to that member or otherwise give the appearance of a conflict of interest under State law.

"SEC. 642. FEDERAL ADMINISTRATION.

''Sections 616, 617, and 618 shall, to the extent not inconsistent with this part, apply to the program authorized by this part, except that—

''(1) any reference in such sections to a State educational agency shall be considered to be a reference to a State's lead agency established or designated under section 635(a)(10);

''(2) any reference in such sections to a local educational agency, educational service agency, or a State agency shall be considered to be a reference to an early intervention service provider under this part; and

''(3) any reference to the education of children with disabilities or the education of all children with disabilities shall be considered to be a reference to the provision of appropriate early intervention services to infants and toddlers with disabilities.

"SEC. 643. ALLOCATION OF FUNDS.

''(a) RESERVATION OF FUNDS FOR OUTLYING AREAS.—

''(1) IN GENERAL.—From the sums appropriated to carry out this part for any fiscal year, the Secretary may reserve not more than 1 percent for payments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands in accordance with their respective needs for assistance under this part.

''(2) CONSOLIDATION OF FUNDS.—The provisions of Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds those areas receive under this part.

''(b) PAYMENTS TO INDIANS.—

''(1) IN GENERAL.—The Secretary shall, subject to this subsection, make payments to the Secretary of the Interior to be distributed to tribes, tribal organizations (as defined under section 4 of the Indian Self-Determination and Education Assistance Act), or consortia of the above entities for the coordination of assistance in the provision of early intervention services by the States to infants and toddlers with disabilities and their families on reservations served by elementary schools and secondary schools for Indian children operated or funded by the Department of the Interior. The amount of such payment for any fiscal year shall be 1.25 percent of the aggregate of the amount available to all States under this part for such fiscal year.

''(2) ALLOCATION.—For each fiscal year, the Secretary of the Interior shall distribute the entire payment received under paragraph (1) by providing to each tribe, tribal organization, or consortium an amount based on the number of infants and toddlers residing on the reservation, as determined annually, divided by the total of such children served by all tribes, tribal organizations, or consortia.

''(3) INFORMATION.—To receive a payment under this subsection, the tribe, tribal organization, or consortium shall submit such information to the Secretary of the Interior as is needed to determine the amounts to be distributed under paragraph (2).

''(4) USE OF FUNDS.—The funds received by a tribe, tribal organization, or consortium shall be used to assist States in child find, screening, and other procedures for the early identification of Indian children under 3 years of age and for parent training. Such funds may also be used to provide early intervention services in accordance with this part. Such activities may be carried out directly or through contracts or cooperative agreements with the Bureau of Indian Affairs, local educational agencies, and other public or private nonprofit organizations. The tribe, tribal organization, or consortium is encouraged to involve Indian parents in the development and implementation of these activities. The above entities shall, as appropriate, make referrals to local, State, or Federal entities for the provision of services or further diagnosis.

''(5) REPORTS.—To be eligible to receive a payment under paragraph (2), a tribe, tribal organization, or consortium shall make a biennial report to the Secretary of the Interior of activities undertaken under this subsection, including the number of contracts and cooperative agreements entered into, the number of infants and toddlers contacted and receiving services for each year, and the estimated number of infants and toddlers needing services during the 2 years following the year in which the report is made. The Secretary of the Interior shall include a summary of this information on a biennial basis to the Secretary of Education along with such other information as required under section 611(h)(3)(E). The Secretary of Education may require any additional information from the Secretary of the Interior.

''(6) PROHIBITED USES OF FUNDS.—None of the funds under this subsection may be used by the Secretary of the Interior for administrative purposes, including child count, and the provision of technical assistance.

''(c) STATE ALLOTMENTS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), from the funds remaining for each fiscal year after the reservation and payments under subsections (a), (b), and (e), the Secretary shall first allot to each State an amount that bears the same ratio to the amount of such remainder as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States.

''(2) MINIMUM ALLOTMENTS.—Except as provided in paragraph (3), no State shall receive an amount under this section for any fiscal year that is less than the greater of—

''(A) ½ of 1 percent of the remaining amount described in paragraph (1); or

''(B) $500,000.

''(3) RATABLE REDUCTION.—

''(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allotments to such States for such year.

''(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allotments that were reduced under subparagraph (A) shall be increased on the same basis the allotments were reduced.

''(4) DEFINITIONS.—In this subsection—

''(A) the terms 'infants' and 'toddlers' mean children under 3 years of age; and

''(B) the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

''(d) REALLOTMENT OF FUNDS.—If a State elects not to receive its allotment under subsection (c), the Secretary shall reallot, among the remaining States, amounts from such State in accordance with such subsection.

''(e) RESERVATION FOR STATE INCENTIVE GRANTS.—

''(1) IN GENERAL.—For any fiscal year for which the amount appropriated pursuant to the authorization of appropriations under section 644 exceeds $460,000,000, the Secretary shall reserve 15 percent of such appropriated amount to provide grants to States that are carrying out the policy described in section 635(c) in order to facilitate the implementation of such policy.

''(2) AMOUNT OF GRANT.—

''(A) IN GENERAL.—Notwithstanding paragraphs (2) and (3) of subsection (c), the Secretary shall provide a grant to each State under paragraph (1) in an amount that bears the same ratio to the amount reserved under such paragraph as the number of infants and toddlers in the State bears to the number of infants and toddlers in all States receiving grants under such paragraph.

''(B) MAXIMUM AMOUNT.—No State shall receive a grant under paragraph (1) for any fiscal year in an amount that is greater than 20 percent of the amount reserved under such paragraph for the fiscal year.

''(3) CARRYOVER OF AMOUNTS.—

''(A) 1ST SUCCEEDING FISCAL YEAR.—Pursuant to section 421(b) of the General Education Provisions Act, amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the first fiscal year succeeding the fiscal year for which such amounts were appropriated shall remain available for obligation and expenditure during such first succeeding fiscal year.

''(B) 2D SUCCEEDING FISCAL YEAR.—Amounts under a grant provided under paragraph (1) that are not obligated and expended prior to the beginning of the second fiscal year succeeding the fiscal year for which such amounts were appropriated shall be returned to the Secretary and used to make grants to States under section 633 (from their allotments under this section) during such second succeeding fiscal year.

"SEC. 644. AUTHORIZATION OF APPROPRIATIONS.

''For the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2010.

"PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

"SEC. 650. FINDINGS.

''Congress finds the following:

''(1) The Federal Government has an ongoing obligation to support activities that contribute to positive results for children with disabilities, enabling those children to lead productive and independent adult lives.

''(2) Systemic change benefiting all students, including children with disabilities, requires the involvement of States, local educational agencies, parents, individuals with disabilities and their families, teachers and other service providers, and other interested individuals and organizations to develop and implement comprehensive strategies that improve educational results for children with disabilities.

''(3) State educational agencies, in partnership with local educational agencies, parents of children with disabilities, and other individuals and organizations, are in the best position to improve education for children with disabilities and to address their special needs.

''(4) An effective educational system serving students with disabilities should—

''(A) maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system, and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals;

''(B) clearly define, in objective, measurable terms, the school and post-school results that children with disabilities are expected to achieve; and

''(C) promote transition services and coordinate State and local education, social, health, mental health, and other services, in addressing the full range of student needs, particularly the needs of children with disabilities who need significant levels of support to participate and learn in school and the community.

''(5) The availability of an adequate number of qualified personnel is critical—

''(A) to serve effectively children with disabilities;

''(B) to assume leadership positions in administration and direct services;

''(C) to provide teacher training; and

''(D) to conduct high quality research to improve special education.

''(6) High quality, comprehensive professional development programs are essential to ensure that the persons responsible for the education or transition of children with disabilities possess the skills and knowledge necessary to address the educational and related needs of those children.

''(7) Models of professional development should be scientifically based and reflect successful practices, including strategies for recruiting, preparing, and retaining personnel.

''(8) Continued support is essential for the development and maintenance of a coordinated and high quality program of research to inform successful teaching practices and model curricula for educating children with disabilities.

''(9) Training, technical assistance, support, and dissemination activities are necessary to ensure that parts B and C are fully implemented and achieve high quality early intervention, educational, and transitional results for children with disabilities and their families.

''(10) Parents, teachers, administrators, and related services personnel need technical assistance and information in a timely, coordinated, and accessible manner in order to improve early intervention, educational, and transitional services and results at the State and local levels for children with disabilities and their families.

''(11) Parent training and information activities assist parents of a child with a disability in dealing with the multiple pressures of parenting such a child and are of particular importance in—

''(A) playing a vital role in creating and preserving constructive relationships between parents of children with disabilities and schools by facilitating open communication between the parents and schools; encouraging dispute resolution at the earliest possible point in time; and discouraging the escalation of an adversarial process between the parents and schools;

''(B) ensuring the involvement of parents in planning and decisionmaking with respect to early intervention, educational, and transitional services;

''(C) achieving high quality early intervention, educational, and transitional results for children with disabilities;

''(D) providing such parents information on their rights, protections, and responsibilities under this title to ensure improved early intervention, educational, and transitional results for children with disabilities;

''(E) assisting such parents in the development of skills to participate effectively in the education and development of their children and in the transitions described in section 673(b)(6);

''(F) supporting the roles of such parents as participants within partnerships seeking to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and

''(G) supporting such parents who may have limited access to services and supports, due to economic, cultural, or linguistic barriers.

''(12) Support is needed to improve technological resources and integrate technology, including universally designed technologies, into the lives of children with disabilities, parents of children with disabilities, school personnel, and others through curricula, services, and assistive technologies.

"Subpart 1—State Personnel Development Grants

"SEC. 651. PURPOSE; DEFINITION OF PERSONNEL; PROGRAM AUTHORITY.

''(a) PURPOSE.—The purpose of this subpart is to assist State educational agencies in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transition services in order to improve results for children with disabilities.

''(b) DEFINITION OF PERSONNEL.—In this subpart the term 'personnel' means special education teachers, regular education teachers, principals, administrators, related services personnel, paraprofessionals, and early intervention personnel serving infants, toddlers, preschoolers, or children with disabilities, except where a particular category of personnel, such as related services personnel, is identified.

''(c) COMPETITIVE GRANTS.—

''(1) IN GENERAL.—Except as provided in subsection (d), for any fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is less than $100,000,000, the Secretary shall award grants, on a competitive basis, to State educational agencies to carry out the activities described in the State plan submitted under section 653.

''(2) PRIORITY.—In awarding grants under paragraph (1), the Secretary may give priority to State educational agencies that—

''(A) are in States with the greatest personnel shortages; or

''(B) demonstrate the greatest difficulty meeting the requirements of section 612(a)(14).

''(3) MINIMUM AMOUNT.—The Secretary shall make a grant to each State educational agency selected under paragraph (1) in an amount for each fiscal year that is—

''(A) not less than $500,000, nor more than $4,000,000, in the case of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

''(B) not less than $80,000 in the case of an outlying area.

''(4) INCREASE IN AMOUNT.—The Secretary may increase the amounts of grants under paragraph (4) to account for inflation.

''(5) FACTORS.—The Secretary shall determine the amount of a grant under paragraph (1) after considering—

''(A) the amount of funds available for making the grants;

''(B) the relative population of the State or outlying area;

''(C) the types of activities proposed by the State or outlying area;

''(D) the alignment of proposed activities with section 612(a)(14);

''(E) the alignment of proposed activities with the State plans and applications submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965; and

''(F) the use, as appropriate, of scientifically based research activities.

''(d) FORMULA GRANTS.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), for the first fiscal year for which the amount appropriated under section 655, that remains after the Secretary reserves funds under subsection (e) for the fiscal year, is equal to or greater than $100,000,000, and for each fiscal year thereafter, the Secretary shall allot to each State educational agency, whose

application meets the requirements of this subpart, an amount that bears the same relation to the amount remaining as the amount the State received under section 611(d) for that fiscal year bears to the amount of funds received by all States (whose applications meet the requirements of this subpart) under section 611(d) for that fiscal year.

''(2) MINIMUM ALLOTMENTS FOR STATES THAT RECEIVED COMPETITIVE GRANTS.—

''(A) IN GENERAL.—The amount allotted under this subsection to any State educational agency that received a competitive multi-year grant under subsection (c) for which the grant period has not expired shall be not less than the amount specified for that fiscal year in the State educational agency's grant award document under that subsection.

''(B) SPECIAL RULE.—Each such State educational agency shall use the minimum amount described in subparagraph (A) for the activities described in the State educational agency's competitive grant award document for that year, unless the Secretary approves a request from the State educational agency to spend the funds on other activities.

''(3) MINIMUM ALLOTMENT.—The amount of any State educational agency's allotment under this subsection for any fiscal year shall not be less than—

''(A) the greater of $500,000 or ½ of 1 percent of the total amount available under this subsection for that year, in the case of each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico; and

''(B) $80,000, in the case of an outlying area.

''(4) DIRECT BENEFIT.—In using grant funds allotted under paragraph (1), a State educational agency shall, through grants, contracts, or cooperative agreements, undertake activities that significantly and directly benefit the local educational agencies in the State.

''(e) CONTINUATION AWARDS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this subpart, from funds appropriated under section 655 for each fiscal year, the Secretary shall reserve the amount that is necessary to make a continuation award to any State educational agency (at the request of the State educational agency) that received a multi-year award under this part (as this part was in effect on the day before the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004), to enable the State educational agency to carry out activities in accordance with the terms of the multi-year award.

''(2) PROHIBITION.—A State educational agency that receives a continuation award under paragraph (1) for any fiscal year may not receive any other award under this subpart for that fiscal year.

"SEC. 652. ELIGIBILITY AND COLLABORATIVE PROCESS.

''(a) ELIGIBLE APPLICANTS.—A State educational agency may apply for a grant under this subpart for a grant period of not less than 1 year and not more than 5 years.

''(b) PARTNERS.—

''(1) IN GENERAL.—In order to be considered for a grant under this subpart, a State educational agency shall establish a partnership with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including—

''(A) not less than 1 institution of higher education; and

''(B) the State agencies responsible for administering part C, early education, child care, and vocational rehabilitation programs.

''(2) OTHER PARTNERS.—In order to be considered for a grant under this subpart, a State educational agency shall work in partnership with other persons and organizations involved in, and concerned with, the education of children with disabilities, which may include—

''(A) the Governor;

''(B) parents of children with disabilities ages birth through 26;

''(C) parents of nondisabled children ages birth through 26;

''(D) individuals with disabilities;

''(E) parent training and information centers or community parent resource centers funded under sections 671 and 672, respectively;

''(F) community based and other nonprofit organizations involved in the education and employment of individuals with disabilities;

''(G) personnel as defined in section 651(b);

''(H) the State advisory panel established under part B;

''(I) the State interagency coordinating council established under part C;

''(J) individuals knowledgeable about vocational education;

''(K) the State agency for higher education;

''(L) public agencies with jurisdiction in the areas of health, mental health, social services, and juvenile justice;

''(M) other providers of professional development that work with infants, toddlers, preschoolers, and children with disabilities; and

''(N) other individuals.

''(3) REQUIRED PARTNER.—If State law assigns responsibility for teacher preparation and certification to an individual, entity, or agency other than the State educational agency, the State educational agency shall—

''(A) include that individual, entity, or agency as a partner in the partnership under this subsection; and

''(B) ensure that any activities the State educational agency will carry out under this subpart that are within that partner's jurisdiction (which may include activities described in section 654(b)) are carried out by that partner.

"SEC. 653. APPLICATIONS.

''(a) IN GENERAL.—

''(1) SUBMISSION.—A State educational agency that desires to receive a grant under this subpart shall submit to the Secretary an application at such time, in such manner, and including such information as the Secretary may require.

''(2) STATE PLAN.—The application shall include a plan that identifies and addresses the State and local needs for the personnel preparation and professional development of personnel, as well as individuals who provide direct supplementary aids and services to children with disabilities, and that—

''(A) is designed to enable the State to meet the requirements of section 612(a)(14) and section 635(a) (8) and (9);

''(B) is based on an assessment of State and local needs that identifies critical aspects and areas in need of improvement related to the preparation, ongoing training, and professional development of personnel who serve infants, toddlers, preschoolers, and children with disabilities within the State, including—

''(i) current and anticipated personnel vacancies and shortages; and

''(ii) the number of preservice and inservice programs; and

''(C) is integrated and aligned, to the maximum extent possible, with State plans and activities under the Elementary and Secondary Education Act of 1965, the Rehabilitation Act of 1973, and the Higher Education Act of 1965.

''(3) REQUIREMENT.—The State application shall contain an assurance that the State educational agency will carry out each of the strategies described in subsection (b)(4).

''(b) ELEMENTS OF STATE PERSONNEL DEVELOPMENT PLAN.—Each State personnel development plan under subsection (a)(2) shall—

''(1) describe a partnership agreement that is in effect for the period of the grant, which agreement shall specify—

''(A) the nature and extent of the partnership described in section 652(b) and the respective roles of each member of the partnership, including the partner described in section 652(b)(3) if applicable; and

''(B) how the State educational agency will work with other persons and organizations involved in, and concerned with, the education of children with disabilities, including the respective roles of each of the persons and organizations;

''(2) describe how the strategies and activities described in paragraph (4) will be coordinated with activities supported with other public resources (including part B and part C funds retained for use at the State level for personnel and professional development purposes) and private resources;

''(3) describe how the State educational agency will align its personnel development plan under this subpart with the plan and application submitted under sections 1111 and 2112, respectively, of the Elementary and Secondary Education Act of 1965;

''(4) describe those strategies the State educational agency will use to address the professional development and personnel needs identified under subsection (a)(2) and how such strategies will be implemented, including—

''(A) a description of the programs and activities to be supported under this subpart that will provide personnel with the knowledge and skills to meet the needs of, and improve the performance and achievement of, infants, toddlers, preschoolers, and children with disabilities; and

''(B) how such strategies will be integrated, to the maximum extent possible, with other activities supported by grants funded under section 662;

''(5) provide an assurance that the State educational agency will provide technical assistance to local educational agencies to improve the quality of professional development available to meet the needs of personnel who serve children with disabilities;

''(6) provide an assurance that the State educational agency will provide technical assistance to entities that provide services to infants and toddlers with disabilities to improve the quality of professional development available to meet the needs of personnel serving such children;

''(7) describe how the State educational agency will recruit and retain highly qualified teachers and other qualified personnel in geographic areas of greatest need;

''(8) describe the steps the State educational agency will take to ensure that poor and minority children are not taught at higher rates by teachers who are not highly qualified; and

''(9) describe how the State educational agency will assess, on a regular basis, the extent to which the strategies implemented under this subpart have been effective in meeting the performance goals described in section 612(a)(15).

''(c) PEER REVIEW.—

''(1) IN GENERAL.—The Secretary shall use a panel of experts who are competent, by virtue of their training, expertise, or experience, to evaluate applications for grants under section 651(c)(1).

''(2) COMPOSITION OF PANEL.—A majority of a panel described in paragraph (1) shall be composed of individuals who are not employees of the Federal Government.

''(3) PAYMENT OF FEES AND EXPENSES OF CERTAIN MEMBERS.—The Secretary may use available funds appropriated to carry out this subpart to pay the expenses and fees of panel members who are not employees of the Federal Government.

''(d) REPORTING PROCEDURES.—Each State educational agency that receives a grant under this subpart shall submit annual performance reports to the Secretary. The reports shall—

''(1) describe the progress of the State educational agency in implementing its plan;

''(2) analyze the effectiveness of the State educational agency's activities under this subpart and of the State educational agency's strategies for meeting its goals under section 612(a)(15); and

''(3) identify changes in the strategies used by the State educational agency and described in

subsection (b)(4), if any, to improve the State educational agency's performance.

"SEC. 654. USE OF FUNDS.

''(a) PROFESSIONAL DEVELOPMENT ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

''(1) Carrying out programs that provide support to both special education and regular education teachers of children with disabilities and principals, such as programs that—

''(A) provide teacher mentoring, team teaching, reduced class schedules and case loads, and intensive professional development;

''(B) use standards or assessments for guiding beginning teachers that are consistent with challenging State student academic achievement and functional standards and with the requirements for professional development, as defined in section 9101 of the Elementary and Secondary Education Act of 1965; and

''(C) encourage collaborative and consultative models of providing early intervention, special education, and related services.

''(2) Encouraging and supporting the training of special education and regular education teachers and administrators to effectively use and integrate technology—

''(A) into curricula and instruction, including training to improve the ability to collect, manage, and analyze data to improve teaching, decisionmaking, school improvement efforts, and accountability;

''(B) to enhance learning by children with disabilities; and

''(C) to effectively communicate with parents.

''(3) Providing professional development activities that—

''(A) improve the knowledge of special education and regular education teachers concerning—

''(i) the academic and developmental or functional needs of students with disabilities; or

''(ii) effective instructional strategies, methods, and skills, and the use of State academic content standards and student academic achievement and functional standards, and State assessments, to improve teaching practices and student academic achievement;

''(B) improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices, and that—

''(i) provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient;

''(ii) involve collaborative groups of teachers, administrators, and, in appropriate cases, related services personnel;

''(iii) provide training in methods of—

''(I) positive behavioral interventions and supports to improve student behavior in the classroom;

''(II) scientifically based reading instruction, including early literacy instruction;

''(III) early and appropriate interventions to identify and help children with disabilities;

''(IV) effective instruction for children with low incidence disabilities;

''(V) successful transitioning to postsecondary opportunities; and

''(VI) using classroom-based techniques to assist children prior to referral for special education;

''(iv) provide training to enable personnel to work with and involve parents in their child's education, including parents of low income and limited English proficient children with disabilities;

''(v) provide training for special education personnel and regular education personnel in planning, developing, and implementing effective and appropriate IEPs; and

''(vi) provide training to meet the needs of students with significant health, mobility, or behavioral needs prior to serving such students;

''(C) train administrators, principals, and other relevant school personnel in conducting effective IEP meetings; and

''(D) train early intervention, preschool, and related services providers, and other relevant school personnel, in conducting effective individualized family service plan (IFSP) meetings.

''(4) Developing and implementing initiatives to promote the recruitment and retention of highly qualified special education teachers, particularly initiatives that have been proven effective in recruiting and retaining highly qualified teachers, including programs that provide—

''(A) teacher mentoring from exemplary special education teachers, principals, or superintendents;

''(B) induction and support for special education teachers during their first 3 years of employment as teachers; or

''(C) incentives, including financial incentives, to retain special education teachers who have a record of success in helping students with disabilities.

''(5) Carrying out programs and activities that are designed to improve the quality of personnel who serve children with disabilities, such as—

''(A) innovative professional development programs (which may be provided through partnerships that include institutions of higher education), including programs that train teachers and principals to integrate technology into curricula and instruction to improve teaching, learning, and technology literacy, which professional development shall be consistent with the definition of professional development in section 9101 of the Elementary and Secondary Education Act of 1965; and

''(B) the development and use of proven, cost effective strategies for the implementation of professional development activities, such as through the use of technology and distance learning.

''(6) Carrying out programs and activities that are designed to improve the quality of early intervention personnel, including paraprofessionals and primary referral sources, such as—

''(A) professional development programs to improve the delivery of early intervention services;

''(B) initiatives to promote the recruitment and retention of early intervention personnel; and

''(C) interagency activities to ensure that early intervention personnel are adequately prepared and trained.

''(b) OTHER ACTIVITIES.—A State educational agency that receives a grant under this subpart shall use the grant funds to support activities in accordance with the State's plan described in section 653, including 1 or more of the following:

''(1) Reforming special education and regular education teacher certification (including recertification) or licensing requirements to ensure that—

''(A) special education and regular education teachers have—

''(i) the training and information necessary to address the full range of needs of children with disabilities across disability categories; and

''(ii) the necessary subject matter knowledge and teaching skills in the academic subjects that the teachers teach;

''(B) special education and regular education teacher certification (including recertification) or licensing requirements are aligned with challenging State academic content standards; and

''(C) special education and regular education teachers have the subject matter knowledge and teaching skills, including technology literacy, necessary to help students with disabilities meet challenging State student academic achievement and functional standards.

''(2) Programs that establish, expand, or improve alternative routes for State certification of special education teachers for highly qualified individuals with a baccalaureate or master's degree, including mid-career professionals from other occupations, paraprofessionals, and recent college or university graduates with records of academic distinction who demonstrate the potential to become highly effective special education teachers.

''(3) Teacher advancement initiatives for special education teachers that promote professional growth and emphasize multiple career paths (such as paths to becoming a career teacher, mentor teacher, or exemplary teacher) and pay differentiation.

''(4) Developing and implementing mechanisms to assist local educational agencies and schools in effectively recruiting and retaining highly qualified special education teachers.

''(5) Reforming tenure systems, implementing teacher testing for subject matter knowledge, and implementing teacher testing for State certification or licensing, consistent with title II of the Higher Education Act of 1965.

''(6) Funding projects to promote reciprocity of teacher certification or licensing between or among States for special education teachers, except that no reciprocity agreement developed under this paragraph or developed using funds provided under this subpart may lead to the weakening of any State teaching certification or licensing requirement.

''(7) Assisting local educational agencies to serve children with disabilities through the development and use of proven, innovative strategies to deliver intensive professional development programs that are both cost effective and easily accessible, such as strategies that involve delivery through the use of technology, peer networks, and distance learning.

''(8) Developing, or assisting local educational agencies in developing, merit based performance systems, and strategies that provide differential and bonus pay for special education teachers.

''(9) Supporting activities that ensure that teachers are able to use challenging State academic content standards and student academic achievement and functional standards, and State assessments for all children with disabilities, to improve instructional practices and improve the academic achievement of children with disabilities.

''(10) When applicable, coordinating with, and expanding centers established under, section 2113(c)(18) of the Elementary and Secondary Education Act of 1965 to benefit special education teachers.

''(c) CONTRACTS AND SUBGRANTS.—A State educational agency that receives a grant under this subpart—

''(1) shall award contracts or subgrants to local educational agencies, institutions of higher education, parent training and information centers, or community parent resource centers, as appropriate, to carry out its State plan under this subpart; and

''(2) may award contracts and subgrants to other public and private entities, including the lead agency under part C, to carry out the State plan.

''(d) USE OF FUNDS FOR PROFESSIONAL DEVELOPMENT.—A State educational agency that receives a grant under this subpart shall use—

''(1) not less than 90 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (a); and

''(2) not more than 10 percent of the funds the State educational agency receives under the grant for any fiscal year for activities under subsection (b).

''(e) GRANTS TO OUTLYING AREAS.—Public Law 95–134, permitting the consolidation of grants to the outlying areas, shall not apply to funds received under this subpart.

"SEC. 655. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2005 through 2010.

"Subpart 2—Personnel Preparation, Technical Assistance, Model Demonstration Projects, and Dissemination of Information

"SEC. 661. PURPOSE; DEFINITION OF ELIGIBLE ENTITY.

''(a) PURPOSE.—The purpose of this subpart is—

''(1) to provide Federal funding for personnel preparation, technical assistance, model demonstration projects, information dissemination, and studies and evaluations, in order to improve early intervention, educational, and transitional results for children with disabilities; and

''(2) to assist State educational agencies and local educational agencies in improving their education systems for children with disabilities.

''(b) DEFINITION OF ELIGIBLE ENTITY.—

''(1) IN GENERAL.—In this subpart, the term 'eligible entity' means—

''(A) a State educational agency;

''(B) a local educational agency;

''(C) a public charter school that is a local educational agency under State law;

''(D) an institution of higher education;

''(E) a public agency not described in subparagraphs (A) through (D);

''(F) a private nonprofit organization;

''(G) an outlying area;

''(H) an Indian tribe or a tribal organization (as defined under section 4 of the Indian Self-Determination and Education Assistance Act); or

''(I) a for-profit organization, if the Secretary finds it appropriate in light of the purposes of a particular competition for a grant, contract, or cooperative agreement under this subpart.

''(2) SPECIAL RULE.—The Secretary may limit which eligible entities described in paragraph (1) are eligible for a grant, contract, or cooperative agreement under this subpart to 1 or more of the categories of eligible entities described in paragraph (1).

"SEC. 662. PERSONNEL DEVELOPMENT TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES.

''(a) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, or enter into contracts or cooperative agreements with, eligible entities to carry out 1 or more of the following objectives:

''(1) To help address the needs identified in the State plan described in section 653(a)(2) for highly qualified personnel, as defined in section 651(b), to work with infants or toddlers with disabilities, or children with disabilities, consistent with the qualifications described in section 612(a)(14).

''(2) To ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined, through scientifically based research, to be successful in serving those children.

''(3) To encourage increased focus on academics and core content areas in special education personnel preparation programs.

''(4) To ensure that regular education teachers have the necessary skills and knowledge to provide instruction to students with disabilities in the regular education classroom.

''(5) To ensure that all special education teachers are highly qualified.

''(6) To ensure that preservice and in-service personnel preparation programs include training in—

''(A) the use of new technologies;

''(B) the area of early intervention, educational, and transition services;

''(C) effectively involving parents; and

''(D) positive behavioral supports.

''(7) To provide high-quality professional development for principals, superintendents, and other administrators, including training in—

''(A) instructional leadership;

''(B) behavioral supports in the school and classroom;

''(C) paperwork reduction;

''(D) promoting improved collaboration between special education and general education teachers;

''(E) assessment and accountability;

''(F) ensuring effective learning environments; and

''(G) fostering positive relationships with parents.

''(b) PERSONNEL DEVELOPMENT; ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities—

''(A) for personnel development, including activities for the preparation of personnel who will serve children with high incidence and low incidence disabilities, to prepare special education and general education teachers, principals, administrators, and related services personnel (and school board members, when appropriate) to meet the diverse and individualized instructional needs of children with disabilities and improve early intervention, educational, and transitional services and results for children with disabilities, consistent with the objectives described in subsection (a); and

''(B) for enhanced support for beginning special educators, consistent with the objectives described in subsection (a).

''(2) PERSONNEL DEVELOPMENT.—In carrying out paragraph (1)(A), the Secretary shall support not less than 1 of the following activities:

''(A) Assisting effective existing, improving existing, or developing new, collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities that incorporate best practices and scientifically based research, where applicable, in providing special education and general education teachers, principals, administrators, and related services personnel with the knowledge and skills to effectively support students with disabilities, including—

''(i) working collaboratively in regular classroom settings;

''(ii) using appropriate supports, accommodations, and curriculum modifications;

''(iii) implementing effective teaching strategies, classroom-based techniques, and interventions to ensure appropriate identification of students who may be eligible for special education services, and to prevent the misidentification, inappropriate overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children;

''(iv) effectively working with and involving parents in the education of their children;

''(v) utilizing strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom;

''(vi) effectively constructing IEPs, participating in IEP meetings, and implementing IEPs;

''(vii) preparing children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate, and to ensure that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965; and

''(viii) working in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

''(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers to reduce teacher shortages, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

''(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities.

''(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

''(E) In the case of principals and superintendents, providing activities to promote instructional leadership and improved collaboration between general educators, special education teachers, and related services personnel.

''(F) Supporting institutions of higher education with minority enrollments of not less than 25 percent for the purpose of preparing personnel to work with children with disabilities.

''(G) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

''(H) Providing continuous personnel preparation, training, and professional development designed to provide support and improve the qualifications of personnel who provide related services to children with disabilities, including to enable such personnel to obtain advanced degrees.

''(3) ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—In carrying out paragraph (1)(B), the Secretary shall support not less than 1 of the following activities:

''(A) Enhancing and restructuring existing programs or developing preservice teacher education programs to prepare special education teachers, at colleges or departments of education within institutions of higher education, by incorporating an extended (such as an additional 5th year) clinical learning opportunity, field experience, or supervised practicum into such programs.

''(B) Creating or supporting teacher-faculty partnerships (such as professional development schools) that—

''(i) consist of not less than—

''(I) 1 or more institutions of higher education with special education personnel preparation programs;

''(II) 1 or more local educational agencies that serve high numbers or percentages of low-income students; or

''(III) 1 or more elementary schools or secondary schools, particularly schools that have failed to make adequate yearly progress on the basis, in whole and in part, of the assessment results of the disaggregated subgroup of students with disabilities;

''(ii) may include other entities eligible for assistance under this part; and

''(iii) provide—

''(I) high-quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

''(II) inservice professional development to beginning and veteran special education teachers through the ongoing exchange of information and instructional strategies with faculty.

''(c) LOW INCIDENCE DISABILITIES; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), that benefit children with low incidence disabilities.

