SENATE—*Saturday, November 23, 1991*

(Legislative day of Wednesday, November 20, 1991)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable TIMOTHY WIRTH, a Senator from the State of Colorado.

The PRESIDING OFFICER. The prayer will be offered by Dr. James D. Ford, Chaplain, U.S. House of Representatives, Washington, DC.

PRAYER

The Chaplain, Dr. James D. Ford, Chaplain, U.S. House of Representatives, Washington, DC, offered the following prayer:

Let us pray:

Teach us, gracious God, to remember You in our prayers and petitions not only at times of conflict and distress or at the moments of anxiety and frustration, but to speak daily to You from the depths of our hearts and from the center of our being. O God, You have blessed us with every good gift of life and love and with all the opportunities of friendship and fellowship. Remind us at the dawn of the morning until the fading light of day to hear Your still small voice and joyfully celebrate Your blessings to us and to all people. In Your name, we pray. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 23, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TIMOTHY E. WIRTH, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. WIRTH thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

THE SCHEDULE

Mr. MITCHELL. Mr. President, under the agreement reached last evening, the Senate will now proceed to the Defense appropriations conference report under a time limitation which provides for a maximum number of 5 hours of debate on that bill. I indicated last evening that the vote would occur when all the time is used or yielded back but in any event not prior to noon. So, a vote on that bill will, therefore, occur sometime between noon and 2 p.m. depending on how much of the maximum 5 hours permitted for debate is actually used.

Upon disposition of that bill the Senate will proceed to consideration of the CFE Treaty. There is no time limitation. We have been unable to obtain a time limitation on debate, and I am advised that there may be considerable debate on that matter. It is an important matter, of course, deserving of full consideration by the Senate.

I intend to remain in session today until we do complete action on that and, therefore, the Senate will undoubtedly be in session throughout the day and perhaps into the evening depending upon progress of debate.

I also indicated last evening that the possibility of other matters coming before the Senate exists and that remains the case. I will be meeting with the Republican leader and with the Senators on both sides of the aisle throughout the day in an effort to determine how best to proceed so as to enable us to complete the business on which we must act prior to adjournment. And it is possible that there will be other measures before the Senate during the day today.

Mr. President, I note the presence of the distinguished Senator from Hawaii, the manager of the bill which will now be before the Senate.

I, therefore, yield the floor.

RESERVATION OF LEADER TIME

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

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, FISCAL YEAR 1992—CONFERENCE REPORT

Mr. INOUYE. Mr. President, I submit a report of the committee of conference on H.R. 2521 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The report will be stated.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 2521) making appropriations for the Department of Defense for the fiscal year ending September 30, 1992, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The ACTING PRESIDENT pro tempore. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 18, 1991.)

The ACTING PRESIDENT pro tempore. The time for debate on the conference report is limited to 5 hours divided and controlled as follows: One and a half hours each for Mr. NUNN and Mr. WARNER, 45 minutes each for Mr. INOUYE and Mr. STEVENS, and 30 minutes for Mr. SASSER.

The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, on behalf of the managers on the part of the Senate in the committee on conference on the fiscal year 1992 Defense appropriations bill, I am pleased to present to the Senate our recommendations for fiscal year 1992 funding of the programs and activities of our Government in support of our Nation's defense and security.

The bill before the Senate provides $269.9 billion in budget authority and $275.4 billion in outlays for fiscal year 1992 defense spending. These amounts approximate the committee 602(b) allocations of budget authority and outlays to the Subcommittee on Defense Appropriations. We are within, approximately, $500 million of our budget authority total—in other words, we are below the amount designated for the committee—and $25 million of the allowance for outlays. We have spent less than what we were designated.

This conference agreement is in tune with our times and it is in touch with reality. At a time when the Soviet threat appears to be receding, we make appropriate adjustments. At a time when it is difficult to be certain that all threats have, indeed, been removed, we fund the basic elements of our national strength and we preserve the vitality of our Nation's Armed Forces. And, as we look to a future where America will undoubtedly turn inward and reduce spending for military programs, we finance investments in research and development, and, we fund procurement of systems which will preserve our Nation's strength with a smaller Army, a smaller Air Force, and a smaller Navy and Marine Corps.

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

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

So now if I may proceed first to title I, military personnel.

TITLE I: MILITARY PERSONNEL

The bill before the Senate fully funds the President's request for military personnel. The recommendation fully funds active duty personnel end strength at the budgeted and authorized level—a reduction of 106,358 from fiscal year 1991. I would like to repeat that again. This bill reduces the active duty personnel end strength by 106,358 from fiscal year 1991. For the Guard and Reserve, we add back 67,796 from the budgeted reduction. As we all recall, the President of the United States had proposed the reduction of 107,526 in National Guard and Reserve end strength; we reduced it by 40,030. In other words from the President's budget reduction we added back 67,496.

We also protect the Guard and Reserve Force structure. Section 8067, a general provision, prohibits any reduction in the force structure allowance of the Army Guard and Reserve below specified numbers.

Mr. President, several of my colleagues have come to me expressing concern about the actions taken by the conference committee on the National Guard and Reserves. I believe it might be helpful if I tried to put the actions of the appropriations conference agreement in context with the actions of the authorization conference agreement. Both of these agreements, as my colleagues are aware, have been adopted by the House. And the Senate has now passed the authorization agreement.

Under bill language contained in the authorization conference agreement, end strength levels for each of the Guard and Reserve components are mandated.

End strength levels refer to the number of people in the Guard or Reserve on the last day of the fiscal year, September 30, 1992. To put it another way, the authorized end strength level places a ceiling on the number of people in the Guard and Reserve during a given fiscal year.

The concerns that have been expressed to me principally involve the Army National Guard and the Army Reserve. Let me use the Army National Guard as an example to illustrate the point I am trying to make.

The authorization agreement mandates an Army Guard end strength of 440,000 men and women, plus the possibility of a 2-percent increase for a total of 448,800. So under the authorization conference agreement, the Army Guard strength could go as high as 448,800. However, nothing—I repeat nothing—is contained in the authorization conference agreement which would prevent the Department of Defense from drawing Army Guard end strength down to any figure it chooses. Army Guard strength under the authorization bill could be anywhere from 448,800—2 percent above the authorized end strength—or 50,000, or 60,000, or 70,000 below that level.

Theoretically, if the DOD lost its mind, it could go all the way down to zero. In other words, the authorization conference agreement set a ceiling but not a floor.

The appropriations conference, on the other hand, sets a floor on Army Guard end strength, and that floor is 440,000, the authorized end strength. Our conference agreement says that the Department of Defense may not draw Guard end strength below 440,000, except that the Secretary of Defense may vary that end strength by no more than 2 percent. The Department of Defense could reduce Army Guard end strength by an additional 8,800 under the end strength funded in the appropriations bill. But DOD could not reduce end strength any further. Unlike the authorization bill, the appropriations conference agreement floor would prevent further reductions and as such we establish a minimal force size. To put it another way, we protect the Guard.

Mr. President, the appropriations conference agreement also addresses force structure allowances. Under our agreement, there is a floor on Army Guard and Army Reserve force structure allowances. The Department may not reduce force structure allowance for the Army Guard below 450,000 and for the Army Reserve below 310,000 and for the other Reserve components below the end strength levels supported by the Appropriations Act. Again, we have given the Secretary of Defense a little flexibility. Our agreement will allow him to vary force structure allowances by the same percentage that he has varied—increased or reduced—end strength.

This is one of the most difficult issues that we confronted in conference. No one here wants to reduce Guard and Reserve Forces, and yet, as the active components are reduced and elements are eliminated, it is difficult to justify keeping the Guard and Reserve at their current level. We did, however, want to avoid large reductions at this time, especially since the Department of Defense does not appear to have a coordinated plan to make these reductions.

In the report which accompanies the conference agreement, we have directed the Department of Defense to provide the Committees on Appropriations with a listing of all units scheduled to be reduced, realigned or inactivated in fiscal year 1992 and a similar listing for fiscal year 1993. Where appropriate, the lists are to include active units which these Guard and Reserve units support.

The authorization conference agreement also requires an assessment of the structure and mix of Active and Reserve Forces through the mid- to late-nineties, with an interim report due by May 1, 1992. I hope, and believe, that the two reports will make it possible for all of us to make informed decisions when we consider the fiscal year 1993 authorization and appropriations bills.

Mr. President, I know that there are Senators who will disagree with the position the conferees have taken on the Guard and Reserves. Nonetheless, I stand before you and the Senate, and I say without reservation—we protected the Guard.

TITLE II: OPERATION AND MAINTENANCE

For the operation and maintenance title, various pricing and fact-of-life adjustments enabled us to take $1.8 billion out of the request. We have put this money to good use.

We have increased Army training funds by $150 million; we have enhanced readiness by providing an increase of $400 million for depot maintenance—that is repair and maintenance of equipment, long, long overdue; and we have provided a $500 million fund to meet the requirements for facilities maintenance at Army, Navy, and Air Force installations.

Under the O&M title, we have also provided funds to really begin the environmental cleanup of our Nation's defense installations, we provide $1.2 billion, not just for studies and research but for cleaning up the mess left behind by a century of neglect. In this regard, we also provide $105 million in Navy operation and maintenance funding to support Navy operations and to help clean up environmental pollution in Antarctica.

The bill also addresses Coast Guard operations. We provide $189 million in support of Coast Guard drug interdiction and defense related operations.

TITLE III: PROCUREMENT

Mr. President, the bill which the committee has recommended makes a prudent investment in the military hardware and related equipment necessary to preserve a strong defense establishment.

NAVY

For the Navy, we provide funds for 1 SSN-21 *Seawolf* attack submarine, 5 DDG-51 Aegis destroyers, 3 MHC Minehunters and 24 of the LCAC landing craft.

Mr. President, it is clear that our Nation needs to revitalize its fleet of attack submarines. The committee is concerned, however, that the *Seawolf*—the SSN-21 class—may be too expensive. Under current plans, only one per year is to be constructed. At one submarine per year, we can never sustain our goal of 60 or 70 submarines. Therefore, the Navy is now starting to look at a follow-on to the *Seawolf*, the SSN-21, the so-called *Centurion*. At this juncture I think it is well for us to note that while we are providing funds for one submarine, the Soviet Union, with all its economic ills and problems, will be providing funds for nine submarines.

Therefore, the Navy is now starting to look at a follow-on, as I said, to the SSN-21, the so-called *Centurion*. The committee has provided advance procurement funds for submarine construction, but has withheld the obligation of these funds until the Secretary of the Navy reports on his review of the submarine program and his determination as to where the future lies—with the *Centurion*, or some other submarine.

We address the problems of Navy air by funding procurement of 39 F/A-18 aircraft. We also provide substantial amounts in R&D funding for an advanced version of the F/A 18, the E/F version.

ARMY

For the Army, we are recommending the procurement of a new training helicopter—it will save money to buy rather than lease a new training helicopter, and we recommended procurement of 47 additional UH-60 Blackhawk utility helicopters. We also fund 24 AHIP helicopters, as authorized.

A number of Members have expressed an interest in the MLRS rocket. We recommend funding of 36,000 rockets and 44 launchers. This year, in addition to procurement for the Regular Army, we are recommending the appropriation of $110 million for procurement of MLRS for the National Guard. This amount was not requested, but I believe the Guard can and should take on additional roles in the future of our Nation's defense.

We provide additional funding to meet the increased cost of procurement of the 60 M1A2 tanks funded in fiscal year 1991 and we provide funding to upgrade the M1 tank to the M1A2 tank—as you know, the M1 is the tank which did so well in the recent war in the desert. It outgunned the Russian T-72 tank and outmaneuvered it as well. In fact, the M1 outmaneuvered its own support vehicles, so, in R&D, we provide funds for support vehicles in the Armored Systems Modernization Program, while deferring development of the so-called Block III tank.

AIR FORCE

For the Air Force, we provide in excess of $1 billion for the procurement of 48 F-16 aircraft, with advance procurement for an additional 24 to be procured in fiscal year 1993.

We begin to meet the requirements for airlift by funding four C-17 air transport aircraft. The budget had requested funding for six, but the contractor has experienced delays and we believe $1.5 billion is sufficient to meet production requirements for four aircraft.

Mr. President, I know all Senators are interested in what we are proposing for the B-2. We provide the same funding levels as included in the authorization bill, a total of $2.8 billion in procurement and $1.6 billion in R&D. The fences and restrictions in the authorization bill govern the obligation of these funds.

TITLE IV: RESEARCH AND DEVELOPMENT

In the research and development accounts, we provide funding for investment in the future of America's Armed Forces. We are not unaware that defense budgets will decline—and decline sharply—in the next 3 years. Accordingly, we have been careful to avoid initiation of R&D programs which are unaffordable in the future.

NAVY

We do provide ample resources to those R&D programs which have been identified as required investments. For example, we provide $350 million for the Navy's F/A 18 E/F program. This airplane will provide the solution to the Navy's midterm problems in the area of attack aircraft.

ARMY

Under Army R&D, one of the largest expenditure's will be for the armored systems modernization program. Because of the committee's concern with the need to get on with the development of new artillery—a need which was underscored in Desert Storm, where Iraqi artillery had greater range than anything we had in the field—we have provided funds to accelerate development of the new howitzer while slowing the development of the Block III tank.