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

''(A) Preparing persons who—

''(i) have prior training in educational and other related service fields; and

''(ii) are studying to obtain degrees, certificates, or licensure that will enable the persons to assist children with low incidence disabilities to achieve the objectives set out in their individualized education programs described in section 614(d), or to assist infants and toddlers with low incidence disabilities to achieve the outcomes

described in their individualized family service plans described in section 636.

''(B) Providing personnel from various disciplines with interdisciplinary training that will contribute to improvement in early intervention, educational, and transitional results for children with low incidence disabilities.

''(C) Preparing personnel in the innovative uses and application of technology, including universally designed technologies, assistive technology devices, and assistive technology services—

''(i) to enhance learning by children with low incidence disabilities through early intervention, educational, and transitional services; and

''(ii) to improve communication with parents.

''(D) Preparing personnel who provide services to visually impaired or blind children to teach and use Braille in the provision of services to such children.

''(E) Preparing personnel to be qualified educational interpreters, to assist children with low incidence disabilities, particularly deaf and hard of hearing children in school and school related activities, and deaf and hard of hearing infants and toddlers and preschool children in early intervention and preschool programs.

''(F) Preparing personnel who provide services to children with significant cognitive disabilities and children with multiple disabilities.

''(G) Preparing personnel who provide services to children with low incidence disabilities and limited English proficient children.

''(3) DEFINITION.—In this section, the term 'low incidence disability' means—

''(A) a visual or hearing impairment, or simultaneous visual and hearing impairments;

''(B) a significant cognitive impairment; or

''(C) any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

''(4) SELECTION OF RECIPIENTS.—In selecting eligible entities for assistance under this subsection, the Secretary may give preference to eligible entities submitting applications that include 1 or more of the following:

''(A) A proposal to prepare personnel in more than 1 low incidence disability, such as deafness and blindness.

''(B) A demonstration of an effective collaboration between an eligible entity and a local educational agency that promotes recruitment and subsequent retention of highly qualified personnel to serve children with low incidence disabilities.

''(5) PREPARATION IN USE OF BRAILLE.—The Secretary shall ensure that all recipients of awards under this subsection who will use that assistance to prepare personnel to provide services to visually impaired or blind children that can appropriately be provided in Braille, will prepare those individuals to provide those services in Braille.

''(d) LEADERSHIP PREPARATION; AUTHORIZED ACTIVITIES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support leadership preparation activities that are consistent with the objectives described in subsection (a).

''(2) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this subsection include activities such as the following:

''(A) Preparing personnel at the graduate, doctoral, and postdoctoral levels of training to administer, enhance, or provide services to improve results for children with disabilities.

''(B) Providing interdisciplinary training for various types of leadership personnel, including teacher preparation faculty, related services faculty, administrators, researchers, supervisors, principals, and other persons whose work affects early intervention, educational, and transitional services for children with disabilities, including children with disabilities who are limited English proficient children.

''(e) APPLICATIONS.—

''(1) IN GENERAL.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(2) IDENTIFIED STATE NEEDS.—

''(A) REQUIREMENT TO ADDRESS IDENTIFIED NEEDS.—An application for assistance under subsection (b), (c), or (d) shall include information demonstrating to the satisfaction of the Secretary that the activities described in the application will address needs identified by the State or States the eligible entity proposes to serve.

''(B) COOPERATION WITH STATE EDUCATIONAL AGENCIES.—An eligible entity that is not a local educational agency or a State educational agency shall include in the eligible entity's application information demonstrating to the satisfaction of the Secretary that the eligible entity and 1 or more State educational agencies or local educational agencies will cooperate in carrying out and monitoring the proposed project.

''(3) ACCEPTANCE BY STATES OF PERSONNEL PREPARATION REQUIREMENTS.—The Secretary may require eligible entities to provide in the eligible entities' applications assurances from 1 or more States that such States intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards or other requirements in State law or regulation for serving children with disabilities or serving infants and toddlers with disabilities.

''(f) SELECTION OF RECIPIENTS.—

''(1) IMPACT OF PROJECT.—In selecting eligible entities for assistance under this section, the Secretary shall consider the impact of the proposed project described in the application in meeting the need for personnel identified by the States.

''(2) REQUIREMENT FOR ELIGIBLE ENTITIES TO MEET STATE AND PROFESSIONAL QUALIFICATIONS.—The Secretary shall make grants and enter into contracts and cooperative agreements under this section only to eligible entities that meet State and professionally recognized qualifications for the preparation of special education and related services personnel, if the purpose of the project is to assist personnel in obtaining degrees.

''(3) PREFERENCES.—In selecting eligible entities for assistance under this section, the Secretary may give preference to eligible entities that are institutions of higher education that are—

''(A) educating regular education personnel to meet the needs of children with disabilities in integrated settings;

''(B) educating special education personnel to work in collaboration with regular educators in integrated settings; and

''(C) successfully recruiting and preparing individuals with disabilities and individuals from groups that are underrepresented in the profession for which the institution of higher education is preparing individuals.

''(g) SCHOLARSHIPS.—The Secretary may include funds for scholarships, with necessary stipends and allowances, in awards under subsections (b), (c), and (d).

''(h) SERVICE OBLIGATION.—

''(1) IN GENERAL.—Each application for assistance under subsections (b), (c), and (d) shall include an assurance that the eligible entity will ensure that individuals who receive a scholarship under the proposed project agree to subsequently provide special education and related services to children with disabilities, or in the case of leadership personnel to subsequently work in the appropriate field, for a period of 2 years for every year for which the scholarship was received or repay all or part of the amount of the scholarship, in accordance with regulations issued by the Secretary.

''(2) SPECIAL RULE.—Notwithstanding paragraph (1), the Secretary may reduce or waive the service obligation requirement under paragraph (1) if the Secretary determines that the service obligation is acting as a deterrent to the recruitment of students into special education or a related field.

''(3) SECRETARY'S RESPONSIBILITY.—The Secretary—

''(A) shall ensure that individuals described in paragraph (1) comply with the requirements of that paragraph; and

''(B) may use not more than 0.5 percent of the funds appropriated under subsection (i) for each fiscal year, to carry out subparagraph (A), in addition to any other funds that are available for that purpose.

''(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of the fiscal years 2005 through 2010.

"SEC. 663. TECHNICAL ASSISTANCE, DEMONSTRATION PROJECTS, DISSEMINATION OF INFORMATION, AND IMPLEMENTATION OF SCIENTIFICALLY BASED RESEARCH.

''(a) IN GENERAL.—The Secretary shall make competitive grants to, or enter into contracts or cooperative agreements with, eligible entities to provide technical assistance, support model demonstration projects, disseminate useful information, and implement activities that are supported by scientifically based research.

''(b) REQUIRED ACTIVITIES.—Funds received under this section shall be used to support activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through—

''(1) implementing effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services;

''(2) improving the alignment, compatibility, and development of valid and reliable assessments and alternate assessments for assessing adequate yearly progress, as described under section 1111(b)(2)(B) of the Elementary and Secondary Education Act of 1965;

''(3) providing training for both regular education teachers and special education teachers to address the needs of students with different learning styles;

''(4) disseminating information about innovative, effective, and efficient curricula designs, instructional approaches, and strategies, and identifying positive academic and social learning opportunities, that—

''(A) provide effective transitions between educational settings or from school to post school settings; and

''(B) improve educational and transitional results at all levels of the educational system in which the activities are carried out and, in particular, that improve the progress of children with disabilities, as measured by assessments within the general education curriculum involved; and

''(5) applying scientifically based findings to facilitate systemic changes, related to the provision of services to children with disabilities, in policy, procedure, practice, and the training and use of personnel.

''(c) AUTHORIZED ACTIVITIES.—Activities that may be carried out under this section include activities to improve services provided under this title, including the practices of professionals and others involved in providing such services to children with disabilities, that promote academic achievement and improve results for children with disabilities through—

''(1) applying and testing research findings in typical settings where children with disabilities

receive services to determine the usefulness, effectiveness, and general applicability of such research findings in such areas as improving instructional methods, curricula, and tools, such as textbooks and media;

''(2) supporting and promoting the coordination of early intervention and educational services for children with disabilities with services provided by health, rehabilitation, and social service agencies;

''(3) promoting improved alignment and compatibility of general and special education reforms concerned with curricular and instructional reform, and evaluation of such reforms;

''(4) enabling professionals, parents of children with disabilities, and other persons to learn about, and implement, the findings of scientifically based research, and successful practices developed in model demonstration projects, relating to the provision of services to children with disabilities;

''(5) conducting outreach, and disseminating information, relating to successful approaches to overcoming systemic barriers to the effective and efficient delivery of early intervention, educational, and transitional services to personnel who provide services to children with disabilities;

''(6) assisting States and local educational agencies with the process of planning systemic changes that will promote improved early intervention, educational, and transitional results for children with disabilities;

''(7) promoting change through a multistate or regional framework that benefits States, local educational agencies, and other participants in partnerships that are in the process of achieving systemic-change outcomes;

''(8) focusing on the needs and issues that are specific to a population of children with disabilities, such as providing single-State and multi-State technical assistance and in-service training—

''(A) to schools and agencies serving deaf-blind children and their families;

''(B) to programs and agencies serving other groups of children with low incidence disabilities and their families;

''(C) addressing the postsecondary education needs of individuals who are deaf or hard-of-hearing; and

''(D) to schools and personnel providing special education and related services for children with autism spectrum disorders;

''(9) demonstrating models of personnel preparation to ensure appropriate placements and services for all students and to reduce disproportionality in eligibility, placement, and disciplinary actions for minority and limited English proficient children; and

''(10) disseminating information on how to reduce inappropriate racial and ethnic disproportionalities identified under section 618.

''(d) BALANCE AMONG ACTIVITIES AND AGE RANGES.—In carrying out this section, the Secretary shall ensure that there is an appropriate balance across all age ranges of children with disabilities.

''(e) LINKING STATES TO INFORMATION SOURCES.—In carrying out this section, the Secretary shall support projects that link States to technical assistance resources, including special education and general education resources, and shall make research and related products available through libraries, electronic networks, parent training projects, and other information sources, including through the activities of the National Center for Education Evaluation and Regional Assistance established under part D of the Education Sciences Reform Act of 2002.

''(f) APPLICATIONS.—

''(1) IN GENERAL.—An eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(2) STANDARDS.—To the maximum extent feasible, each eligible entity shall demonstrate that the project described in the eligible entity's application is supported by scientifically valid research that has been carried out in accordance with the standards for the conduct and evaluation of all relevant research and development established by the National Center for Education Research.

''(3) PRIORITY.—As appropriate, the Secretary shall give priority to applications that propose to serve teachers and school personnel directly in the school environment.

"SEC. 664. STUDIES AND EVALUATIONS.

''(a) STUDIES AND EVALUATIONS.—

''(1) DELEGATION.—The Secretary shall delegate to the Director of the Institute of Education Sciences responsibility to carry out this section, other than subsections (d) and (f).

''(2) ASSESSMENT.—The Secretary shall, directly or through grants, contracts, or cooperative agreements awarded to eligible entities on a competitive basis, assess the progress in the implementation of this title, including the effectiveness of State and local efforts to provide—

''(A) a free appropriate public education to children with disabilities; and

''(B) early intervention services to infants and toddlers with disabilities, and infants and toddlers who would be at risk of having substantial developmental delays if early intervention services were not provided to the infants and toddlers.

''(b) ASSESSMENT OF NATIONAL ACTIVITIES.—

''(1) IN GENERAL.—The Secretary shall carry out a national assessment of activities carried out with Federal funds under this title in order—

''(A) to determine the effectiveness of this title in achieving the purposes of this title;

''(B) to provide timely information to the President, Congress, the States, local educational agencies, and the public on how to implement this title more effectively; and

''(C) to provide the President and Congress with information that will be useful in developing legislation to achieve the purposes of this title more effectively.

''(2) SCOPE OF ASSESSMENT.—The national assessment shall assess activities supported under this title, including—

''(A) the implementation of programs assisted under this title and the impact of such programs on addressing the developmental needs of, and improving the academic achievement of, children with disabilities to enable the children to reach challenging developmental goals and challenging State academic content standards based on State academic assessments;

''(B) the types of programs and services that have demonstrated the greatest likelihood of helping students reach the challenging State academic content standards and developmental goals;

''(C) the implementation of the professional development activities assisted under this title and the impact on instruction, student academic achievement, and teacher qualifications to enhance the ability of special education teachers and regular education teachers to improve results for children with disabilities; and

''(D) the effectiveness of schools, local educational agencies, States, other recipients of assistance under this title, and the Secretary in achieving the purposes of this title by—

''(i) improving the academic achievement of children with disabilities and their performance on regular statewide assessments as compared to nondisabled children, and the performance of children with disabilities on alternate assessments;

''(ii) improving the participation of children with disabilities in the general education curriculum;

''(iii) improving the transitions of children with disabilities at natural transition points;

''(iv) placing and serving children with disabilities, including minority children, in the least restrictive environment appropriate;

''(v) preventing children with disabilities, especially children with emotional disturbances and specific learning disabilities, from dropping out of school;

''(vi) addressing the reading and literacy needs of children with disabilities;

''(vii) reducing the inappropriate overidentification of children, especially minority and limited English proficient children, as having a disability;

''(viii) improving the participation of parents of children with disabilities in the education of their children; and

''(ix) resolving disagreements between education personnel and parents through alternate dispute resolution activities, including mediation.

''(3) INTERIM AND FINAL REPORTS.—The Secretary shall submit to the President and Congress—

''(A) an interim report that summarizes the preliminary findings of the assessment not later than 3 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004; and

''(B) a final report of the findings of the assessment not later than 5 years after the date of enactment of such Act.

''(c) STUDY ON ENSURING ACCOUNTABILITY FOR STUDENTS WHO ARE HELD TO ALTERNATIVE ACHIEVEMENT STANDARDS.—The Secretary shall carry out a national study or studies to examine—

''(1) the criteria that States use to determine—

''(A) eligibility for alternate assessments; and

''(B) the number and type of children who take those assessments and are held accountable to alternative achievement standards;

''(2) the validity and reliability of alternate assessment instruments and procedures;

''(3) the alignment of alternate assessments and alternative achievement standards to State academic content standards in reading, mathematics, and science; and

''(4) the use and effectiveness of alternate assessments in appropriately measuring student progress and outcomes specific to individualized instructional need.

''(d) ANNUAL REPORT.—The Secretary shall provide an annual report to Congress that—

''(1) summarizes the research conducted under part E of the Education Sciences Reform Act of 2002;

''(2) analyzes and summarizes the data reported by the States and the Secretary of the Interior under section 618;

''(3) summarizes the studies and evaluations conducted under this section and the timeline for their completion;

''(4) describes the extent and progress of the assessment of national activities; and

''(5) describes the findings and determinations resulting from reviews of State implementation of this title.

''(e) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support objective studies, evaluations, and assessments, including studies that—

''(1) analyze measurable impact, outcomes, and results achieved by State educational agencies and local educational agencies through their activities to reform policies, procedures, and practices designed to improve educational and transitional services and results for children with disabilities;

''(2) analyze State and local needs for professional development, parent training, and other appropriate activities that can reduce the need for disciplinary actions involving children with disabilities;

''(3) assess educational and transitional services and results for children with disabilities from minority backgrounds, including—

''(A) data on—

''(i) the number of minority children who are referred for special education evaluation;

''(ii) the number of minority children who are receiving special education and related services

and their educational or other service placement;

''(iii) the number of minority children who graduated from secondary programs with a regular diploma in the standard number of years; and

''(iv) the number of minority children who drop out of the educational system; and

''(B) the performance of children with disabilities from minority backgrounds on State assessments and other performance indicators established for all students;

''(4) measure educational and transitional services and results for children with disabilities served under this title, including longitudinal studies that—

''(A) examine educational and transitional services and results for children with disabilities who are 3 through 17 years of age and are receiving special education and related services under this title, using a national, representative sample of distinct age cohorts and disability categories; and

''(B) examine educational results, transition services, postsecondary placement, and employment status for individuals with disabilities, 18 through 21 years of age, who are receiving or have received special education and related services under this title; and

''(5) identify and report on the placement of children with disabilities by disability category.

''(f) STUDY.—The Secretary shall study, and report to Congress regarding, the extent to which States adopt policies described in section 635(c)(1) and on the effects of those policies.

"SEC. 665. INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, BEHAVIORAL SUPPORTS, AND SYSTEMIC SCHOOL INTERVENTIONS.

''(a) PROGRAM AUTHORIZED.—The Secretary may award grants, and enter into contracts and cooperative agreements, to support safe learning environments that support academic achievement for all students by—

''(1) improving the quality of interim alternative educational settings; and

''(2) providing increased behavioral supports and research-based, systemic interventions in schools.

''(b) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support activities to—

''(1) establish, expand, or increase the scope of behavioral supports and systemic interventions by providing for effective, research-based practices, including—

''(A) training for school staff on early identification, prereferral, and referral procedures;

''(B) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

''(C) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

''(D) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

''(E) stronger linkages between school-based services and community-based resources, such as community mental health and primary care providers; or

''(F) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

''(2) improve interim alternative educational settings by—

''(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers) in behavioral supports and interventions;

''(B) attracting and retaining a high quality, diverse staff;

''(C) providing for referral to counseling services;

''(D) utilizing research-based interventions, curriculum, and practices;

''(E) allowing students to use instructional technology that provides individualized instruction;

''(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

''(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

''(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

''(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

''(c) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term ''eligible entity'' means—

''(1) a local educational agency; or

''(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

''(A) Another local educational agency.

''(B) A community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed.

''(C) An institution of higher education.

''(D) A community mental health provider.

''(E) An educational service agency.

''(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall—

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

''(2) involve parents of participating students in the design and implementation of the activities funded under this section.

''(e) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this section shall prepare and submit annually to the Secretary a report on the outcomes of the activities assisted under the grant.

"SEC. 667. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to carry out this subpart (other than section 662) such sums as may be necessary for each of the fiscal years 2005 through 2010.

''(b) RESERVATION.—From amounts appropriated under subsection (a) for fiscal year 2005, the Secretary shall reserve $1,000,000 to carry out the study authorized in section 664(c). From amounts appropriated under subsection (a) for a succeeding fiscal year, the Secretary may reserve an additional amount to carry out such study if the Secretary determines the additional amount is necessary.

"Subpart 3—Supports To Improve Results for Children With Disabilities

"SEC. 670. PURPOSES.

''The purposes of this subpart are to ensure that—

''(1) children with disabilities and their parents receive training and information designed to assist the children in meeting developmental and functional goals and challenging academic achievement goals, and in preparing to lead productive independent adult lives;

''(2) children with disabilities and their parents receive training and information on their rights, responsibilities, and protections under this title, in order to develop the skills necessary to cooperatively and effectively participate in planning and decision making relating to early intervention, educational, and transitional services;

''(3) parents, teachers, administrators, early intervention personnel, related services personnel, and transition personnel receive coordinated and accessible technical assistance and information to assist such personnel in improving early intervention, educational, and transitional services and results for children with disabilities and their families; and

''(4) appropriate technology and media are researched, developed, and demonstrated, to improve and implement early intervention, educational, and transitional services and results for children with disabilities and their families.

"SEC. 671. PARENT TRAINING AND INFORMATION CENTERS.

''(a) PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, parent organizations to support parent training and information centers to carry out activities under this section.

''(2) DEFINITION OF PARENT ORGANIZATION.—In this section, the term 'parent organization' means a private nonprofit organization (other than an institution of higher education) that—

''(A) has a board of directors—

''(i) the majority of whom are parents of children with disabilities ages birth through 26;

''(ii) that includes—

''(I) individuals working in the fields of special education, related services, and early intervention; and

''(II) individuals with disabilities; and

''(iii) the parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

''(B) has as its mission serving families of children with disabilities who—

''(i) are ages birth through 26; and

''(ii) have the full range of disabilities described in section 602(3).

''(b) REQUIRED ACTIVITIES.—Each parent training and information center that receives assistance under this section shall—

''(1) provide training and information that meets the needs of parents of children with disabilities living in the area served by the center, particularly underserved parents and parents of children who may be inappropriately identified, to enable their children with disabilities to—

''(A) meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

''(B) be prepared to lead productive independent adult lives, to the maximum extent possible;

''(2) serve the parents of infants, toddlers, and children with the full range of disabilities described in section 602(3);

''(3) ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

''(4) assist parents to—

''(A) better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

''(B) communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

''(C) participate in decisionmaking processes and the development of individualized education programs under part B and individualized family service plans under part C;

''(D) obtain appropriate information about the range, type, and quality of—

''(i) options, programs, services, technologies, practices and interventions based on scientifically based research, to the extent practicable; and

''(ii) resources available to assist children with disabilities and their families in school and at home;

''(E) understand the provisions of this title for the education of, and the provision of early intervention services to, children with disabilities;

''(F) participate in activities at the school level that benefit their children; and

''(G) participate in school reform activities;

''(5) in States where the State elects to contract with the parent training and information center, contract with State educational agencies to provide, consistent with subparagraphs (B) and (D) of section 615(e)(2), individuals who meet with parents to explain the mediation process to the parents;

''(6) assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e);

''(7) assist parents and students with disabilities to understand their rights and responsibilities under this title, including those under section 615(m) upon the student's reaching the age of majority (as appropriate under State law);

''(8) assist parents to understand the availability of, and how to effectively use, procedural safeguards under this title, including the resolution session described in section 615(e);

''(9) assist parents in understanding, preparing for, and participating in, the process described in section 615(f)(1)(B);

''(10) establish cooperative partnerships with community parent resource centers funded under section 672;

''(11) network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3); and

''(12) annually report to the Secretary on—

''(A) the number and demographics of parents to whom the center provided information and training in the most recently concluded fiscal year;

''(B) the effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

''(C) the number of parents served who have resolved disputes through alternative methods of dispute resolution.

''(c) OPTIONAL ACTIVITIES.—A parent training and information center that receives assistance under this section may provide information to teachers and other professionals to assist the teachers and professionals in improving results for children with disabilities.

''(d) APPLICATION REQUIREMENTS.—Each application for assistance under this section shall identify with specificity the special efforts that the parent organization will undertake—

''(1) to ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

''(2) to work with community based organizations, including community based organizations that work with low-income parents and parents of limited English proficient children.

''(e) DISTRIBUTION OF FUNDS.—

''(1) IN GENERAL.—The Secretary shall—

''(A) make not less than 1 award to a parent organization in each State for a parent training and information center that is designated as the statewide parent training and information center; or

''(B) in the case of a large State, make awards to multiple parent training and information centers, but only if the centers demonstrate that coordinated services and supports will occur among the multiple centers.

''(2) SELECTION REQUIREMENT.—The Secretary shall select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to parents, including parents in urban and rural areas, in the State.

''(f) QUARTERLY REVIEW.—

''(1) MEETINGS.—The board of directors of each parent organization that receives an award under this section shall meet not less than once in each calendar quarter to review the activities for which the award was made.

''(2) CONTINUATION AWARD.—When a parent organization requests a continuation award under this section, the board of directors shall submit to the Secretary a written review of the parent training and information program conducted by the parent organization during the preceding fiscal year.

"SEC. 672. COMMUNITY PARENT RESOURCE CENTERS.

''(a) PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary may award grants to, and enter into contracts and cooperative agreements with, local parent organizations to support community parent resource centers that will help ensure that underserved parents of children with disabilities, including low income parents, parents of limited English proficient children, and parents with disabilities, have the training and information the parents need to enable the parents to participate effectively in helping their children with disabilities—

''(A) to meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

''(B) to be prepared to lead productive independent adult lives, to the maximum extent possible.

''(2) DEFINITION OF LOCAL PARENT ORGANIZATION.—In this section, the term 'local parent organization' means a parent organization, as defined in section 671(a)(2), that—

''(A) has a board of directors the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served; and

''(B) has as its mission serving parents of children with disabilities who—

''(i) are ages birth through 26; and

''(ii) have the full range of disabilities described in section 602(3).

''(b) REQUIRED ACTIVITIES.—Each community parent resource center assisted under this section shall—

''(1) provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the grant, contract, or cooperative agreement;

''(2) carry out the activities required of parent training and information centers under paragraphs (2) through (9) of section 671(b);

''(3) establish cooperative partnerships with the parent training and information centers funded under section 671; and

''(4) be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

"SEC. 673. TECHNICAL ASSISTANCE FOR PARENT TRAINING AND INFORMATION CENTERS.

''(a) PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary may, directly or through awards to eligible entities, provide technical assistance for developing, assisting, and coordinating parent training and information programs carried out by parent training and information centers receiving assistance under section 671 and community parent resource centers receiving assistance under section 672.

''(2) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' has the meaning given the term in section 661(b).

''(b) AUTHORIZED ACTIVITIES.—The Secretary may provide technical assistance to a parent training and information center or a community parent resource center under this section in areas such as—

''(1) effective coordination of parent training efforts;

''(2) dissemination of scientifically based research and information;

''(3) promotion of the use of technology, including assistive technology devices and assistive technology services;

''(4) reaching underserved populations, including parents of low-income and limited English proficient children with disabilities;

''(5) including children with disabilities in general education programs;

''(6) facilitation of transitions from—

''(A) early intervention services to preschool;

''(B) preschool to elementary school;

''(C) elementary school to secondary school; and

''(D) secondary school to postsecondary environments; and

''(7) promotion of alternative methods of dispute resolution, including mediation.

''(c) COLLABORATION WITH THE RESOURCE CENTERS.—Each eligible entity receiving an award under subsection (a) shall develop collaborative agreements with the geographically appropriate regional resource center and, as appropriate, the regional educational laboratory supported under section 174 of the Education Sciences Reform Act of 2002, to further parent and professional collaboration.

"SEC. 674. TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND UTILIZATION; MEDIA SERVICES; AND INSTRUCTIONAL MATERIALS.

''(a) PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Secretary, on a competitive basis, shall award grants to, and enter into contracts and cooperative agreements with, eligible entities to support activities described in subsections (b) and (c).

''(2) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' has the meaning given the term in section 661(b).

''(b) TECHNOLOGY DEVELOPMENT, DEMONSTRATION, AND USE.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities to promote the development, demonstration, and use of technology.

''(2) AUTHORIZED ACTIVITIES.—The following activities may be carried out under this subsection:

''(A) Conducting research on and promoting the demonstration and use of innovative, emerging, and universally designed technologies for children with disabilities, by improving the transfer of technology from research and development to practice.

''(B) Supporting research, development, and dissemination of technology with universal design features, so that the technology is accessible to the broadest range of individuals with disabilities without further modification or adaptation.

''(C) Demonstrating the use of systems to provide parents and teachers with information and training concerning early diagnosis of, intervention for, and effective teaching strategies for, young children with reading disabilities.

''(D) Supporting the use of Internet-based communications for students with cognitive disabilities in order to maximize their academic and functional skills.

''(c) EDUCATIONAL MEDIA SERVICES.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall support—

''(A) educational media activities that are designed to be of educational value in the classroom setting to children with disabilities;

''(B) providing video description, open captioning, or closed captioning, that is appropriate for use in the classroom setting, of—

''(i) television programs;

''(ii) videos;

''(iii) other materials, including programs and materials associated with new and emerging

technologies, such as CDs, DVDs, video streaming, and other forms of multimedia; or

''(iv) news (but only until September 30, 2006);

''(C) distributing materials described in subparagraphs (A) and (B) through such mechanisms as a loan service; and

''(D) providing free educational materials, including textbooks, in accessible media for visually impaired and print disabled students in elementary schools and secondary schools.

''(2) LIMITATION.—The video description, open captioning, or closed captioning described in paragraph (1)(B) shall be provided only when the description or captioning has not been previously provided by the producer or distributor, or has not been fully funded by other sources.

''(d) APPLICATIONS.—

''(1) IN GENERAL.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under subsection (b) or (c) shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(2) SPECIAL RULE.—For the purpose of an application for an award to carry out activities described in subsection (c)(1)(D), such eligible entity shall—

''(A) be a national, nonprofit entity with a proven track record of meeting the needs of students with print disabilities through services described in subsection (c)(1)(D);

''(B) have the capacity to produce, maintain, and distribute in a timely fashion, up-to-date textbooks in digital audio formats to qualified students; and

''(C) have a demonstrated ability to significantly leverage Federal funds through other public and private contributions, as well as through the expansive use of volunteers.

''(e) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

''(1) IN GENERAL.—The Secretary shall establish and support, through the American Printing House for the Blind, a center to be known as the 'National Instructional Materials Access Center' not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

''(2) DUTIES.—The duties of the National Instructional Materials Access Center are the following:

''(A) To receive and maintain a catalog of print instructional materials prepared in the National Instructional Materials Accessibility Standard, as established by the Secretary, made available to such center by the textbook publishing industry, State educational agencies, and local educational agencies.

''(B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe.

''(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under sections 612(a)(23) and 613(a)(6).

''(3) DEFINITIONS.—In this subsection:

''(A) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term 'blind or other persons with print disabilities' means children served under this Act and who may qualify in accordance with the Act entitled 'An Act to provide books for the adult blind', approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

''(B) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'National Instructional Materials Accessibility Standard' means the standard established by the Secretary to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

''(C) PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

''(D) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the term in section 121(d)(3) of title 17, United States Code.

''(4) APPLICABILITY.—This subsection shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard was published in the Federal Register.

''(5) LIABILITY OF THE SECRETARY.—Nothing in this subsection shall be construed to establish a private right of action against the Secretary for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the duties of such center, or to otherwise authorize a private right of action related to the performance by such center, including through the application of the rights of children and parents established under this Act.

''(6) INAPPLICABILITY.—Subsections (a) through (d) shall not apply to this subsection.

"SEC. 675. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out this subpart such sums as may be necessary for each of the fiscal years 2005 through 2010.

"Subpart 4—General Provisions

"SEC. 681. COMPREHENSIVE PLAN FOR SUBPARTS 2 AND 3.

''(a) COMPREHENSIVE PLAN.—

''(1) IN GENERAL.—After receiving input from interested individuals with relevant expertise, the Secretary shall develop and implement a comprehensive plan for activities carried out under subparts 2 and 3 in order to enhance the provision of early intervention services, educational services, related services, and transitional services to children with disabilities under parts B and C. To the extent practicable, the plan shall be coordinated with the plan developed pursuant to section 178(c) of the Education Sciences Reform Act of 2002 and shall include mechanisms to address early intervention, educational, related service and transitional needs identified by State educational agencies in applications submitted for State personnel development grants under subpart 1 and for grants under subparts 2 and 3.

''(2) PUBLIC COMMENT.—The Secretary shall provide a public comment period of not less than 45 days on the plan.

''(3) DISTRIBUTION OF FUNDS.—In implementing the plan, the Secretary shall, to the extent appropriate, ensure that funds awarded under subparts 2 and 3 are used to carry out activities that benefit, directly or indirectly, children with the full range of disabilities and of all ages.

''(4) REPORTS TO CONGRESS.—The Secretary shall annually report to Congress on the Secretary's activities under subparts 2 and 3, including an initial report not later than 12 months after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004.

''(b) ASSISTANCE AUTHORIZED.—The Secretary is authorized to award grants to, or enter into contracts or cooperative agreements with, eligible entities to enable the eligible entities to carry out the purposes of such subparts in accordance with the comprehensive plan described in subsection (a).

''(c) SPECIAL POPULATIONS.—

''(1) APPLICATION REQUIREMENT.—In making an award of a grant, contract, or cooperative agreement under subpart 2 or 3, the Secretary shall, as appropriate, require an eligible entity to demonstrate how the eligible entity will address the needs of children with disabilities from minority backgrounds.

''(2) REQUIRED OUTREACH AND TECHNICAL ASSISTANCE.—Notwithstanding any other provision of this title, the Secretary shall reserve not less than 2 percent of the total amount of funds appropriated to carry out subparts 2 and 3 for either or both of the following activities:

''(A) Providing outreach and technical assistance to historically Black colleges and universities, and to institutions of higher education with minority enrollments of not less than 25 percent, to promote the participation of such colleges, universities, and institutions in activities under this subpart.

''(B) Enabling historically Black colleges and universities, and the institutions described in subparagraph (A), to assist other colleges, universities, institutions, and agencies in improving educational and transitional results for children with disabilities, if the historically Black colleges and universities and the institutions of higher education described in subparagraph (A) meet the criteria established by the Secretary under this subpart.