AIR FORCE

The R&D programs in the Air Force are numerous, and very costly. Nonetheless, we support them because we believe air superiority and the importance of strategic and tactical bombing was unquestionably demonstrated in the gulf war. Communications, intelligence, and control of the air over the battlefield are vital to the success of our Armed Forces.

For the Air Force, we provide: $900 million for Milstar Satellite communications; and $376 million for the C-17 transport aircraft.

We also provide: $442 million for ICBM modernization; $145 million for Titan space launch vehicles, and, $1,563 million for continued R&D on the B-2 bomber.

DEFENSE AGENCIES

It is under Defense agencies that we find the largest of the R&D programs, the strategic defense initiative. As you know, the Defense authorization bill restructures this program and provides increased emphasis on ground-based systems. As authorized, we provide $4.15 billion for the SDI Program.

CONCLUSION

Mr. President, those are the principal recommendations for funding.

As you know, the Defense appropriations bill carries a large number of general provisions—over 100—which cover a variety of subjects. I will not review all of them; most have been carried in our bill for a number of years.

Mr. President, in a recent, special briefing before the Appropriations Committee, Gen. Colin Powell, the Chairman of the Joint Chiefs of Staff, spoke frankly and candidly about his fears for the future of America's Armed Forces.

He expressed his concern that measures to keep the Guard and Reserve at current levels, or to prohibit the managed reduction of the regular force, will lead to a top heavy structure of aging military personnel.

He expressed his concern that reductions in procurement and research and development could erode the qualitative edge our service men and women have on the battlefield. A qualitative edge which will grow ever more important as we reduce the number of men and women under arms.

General Powell expressed his concern that we would build a hollow force with outmoded equipment and overage soldiers.

Mr. President, we must not allow that to happen. We must manage reductions in force levels and defense spending. We all know these reductions will come over the next several years. We, on the Defense Appropriations Subcommittee have begun to make them.

Mr. President, that concludes my remarks. I am pleased to yield the floor to my distinguished colleague, my dear friend whose wisdom and humor have made my life much easier and my work more productive, the senior Senator from Alaska, TED STEVENS, the ranking minority member of the Subcommittee on Defense Appropriations.

Mr. President, I yield the floor at this moment.

The ACTING PRESIDENT pro tempore. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I am grateful to my good friend from Hawaii. It is difficult to keep one's good humor in dealing with this bill but I think we should try to do that today.

Let me start off briefly with just a couple of comments. I yield myself 5 minutes, Mr. President, and I yield my good friend, the distinguished Senator from Arizona [Mr. MCCAIN] 20 minutes, and reserve the remainder of the time for later comments today.

The Senate, in its wisdom, has divided jurisdiction over this subject between two entities of the Senate: One, the Senate Armed Services Committee, which has some 50 staff; the other is the Defense Appropriations Subcommittee, chaired by my good friend from Hawaii. I was the chairman of this subcommittee for 6 years, and we have worked together for some 20 years.

We have 10 staff on the majority side. They are basically nonpartisan. And I have one professional assistant on this subcommittee, Mr. Cortese, who sits beside me. We have a total, in other words, of 14, of our administrative staff, 14 working with us, and there are

50 working with the Armed Services Committee.

We are going to witness today a battle between the staffs, because when our bill, the Defense Appropriations Committee bill, left the Senate, it was almost tracking the defense authorization bill. The Senators who represent the Armed Services Committee and went to conference with the House on the defense authorization bill met with 102 Members of the House; some 13 Members of the Senate did that.

The bill that they brought back to the Senate, and we just approved yesterday as a conference report, was substantially different from the bill that we tried to fund with the Senate-passed appropriations bill. In conference, we tried to keep up with their conference, those of us who were on the Appropriations Committee, but it was almost impossible to do so because the changes in that bill were so rapid, so varied, and the final version, as I indicated, was very little like the original product that left the Senate.

We met as a subcommittee with the subcommittee of the House Appropriations Committee, some 13 of us, meeting with 19 other Members. There is no overlap between the Appropriations Committee or the Armed Services Committee, House or Senate. So we had to do as best we could to fashion a bill to meet the objectives of the Senate, keeping in mind the bill that we took to the conference tracked the original authorization bill but the bill they brought back here did not look like anything they took to conference themselves.

We are going to be railed against once again, and this Senator is getting a little tired of it. The authorization committee in the Senate, I will note, micromanages the Department of Defense and now they are trying to micromanage another entity of the Senate.

This conference report that is before the Senate now complies with the 602 limits for budget authority and outlays for the Department of Defense. We have funded the major items of the defense bill that was brought back by the Armed Services Committee, notwithstanding their peregrinations and notwithstanding the varied amounts in their bill as compared to the original bill.

We have, as the Senator from Hawaii has indicated, I think maintained the significant initiatives of the Armed Services Committee, including the Warner initiative on SDI, which is significantly different from the President's budget, significantly different from the recommendations of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. We maintained the progress on the new F-22 advance attack fighter for the Air Force, the E/F version of the F-18 and the V-22 for the Marine Corps, notwithstanding various disagreements in the Pentagon and in the White House and, I might add, here with some other Members of the Senate. But we have tried to track the desires of the Armed Services Committee to the maximum extent possible.

The difficulty I have with the criticisms that the Senate is going to hear today is that in trying to work out an agreement with the House Members in this conference of ours on appropriations, we had to make significant concessions on small items. They are very small items. Take, for instance, the university items before us today. I personally had over 200 letters from Members of the Senate that if we had been able to accede to their request would have totaled more than $10 billion.

We were not able to accede to all those requests, but the ones from the Armed Services Committee we did accede to, and we did get our colleagues in the House to agree to.

The interesting thing is the Armed Services Committee has forced us to fund what we call federally funded research and development centers. Those centers have increased $600 million since 1985. They spend the same kind of money as these universities that the people will complain about today. They are, in effect, consultants for the Department of Defense, and so are the universities.

I do not totally defend the process by which we end up with these universities and their allocations today, but they are equally sound to the FFRDC's, the federally funded research development companies, that spent in total $1.6 billion this year of taxpayers' money to consult with those who should be making our defense policy.

I commend to the Armed Services Committee the task of reducing that expenditure as they try to reduce the expenditures by our universities.

Mr. President, I hope to be able to respond to others, but I think we have reached an acceptable balance for 1992 with our counterparts in the House.

I particularly want to commend the chairman, Mr. MURTHA, and the ranking member, Congressman MCDADE, who have worked with us. And I again thank my good friend from Hawaii for all his patience in trying to work out this matter.

I myself had to author an amendment to delete an item that I personally first brought to the Senate 10 years ago to try and find a way to provide women in Armed Services with some form of consideration when they do have the problem of facing abortion. I had to author that amendment to delete from this bill that section in order that we might get a bill to bring back to the Senate this year because there was such stern opposition to it in the House.

That was not a pleasant duty, and I do thank those who understood the circumstance. I am sure I will have to answer to that for years to come. But this bill is an important bill. It is a bill that must continue the support for our Armed Services and, as I indicated, I look forward to the dialog today.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. MCCAIN addressed the Chair.

Mr. INOUYE. Mr. President, may I yield myself just 30 seconds?

PRIVILEGE OF THE FLOOR

Mr. INOUYE. Mr. President, I ask unanimous consent that during consideration of this conference report, the following people, Charles Cook, John Young, and Stacy McCarthy, be granted floor privileges.

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

The Senator from Arizona is yielded 20 minutes.

Mr. MCCAIN. Mr. President, if it is agreeable to my distinguished friend from Alaska, acting in behalf of Senator WARNER, I yield myself such time as deemed necessary from his time. Is that agreeable to the Senator from Alaska?

Mr. STEVENS. It is my understanding, Mr. President, that the Senator wanted 20 minutes of my time. I yielded that to him. He may have it if he wishes.

Mr. MCCAIN. I thank my friend from Alaska. Mr. President, let me preface my remarks with by noting the high esteem, regard, and affection which I hold for the distinguished chairman and the ranking Republican member of the Defense Appropriations Subcommittee. One of the greatest privileges that I have had serving in this body is knowing and appreciating the skills, talent, and dedication of these two individuals, and I know that they would not perceive my remarks as in any way a criticism of them.

What I am going to criticize today is a system which has become more and more flawed and more and more disgraceful. Most important, it has become a great disservice to the taxpayers of my State and this Nation.

Our current system for reviewing the defense budget cries out for reform, and at the end of my remarks, I will make several recommendations. We cannot, however, wait to reform the system. We are faced with a fiscal year 1992 Defense appropriations bill which programs over $6 billion in unauthorized and/or noncompetitive expenditures. This can be broken down into $3.3 billion in 17 accounts or $4.9 billion in 170 lines at the line-item level with all due respect to my dear friends, Senator INOUYE and Senator STEVENS, I have to register not only my feeling of strong disagreement with such waste but that of the people I represent.

I am going to vote against this bill. I am going to do so even though the bill has many strong features, many fea-

tures which I was privileged to work on over the entirety of last year. Nevertheless, a point of principle is involved, and so is the interest of the American taxpayer. It is no secret that each of us is here to represent his or her constituents. It is no secret that the Congress makes a host of changes in every appropriations bill. Many of these changes are, in fact, changes that aid our national security. The defense budget is prepared and submitted to Congress nearly 10 months before we take final action.

There are many areas of controversy that need to be debated as time goes on. There are many shifts in the overall budget situation, our strategic posture, and military requirements. All of us see many lobbyists in uniform, as well as in civilian clothes. No one can object if some objections are made to suit State and local interests.

We all know that the Federal Government is anything but infallible and that small changes in the total Federal budget can have a devastating impact on a given community. We exist as a body because our Founding Fathers knew that we could only build a national consensus around the fair representation of regional interests and a concern for the people, as well as national policy.

I think it is appropriate in this context to mention that my friend from Alaska just stated the defense authorizers micromanage the defense establishment I believe that remark to be unfair. Our obligation is to ensure that the defense budget meets the Nation's needs and those of the American people, not to be act as a rubber stamp for the Pentagon or the executive branch. As an authorizing committee under the leadership of our chairman, Senator NUNN, we have for years attempted to avoid micromanagement. I admit that the criticism of the Senator from Alaska is sometimes accurate. We are not perfect. We do micromanagement from time to time. However, I would suggest that clearly, under the structure of the Senate, the authorizing committee is required to make the kind of decisions it makes in the authorization bill. I will quote the law in just a minute. But again, I repeat, I am not attacking the appropriations bill because the authorization bill is at issue. I am doing so because of its impact on public policy.

Mr. President, I believe in a strong national defense. I believe in a competitive United States. I believe in a peace dividend. In lowering taxes, and in getting the Federal deficit under control, I believe there must be sharp limits on midnight raids on the Treasury. The law is clear. And I will repeat it more than once during the course of this debate. It says:

No funds may be appropriated for any fiscal year, or to or for the use of any armed force or obligated or expended (for procurement, R&D, etc.) unless funds therefore have been specifically authorized by law.

"Unless funds therefore have been specifically authorized by law." The Armed Services Committee also has a longstanding agreement with the appropriators that the Senate Armed Services Committee sets the ceiling for defense expenditures, and they establish the floor. We have agreed to a process of checks and balances on unnecessary defense spending where we do not reverse each other's policy decisions and no one legislates on the appropriations bill.

But, Mr. President, as I said earlier, the defense appropriations bill adds $3.3 billion in 17 accounts at the account level. It adds $4.9 billion in 170 lines at the line-item level. It legislates unnecessary spending for universities, military depots, and museums by ending a legal requirements for competition. This adds about $350 million to the total.

The bill also mandates that a single contractor—a single contractor—get a noncompetive extension of a contract for CHAMPS services worth over $1 billion. In short, we are talking about changes that total at least $6.3 billion. To my friends in Arizona, $6.3 billion is a great deal of money. I want to emphasize that some parts of this $6.3 billion may include very valuable and, indeed, justified items in them. But the fact is, the law states:

Unless funds, therefore, have been specifically authorized by law, no funds may be appropriated for any fiscal year.

Mr. President, we cannot turn a blind eye to this kind of unnecessary spending at a time when Americans all over this country are experiencing economic hardship and uncertainty. We cannot turn a blind eye at a time when we are making massive cuts in defense spending in our forces. We live in a world where real defense spending by the Department of Defense has already been cut from $349 billion in fiscal year 1986 to $278 billion today. We live in a world where real defense spending will drop below $245 billion by the mid-1990's. We live in a recession where Americans need tax reduction and deficit reduction and honest competition to stimulate the economy.

We cannot afford to shift over $6 billion in defense funds from high-priority military needs to areas which often serve local or special interests. We cannot, after 6 straight years of cutting the defense budget, treat it as a pool of resources that neither enhances our security nor reduces the burden on the taxpayers. We cannot ignore the needs and sacrifices of our men and women in uniform.

Let me emphasize this latter point. Mr. President, one that I wrestled with—along with the chairman, the ranking member, Senator WARNER, and Senator GLENN on the Manpower and Personnel Subcommittee—is how we could properly compensate those men and women who served in the military, who volunteered for service, and who will be involuntarily separated or forced to leave military service voluntarily years before they planned to do so. This will include well over 300,000 men and women and at least some who risked their lives in Desert Storm. One of our biggest difficulties in providing such compensation was finding the funding to provide them with the benefits which they deserve and which many have risked their lives, to earn.

Frankly, Mr. President, a lot of this $6.36 billion I am talking about could better be spent on giving the American men and women who serve in our military better benefits, including pay raises in keeping with the rises in civilian salaries, which we have not done over several years.

Let me now address the issue of how this money will be spent if the Defense appropriations bill passes.

I have a long list of the detailed add-ons that contribute to this $6 billion figure, and I will request that they be added to my statement at the end of my remarks. Once again, I do not dispute that some are justified. I make no claim for perfection on the part of the authorizing committee, but I cannot help but touch on a few of these items. They include:

The sum of $20 million in gasoline truck engines to keep one firm alive at a time the Army has a more than 10-year surplus of such engines, and is converting to multifuel engines.

The sum of $175 million in upgrades for the F-14 whose nature is undefined, but which seem to be designed to subsidize an engine manufacturer and which will create a fourth configuration of the F-14, rather than attempt to solve the Navy's real fighter development problems.

The sum of $35.5 million for 155mm artillery rounds. This may even be a good idea. We are short on ammunition, but why 155mm rounds and not all the other shortfalls.

The sum of $8 million to subsidize a manufacturer of tactical trailer and dolly sets.

The sum of $100 million for the SSN-21 *Seawolf*—a submarine that now lacks a stand off weapon and new torpedo and whose cost seems to be climbing well above $2 billion.

The sum of $91 million for the AN/SSQ-95 sonobouy at a time when the Navy is dropping ASW from first to seventh priority.

What seems to be over $80 million for special and black programs which now seem to have black budgets.

The sum of $221 million more in black money for a classified ship air defense program.

The sum of $35 million for unspecific range improvements—which often translate into local improvements.

The sum of $356.5 million above the increase we made as authorizers for

still more C-130's—a plane that is constantly being thrust on the National Guard without any regard for the Guard's overall priorities and the need for a modern total force concept. Further, there is another $42.6 million for C-130 modifications.

Mr. President, the fact is that the law says that these grants to universities will be competed for on a merit basis. We have seen this earmarking grow and grow and grow over the years. We have to return to fair competition for these universities. Otherwise, it will be difficult for me and any other Member of Congress to tell the universities in my State to go ahead and compete if the money is going to be awarded on a noncompetitive basis.

The sum of $600 million more for sealift, where we already have $1.275 billion waiting to fund a program that does not yet have any obligations.

The sum of $238 million for LCAC landing craft, to double the number from 12 to 24, although the Authorization Act questioned the need for 12 and the appropriations bill does not fund an LSD-49 call amphibious landing ship that was both requested and authorized.

The sum of $149 million for a TAGOS ocean surveillance ship which cannot actually fund a full ship, and in spite of the fact the same manufacturer is likely to have to submit claims and cost overruns for the first two ships.

The sum of $60 million for a field artillery ammunition vehicle that the Army does not want, and that will keep a single manufacturer in business.

The sum of $114 million in university set-asides that subsidize certain schools without any competition, without any concern for academic excellence, and without any concern for the taxpayer—often making gifts of $10 to $29 million of the taxpayer's money to a given school.

The sum of $146 million in other institutional set-asides, including $37 million for the Letterman Army Hospital at the Presidio, and $22 million for a single public school at Fort Irwin. Incidentally, some people have already asked if their children will be eligible for a $22 million public school. They might even settle for the $10 million school at Fort Bragg.

These set-asides include $25 million for an Arctic region supercomputer. Further, there is another unexplained $60 million add-on for supercomputers elsewhere in the bill—total procurement—Defense agencies. All the universities in my State want one too. They, however, are trying to get one the old-fashioned way. They are trying to compete for one. Then we have a $11 million, I believe, in museums.

I think museums are an enormous contribution to our culture, to our heritage and our appreciation of the service and sacrifice of our men and women who have served in the military. But we face critical fiscal constraints. Is it justified to spend $11.7 million for a military museum? I think it is a legitimate question.

The sum of $55 million to satisfy a private manufacturer's claim for cost overruns on TAGS 39/40 ships built during 1989 and 1990 that it could never get through the law. Let me take a moment to discuss this claim in more detail. As a result of actions whose source and nature is not clear to me, the defense appropriations bill would provide $55 million to a single firm, the Baltimore Marine Division of Bethlehem Steel for cost overruns on two TAGS 39-class ocean surveying ships. This $55 million would be given to Bethlehem Steel even though the taxpayers have already paid $196.7 million for these ships. It would be given although the Department of Defense did not request it, although the money is not authorized, and although the money was not included in the House or Senate defense appropriations bills.

The $55 million of the taxpayers' money would be given away although none of the merits claimed have been decided by the proper courts and boards, and such claims are pending. Bethlehem Steel has already filed requests for equitable adjustments with the Navy, requested extraordinary relief from the Secretary of the Navy, and filed suit in the U.S. claims court.

If this is the kind of precedent we are going to follow, does that mean that we provide $3.1 billion to meet the claims of McDonnell Douglas and General Dynamics for overruns on the A-12? Do we give Lockheed $400 million for its claim on the P-7? Do we give Grumman its claims for its entitlements on stock options? Do we give Peterson Builders its claim on the mine countermeasure ships? Do we give McDonnell Douglas another $200 million for its claims on the C-17?

Why should we bypass every normal claim in court and legislative procedure for one firm and not another? We need peace dividends, we need defense, not waste. We need to give Americans a fair chance to compete, not special interest subsidies.

In fact, let me point out that few States will really benefit from this kind of unnecessary spending. Any given item may seem attractive, but each takes away money from the competitive and efficient. Each adds money to one part of a State, but usually at the cost of taking taxpayers' dollars from another. Each deprives those who compete of their just reward, and each encourages those who politick.

Mr. President, that is why I support my colleagues in the Senate Armed Services Committee so strongly in voting against this bill.

I understand that the Senate will probably pass this bill, although I will urge my colleagues to defeat it. If it does, I hope that the President will veto it. If the President does not veto it, I will urge the Secretary of Defense to seek rescissions on every expenditure that he feels is not necessary whether they are in the appropriations bill or the authorization bill.

Mr. President, I hope that at some point in time we can reform this process and comply with our own laws. There has been a great deal of criticism from time to time about the members of the executive branch, and justified criticism, and certain actions taken against individuals who have failed to obey the law. We too, however, are clearly at blame. We are concentrating on 1-year or line item or input expenditures. We are failing to look at strategic requirements, the needs of given roles and missions, and the need for long-term stability in creating cost-effective programs. We are ending this year's budget cycle with more than $6.3 billion in unauthorized expenditures. Expenditures that cry out for a line-item veto. This is a legislative initiative I have strongly pursued in the past, and which this bill indicates is a vital necessity. It is an initiative that I will pursue in the future.

It is my understanding, Mr. President, and I would be glad to be educated by my more informed colleagues, that the law regarding these expenditures is very clear: No funds may be appropriated for any fiscal year to or for the use of the Armed Forces or obligated or expended unless funds therefore have been specifically authorized by law.

Let me conclude by saying that I do appreciate the outstanding and dedicated work of the members of the Appropriations Committee. I want to state again that some of the areas that I have remarked upon as being unnecessary or unauthorized spending may prove to be fully justified. But the fact is that they were not authorized, and they involve very large sums of money. I think that it is time that we look at the budget review system. It has clearly gotten out of hand, particularly given the coming cuts in the defense budget. We are going to have to make more and more difficult decisions and more and more cuts. We need a system that gives priority first to our national security requirements and, second, to the men and women who man the military.

Mr. President, I ask unanimous consent that the aforementioned list of detailed add-ons be printed in the RECORD.

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

Unappropriated authorizations

	Millions
9 F-18 aircraft	202
4 F-117 aircraft	560
21 Trident II missiles	140
1 LSD-41 amphibious ship	245
6 MX test missiles	255

SICBM	115
Precompetitive technology	40
Critical technology centers	50
Manuf. extension program	50
13 UH-60 helicopters	83
9 HH-60 helicopters	165
Standard missiles	83
Marine Corps MLRS	95
F-18 R&D	64
Advanced cruise missile R&D	80
Balanced technology initiative	35

Unauthorized appropriations account levels

O&M, Navy Reserve	0.9
O&M, Marine Corps Reserve	.8
O&M, Army National Guard	1.0
O&M, Air National Guard	5.0
Rifle practice	1.0
Humanitarian assistance	2.0
Drug interdiction	30.0
Weapons and Tracked combat vehicles	103.8
Army ammunition	6.7
Shipbuilding	787.5
Missile procurement, Air Force	30.6
Procurement, Defense agencies	11.8
Guard and Reserve equipment	816.7
Coast Guard	188.7
Corporate information management	710.3
Mount Pinatubo claims	150.0
Real property maintenance	500.0
Account subtotal	3,346.8
O&M, Defense agencies	7,755.4

Earmarks in fiscal year 1992 DOD appropriations bill/report

University set-asides:	*Millions*
Prostate research at Walter Reed	2.0
Neuroscience R&D at Louisiana State	10.0
Marywood College, PA	10.0
University of Texas at Austin	6.0
Northeastern University	6.0
Texas Regional Institute for Environ. R&D	5.0
Kansas State University	7.7
University of Wisconsin	1.6
Boston University	29.0
Medical College of Ohio	.25
University of South Carolina	.5
George Mason University	.75
Monmouth College, NJ	2.3
University of Minnesota	10.0
University of St. Thomas, MN	.5
Brandeis University	2.0
New Mexico State University	3.0
Penn State University	5.0
Illinois Institute of Technology	2.0
Monterey Institute for International Studies	6.8
St. Francis College, PA	2.5
Oregon Graduate Institute, HDTV research	1.3
Subtotal	114.2

Earmarks in fiscal year 1992 DOD appropriations bill/report

Other institutional set-asides:	*Millions*
National Center for Manuf. Sciences	30.0
U.S.-U.S.S.R. Joint seismic research	5.7
Mississippi Resource Development Corp	1.0
Letterman Army Hospital, Presidio, CA	37.0
Maryland Hospital Association	.3
Fort Irwin public school construction	22.0
Fort Bragg public school construction	10.0
Post traumatic stress centers, Pennsylvania and Hawaii	0.6
National Biomedical Research Foundation	10.0
Army Environmental Policy Institute	4.5
Arctic regional supercomputer	25.0
Subtotal	145.1
Museums:	
Naval Undersea Museum, Keyport, WA	2.1
National D-Day Museum Foundation	4.0
Airborne and SOF Museum Foundation	4.0
Restoration of U.S.S. *Blueblack*, Oregon	1.6
U.S.S. *Bennington* transportation to Vermont	
Subtotal	11.7

Unauthorized programs

	Millions
Bradley advance procurement	50
Field artillery ammo. vehicle	60
F-14 upgrades	175
AV-8B modifications	40
Slam missile	130
Tagos surtass ship	149
Tags 39/40 (ship claim)	55
Sealift	600
LCACS	238
Army truck engines	20