''(d) PRIORITIES.—The Secretary, in making an award of a grant, contract, or cooperative agreement under subpart 2 or 3, may, without regard to the rulemaking procedures under section 553 of title 5, United States Code, limit competitions to, or otherwise give priority to—

''(1) projects that address 1 or more—

''(A) age ranges;

''(B) disabilities;

''(C) school grades;

''(D) types of educational placements or early intervention environments;

''(E) types of services;

''(F) content areas, such as reading; or

''(G) effective strategies for helping children with disabilities learn appropriate behavior in the school and other community based educational settings;

''(2) projects that address the needs of children based on the severity or incidence of their disability;

''(3) projects that address the needs of—

''(A) low achieving students;

''(B) underserved populations;

''(C) children from low income families;

''(D) limited English proficient children;

''(E) unserved and underserved areas;

''(F) rural or urban areas;

''(G) children whose behavior interferes with their learning and socialization;

''(H) children with reading difficulties;

''(I) children in public charter schools;

''(J) children who are gifted and talented; or

''(K) children with disabilities served by local educational agencies that receive payments under title VIII of the Elementary and Secondary Education Act of 1965;

''(4) projects to reduce inappropriate identification of children as children with disabilities, particularly among minority children;

''(5) projects that are carried out in particular areas of the country, to ensure broad geographic coverage;

''(6) projects that promote the development and use of technologies with universal design, assistive technology devices, and assistive technology services to maximize children with disabilities' access to and participation in the general education curriculum; and

''(7) any activity that is authorized in subpart 2 or 3.

''(e) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—No State or local educational agency, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under subpart 2 or 3 that relates exclusively to programs, projects, and activities pertaining to children aged 3 through 5, inclusive, unless the State is eligible to receive a grant under section 619(b).

"SEC. 682. ADMINISTRATIVE PROVISIONS.

''(a) APPLICANT AND RECIPIENT RESPONSIBILITIES.—

''(1) DEVELOPMENT AND ASSESSMENT OF PROJECTS.—The Secretary shall require that an

applicant for, and a recipient of, a grant, contract, or cooperative agreement for a project under subpart 2 or 3—

''(A) involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the project; and

''(B) where appropriate, determine whether the project has any potential for replication and adoption by other entities.

''(2) ADDITIONAL RESPONSIBILITIES.—The Secretary may require a recipient of a grant, contract, or cooperative agreement under subpart 2 or 3 to—

''(A) share in the cost of the project;

''(B) prepare any findings and products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities;

''(C) disseminate such findings and products; and

''(D) collaborate with other such recipients in carrying out subparagraphs (B) and (C).

''(b) APPLICATION MANAGEMENT.—

''(1) STANDING PANEL.—

''(A) IN GENERAL.—The Secretary shall establish and use a standing panel of experts who are qualified, by virtue of their training, expertise, or experience, to evaluate each application under subpart 2 or 3 that requests more than $75,000 per year in Federal financial assistance.

''(B) MEMBERSHIP.—The standing panel shall include, at a minimum—

''(i) individuals who are representatives of institutions of higher education that plan, develop, and carry out high quality programs of personnel preparation;

''(ii) individuals who design and carry out scientifically based research targeted to the improvement of special education programs and services;

''(iii) individuals who have recognized experience and knowledge necessary to integrate and apply scientifically based research findings to improve educational and transitional results for children with disabilities;

''(iv) individuals who administer programs at the State or local level in which children with disabilities participate;

''(v) individuals who prepare parents of children with disabilities to participate in making decisions about the education of their children;

''(vi) individuals who establish policies that affect the delivery of services to children with disabilities;

''(vii) individuals who are parents of children with disabilities ages birth through 26 who are benefiting, or have benefited, from coordinated research, personnel preparation, and technical assistance; and

''(viii) individuals with disabilities.

''(C) TERM.—No individual shall serve on the standing panel for more than 3 consecutive years.

''(2) PEER-REVIEW PANELS FOR PARTICULAR COMPETITIONS.—

''(A) COMPOSITION.—The Secretary shall ensure that each subpanel selected from the standing panel that reviews an application under subpart 2 or 3 includes—

''(i) individuals with knowledge and expertise on the issues addressed by the activities described in the application; and

''(ii) to the extent practicable, parents of children with disabilities ages birth through 26, individuals with disabilities, and persons from diverse backgrounds.

''(B) FEDERAL EMPLOYMENT LIMITATION.—A majority of the individuals on each subpanel that reviews an application under subpart 2 or 3 shall be individuals who are not employees of the Federal Government.

''(3) USE OF DISCRETIONARY FUNDS FOR ADMINISTRATIVE PURPOSES.—

''(A) EXPENSES AND FEES OF NON-FEDERAL PANEL MEMBERS.—The Secretary may use funds available under subpart 2 or 3 to pay the expenses and fees of the panel members who are not officers or employees of the Federal Government.

''(B) ADMINISTRATIVE SUPPORT.—The Secretary may use not more than 1 percent of the funds appropriated to carry out subpart 2 or 3 to pay non-Federal entities for administrative support related to management of applications submitted under subpart 2 or 3, respectively.

''(c) PROGRAM EVALUATION.—The Secretary may use funds made available to carry out subpart 2 or 3 to evaluate activities carried out under subpart 2 or 3, respectively.

''(d) MINIMUM FUNDING REQUIRED.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall ensure that, for each fiscal year, not less than the following amounts are provided under subparts 2 and 3 to address the following needs:

''(A) $12,832,000 to address the educational, related services, transitional, and early intervention needs of children with deaf-blindness.

''(B) $4,000,000 to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness.

''(C) $4,000,000 to address the educational, related services, and transitional needs of children with an emotional disturbance and those who are at risk of developing an emotional disturbance.

''(2) RATABLE REDUCTION.—If the sum of the amount appropriated to carry out subparts 2 and 3, and part E of the Education Sciences Reform Act of 2002 for any fiscal year is less than $130,000,000, the amounts listed in paragraph (1) shall be ratably reduced for the fiscal year.''.

TITLE II—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

SEC. 201. NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.

(a) AMENDMENT.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(1) by redesignating part E as part F; and

(2) by inserting after part D the following:

''PART E—NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH

''SEC. 175. ESTABLISHMENT.

''(a) ESTABLISHMENT.—There is established in the Institute a National Center for Special Education Research (in this part referred to as the 'Special Education Research Center').

''(b) MISSION.—The mission of the Special Education Research Center is—

''(1) to sponsor research to expand knowledge and understanding of the needs of infants, toddlers, and children with disabilities in order to improve the developmental, educational, and transitional results of such individuals;

''(2) to sponsor research to improve services provided under, and support the implementation of, the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.); and

''(3) to evaluate the implementation and effectiveness of the Individuals with Disabilities Education Act in coordination with the National Center for Education Evaluation and Regional Assistance.

''(c) APPLICABILITY OF EDUCATION SCIENCES REFORM ACT OF 2002.—Parts A and F, and the standards for peer review of applications and for the conduct and evaluation of research under sections 133(a) and 134, respectively, shall apply to the Secretary, the Director, and the Commissioner in carrying out this part.

''SEC. 176. COMMISSIONER FOR SPECIAL EDUCATION RESEARCH.

''The Special Education Research Center shall be headed by a Commissioner for Special Education Research (in this part referred to as the 'Special Education Research Commissioner') who shall have substantial knowledge of the Special Education Research Center's activities, including a high level of expertise in the fields of research, research management, and the education of children with disabilities.

''SEC. 177. DUTIES.

''(a) GENERAL DUTIES.—The Special Education Research Center shall carry out research activities under this part consistent with the mission described in section 175(b), such as activities that—

''(1) improve services provided under the Individuals with Disabilities Education Act in order to improve—

''(A) academic achievement, functional outcomes, and educational results for children with disabilities; and

''(B) developmental outcomes for infants or toddlers with disabilities;

''(2) identify scientifically based educational practices that support learning and improve academic achievement, functional outcomes, and educational results for all students with disabilities;

''(3) examine the special needs of preschool aged children, infants, and toddlers with disabilities, including factors that may result in developmental delays;

''(4) identify scientifically based related services and interventions that promote participation and progress in the general education curriculum and general education settings;

''(5) improve the alignment, compatibility, and development of valid and reliable assessments, including alternate assessments, as required by section 1111(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b));

''(6) examine State content standards and alternate assessments for students with significant cognitive impairment in terms of academic achievement, individualized instructional need, appropriate education settings, and improved post-school results;

''(7) examine the educational, developmental, and transitional needs of children with high incidence and low incidence disabilities;

''(8) examine the extent to which overidentification and underidentification of children with disabilities occurs, and the causes thereof;

''(9) improve reading and literacy skills of children with disabilities;

''(10) examine and improve secondary and postsecondary education and transitional outcomes and results for children with disabilities;

''(11) examine methods of early intervention for children with disabilities, including children with multiple or complex developmental delays;

''(12) examine and incorporate universal design concepts in the development of standards, assessments, curricula, and instructional methods to improve educational and transitional results for children with disabilities;

''(13) improve the preparation of personnel, including early intervention personnel, who provide educational and related services to children with disabilities to increase the academic achievement and functional performance of students with disabilities;

''(14) examine the excess costs of educating a child with a disability and expenses associated with high cost special education and related services;

''(15) help parents improve educational results for their children, particularly related to transition issues;

''(16) address the unique needs of children with significant cognitive disabilities; and

''(17) examine the special needs of limited English proficient children with disabilities.

''(b) STANDARDS.—The Special Education Research Commissioner shall ensure that activities assisted under this section—

''(1) conform to high standards of quality, integrity, accuracy, validity, and reliability;

''(2) are carried out in accordance with the standards for the conduct and evaluation of all research and development established by the National Center for Education Research; and

''(3) are objective, secular, neutral, and nonideological, and are free of partisan political influence, and racial, cultural, gender, regional, or disability bias.

''(c) PLAN.—The Special Education Research Commissioner shall propose to the Director a research plan, developed in collaboration with the

Assistant Secretary for Special Education and Rehabilitative Services, that—

''(1) is consistent with the priorities and mission of the Institute and the mission of the Special Education Research Center;

''(2) is carried out, updated, and modified, as appropriate;

''(3) is consistent with the purposes of the Individuals with Disabilities Education Act;

''(4) contains an appropriate balance across all age ranges and types of children with disabilities;

''(5) provides for research that is objective and uses measurable indicators to assess its progress and results; and

''(6) is coordinated with the comprehensive plan developed under section 681 of the Individuals with Disabilities Education Act.

''(d) GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—

''(1) IN GENERAL.—In carrying out the duties under this section, the Director may award grants to, or enter into contracts or cooperative agreements with, eligible applicants.

''(2) ELIGIBLE APPLICANTS.—Activities carried out under this subsection through contracts, grants, or cooperative agreements shall be carried out only by recipients with the ability and capacity to conduct scientifically valid research.

''(3) APPLICATIONS.—An eligible applicant that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require.

''(e) DISSEMINATION.—The Special Education Research Center shall—

''(1) synthesize and disseminate, through the National Center for Education Evaluation and Regional Assistance, the findings and results of special education research conducted or supported by the Special Education Research Center; and

''(2) assist the Director in the preparation of a biennial report, as described in section 119.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this part such sums as may be necessary for each of fiscal years 2005 through 2010.''.

(b) CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO THE TABLE OF CONTENTS.—The table of contents in section 1 of the Act entitled ''An Act to provide for improvement of Federal education research, statistics, evaluation, information, and dissemination, and for other purposes'', approved November 5, 2002 (116 Stat. 1940; Public Law 107-279), is amended—

(A) by redesignating the item relating to part E as the item relating to part F; and

(B) by inserting after the item relating to section 174 the following:

''Part E—National Center for Special Education Research

''Sec. 175. Establishment.

''Sec. 176. Commissioner for Special Education Research.

''Sec. 177. Duties.''.

(2) EDUCATION SCIENCES REFORM ACT OF 2002.—The Education Sciences Reform Act of 2002 (20 U.S.C. 9501 et seq.) is amended—

(A) in section 111(b)(1)(A) (20 U.S.C. 9511(b)(1)(A)), by inserting ''and special education'' after ''early childhood education'';

(B) in section 111(c)(3) (20 U.S.C. 9511(c)(3))—

(i) in subparagraph (B), by striking ''and'' after the semicolon;

(ii) in subparagraph (C), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(D) the National Center for Special Education Research (as described in part E).'';

(C) in section 115(a) (20 U.S.C. 9515(a)), by striking ''including those'' and all that follows through ''such as'' and inserting ''including those associated with the goals and requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), such as''; and

(D) in section 116(c)(4)(A)(ii) (20 U.S.C. 9516(c)(4)(A)(ii), by inserting ''special education experts,'' after ''early childhood experts,''.

(3) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 1117(a)(3) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6317(a)(3)) is amended by striking ''part E'' and inserting ''part D''.

SEC. 202. NATIONAL BOARD FOR EDUCATION SCIENCES.

Section 116(c)(9) of the Education Sciences Reform Act of 2002 (20 U.S.C. 9516(c)(9)) is amended by striking the third sentence and inserting the following: ''Meetings of the Board are subject to section 552b of title 5, United States Code (commonly referred to as the Government in the Sunshine Act).''.

SEC. 203. REGIONAL ADVISORY COMMITTEES.

Section 206(d)(3) of the Educational Technical Assistance Act of 2002 (20 U.S.C. 9605(d)(3)) is amended by striking ''Academy'' and inserting ''Institute''.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. AMENDMENT TO CHILDREN'S HEALTH ACT OF 2000.

Section 1004 of the Children's Health Act of 2000 (42 U.S.C. 285g note) is amended—

(1) in subsection (b), by striking ''Agency'' and inserting ''Agency, and the Department of Education''; and

(2) in subsection (c)—

(A) in paragraph (2), by striking ''and'' after the semicolon;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) be conducted in compliance with section 444 of the General Education Provisions Act (20 U.S.C. 1232g), including the requirement of prior parental consent for the disclosure of any education records, except without the use of authority or exceptions granted to authorized representatives of the Secretary of Education for the evaluation of Federally-supported education programs or in connection with the enforcement of the Federal legal requirements that relate to such programs.''.

SEC. 302. EFFECTIVE DATES.

(a) PARTS A, B, AND C, AND SUBPART 1 OF PART D.—

(1) IN GENERAL.—Except as provided in paragraph (2), parts A, B, and C, and subpart 1 of part D, of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on July 1, 2005.

(2) HIGHLY QUALIFIED DEFINITION.—Subparagraph (A), and subparagraphs (C) through (F), of section 602(10) of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on the date of enactment of this Act for purposes of the Elementary and Secondary Education Act of 1965.

(b) SUBPARTS 2, 3, AND 4 OF PART D.—Subparts 2, 3, and 4 of part D of the Individuals with Disabilities Education Act, as amended by title I, shall take effect on the date of enactment of this Act.

(c) EDUCATION SCIENCES REFORM ACT OF 2002.—

(1) NATIONAL CENTER FOR SPECIAL EDUCATION RESEARCH.—Sections 175, 176, and 177 (other than section 177(c)) of the Education Sciences Reform Act of 2002, as enacted by section 201(a)(2) of this Act, shall take effect on the date of enactment of this Act.

(2) PLAN.—Section 177(c) of the Education Sciences Reform Act of 2002, as enacted by section 201(a)(2) of this Act, shall take effect on October 1, 2005.

SEC. 303. TRANSITION.

(a) ORDERLY TRANSITION.—

(1) IN GENERAL.—The Secretary of Education (in this section referred to as ''the Secretary'') shall take such steps as are necessary to provide for the orderly transition from the Individuals with Disabilities Education Act, as such Act was in effect on the day preceding the date of enactment of this Act, to the Individuals with Disabilities Education Act and part E of the Education Sciences Reform Act of 2002, as amended by this Act.

(2) LIMITATION.—The Secretary's authority in paragraph (1) shall terminate 1 year after the date of enactment of this Act.

(b) MULTI-YEAR AWARDS.—Notwithstanding any other provision of law, the Secretary may use funds appropriated under part D of the Individuals with Disabilities Education Act to make continuation awards for projects that were funded under section 618, and part D, of the Individuals with Disabilities Education Act (as such section and part were in effect on September 30, 2004), in accordance with the terms of the original awards.

(c) RESEARCH.—Notwithstanding section 302(b) or any other provision of law, the Secretary may award funds that are appropriated under the Department of Education Appropriations Act, 2005 for special education research under either of the headings ''SPECIAL EDUCATION'' or ''INSTITUTE OF EDUCATION SCIENCES'' in accordance with sections 672 and 674 of the Individuals with Disabilities Education Act, as such sections were in effect on October 1, 2004.

SEC. 304. REPEALER.

Section 644 of the Individuals with Disabilities Education Act, as such section was in effect on the day before the enactment of this Act, is repealed.

SEC. 305. IDEA TECHNICAL AMENDMENTS TO OTHER LAWS.

(a) TITLE 10.—Section 2164(f) of title 10, United States Code is amended—

(1) in paragraph (1)(B)—

(A) by striking ''infants and toddlers'' each place the term appears and inserting ''infants or toddlers'';

(B) by striking ''part H'' and inserting ''part C''; and

(C) by striking ''1471'' and inserting ''1431''; and

(2) in paragraph (3)—

(A) in subparagraph (A)—

(i) by striking ''602(a)(1)'' and inserting ''602''; and

(ii) by striking ''1401(a)(1)'' and inserting ''1401'';

(B) by striking subparagraph (B);

(C) by redesignating subparagraph (C) as subparagraph (B); and

(D) in subparagraph (B) (as so redesignated)—

(i) by striking ''and toddlers'' and inserting ''or toddlers'';

(ii) by striking ''672(1)'' and inserting ''632''; and

(iii) by striking ''1472(1)'' and inserting ''1432''.

(b) DEFENSE DEPENDENTS EDUCATION ACT OF 1978.—Section 1409(c)(2) of the Defense Dependents Education Act of 1978 (20 U.S.C. 927(c)(2)) is amended—

(1) by striking ''677'' and inserting ''636''; and

(2) by striking ''part H'' and inserting ''part C''.

(c) HIGHER EDUCATION ACT OF 1965.—The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 465(a)(2)(C) (20 U.S.C. 1087ee(a)(2)(C), by striking ''Individuals With'' and inserting ''Individuals with'' and;

(2) in section 469(c) (20 U.S.C. 1087ii(c)), by striking ''602(a)(1) and 672(1)'' and inserting ''602 and 632''.

(d) EDUCATION OF THE DEAF ACT.—The matter preceding subparagraph (A) of section 104(b)(2) of the Education of the Deaf Act (20 U.S.C.

4304(b)(2)) is amended by striking ''618(a)(1)(A)'' and inserting ''618(a)(1)''.

(e) GOALS 2000: EDUCATE AMERICA ACT.—Section 3(a)(9) of the Goals 2000: Educate America Act (20 U.S.C. 5802(a)(9)) is amended by striking ''602(a)(17)'' and inserting ''602''.

(f) SCHOOL-TO-WORK OPPORTUNITIES ACT OF 1994.—Section 4(15) of the School-to-Work Opportunities Act of 1994 (20 U.S.C. 6103(15)) is amended—

(1) by striking ''602(a)(17)'' and inserting ''602''; and

(2) by striking ''1401(17)'' and inserting ''1401''.

(g) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) is amended—

(1) in section 1111(b)(2)(I)(ii) (20 U.S.C. 6311(b)(2)(I)(ii)), by striking ''612(a)(17)(A)'' and inserting ''612(a)(16)(A)'';

(2) in section 5208 (20 U.S.C. 7221g), by striking ''602(11)'' and inserting ''602''; and

(3) in section 5563(b)(8)(C) (20 U.S.C. 7273b(b)(8)(C)), by striking ''682'' and inserting ''671''.

(h) REHABILITATION ACT OF 1973.—The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) is amended—

(1) in section 101(a)(11)(D)(ii) (29 U.S.C. 721(a)(11)(D)(ii)), by striking ''(as added by section 101 of Public Law 105–17)'';

(2) in section 105(b)(1)(A)(ii) (29 U.S.C. 725(b)(1)(A)(ii)), by striking ''682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)'' and inserting ''671 of the Individuals with Disabilities Education Act'';

(3) in section 105(c)(6) (29 U.S.C. 725(c)(6))—

(A) by striking ''612(a)(21)'' and inserting ''612(a)(20)'';

(B) by striking ''Individual with'' and inserting ''Individuals with''; and

(C) by striking ''(as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)'';

(4) in section 302(f)(1)(D)(ii) (29 U.S.C. 772 (f)(1)(D)(ii)), by striking ''(as amended by section 101 of the Individuals with Disabilities Education Act Amendments of 1997 (Public Law 105–17))'';

(5) in section 303(c)(6) (29 U.S.C. 773(c)(6))—

(A) by striking ''682(a)'' and inserting ''671''; and

(B) by striking ''(as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)''; and

(6) in section 303(c)(4)(A)(ii) (29 U.S.C. 773(c)(4)(A)(ii)), by striking ''682(a) of the Individuals with Disabilities Education Act (as added by section 101 of the Individuals with Disabilities Education Act Amendments of 1997; Public Law 105–17)'' and inserting ''671 of the Individuals with Disabilities Education Act''.

(i) PUBLIC HEALTH SERVICE ACT.—The Public Health Service Act (42 U.S.C. 201 et seq.) is amended—

(1) in section 399A(f) (42 U.S.C. 280d(f), by striking ''part H'' and inserting ''part C'';

(2) in section 399(n)(3) (42 U.S.C. 280c–6(n)(3)), by striking ''part H'' and inserting ''part C'';

(3) in section 399A(b)(8) (42 U.S.C. 280d(b)(8)), by striking ''part H'' and inserting ''part C'';

(4) in section 562(d)(3)(B) (42 U.S.C. 290ff–1(d)(3)(B)), by striking ''and H'' and inserting ''and C''; and

(5) in section 563(d)(2) (42 U.S.C. 290ff–2(d)(2)), by striking ''602(a)(19)'' and inserting ''602''.

(j) SOCIAL SECURITY ACT.—The Social Security Act (42 U.S.C. 301 et seq.) is amended—

(1) in section 1903(c) (42 U.S.C. 1396b(c)), by striking ''part H'' and inserting ''part C''; and

(2) in section 1915(c)(5)(C)(i) (42 U.S.C. 1396n(c)(5)(C)(i)), by striking ''(as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16), (17))'' and inserting ''(as such terms are defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. 1401))''.

(k) DOMESTIC VOLUNTEER SERVICE ACT OF 1973.—Section 211(a) of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 5011(a)) is amended—

(1) by striking ''part H'' and inserting ''part C''; and

(2) by striking ''1471'' and inserting ''1431''.

(l) HEAD START ACT.—The Head Start Act (42 U.S.C. 9831 et seq.) is amended—

(1) in section 640(a)(5)(C)(iv) (42 U.S.C. 9835(a)(5)(C)(iv)), by striking ''1445'' and inserting ''1444'';

(2) in section 640(d) (42 U.S.C. 9835(d))—

(A) by striking ''U.S.C'' and inserting ''U.S.C.''; and

(B) by striking ''1445'' and inserting ''1444'';

(3) in section 641(d)(3) (42 U.S.C. 9836(d)(3)), by striking ''U.S.C 1431–1445'' and inserting ''U.S.C. 1431–1444''; and

(4) in section 642(c) (42 U.S.C. 9837(c)), by striking ''1445'' and inserting ''1444''.

(m) NATIONAL AND COMMUNITY SERVICE ACT OF 1990.—Section 101(21)(B) of the National and Community Service Act of 1990 (42 U.S.C. 12511(21)(B)) is amended—

(1) by striking ''602(a)(1)'' and inserting ''602''; and

(2) by striking ''1401(a)(1)'' and inserting ''1401''.

(n) DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000.—The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.) is amended—

(1) in section 125(c)(5)(G)(i) (42 U.S.C. 15025(c)(5)(G)(i)), by striking ''subtitle C'' and inserting ''part C''; and

(2) in section 154(a)(3)(E)(ii)(VI) (42 U.S.C. 15064(a)(3)(E)(ii)(VI))—

(A) by striking ''682 or 683'' and inserting ''671 or 672''; and

(B) by striking ''(20 U.S.C. 1482, 1483)''.

(o) DISTRICT OF COLUMBIA SCHOOL REFORM ACT OF 1995.—The District of Columbia School Reform Act of 1995 (Public Law 104–134) is amended—

(1) in section 2002(32)—

(A) by striking ''602(a)(1)'' and inserting ''602''; and

(B) by striking ''1401(a)(1)'' and inserting ''1401'';

(2) in section 2202(19), by striking ''Individuals With'' and inserting ''Individuals with''; and

(3) in section 2210—

(A) in the heading for subsection (c), by striking ''WITH DISABILITIES'' and inserting ''WITH DISABILITIES''; and

(B) in subsection (c), by striking ''Individuals With'' and inserting ''Individuals with''.

SEC. 306. COPYRIGHT.

Section 121 of title 17, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d);

(2) by inserting after subsection (b) the following:

''(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary or secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(23)(C), 613(a)(6), and section 674(e) of the Individuals with Disabilities Education Act that contain the contents of print instructional materials using the National Instructional Material Accessibility Standard (as defined in section 674(e)(3) of that Act), if—

''(1) the inclusion of the contents of such print instructional materials is required by any State educational agency or local educational agency;

''(2) the publisher had the right to publish such print instructional materials in print formats; and

''(3) such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats.''; and

(3) in subsection (d), as redesignated by this section—

(A) in paragraph (2), by striking ''and'' after the semicolon; and

(B) by striking paragraph (3) and inserting the following:

''(3) 'print instructional materials' has the meaning given under section 674(e)(3)(C) of the Individuals with Disabilities Education Act; and

''(4) 'specialized formats' means—

''(A) braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities; and

''(B) with respect to print instructional materials, includes large print formats when such materials are distributed exclusively for use by blind or other persons with disabilities.''.

And the Senate agree to the same.

From the Committee on Education and the Workforce, of reconsideration of the House bill and the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
MICHAEL N. CASTLE,
VERNON J. EHLERS,
RIC KELLER,
JOE WILSON,
GEORGE MILLER,
LYNN C. WOOLSEY,
MAJOR R. OWENS,

From the Committee on Energy and Commerce, for consideration of sec. 101 and title V of the Senate amendment, and modifications committed to conference:

JOE BARTON,
MICHAEL BILIRAKIS,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of sec. 205 of the House bill, and sec. 101 of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER, Jr.,
LAMAR SMITH,
JOHN CONYERS,

Managers on the Part of the House.

JUDD GREGG,
BILL FRIST,
MICHAEL B. ENZI,
LAMAR ALEXANDER,
CHRISTOPHER BOND,
MIKE DEWINE,
PAT ROBERTS,
JEFF SESSIONS,
JOHN ENSIGN,
LINDSEY GRAHAM,
JOHN WARNER,
EDWARD KENNEDY,
CHRISTOPHER J. DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
JEFF BINGAMAN,
PAT MURRAY,
JACK REED,
JOHN EDWARDS,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1350), an Act to reauthorize the Individuals with Disabilities Education Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by managers and recommended in the accompanying conference report:

RECOMMENDATIONS

Enacting Clause, Short Title, and Organization

(1) The House bill and Senate amendment have different titles and different organization systems.

HR

(2) The House bill includes this technical language as part of its structure to keep section 604 as current law. The Senate amendment replaces the entire existing law.

HR/LC

Title I, Part A

(3) There are no significant differences between the House bill and Senate amendment.

HR/LC

(4) The House bill and Senate amendment have different sections and headings in Part A and Part D. In Part D the Senate amendment has a subpart IV that is not in the House bill.

LC

(5) There are no significant differences between House (c)(1) and Senate (c)(1).

LC

(6) The Senate amendment goes into greater detail on how the needs of special education students were not being met prior to PL 94–142.

HR

(7) The House bill does not include the Senate findings on implementation or providing services.

HR

(8) There are no significant differences between the House bill and Senate amendment.

LC

(9) The House bill does not include these Senate findings.

HR

(10) There are no significant differences between the House bill and Senate amendment.

LC

(11) There are no significant differences between the House and Senate amendments.

LC

(12) There are minor wording differences between the House bill and the Senate amendment regarding full participation of minority individuals.

SR

(13) The House bill does not include this Senate finding.

HR

(14) The House bill refers to ''system improvement activities'' while the Senate bill refers to ''systemic-change activities.''

SR

(15) The Senate amendment, but not the House bill, includes a clarification that certain medical devices are not required to be provided under the Act.

HR

(16) There are no significant differences between the House bill and Senate amendment.

LC

(17) The Senate amendment, but not the House bill, adds this new definition.

HR

(18) There are no differences between the House bill and Senate amendment.

LC

(19) The Senate amendment, not the House bill, has greater detail in citing ESEA programs. There are also minor wording differences between the bills in describing the impact of State or local funds.

HR

(20) The House bill and Senate amendment are largely similar except the House bill includes language designed to place a limitation on the extent of the services provided under the Act. The Senate amendment does not include this provision.

HR

(21) The House bill applies the requirements for a highly qualified teacher in NCLB to special education teachers. The Senate amendment mirrors the NCLB definition of a highly qualified teacher, with these exceptions:

1. Requires all special education teachers to be certified as special education teachers.

2. Exempts teachers who only provide consultative services from demonstrating subject knowledge/competency.

3. Requires middle/high school teachers, who primarily teach children with significant cognitive disabilities to demonstrate knowledge of elementary curriculum rather than high level competition in each of the subjects they teach.

HR with an amendment to read as follows:

''(10) HIGHLY QUALIFIED.—

''(A) IN GENERAL.—For any special education teacher, the term ''highly qualified'' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also—

''(i) includes the requirements described in subparagraph (B); and

''(ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

''(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS.—When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that—

''(i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;

''(ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

''(iii) the teacher holds at least a bachelor's degree.

''(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS.—When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of such Act, such term means the teacher, whether new or not new to the profession, may either—

''(i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

''(ii) meet the requirement of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

''(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS.—When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may—

''(i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;

''(ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or

''(iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the additional core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform state standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

''(E) RULE OF CONSTRUCTION.—Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

''(F) DEFINITION FOR PURPOSES OF THE ESEA.—A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.''

Report language: ''The Conference Committee intends to clarify that, for the purposes of the Elementary and Secondary Education Act of 1965 and the Individuals with Disabilities Education Act, a special education teacher who provides only consultative services to a highly qualified teacher (as such term is defined in section 9101 (23) of the Elementary and Secondary Education Act of 1965) should be considered a highly qualified special education teacher if such teacher meets the requirements of section 602(10)(A) of this legislation. Such consultative services do not include instruction in core academic subjects, but may include adjustments to the learning environment, modifications of instructional methods, adaptation of curricula, the use of positive behavioral supports and interventions, or the use of appropriate accommodations to meet the needs of individual children.''

Report language: ''Under the Elementary and Secondary Education Act of 1965, each state was charged with developing a 'high, objective, uniform state standard of evaluation' (HOUSSE) to provide teachers with another avenue through which to demonstrate the subject mastery requirements of the ''highly qualified'' definition. Some states have developed HOUSSE standards for special education teachers. With the passage of this legislation, the Conference committee intends to clarify that under the Elementary and Secondary Education Act of 1965, states may allow special education teachers to utilize a HOUSSE which applies to all teachers or adapt a HOUSSE to accommodate special education teachers, including a HOUSSE that consists of a single evaluation to cover multiple subjects. Such adaptations or accommodations must not, however, establish a lesser standard for the content knowledge requirements of special education teachers compared to the standards for general education teachers. The Conference committee

encourages all states to explore these options.''

Report language: ''It is the conferees' intent that any new special education teacher teaching one core academic subject shall demonstrate competency by passing a rigorous State academic subject test in that subject, or successful completion in that subject of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing. Any special education teacher who is not new to the profession and who teaches one core academic subject must, by the end of the 2005–2006 school year, pass a rigorous State academic subject test in that subject, complete in that subject an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing, or complete a high objective uniform State standard of evaluation.''

Report language: ''The bill requires special education teachers to have obtained full State certification as special education teachers, but it does not prevent general education and other teachers who are highly qualified in particular subjects from providing instruction in core academic subjects to children with disabilities in those subjects. For example, a reading specialist who is highly qualified in reading instruction, but who is not certified as a special education teacher, would not be prohibited by this provision from providing reading instruction to children with disabilities.''

Report language: ''In special cases where such children also receive instruction in one or more core academic subjects at an instructional level above the basic elementary school curriculum, the Conferees fully intend for such instruction to be provided by a highly qualified teacher demonstrating a high level of competency in each of the core academic subjects taught. Such instruction could be provided by a highly qualified teacher in the general education classroom or by such teacher providing instruction in a self-contained classroom. Such competency shall be demonstrated consistent with the requirements of this section and with those of section 9101 of the Elementary and Secondary Education Act of 1965.''

(22) There are no significant differences between the House bill and the Senate amendment.

LC

(23) The Senate amendment, but not the House bill, adds this new definition.

HR

(24) There are no significant differences between the House bill and the Senate amendment.

LC

(25) There are no significant differences between the House bill and the Senate amendment. Both the House bill and the Senate amendment include this definition of outlying area.

LC

(26) The Senate amendment, but not the House bill, includes extensive language regarding the different types of people that can be deemed a parent of a child with a disability.

SR with an amendment to read as follows:

''(22) PARENT.—The term 'parent' means—

''(i) a natural, adoptive or foster parent of a child (unless prohibited by State law);

''(ii) a guardian (but not the State if the child is a ward of the State)

''(iii) an individual acting in the place of a natural or adoptive parents, including a grandparent, stepparent or other relative with whom the child lives or an individual who is legally responsible for the child's welfare; or

''(iv) except as used in sections 615(b)(2) and 639(a)(5), an individual assigned under either of those sections to be a surrogate parent.''

(27) The House bill and Senate amendment are largely similar except the Senate amendment includes an exception regarding certain medical devices and the Senate amendment includes interpreting services, school health services, and travel training instruction as listed related services. The Senate amendment, but not the House bill, includes an exception for medical devices that are surgically implemented or its replacement.

HR with an amendment:

Strike ''school health services'' and insert ''school nurse services designed to enable the child to receive FAPE as described in the IEP'' and strike ''travel training instruction,''.

Report language: ''The Conferees intend that 'orientation and mobility services' include travel training instruction.''

(28) There are no significant differences between the House bill and the Senate amendment.

LC

(29) There are no differences between the House bill and the Senate amendment.

LC

(30) There are no significant differences between the House bill and the Senate amendment.

LC

(31) The House bill focuses on ''academic and developmental achievement'' and the Senate amendment focuses on ''academic and functional achievement.''

HR

(32) The Senate amendment, but not the House bill, includes these definitions for military children, homeless children, and wards of the State.

SR with an amendment to read as follows:

''(34) HOMELESS CHILDREN.—The term 'homeless children' has the meaning given the term 'homeless children and youths' in section 725 of the McKinney-Vento Homeless Assistance Act.

''(35) WARD OF THE STATE.—

''(A) The term 'ward of the state' means a child who, as defined by the State where the child resides, is a foster child, a ward of the State or is in the custody of a public child welfare agency; and

''(B) Not withstanding subparagraph (A), the term does not include a foster child who has a foster parent covered by the definition of ''parent'' in section 602 (22).''

(33) There are no differences between the House bill and the Senate amendment.

LC

(34) Neither the House bill nor Senate amendment make changes to current law.

HR

(35) The House bill includes this technical language as part of its structure to keep section 604 as current law. The Senate amendment replaces the entire existing law.

LC

(36) There are no differences between the House bill and the Senate amendment.

LC

(37) The House bill, but not the Senate amendment, provides examples of jobs in which recipients of funds should try to employ people with disabilities.

HR

(38) There are minor wording differences between the House bill and the Senate amendment.

HR

(39) The House bill requires a public comment period of 60 days while the Senate amendment limits the comment period to 90 days.

SR with an amendment:

Strike ''60'' and insert ''75''.

(40) There are minor wording differences between the House bill and the Senate amendment, but the content is the same.

HR

(41) The House and Senate have the same language, but the Senate amendment places this in (f) (see note 43).

HR

(42) The House bill and Senate amendment are similar with minor wording differences, except that the Senate amendment and not the House bill includes a provision that any letters are provided as guidance and are not legally binding.

HR

(43) The House and Senate have similar language, but the House bill places this in (e) (see note 41).

HR

(44) The House bill includes this technical language as part of its structure to keep parts of current law. The Senate amendment replaces the entire existing law.

LC

(45) The House bill and Senate amendment contain similar provisions regarding State support and facilitation of regulations. But the House bill, not the Senate amendment, requires States to minimize the number of regulations under the Act while the Senate amendment, not the House bill, requires States to identify in writing any rule, regulation, or policy that is generated by the State, not the Act or its regulations.

HR with an amendment:

Insert paragraph (2) of House bill.

(46) The Senate amendment allows up to 15 States to participate in a paperwork reduction pilot. The House bill allows the participation of up to 10 States in note 263.

HR

(47) The House bill contains a request for GAO to report on the paperwork burden of the Act every 2 years, with an initial 2 year deadline.

HR

(48) The House bill also includes requests for GAO to report on disability definitions in the States, distance learning for professional development programs, and the impact of the Act on limited English proficient students. The Senate amendment does not include these reports.

HR

(49a) The Senate amendment, but not the House bill, specifies that the Freely Associated States shall continue to be eligible for competitive grants administered by the Secretary.

HR

Part B

(49) The House bill includes this technical language as part of its structure to keep parts of current law. The Senate amendment replaces the entire existing law.

LC

(50) There are no differences between the House bill and the Senate amendment.

LC

(51) The House bill places a cap on the maximum grant that is based on the number of students in the State. The Senate amendment bases the formula for the maximum

total cap on the number of children with disabilities in the 02–03 school year and adjusts the formula by the change in the population and poverty rates in the State.

SR with an amendment:

Rewrite (a)(2) to read as follows:

''(2) MAXIMUM AMOUNTS.—The maximum amount of the grant a State may receive under this section for any fiscal year is—

''(A) for fiscal years 2005 and 2006 is—

''(i) the number of children with disabilities in the State who are receiving special education and related services—

''(I) aged 3 through 5 if the State is eligible for a grant under section 619; and

''(II) aged 6 through 21; multiplied by—

''(ii) 40 percent of the APPE in public elementary and secondary schools in the United States; and

''(B) for fiscal year 2007 and subsequent fiscal years—

''(i) the number of children with disabilities in the 2004–2005 school year in the State who received special education and related services—

''(I) aged 3 through 5 if the State is eligible for a grant under section 619; and

''(II) aged 6 through 21; multiplied by—

''(ii) 40 percent of the APPE in public elementary and secondary schools in the United States; adjusted by;

''(iii) the rate of annual change in the sum of—

''(I) 85 percent of such State's population described in subsection (d)(3)(A)(i)(II); and

''(II) 15 percent of such State's population described in subsection (d)(3)(A)(i)(III).''

(52) The Senate amendment includes the Freely Associated States as eligible entities under this Act. The House bill does not.

HR

(53) There are no differences between the House bill and Senate amendment.

LC

(54) The Senate amendment allows funds to be allocated to the Freely Associated States and for studies and evaluations under Part B. The FAS's are not eligible entities under the House bill, and the House bill allocates funds for studies and evaluations in Part D.

HR with amendment:

Insert:

''(i) TECHNICAL ASSISTANCE.—

''(A) IN GENERAL.—The Secretary may reserve not more than ½ of 1 percent of the amounts appropriated under this Part for each fiscal year to provide technical assistance activities authorized under section 616.

''(B) MAXIMUM AMOUNT.—The maximum amount the Secretary may reserve under (A) for any fiscal year is $25,000,000, increased by the cumulative rate of inflation since fiscal year 2004.''

(55) The House bill and Senate amendment have different language to recalculate the 1999 base amount if a State that served 3–5 year olds in that year does not serve them in a subsequent year.

HR

(56) There are minor technical differences between the House and Senate amendments, but the content is the same.

HR

(57) There are minor technical and wording differences between the House and Senate amendments, but the content is the same.

HR

(58) There are no differences between the House bill and Senate amendment.

HR/LC

(59) There are minor technical and wording differences between the House and Senate amendments, but the content is the same.

HR/LC

(60) The House bill limits the amount of funds for State-level activities to 25% of its FY 97 State grant, adjusted by inflation or the percent increase of the Federal appropriation, and allows these funds to be used without regard to commingling or supplantation requirements. The Senate amendment allows States in FY 04 and 05 to reserve 10% off their State grant for State-level activities, after reserving funds for administration. After FY 05, this figure is then increased by the inflation rate. Small States are allowed to reserve 12% until FY 05, and then adjust that level by inflation (see note (62)). Both House and Senate allow commingling. See note (66).

HR

(61) The House bill allows States to use up to 20% of its State set-aside for administration, or $750,000. The Senate amendment allows States to use their FY 03 level for administration, or $800,000, adjusted for inflation each year.

The Senate amendment, but not the House bill, also requires States to certify that they meet the requirements of designating financial responsibilities for services.

SR with an amendment to read as follows:

''(1) STATE ADMINISTRATION.—

''(A) IN GENERAL.—For the purpose of administering this part, including paragraph (3), section 619, and the coordination of activities under this part with, and providing technical assistance to, other programs that provide services to children with disabilities—

''(i) each State may reserve for each fiscal year not more than the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004 or $800,000 (adjusted in accordance with subparagraph (B)), whichever is greater; and

''(ii) each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under subsection (b) for the fiscal year or $35,000, whichever is greater.

''(B) CUMULATIVE ANNUAL ADJUSTMENTS.—For each fiscal year beginning with fiscal year 2005, the Secretary shall cumulatively adjust (i) the maximum amount the State was eligible to reserve for State administration under this part for fiscal year 2004, and (ii) $800,000, by the rate of inflation as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

''(C) PART C.—Funds reserved under subparagraph (A) may be used for the administration of part C, if the State educational agency is the lead agency for the State under that part.

''(D) CERTIFICATION.—Prior to expenditure of funds under this paragraph, the State shall provide assurances to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12(A) are current.''

(62) The Senate amendment allows States in FY 04 and 05 to reserve 10% off their State grant for State-level activities, after reserving funds for administration. After FY 05, this figure is then increased by the inflation rate. Small States are allowed to reserve 12% until FY 05, and then adjust that level by inflation. The House bill limits the amount of funds for State-level activities to 25% of its FY 97 State grant, adjusted by inflation or the percent increase of the Federal appropriation, and allows these funds to be used without regard to commingling or supplantation requirements. See note (66).

SR with an amendment to read as follows:

''(2) OTHER STATE-LEVEL ACTIVITIES.—

''(A) STATE-LEVEL ACTIVITIES.—

''(i) IN GENERAL.—For the purpose of carrying out State-level activities, each State may reserve for each of the fiscal years 2005 and 2006 not more than 10 percent from the amount of the State's allocation under subsection (d) for fiscal year 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, the State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (adjusted by the cumulative rate of inflation since fiscal year 2006 as measured by the percentage increase, if any in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

''(ii) SMALL STATE ADJUSTMENT.—Notwithstanding clause (i), in the case of a state for which the maximum amount reserved for State administration is not greater than $850,000 the State may reserve for the purpose of carrying out State-level activities for each of the fiscal years 2005 and 2006, not more than 10.5 percent from the amount of the State's allocation under subsection (d) for fiscal year 2005 and 2006, respectively. For fiscal year 2007 and each subsequent fiscal year, such State may reserve the maximum amount the State was eligible to reserve under the preceding sentence for fiscal year 2006 (adjusted by the cumulative rate of inflation since fiscal year 2006 as measured by the percentage increase, if any, in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor).''.

(63) The Senate amendment establishes a list of required activities that States must support with their State-level funds to support. The House bill has no similar requirement.

SR with an amendment to read as follows:

''(B) REQUIRED ACTIVITIES.—Funds reserved under subparagraph (A) shall be used to carry out the following activities:

''(i) For monitoring, enforcement and complaint investigation.

''(ii) To establish and implement the mediation, processes required by section 615(e)(1), including providing for the costs of mediators, support personnel.''

(64) The Senate amendment establishes a list of authorized activities that States may conduct with State-level funds. The House bill includes Senate activities (i), (ii), (vii), and (viii) in note 67 and adds monitoring and complaint investigation, mediation and voluntary binding arbitration, support to meet State goals in 612(a)(15), prereferral services, and subgrants to LEAs designated as in need of improvement due to the scores of students with disabilities. Activities (iii)–(vi), (ix), and (x) in the Senate amendment are not included in the House bill.

SR with an amendment to read as follows:

''(C) AUTHORIZED ACTIVITIES.—Funds reserved under subparagraph (A) may be used to carry out the following activities:

''(i) For support and direct services, including technical assistance, personnel preparation, and professional development and training.

''(ii) To support paperwork reduction activities, including expanding the use of technology in the IEP process.

''(iii) To assist local educational agencies in providing positive behavioral interventions and supports and mental health services for children with disabilities.

''(iv) To improve the use of technology in the classroom by children with disabilities to enhance learning.

''(v) To support the use of technology, including universally designed technology and assistive technology devices, to maximize

accessibility to the general curriculum for children with disabilities.

''(vi) Development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to post-secondary activities.

''(vii) To assist local educational agencies in meeting personnel shortages.

''(viii) To support capacity building activities and improve the delivery of services by local educational agencies to improve results for children with disabilities.

''(ix) Alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools.

''(x) To support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 6111 of the Elementary and Secondary Education Act of 1965.

''(xi) To provide technical assistance to schools and local educational agencies, and direct services, including supplemental educational services, to students with disabilities, in schools or local educational agencies identified as being in need of improvement under section 1116 of the Elementary and Secondary Education Act of 1965 on the basis, in whole, of the assessment results of the disaggregated subgroup of students with disabilities, including providing professional development to special and regular education teachers, that teach students with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement to meet the goals in section 1111.''

(65) The House bill allows States to reserve up to 40% of its state-level funds to establish a fund for high cost special education services. The Senate requires States to reserve 2% of their State grant (after reserving funds for administration) to establish a LEA risk pool and distribute those funds to LEAs. The Senate requires the State to pay 75% of the costs that exceed 4 times the national APPE for every student in each LEA that applies. This amount is ratably reduced if there are not sufficient funds. The Senate amendment requires LEA applications to ensure that the State funds do not supplant State medicaid payments for appropriate services. The Senate amendment also allows pre-existing State programs to override the required elements established in the Senate amendment.

HR with an amendment to read as follows:

''(3) LOCAL EDUCATIONAL AGENCY RISK POOL.—

''(A) IN GENERAL.—For the purpose of assisting local educational agencies (and charter schools that are local educational agencies, and consortia of local educational agencies) in addressing the needs of high-need children, each State shall reserve for each fiscal year 10 percent from the amount of the State's reservation for state-level activities under paragraph (2)(A), to—

''(i) establish a high-cost fund, but only during the initial fiscal year of the fund;

''(ii) make disbursements from the high-cost fund to local educational agencies in accordance with this paragraph; and

''(iii) support innovative and effective ways of cost-sharing by the State, by a local educational agency, or among a consortia of local educational agencies, as determined by the State in coordination with representatives from local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies).

''(B) LIMITATION ON USES OF FUNDS.—

''(i) The funds used pursuant to subparagraph (A)(i) to establish a high-cost fund shall not exceed five percent of the reservation in the initial fiscal year of the fund.

''(ii) The funds used pursuant to subparagraph (A)(iii) to support the innovative and effective ways of cost-sharing among a consortia of local educational agencies shall be not more than five percent of the reservation.

''(C) STATE PLAN FOR HIGH-COST FUND.—

''(i) The State educational agency shall establish a plan, including the State's definition of a 'high need' child with a disability, which is developed in consultation with local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies) within 90 days of the reservation of funds under this subsection.

''(ii) Such plan shall—

''(I) Establish, in coordination with representatives from local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies), the definition of a 'high need' child with a disability that, at a minimum—

''(aa) addresses the financial impact the specific 'high need' child with a disability has on that child's local educational agency budget, and

''(bb) ensures that the cost of any such 'high need' child with a disability is greater than three times the average per pupil expenditure (as defined in ESEA) in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate;

''(II) Establish eligibility criteria for the participation of local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies) that, at a minimum, takes into account the number and percentage of 'high need' children with disabilities in a local educational agency;

''(III) Develop a funding mechanism that provides distributions each fiscal year to eligible local educational agencies (including charter schools that are local educational agencies, and consortia of local educational agencies) that meet the criteria developed by the State under subclause (II); and

''(IV) Establish an annual schedule by which the State educational agency shall make its distributions from the fund each fiscal year.

''(iii) The State shall make its final plan publicly available at least 30 days prior to the beginning of the school year, including dissemination of such information on the State website.

''(D) DISBURSEMENTS FROM THE HIGH-COST FUND.—

''(i) IN GENERAL.—Each State educational agency shall make all annual disbursements from the fund established under subparagraph (A)(i) in accordance with the plan published pursuant to subparagraph (C).

''(ii) USE OF DISBURSEMENTS.—Each State educational agency shall make annual disbursements to eligible local educational agencies in accordance with its plan under (C)(ii).

''(iii) APPROPRIATE COSTS.—The costs associated with educating a high need child under clause (ii) are only those costs associated with providing direct special education and related services to such child that are identified in such child's IEP.

''(E) LEGAL FEES.—The disbursements under subparagraph (D) shall not support legal fees, court costs, or other costs associated with a cause of action brought on behalf of such child to ensure a free appropriate public education for such child.

''(F) ASSURANCE OF A FREE APPROPRIATE PUBLIC EDUCATION.—Nothing in this section shall be construed—

''(i) to limit or condition the right of a child with a disability who is assisted under this part to receive a free appropriate public education pursuant to section 612(a)(1) in a least restrictive environment pursuant to section 612(a)(5); or

''(ii) to authorize a State educational agency or local educational agency to establish a limit on what may be spent on the education of a child with a disability.

''(G) MEDICAID SERVICES NOT AFFECTED.—Disbursements provided under this subsection shall not be used to pay costs that otherwise would be reimbursed as medical assistance for a child with a disability under the State medicaid program under title XIX of the Social Security Act.

''(H) SPECIAL RULE FOR RISK POOL AND HIGH-NEED ASSISTANCE PROGRAMS IN EFFECT AS OF JANUARY 1, 2004.—Notwithstanding the provisions of subparagraphs (A) through (G), a State may use funds reserved pursuant to this paragraph for implementing a placement neutral cost-sharing and reimbursement program of high-need, low-incidence, catastrophic, or extraordinary aid to local educational agencies that provides services to students eligible under this part based on eligibility criteria for such programs that were created not later than January 1, 2004 and are currently in operation, provided such program meets the minimum definition of a 'high need' child with a disability in subparagraph (C)(2)(I).

''(I) REMAINING FUNDS.—Funds reserved under subparagraph (A) in any fiscal year but not expended in that fiscal year pursuant to subparagraph (D) or subparagraph (F) shall be allocated to local educational agencies in the same manner as funds are allocated to local educational agencies under subsection (f).''

(66) The Senate amendment allows State-level funds to be used without regard to commingling or supplantation requirements. See note (60), which includes identical language from the House bill.

HR with an amendment:

Strike '', and (3)'' and insert ''and'' before (2) in paragraph (4).

(67) The House bill establishes a list of authorized activities that States may conduct with State-level funds. The Senate amendment only includes House activities (A), (D), (F), and (H) in note 64 and adds positive behavioral supports and mental health services, use of technology, transition programs, alternative programming for expelled students, and support for appropriate accommodations and alternate assessments.

HR

(68) The House bill, but not the Senate amendment, requires States to use any increase in State-level funds that exceeds the rate of inflation to be used to provide subgrants to LEAs designated as in need of improvement due to the scores of students with disabilities to improve results for students with disabilities in those LEAs.

HR

(69) There are minor wording differences between the House and Senate amendments, and the House bill includes a requirement that the report include information on the percentage of funds distributed by formula to LEAs.

HR

(70) The Senate amendment allows States to use State-level funds under Part B and the 619 program to support a State policy to

allow children to remain in Part C instead of moving to the 619 program until kindergarten. The House bill does not include this provision.

HR

(71) There are minor wording differences between the House and Senate amendments, but the content is the same.

LC

(72) There are minor wording differences between the House and Senate amendments. Note: the reference to subsection (e) in (2) of the House bill should be a reference to subsection (d).

LC

(73) There are no differences between the House bill and Senate amendment.

LC

(74) The House bill places a cap on the amount of funds for State-level activities to the FY 03 level, except that the amount may increase by the rate of inflation for the purpose of making subgrants to LEAs designated as in need of improvement due to the assessment scores of students with disabilities.

HR with an amendment:

Add the following language to section 611(e) as paragraph (5):

''(5) SPECIAL RULE FOR INCREASED FUNDS.—The State may use funds it reserves as a result of inflationary increases under section 611 (e)(1)(B) to carry out activities authorized by sections 611(e)(2)(C)(i), (iii), (vii), and (viii).''

(75) There are no differences between the House bill and Senate amendment.

LC

(76) The House bill and the Senate amendment are the same, except the House bill includes a requirement that the BIA distribute 80% of its funds to BIA schools by July 1 of the fiscal year and 20% of the funds by September 30 of the fiscal year.

SR

(77) There are minor wording differences between the House bill and Senate amendment, but the content is the same.

LC

(78) There are no significant differences between the House and Senate amendments, except the House bill requires an annual report from the Secretary of the Interior while the Senate amendment requires a biennial report.

HR

(79) There are minor wording differences between the House and Senate amendments but the content is the same.

LC

(80) There are no significant differences between the House and Senate amendments, except for differences in section numbers between the two bills.

LC

(81) There are no significant differences between the House and Senate amendments, except for differences in section numbers between the two bills.

LC

(82) The House bill and Senate amendment establish slightly different patterns toward reaching the 40% goal.

HR

(83) There are no differences between the House bill and Senate amendment.

LC

(84) The House bill requires State plans to ''reasonably demonstrate'' that the plan meets the requirements of the law. The Senate amendment requires States to ''provide assurances'' that the plan meets the requirements of the law.

HR

(85) The House bill includes this technical language as part of its structure to keep section 612(a)(12) as current law. The Senate amendment replaces the entire existing law.

LC

(86) There are no differences between the House bill and Senate amendment.

LC

(87) The Senate amendment exempts States from FAPE requirements if the State provides services to children through the part C program that are eligible for the 619 program. The House bill has similar language as part C.

HR

(88) The Senate amendment, but not the House bill, includes language regarding children with disabilities who are homeless or are wards of the State.

HR

(89) The House bill and Senate amendment have the same definition of least restrictive environment. The House bill requires that if a State distributes funds through a mechanism based on the child's setting, such formula cannot result in violations of the LRE requirements. The House bill also requires States to modify funding mechanisms that do not comply with that requirement. The Senate amendment prohibits a funding mechanism that violates the LRE requirements and requires States to revise any funding mechanism that violates that requirement.

HR

Report language: The conferees are concerned that some States continue to use funding mechanisms that provide financial incentives for, and disincentives against, certain placements. It is the intent of the changes to Section 612(a)(5)(B) to prevent State funding mechanisms from affecting appropriate placement decisions for students with disabilities.

''The law requires that each public agency shall ensure that a continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) is available to meet the needs of children with disabilities for special education and related services. State funding mechanisms are in place to ensure funding is available to support the requirements of this provision, not to provide an incentive or disincentive for placement. Part B's LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully in the least restrictive environment. Through the Individual Education Plan (IEP) process the Team shall make placement decisions that are individually determined on the basis of each child's abilities and needs. The new provisions in this section were added to prohibit States from maintaining funding mechanisms that violate appropriate placement decisions, not to require States to change funding mechanisms that support appropriate placements decisions.''

(90) The House bill and Senate amendment are substantially the same except the House bill, but not the Senate amendment, requires that children with disabilities also be evaluated in accordance with section 614 (c).

SR

(91) The House bill and Senate amendment are similar, with the Senate amendment adding a clause referring to the Senate language allowing a child to stay in the Part C program until kindergarten, instead of moving to the Section 619 program at age 3.

HR

(92) The House bill and Senate amendment include similar requirement, except the Senate amendment requires a written explanation by LEAs when they disagree with private school officials, a written affirmation from private school officials about consultation, and the provision of direct services (to the extent practicable) private schools. Also, the Senate amendment does not include the supplement, not supplant language included in the House bill. The House bill also contains specific sections regarding thorough child find when calculating the proportionate share of Federal funds and regarding services to be provided by employees of a public agency or through a contract by a public agency.

SR with an amendment to read as follows:

''(10) CHILDREN IN PRIVATE SCHOOLS.—

''(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.—

''(i) IN GENERAL.—To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

''(I) Amounts to be expended for the provision of those services (including direct services to parentally-placed children) by the local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

''(II) In calculating the proportionate share of Federal funds, the local educational Agency, after timely and meaningful consultation with representatives of private schools as described in clause (iii), shall conduct a thorough and complete child-find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.

''(III) Such services to children with disabilities parentally-placed may be provided to children with disabilities on the premises of private, including religious, schools, to the extent consistent with law.

''(IV) State and local funds may supplement and in no case shall supplant the proportionate amount of Federal funds required to be expended under this paragraph.

''(V) Each local educational agency shall maintain in its records and provide to the State educational agency the number of children evaluated under this paragraph, the number of children determined to be children with disabilities, and the number of children served under this subsection.

''(ii) CHILD-FIND REQUIREMENT.—

''(I) IN GENERAL.—The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including religious, elementary and secondary schools.

''(II) EQUITABLE PARTICIPATION.—The child-find process shall be designed to ensure the equitable participation of parentally-placed private school children and an accurate count of such children.

''(III) ACTIVITIES.—In carrying out this clause, the local educational agency, or where applicable, the State educational agency, shall undertake activities similar to those activities undertaken for its public school children.

''(IV) COST.—The cost of carrying out this clause, including individual evaluations,

may not be considered in determining whether a local educational agency has met its obligations under clause (i).

''(V) COMPLETION PERIOD.—Such child-find process shall be completed in a time period comparable to that for other students attending public schools in the local educational agency.

''(iii) CONSULTATION.—To ensure timely and meaningful consultation, a local educational agency, or where appropriate, a state educational agency, shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for these children including—

''(I) the child-find process and how parentally-placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;

''(II) the determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under this paragraph, including the determination of how those funds were calculated;

''(III) the consultation process among the local educational agency private school officials, and representatives of parents of parentally-placed private school children with disabilities including how such process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;

''(IV) how, where, and by whom special education and related services will be provided for parentally-placed private school children, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

''(V) how, if the local educational agency disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.

''(iv) WRITTEN AFFIRMATION.—When timely and meaningful consultation as required by this section has occurred, the local educational agency shall obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide such affirmation within a reasonable period of time, the local educational agency shall forward the documentation of the consultation process to the State educational agency.

''(v) COMPLIANCE.—

''(I) IN GENERAL.—A private school official shall have the right to complain to the State educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

''(II) PROCEDURE.—If the private school official wishes to complain, the official shall provide the basis of the noncompliance with this section by the local educational agency to the State educational agency, and the local educational agency shall forward the appropriate documentation to the State educational agency. If the private school official is dissatisfied with the decision of the State educational agency, such official may complain to the Secretary by providing the basis of the noncompliance with this section by the local educational agency to the Secretary, and the State educational agency shall forward the appropriate documentation to the Secretary.

''(vi) PROVISION OF EQUITABLE SERVICES.—

''(I) DIRECTLY OR THROUGH CONTRACTS. The provision of services under this Act shall be provided—

''(aa) by employees of a public agency; or

''(bb) through contract by the public agency with an individual, association, agency, organization, or other entity.

''(II) SECULAR, NEUTRAL, NONIDEOLOGICAL.—Special education and related services provided to children with disabilities attending private schools, including materials and equipment, shall be secular, neutral, and nonideological.

''(vii) PUBLIC CONTROL OF FUNDS.—The control of funds used to provide special education and related services under this section, and title to materials, equipment, and property purchased with those funds, shall be in a public agency for the uses and purposes provided in this Act, and a public agency shall administer the funds and property.

''(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

''(i) IN GENERAL.—Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

''(ii) STANDARDS.—In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.

''(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY.—

''(i) IN GENERAL.—Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

''(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.—If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

''(iii) LIMITATION ON REIMBURSEMENT.—The cost of reimbursement described in clause (ii) may be reduced or denied—

''(I) if—

''(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

''(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

''(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section [615(b)(7)], of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

''(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

''(iv) EXCEPTION.—Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement—

''(I) shall not be reduced or denied for failure to provide such notice if—

''(aa) the school prevented the parent from providing such notice; or

''(bb) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I); or

''(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

''(II) may, in the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if—

''(aa) the parent is illiterate or cannot write in English; or

''(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.''

(93) There are no differences between the House bill and Senate amendment.

SR with an amendment:

Add an (11)(A)(iii):

''(iii) in carrying out this part with respect to homeless children and youth, the requirements of subtitle B of the McKinney-Vento Homeless Assistance Act are met.''

(94) The House bill did not make any changes to current law in this section. The Senate amendment includes minor technical changes to current law regarding authority to claim reimbursement, methods of determining responsibility, and updated section numbers.

HR

(95) The House bill includes this technical language as part of its structure to keep section 612(a)(12) as current law. The Senate amendment replaces the entire existing law.

LC

(96) There are no differences between the House bill and Senate amendment.

LC

(97) The House bill requires the State plan to include standards to ensure that all special education teachers are highly qualified in core academic subjects; that standards for all related services personnel and paraprofessionals are set to ensure the providers are qualified to provide services, and that the SEA develops innovative strategies for professional development. The Senate amendment requires all special education teachers to be highly qualified by the end of the 2006–2007 school year, requires States to inform parents about the qualifications of the teachers, requires States to adopt policies to recruit, train, and retain highly qualified personnel, and establishes that those requirements do not create a right to action.

HR with an amendment:

Strike references to ''standards'' and replace with ''qualifications'' throughout and strike ''not later than the end of the 2006–2007 school year.'' in (C)(i) and in (ii)(II).

Report language: ''Conferees are cognizant of the difficulties that some local educational agencies have experienced in recruiting and retaining qualified related services providers and have provided greater flexibility to State educational agencies to establish appropriate personnel standards.

''Conferees are concerned that language in current law regarding the qualifications of related services providers has established an unreasonable standard for State educational agencies to meet, and as a result, has led to a shortage of the availability of related services for students with disabilities.

''Conferees intend for State educational agencies to establish rigorous qualifications for related services providers to ensure that students with disabilities receive the appropriate quality and quantity of care. State educational agencies are encouraged to consult with local educational agencies, other State agencies, the disability community, and professional organizations to determine the appropriate qualifications for related service providers, including the use of consultative, supervisory, and collaborative models to ensure that students with disabilities receive the services described in their individual IEP's.''

(98) The House bill and Senate amendment are the same except the Senate amendment adds a requirement that States establish performance goals for graduation rates.

HR with an amendment:

Insert ''which may include elements of the reports required under section 1111(h) of the Elementary and Secondary Education act of 1965.'' at the end of subparagraph (C).

(99) The House bill and Senate amendment include similar requirements except the Senate amendment adds requirements for alternate assessments, reporting requirements relating to students with disabilities taking alternate assessments, and requirements regarding universal design. Both the House bill and Senate amendment require that alternate assessments have been developed and conducted.

HR with an amendment:

Strike ''accountability systems'' throughout.

(100) The House bill requires States to develop voluntary binding arbitration system. The Senate amendment does not include this requirement.

HR

(101) There are no significant differences between the House bill and Senate amendment.

HR/LC

(102) There are no significant differences between the House bill and Senate amendment.

HR/LC with an amendment:

Strike paragraph (20) and insert the following, and renumber subsequent paragraphs:

''(20) RULE OF CONSTRUCTION.—In complying with paragraphs 612(a)(18) and (19), a state may not use funds paid to it under this part to satisfy state-law mandated funding obligations for local educational agencies, including funding based on student attendance or enrollment, or inflation.''

(103) There are no significant differences between the House bill and Senate amendment.

HR/LC

(104) The House bill requires the panel to be comprised of a majority of individuals with disabilities or parents of children with disabilities ages birth through 26. The Senate amendment requires the panel to be comprised of a majority of individuals with disabilities ages birth through 26 or parents of children with disabilities ages birth through 26.

The Senate amendment, but not the House bill, adds requirements of the types of parents that must be on the panel.

The Senate amendment, but not the House bill, adds additional parties that must be represented on the panel.

SR with an amendment:

Strike clause (v) from the House bill and insert clause (v) from the Senate amendment. Insert ''(xi) a representative from the State child welfare agency responsible for foster care.''

(105) The House bill, but not the Senate amendment, requires suspension and expulsion rates to be disaggregated by race and ethnicity.

SR

(106) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(107) The House bill and Senate amendment include similar language requiring States to adopt the national instructional materials accessibility standard and requiring States to modify their contracts to obtain accessible materials.

The House bill, but not the Senate amendment, has a definition of instructional materials.

The Senate amendment, not the House bill, includes a requirement for the establishment of a national center for instructional materials.

HR with an amendment as follows:

Strike ''675(a)'' and insert ''674(d)(3)(A)'' in subparagraph (A).