SASC sub	Line	PE	Program	Amended fiscal year 1992 request	Conference: Change to request	Conference: Authorized	Appropriation Conference versus Request	Fiscal year 1992 Appropriation Conference	Unauthorized appropriation
D	2	61102A	Defense research sciences	179,363		179,363	11,500	190,863	11,500
D	21	62720A	Environmental quality technology	18,984	10,000	28,984	10,750	29,734	750
D	27	62786A	Logistics technology	31,552		31,552	2'800	34,352	2,800
D			Simulation facility				8,000	8,000	8,000
	30A		MPIM technology				7,000	7,000	7,000
D	32	63002A	Medical advanced technology	22,245	1,500	23,745	4,500	26,745	3,000
D			Laser burn treatment				1,000	1,000	1,000
D			Prostate disease research				2,000	2,000	2,000
D			Breast cancer research				25,000	25,000	25,000
D	34	63004A	Weapons and munitions advanced tech	40,865	8,500	49,365	15,000	55,865	6,500
C	49	63322A	Tractor cage	20,966		20,966	4,000	24,966	4,000
	59b		Multi-purpose weapon				6,000	6,000	6,000
C	71	63713A	Army data distribution system	19,534		19,534	3,000	22,534	3,000
C	77	63757A	Forward area air defense (FAAD) system	97,387		97,387	10,000	107,387	10,000
C	81	63801A	Aviation—Adv dev	13,828		13,828	1,100	14,928	1,100
C	85	63805A	Combat service support computer system	24,635		24,635	4,000	28,635	4,000
C	95	64270A	EW development		(7,000)		(53,537)		46,537
C	96	64321A	Joint Tactical Fusion Program	130,775	−21,500	109,275	−15,500	115,275	6,000
C	114	64746A	Automatic test equipment development	11,232		11,232	7,000	18,232	7,000
C	119	64769A	Tractor helm	66,973	35,000	101,973	36,400	103,373	1,400
C	122	64801A	Aviation—eng dev	12,517		12,517	1,500	14,017	1,500
C	132	64813A	Tractor pull	16,762	−16,762			16,762	16,762
C	150	23801A	Missile/air defense product improvement	53,042		53,042	5,000	58,042	5,000
		Total R,D,T & E Army							179,849
D	27	63712N	Generic logistics R&D technology demons	13,829		13,829	600	14,429	600
S	33	63794N	C3 Advanced technology	1,373		1,373	15,000	16,373	15,000
C	55	63231N	Navy advanced tactical fighter				2,000	2,000	2,000
P	67	63504N	Advanced submarine ASW development	31,232		31,232	9,000	40,232	9,000
P	69	63512N	Shipboard aviation systems	11,440		11,440	4,400	15,840	4,400
P	92	63612M	Marine Corps mine/countermeasures sys-adv d				16,800	16,800	16,800
P			Ship self defense				221,000	221,000	221,000
P	124	64212N	Lamps	30,215		30,215	4,000	34,215	4,000
P	129	64219N	Airborne ASW developments	25,843	−17,533	8,310	−6,000	19,843	11,533
P	130	64221N	P-3 Modernization Program	41,144	17,603	58,747	41,500	82,644	23,897
P	149	64367N	Tomahawk	28,815		28,815	4,000	32,815	4,000
P	158	64507N	Navy standard signal processors	9,266		9,266	11,100	20,366	11,100
P	163	64524N	Submarine combat system	270,272	−27,300	242,972	−3,000	267,272	24,300
P			Centurion				23,000	23,000	3,000
C	172	64603N	Unguided conventional air-launched wpns	8,389		8,389	2,400	10,789	2,400
P	194	64784N	Fixed distributed system—eng	229,154	−20,000	209,154	9,069	238,223	29,069
P	202	24229N	Surface Combatant ordnance and missiles	28,428	−1,200	27,228		28,428	1,200
P	203	24311N	Undersea surveillance systems	72,594	−3,700	68,894		72,594	3,700
P	204	24313N	Ship-towed array surveillance systems	17,622		17,622	6,300	23,922	6,300
C			Improved tactical air-launched decoy				17,000	17,000	17,000
S			Laser communications				10,000	10,000	10,000
S	999		Intelligence and communications classified	678,821	16,335	695,156	16,815	695,636	480
D			Total R,D,T & E Navy						420,779
D	33	63401F	Advanced spacecraft technology	17,914	5,000	22,914	10,000	27,914	5,000

SASC sub	Line	PE	Program	Amended fiscal year 1992 request	Conference: Change to request	Conference: Authorized	Appropriation Conference versus Request	Fiscal year 1992 Appropriation Conference	Unauthorized appropriation
D	37	63605F	Advanced weapons technology	57,152		57,152	4,400	61,552	4,400
D	39	63723F	Civil and environmental engineering tech	12,036		12,036	1,000	13,036	1,000
S	50	64240F	B-2 advanced technology bomber	1,563,072	−200	1,562,872		1,563,072	200
S	69	12424F	Spacetrack	20,124		20,124	14,500	34,624	14,500
C	92	64218F	Engine Model Derivative program (EMDP)	1,022		1,022	3,000	4,022	3,000
C	106	64270F	EW development	215,221	−17,250	197,971	−15,150	200,071	2,100
S	106a		B-1B RWR		−9,800	−9,800			9,800
C	108	64327F	Hardened target munitions	7,183		7,183	6,000	13,183	6,000
C	120	64740F	Computer resources management technology	8,419		8,419	9,000	17,419	9,000
S	194	64408F	Advanced launch system	147,744	−97,744	50,000	−92,744	55,000	5,000
D	209	65894F	Real property maintenance—RD&E	105,123	−4,000	101,123	−2,000	103,123	2,000
S	215	35144F	Titan space launch vehicles	143,915		143,915	1,500	145,415	1,500
			Excimer laser				15,000	15,000	15,000
			Total R,D,T & E Air Force						78,500
D	1	61101E	Defense research sciences	88,290	12,800	101,090	25,300	113,590	12,500
D			Military nursing research				1,000	1,000	1,000
D	3	61103D	University research initiatives	87,373	95,000	182,373	138,600	225,973	43,600
D	7	62109H	Superconductive magnetic energy storage		20,000	20,000	40,000	40,000	20,000
D	10	62227D	Medical free electron laser	20,000		20,000	3,600	23,600	3,600
D	12	62702E	Tactical technology	117,900	3,000	120,900	9,000	126,900	6,000
D	15	62712E	Materials and electronics technology	62,036	81,000	143,036	125,500	187,536	44,500
P	32	63569E	Advanced submarine technology		45,000	45,000	75,000	75,000	30,000
S	58	63741D	Air defense initiative	273,000	−109,000	164,000	−66,000	207,000	43,000
S	66	63710D	Classified Program—C31	5,300		5,300	5,000	10,300	5,000
C	68	63715D	AIM-9 Consolidated program	43,781		43,781	18,558	62,339	18,558
C	73	21135K	Cinc C2 initiatives				1,803	1,803	1,803
C			Mobile offshore base		1,000	1,000	3,000	3,000	2,000
P	79	1160404BB	Special operations tactical systems dev	194,290	12,800	207,090	14,000	208,290	1,200
S	92	35159I	Defense reconnaissance support activ	52,876	22,000	74,876	30,000	82,876	8,000
S	999		Intell & communications classified	1,226,759	44,406	1,271,165	48,941	1,275,700	4,535
D	99b		FCIMS programs		21,500	21,500	27,000	27,000	5,500
D	111	65116D	General support to C3I				15,000	15,000	15,000
			Total R,D,T & E Defense agencies						265,796
D	1	64940D	Central test & eval investment develop	125,527	−35,600	89,927	−32,200	93,327	3,400
			Total developmental test						3,400
			Total RDT&E						948,324

SASC sub	P-1 line	Item	Amended fiscal year 1992 request: Quantity	Amended fiscal year 1992 request: Amount	Conference change to request: Quantity	Conference change to request: Amount	Conference fiscal year 1992 authorization: Quantity	Conference fiscal year 1992 authorization: Amount	Appropriations Conference 1992 +/− Req	Appropriations Conference 1992 amount	Unauthorized programs
C		C-23 MODS							8,000	8,000	8,000
C		External fuel tanks							5,000	5,000	5,000
C	34	Aircraft survivability equipment		48,035				48,035	1,500	49,535	1,500
		Total aircraft procurement Army		1,667,700		115,900		1,783,600	25,100	1,692,800	14,500
C	2	Bradley advance proc (CY)							50,000	50,000	50,000
	7a	FAASV							60,000	60,000	60,000
C	19	Production base support (TCV-WICV)		73,287		−10,300		62,987	−7,287	66,000	3,013
C	24	Grenade launcher, auto, 40MM, MK19-3			1,066	16,600	1,066	16,600	17,600	17,600	1,000
		Total procurement of W&TCV, Army		839,100		168,200		1,007,300	271,996	1,111,096	114,013
R	35	Proj, Arty, 155MM, HE, M107							35,500	35,500	35,500
R	44	Fuze, artillery, elec time, M762				20,500		20,500	22,000	22,000	1,500
		Total ammunition Army		1,249,800		112,600		1,362,400	119,280	1,369,080	37,000
C	1	Tactical trailers/dolly sets		8,311				8,311	25,000	33,311	25,000
C	42	Eac communications		27,574				27,574	13,200	40,774	13,200
C	43	Mod of IN-SVC equip (EAC COMM)		16,209		−4,000		12,209		16,209	4,000
C	103	Integrated family of test equip (IFTE)		48,048				48,048	14,000	62,048	14,000
C	111	Production base support (C-E)		1,000				1,000	11,500	12,500	11,500
C	158	Medical support equipment		84,893				84,893	5,000	89,893	5,000
		Total other procurement Army		3,163,800		−81,999		3,081,801	−100,001	3,063,799	72,700
C	3	EA-6B/REMFG (electronic warfare) prowler		98,434		−5,000		93,434		98,434	5,000
P	5	AV-88 (V/STOL) harrier PY savings				−40,000		−40,000	40,000	40,000	80,000
C	21	E-2C (early warning) Hawkeye	6	500,908		−30,000	6	470,908		500,908	30,000
C	30	A-6 series		5,485				5,485	16,000	21,485	16,000
C	35	F-14 series		53,562				53,562	175,000	228,562	175,000
P	44	H-1 series		118,201				118,201	15,000	133,201	15,000
P	45	H-2 series		108,202				108,202	8,000	116,202	8,000
C	59	Common ECM equipment		101,414				101,414	18,000	119,414	18,000
C	63a	Common ground equipment PY savings				−38,000		−38,000			38,000
		Total aircraft procurement, Navy		7,114,800		−25,000		7,089,800	−166,180	6,948,620	385,000
C	8	Harpoon/SLAM		37,803				37,803	130,000	167,803	130,000
C		Rockeye PIP		37,803					4,000	4,000	4,000
		Total weapons procurement, Navy		4,581,300		139,560		4,720,860	−18,679	4,562,621	134,000
P	5	SSN-21	1	1,527,725		−100,000	1	427,725		1,527,725	100,000
P	17	Tagos surtass ships							149,000	149,000	149,000
P		Tags 39/40							55,000	55,000	55,000
P	21	Sealift							600,000	600,000	600,000
P	22	Service craft		15,468				15,468	20,000	35,468	20,000
P	24	LCAC landing craft	12	265,902			12	265,902	238,098	504,000	238,098
		Total shipbuilding and conversion, Navy		8,493,200		−127,410		8,365,790	660,087	9,153,287	1,162,098
P	40	Standard boats	326	19,940			326	19,940	2,000	21,940	2,000
P	47	Modernization support		786,159				786,159	93,000	879,159	93,000
P	49	AN/SPS-48		20,354				20,354	24,250	44,604	24,250

SASC sub	P-1 line	Item	Amended fiscal year 1992 request		Conference change to request		Conference fiscal year 1992 authorization		Appropriations Conference 1992 +/− Req	Appropriations Conference 1992 amount	Unauthorized programs
			Quantity	Amount	Quantity	Amount	Quantity	Amount			
P		Enhanced modular signal processor							91,200	91,200	91,200
P	74	AN/SSQ-95							12,000	12,000	12,000
C	190	Meteorological equipment		33,008		−3,400		29,608	−2,200	30,808	1,200
P	248	Amphibious equipment		86,049				86,049	6,000	92,000	6,000
		Total other procurement, Navy		6,471,200		21,155		6,492,355	−38,737	6,432,463	229,650
R	16	155MM HE ADAM		40,200				40,200	40,200	80,400	40,200
P	48	TOW							30,000	30,000	30,000
P	65	Tactical air oper module (TAOM)							27,000	27,000	27,000
		Total procurement, Marine Corps		1,039,400		85,237		1,124,637	40,551	1,079,951	97,200
C	5	F-15 E		169,657				169,657	335,300	504,957	335,300
P	12	C-17 advance procurement (CY)		222,424		−100,000		122,424	−50,000	172,424	50,000
P	14	C-130H	8	245,479			8	245,479	44,521	290,000	44,521
		LC-130H							92,000	92,000	92,000
C	30	F-15		294,537				294,537	2,500	297,037	2,500
C	31	F-16		250,985				250,985	3,000	253,985	3,000
C	63	Classified projects		56,254		−10,392		45,862	12,000	68,254	22,392
R	66	APAF spares and repair parts		984,465		−387,500		596,965	−380,500	603,965	7,000
C	70	Other production charges		445,331		101,720		547,051	102,419	547,750	699
R		DBOF deny milcon capital budget				−1,200		−1,200	3,500	3,500	4,700
		Total aircraft procurement, Air Force		11,115,500		−478,569		10,636,931	−703,150	10,412,350	562,112
C	11a	AGM-65D Maverick PY savings				−100,000		−100,000			100,000
S	46	Special programs		2,419,740		−239,400		2,180,340	−189,400	2,230,340	50,000
C	999	Classified programs		32,594				32,594	9,806	42,400	9,806
		Total missile procurement, Air Force		5,600,000		−395,117		5,204,883	−364,550	5,235,450	159,806
R	13	MK-87 Inert/BDU-50							13,800	13,800	13,800
C	100	Air traffic ctrl/land sys (Atcals)		14,135		−14,135				14,135	14,135
C	129	Range improvements		51,665				51,665	35,000	86,665	35,000
C	151	TV equipment (AFRIV)		4,047				4,047	500	4,547	500
C	175	Base procured equipment		33,485				33,485	2,500	35,985	2,500
S	187	Intelligence production activity		62,888		−29,086		33,802	−28,369	34,519	717
		Total other procurement, Air Force		8,058,100		135,909		8,194,009	10,004	8,068,104	66,652
R	23	Other major equipment, DLA							10,000	10,000	10,000
S	999	Classified programs		465,965		86,520		552,485	95,727	561,592	9,207
S		Classified program							15,400	15,400	15,400
C		Joint simulation office-PY savings				−60,000		−60,000			60,000
		Supercomputers							42,000	42,000	42,000
P	45	C-130 modifications		101,663		12,900		114,563	55,500	157,163	42,600
P	51	Patrol boat, coastal		2,605				2,605	1,600	4,205	1,600
P	67	Classified programs		124,264				124,264	4,999	129,263	4,999
		Total procurement, defense agencies		2,089,600		149,429		2,239,029	161,226	2,250,826	185,806
C	2	Communications electronics							15,000	15,000	15,000
P	8	Miscellaneous equipment				10,000		10,000	15,000	15,000	15,000
P	9	AN-SQT-1 trainers							10,000	10,000	10,000
P		C-130T							114,000	114,000	114,000
P	13	HH-60H upgrade kits							45,000	45,000	45,000
P		MIUW vans							15,000	15,000	15,000
		P-3 upgrades							20,000	20,000	20,000
P	21	KC-130T aircraft							67,000	67,000	67,000
P	22	AH-1W Cobra aircraft							71,000	71,000	71,000
C	25	C-130 aircraft			8	200,000	8	200,000	348,000	348,000	148,000
C	43	C-26 aircraft							3,000	3,000	3,000
C	45	MLRS rockets							48,000	48,000	48,000
C	47	Communications electronics							15,000	15,000	15,000
C	47a	Squad engagement training devices							10,000	10,000	10,000
		Sincgars radios							35,000	35,000	35,000
C	TCT upgrade								8,200	8,200	8,200
C	AH-1 MODS C-nite								15,000	15,000	15,000
C	50	C-130 aircraft			12	309,800	12	309,800	337,300	337,300	27,500
C	53	C-26 aircraft							18,000	18,000	18,000
C	54	MH-60G helicopters							35,000	35,000	35,000
C	62	TAC air control improvements/MCE				50,000		50,000	95,000	95,000	45,000
		Total Guard and Reserve									769,700
		Total procurement									3,990,237