HR with an amendment as follows:

Insert subparagraph (B) to read as follows, and redesignate the other paragraphs accordingly:

''(B) RIGHTS OF STATE EDUCATIONAL AGENCY.—Nothing in this paragraph shall be construed to require any State educational agency to participate in the National Instructional Materials Access Center. If a State educational agency chooses not to participate, such agency shall provide an assurance to the Secretary that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.''

HR with an amendment to strike the new (C) and insert the following:

''(C) PREPARATION AND DELIVERY OF FILES.—If a State educational agency chooses to participate in the National Instructional Materials Access Center, not later than 2 years after the date of enactment [of the Individuals with Disabilities Education Improvement Act of 2004–not sure we need since we have an enactment clause?], such agency, as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enters into a written contract with the publisher of the print instructional materials to—

''(i) prepare, and on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, established pursuant to section 674(d), electronic files containing the contents of the print instructional materials using the Instructional Materials Accessibility Standard; or

''(ii) purchase instructional materials from a publisher that are produced in or may be rendered in the specialized formats described in section 674(d)(3)(C).''

(108) The House bill, but not the Senate amendment, requires States to adopt policies to prevent overidentification by race or ethnicity.

SR with an amendment:

Insert ''(c)'' after ''618'' and strike ''the identification of children as''.

(109) The House bill, but not the Senate amendment, requires States to adopt policies regarding psychotropic medication.

HR with an amendment to read as follows:

''(25) Prohibition on mandatory medication.

''(a) IN GENERAL.—The State educational agency shall prohibit State and local educational personnel from requiring a child to obtain a prescription for substances covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation under section 614 (a) and (c) or receiving services.

''(b) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under section 612(a)(3).''

(110) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(111) There are no differences between the House bill and Senate amendment.

HR/LC

(112) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(113) There are no significant differences between the House bill and Senate amendment.

LC

(114) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(115) There are no differences between the House bill and Senate amendment.

LC

(116) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

LC

(117) There are no differences between the House bill and Senate amendment.

LC

(118) The House bill makes no changes to current law in this section. The Senate amendment largely follows current law, except that the Senate amendment makes changes to require the Secretary to determine whether the State has failed or is unwilling to provide for the equitable participation of private school students.

HR

(119) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

LC

(120) The House bill requires the LEA to ''reasonably demonstrate'' that the LEA

meets the conditions, while the Senate amendment requires the LEA to ''provide assurances'' that the LEA meets the conditions.

HR

(121) There are no differences between the House bill and Senate amendment.

LC

(122) The House bill allows LEAs to treat 20% of the increase from one year to the next as local funds to be used for educational programs authorized under ESEA, unless the SEA determines that the LEA has not provided FAPE to its students with disabilities. The Senate amendment allows LEAs to treat 8% of their funds as local funds each year. The Senate amendment allows LEAs to treat not more than 40% of their funds as local funds in any year that the maximum amount for State grants is provided under 611. The Senate amendment requires any LEA that exercises this authority to include that in its calculation of funds reserved for prereferral services.

SR with an amendment to read as follows:

''(C) ADJUSTMENT TO LOCAL FISCAL EFFORT IN CERTAIN FISCAL YEARS.—

''(i) AMOUNTS IN EXCESS.—Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which the allocation received by a local educational agency under section 611(f) exceeds the amount the local educational agency received for the previous fiscal year, the local educational agency may reduce the level of expenditures otherwise required by subparagraph (A)(iii) by not more than 50 percent of the amount of such excess.

''(ii) USE OF AMOUNTS TO CARRY OUT ACTIVITIES UNDER ESEA.—If a local educational agency exercises the authority under clause (i), the agency shall use an amount of local funds equal to the reduction in expenditures under clause (i) to carry out activities authorized under the Elementary and Secondary Education Act of 1965.

''(iii) STATE PROHIBITION.—Notwithstanding clause (i), if a State educational agency determines that a local educational agency is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a) or the State educational agency has taken action against the local educational agency under section 616, the State educational agency shall prohibit the local educational agency from reducing the level of expenditures under clause (i) for that fiscal year.

''(iv) SPECIAL RULE.—The amount of funds expended by a local educational agency under subsection (f) shall count toward the maximum amount of expenditures such local educational agency may reduce under clause (i).''

Report language: ''The Conferees intend for school districts to have meaningful flexibility to use local funds that are generated from their reduction in the maintenance of effort. The Conferees do not intend that school districts have to use these local funds for programs exclusively authorized under the Elementary and Secondary Act of 1965. The conferees recognize that most state and local education programs are consistent with the broad flexibility that is provided in Sec 5131 of the Elementary and Secondary Education Act of 1965.

''The Conferees intend that in any fiscal year in which the local educational agency or State educational agency reduces expenditures pursuant to section 613(a)(2)(C) or section 613(j), the reduced level of effort shall be considered the new base for purposes of determining the required level of fiscal effort for the succeeding year.''

(123) The Senate amendment, but not the House bill, allows these Federal funds to be treated as local funds in calculating local shares under Medicaid.

The Senate amendment also requires LEAs to report to SEAs on the amount of funds treated as local funds each year.

SR

(124) The House bill and Senate amendment refer to different sections of ESEA regarding programs of personnel development.

HR

(125) The House bill and Senate amendment include similar allowable uses of funds for LEAs, except the House bill also allows funds to be used for high cost reserve funds and supplemental services provided under ESEA.

HR with an amendment:

Insert subparagraph (C) from House bill.

(126) The House bill and Senate amendment are essentially the same.

HR with an amendment:

Rewrite subparagraph (B) to read as follows:

''(B) provides funds under this part to those charter schools on the same basis as it provides those funds to its other public schools, including proportional distribution based on relative enrollment of children with disabilities, and at the same time as such agency distributes other Federal funds to its other schools, consistent with State's charter school law.''

(127) The House bill and Senate amendment include a similar requirement requiring LEAs to use the national instructional materials accessibility standard when purchasing instructional materials.

HR with an amendment to read as follows:

''(6) Instructional Materials.—''(A) Purchase.—Not later than 2 years after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, a local educational agency that chooses to participate in the National Instructional Materials Access Center, such agency, when purchasing print instructional materials, acquires these instructional materials in the same manner as a State educational agency described in section 612(a)(22).

(B) Rights of local educational agency.—Nothing in this paragraph shall be construed to require any local educational agency to participate in the National Instructional Materials Access Center. If a local educational agency chooses not to participate, such agency shall provide an assurance to the State educational agency that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner.''

(128) There are no significant differences between the House and Senate amendments.

LC

(129) There are no significant differences between the House bill and Senate amendment.

LC

(130) There are no differences between the House bill and Senate amendment.

HR/LC

(131) There are no differences between the House bill and Senate amendment.

LC

(132) There are no differences between the House bill and Senate amendment.

LC

(133) There are no differences between the House bill and Senate amendment.

LC

(134) Using different names and different methods of identifying children as eligible for these activities, both the House bill and Senate amendment allow LEAs to use up to 15% of their funds to provide services to students before they are identified with a disability.

HR with an amendment:

Strike ''who do not meet the definition of a child with a disability under section 602(3)'' and insert ''who have not been identified as needing special education or related services''.

(135) The House bill and Senate amendment allow similar activities such as professional development evaluations, and behavioral supports. The Senate amendment also allows LEAs to use funds to develop and implement interagency financing structures.

HR with an amendment:

Strike paragraph (C)

(136) There are no differences between the House bill and Senate amendment.

LC

(137) The House bill and Senate amendment require similar reporting requirements, with the House bill adding a requirement that LEAs report on children served for two years.

SR

Report language: ''The Conferees want to ensure that information is provided on the impact that the early intervening services have on children to determine if these activities have reduced the numbers of referrals to special education. Local educational agencies are required to report on the number of students who are served under this activity for two years to determine if the provision of services under this activity reduces the number of overall referrals to special education and related services. The Conferees intend that the two-year period apply to the two years after the child has received services under this activity.''

(138) The House bill and Senate amendment allow funds used in the section to be aligned with ESEA activities so long as the IDEA funds supplement, but not supplant, other Federal funds for those activities.

HR with an amendment:

Strike ''Certain Projects Under'' from heading.

(139) The House bill does not include this GAO study.

SR

(140) There are no differences between the House bill and Senate amendment.

LC

(141) There are no differences between the House bill and Senate amendment.

LC

(142) The Senate amendment, but not the House bill, gives States that are the providers of special education or pay for 80% or more of the non-federal share of special education costs, the same options that LEAs have to treat a certain portion of its IDEA funds if the State adheres to the requirements of the Act.

SR with an amendment to read as follows:

''(j) STATE AGENCY FLEXIBILITY.—

''(1) Adjustment to state fiscal effort in certain fiscal years.—For any fiscal year for which the allotment received by a State under section 611 exceeds the amount the State received for the previous fiscal year and if the State in school year 2003–2004 or any subsequent school year pays or reimburses all local educational agencies within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services, the State

educational agency, notwithstanding paragraphs (17) and (18) of section 612(a) and section 612(b), may reduce the level of expenditures from State sources for the education of children with disabilities by not more than 50 percent of the amount of such excess.

''(2) PROHIBITION.—Notwithstanding paragraph (1), if the Secretary determines that a State educational agency is unable to establish, maintain, or oversee programs of free appropriate public education that meet the requirements of this part, or that the State needs assistance, intervention, or substantial intervention under section 616(d)(2)(A), the Secretary shall prohibit the State educational agency from exercising the authority in paragraph (1).

''(3) EDUCATION ACTIVITIES.—If a State educational agency exercises the authority under paragraph (1), the agency shall use funds from State sources, in an amount equal to the amount of the reduction under paragraph (1), to support activities authorized under the Elementary and Secondary Education Act of 1965 or to support need based student or teacher higher education programs.

''(4) REPORT.—For each fiscal year for which a State educational agency exercises the authority under paragraph (1), the State educational agency shall report to the Secretary the amount of expenditures reduced pursuant to such paragraph and the activities that were funded pursuant to paragraph (3).

''(5) Limitation.—Notwithstanding paragraph (1), a State educational agency may not reduce the level of expenditures described in paragraph (1) if any local educational agency in the State would, as a result of such reduction, receive less than 100 percent of the amount necessary to ensure that all children with disabilities served by the local educational agency receive a free appropriate public education from the combination of Federal funds received under this title and State funds received from the State educational agency.''

(143) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(144) The House bill and Senate amendment are similar, with the House bill adding parental consent in the heading.

SR

(145) The House bill and Senate amendment have similar language regarding initial evaluations, with the Senate amendment requiring that such evaluations take place within 60 days unless the State has an existing established time frame.

HR with an amendment to read as follows:

''(C) Procedures.—

''(i) In general.—Such initial evaluation shall consist of procedures—

''(I) to determine whether a child is a child with a disability (as defined in section 602(3)) within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and

''(II) to determine the educational needs of such child.

''(ii) EXCEPTION.—The relevant timeframe in subparagraph (i)(I) shall not apply to a local educational agency if—

''(I) a child enrolls at a local educational agency after the relevant timeframe in subparagraph (i)(I) has begun and prior to a determination by the child's previous local educational agency as to whether a child is a child with a disability (as defined in section 602(3)), provided that the local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and local educational agency agree to a specific time when the evaluation will be completed; or

''(II) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.''

(146a) The House bill provides guidance to parents and LEAs if the parent refuses consent for evaluation or initial services. The Senate amendment provides that the LEA is not in violation of FAPE if the parent refuses services.

SR with an amendment to read as follows:

''(ii) Absence of consent.—

''(I) FOR INITIAL EVALUATION.—If the parent of such child does not provide consent for an initial evaluation under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation of the child by utilizing the procedures described in section 615, except to the extent inconsistent with State law relating to such parental consent.

''(II) FOR SERVICES.—If the parent of such child refuses to consent to services under clause (i)(II), the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 615.

''(III) EFFECT ON AGENCY OBLIGATIONS.—If the parent of a child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide the consent—

''(aa) the local educational agency shall not be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide the special education and related services for which the local educational agency requests such consent; and

''(bb) the local educational agency shall not be required to convene an IEP meeting or develop an IEP under this section for the child for services for which the local educational agency requests such consent.''

(146b) The Senate amendment, but not the House bill, allows the school district to not seek parental consent for wards of the State if consent has been given by an appropriate official.

SR with an amendment to read as follows:

''(iv) EXCEPTION FOR WARDS OF THE STATE.—If the child is a ward of the state and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parents, as defined in section 602(22), of a child for an initial evaluation to determine whether the child is a child with a disability. In cases where—

''(I) despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parents of such child;

''(II) the rights of the parents have been terminated in accordance with State law; or

''(III) the rights of the parents to make educational decisions have been subrogated by a judge in accordance with State law and consent has been given by an individual appointed by the judge to represent the child

the agency shall not be required to obtain informed consent from the parents of a child for an initial evaluation to determine whether the child is a child with a disability.''

Report language: ''The conferees intend that in the case of children who are wards of the State, consent may be provided by individuals legally responsible for the child's welfare or appointed by the judge to protect the rights of the child.''

(147) The House bill, but not the Senate amendment, provides that the screening of a child by a teacher or specialist shall not be considered an evaluation.

SR

(148) The House bill and Senate amendment have similar language regarding reevaluations, except the Senate amendment also allows that related services needs to factor in to the need for evaluation.

HR

(149) There are no differences between the House bill and Senate amendment.

HR

(150) The House bill and Senate amendment have similar requirements regarding the assessments used for evaluations. The House bill requires multiple up-to-date measures, while the Senate amendment requires a variety of assessment tools and strategies.

The Senate amendment also requires that the LEA not use any single procedure, measure or assessment as the sole criteria, while the House bill requires that the LEA not use any single measure or assessment.

HR with an amendment:

Strike ''procedure'' in 2(B).

(151) The House bill and Senate amendment have similar requirements with the House bill focusing on ''assessments'' and the Senate amendment focusing on ''tests''.

The Senate amendment, but not the House bill, adds additional requirements for homeless children, wards of the State, and military children.

HR with an amendment:

Strike ''tests'' and insert ''assessments'' throughout.

Strike (D) and insert a new (D) to read as follows:

''(D) assessments of children with disabilities who transfer from 1 school district to another school district in the same academic year, are coordinated with such children's prior and subsequent schools as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.''

Report language: ''The Conferees recognize that the high mobility rates of some children, including homeless children and youth and children and youth in the custody of a state child welfare agency, may cause delays in the assessment process and in the provision of a free appropriate public education. In order to minimize such delays, the Conferees intend that local education agencies ensure that assessments for these children and youth be completed expeditiously, taking into consideration the date on which such children and youth were first referred for assessment in any local educational agency. Such assessments shall be made in collaboration with parents (including foster parents) and, where applicable, surrogate parents, homeless liaisons designated under Section 723(g)(1)(j)(ii) of the McKinney-Vento Homeless Assistance Act, court appointed special advocates, a guardian ad litem, or a judge.''

(152) The House bill and Senate amendment have similar language except the House bill adds the requirement that the evaluation team and the parents determine the educational needs of the child.

SR

Report language: ''Conferees intend the evaluation process for determining eligibility of a child under this Act to be a comprehensive process that determines whether the child has a disability, and as a result of that disability, whether the child has a need for special education and related services. As part of the evaluation process, conferees expect the multi-disciplinary evaluation team to address the educational needs of the child in order to fully inform the decisions made

by the IEP Team when developing the educational components of the child's IEP. Conferees expect the IEP Team to independently review any determinations made by the evaluation team, and that the IEP Team will utilize the information gathered during the evaluation to appropriately inform the development of the IEP for the child.''

(153) The House bill and Senate amendment have the similar language except the House bill expands on the definition of reading by referring to ESEA definition of scientifically based reading practices.

SR with an amendment:

Strike (A) and insert a new (A) to read as follows:

''(A) lack of appropriate instruction in reading, including in the essential components of reading as defined in Sec. 1208(3) of ESEA of 1965.''

(154) The Senate amendment, but not the House bill, requires that the determination of the diagnosis of specific learning disability falls under the evaluation procedures.

HR

(156) The House bill specifies that classroom-based assessments should be local or State assessments and requires the evaluation to determine whether the child continues to have educational needs based on the child's academic achievement. The Senate amendment requires the reevaluation to determine the particular category of disability.

SR with an amendment:

Insert comma before ''local'' in (c)(1)(A).

(157) The House bill and Senate amendment have similar language, except for the difference in referring to assessments in the House bill and tests in the Senate amendment, and the inclusion of procedures in the Senate amendment.

SR

(158) There are no differences between the House bill and Senate amendment.

LC

(159) The House bill and Senate amendment have similar language, except for the House bill requiring the evaluation to determine the educational need of the child.

SR

(160) The House bill requires a reevaluation prior to graduation and before determining the child no longer has a disability only if the IEP Team is not in agreement regarding that decision. The Senate amendment requires a reevaluation prior to determining the child no longer has a disability. The Senate amendment requires the LEA to provide a summary of the child's performance to a student that is graduating or exceeding the age eligibility under State law.

HR

(161) The House bill and Senate amendment have similar language except the Senate amendment also requires functional performance to be part of the present levels of performance.

HR

(162) The House bill establishes requirements for the inclusion of benchmarks or short-term objectives in the child's IEP for students taking alternate assessments aligned to alternate standards.

SR with an amendment:

Strike (d)(1)(A)(I)(cc) and replace with new (d)(1)(A)(I)(cc) to read as follows: ''for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.''

(163) The House bill and Senate amendment include similar language regarding annual goals, with the Senate amendment also requiring that the IEP include quarterly reporting on progress towards those annual goals. The House bill includes a regular reporting requirement in (VII), see note 166.

HR

(164) The House bill and Senate amendment have similar requirements, with the House bill including a requirement that related services be based on peer-reviewed research to the extent practicable.

SR

(165) The House bill requires the IEP team to explain why the regular assessment is not appropriate and how the child will be assessed. The Senate amendment requires the IEP team to explain why the child cannot participate in the regular assessment and why the alternate assessment is appropriate.

HR

(166) The House bill requires the IEP team to plan for transition at age 14 and implement a transition plan by age 16. The Senate amendment requires all transition planning and services to start at age 14.

HR with an amendment:

Strike ''14'' and insert ''16''.

(167) The House bill requires the IEP to report progress toward the annual goals in the same frequency as LEAs report progress on non-disabled students. Senate has similar requirement in earlier provision (see note 163).

HR

(168) There are no significant differences between the House and Senate amendments.

HR

(169) There are no differences between the House bill and Senate amendment.

LC

(170) Both the House bill and Senate amendment require a regular education teacher to be on the IEP team, but the House bill, and not the Senate amendment, allows the regular education teacher flexibility in which parts of the meetings they attend. The House bill also allows one regular education teacher to serve as a representative if the child has multiple regular education teachers. See note 172 for similar Senate provision.

HR

(171) The House bill refers to the general education curriculum while the Senate amendment refers to the general curriculum.

The Senate amendment, but not the House bill, specifies that a child who is a ward of the State may have an appropriate official at the IEP Team meeting.

SR

(172) The Senate amendment allows an IEP team member flexibility in which parts of the meetings they attend so long as the parent and LEA agree and so long as the excused member submits input prior to the IEP meeting. See note 170 and 177 for similar House provision.

HR with an amendment:

Insert ''to the IEP team'' after ''submits'' in (C)(ii)(II).

HR with an amendment:

Strike ''that member,'' in (C)(i) and (C)(ii)(I), and the '','' after ''parent'' in (C)(ii)(I), and insert ''in writing to the parent and IEP team'' after ''input'' in (C)(ii)(II).

HR with an amendment:

Insert (D) to read as follows:

''(D) IEP TEAM TRANSITION.—In the case of a child who was previously served under Part C, an invitation to the initial IEP meeting to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.''

Report language: ''The Conferees recognize that ensuring that a smooth transition from the Part C system to the Preschool Program or to school is vital for a child's educational success. It is the Conferees' intent that during the initial IEP meeting for a child transferring from the Part C program the types of services the child received as part of the IFSP are discussed. The Conferees understand that services provided through the Part B program may differ in frequency, duration, and environment, however, the IEP Team should explain the changes in services in the initial IEP meeting. The Conferees do not intend that a State or district reduce any service a child would be otherwise eligible for under Part B.''

(173) The House bill, but not the Senate amendment, requires the IEP team to consider the IFSP when developing an IEP.

The Senate amendment, but not the House bill, requires that IEPs transfer with a child from one district to another, or State to State.

SR with an amendment:

Insert (C) to read as follows:

''(C) PROGRAM FOR CHILDREN WHO TRANSFER SCHOOL DISTRICTS.—

''(i) IN GENERAL.—

''(I) In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.

''(II) In the case of a child with a disability who transfers school districts within the same academic year, who enrolls in a new school and who had an IEP that was in effect in another State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency conducts an evaluation pursuant to section 614(a)(1), if determined to be necessary by such agency, and develops a new IEP, if appropriate, that is consistent with Federal and State law.

''(ii) TRANSMITTAL OF RECORDS.—To facilitate the transition for a child described in clause (i)—

''(I) the new school in which the child enrolls shall take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled pursuant to 34 CFR 99.31(a)(2), and

''(II) the previous school in which the child was enrolled shall take reasonable steps to promptly respond to such request from the new school.''

(174) The House bill and Senate amendment have similar language, in different order, and the Senate amendment adds a requirement that the functional needs of the child are considered.

HR

Report language: ''The Conferees understand that the development of a child's IEP involves many considerations and decisions on how best to create an education program that serves the needs of the individual child. The Conferees intend that the uniqueness of

each child help guide these decisions, including the child's strengths, characteristics, and background when developing the IEP.''

(175) The Senate amendment, but not the House bill, requires that IEPs provide behavioral interventions for children whose behavior impedes their own learning or that of others. The Senate amendment also requires the IEP team to consider a larger list of services for blind students.

SR

(176) The House bill, but not the Senate amendment, allows for the possibility that the regular education teacher may not be part of the IEP team if appropriately determined.

HR

(177) The House bill allows an IEP team member flexibility in which parts of the meetings they attend so long as the parent and LEA agree and so long as the excused member submits written input prior to the IEP meeting. See note 172 for similar Senate provision.

HR

(178) The House bill encourages consolidation of IEP meetings while the Senate amendment encourages consolidation of reevaluations with the IEP Team meeting.

HR with an amendment:

Strike (E) and insert new (E) to read as follows:

''(E) CONSOLIDATION OF IEP TEAM MEETINGS.—To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.''

(179) The House bill, but not the Senate amendment, specifies that changes to the IEP can be done by amendment, instead of rewriting the entire IEP.

SR with an amendment:

Insert ''Upon request, a parent shall be provided an executed copy of the IEP.'' at the end of subparagraph (G).

(180) The House bill, but not the Senate amendment, allows for the possibility that the regular education teacher may not be part of the IEP team if appropriately determined.

HR

(181) Both the House bill and the Senate amendment allow the LEA to offer to parents the ability to develop a comprehensive 3-year IEP, if the parents choose to develop such an IEP. The House bill allows this to be done for all children that receive special education. The Senate amendment restricts this option to students age 18 that stay within the educational system.

SR with an amendment to read as follows:

''(5) MULTI-YEAR IEP DEMONSTRATION.—

''(A) PILOT PROGRAM.—

''(i) PURPOSE.—The purpose of this subsection is to provide an opportunity for States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

''(ii) AUTHORIZATION.—In order to carry out the purpose of this subsection, the Secretary is authorized to approve not more than 15 States based on proposals submitted by States to allow parents and local educational agencies the opportunity for long-term planning by offering the option of developing a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child.

''(iii) PROPOSAL.—

''(I) IN GENERAL.—A State desiring to participate in the program under this subsection shall submit a proposal to the Secretary at such time and in such manner as the Secretary may reasonably require.

''(II) CONTENT.—The proposal shall include—

''(aa) assurances that the parent must consent to the option of developing a comprehensive multi-year IEP;

''(bb) a list of required elements for each multi-year IEP, including—

''(AA) measurable goals pursuant to paragraph (1)(A)(i)(II), coinciding with natural transition points for the child, that will enable the child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the child's disability; and

''(BB) measurable annual goals for determining progress toward meeting the goals described in subitem (AA); and

''(cc) a description of the process for the review and revision of each multi-year IEP, including—

''(AA) a review by the IEP Team of the child's multi-year IEP at each of the child's natural transition points;

''(BB) in years other than a child's natural transition points, an annual review of the child's IEP to determine the child's current levels of progress and whether the annual goals for the child are being achieved; and to amend the IEP, as appropriate, to enable the child to continue to meet the measurable goals set out in the IEP;

''(CC) if the IEP Team determines on the basis of a review that the child is not making sufficient progress toward the goals described in the multi-year IEP, a local educational agency will ensure that the IEP Team reviews the IEP within 30 calendar days; and

''(DD) at the request of the parent, the IEP Team shall conduct a review of the child's multi-year IEP rather than or subsequent to an annual review.

''(B) REPORT.—Beginning 2 years after the date of enactment, the Secretary shall submit an annual report to the Committee on Education and the Workforce in the House of Representatives and the Health, Education, Labor and Pensions Committee in the Senate regarding the effectiveness of the program and any specific recommendations for broader implementation of such program including

''(i) reducing—

''(I) the paperwork burden on teachers, principals, administrators, and related service providers; and

''(II) noninstructional time spent by teachers in complying with this part;

''(ii) enhancing longer-term educational planning;

''(iii) improving positive outcomes for children with disabilities;

''(iv) promoting collaboration between IEP Team members; and

''(v) ensuring satisfaction of family members.''

''(C) DEFINITION.—As used in this paragraph, the term 'natural transition points' means those periods that are close in time to the transition of a child with a disability from preschool to elementary grades, from elementary grades to middle or junior high school grades, from middle or junior high school grades to high school grades, and from high school grades to post-secondary activities, but in no case longer than 3 years.''

(182) There are no significant differences between the House bill and Senate amendment.

LC

(183) The Senate amendment, but not the House bill, requires that placements of homeless children with disabilities comply with the McKinney-Vento Homeless Assistance Act.

The House bill, but not the Senate amendment, allows for alternative means of meeting participation for meetings under section 615.

SR with an amendment:

Strike ''and 615'' in (f) and insert '', 615(e) and (f)(1)(B), and administrative matters under 615 (such as scheduling, exchange of witness lists and status conferences)''.

(184) The House bill includes a Sense of Congress regarding the need to have a disability diagnosis performed by a physician or licensed health care professional. The Senate amendment does not include this provision.

HR

(185) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(186) The Senate amendment, but not the House bill, includes language regarding children who are wards of the State.

SR

(187) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(188) The House bill and Senate amendment include similar language, except the House bill modifies the need for an independent evaluation to be done as appropriate.

HR

(189) The Senate amendment, but not the House bill, includes language regarding homeless children and children who are wards of the State.

SR with an amendment:

Rewrite (b)(2) to read as follows:

''(b)(2)(A) IN GENERAL.—procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents. In the case of—

''(i) a child who is a ward of the State, such surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of this paragraph;

''(ii) an unaccompanied homeless youth as defined in Sec 725(6) of the McKinney-Vento Homeless Assistance Act, the LEA shall appoint a surrogate in accordance with this paragraph.

''(B) TIME REQUIREMENT.—The State shall make reasonable efforts to ensure the assignment of the surrogate not more than 30 days after there is a determination made by the agency that the child needs a surrogate.''

Report language: ''In light of the fact that unaccompanied homeless youth are a particularly mobile population, once the school district has made a determination that such youth require a surrogate, the Conferees encourage States or local educational agencies where allowed by law to quickly appoint a surrogate or refer the child to the child welfare system if consistent with State law. The Conferees recognize that, because the parents of homeless unaccompanied youth may be unavailable or unwilling to participate in the youth's education, homeless unaccompanied youth face unique problems in obtaining a free appropriate public education. Accordingly, the Conferees intend that the surrogate parent process be available for such

youth, to ensure that they are provided with a free appropriate public education. Furthermore, the Conferees intend that appropriate staff members of emergency shelters, transitional shelters, independent living programs, and street outreach programs not be considered to be employees of agencies involved in the education or care of youth, for purposes of the prohibition of certain agency employees from acting as surrogates for parents as set forth in Sec. (b)(2)(A), provided that a such role is temporary until a surrogate can be appointed that meets the requirements and such role in no way conflicts with, or is in derogation of, the provision of a free appropriate public education to these youth.''

(190) There are minor wording differences between the House and Senate amendments, but the content is the same.

LC

(191) There are no differences between the House bill and Senate amendment.

LC

(192) The House bill adds a requirement for voluntary binding arbitration that the Senate amendment does not include.

HR

(193) The House bill and Senate amendment have similar language regarding the opportunity to present complaints, but the House bill, not the Senate amendment, includes language establishing a 1 year statute of limitations on the right to present complaints. Senate has a 2 year timeline for filing complaints at note 221.

SR with an amendment to read as follows:

''(6) an opportunity to present complaints—

''(A) with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child; and

''(B) which set forth an alleged violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint.''

(194) The Senate amendment, but not the House bill, allows for either party to file a due process complaint.

The House bill requires the complaint to have a description of the specific issues while the Senate amendment requires a description of the nature of the problem.

HR

(195) The Senate amendment, but not the House bill, requires the LEA to send a prior written notice to a parent if the LEA has not already done so, after a parent has filed a due process complaint.

SR

(196) The Senate amendment, but not the House bill, requires the SEA to develop model forms for the complaint notice.

HR

(197) The Senate amendment, but not the House bill, includes procedures for children who are wards of the State.

SR

(198) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(199) The Senate amendment, but not the House bill, requires the notice to include what options the agency considered but did not include, and why. The Senate amendment, but not the House bill, requires a description of any other factors relevant to the agency's proposal or refusal.

SR with an amendment:

Insert (C) as amended by striking ''any other options that the agency considered'' and inserting ''other options considered by the IEP team'' and insert (E) as amended by striking ''any other'' and inserting ''the''.

(200) The Senate amendment, but not the House bill, presumes that the complaint is sufficient unless a party submits an objection to the notice, establishes timelines and procedures to support this rule, and requires the other party to receive the notice.

The Senate amendment, but not the House bill, also allows parents to amend their complaint if the hearing officer or other party consents, with timelines restarting at the time the amendment is filed.

HR with an amendment:

Strike ''only'' and insert ''not later than 5 days'' in (2)(D)(i)(II).

HR with an amendment:

Insert '', including the timeline under subsection (f)(1)(B)'' after ''notice'' in (2)(D)(ii).

HR with an amendment:

Strike ''20'' and insert ''15'' in paragraph (B).

HR with an amendment:

Modify (2)(A) as follows:

''(2) DUE PROCESS COMPLAINT NOTICE.—

''(A)(i) PARENT COMPLAINT.—The due process complaint notice required under subsection (b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the requirements of that subsection.

''(ii) RESPONSE.—If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall within 10 days send to the parent a response that shall include—

''(I) an explanation of why the agency proposed or refused to take the action raised in the complaint;

''(II) a description of other options that the IEP team considered and the reasons why those options were rejected;

''(III) a description of each evaluation procedure, test, record or report the agency used as the basis for the proposed or refused action; and

(IV) a description of the factors that are relevant to the agency's proposal or refusal.

''(iii) SUFFICIENCY.—A response filed by a local educational agency pursuant to clause (ii) shall not be construed to preclude such local educational agency from asserting that the parent's due process complaint notice was insufficient, where appropriate.''

(201) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(202) The Senate amendment, but not the House bill, requires a notice whenever a due process complaint is filed.

HR with an amendment:

Rewrite (d)(1) to read as follows:

''(d) PROCEDURAL SAFEGUARDS NOTICE.—

''(1) IN GENERAL.—

''(A) A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents—

''(i) upon initial referral or parental request for evaluation;

''(ii) upon the first occurrence of the registration of a complaint under subsection (b)(6); and

(iii) upon request by a parent.

''(B) The local educational agency may place a current copy of the procedural safeguards notice on its Internet website, if such website exists.''

(203) The House bill and Senate amendment contain similar language, except the House bill requires a description of the safeguards while the Senate amendment requires a full explanation.

HR

(204) The Senate amendment, but not the House bill, requires the notice to include time period requirements and a description of the State-level appeal. The House bill does not include a State-level appeal system.

HR

(205) The House bill, but not the Senate amendment, requires a description of the voluntary binding arbitration system. The Senate amendment does not include that option.

HR

(206) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(207) The House bill, but not the Senate amendment, creates a Voluntary Binding Arbitration system in the title of this section.

HR

(208) Senate amendment, but not House bill, specifies that a mediation agreement is enforceable in court.