Earmarks in fiscal year 1992 DOD appropriations conference report

[Total: $335,000,000]

University Set-Asides:

In bill language:

Walter Reed Army Institute of Medical Research, Center for Prostate Research	2.0
Louisiana State University, Neuroscience Center of Excellence	10.0
Marywood College, PA	10.0
University of Texas at Austin	6.0
Northeastern University	6.0
Texas Regional Institute for Environmental Studies	5.0

Earmarks in fiscal year 1992 DOD appropriations conference report—Continued

[Total: $335,000,000]

Kansas State University	7.7
University of Wisconsin	1.6
Boston University	29.0
Medical College of Ohio	.25
University of South Carolina	.5
George Mason University	.75
Monmouth College, NJ	2.3
University of Minnesota	10.0
University of St. Thomas, MN	.5
Brandeis University	2.0

Earmarks in fiscal year 1992 DOD appropriations conference report—Continued

[Total: $335,000,000]

New Mexico State University	3.0

In statement of managers:

Pennsylvania State University	5.0
Illinois Institute of Technology, Instrumental Factory for Gears	2.0
Monterey Institute of International Studies	6.8
St. Francis College, PA, Physician Assistant Program	2.5
Oregon Graduate Institute, HDTV Research	1.3

Earmarks in fiscal year 1992 DOD appropriations conference report—Continued

[Total: $335,000,000]

Other Institutional Set-Asides:	
National Center for Manufacturing Sciences	30.0
Incorporated Research Institutions for Seismology, U.S.-U.S.S.R. Joint Seismic Research	5.7
Mississippi Resource Development Corp. National Center for Physical Acoustics	1.0
Letterman Army Hospital, Presidio, CA	37.0
Maryland Hospital Association, health care demonstration project	.3
Silver Valley Public School District, CA public school construction at Fort Irwin	22.0
Cumberland City School District, NC public school construction at Fort Bragg	10.0
2 post-traumatic stress disorder treatment centers, Hawaii and Pennsylvania	.6
National Biomedical Research Foundation	10.0
Army Environmental Policy Institute	4.5
Museums:	
Naval Undersea Museum Foundation, Keyport, WA	2.1
National D-Day Museum Foundation	4.0
Airborne and Special Ops Museum Foundation	4.0
Oregon Museum of Science and Technology, restoration of U.S.S. Blueblack	1.6
U.S.S. Bennington "accoutrements", transportation from China Lake to Vermont	(?)
Other Set-Asides:	
Memorial Day celebration	.35
Capitol Fourth project	.35
Oregon Department of Economic Development (chemical decontamination around Umatillo)	.35
Nye County, NV (economic assistance following F-177 move out of Tonapeh)	1.0
Charleston Harbor management plan (economic assistance)	.5
Kaneohe, HI, stock enhancement	.75
Arctic region supercomputer	25.0
Manhattan, KS, airport study	.25
Inventory of DOD-owned property in Hawaii	.75
Memphis Naval Complex, TN, facilities restoration	(?)
Forth Riley, KS, railyard work	6.8
Reinternments in Hawaii	.3
Forth Bragg, NC, mental health care demonstration project	14.0
Babcock and Wilcox, PA, to clean up submarine facility	30.0
National Presto Industries, WI, cleanup	7.0
Sunflower, KS, ammo plant cleanup	10.0
Possible Set-Aside:	
Space launch reimbursement (Amount No. 200)	20.0

Mr. McCAIN. Mr. President, I yield the remainder of my time.

Mr. STEVENS addressed the Chair.

Mr. McCAIN. I thank my friend from Alaska for allowing me this time from his allotted time.

The ACTING PRESIDENT pro tempore. The Senator from Alaska.

Mr. STEVENS. Mr. President, I yield myself whatever time I use.

My comments to my friends are with regard to the university competitions. There are no competitions for federally funded research development corporations. Those are specified, authorized by the Armed Services without regard to competition.

Second, the Armed Services Committee included $560 million to restart production of the F-117, the stealth fighter, notwithstanding that it was not requested.

The Air Force specifically came to us, Senator INOUYE and me, and asked our committee not to fund that initiative in conference. It was unneeded and a waste of defense funds.

As far as the TAGS vessel, those funds are available in this bill subject to the determination of the Secretary of the Navy that the claims are justified. We have not funded unjustified claims.

I really find the great difficulty I have with the comments of my friend from Arizona is that most of the items the Senator has mentioned are items that came to our subcommittee from members of the Armed Services Committee while we were in conference. They were requested from us. We could not tell whether they were authorized in the Armed Services bill or whether they were personal requests of the member. We proceed to fund them to the extent of our ability. Now we are being lashed for having done so.

I think the procedure is wrong. I would remind the Senate that in 1984 I suggested that the Armed Services Committee become the subcommittee for the Appropriations Committee for the purpose of dealing with this bill. The Senate refused to do that.

As long as we have to deal with different Members of the House, to try to accommodate the wishes of the Senate, we cannot come up with a bill that goes to the keynote fashioned by the Armed Services Committee. Furthermore, Mr. President, I am compelled to say I would not want to fund the keyhole fashion by the Armed Services Committee. They have not been, in my judgment, other than micromanaging the bill.

I intend to bring before the Senate today sometime the 1991 authorization bill and the 1991 authorization bill report, which would fit easily into the palm of my hand.

And then let us take the one from this year, the authorization bill and the report that accompanied it, and then the report that accompanies the conference report on the Armed Services Committee—they weigh 10 pounds. The Armed Services Committee is not only micromanaging the bill, the Department of Defense, but as I said before, they are trying to micromanage the appropriations process; every single nut and bolt that the Department of Defense must buy this year is line itemed now in the authorization bill.

If we deviate one single speck from it, those 50 staff members over in the Armed Services Committee are running out and telling somebody in the press that we are spending money that is not authorized.

This process cannot work in that way. I hope that perhaps the Armed Services Committee would agree that next year they will work with the same number of staff we work with, which is 14. If they did, that is one more than on both of our committees. The Armed Services Committee has 13. We have 13. Why do we need 50 staff members wandering around there causing trouble all of the time? If they had just 13 or 14, I think this issue would not come up every year.

I reserve the remainder of my time.

THE REGIONAL CENTER FOR SOFTWARE ENGINEERING, MANUFACTURED AND MANAGEMENT TECHNOLOGY

Mr. DURENBERGER. Mr. President, I want to bring to my colleagues' attention an important initiative which has been developed by an institution of higher education in St. Paul, MN. The University of St. Thomas has developed an innovative proposal—the Regional Center for Software Engineering, Manufacturing and Management Technology—to assist the Department of Defense in enhancing national security and domestic industrial competitiveness through the development and transfer of critical technologies to American industry.

According to both a May 1991 Department of Defense "Critical Technologies Plan" and a March 1991 report compiled by the National Critical Technologies Panel [NCTP]:

> Because of the pervasive nature of (critical) technologies, the strong international and technological challenges faced by U.S. producers in this technology area tend to cascade throughout the economy, * * * (Additionally), [m]aintaining state-of-the-art capabilities in information technologies will, without question, determine the economic performance of increasing numbers of segments of the U.S. manufacturing and service sectors.

To achieve the dual goals of ensuring our national security and economic competitiveness, attention needs to be directed to improving technology transfer, the transformation of theoretical advances into practical and applied technologies. Addressing this need is the underlying premise supporting the proposal for the center. Specifically, the center will concentrate on applied research and computing technology, with a primary focus on software engineering, manufacturing systems engineering and management of technology-intensive operations and organizations. It is this technology that ultimately defines sophisticated defense weapons systems and enables the integration and control of complex and versatile manufacturing systems.

The mission and focus of the center would provide the foundation for a partnership involving the Department of Defense, the university and industry. It would also provide an important resource to those industries that have been, and will continue to be, primary contractors for our national defense. The university has strong industry ties, and its technology programs are unique among universities and colleges in the United States. Existing programs fill critical need, and Federal support for the center would allow for the expansion of those programs as well as the development of new ones.

There are two major factors which, in my opinion, reflect the university's unique capabilities to assist the Fed-

eral Government in advancing this critically important initiative. First, is the expertise of the university's faculty, the majority of whom are hired because of their demonstrated ability to relate theory to application and their heavy involvement in private sector research projects at nationally renowned corporations such as 3M, Honeywell, and Cray, which have their headquarters in Minnesota.

In addition to the expertise of its faculty, the university has extensive experience and a proven track record in developing academic programs to meet the needs of both civil- and defense-oriented corporations. The Master of Software Design and Development [MSDD], the largest graduate program in software design and development in the country, and master of Manufacturing System Engineering [MMSE] Programs in the university's graduate school of technology are highly successful because of their emphasis on applied research and their ties to high-tech industries. Currently, there are nearly 5,000 students enrolled in the university's graduate school programs.

The integration of academia and private sector expertise is a unique and essential component of the entire program. It has made it possible for MSDD students to solve real world software problems in tandem with leading researchers at national corporations. MMSE students work in the university's manufacturing research laboratory, and in corporate laboratories, to solve problems and develop ideas which will revitalize and invigorate America's manufacturing sector. These experiences provide an opportunity to improve both quality and productivity by applying in the workplace the theory learned in the classroom.

With the university's proven track record, highly trained faculty, and a dedicated student body, I believe the Regional Center for Software Engineering, Manufacturing and Management Technology provides the Department of Defense with a tremendous opportunity to strengthen both the technological capabilities and national security interests of the United States.

Mr. INOUYE. Mr. President, how much time do I have left?

The PRESIDING OFFICER (Mr. FORD). The Senator from Hawaii has remaining 20 minutes, 6 seconds.

Mr. INOUYE. I am pleased to yield 10 minutes to the president pro tempore.

Mr. BYRD. Mr. President, I commend the distinguished chairman of the Defense Subcommittee, Mr. INOUYE and the distinguished ranking member, Mr. STEVENS, for their excellent work on this mammoth bill. Under their leadership, the Defense Subcommittee has done a remarkable job of maintaining a responsible level of spending for our country's security, and at the same time, incorporating various adjustments which reflect the changing reality of the international environment.

Mr. President, the pressure to reduce defense spending, due to several key developments, is growing and will continue to mount. Three major events or trends are now at work affecting our national security requirements and the kind and level of resources which we need to dedicate to national security over the next few years.

First, the Soviet empire has crumbled, and the Soviet Union itself has disintegrated as a viable nation state. Whatever collage of political and economic entities finally emerges into some semblance of stability will not resemble the beast that has died.

Thus, the primary focus of nearly everything of consequence that we have done in the national security arena; that is, the presence of a virulent centralized adversary which threatened our survival, and challenged our basic interests, allies and friends everywhere in the world, has ceased to exist.

Thus, the international framework driving our Defense budgets, our alliances, and our worldwide network of commitments is obsolete. Nothing has yet replaced it, but the international scene will be different, hopefully less hostile, and less threatening to our country.

Second, the American economy is in very difficult shape. All major indices of economic health are in the red zone: Our basic competitiveness, savings and investment rates, trade and budget deficits, employment, and the state of our infrastructure. We must attend to our domestic needs, and shift our priorities and our resources accordingly.

Third, our allies and our former adversaries from World War II have all become healthy economic powers who can more or less take care of themselves and pursue their own interests. We rebuilt the world for half a century, and the West is strong and safe. While America will remain an international leader, the world is now more a collection of healthy Western nation states, and unhealthy and recovering Eastern former Communist nations.

The time has come, therefore, to attend to our domestic problems and reemphasize domestic priorities. Over the next couple of years, we must shift our resources toward our own country and our own people.

The defense and foreign operations budgets of the next few years must come down, but in an orderly and sensible way, so that our forces remain fit to fight, even though they will be somewhat smaller in overall size. Big new weapons systems must be curtailed, or they will gobble up most of our defense resource. We must shift our manpower toward a larger percentage of Reserve and National Guard Forces, since they are less expensive, and since we have seen a graphic demonstration of their capabilities in the sands of the Middle East during the Desert Storm operation.

All these trends have begun in the bill that is before us, and I commend the managers for their successful work in this difficult, uncertain, and rapidly changing environment.

Mr. President, this bill also contains a provision which funds the implementation of a plan proposed by the CIA for the consolidation of nearly two dozen Washington area facilities. The language of the provision is identical to that contained in the fiscal year 1992 intelligence authorization measure, and it has been included in this bill at my request.

The language pays due attention to the procedures needed for a responsible and careful selection procedure in connection with the consolidation. I fully agree with the need to have in place such procedures.

I hope that these language provisions will address the criticisms that have been leveled at the CIA and some at me personally.

I think it is important to try to answer some of the questions that have been raised over the course of the past year. This consolidation proposal was not the product of a "back-room deal." It was not developed in secrecy. It does not circumvent the proper procedures. In point of fact, the consolidation proposal is the product of nearly 5 years of planning, feasibility studies, and careful analysis on the part of the CIA and its management consultants.

The idea for a consolidation plan originated with the CIA back in 1987. The agency recognized then the drawbacks to having offices scattered in many locations. In an attempt to address concerns regarding cost, security, and efficiency, efforts were begun to look for land to accommodate relocating these offices and also to address future needs.

In late 1990, the CIA contracted with the real estate consulting firm, Legg-Mason, for the purpose of conducting a site survey and feasibility study. At that time, the Agency gave the consulting firm specific criteria, which included a 75-minute non-rush-hour commute, locations west of the Potomac River and southwest of Interstate 270, and physical needs such as access to utilities. The original survey included a slice of Jefferson County, WV. Unfortunately, Legg-Mason erroneously and unilaterally altered the CIA's criteria and, in so doing, eliminated portions of the geographic area proposed by the CIA, including West Virginia.

In putting together the survey, Legg-Mason arbitrarily changed the criteria, inadvertently, I am sure, but arbitrarily changed the criteria with respect to computing time and assumed the drive was to be made in 75 minutes during rush hours.

After realizing this mistake, the Agency then directed Legg-Mason to go back and review locations that had been wrongly eliminated by virtue of

the change in the criterion with respect to non-rush-hour traffic. As a result of that review, a suitable site in Jefferson County was identified and is now part of the CIA proposal.

The consolidation will affect CIA employees in two directorates: science and technology, and administrative.

The CIA, in assessing the needs of its employees in the spring of 1991, determined that the population could be divided into two segments. The science and technology directorate interacts frequently with headquarters' staff at Langley, but not every day, and travels frequently, so the employees need access to a major airport.

The administrative directorate encompasses more light industrial functions, including a printing plant and computers, and would house a larger number of machines than people.

In comparing land costs, the CIA noted that land in Prince William County, VA, costs in the neighborhood of $100,000 or more per acre, while land in the Charles Town, WV, area costs approximately $10,000 per acre.

CIA staff determined that it would make more sense economically to split the consolidation into two compounds, and on May 24, 1991, the CIA's management committee approved the two-site proposal. Then-Director William Webster agreed to the recommendation on June 19, 1991.

The consolidation from 21 leased offices into two compounds will improve security, operating efficiency, and intelligence-gathering abilities, and will also provide tremendous economic benefits.

The CIA has estimated the cost of the consolidation to be $1.2 billion. But that is a comprehensive, 20-year figure that takes into account inflation, about $300 million; operations and maintenance of buildings as they come on line, about $200 million; security and communications, $192 million; and construction and land acquisition, $445.5 million. It should be noted that it is most unusual for an agency to incorporate the added costs of infrastructure, such as I have mentioned, into a proposal of this kind. Most often a consolidation price tag would only include the costs of construction. The CIA really should be commended for being forthcoming and upfront about the overall costs of their consolidation plan.

More significant than the outlays are the cost savings that this consolidation will result in for the American taxpayer. By the year 2006, the total savings to taxpayers will be $500 million to $600 million as compared to the cost if the CIA continued its current lease system. By the year 2010, the consolidation will pay for itself.

Contrary to fears that have been expressed over the welfare of CIA employees that may be affected by the consolidation, the proposal is designed to improve working conditions of CIA employees. According to the CIA, many of the Agency's employees are currently laboring in substandard working conditions. The General Services Administration recommends 125 square feet of space per employee. The CIA has people working in 70 to 80 square feet of space. Headquarters at Langley are overcrowded.

The CIA estimates that 3,200 employees would be located at the Prince William County site, and 2,200 at the Jefferson County site. Most of the CIA's employees currently live in Virginia, between Leesburg, Manassas, and Falls Church, and the Agency has determined that the employee population is shifting south and west. The consolidation proposal will give CIA employees an opportunity for a reverse commute to work.

Mr. President, we have heard claims of employee commutes in excess of 4 hours. Those are exorbitant claims. I have driven from the McLean area of CIA headquarters to Charles Town, WV, many times. The distant is under 60 miles. It has taken me no longer than 75 minutes on any occasion, driving at moderate speed, to reach Charles Town from where I live in McLean just across the highway from the CIA headquarters and no longer than 75 minutes to return therefrom.

West Virginia has a great deal to offer in terms of a lower cost of living, one of the lowest crime rates in the Nation, affordable housing and attractive real estate prices. The eastern panhandle is a rapidly growing part of the State that offers many opportunities for education, employment, and entertainment for its residents. Above all, West Virginians are known for their friendliness and solid values, and those qualities make West Virginia an ideal location for living and raising a family.

So, it may be that some employees would choose to move to the eastern panhandle of West Virginia. In that event, let them be reassured that they will not have to uproot, sell their current homes, pull their children out of school, have their spouses quit their jobs, and disrupt their lives overnight. According to the CIA, the earliest that anyone would be relocated would be in the 1997 to 1998 timeframe. Completion of the consolidation is not expected until 2003 to 2004, so employees would have, on average, 8 to 12 years to make this transition.

This is not something new for CIA employees. According to Agency officials, the CIA operates in somewhat the same fashion as the military, and assigns personnel to a variety of duty stations throughout their careers. Moreover, the Agency assures me that it works with employees who have any problems with relocating to a specific location. With such a long lead time, and an attrition rate of approximately 5 percent a year, the CIA is confident that it will be able to manage the consolidation smoothly and with little unforeseen disruption to the lives of its employees.

I am confident that the CIA proposal is a good one and that it is in the best interests of the American taxpayer.

Lastly, I commend the staff of the subcommittee for its long, hard, and outstanding work: Richard Collins, Steve Cortese, Richard D'Amato, Rand Fishbein, Charles Houy, Jay Kimmitt, Peter Lennon, Mary Marshall, Jane McMullan, David Morrison, Mavis Masaki and Mazie Mattson, Dona Pate, and the able detailee support group that has worked with them throughout the year, Charles Cook, Stacy McCarthy, and John Young.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I will yield myself a few minutes.

Mr. President, I sincerely thank my colleagues, Senator STEVENS and Senator INOUYE, for their diligent effort in reaching agreement on the conference report to accompany H.R. 2521, the fiscal year 1992 DOD Appropriations Act. In general, this bill reflects the similar actions of the Armed Services Committee on a defense program for the current fiscal year. As the ranking Republican member of the Senate Armed Services Committee, I understand the difficulty of negotiating the thousands of items contained in defense bills, and I commend my colleagues on the Appropriations Committee for their successful negotiation of a good bill.

However, I wish to bring to the attention of the Senate my serious concerns about certain provisions in the conference report—concerns which are generally shared by my colleagues on the Senate Armed Services Committee.

First, this conference report sets aside over $400 million for grants to dozens of specifically identified colleges and universities, private and public institutions, public school districts, museums, local governments, and other organizations. In some cases, in order to ensure that these amounts are provided directly to the institutions and agencies named in the bill, all competitive contracting procedures relating to these "earmarks" are waived in a separate provision of the bill. In many cases, the programs for which funds are set-aside are in no way related to national security needs, and often the purpose of the program is not described in even a general way.

Let me take a moment to point out to my colleagues a few of the programs which cause me concern: $32 million for two separate public school districts for the purpose of building public schools at local military bases; individual grants to 15 colleges and universities to conduct some form of unspecified re-

search, described in the conference report as "laboratory and other efforts associated with research, development, and other programs of major importance to the Department of Defense." I must note that, in this area, $750,000 is set-aside for a university in the State of Virginia; $6.8 million for a grant to an institute of international studies, for which no purpose is specified; almost $12 million to establish four specific new military museum foundations in several States; $2 million for a prostate research center in the Washington Metropolitan Area and $10 million for a Neuroscience Center of Excellence at a southern university; and a physician assistant program at a northeastern college, and research into high-definition television at a west coast institute.

These are but a few examples of the types of programs for which defense funds are earmarked in this conference report. I have a more comprehensive list of the set-aside provisions in the bill, and I ask unanimous consent that the entire list be included in the RECORD at this time.

The earmarking of defense funds, particularly for activities with little demonstrable relationship or utility to national security, is a practice which the Armed Services Committee has actively opposed for many years, and we have made our views well known to our colleagues on the Appropriations Committee. The Congress enacted into law a requirement that such DOD contracts for these research activities be awarded competitively, but the conference report specifically waives that competitive requirement for these earmarked programs.

Mr. President, I firmly believe that noncompetitive grants of unspecified research and other contracts to universities, institutes, and other organizations flies in the face of past actions of the Senate and contradicts standing law which requires that such contracts be awarded competitively to ensure the lowest price and the highest quality product. At a time when declining defense budgets are forcing the administration and the Congress to make difficult choices among truly meritorious defense programs, I find it completely unacceptable that defense dollars are diverted to projects that have not been reviewed or requested by DOD, may not serve any national security purpose, and could not apparently withstand the scrutiny of competition. I and my colleagues will continue to work to resolve this issue to ensure that defense funds are spent only for the highest priority defense programs and in the most cost-effective manner.

Mr. President, another issue of concern is the continuing practice of appropriating funds for defense programs in excess of the amounts authorized. We have fought the issue, too, for many years, and we have sometimes won these fights.

This year, we have identified 170 line items where the amount appropriated for the program exceeds the amount authorized; these excess appropriations amount to almost $5 billion. I must note that some of these add-ons, indeed, may prove after further study to be meritorious defense programs, but some are clearly not justified on the merits of the programs.

For example, the conference report contains an additional $600 million for sealift, but the DOD has not yet expended almost $1.3 billion appropriated for this program over the last few years. I do not question that additional sealift capability is required, but it is also clear that the program does not at this time require an additional $600 million in unrequested, unauthorized funding.

The conference report also funds 31 C-130 aircraft, which is 11 more than the number authorized, for a total of $357 million more than the amount authorized. All of these aircraft are designated for the Guard and Reserve components.

The conference report contains $238 million for an additional 12 LCAC ships, which is 12 more than necessary to fulfill 100 percent of the total requirement for these ships.

The conference report adds funds to several programs which were not even included in the President's budget request, such as $60 million for the Field Artillery ammo support vehicle, $149 million for TAGOS Surtass ships, $91.2 million for an enhanced modular signal processor system, $27 million for the Tactical Air Operations Module Program, $42 million for supercomputers, over $700 million for Guard and Reserve equipment, and many research and development programs.

Mr. President, the Armed Services and Appropriations Committees have a long-standing agreement that appropriated amounts must be specifically authorized. The inclusion of large amounts of excess appropriations in this conference report violates, at a minimum, the spirit of our agreement. The members of the Armed Services Committee intend to ensure that any meritorious program for which appropriations exceed the authorized level will be authorized. But we will also review each of these programs and work to ensure that any excess appropriations designated for programs which do not meet the test of national security are not expended for that purpose.

Mr. President, these are serious concerns that I and my colleagues have raised today. Chairman NUNN and I have discussed these issues with the members of the Armed Services Committee, and we are continuing to explore a number of options to address our very serious concerns.

Mr. President, yesterday, the Senate passed the fiscal year 1992 dire emergency supplemental appropriations bill for Operation Desert Storm as well as various other domestic programs. The managers of the bill and the leadership of the Senate characterized the bill as a dire emergency requiring immediate action by the Congress, even though the legislation had been received in the Congress almost 6 months earlier. To be honest, I know, and I believe the majority of my colleagues, as well as the managers of the bill will agree, that there is little, if anything, in that bill which could be fairly characterized as an emergency legislation. However, in order to conclude Senate action, the manager of the bill undertook to cut off debate by moving to third reading of the bill, while knowing that more than 70 amendments, coming from both sides of the aisle, remained to be offered to the legislation.

I and my colleagues on the Armed Services Committee had intended to offer amendments to that supplemental appropriations bill to address the concerns I have discussed here today. Obviously, these amendments would have been strenuously opposed by the authors of the DOD appropriations conference report.