HR with an amendment:

Strike (F) and (G) and insert the following (F) and (G):

''(F) WRITTEN AGREEMENT.—In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that—

''(I) states that all discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings;

''(II) is signed by both the parent and a representative of the public agency who has the authority to bind such agency; and

''(III) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

''(G) MEDIATION DISCUSSIONS.—Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.''

Report language: ''The conferees intend that the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process to ensure that all discussions that occur during the mediation process remain confidential irrespective of whether the mediation results in a resolution.''

(209) The House bill, but not the Senate amendment, requires States to develop a voluntary binding arbitration system for the resolution of disputes.

HR

(210) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(211) The House bill does not provide for a State-level appeal system, so eliminates the dual-tier language. The Senate amendment maintains the State-level appeal.

HR

(212) Both the House bill and Senate amendment require the LEA and parent of a

child with a disability to meet within 15 days of a parent's complaint being filed to attempt to resolve the complaint. The Senate amendment requires the meeting to include the IEP team and a person with decision making authority on behalf of the LEA. The House bill requires a meeting with the LEA and the parents. The House bill, but not the Senate amendment, operates within the regulatory 45 day timeline.

HR with an amendment:

Strike ''Opportunity to Resolve Complaint'' and insert ''Resolution Session'' in the heading.

HR with an amendment:

Strike ''and the IEP Team'' and replace with ''and the relevant member or members of the IEP team with specific knowledge of the facts identified in the complaint'' in (B)(i).

HR with an amendment:

Strike ''specific issues'' and insert ''facts'' in subparagraph (B)(i)(IV).

Report language: ''The Committee intends that the relevant members be determined by the parents and LEA.''

(216) The Senate amendment, but not the House bill, prevents the LEA from bringing an attorney to the preliminary meeting unless the parent brings their attorney. The House bill defines the resolution session as a non-administrative or judicial meeting, and the Senate amendment requires a written agreement to be signed by both parties if agreement is reached, and such agreement is to be enforceable in court.

HR with an amendment:

Strike (iii) and insert the following (iii) and (iv):

''(iii) WRITTEN SETTLEMENT AGREEMENT.—In the case that a resolution is reached to resolve the complaint at such meeting, the parties shall execute a legally binding agreement that is—

''(I) signed by both the parent and a representative of the public agency who has the authority to bind such agency; and

''(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

''(iv) REVIEW PERIOD.—If the parties execute an agreement pursuant to clause (iii), each party has the opportunity to void such agreement within 3 business days of its execution.''

(217) The House bill and Senate amendment contain similar timeline requirements with the House bill requiring notice 'at least 5 business days prior' and the Senate amendment requiring 'not less than 5 business days prior.'

HR

(218) The House bill and Senate amendment include similar language regarding who cannot conduct a hearing. The Senate amendment, but not the House bill, adds additional requirements regarding the qualifications of hearing officers.

HR with an amendment:

Rewrite (3)(A)(ii) to read as follows:

''(ii) possess knowledge of, and the ability to understand, the provisions of this Act, Federal and State regulations pertaining to this Act, and legal interpretations of this Act by Federal and State courts;''

(219) Both the House bill and Senate amendment include similar requirements about the subject matters that may be brought up during a hearing, but the Senate amendment, not the House bill, clarifies that either the parent or the LEA may request a due process hearing.

HR

(220) The Senate amendment, but not the House bill, includes a rule of construction allowing parents to file separate due process hearings on separate issues.

HR

Report language: ''The Conferees intend to encourage the consolidation of multiple issues into a single complaint where such issues are known at the time of the filing of the initial complaint.''

(221) The Senate amendment establishes a 2-year statute of limitations unless State law already has a statute of limitations. The House bill includes a 1-year statute of limitations (see note 193).

HR/LC

(222) The Senate amendment, but not the House bill, includes several exceptions to the requirements of a statue of limitations.

HR with an amendment to read as follows:

''(E) EXCEPTION TO THE TIMELINE.—The timeline described in subparagraph (D) shall not apply if the parent was prevented from requesting the hearing due to—

''(i) specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or

''(ii) the local educational agency's withholding of information from parents that was required to be provided to parents under this part.''

(223) The Senate amendment, but not the House bill, requires hearing officer decisions to be based on substantive grounds.

HR with an amendment:

Strike ''compromised'' and insert ''impeded'' in (F)(ii)(I) and strike ''seriously hampered'' and insert ''significantly impeded'' in (F)(ii)(II).

(224) The Senate amendment, but not the House bill, allows procedural violations to rise to the level of a substantive violation under certain circumstances.

HR with an amendment:

Strike ''compromised'' and insert ''impeded'' in(F)(ii)(I) and strike ''seriously hampered'' and insert ''significantly impeded'' in (F)(ii)(II).

(225) The Senate amendment, but not the House bill, allows for the existence of a State-level appeal system for due process hearings.

HR with an amendment:

Strike (G) and insert the following:

''(G) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the right of a parent to file a complaint with the State educational agency, if such agency offers and conducts such appeals.''

HR with an amendment:

Insert ''if the State educational agency offers a state level appeals process'' at the end of the first sentence in (g).

(226) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(227) The House bill, not the Senate amendment, allows for non-attorney advocates to represent parents at due process hearings. The Senate amendment, but not the House bill, allows for individuals with special knowledge to accompany and advise parents at due process hearings.

HR

(228) The Senate amendment, but not the House bill, allows for a State-level appeal system, and requires the transmittal of records to the State advisory panel.

HR

(229) The House bill includes technical changes to update language after removing the State-level appeal system. The Senate amendment replaces the entire existing law, but makes no changes in this section, except to add a 90 day limit for filing an appeal to court, unless State law provides for a different timeline.

HR

(230) The House bill includes technical changes to update language after removing the State-level appeal system.

HR

(231) The House bill requires the Governor to establish rates for attorney's fees and make those rates public. The Senate amendment places limitations on whether attorneys' fees can be awarded.

The Senate amendment clarifies that meetings conducted under the opportunity to resolve provision are not eligible for reimbursement for attorney's fees.

HR

(232) The Senate amendment clarifies that the parent's attorney's conduct may result in reduction of attorney's fees.

HR

(233) The Senate amendment allows parents to represent their child in court.

SR

(234) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(235) There are minor technical differences between the House bill and Senate amendment, but the content is the same.

LC

(236) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(237)–(245)

HR with an amendment to read as follows:

''(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING.—

''(1) AUTHORITY OF SCHOOL PERSONNEL.—

''(A) CASE-BY-CASE DETERMINATION.—School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.

''(B) AUTHORITY.—School personnel under this section may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).

''(C) ADDITIONAL AUTHORITY.—If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities, except as provided in section 612(a)(1) although it may be provided in an interim alternative educational setting.

''(D) SERVICES.—A child with a disability who is removed from the child's current placement under subparagraph (G) (irrespective of whether the behavior is determined to be a manifestation of the child's disability) or (C) shall—

''(i) continue to receive educational services, as provided in section 612(a)(1), so as to enable the child to continue to participate in

the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

''(ii) receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

''(E) MANIFESTATION DETERMINATION.—

''(i) IN GENERAL.—Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

''(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

''(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

''(ii) MANIFESTATION.—If the local educational agency, the parent and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

''(F) DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION.—If the local educational agency, the parent and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

''(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in the change in placement described in subparagraph (C) or (G);

''(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

''(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

''(G) SPECIAL CIRCUMSTANCES.—School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child—

''(i) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or local educational agency; or

''(ii) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or a school function under the jurisdiction of a State or local educational agency; or

''(iii) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

''(H) NOTIFICATION.—Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards accorded under this section.

(2) DETERMINATION OF SETTING.—The interim alternative educational setting in subparagraph (C) and (G) of paragraph (1) shall be determined by the IEP Team.

(3) APPEAL.—

''(A) IN GENERAL.—The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.

''(B) AUTHORITY OF HEARING OFFICER.—

''(i) IN GENERAL.—A hearing officer shall hear, and make a determination regarding, an appeal requested under subparagraph (A).

''(ii) CHANGE OF PLACEMENT ORDER.—In making the determination under clause (i), the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may—

''(I) return a child with a disability to the placement from which the child was removed; or

''(II) order a change in placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such child is substantially likely to result in injury to the child or to others.

''(4) PLACEMENT DURING APPEALS.—When an appeal under paragraph (3) has been requested by either the parent or the local educational agency—

''(A) the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(C), whichever occurs first, unless the parent and the State or local educational agency agree otherwise; and

''(B) the State or local educational agency shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

''(5) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES.—

''(A) IN GENERAL.—A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

''(B) BASIS OF KNOWLEDGE.—A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred—

''(i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

''(ii) the parent of the child has requested an evaluation of the child pursuant to section 614(a)(1)(B); or

''(iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.

''(C) EXCEPTION.—A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 or has refused services under this part or the child has been evaluated and it was determined that the child was not a child with a disability under this part.

''(D) CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE.—

''(i) IN GENERAL.—If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B) or (C)) prior to taking disciplinary measures against the child, the child may be subjected to disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

''(ii) LIMITATIONS.—If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under this subsection, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.''

Report language: ''The Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordianry circumstances presented. Additionally, it is the intention of the Conferees that when a student has violated a code of conduct school personnel may consider any unique circumstances on a case-by-case basis to determine to whether a change of placement for discipline purposes is appropriate. The Conferees intend that if a change in placement is proposed, the manifestation determination will analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability. The Conferees intend that in situations where the local educational agency, the parent and the relevant members of the IEP team determine that the conduct was the direct result of the child's disability, a child with a disability should not be subject to discipline in the same manner as a non-disabled child.

''The Conferees intend that in order to determine that the conduct in question was a manifestation of the child's disability, the local educational agency, the parent and the relevant members of the IEP team must determine the conduct in question be the direct result of the child's disability. It is intention of the Conferees that the conduct in question was caused by, or has a direct and substantial relationship to, the child's disability, and is not an attenuated association, such as low self-esteem, to the child's disability.''

(246) There are no significant differences between the House bill and Senate amendment.

HR

(247) The House bill does not include these definitions.

HR

(248) The House bill includes this technical language as part of its structure. The Senate amendment adds language regarding the McKinney-Vento Act.

HR with an amendment:

Strike ''or under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act or parts B and E of title IV of the Social Security Act''.

(249) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(250) There are no significant differences between the House bill and Senate amendment.

HR/LC

(251) The Senate amendment allows parents to receive notices through email. The House bill does not include this provision.

HR

(252) The Senate amendment, but not the House bill, includes language requiring the appointment of a surrogate parent if determined necessary by the LEA.

SR

(253)–(258):

SR with an amendment to read as follows:

''SEC. 616. MONITORING, TECHNICAL ASSISTANCE, AND ENFORCEMENT.

''(a) FEDERAL AND STATE MONITORING.—

''(1) IN GENERAL.—The secretary shall—

''(A) monitor implementation of this part through—

''(i) oversight of the exercise of general supervision by the States, as required in section 612(a)(11); and

''(ii) the State performance plans, described in subsection (b)

''(B) enforce this part in accordance with subsection (e); and

''(C) require States to—

''(i) monitor implementation of this part by local educational agencies; and

''(ii) enforce this part in accordance with paragraph (3) and subsection (e).

''(2) FOCUSED MONITORING.—The primary focus of Federal and State monitoring activities described in paragraph (1) shall be on—

''(A) improving educational results and functional outcomes for all children with disabilities; and

''(B) ensuring that States meet the program requirements under this part, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

''(3) MONITORING PRIORITIES.—The Secretary shall monitor the States, and shall require each State to monitor its local educational agencies located in the State (except the State exercise of general supervisory responsibility), using quantifiable indicators, in the following priority areas and using such qualitative indicators as are needed to adequately measure performance in the following priority areas:

''(A) Provision of a free appropriate public education in the least restrictive environment.

''(B) State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services as defined in section 602(33) and 637(a)(9).

''(C) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

''(4) PERMISSIVE AREAS OF REVIEW.—The Secretary shall consider other relevant information and data, including data provided by States under section 618.

''(b) STATE PERFORMANCE PLANS.—

''(1) PLAN.—

''(A) IN GENERAL.—Not later than 1 year after the date of the enactment of the Individuals with Disabilities Education Improvement Act of 2004, each State shall have in place a performance plan that evaluates that State's efforts to implement the requirements and purposes of this Act and describes how the State will improve such implementation.

''(B) SUBMISSION FOR APPROVAL.—Each State shall submit the State's performance plan to the Secretary for approval in accordance with the approval process described in subsection (c).

''(C) REVIEW.—Each State shall review its State performance plan at least once every 6 years and submit any amendments to the Secretary.

''(2) TARGETS.—

''(A) IN GENERAL.—As a part of the plan described under paragraph (1), each State shall establish measurable and rigorous targets for the indicators established under the priority areas described in subsection (a)(3).

''(B) DATA COLLECTION.—

''(i) IN GENERAL.—Each State shall collect valid and reliable information as needed to report annually to the Secretary on the priority areas described in subsection (a)(3).

''(ii) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under this Act.

''(C) PUBLIC REPORTING AND PRIVACY.—

''(i) IN GENERAL.—The State shall use the targets established in the plan and priority areas described in subsection (a)(3) to analyze the performance of each local educational agency in the State in implementing this part.

''(ii) REPORT.—

''(I) PUBLIC REPORT.—The State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan. The State shall make the State's performance plan available through public means, including posting on the website of the State educational agency, distribution to the media, and distribution through public agencies.

''(II) STATE PERFORMANCE REPORT.—The State shall report annually to the Secretary on the performance of the State under the State's performance plan.

''(iii) PRIVACY.—The State shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data is insufficient to yield statistically reliable information.

''(c) APPROVAL PROCESS.—

''(1) DEEMED APPROVAL.—The Secretary shall review (including the specific provisions described in subsection (b)) each performance plan submitted by a State pursuant to subsection (b)(1)(B) and the plan shall be deemed to be approved by the Secretary unless the Secretary makes a written determination, prior to the expiration of the 120–day period beginning on the date on which the Secretary received the plan, that the plan does not meet the requirements of this section, including the specific provisions described in subsection (b).

''(2) DISAPPROVAL.—The Secretary shall not finally disapprove the plan, except after giving the State educational agency notice and an opportunity for a hearing.

''(3) NOTIFICATION.—If the Secretary finds that the plan does not meet the requirements, in whole or in part, of this section, the Secretary shall—

''(A) give the State notice and an opportunity for a hearing; and

''(B) notify the State of the finding, and in such notification shall—

''(i) cite the specific provisions in the plan that do not meet the requirements; and

''(ii) request additional information, only as to the provisions not meeting the requirements, needed to make the plan meet the requirements of this section.

''(4) RESPONSE.—If the State educational agency responds to the Secretary's notification described in paragraph (3)(B) during the 30–day period beginning on the date on which the agency received the notification, and resubmits the plan with the requested information described in paragraph (3)(B)(ii), the Secretary shall approve or disapprove such plan prior to the later of—

''(A) the expiration of the 30–day period beginning on the date on which the plan is resubmitted; or

''(B) the expiration of the 120–day period described in paragraph (1).

''(5) FAILURE TO RESPOND.—If the State educational agency does not respond to the Secretary's notification described in paragraph (3)(B) during the 30–day period beginning on the date on which the agency received the notification, such plan shall be deemed to be disapproved.

''(d) SECRETARY'S REVIEW AND DETERMINATION.—

''(1) REVIEW.—The Secretary shall annually review the State performance report submitted pursuant to subsection (b)(2)(C)(ii)(II) in accordance with this section.

''(2) DETERMINATION.—

''(A) IN GENERAL.—Based on the information provided by the State in the State performance report, information obtained through monitoring visits, and any other public information made available, the Secretary shall determine if the State—

''(i) meets the requirements and purposes of this part;

''(ii) needs assistance in implementing the requirements of this part;

''(iii) needs intervention in implementing the requirements of this part; or

''(iv) needs substantial intervention in implementing the requirements of this part.

''(B) NOTICE AND OPPORTUNITY FOR A HEARING.—For any determinations made under subparagraph (A), the Secretary shall provide reasonable notice and an opportunity for a hearing on such determination.

''(e) ENFORCEMENT.—

''(1) NEEDS ASSISTANCE.—If the Secretary determines, for 2 consecutive years, that a State needs assistance under subsection (d)(2)(ii) in implementing the requirements of this Act, the Secretary shall take 1 or more of the following actions:

''(A) Advise the State of available sources of technical assistance that may help the State address the areas in which the State needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the Department of Education, other Federal agencies, technical assistance providers approved by the Secretary, and other federally funded nonprofit agencies, and require the State to partner with appropriate entities. Such technical assistance may include—

''(i) the provision of advice by experts to address the areas in which the State needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

''(ii) assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

''(iii) designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

''(iv) devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under part D, and private providers of scientifically based technical assistance.

''(B) Direct the use of State level funds under section 611(e) on the area or areas in which the State needs assistance.

''(C) Identify the State as a high-risk grantee and impose special conditions on the State's grant under this part.

''(2) NEEDS INTERVENTION.—If the Secretary determines, for 3 or more consecutive years, that a State needs intervention under subsection (d)(2)(iii) in implementing the requirements of this Act, the following shall apply:

''(A) The Secretary may take any of the actions in (1), and

''(B) The Secretary shall take 1 or more of the following actions:

''(i) Require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within 1 year.

''(ii) Require the State to enter into a compliance agreement under section 457 of the General Education Provisions Act, if the Secretary has reason to believe that the State cannot correct the problem within 1 year.

''(iii) Each year of the determination withhold not less than 20 and not more than 50 percent of the State's funds under section 611(e), until the Secretary determines the State has sufficiently addressed the areas in which the State needs intervention.

''(iv) Seek to recover funds under section 452 of the General Education Provisions Act.

''(v) Withhold, in whole or in part, any further payments to the State under this part pursuant to paragraph (5).

''(vi) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

''(3) NEEDS SUBSTANTIAL INTERVENTION.—Notwithstanding paragraph (1) or (2), at any time that the Secretary determines that a State needs substantial intervention in implementing the requirements of this Act or that there is a substantial failure to comply with any condition of a State educational agency's or local educational agency's eligibility under this part, the Secretary shall take 1 or more of the following actions:

''(A) Recover funds under section 452 of the General Education Provisions Act.

''(B) Withhold, in whole or in part, any further payments to the State under this part.

''(C) Refer the case to the Office of the Inspector General at the Department of Education.

''(D) Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

''(4) OPPORTUNITY FOR HEARING.—

''(A) WITHHOLDING OF FUNDS.—Prior to withholding any funds under this section, the Secretary shall provide reasonable notice and an opportunity for a hearing to the State educational agency involved.

''(B) SUSPENSION.—Pending the outcome of any hearing to withhold payments under subsection (b), the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under this part, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under this part should not be suspended.

''(5) REPORT TO CONGRESS.—The Secretary shall report to the Committee on Education and the Workforce in the House of Representatives and the Committee on Health, Education, Labor, and Pensions in the Senate within 30 days of taking enforcement action pursuant to paragraph (1), (2) or (3), on the specific action taken and the reasons why enforcement action was taken.

''(6) NATURE OF WITHHOLDING.—

''(A) LIMITATION.—If the Secretary withholds further payments pursuant to paragraphs (2) or (3), the Secretary may determine—

''(i) that such withholding will be limited to programs or projects, or portions thereof, that affected the Secretary's determination in (d)(2); or

''(ii) that the State educational agency shall not make further payments under this part to specified State agencies or local educational agencies that caused or were involved in the Secretary's determination in subsection (d)(2).

''(B) WITHHOLDING UNTIL RECTIFIED.—Until the Secretary is satisfied that the conditions that caused the initial withholding has been substantially rectified—

''(i) payments to the State under this part shall be withheld in whole or in part; and

''(ii) payments by the State educational agency under this part shall be limited to State agencies and local educational agencies whose actions did not cause or were not involved in the Secretary's determination in (d)(2), as the case may be.

''(7) PUBLIC ATTENTION.—Any State educational agency that has received notice under subsection (d)(2) shall, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the State.

''(8) JUDICIAL REVIEW.—

''(A) IN GENERAL.—If any State is dissatisfied with the Secretary's action with respect to the eligibility of the State under section 612, such State may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings upon which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

''(B) JURISDICTION; REVIEW BY UNITED STATES SUPREME COURT.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

''(C) STANDARD OF REVIEW.—The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall be conclusive if supported by substantial evidence.

''(f) STATE ENFORCEMENT.—If a State educational agency determines that a local educational agency is not meeting the requirements of this part, including the targets in the State's performance plan, the State educational agency shall prohibit the local educational agency from reducing the local educational agency's maintenance of effort under this part as local funds under section 613(a)(2)(C) for any fiscal year.

''(g) RULE OF CONSTRUCTION.—Nothing under this section shall be construed to restrict the Secretary from utilizing any authority under the General Education Provisions Act to monitor and enforce the requirements of this Act.''

Report language: ''The Conferees believe that accurate decision making with regard to enforcement of the IDEA is required in order to: (1) ensure that federal dollars are being spent productively on education, and, (2) to ensure that monitoring and enforcement is administered fairly. It is our expectation that state performance plans, indicators, and targets will be developed with broad stakeholder input and public dissemination.

''The Secretary is directed to monitor states using rigorous targets and to request such information from states and stakeholders as is necessary to implement the purposes of IDEA, including the use of on-site monitoring visits and student file reviews, and to enforce the requirements of the IDEA.

''Conferees strongly encourage the Secretary to review all relevant and publicly available data, including the data gathered under Section 618, related to the targets and priority areas established for reviewing the efforts of States and local educational agencies to implement the requirements and purposes of IDEA. The Secretary is also authorized to use qualitative measures to inform his decision-making process in determining the efforts of the State or LEA in implementing IDEA.

''Conferees recommend that the Secretary diligently investigate any root causes prior to selecting enforcement options, so that enforcement options are appropriately selected and have the greatest likelihood in yielding improvement in that state. However, investigations must not unduly delay the enforcement action.''

(259) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(260) There are no differences between the House bill and Senate amendment.

HR

(261) The House bill prohibits the Federal Government from dictating the content of curriculum or instruction. The Senate amendment does not include that provision.

SR

(262) The Senate amendment, but not the House bill, includes authorization for the Secretary to hire personnel to carry out the Secretary's duties under section 664.

SR

(263) The House bill allows the Secretary to grant waivers to 10 States to reduce paperwork. The Senate amendment includes this provision in note 46.

HR

(264) The Senate amendment requires the development of a model IFSP form, the House bill does not include that provision.

HR

(265) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(266) The House bill and Senate amendment contain similar requirements regarding data collection, except the House bill, and not the Senate amendment requires LEAs to submit the same data as States, and requires data on voluntary binding arbitration and children served with early intervening funds

under 613(f). The Senate amendment, but not the House bill, requires disaggregation by gender, and by LEP status and gender on several indicators, data collection on students suspended for one day or more, the numbers of students sent to alternate settings due to discipline violations, the number of due process complaints and hearings held, and other data regarding discipline provisions.

HR with an amendment:

Strike (L).

(267) The House bill allows the Secretary to obtain information through sampling. The Senate amendment requires that the data not be able to identify individual children.

HR with an amendment:

Include both.

(268) The Senate amendment allows the Secretary to provide technical assistance to States to collect data. The House bill does not include this provision.

HR

(269) The House bill and Senate amendment contain similar language, except the House bill requires data to be examined on ethnicity as well.

The House bill also requires States to use funds for prereferral services to address disproportionality if any is found and requires the LEA to publicly report on any revisions.

SR with an amendment:

Strike ''preferral'' and insert ''early intervening'' in (2)(B).

Report language: ''The Conferees believe that early intervening services should make use of supplemental instructional materials, where appropriate, to support student learning. Children targeted for early intervening services under IDEA are the very students who are most likely to need additional reinforcement to the core curriculum used in the regular classroom. These are in fact the additional instructional materials that have been developed to supplement and therefore strengthen the efficacy of comprehensive core curriculum. Per the requirements of NCLB, core curriculum must meet standards of scientific rigor. As supplementary materials to these core programs, they are aligned with and designed to reinforce the skills taught in these comprehensive research-based texts.''

(270) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(271) There are no differences between the House bill and Senate amendment.

LC

(272) There are no significant differences between the House bill and Senate amendment.

LC

(273) There are no significant differences between the House bill and Senate amendment.

LC

(274) There are no differences between the House bill and Senate amendment.

SR with an amendment:

Strike '', if the State educational agency is the lead agency for the State under that part'' in (e)(2).

(275) The House bill, but not the Senate amendment, allows funds to support the implementation of a State plan under Part D if the State receives a grant. The Senate amendment, but not the House bill, allows funds to be used to provide services to children with disabilities under the Part C program until the child attends kindergarten.

HR with an amendment:

LC on ''it retains'' versus ''the State reserves''.

HR with an amendment:

Insert new paragraph (6) to read as follows:

''(6) at the State's discretion, to continue service coordination or case management for families who receive services under part C.''

(276) There are no significant differences between the House bill and Senate amendment.

LC

(277) There are no differences between the House bill and Senate amendment.

LC

(278) The House bill authorizes $500 million for FY 04 and such sums thereafter, while the Senate amendment authorizes such sums.

HR

Part C

(279) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(280) The House bill and Senate amendment have virtually the same findings, but the Senate amendments contains additional language on brain development.

HR

(281) There are no significant differences between the House and Senate amendments.

LC

(282) There are no differences between the House bill and Senate amendment.

LC

(283) The House bill requires services to be designed to address family-identified priorities, while the Senate amendment requires services to be designed to meet the developmental needs of the infant or toddler.

HR with an amendment to read as follows:

''(C) are designed to meet the developmental needs of an infant or toddler with a disability as identified by the individualized family service plan team in any 1 or more of the following areas:''.

(284) The House bill and Senate amendment include minor differences in the services provided with the House bill adding family therapy and the Senate amendment adding sign language and cued language services.

HR

Report language: ''Conferees commend the Office of Special Education & Rehabilitative Services for developing updated early intervention materials that set out the full range of options for families with deaf and hard of hearing children who now have the potential to develop age appropriate language in whatever modality their parents choose. Dramatic improvements in hearing technology, both hearing aids and cochlear implants, provide new opportunities for families who wish to pursue spoken language for their child with hearing loss. These new materials and efforts further the goals of the IDEA that early intervention personnel actively provide comprehensive and bias-free information on the range of language options available to a child with hearing loss, including the benefits of early amplification and/or early implantation of a cochlear implant.''

(285) The House bill and Senate amendment include minor differences in the personnel authorized to provide services with the House bill authorizing registered dietitians and the Senate amendment authorizing nutritionists. The Senate amendment also adds teachers of the deaf as a listed provider while the House bill does not.

SR

Report Language: ''The conferees intend that the term 'special educators' includes teachers of the deaf. The conferees recognize that with the recent dramatic rise in newborn hearing screening, more infants are being identified with hearing loss early and they need the services of teachers of the deaf who can meet their language and communication needs.''

(286) The House bill allows the State to use the Part C program to provide services to infants and toddlers up through age 5 if the services include an educational component and parents are advised of their rights to choose to move to the Section 619 program. The Senate amendment contains a similar program for children ages 3–5. See Section 635(b) of the Senate amendment.

HR with an amendment:

HR on structure of (5)(B) with an amendment to (5)(B)(ii) to read as follows:

''(ii) children with disabilities who are eligible for services under section 619 and who previously received services under this part until such children enter, or are eligible under state law to enter, kindergarten; provided that any programs under this part serving these children shall include—

''(I) an educational component that promotes school readiness and incorporates preliteracy, language and numeracy skills, and

''(II) a written notification to parents of their rights and responsibilities in determining whether their child will continue to receive services under this part or participate in preschool programs under section 619.''

(287) The Senate amendment, but not the House bill, includes language regarding homeless children, wards of the State, and military children.

SR with an amendment:

Insert '', infants or toddlers with disabilities who are homeless children, infants or toddlers with disabilities who are wards of the State,'' after ''including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State,''.

(288) The Senate amendment establishes minimum levels of developmental delay that States must cover. The House bill does not include this language.

SR with an amendment:

Amend section 635(a)(1) to read ''A rigorous definition of the term developmental delay that will be used for the state in carrying out programs under this part in order to appropriately identify infants and toddlers that are in need of services under this part''.

Report language: ''The Conferees intend that States establish rigorous standards for identifying and serving infants and toddlers with developmental delays. The Conferees believe that these standards should encompass a sufficient scope of developmental delays to ensure that these infants and toddlers receive the benefit of Part C services designed to lessen the infant or toddler's need for future or more extensive services.''

(289) The House bill, but not the Senate amendment, requires that early intervention services be based on scientifically based research.

SR with an amendment:

Rewrite (2) to read as follows:

''(2) A State policy that is in effect and that ensures that appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian infants and toddlers with disabilities and their

families and homeless infants and toddlers with disabilities and their families.''

SR with an amendment:

Add at the end of (5) ''and that ensures rigorous standards for appropriately identifying infants and toddlers for services under this part that will reduce the need for future services''

(290) The House bill, but not the Senate amendment, requires an emphasis on informing parents of infants with risk factors on the availability of early intervention services.

The Senate amendment, but not the House bill, expands the list of places the public awareness program should focus on delivering information.

SR

Report Language: ''The Conferees intend that the public awareness program include a broad range of referral sources such as homeless family shelters, clinics and other health service related offices, public schools and officials and staff in the child welfare system.''

(291) There are no differences between the House bill and Senate amendment.

LC

(292) The House bill requires States to focus on three areas of personnel and allows States to focus on rural and inner city areas and emotional and social development areas. The Senate amendment permits States to focus on these areas and rural/urban areas.

SR

(293) The Senate amendment, but not the House bill, includes a provision allowing States to allow paraprofessionals to provide services in accordance with State law, regulation, or written policy.

HR

(294) There are no differences between the House bill and Senate amendment.

LC

(295a) The House bill requires that services be provided in a setting other than the natural environment only when intervention cannot be achieved satisfactorily in that setting. The Senate amendment requires that services be provided in the natural setting unless a specific outcome cannot be met.

SR with an amendment to read as follows:

''(B) the provision of early intervention services for any infant or toddler occurs in a setting other than a natural environment that is most appropriate, as determined by the parent and the individualized family service plan team, only when early intervention cannot be achieved satisfactorily for the infant or toddler in a natural environment.''

Report language: ''The legislation amends current law to recognize that there may be instances when a child's individualized family service plan cannot be implemented satisfactorily in the natural environment. The Conferees intend that in these instances, the child's parents and the other members of the individualized family service plan team will together make this determination and then identify the most appropriate setting in which early intervention services can be provided.''

(295b) The Senate amendment, but not the House bill, requires procedures for homeless children and wards of the State.

SR

(296) The Senate amendment does not include this requirement.

SR with an amendment to strike ''consistent with State law within 3 years.''

(297) Both the House bill and the Senate amendment allow States to continue to provide services to children aged 3–5 in the Part C program, if the parent chooses to keep their child in that system. The Senate amendment consolidates its language in this section. The House bill incorporates language in multiple areas.

HR with an amendment to read as follows:

''(b) FLEXIBILITY TO SERVE CHILDREN 3 YEARS OF AGE UNTIL ENTRANCE INTO ELEMENTARY SCHOOL.—

''(1) IN GENERAL.—A statewide system described in section 633 may include a State policy, developed and implemented jointly by the lead agency and the State educational agency, under which parents of children with disabilities who are eligible for services under section 619 and previously received services under this part, may choose the continuation of early intervention services (which shall include an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills) for such children under this part until such children enter, or are eligible under State law to enter, kindergarten.

''(2) REQUIREMENTS.—If a statewide system includes a State policy described in paragraph (1), the statewide system shall ensure—

''(A) that parents of children served pursuant to this subsection are provided with annual notice that provides—

''(i) a description of such parents' right to elect services pursuant to this subsection or under part B; and

''(ii) an explanation of the differences between receiving services pursuant to this subsection and receiving services under part B, including—

''(I) the types and location of services available under both provisions;

''(II) applicable procedural safeguards under both provisions; and

''(III) the possible costs, if any (including any fees to be charged to families as described in section 632(4)(B)) to parents under both provisions;

''(B) that services provided pursuant to this subsection include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills;

''(C) that the State policy will not affect the right of any child served pursuant to this subsection to instead receive a free appropriate public education under part B;

''(D) the continuance of all early intervention services outlined in the child's individualized family service plan under section 636 while any eligibility determination is being made for services under this subsection;

''(E) that parents of infants or toddlers with disabilities (as defined in section 632(5)(A)) provide informed written consent to the State, before such infants and toddlers reach 3 years of age, as to whether such parents intend to choose the continuation of early intervention services pursuant to the subsection for such infants or toddlers; and

''(F) that the requirements under section 637(a)(9) are deferred if the child is receiving services in accordance with this subsection until not less than 90 days (and at the discretion of the parties to the conference under section 637(a)(9)(A), not more than 9 months) before, the time the child will no longer receive services under this subsection.

''(G) the referral for evaluation for early intervention services of a child who experiences a substantiated case of trauma due to exposure to family violence, as defined in section 309(1) of the Family Violence and Protection Services Act.

''(3) REPORTING REQUIREMENT.—If a statewide system includes a State policy described in paragraph (1), the State shall submit to the Secretary, in the State's report under section 637(b)(4)(A), a report on the number and percentage of children with disabilities who are eligible for services under section 619 but whose parents choose for such children to continue to receive early intervention services under this part; and

''(4) RULES OF CONSTRUCTION.—

''(A) If a statewide system includes a State policy described in paragraph (1), a State that provides services in accordance with this subsection to a child who is eligible for services under section 619, shall not be required to provide such child with a free appropriate public education under part B for the length of time in which such children are receiving services under this part.

''(B) Nothing in this subsection shall be construed to require a provider of services under this part to provide a child served under this part with a free appropriate public education.

''(5) AVAILABLE FUNDS.—If a Statewide system includes a State policy described in paragraph (1), the policy shall describe the funds (including an identification as Federal, State, or local funds) that will be used to ensure that the option described in paragraph (1) is available to eligible children and families who provide the consent described in paragraph (2)(E), including fees (if any) to be charged to families as described in section 632(4)(B).''

(298) The Senate amendment, but not the House bill, includes this rule of construction regarding payment for certain procedures.

SR

(299) There are no differences between the House bill and Senate amendment.

HR

(300) There are no differences between the House bill and Senate amendment.

LC

(301) There are no significant differences between the House bill and Senate amendment, except the House bill refers to major goals while the Senate amendment refers to measurable outcomes.

SR with an amendment:

In paragraph (3), strike ''major'' and insert ''measurable'', and strike all references to ''goals'' and insert ''results or outcomes''

(302) There are no differences between the House bill and Senate amendment.

LC

(303) The Senate amendment, but not the House bill requires States to demonstrate that they have in effect the statewide system required in section 633.

The House bill specifically references effects of fetal exposure to alcohol, the Senate amendment does not.

The House bill, but not the Senate amendment, requires a description of collaboration efforts with other early childhood programs in the State.

HR with an amendment:

Strike ''for evaluation'' after ''require the referral'' and insert ''under this part'' after ''intervention services'' in (6) and insert:

''(11) a description of State efforts to promote collaboration between Early Head Start programs, early education and child care programs, and services under part C of this Act.''

Report language: ''The Conferees intend that every child described in 637(a)(6)(A) and (B) will be screened by a Part C provider or designated primary referral source to determine whether a referral for an evaluation for early intervention services under Part C is warranted. If the screening indicates the need for a referral, the Conferees expect a referral to be made. However, the Conferees do

not intend this provision to require every child described in Section 637 (a)(6)(A) and (B) to receive an evaluation or early intervention services under Part C.''

(304) The House bill gives discretion of up to 6 months to develop a transition plan. The Senate amendment provides up to 9 months.

HR

(305) Senate transition plan includes reference to ''as appropriate, steps to exit from the program.''

HR

The Senate amendment, but not the House bill, includes a requirement for policies and procedures regarding homeless children and wards of the State.

SR

(306) The Senate amendment, but not the House bill, requires assurances regarding homeless children and wards of the State.

HR

(307) There are no significant differences between the House bill and Senate amendment.

LC

(308) Both the House bill and the Senate amendment allow States to continue to provide services to children aged 3–5 in the Part C program, if the parent chooses to keep their child in that system. The Senate amendment requires the written consent of parents to continue to provide early intervention services.

HR with an amendment to (4) to read as follows:

''(4) with the written consent of the parents, to continue to provide early intervention services under this part to children with disabilities from their 3rd birthday until such children enter, or are eligible under State law to enter, kindergarten, in lieu of a free appropriate public education provided in accordance with part B; and''.

(309) Neither the House bill nor the Senate amendment make any changes in this section to current law.

HR

(310) The House bill makes no changes to current law. The Senate amendment adds a provision requiring States to ensure that interagency agreements are in place to ensure that services are paid for by appropriate State agencies.

HR with an amendment to (b) to read as follows:

''(b) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES.—

''(1) ESTABLISHING FINANCIAL RESPONSIBILITY FOR SERVICES.—

''(A) IN GENERAL.—The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency and the designated lead agency, in order to ensure—

''(i) the provision of, and financial responsibility for, services provided under this part; and

''(ii) such services are consistent with the requirements of section 635 and the State's application pursuant to section 637, including the provision of such services during the pendency of any such dispute.

''(B) CONSISTENCY BETWEEN AGREEMENTS OR MECHANISMS UNDER PART B.—The Chief Executive Officer of a State or designee of the officer shall ensure that the terms and conditions of such agreement or mechanism are consistent with the terms and conditions of the State's agreement or mechanism under Section 612(a)(12), where appropriate.

''(2) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY.—

''(A) IN GENERAL.—If a public agency other than an educational agency fails to provide or pay for the services pursuant to an agreement required under paragraph (1) the local educational agency or State agency (as determined by the Chief Executive Officer or designee) shall provide or pay for the provision of such services to the child.

''(B) REIMBURSEMENT.—Such local educational agency or State agency is authorized to claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism required under paragraph (1).

''(3) SPECIAL RULE.—The requirements of paragraph (1) may be met through—

''(A) State statute or regulation;

''(B) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

''(C) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer and approved by the Secretary through the review and approval of the State's application pursuant to section 637.''

(311) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR

(312) There are no differences between the House bill and Senate amendment.

LC

(313) The House bill, but not the Senate amendment, requires the addition of representatives from the State mental health agency, child welfare agency, and the Office of the Coordinator of homeless children and youth to the State council.

The Senate amendment, but not the House bill, requires parents of homeless children and representatives of wards of the State to be on the panel.

The Senate amendment, but not the House bill, requires the addition of representatives from the State Medicaid agency to the State council, homeless children, the welfare agency, and foster children.

HR with an amendment:

Strike 1(A) and replace with 1(A) from House bill and strike 1(M) and insert 1(J) from House bill.

(314) There are no differences between the House bill and Senate amendment.

LC

(315) There are no differences between the House bill and Senate amendment.

LC

(316) There are no differences between the House bill and Senate amendment.

LC

(317) There are no differences between the House bill and Senate amendment.

LC

(318) The House bill requires the BIA to submit an annual report and the Senate amendment requires a biennial report.

HR

(319) The Senate amendment includes the authorization of a new State bonus grant to States that develop birth -6 programs, otherwise the State formulas are the same.

HR with an amendment:

Amend (e) to read as follows:

''(e) RESERVATION FOR STATE INCENTIVE GRANTS.—

''(1) The Secretary shall reserve 15 percent of the amount appropriated under section 644 for any fiscal year that such amount exceeds $460,000,000 to make allotments to States that are carrying out the policy described in section 635(b), by allotting to each State an amount that bears the same ratio to the amount of such reservation as the number of infants and toddlers in the State bears to the number of infants and toddlers in all participating States, without regard to subsections (c)(2) and (3).

''(2) MAXIMUM.—No State may receive an allotment greater than 20 percent of the reservation pursuant to this subsection.

''(3) CARRYOVER OF FUNDS BY STATES.—Notwithstanding section 421(b) of the General Education Provisions Act or any other provision of law, a State may carryover funds received from the Secretary under this for one additional fiscal year.''

(320) The House bill establishes a specific authorization level for the first year and such sums for the life of the authorization. The Senate amendment authorizes such sums for the entire authorization.

HR

Part D

(321) The House bill includes this technical language as part of its structure. The Senate amendment replaces the entire existing law.

HR/LC

(322) Except for minor wording differences, there are no differences between the House bill and Senate amendment.

HR

(323) The House bill focuses on training for existing personnel while the Senate amendment also allows for education of future personnel and defines the term personnel.

HR with an amendment:

Amend title to ''State Personnel Development Grants''.

(324) The Senate amendment authorizes a formula grant program if the appropriation exceeds $100 million. The House bill keeps the program as a competitive grant.

HR with an amendment:

Insert new (4) as follows and renumber accordingly:

''(4) DIRECT BENEFIT.—In utilizing the amount provided under paragraph (1) and not reserved pursuant to subsection (e), a State educational agency shall, through grants, contracts, or cooperative agreements, undertake activities that significantly and directly benefit the local educational agencies in the State.''

(325) The Senate amendment, but not the House bill, requires the inclusion as a partner of a State agency for teacher preparation and certification, if it is outside of the SEA. The Senate amendment also requires the inclusion of the State agency responsible for administering Part C, child care, and VR programs.

HR with an amendment:

Strike ''institutions of higher education'' and insert ''at least one institution of higher education'' in (b)(1).

HR with an amendment:

Strike ''child care'' and insert ''early education, child care'' in (b)(1).

Report language: ''This provision requires State educational agencies to establish partnerships with local educational agencies and other State agencies involved in, or concerned with, the education of children with disabilities, including at least one institution of higher education and the State agencies responsible for administering part C, child care, and vocational rehabilitation programs. The Conferees encourage State educational agencies, when establishing such

partnerships and where feasible, to establish partnerships with multiple institutions of higher education.''

(326) The House bill and Senate amendment have similar, but differing descriptions of PTIs (E), the State advisory panel, and personnel.

HR

(327) Current law in Senate amendment lists other partners, the House bill lists optional partners.

HR

(328) The Senate amendment includes a requirement that the plan assess vacancies and shortages, and the existence of preservice programs.

HR with an amendment:

Insert ''and inservice'' after ''preservice'' in (a)(2)(B)(ii).

(329) The House bill specifically mentions related services personnel, while the Senate amendment does not.

HR

(330) The Senate amendment references meeting personnel requirements of Part C, while the House bill does not.

HR

(331) The Senate amendment includes a requirement that the State will carry out each of the strategies in the plan. The House bill includes this requirement in (b)(5).

HR

(332) The Senate amendment, but not the House bill, includes requirements relating to highly qualified teachers and teacher qualifications for poor and minority students.

HR with an amendment:

Amend heading to ''Elements of State Personnel Development Plan''.

(333) The House bill and Senate amendment have differing provisions on coordination of other public and private resources.

HR

(334) The Senate amendment, but not the House bill, requires State plans to include information on integration with other activities (4)(B), provide technical assistance (5) and (6), recruit and retain highly qualified teachers (7), teachers of poor and minority children (8), and meeting performance goals in Section 612(a)(15).

HR with an amendment:

Strike ''preservice and inservice''.

(335) The House bill maintains this program as a competitive grant program. The Senate amendment converts this to a formula grant program if funds exceed $100 million.

HR

(336) There are no significant differences between the House bill and Senate amendment, except the Senate language only applies if the program is competitive.

HR

(337) The House bill, but not the Senate amendment, includes a requirement that the annual report identify necessary changes to the State plan to improve performance.

SR with an amendment to read as follows:

''(3) identify changes in such strategies, if any, to improve its performance''.

(338) Similar provisions with the Senate amendment adding as an allowable activity the ability to improve personnel preparation programs, and including functional standards. The Senate amendment also includes principals as eligible personnel, while the House bill includes early intervention and related services personnel. The Senate amendment also includes training in implementing effective IEPs.

HR

(339) The House bill and Senate amendment are similar except the Senate amendment refers to '' or more'' of the activities while the House bill does not.

HR

(340) There are no significant differences between the House and Senate amendments.

HR/LC

(341) The House bill requires that 90% of funds be spent on professional development, while the Senate amendment requires 75% be spent on professional development.

SR

(342) There are no differences between the House bill and Senate amendment.

LC

(343) The House bill maintains this as a competitive grant program and establishes a lower maximum grant award.

HR

(344) The House bill authorizes $44 million for the first year while the Senate amendment authorizes ''such sums.''

HR

(345) The Senate amendment, but not the House bill, includes a purpose to help SEAs and LEAs improve their educational systems.

HR with an amendment:

Add term ''personnel prep'' to paragraph (1) and the term ''for children with disabilities'' in paragraph (2).

Report language: ''The committee believes that information and assistance to States and LEAs on the effective implementation of responsiveness to intervention models must be developed and made widely available as quickly as possible. Large-scale implementation of improved methodologies for the determination of and appropriate intervention for specific learning disabilities will be crucial to making needed reforms in this area. The Secretary is strongly encouraged to collaborate with leading organizations and researchers in the field of learning disabilities to assist with development and dissemination activities, including information and assistance for educators and parents. Such an entity would have existing capacity for national dissemination activities, proven effectiveness and efficiency in developing and delivering large-scale research-based informational and assistance programs, and have well established relationships with the education and parent communities.''

(346) The Senate amendment requires the comprehensive plan be coordinated with the ESRA plan and that the Secretary solicit input from interested individuals. The House bill does not include these provisions.

The Senate amendment also allows public comment of 60 days, while the House bill requires 30 days for public comment.

HR with an amendment:

Strike ''60'' and insert ''45'' in paragraph (2).

(347) The House bill, but not the Senate amendment, allows the Secretary to determine whether to include for-profit entities in the competition.

HR

(348) The House bill requires 2% of funds to be reserved for HBCU's, while the Senate amendment requires 1% of funds to be reserved. The Senate amendment, but not the House bill, expands the pool of funds that are eligible to include subparts 3 and 4.

SR

(349) The Senate amendment, but not the House bill, adds priorities for geographic diversity universal design and assistive technology, and gifted and talented children.

SR with an amendment:

Insert the following definition at note 32:

''(34) UNIVERSAL DESIGN.—The term 'universal design' has the meaning given that term under paragraph (1) of section 3 of the Assistive Technology Act of 1998, (29 USC Sec. 3002).''

The Senate amendment, but not the House bill, includes homeless children and wards of the State and Impact Aid children as being included in the list of children the Department can address the needs with projects under Part D.

SR on Senate 3(L) and (8)

(350) There are no differences between the House bill and Senate amendment.

LC

(351) The Senate amendment, but not the House bill, requires the Secretary to ensure that products are available in accessible formats for people with disabilities.

SR

Report language: ''The Conferees intend that the Secretary shall ensure that recipients of grants under this part make products available in alternate formats, including electronically.''

(352) The Senate amendment, but not the House bill, expands the pool of funds considered as part of the amount for a ratable reduction, if necessary.

HR

(353) The House bill and Senate amendment contain similar provisions creating a National Center for Special Education Research at the Institute for Education Science. However, the Senate amendment contains this language in Title III.

HR

(354) The House bill and Senate amendment include similar provisions regarding authorized research activities with the House bill adding a focus on limited English proficient children with disabilities and the Senate amendment adding a focus on transition services. The Senate language is in Title III.

HR/SR to accept both new activities

(355) The House bill and Senate amendment contain similar provisions regarding a research plan, with the House bill adds implementation criteria to ensure the plan is carried out. The Senate language is in Title III.

HR

(356) The House bill and Senate amendment include similar provisions with the House bill adding as an allowable activity the ability to test and apply research findings in typical classroom settings.

SR with an amendment:

Strike ''service'' and insert ''where children with disabilities receive services'' after ''settings'' in (c)(1).

Report language: ''The conferees recognize that research-based structured learning systems that are capable of using fine grained diagnostics to generate prescriptions, and incorporate community members and parents as mentors are highly effective in preventing school failure for children with disabilities. These programs are particularly effective as an early intervention strategy for children with disabilities, especially in reading and mathematics. When aligned to state standards such programs create a high level of accountability for local programs serving children with disabilities.

''The HOSTS Language Arts program, which is used widely in Texas, Ohio, Florida, Delaware, Michigan, Louisiana, and other states, is an example of such a program.

HOSTS Learning programs have assisted schools in significantly improving student achievement and test results for all children, including children with disabilities. Research conducted by Bowling Green University has specifically demonstrated the efficacy of HOSTS Learning with children with disabilities and with children whose low achievement might otherwise cause them to be mislabeled as disabled.

''It has been demonstrated that these programs reduce academic failure, promote the integration of children with disabilities into the mainstream of educational success, decrease the incidence of school dropout, substance abuse, teen pregnancy, crime, and unemployment. This is instrumental in restoring trust in America's schools. Specifically, the conferees believe these intensive, research-based learning systems, that utilize teacher oversight, diagnostic and prescriptive tools, and community engagement, dramatically increase student achievement and implement the recommendations of the National Reading Panel for all children.''

(357) The House bill and Senate amendment contain similar provisions with the Senate amendment adding activities to ensure the training of highly qualified teachers, and training on technology and transition services.

HR with an amendment:

Move Sec. 664 to Note 353 and renumber Sections accordingly.

(358) The House bill and Senate amendment include similar provisions with the Senate amendment adding activities to allow programs to support continuous personnel preparation, parental involvement, rural and high poverty schools, and highly qualified teachers.

HR with an amendment to read as follows:

''(b) PERSONNEL DEVELOPMENT; ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—

(1) IN GENERAL.—In carrying out this section, the Secretary shall support activities

''(A) for personnel development, including activities for the preparation of personnel who will serve children with high-incidence and low-incidence disabilities, to prepare special education and general education teachers, principals, administrators, and related services personnel (and school board members, when appropriate) to meet the diverse and individualized instructional needs of children with disabilities and improve early intervention, educational, and transitional services and results for children with disabilities, consistent with the objectives described in subsection (a); and

''(B) for enhanced support for beginning special educators, consistent with the objectives described in subsection (a).

''(2) PERSONNEL DEVELOPMENT.—In carrying out paragraph (1)(A) the Secretary shall support not less than 1 of the following activities:

''(A) Support effective existing, improve existing, or develop new collaborative personnel preparation activities undertaken by institutions of higher education, local educational agencies, and other local entities that incorporate best practices and scientifically based research, where applicable, in providing special education and general education teachers, principals, administrators, and related services personnel with the knowledge and skills to effectively support students with disabilities, including—

''(i) Working collaboratively in regular classroom settings.

''(ii) Using appropriate supports, accommodations, and curriculum modifications.

''(iii) Implementing effective teaching strategies, classroom-based techniques, and interventions to ensure appropriate identification of students who may be eligible for special education services, and to prevent the misidentification, overidentification, or underidentification of children as having a disability, especially minority and limited English proficient children.

''(iv) Effectively working with and involving parents in the education of such parents' children.

''(v) Utilizing strategies, including positive behavioral interventions, for addressing the conduct of children with disabilities that impedes their learning and that of others in the classroom.

''(vi) Effectively constructing IEPs, participating in IEP meetings, and implementing IEPs.

''(vii) Preparing children with disabilities to participate in statewide assessments (with or without accommodations) and alternate assessments, as appropriate, and to ensure that all children with disabilities are a part of all accountability systems under the Elementary and Secondary Education Act of 1965.

''(viii) Working in high need elementary schools and secondary schools, including urban schools, rural schools, and schools operated by an entity described in section 7113(d)(1)(A)(ii) of the Elementary and Secondary Education Act of 1965, and schools that serve high numbers or percentages of limited English proficient children.

''(B) Developing, evaluating, and disseminating innovative models for the recruitment, induction, retention, and assessment of new, highly qualified teachers to reduce teacher shortages, especially from groups that are underrepresented in the teaching profession, including individuals with disabilities.

''(C) Providing continuous personnel preparation, training, and professional development designed to provide support and ensure retention of special education and general education teachers and personnel who teach and provide related services to children with disabilities.

''(D) Developing and improving programs for paraprofessionals to become special education teachers, related services personnel, and early intervention personnel, including interdisciplinary training to enable the paraprofessionals to improve early intervention, educational, and transitional results for children with disabilities.

''(E) In the case of principals and superintendents, providing activities to promote instructional leadership and improved collaboration between general educators, special education teachers, and related services personnel.

''(F) Supporting institutions of higher education with minority enrollments of at least 25 percent for the purpose of preparing personnel to work with children with disabilities.

''(G) Developing and improving programs to train special education teachers to develop an expertise in autism spectrum disorders.

''(3) ENHANCED SUPPORT FOR BEGINNING SPECIAL EDUCATORS.—In carrying out paragraph (1)(B) the Secretary shall support not less than 1 of the following activities:

''(A) Enhancing and restructuring existing programs or developing preservice teacher education programs to prepare special education teachers, at colleges or departments of education within institutions of higher education, by incorporating an extended (such as an additional 5th year) clinical learning opportunity, field experience, or supervised practicum into such programs; or

''(B) Creating or supporting teacher-faculty partnerships (such as professional development schools) that—

''(i) consist of at least—

''(I) 1 or more institutions of higher education with special education personnel preparation programs;

''(II) 1 or more local educational agencies that serve high numbers or percentages of low-income students;

''(III) 1 or more elementary or secondary schools, particularly schools that have failed to make adequate yearly progress on the basis, in whole and in part, of the assessment results of the disaggregated subgroup of students with disabilities; and

''(ii) may include other entities eligible for assistance under this part; and

''(iii) provide—

''(I) high-quality mentoring and induction opportunities with ongoing support for beginning special education teachers; or

''(II) inservice professional development to beginning and veteran special education teachers through the ongoing exchange of information and instructional strategies with faculty.''

(359) The House bill and Senate amendment include similar provisions with the House bill adding as an allowable activity to focus on LEP students with low-incidence disabilities and the Senate amendment adding a new emphasis on communication and significant cognitive disabilities and multiple disabilities.

HR/SR to accept both

(360) The House bill, but not the Senate amendment, adds as an allowable activity services that benefit leadership personnel that serve LEP students.

SR

(361) The Senate amendment adds a new program to provide funds to colleges and universities to support and train special education teachers.

SR

(362) The Senate amendment adds a new program to provide funds to colleges and universities to support and train general education teachers to work with students with disabilities.

SR

(363) The House bill, but not the Senate amendment, adds a required assurance that the State needs personnel in the area of support.

SR with an amendment:

Strike (3)(B).

(364) The Senate amendment but not House bill allows the Secretary to give preferences to underrepresented groups.

HR

(365) The House bill requires a service obligation of 2 years for every year of assistance provided while the Senate amendment requires 1 year of service for one year of support. The House bill also contains a provision on leadership preparation. The Senate amendment, but not the House bill, allows scholarships for its new general educator program.

HR with an amendment to read as follows:

''(i) SERVICE OBLIGATION.—

''(I) IN GENERAL.—Each application for funds under subsections (b), (c), and (d) shall include an assurance that the applicant will ensure that individuals who receive a scholarship under the proposed project will subsequently provide special education and related services to children with disabilities for a period of 2 years for every year for which assistance was received or repay all or part of the cost of that assistance, in accordance with regulations issued by the Secretary.

''(II) SPECIAL RULE.—Notwithstanding paragraph (1) of this subsection, the Secretary may reduce or waive the service obligation requirement if the Secretary determines that the service obligation is acting as a deterrent to the recruitment of students into special education or a related field.

''(III) Oversight.—The Secretary shall be responsible for ensuring that individuals participating in these programs fulfill their service obligations.''

(366) The Senate amendment includes a separate authorization for this section, while the House bill contains an authorization for the entire subpart.

HR

(367) The House bill and Senate amendment include similar provisions, except the Senate's list of authorized activities falls in subsection (e).

HR

(368) The House bill and Senate amendment contain similar provisions, with the House bill requiring a comprehensive plan to be published for public comment and the Senate amendment requiring consultation with specified groups.

The House bill requires an interim report be published in 2 and ½ years while the Senate amendment requires the interim report in 3 years.

SR with an amendment:

Amend heading of (b) to ''Assessment of National Activities''.

HR on 3 years for interim report

(369) The Senate amendment, but not the House bill, requires a study on alternate assessments and alternative achievement standards.

HR

(370) There are no differences between the House bill and Senate amendment.

LC

(371) The House bill and Senate amendment include similar provisions, except the House's list of authorized activities is in (b).

The Senate amendment, but not the House bill, requires a study on the 0–6 program in Part C.

HR

(372) The Senate amendment allows the Secretary to reserve funds under Parts B and C to pay for the studies and evaluations, while the House bill requires studies and evaluations to be paid out of the authorizations of appropriations for this subpart.

SR

(373) The House bill includes one authorization of appropriations for this subpart, while the Senate amendment included authorizations for each section.

HR

(374) There are no significant differences between the House and Senate amendments.

HR with an amendment:

Insert a new paragraph (1) to read as follows and renumber accordingly:

''(1) children with disabilities and their parents receive training and information designed to assist the children in meeting developmental and functional goals and challenging academic achievement goals, and in preparing to lead productive independent adult lives;''.

(375) The House bill and Senate amendment contain similar provisions with the House bill adding as a required activity to meet the needs of low-income and limited English proficient students and the Senate amendment adding requirements for the center to explain mediation requirements to parents, assist parents and children of their rights upon reaching their majority, partner with community parent resource centers, and report on the number of parents served through alternative dispute resolution.

HR with an amendment:

Insert as a new paragraph (3) to read as follows and renumber accordingly:

''(3) ensure that the training and information provided meets the needs of low-income parents and parents of children with limited English proficiency;''.

HR with an amendment:

Strike ''research based practices and interventions'' and insert ''practices and interventions based on scientifically based research, to the extent practicable,'' in (3)(D).

HR with an amendment:

Insert as a new (F) to read as follows and reorder accordingly:

''(F) participate in activities at the school level that benefit their children;''.

HR with an amendment:

Insert in paragraph (10) [not renumbered]: ''and the Institute of Education Sciences'' after ''section 663''.

HR with an amendment:

Add ''as appropriate under state law'' after ''majority'' in paragraph (6).

HR with an amendment:

Insert at the end of paragraph (7) [not renumbered]: '', including the resolution session described in section 615(e);''.

(376) The House bill allows as an optional activity information to assist parents and children of their rights upon reaching their majority.

HR

(377) The Senate amendment, but not the House bill, requires coordination of grantees in a large State.

HR with an amendment:

Insert '', including those that work with low-income parents and parents of children with limited English proficiency'' at the end of (d)(2).

(378) The House bill, but not the Senate amendment, requires the advising board to advise the governing board of the organization.

HR

(379) The House bill, but not the Senate amendment, requires that the board ensure that members include low-income parents and parents of limited English proficient students.

The Senate amendment, but not the House bill, eliminates special governing committees. The House bill, but not the Senate amendment, requires the development of a memorandum explaining the role of the board and the center while the Senate amendment requires the center to develop a specific mission.

HR with an amendment:

Insert '', including low-income parents and parents of children with limited English proficiency'' at the end of (g)(1)(C).

(380) The Senate amendment, but not the House bill, includes functional goals, and requires that a majority of members are parents of children with disabilities age birth through 26.

HR

(381) The Senate amendment limits the national technical assistance grantee to one parent organization while the House bill allows multiple grants and a variety of eligible agencies.

SR

(382) The Senate amendment, but not the House bill, includes extra requirements for a national and regional network of parent training and information technical assistance centers.

SR with amendment:

Add Senate (d) to House bill.

(383) The House bill, but not the Senate amendment, adds the support of implementation of research and the uses of technology and the Senate amendment, but not the House bill, adds support of internet based communications for students with cognitive disabilities.

HR with an amendment as follows:

Strike ''and'' and insert '', (c) and (d)'' after ''subsections (b)'' in subsection (a).

(384) The House bill allows the Secretary to support these activities and the Senate amendment requires the Secretary to support these activities. The Senate amendment also limits the captioning of programs only if captioning has not previously been provided or paid for.

HR with an amendment as follows:

Insert ''; AND INSTRUCTIONAL MATERIALS'' after ''ACTIVITIES'' in the heading of subsection (c).

HR with an amendment as follows:

Strike (1)(D).

HR with an amendment as follows:

Insert subsection (e) to read as follows:

''(e) NATIONAL INSTRUCTIONAL MATERIALS ACCESS CENTER.—

''(1) IN GENERAL.—Notwithstanding subsection (d), in carrying out this section, the Secretary shall support, through the American Printing House for the Blind, a center known as the Instructional Materials Access Center not later than one year after the date of enactment.

''(2) RESPONSIBILITIES.—The duties of the National Instructional Materials Access Center are the following:

''(A) To receive and maintain a catalog of print instructional materials prepared in the national instructional materials accessibility standard, as established by the Secretary, made available to the center by the textbook publishing industry, State educational agencies, and local educational agencies;

''(B) To provide access to print instructional materials, including textbooks, in accessible media, free of charge, to visually impaired and print disabled students in elementary schools and secondary schools, in accordance with such terms and procedures as the National Instructional Materials Access Center may prescribe; and

''(C) To develop, adopt and publish procedures to protect against copyright infringement, with respect to the print instructional materials provided under 612(a)(22) and section 613(a)(6).

''(3) DEFINITIONS.—In this section—

''(A) NATIONAL INSTRUCTIONAL MATERIALS ACCESSIBILITY STANDARD.—The term 'National Instructional Materials Accessibility Standard' means the technical standards described in paragraph (2), to be used in the preparation of electronic files suitable and used solely for efficient conversion into specialized formats.

''(B) BLIND OR OTHER PERSONS WITH PRINT DISABILITIES.—The term 'blind or other persons with print disabilities' means children served under this Act and who may qualify in accordance with the Act entitled 'An Act to provide books for the adult blind,' approved March 3, 1931 (2 U.S.C. 135a; 46 Stat. 1487) to receive books and other publications produced in specialized formats.

''(C) SPECIALIZED FORMATS.—The term 'specialized formats' has the meaning given the term in section 121 (c) (3) of title 17, United States Code.

''(D) PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

''(4) APPLICABILITY.—This section shall apply to print instructional materials published after the date on which the final rule establishing the National Instructional Materials Accessibility Standard is published in the Federal Register.

''(5) LIABILITY OF THE SECRETARY.—Nothing in this subsection shall be construed to establish a private right of action against the Secretary of Education for failure to provide instructional materials directly, or for failure by the National Instructional Materials Access Center to perform the functions of such Center, or to otherwise authorize a private right of action related to the performance by the Center, including through the application of the rights of children and parents established under this Act.''

HR with an amendment as follows:

Insert ''not'' before ''been fully funded by other sources'' in paragraph (2).

(385) The House bill, but not the Senate amendment, contains more specific requirements for eligible entities of the distributors of textbooks.

HR with an amendment as follows:

Redesignate subsection (e) as subsection (f).

(386) The House bill lays out set figures for authorizations for the subpart and for each section, while the Senate authorizes such sums for the section.

HR

(387) The Senate amendment requires the Secretary to establish an electronic standard for the preparation of electronic files for instructional materials and creates a national center to disseminate instructional materials to some students with disabilities. The House bill does not include this provision.

SR with an amendment:

Add at the end of this Act the following technical amendments in the miscellaneous provisions section to amend 17 U.S.C. §121 as follows:

Redesignate subsection (c) to (d)

Insert new paragraph (c) to read as follows:

''(c) Notwithstanding the provisions of section 106, it is not an infringement of copyright for a publisher of print instructional materials for use in elementary and secondary schools to create and distribute to the National Instructional Materials Access Center copies of the electronic files described in sections 612(a)(22)(B), 613(a)(6), and section 674(d) of the Individuals with Disabilities Education Reform Act of 2004, containing the contents of print instructional materials using the Instructional Material Accessibility Standard (as defined in section 674(d) of said Act, when required to do so by any State or local educational agency, if the publisher had the right to publish such print instructional materials in print formats and if such copies are used solely for reproduction or distribution of the contents of such print instructional materials in specialized formats.''

SR with amendment as follows:

Amend the definition of ''specialized formats'' in subsection (d) (currently subsection (c)) and add the definition from ''print instructional materials'' as follows:

''''Specialized formats' means braille, audio, or digital text which is exclusively for use by blind or other persons with disabilities. With respect to instructional materials, 'specialized formats' also means large print formats when they are distributed exclusively for use by blind or other persons with disabilities.

''PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' has the meaning given to it under section 674(d)(3)((D) of the Individuals with Disabilities Education Reform Act of 2004.

(388) The Senate amendment creates a new $50 million competitive program to make grants to LEAs to establish alternative educational settings and provide behavioral supports to students with disabilities. The House bill does not include this program.

HR with amendment:

Insert the following at the end of Subpart 2:

''SEC. 674. INTERIM ALTERNATIVE EDUCATIONAL SETTINGS, BEHAVIORAL SUPPORTS, AND SYSTEMIC SCHOOL INTERVENTIONS.