Mr. President, the only reason that we proposed to amend the supplemental bill rather than the DOD appropriations conference report is that this conference report is not open to amendment. I find it quite interesting that this conference report—which was returned to the Senate with earmarks, unauthorized appropriations, and other legislative provisions which were in neither the Senate or House bill going into the conference—is the only appropriations conference report this year that includes not one single amendment in disagreement. Since there are no amendments possible to this conference report, we had no option but to offer amendments to some other bill in order to raise these important issues.

Mr. President, I am very troubled with the manner in which substantive debate on the supplemental appropriations bill was cut short and the bill was subsequently passed. I and my Armed Services Committee colleagues continue to have serious concerns about many of the provisions in this conference report, and we have been denied the opportunity to present our concerns to the Senate. Therefore, I regret that I am unable to support the fiscal year 1992 DOD appropriations conference report.

I urge my colleagues to defeat this legislation and to require the Appropriations Committee to reconsider their recommendations in the areas I have discussed today.

Mr. WARNER. I am presently in the highway conference, and just learned of these remarks by my distinguished chairman. We worked together on this. Not having had the benefit of his earlier remarks, I wish to engage in a brief colloquy.

My recollection is that the chairman and I have worked long on this consolidation project, and when a time came that there was a question raised about the CIA's procedures, we worked out a draft bill which was included in the Senate Intelligence Committee of which I am a member. We further refined this bill in conference and reached an agreement that was acceptable to the chairman of the House Intelligence Committee; is that not correct?

Mr. BYRD. That language was worked out with the chairman of the House committee and the chairman of the Senate committee, the Intelligence Committees, and the Senator from Virginia and I were consulted thereon.

Mr. WARNER. And my recollection was that that language was agreeable to all parties involved.

Mr. BYRD. That is my recollection. And it was at my request that the identical same language be placed in the DOD appropriations bill which we are now discussing.

Mr. WARNER. And in drafting that language the Senator from West Virginia and the Senator from Virginia explicitly put in provisions to protect the interests of Government procedures to involve the GSA and all of the other protective mechanisms that are associated with an Agency or Department of the Federal Government acquiring new lands and new facilities.

Mr. BYRD. Those procedures are specified therein. They were agreeable to the Senator from Virginia [Mr. WARNER] and myself, and they are also included in the DOD appropriations bill, and they will, I am sure, go far in answering and allaying criticisms that have been leveled at this consolidation proposal.

Mr. WARNER. Mr. President, also I would like to add at this time that I was a member, as I say, of the Senate Intelligence Committee—of course that is a matter of record—but I also participated very actively throughout the entire day when the conference was held between the Senate conferees on the intelligence bill and the House conferees, and the subject of this consolidation consumed, as it should have, a considerable portion of that debate. I think I was completely responsive to all inquiries, as was Chairman MCCURDY of the House Intelligence Committee, and Chairman BOREN of the Senate Intelligence Committee. The three of us responded to a number of inquiries, not from the Senate side, but from the House side, and at the conclusion, of course, the conferees accepted the provision and it is now becoming a matter of law.

Thereafter ensued a number of articles relating to what happened. And in reading those articles the facts and conclusions stated therein do not comport to my recollection of what transpired in the conference, nor do some of these articles comport with the clear English language contained in the conference report.

I am pleased to see that the chairman and I agree, and I will have an opportunity later to put in the RECORD details of interpretation of the events leading up to the conference, the conference and the conference report now going to the President. It is my intention early this coming week to work with CIA officials and see if for any reason the provisions of the statute are interpreted by them in a manner inconsistent with my interpretation and the interpretation of the distinguished Senator from West Virginia.

But it is clear that the projects are going forward, and the articles which said that the projects are not going forward are factually incorrect. A typical copy of press report is attached to the end of my remarks, with the headline reading "House Kills CIA Move to W. Va." This misleading press must be corrected for the benefit particularly of CIA employees.

I thank the Chair, and I thank my distinguished colleague.

I rise today to stress my support for and provide information on the proposed consolidation of the nearly two dozen CIA offices into two facilities, one in Prince William County, VA, and the other in Jefferson County, WV, near the Virginia/West Virginia border. There has been considerable press covering congressional viewpoints to date. I have not participated, since I believed a more proper time to comment should await final action by both Houses and public disclosure of a conference report. That time has arrived.

To set the record straight, let me make the following point. In this Senator's judgment, the bill language in the Intelligence authorization conference report does not, I repeat, does not "halt the CIA consolidation plan"; rather, it provides for the continued, orderly progress of the basic consolidation plan announced by Director Webster. CIA will, as I believe it always has, follow appropriate and well-established guidelines. These procedures were worked out among the conferees, of which I was one, and have the support of the chairman and vice chairman of both Intelligence Committees, as well as Senator BYRD and myself.

What, then, does the bill actually do? There is authorized and appropriated $10 million available within 60 days after the CIA fulfills a series of conditions. An additional $20 million is also authorized subject to reprogramming actions by the appropriate committees in both Houses. Finally, $500,000 is available immediately to maintain the availability of the property at both sites.

The conditions which must be met in order to secure the funding include a certification that written procedures are in effect and that the consolidation process was in accordance with such procedures; a written opinion by the GSA Administrator that the plan will result in cost savings and will conform to local government regulations; a certification by the OMB Director that the plan has been reviewed and approved by the administration for funding in fiscal year 1991 and is consistent with the fiscal year 1990 budget agreement; a certification that if any improper procedures have been followed, corrective actions will be implemented; and a report that includes a site evaluation and assesses budgetary and personnel changes that may impact on the CIA's plan.

Mr. President, having reviewed in detail the CIA consolidation plan and the reasoning behind it, I am confident that CIA can meet these conditions expeditiously, and thus satisfy any residual concerns about the proposed consolidation. In short, the funds have been authorized, the conditions can be met, and the consolidation plan, as originally decided upon by CIA, will continue apace.

Let me now turn to the substantive arguments for consolidation. Neither proponents nor opponents doubt the need for consolidation. The current set of facilities are inadequate, and operationally inefficient. There are too many, they are too costly, and some do not meet the agency standards for safety and security. The proposed consolidation will save taxpayers money. As Richard Kerr, the CIA Deputy Director notes, "We estimate that by the year 2010 the amount we would save in costs associated with continuing to lease, renovate, and supplement rented buildings would cover the full cost of construction and outfitting the proposed new government-owned facilities." This amounts to roughly $700 million. The consolidation will greatly improve the working conditions of employees.

The decision for two sites also is documented. For those individuals—scientists, technicians, and administrative personnel—who require traditional office space, travel frequently to various agencies and departments in the Washington metropolitan area, and who must maintain day-to-day contact with CIA headquarters, the Prince William site serves the purpose. For those individuals involved in maintenance, storage, printing, and other support services, and who thus do not need to travel frequently or maintain day-to-day contact with CIA headquarters, an outlying area, such as Jefferson County, WV, is a cost-effective choice. The cost of purchasing land and doing business in such an outlying area is less.

Next, I should like to address the process undertaken by CIA. I will simply quote a couple of statements made by the president of Legg-Mason, a highly reputable realty firm chosen to identify and evaluate sites for the CIA consolidation, and whose performance in

this task even the critics have not challenged. Mr. Kleinpaste, the president, states, "it is my strongly held belief that you [CIA] have already conducted one of the most thorough and effective site selection competitions ever undertaken." He further states: "I have told you [CIA] previously how impressed I am with the diligence, care and eithics which you and your staff have brought to this site selection process."

Finally, let me touch on the interests of the State of Virginia, and its citizens employed by the CIA. I simply note that an increasing number of CIA employees already live in the extended suburbs of Virginia—that is, Prince William, Loudoun, and the western, northern, and southern part of Fairfax Counties. This area would be encircled by the three facilities. With the Prince William site within 30 minutes driving time of CIA headquarters and with the Jefferson County site within the 75 minute driving-time criteria, the CIA consolidation offers CIA employees an opportunity to remain in the immediate vicinity of the greater metropolitan area. They may seek housing in the less congested and more affordable areas of the proposed new facilities. At present the State of Virginia is the primary beneficiary of the very positive local economic impact of the CIA; under this proposal Virginia will still be the primary beneficiary.

Ultimately, however, the test of the CIA plan should be whether it enhances the agency's ability to perform its mission for U.S. national security into the next century. I believe it will.

In conclusion, Mr. President, the conference report ensures that the CIA consolidation will go forward.

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

[From the Alexandria Journal, Nov. 21, 1991]

HOUSE KILLS CIA MOVE TO W. VA.—BYRD BID FOR AGENCY SCUTTLED

(By Chet Lunner)

The House of Representatives swiftly approved by voice vote yesterday a measure that effectively stops the move of 6,000 CIA workers from Langley to Prince William County, Va., and West Virginia.

"There was not even a vote," said a pleased Rep. Frank Wolf, R-Va., a key player in the fight to block the move.

The intelligence agency move was proposed under a bill drafted by Sen. Robert Byrd, D-W. Va., chairman of the Senate Appropriations Committee.

"It'll stop the West Virginia move," Wolf said of the measure, agreed to by Senate and House conferees on the overall intelligence authorization bill.

Wolf said he hopes the studies called for in the bill will eventually result in a consolidation of offices near the main Langley CIA campus.

"This [would have been] the most expensive relocation in the history of the country," Wolf said of the Byrd plan.

Byrd's plan met with furious opposition from congressional and administration officials who were not involved in the decision. The language in the new intelligence bill severely restricts any future CIA moves.

The bill requires CIA plans to pass through a series of hearings, studies and approvals inside and outside Congress.

"It's very tight," Wolf said.

The plans also would be reviewed by four congressional committees: House and Senate intelligence and defense appropriations panels.

"If any of those four say 'no,' it's dead," Wolf said.

Mr. BYRD. Mr. President, I thank my friend and I appreciate deeply his cooperation during this entire effort. I also thank him for the cooperation that he extended liberally during the time that we were discussing the highway bill and the Byrd amendment thereto. It was because of that fine cooperation on his part in part that we were able to enact the highway bill, the conference on which he is now attending.

Mr. WARNER. I thank the distinguished Senator from West Virginia.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. NUNN. Mr. President, what is the time allocation?

The PRESIDING OFFICER. An hour and a half each for Mr. NUNN and Mr. WARNER. Mr. WARNER just used approximately 4 minutes of his hour and a half. The Senator from Georgia has 1½ hours.

Mr. NUNN. I thank the Chair.

Mr. President, the defense appropriation bill is a big bill with many complex provisions. In the short hours that remain in this session of the 102d Congress, the Armed Services Committee met several times since the appropriations conference report was completed to initially review this important piece of legislation, but I must confess we are still unable to analyze the entire report because of its complexity and length.

There is not a bill or conference report that cannot be improved. We all know that. There are items in our own defense authorization conference agreement on which I would have preferred a different outcome. There always are, there always will be. And I know Senator INOUYE and Senator STEVENS feel they did the best they could with the defense appropriation conference report. I know how hard both of them worked on this legislation and I know how hard their staffs worked. And I know that both of them and their staffs are dedicated and absolutely committed to a strong and capable national defense. So I want to make that absolutely clear up front. I admire both of them. I feel both of them are very valuable Members of the Senate. I think they are very valuable people.

Mr. President, the conference report does, however, contain a number of items that I simply cannot support. These are problems that cannot be fixed on this bill because this appropriation conference report is not amendable.

Several days ago, I indicated to both Senator INOUYE and Senator STEVENS, as well as Senator BYRD, the chairman of the full Appropriations Committee, the problems that our committee had with this legislation and our hopes that some of these problems could be corrected.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point a letter that the Armed Services Committee sent, after a number of meetings, to Senators INOUYE and STEVENS outlining our concerns and our intention to try to eliminate some of the problems we had with the conference report. I ask unanimous consent that this letter be printed in the RECORD.

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

COMMITTEE ON ARMED SERVICES,
Washington, DC, November 21, 1991.

Hon. DANIEL INOUYE,
Chairman, Subcommittee on Defense Appropriations, Committee on Appropriations, U.S. Senate, Washington, DC.

Hon. TED STEVENS,
Ranking Minority Member, Subcommittee on Defense Appropriations, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR DANNY AND TED: Congratulations on the conclusion of the conference on the defense appropriations bill. We understand the complexity of the process and the pressures you faced in crafting a bill that meets our defense needs in this difficult fiscal environment.

The Armed Services Committee met this morning to discuss the Conference Report on the FY 1992 Defense Appropriations Bill. You were invited, as always, and members of your staff were present during this discussion. We have only had a few days to review the conference report, so our assessment is necessarily provisional. It is clear there are many solid provisions on which we all agree. The conference report parallels in most regards the most difficult and controversial issues in the budget request and our authorization conference.

Nonetheless, the Committee has serious reservations over certain elements of the conference report. More important, those reservations go to the heart of our longstanding agreement that outlines the working relationship we have established between our Committees.

Our agreement stipulates that each committee will refrain from reversing the policy initiatives of the other committee, and that the Appropriations Committee will honor the Senate rule that prohibits legislating on an appropriation bill. In this regard, the Committee is very concerned over the continued practice of earmarking funds for certain colleges, universities and other institutions, especially where such earmarkings were not included in either the original House bill or the Senate amendment. More importantly, the Committee strongly objects to the provision in the conference report that waives statutory requirements for merit review and open competition. Apart from constituting flawed policy, this practice flatly contradicts our agreement with your Committee. There are other instances

in the conference report where the appropriations conference waives or reverses actions in the pending authorization bill or in previous authorization acts. We object to these reversals, and find them inconsistent with our agreement.