''(a) PROGRAM AUTHORIZED.—The Secretary may award grants to, and enter into contracts and cooperative agreements to support safe learning environments that support academic achievement for all students by improving the quality of interim alternative educational settings, and providing increased behavioral supports and research-based, systemic interventions in schools.

''(b) AUTHORIZED ACTIVITIES.—In carrying out this section, the Secretary may support activities to

''(1) establish, expand or increase the scope of behavioral supports and systemic interventions by providing for effective, research-based practices, including—

''(A) training for school staff on early identification, prereferral, and referral procedures;

''(B) training for administrators, teachers, related services personnel, behavioral specialists, and other school staff in positive behavioral interventions and supports, behavioral intervention planning, and classroom and student management techniques;

''(C) joint training for administrators, parents, teachers, related services personnel, behavioral specialists, and other school staff on effective strategies for positive behavioral interventions and behavior management strategies that focus on the prevention of behavior problems;

''(D) developing or implementing specific curricula, programs, or interventions aimed at addressing behavioral problems;

''(E) stronger linkages between school based services and community-based resources, such as community mental health and primary care providers; or

''(F) using behavioral specialists, related services personnel, and other staff necessary to implement behavioral supports; or

''(2) to improve interim alternative educational settings by—

''(A) improving the training of administrators, teachers, related services personnel, behavioral specialists, and other school staff (including ongoing mentoring of new teachers) in behavioral supports and interventions;

''(B) attracting and retaining a high quality, diverse staff;

''(C) providing for referral to counseling services;

''(D) utilizing research-based interventions, curriculum, and practices;

''(E) allowing students to use instructional technology that provides individualized instruction;

''(F) ensuring that the services are fully consistent with the goals of the individual student's IEP;

''(G) promoting effective case management and collaboration among parents, teachers, physicians, related services personnel, behavioral specialists, principals, administrators, and other school staff;

''(H) promoting interagency coordination and coordinated service delivery among schools, juvenile courts, child welfare agencies, community mental health providers, primary care providers, public recreation agencies, and community-based organizations; or

''(I) providing for behavioral specialists to help students transitioning from interim alternative educational settings reintegrate into their regular classrooms.

''(c) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' means—

''(1) a local educational agency; or

''(2) a consortium consisting of a local educational agency and 1 or more of the following entities:

''(A) another local educational agency;

''(B) a community-based organization with a demonstrated record of effectiveness in helping children with disabilities who have behavioral challenges succeed;

''(C) an institution of higher education;

''(D) a community mental health provider; or

''(E) an educational service agency.

''(d) APPLICATIONS.—Any eligible entity that wishes to receive a grant, or enter into a contract or cooperative agreement, under this section shall

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

''(2) involve parents of participating students in the design and implementation of the activities funded under this section.

''(e) REPORT AND EVALUATION.—Each eligible entity receiving a grant under this Act shall prepare and submit annually to the Secretary of Education a report on the outcomes of the activities assisted under the grant.''

Report language: ''The Conferees intend for this program to have a systemic impact on a school environment rather than provide isolated assistance to children with disabilities. The Conferees believe a systemic, research-based approach can greatly benefit special needs children while also providing an incidental benefit to non-disabled children, school staff, parents and others in the school community.

''The Conferees instruct the Department of Education to establish an easily accessible website with information on best practices for interim alternative educational settings, behavior supports, and systemic school interventions to help children with behavioral and emotional disabilities.''

Title II

(389) The Senate amendment includes a new $50 million reservation of Rehabilitation Act State grants for States to provide transition services to students with disabilities through the VR system (beginning in the first year the amount appropriated exceeds the FY04 amount by $100,000,000). The House bill does not include this provision.

SR

Title V (House bill)

(390) The House bill includes a sense of Congress that safe and drug free schools are essential for the learning and development of children with disabilities. The Senate amendment does not include this provision.

HR

(391) The House bill requires a study on the costs to States of complying with IDEA. The Senate amendment does not include this provision.

HR
Title III

(392) The House bill and Senate amendment contain similar provisions creating a National Center for Special Education Research at the Institute for Education Science. However, the House bill contains this language in Section 663.

HR

(393) The Senate amendment, but not the House bill, contains a separate provision on the mission of the NCSER. The House bill and Senate amendment have differing language on the grant application process.

HR

(394) The House bill lists similar authorized activities as the Senate amendment, which contains those activities under the ''duties'' section.

HR

(395) The Senate amendment, but not the House bill, contains a ''standards'' section.

HR

(396) The Senate amendment contains more detailed plan provisions than the House bill, and contains an implementation provision while the House does not.

HR
Title IV

(397) The Senate amendment creates a commission on universal design and requires reports to be submitted to Congress on universal design and accessibility of instructional materials. The House bill does not include this provision.

SR
Title V

(399) The Senate amendment, but not the House bill, includes an amendment to the Children's Health Act to include the Secretary of Education as a required partner in the longitudinal study and requires that the study be in compliance with FERPA requirements.

HR

(398) The Senate amendment, but not the House bill, includes this required study on medication.

SR
General

(400) Add enactment clause

LC

From the Committee on Education and the Workforce, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
MICHAEL N. CASTLE,
VERNON J. EHLERS,
RIC KELLER,
JOE WILSON,
GEORGE MILLER,
LYNN C. WOOLSEY,
MAJOR R. OWENS,

From the Committee on Energy and Commerce, for consideration of sec. 101 and title V of the Senate amendment, and modifications committed to conference:

JOE BARTON,
MICHAEL BILIRAKIS,
JOHN D. DINGELL,

From the Committee on the Judiciary, for consideration of sec. 205 of the House bill, and sec. 101 of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER, Jr.,
LAMAR SMITH,
JOHN CONYERS,

Managers on the Part of the House.

JUDD GREGG,
BILL FRIST,
MICHAEL B. ENZI,
LAMAR ALEXANDER,
CHRISTOPHER BOND,
MIKE DEWINE,
PAT ROBERTS,
JEFF SESSIONS,
JOHN ENSIGN,
LINDSEY GRAHAM,
JOHN WARNER,
EDWARD KENNEDY,
CHRISTOPHER J. DODD,
TOM HARKIN,
BARBARA A. MIKULSKI,
JEFF BINGAMAN,
PATTY MURRAY,
JACK REED,
JOHN EDWARDS,

Managers on the Part of the Senate.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. KILPATRICK (at the request of Ms. PELOSI) for today after 3:00 p.m. on account of personal business.

Mr. ORTIZ (at the request of Ms. PELOSI) for today on account of attending a funeral in the district.

Mr. BURGESS (at the request of Mr. DELAY) for today on account of attending a friend's funeral.

Mrs. MUSGRAVE (at the request of Mr. DELAY) for today and the balance of the week on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. FILNER) to revise and extend their remarks and include extraneous material:)

Mr. PALLONE, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

Mr. CUMMINGS, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Mr. STUPAK, for 5 minutes, today.

Mr. FRANK of Massachusetts, for 5 minutes, today.

Mr. LAMPSON, for 5 minutes, today.

Mr. HINCHEY, for 5 minutes, today.

(The following Members (at the request of Mr. SHAYS) to revise and extend their remarks and include extraneous material:)

Mr. BALLENGER, for 5 minutes, today.

Mr. JONES of North Carolina, for 5 minutes, November 18.

Mr. NUSSLE, for 5 minutes, today.

Mr. DUNCAN, for 5 minutes, November 18 and 19.

ADJOURNMENT

Mr. HOEFFEL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 17 minutes p.m.), the House adjourned until tomorrow, Thursday, November 18, 2004, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

10827. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Hexythiazox; Pesticide Tolerance for Emergency Exemptions [OPP-2004-0329; FRL-7684-2] received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10828. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Thifensulfuron-methyl; Tolerance Actions [OPP-2004-0206; FRL-7683-2] received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10829. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Pyraclostrobin; Pesticide Tolerances [OPP-2004-0325; FRL-7681-9] received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10830. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Deltamethrin; Pesticide Tolerance [OPP-2004-0331; FRL-7683-5] received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10831. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Bacillus pumilus strain QST 2808; Exemption from the Requirement of a Tolerance [OPP-2004-0215; FRL-7684-4] received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10832. A letter from the Assistant General Counsel for Legislative and Regulatory Law, Department of Energy, transmitting the Department's final rule — Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Water Heaters, Hot Water Supply Boilers and Unfired Hot Water Storage Tanks [Docket No. EE-RM/TP-99-480] (RIN: 1904-AA95) received November 1, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10833. A letter from the Director, Regulations Policy Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule — Antiperspirant Drug Products for Over-the-Counter Human Use; Final Monograph; Partial Stay; Reopening of the Administrative Record [Docket No. 1978N-0064] (RIN: 0910-AC89) received November 1, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10834. A letter from the Director, Regulations Policy Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule — Listing of Color Additives Subject to Certification; D&C Black No. 2; Confirmation of Effective Date [Docket No. 1987C-0023] received October 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10835. A letter from the Director, Regulations Policy Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule — Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of Sirolimus Test System Devices [Docket No. 2004P-0354] received October 18, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10836. A letter from the Attorney, National Highway Traffic Safety Administration, Department of Transportation, transmitting the Department's final rule — Schedule of Fees Authorized by 49 U.S.C. 30141 [Docket No. NHTSA 2004-17987; Notice 2] (RIN: 2127-AJ34) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10837. A letter from the Attorney, National Highway Traffic Safety Administration, Department of Transportation, transmitting the Department's final rule — List of Nonconforming Vehicles Decided to be Eligible for Importation [Docket No. NHTSA-2004-19143] (RIN: 2127-AJ35) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10838. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Maine: Final Authorization of State Hazardous Waste Manament Program Revision [FRL-7835-9] received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10839. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Department's final rule — Approval of Section 112(I) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry; State of Georgia [GA-112L-2004-1-FRL-7832-7] received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10840. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of State Implementation Plans; State of Iowa [R07-PAR-2004-IA-0005; FRL-7836-4] received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10841. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Virginia; Control of Municipal Waste Combustor Emissions from Large Existing Municipal Solid Waste Combustor Units [R03-OAR-2004-VA-0002a; FRL-7831-5] received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10842. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; State of Iowa [R07-OAR-2004-IA-0004; FRL-7833-7] received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10843. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Determination of Attainment and Redesignation of City of Weirton PM10 Nonattainment Area to Attainment and Approval of the Maintenance Plan; Correction [R03-OAR-2004-WV-0001; FRL-7836-5] received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10844. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implemantation Plans; Wisconsin [R05-OAR-2004-WI-0001; FRL-7829-4] received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10845. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the Arizona State Implementation Plan, Arizona Department of Environmental Quality [AZ 120-0063; FRL-7820-2] received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10846. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Indiana: Final Authorization of State Hazardous Waste Management Program Revision [FRL-7832-2] received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10847. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — NRC Enforcement Policy [NUREG-1600] received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10848. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — Industry Codes and Standards; Amendment Requirements (RIN: 3150-AH24) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10849. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — Medical Use of Byproduct Material Minor Amendments: Extending Expiration Date for Subpart J (RIN: 3150-AH47) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10850. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — Criminal History Check: Assessment of Application Fee (RIN: 3150-AH53) received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10851. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions — received August 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10852. A letter from the Assistant Secretary for Export Administration, Department of Commerce, transmitting the Department's final rule — Termination of Certain Emergencies with Respect to Yugoslavia and Related Removal of Restrictions on Transactions with Persons Identified by the Bracketed Initials [FRYM] under the Export Administration Regulations [Docket No. 041004276-4276-01] (RIN: 0694-AC98) received Novmeber 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10853. A letter from the Assistant Secretary for Export Administration, Department of Commerce, transmitting the Department's final rule — Revisions to the Export Administration Regulations: Removal of the List of Missile Projects and Expansion of Missile-related End-Use and End-User Controls [Docket No. 040818241-4241-01] (RIN: 0694-AC46) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10854. A letter from the Assistant General Counsel for Regulations, Department of Housing and Urban Development, transmitting the Department's final rule — Update to Equal Employment Opportunity Policy [Docket No. FR 4929-F-01] (RIN: 2501-AD04) received November 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10855. A letter from the Senior Procurement Executive, General Services Administration, transmitting the Administration's final rule — Federal Acquisition Circular 2001-25; Introduction — received October 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10856. A letter from the Director, Office of Personnel Management, transmitting the Office's final rule — Notification of Post-Employment Restrictions (RIN: 3206-AK60) received October 25, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10857. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule — Amistad National Recreation Area, Personal Watercraft Use (RIN: 1024-AD00) received November 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10858. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule — Lake Meredith National Recreation Area, Personal Watercraft Use (RIN: 1024-AC97) received November 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10859. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule — Lake Roosevelt National Recreation Area, Personal Watercraft Use (RIN: 1024-AD01) received November 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10860. A letter from the Federal Register Certifying Officer, Department of the Treasury, transmitting the Department's final rule — Indorsement and Payment of Checks Drawn on the United States Treasury (RIN: 1510-AA99) received October 18, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10861. A letter from the Assistant Secretary for Administration and Management, Department of Labor, transmitting the Department's final rule — Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor (RIN: 1291-AA21) received May 19, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10862. A letter from the Director of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — Adjustment of Civil Penalties for Inflation (RIN: 3150-AH55) received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10863. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Special Local Regulations; Columbus Day Regatta, Biscayne Bay, Miami, FLorida [CGD07-04-120] (RIN: 1625-AA08) received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10864. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Special Local Regulation for Marine Events; Southern Branch, Elizabeth River, Portsmouth, VA [CGD05-04-138] (RIN: 1625-AA08) received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10865. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Mandatory Ballast Water Management Program for U.S. Waters; Corrections [USCG-2002-14273] (RIN:

1625-AA52) received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10866. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulation; Tensas River, Clayton, LA [CGD08-04-034] (RIN: 1625-AA09) received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10867. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Alternate Hull Examinations Program for Certain Passenger Vessels, and Underwater Surveys for Nautical School, Offshore Supply, Passenger and Sailing School Vessels [USCG-2000-6858] (RIN: 1625-AA57) received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10868. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier Model DHC-8-101, -102, -103, -106, -201, -202, -301, -311, and -315 Airplanes [Docket No. 2002-NM-126-AD; Amendment 39-13808; AD 2004-20-03] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10869. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Cessna Aircraft Company 120, 140, 140A,150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes [Docket No. 2003-CE-40-AD; Amendment 39-13795; AD 2004-19-04] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10870. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes [Docket No. 2003-NM-44-AD; Amendment 39-13807; AD 2004-20-02] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10871. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes [Docket No. FAA-2004-19184; Directorate Identifier 2004-NM-159-AD; Amendment 39-13811; AD 2004-20-06] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10872. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes [Docket No. FAA-2004-19183; Directorate Identifier 2004-NM-158-AD; Amendment 39-13810; AD 2004-20-05] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10873. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Valentin GmbH & Co. Taifun 17E Sailplanes [Docket No. 2003-CE-56-AD; Amendment 39-13815; AD 2004-20-10] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10874. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airwothiness Directives; MD Helicopters, Inc. (MDHI) Model 500N and 600N Helicopters [Docket No. FAA-2004-19223; Directorate Identifier 2004-SW-20-AD; Amendment 39-13813; AD 2004-20-08] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10875. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 737-600, 737-700, 737-700C, 737-800, and 737-900 Series Airplanes [Docket No. 2002-NM-327-AD; Amendment 39-13779; AD 2004-18-02] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10876. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airwothiness Directives; Dassault Model Fan Jet Falcon Series Airplanes and Model Mystere-Falcon 20 Series Airplanes [Docket No. 200-NM-227-AD; Amendment 39-13796; AD 2004-19-02] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10877. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, or SA1896SO [Docket No. 97-NM-235-AD; Amendment 39-12861; AD 2002-16-22] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10878. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Robinson Helicopter Company Model R22-series Helicopters [Docket No. 2004-SW-15-AD; Amendment 39-13803; AD 2004-19-09] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10879. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes [Docket No. 2003-CE-40-AD; Amendment 39-13795; AD 2004-19-01] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10880. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 727, 727C, 727-100, -100C, and -200 Series Airplanes [Docket No. 2003-NM-131-AD; Amendment 39-13786; AD 2004-18-08] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10881. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 737-200, -200C, -300, -400, and -500 Series Airplanes [Docket No. 2001-NM-246-AD; Amendment 39-13784; AD 2004-18-06] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10882. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ Series Airplanes [Docket No. 2002-NM-90-AD; Amendment 39-13785; AD 2004-18-07] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10883. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Hartzell Propeller Inc. (formerly Hartzell Propeller Products Division) Model HC-B5MP-3()/M10282A()6 Five Bladed Propellers [Docket No. 86-ANE-7; Amendment 39-13822; AD 2004-21-01] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10884. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; CFM International (CFMI) CFM56-5C Series Turbofan Engines [Docket No. 95-ANE-64-AD; Amendment 39-13791; AD 97-09-02R3] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10885. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Rolls-Royce plc RB211-22B, RB211-524, and RB211-535 Series Turbofan Engines [Docket No. 2003-NE-57-AD; Amendment 39-13798; AD 2004-19-04] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10886. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier Model CL-6002B19 (Regional Jet Series 100 & 440) Airplanes [Docket No. FAA-2004-19229; Directorate Identifier 2004-NM-195-AD; Amendment 39-13814; AD 2004-20-09] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10887. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bombardier Model CL-600-2C10 (Regional Jet Series 700 & 701), and CL-600-2D24 (Regional Jet Series 900) Series Airplanes [Docket No. FAA-2004-18993; Directorate Identifier 2004-NM-125-AD; Amendment 39-13781; AD 2004-18-03] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10888. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; DG Flugzeugbau GmbH, Model DG-500MB Sailplanes [Docket No. 2004-CE-06-AD; Amendment 39-13790; AD 2004-18-12] (RIN: 2120-AA64) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10889. A letter from the Chairman, Surface Transportation Board, Department of Transportation, transmitting the Department's final rule — Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services — 2004 Update [STB Ex Parte No. 542 (Sub-No. 11)] received November 1, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10890. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Restricted Areas 5802C, D, and E; Fort Indiantown Gap, PA [Docket No. FAA-2003-13850; Airspace Docket No. 02-AEA-19] (RIN: 2120-AA66) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10891. A letter from the Attorney-Advisor, NHTSA, Department of Transportation, transmitting the Department's final rule — Federal Motor Vehicle Safety Standards; Rear Impact Guards [Docket No. NHTSA-2004-19523] (RIN: 2127-AH75) received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10892. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Water Quality Standards; Withdrawal of Certain Federal Water Quality Criteria Applicable to Alaska, Arkansas, and Puerto Rico [OW-2004-0006; FRL-7825-1] received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10893. A letter from the Regulations Coordinator, ACF, Department of Health and Human Services, transmitting the Department's final rule — Child Support Enforcement Program Federal Tax Refund Offset (RIN: 0970-AC09) received October 26, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10894. A letter from the Acting Director, International Trade Compliance, Customs and Border Protection, Department of Homeland Security, transmitting the Department's final rule — Prototypes used solely for product development, testing, evaluation, or quality control purposes [CBP Dec. 04-36] (RIN: 1505-AB32) received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10895. A letter from the Administrator, Office of Workforce Security, Department of Labor, transmitting the Department's final rule — Unemployment Insurance Program Letter No. 30-04 Change 1 — received November 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10896. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Low-Income Housing Credit (Rev. Rul. 2004-100) received November 2, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10897. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Information reporting and other guidance regarding distributions with respect to securities issued by foreign corporations [Notice 2004-71] received October 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10898. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property (Rev. Rul. 2004-102) received October 18, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10899. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed $2,800,000 (Rev. Rul. 2004-107) received November 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10900. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Treatment of Loans with Below-Market Interest Rates (Rev. Rul. 2004-108) received November 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10901. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Modification of Rev. Rul. 95-63, 1995-2 C.B. 85, with respect to countries described in section 901(j)(2)(A) of the Internal Revenue Code (Rev. Rul. 2004-103) received October 25, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10902. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Information Reporting Under Section 6050P for Discharges of Indebtedness [TD 9160] (RIN: 1545-AY35) received October 25, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10903. A letter from the Regulations Officer, Social Security Administration, transmitting the Administration's final rule — Representative Payment Under Titles II, VIII and XVI of the Social Security Act [Regulation Nos. 4, 8, and 16] (RIN: 0960-AF83) received October 12, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. POMBO: Committee on Resources. H.R. 4908. A bill to transfer certain land in Riverside County, California, from the Bureau of Land Management to the United States to be held in trust for the Pechanga Band of Luiseno Mission Indians, and for other purposes; with an amendment (Rept. 108–777). Referred to the Committee of the Whole House on the State of the Union.

Mr. REYNOLDS: Committee on Rules. House Resolution 856. Resolution providing for consideration of the bill (S. 2986) to amend title 31 of the United States Code to increase the public debt limit (Rept. 108–778). Referred to the House Calendar.

Mr. BOEHNER: Committee of Conference. Conference report on H.R. 1350. A bill to reauthorize the Individuals with Disabilities Education Act, and for other purposes (Rept. 108–779). Ordered to be printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 710. A bill for the relief of Mrs. Florence Narusewicz of Erie, Pennsylvania (Rept. 108–776). Referred to the Private Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. BEAUPREZ (for himself and Mr. TANCREDO):

H.R. 5373. A bill to authorize the Secretary of the Interior to enter into contracts for the use of excess storage and conveyance capacity of the Fryingpan-Arkansas Project, Colorado, and for other purposes; to the Committee on Resources.

By Mr. ISSA (for himself, Mr. FILNER, Mr. WILSON of South Carolina, Mrs. BONO, Mr. CALVERT, Mr. COX, Mr. POMBO, Mr. GARY G. MILLER of California, Mr. GALLEGLY, Mr. HUNTER, Mr. CUNNINGHAM, Mr. MCKEON, Mr. DREIER, Mr. LEWIS of California, Mr. OSE, Mr. RADANOVICH, Mr. ROHRABACHER, Mr. ROYCE, Mr. NUNES, Mr. HERGER, Mr. DOOLITTLE, Mr. THOMAS, Mr. BACA, Mr. BERMAN, Mr. MATSUI, Ms. WOOLSEY, Ms. PELOSI, Mrs. TAUSCHER, Mr. LANTOS, Ms. LOFGREN, Mr. FARR, Mr. CARDOZA, Mrs. CAPPS, Mr. SCHIFF, Mr. WAXMAN, Mr. BECERRA, Ms. ROYBAL-ALLARD, and Ms. ESHOO):

H.R. 5374. A bill to designate the facility of the United States Postal Service located at 30777 Rancho California Road in Temecula, California, as the ''Dalip Singh Saund Post Office Building''; to the Committee on Government Reform.

By Mr. HYDE (for himself and Mr. LANTOS):

H.R. 5375. A bill to provide for increased accountability and transparency in the United Nations; to the Committee on International Relations.

By Mr. COLLINS:

H.R. 5376. A bill for the relief of Nancy P. Gilbert; to the Committee on Education and the Workforce.

By Mr. GARRETT of New Jersey (for himself, Mr. SMITH of New Jersey, Mr. PALLONE, Mr. FERGUSON, Mr. PAYNE, Mr. PASCRELL, and Mr. MENENDEZ):

H.R. 5377. A bill to establish the Thomas Edison National Historical Park in the State of New Jersey as the successor to the Edison National Historic Site; to the Committee on Resources.

By Mr. PORTMAN (for himself, Mr. JEFFERSON, Mrs. JOHNSON of Connecticut, Mr. NEAL of Massachusetts, Mr. HOUGHTON, Mr. MCCRERY, Mrs. JONES of Ohio, Mr. ENGLISH, Mr. TURNER of Ohio, and Mr. MILLER of North Carolina):

H.R. 5378. A bill to amend the Internal Revenue Code of 1986 to modify the rehabilitation credit and the low-income housing credit; to the Committee on Ways and Means.

By Mr. STUPAK:

H.R. 5379. A bill to amend the Immigration and Nationality Act to limit the timing of issuance of H-2B visas during a fiscal year; to the Committee on the Judiciary.

By Mr. WEINER:

H.R. 5380. A bill to improve the safe operation of aircraft; to the Committee on Transportation and Infrastructure.

By Mr. BOEHNER:

H.J. Res. 111. A joint resolution appointing the day for convening of the first session of the One Hundred Ninth Congress; considered and passed.

By Mr. MCDERMOTT (for himself, Mr. INSLEE, Mr. DICKS, Mr. LARSEN of Washington, Mr. SMITH of Washington, Ms. DUNN, Mr. HASTINGS of Washington, Mr. NETHERCUTT, and Mr. BAIRD):

H. Res. 857. A resolution congratulating the Seattle Storm for winning the 2004 Women's National Basketball Association Championship; to the Committee on Government Reform.

PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII,

Mr. WILSON of South Carolina introduced a bill (H.R. 5381) for the relief of Griselda Lopez Negrete; which was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 121: Mr. FILNER.
H.R. 375: Mrs. DAVIS of California.
H.R. 621: Mr. MCDERMOTT.
H.R. 677: Mr. WELLER.
H.R. 713: Mr. GUTIERREZ.
H.R. 814: Mr. SWEENEY and Mr. ABERCROMBIE.
H.R. 832: Mr. GONZALEZ.
H.R. 857: Mr. PRICE of North Carolina.
H.R. 1043: Mr. HENSARLING.
H.R. 1205: Mr. ANDREWS and Mr. RAHALL.
H.R. 1336: Mr. GOODLATTE.
H.R. 1359: Mr. ANDREWS, Mr. KIND, and Mr. RAHALL.
H.R. 1434: Ms. MILLENDER-MCDONALD.
H.R. 1435: Mr. LEWIS of Georgia.
H.R. 1563: Mrs. DAVIS of California, Mr. RAHALL, Mr. JEFFERSON, Mr. FATTAH, Mr. KENNEDY of Rhode Island, and Mr. SMITH of Washington.
H.R. 1701: Mr. FATTAH, Mr. GREEN of Texas, Mrs. MALONEY, Mr. FROST, Mr. SNYDER, Mr. MCNULTY, Mr. REYES, Mrs. CHRISTENSEN, Mr. MCHUGH, and Mr. OWENS.
H.R. 1776: Mr. CARTER.
H.R. 1811: Mr. BRADLEY of New Hampshire.
H.R. 1824: Mr. BASS.
H.R. 1995: Mr. PAUL.
H.R. 2096: Mrs. LOWEY.
H.R. 2151: Ms. MILLENDER-MCDONALD and Mr. NADLER.
H.R. 2379: Mr. BURTON of Indiana.
H.R. 2490: Mr. JEFFERSON.
H.R. 2505: Mr. ISRAEL.
H.R. 2569: Mr. WEXLER.
H.R. 2702: Mr. FILNER.
H.R. 2821: Mr. BISHOP of Utah, Mr. WHITFIELD, and Mr. CHANDLER.
H.R. 2823: Mr. CRAMER.
H.R. 3058: Mrs. NAPOLITANO.
H.R. 3103: Mr. BISHOP of Georgia, Mr. MOORE, and Mr. MILLER of Florida.
H.R. 3178: Mr. HALL.
H.R. 3350: Mr. PAYNE.
H.R. 3361: Mr. PETERSON of Minnesota and Mr. HONDA.
H.R. 3412: Mr. FRANK of Massachusetts and Ms. CARSON of Indiana.
H.R. 3450: Mr. DAVIS of Alabama.
H.R. 3635: Mr. CUMMINGS.
H.R. 3716: Mrs. NAPOLITANO.
H.R. 3729: Ms. BORDALLO, Mr. ROSS, Mrs. NAPOLITANO, Mr. BONNER, Mr. COOPER, and Mr. OSBORNE.
H.R. 3758: Mrs. MALONEY.
H.R. 3953: Mr. CHABOT.
H.R. 4116: Mr. CONYERS and Ms. HERSETH.
H.R. 4202: Mr. WOLF.
H.R. 4252: Mr. DAVIS of Alabama.
H.R. 4367: Mr. PAYNE.
H.R. 4374: Mr. PAYNE.
H.R. 4423: Mr. ROTHMAN.
H.R. 4433: Ms. LOFGREN, Mr. HYDE, Mr. JACKSON of Illinois, and Mr. BLUMENAUER.
H.R. 4434: Mr. DAVIS of Alabama.
H.R. 4491: Mr. GINGREY, Mr. BISHOP of Georgia, and Mr. RAHALL.
H.R. 4499: Mr. COX.
H.R. 4578: Ms. ROYBAL-ALLARD, Mr. PAYNE, Ms. DEGETTE, and Mr. MOORE.
H.R. 4585: Mr. PAYNE, Ms. JACKSON-LEE of Texas, and Ms. MILLENDER-MCDONALD.
H.R. 4591: Ms. LINDA T. SANCHEZ of California, Mr. HINCHEY, and Mr. STARK.
H.R. 4622: Mr. MCCOTTER.
H.R. 4633: Mr. LEWIS of Georgia.
H.R. 4662: Mr. COX.
H.R. 4676: Ms. JACKSON-LEE of Texas, Mr. PLATTS, Mr. TURNER of Ohio, and Mr. MENENDEZ.
H.R. 4694: Mr. NADLER.
H.R. 4706: Ms. SOLIS, Mr. RANGEL, Mr. BROWN of Ohio, Ms. JACKSON-LEE of Texas, Mr. CLYBURN, Mr. FATTAH, Mr. LEVIN, Mr. HASTINGS of Florida, and Ms. LINDA T. SANCHEZ of California.
H.R. 4769: Mr. DAVIS of Alabama.
H.R. 4826: Mr. SHAYS.
H.R. 4880: Mrs. CHRISTENSEN.
H.R. 4902: Mr. PAYNE.
H.R. 4965: Mr. MCCOTTER.
H.R. 4976: Mr. PASTOR and Mr. ANDREWS.
H.R. 5068: Mrs. TAUSCHER.
H.R. 5114: Mr. HEFLEY.
H.R. 5155: Mrs. CHRISTENSEN.
H.R. 5173: Mr. JENKINS.
H.R. 5190: Ms. KILPATRICK.
H.R. 5197: Mr. RAHALL.
H.R. 5206: Mr. SHAW, Mr. LINCOLN DIAZ-BALART of Florida, Mr. MARIO DIAZ-BALART of Florida, Mr. WEXLER, Mr. BILIRAKIS, Mr. STEARNS, and Ms. GINNY BROWN-WAITE of Florida.
H.R. 5210: Mr. WOLF and Mr. KING of New York.
H.R. 5211: Mr. WOLF.
H.R. 5242: Mr. OLVER and Mr. WAXMAN.
H.R. 5243: Mr. ALLEN, Mr. FROST, Mr. OLVER, Mr. NADLER, Mr. KUCINICH, and Mr. LUCAS of Kentucky.
H.R. 5261: Mr. KING of New York and Mr. FARR.
H.R. 5304: Mr. ROHRABACHER.
H.R. 5320: Mr. JEFFERSON and Mr. TOWNS.
H.R. 5322: Mr. LANGEVIN, Mr. PAYNE, and Mr. RANGEL.
H.R. 5339: Ms. VELAZQUEZ, Ms. SOLIS, and Mr. FILNER.
H.R. 5364: Mr. GARY G. MILLER of California and Mr. HUNTER.
H.R. 5365: Mr. ANDREWS.
H.J. Res. 28: Mr. RYAN of Ohio, Ms. KAPTUR, Mr. MEEKS of New York, and Mr. STARK.
H.J. Res. 29: Mr. RYAN of Ohio and Mr. MEEKS of New York.
H.J. Res. 30: Mr. RYAN of Ohio and Mr. MEEKS of New York.
H.J. Res. 109: Ms. SCHAKOWSKY.
H. Con. Res. 74: Mr. VAN HOLLEN.
H. Con. Res. 210: Ms. MCCARTHY of Missouri and Mr. MCDERMOTT.
H. Con. Res. 325: Mr. DUNCAN.
H. Con. Res. 384: Ms. MCCARTHY of Missouri and Mrs. CHRISTENSEN.
H. Con. Res. 491: Mrs. CAPPS and Mrs. MCCARTHY of New York.
H. Con. Res. 502: Mr. GOODLATTE.
H. Con. Res. 503: Mr. MCGOVERN and Mr. WEXLER.
H. Con. Res. 521: Mr. STARK.
H. Res. 466: Mr. DICKS.
H. Res. 514: Mr. DELAHUNT.
H. Res. 720: Mr. GOODLATTE.
H. Res. 853: Mr. WILSON of South Carolina, Mr. BISHOP of Georgia, Mr. ROHRABACHER, and Mr. SESSIONS.