Our agreement with your Committee also stipulates that the Armed Services Committee will not legislate obligation "floors" and the Appropriations Committee will avoid breaching authorization "ceilings." We have scrupulously adhered to this principle. This year, as in previous years, we have eliminated all obligation floors in our bill, opposed all obligation floors in the House bill, and eliminated any floors that members or staff of the Appropriations Committee brought to our attention.

As we review the Appropriations Conference Report, however, we find 18 accounts in the bill totalling $11 billion that breach authorization ceilings or establish new accounts that were never authorized in the first place. Some of these breaches are technical in nature. For example, your decision to consolidate medical funding DOD-wide, representing $8 billion of the $11 billion, is more of a technical financing issue. But there are other areas that total over $3 billion that we must study more closely. In terms of programs, projects and activities, there might be as many as 170 items totalling over $4.9 billion that exceed the authorization. In any event, our agreement with you stipulates that any appropriations that breach the authorization ceiling be subsequently authorized. We find nothing in the Conference Report that makes it clear that a subsequent authorization is required for these accounts.

We wish to emphasize that we may not necessarily oppose certain decisions that resulted in appropriations that breach authorization ceilings. In previous instances, we have subsequently reviewed them and agreed with many of your decisions. But we do insist that the appropriations conference adhere to the same agreement that we observe in our conference.

As is frequently the case, however, the hour is late and the options available to you and to us are limited. The conference report has been adopted in the House and is not subject to amendment. We are forced either to oppose the conference report—which we find painful because of the considerable merit in the bill—or to find other means to reestablish the balance struck in our agreement with you. We are taking this opportunity, however, to let you know that we do have strong reservations with certain elements of your bill and will seek to work with you and with others to eliminate those concerns.

Sincerely,

Sam Nunn, Chairman; John W. Warner, Ranking Minority Member; J.J. Exon; Carl Levin; Connie Mack; Richard Shelby; John McCain; Tim Wirth; Malcolm Wallop; John Glenn; Strom Thurmond; Jeff Bingaman; Bill Cohen; Alan J. Dixon; Al Gore; Trent Lott, Dan Coats; Bob Smith.

Mr. NUNN. Mr. President, I had hoped to correct some of these problems with two amendments last evening to the supplemental appropriation bill, but this, of course became impossible when all amendments were precluded.

Since these problems areas have not been corrected, I regret that I cannot in good conscience vote for the conference report in its current form. This will be the first defense appropriations bill I have ever opposed since I have been in the Senate. I do so with regret. I do so with sadness. I need to, I think, explain to my colleagues some of the reasons for my decision.

First, there are numerous earmarkings for defense research money for special projects at specific universities and colleges. What makes this most objectionable is the explicit direction by the conferees to waive existing Federal statutes that require these types of awards to be made on the basis of a fair and open competition. In fact, the appropriation conference report specifically prohibits competition for $94.6 million in funding that is directed in 16 colleges and universities in 12 States. The conference report includes a provision that specifically exempts these specific universities and the earmarked funding for each from Federal statutes that the Senate adopted only 3 years ago requiring fair and open competition in these areas.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a compilation of the earmarkings and set-asides that are in the conference report.

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

EARMARKS IN FISCAL YEAR 1992 DOD APPROPRIATIONS BILL/REPORT

UNVERSITY SET-ASIDES FOR WHICH COMPETITION IS PROHIBITED

1. Neuroscience research at Louisiana State University ($10.0m).

2. Marywood College, Pennsylvania ($10.0m).

All the bill says about this grant is that it is to be used for "laboratory and other efforts associated with research, development and other programs of major importance to the Department of Defense."

This same language is then used in the bill to describe all of the following grants:

University of Texas at Austin ($6.0m).
Northeastern University ($6.0m).
Texas Regional Institute for Environmental R&D (5.0m).
Kansas State University ($7.7m).
University of Wisconsin ($1.6m).
Boston University ($29.0m).
Medical College of Ohio ($250,000).
University of South Carolina ($500,000).
George Mason University ($750,000).
Monmouth College, New Jersey ($2.3m).
University of Minnesota ($10.0m).
University of St. Thomas, Minnesota ($500,000).
Brandeis University ($2.0m).
New Mexico State University ($3.0m).

OTHER UNIVERSITY SET-ASIDES

1. Penn State University ($5.0m).

The only explanation for this grant is report language that says it is for "life-cycle by networking critical manufacturing technologies."

2. Monterey Institute for International Studies ($6.8m).

No explanation of its purpose in either the bill or the report.

3. St. Francis College, Pennsylvania ($2.5m).

4. Oregon Graduate Institute ($1.3m).

OTHER INSTITUTIONAL SET-ASIDES

1. Mississippi Resource Development Corporation ($1.0m).

2. Maryland Hospital Association ($300,000).

3. National Biomedical Research Foundation ($10.0m).

4. Arctic Region Supercomputer at the University of Alaska ($25.0m).

5. Consortium for International Earth Science Information Network ($1.0m).

6. Oregon Department of Economic Development ($350,000).

OTHER EARMARKS

1. Memorial Day Celebration ($350,000).

2. Capitol Fourth Project ($350,000).

3. Cleanup of National Presto Industries in Wisconsin ($7.0m).

4. Fish stocking in Hawaii ($750,000).

The report explains that this earmark is to "initiate a feasibility study to improve existing nursery ponds for mullet culture and to establish a mullet larvae hatchery."

Mr. NUNN. Mr. President, I do not know if this list is complete that I have because we have not had a chance to study every small provision in the appropriation bill. I will in a moment reference those particular set-asides, but I do not make the statement here that they are exclusive because there may be others that we have not found. Frequently, earmarkings are indirectly implied by reference to report language. It is a little bit like those Russian dolls that contain smaller dolls inside. You keep finding more earmarkings as you keep reading and looking behind the provisions. We have not had the opportunity to evaluate the merits or demerits of the earmarks that are in this bill.

I want to make it clear my remarks are not aimed at any one earmark. It may very well be that is a project we will really need for our defense effort. If it is, however, it seems to me, it would be able to withstand the competitive provisions that all our other universities have to compete with.

The appropriation conferees must believe that the 16 university projects for $94.6 million are of such questionable value to the Defense Department, however, that the bill has exempted these projects from any form of competition or merit review or in that they alone are interested in this $94.6 million.

The effect of this general provision is to wipe competition and merit review off the books of this project. It exempts these earmarks from the process Congress established several years ago to ensure that the awards are made on the basis of merit and that all qualified institutions are allowed to compete. But, most of all, the competition produces the best results for the taxpayers. That is why we have it—to choose the best for this kind of work, and this kind of work is important.

These competition statutes were the result of several years of floor debates and votes on this issue by the Senate itself. The Senate has spoken on this at least on two occasions after a vigorous debate and rollcall votes. These efforts were led by Senator DANFORTH, Senator BINGAMAN, and myself, and others to ensure all colleges and universities have an equal opportunity to compete

and offer their talents to provide the very best research possible for our defense effort.

Yet these statutes are waived in order to ensure funding for a series of what, I assume, must be a questionable projects in the minds of the sponsors, otherwise why waive competition? I do not believe this process is in the best interest of the taxpayer or the Department of Defense or the U.S. Senate. And I again add, some of these projects may be very valuable and maybe the universities named are the best for that particular research. But if they are, why not let them be chosen like others are chosen, on their merit?

Mr. President, no other college or university in our Nation is allowed to compete to work on these projects. No matter how competent any other college or university or institution might be, there is no flexibility on the part of the Government to get the most out of the investment.

Mr. President, I ask unanimous consent that a list of the 38 States where colleges and universities cannot compete for these defense funds that were earmarked for 16 institutions in 12 States.

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

STATES WITH UNIVERSITIES THAT ARE PROHIBITED BY SECTION 401 FROM COMPETING FOR UNIVERSITY RESEARCH FUNDING

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho.

Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada.

New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wyoming.

Mr. NUNN. Let me just read the list: Louisiana State University, $10 million; Marywood College, PA, $10 million; University of Texas at Austin, $6 million; Northeastern University, MA, $6 million; Texas Regional Institute for Environmental Studies, $5 million; Kansas State University, $7.7 million; University of Wisconsin, $1.6 million; Boston University, $29 million; Medical College of Ohio, $0.25 million; University of South Carolina, $0.50 million; George Mason University, $0.75 million; Monmouth College, NJ, $2.3 million; University of Minnesota, $10 million; University of St. Thomas, St. Paul, MN, $0.50 million, Brandeis University, $2 million; New Mexico State University, $3 million. I ask unanimous consent that this list be printed in the RECORD at this point.

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

Attachment 1

List of universities exempted by section 401

	Millions
Louisiana State University	10
Marywood College, PA	10
University of Texas at Austin	6.0
Northeastern University	6.0
Texas Regional Institute for Environmental Studies	5.0
Kansas State University	7.7
University of Wisconsin	1.6
Boston University	29
Medical College of Ohio	.25
University of South Carolina	.50
George Mason University	.75
Monmouth College, NJ	2.3
University of Minnesota	10
University of St. Thomas in St. Paul, MN	.50
Brandeis University	2.0
New Mexico State University	3.0
Total	94.6

Mr. MCCAIN. Will the Senator from Georgia yield for a question?

Mr. NUNN. Yes.

Mr. MCCAIN. Does the distinguished chairman know for what purpose those grants are awarded to those universities or is it just that they are awarded to the universities?

Mr. NUNN. I really have to say to my friend I cannot tell by reading the conference report what the purpose is.

I would like for my colleagues who have been listening or have aides listening to this debate this morning to understand that this $94.6 million makes ineligible universities in 38 States.

Here are the States that do not get to compete for this $96 million: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming.

I would say Senators representing those States should take a close look at this and ask if they believe that their own universities should be able to compete or whether they conclude, as obviously the Appropriations Committee conferees did, that no other university shall be allowed to compete in this procedure.

This legislative provision eliminating competition, which is a legitimate provision on an appropriations bill, was not in either the House or the Senate bills when they were originally considered. There was no opportunity to debate this extraordinary procedure. And now it is impossible to amend it or eliminate it. At this point we have no other choice but to look for another vehicle, probably in the next session, to deal with this provision. Mr. President, it is provisions like this and situations that the Senate faced yesterday evening that makes the line-item veto attractive to many people.

I have, myself, not come to that conclusion. But I must say if we continue this practice I think there are going to be an awful lot of people who have not favored the line-item veto in the past who may very well reach a different conclusion.

MUSEUMS

Mr. President, in another area, this bill also puts the Defense Department again in the business of funding museums with defense funds. Last year's defense appropriation bill contained funds for a children's science museum in New Jersey and a parliament building in the Solomon Islands. This year's conference report contains funds for four new museums. They all appear to be much more defense related than a couple last year: $4 million to build a National D-Day Museum in New Orleans, LA; $4 million to build an Airborne and Special Operations Museum at Fort Bragg, NC—an installation already hosting a museum honoring the Green Berets, and another commemorating the 82d Airborne Division. It is a wonderful base. It is an installation, however, that already has a museum honoring the Green Berets; $2.1 million for a Naval Undersea Museum at Keyport, WA; and $1.6 million to refurbish a submarine, the USS *Blueback*, for the Oregon Museum of Science and Industry in Portland, OR.

Mr. President, I do not want to in any way denigrate the importance of the specific valor displayed by our fighting forces at D-Day, or the importance and dedication of our airborne, special operations, or submarine communities.

On the contrary, I am an enthusiastic supporter of all these missions. Within my own State of Georgia, there are important military bases supporting the Trident sea launched ballistic missile force at Kings Bay Naval Submarine Base, and special forces units at both Fort Benning and Hunter Army Airfield. Any of these installations would make excellent locations for museums commemorating the heritage of these proud forces. I am sure that if I scoured the history books, I could also find a suitable Georgia location to house the memorabilia of the great victory of D-Day, and I am sure other Senator could find suitable locations in their own States.

I have been personally involved in the development and support of an important museum in middle Georgia, the Robins Museum of Aviation, which is located on Robins Air Force Base. This institution commemorates not only the local and State aviation history, but also the development of logistics support for military aviation. I know from firsthand experience how these museums act as a catalyst for community involvement with and support for adjacent military bases, and how they can be centers of education for our young people. I also appreciate how military museums can support and complement regional tourist indus-

tries. I also know how much work it is to raise private funds for museums because that's how the museum at Robins was built with private funds. And we have had several fundraisers in that respect.

In short, Mr. President, I support military museums, and believe that the four new museums which are selected for support in the Defense appropriations bill would probably fulfill many positive functions.

The question, Mr. President, is not whether museums are worthy institutions but, rather, whether they should be built with defense dollars and, if defense funds are available, whether they should be used for existing museums picked out by certain Members of Congress or whether they should be used for supporting the existing museums that already are being funded and already have a substantial amount of visitors going to those museums.

For many years we have seen numerous private proposals to establish new military museums. We have had proposals in our committee in the past for construction of new museums. We have consistently turned those down. Each new museum initiative cites the value of preserving the heritage of the mission or event which it seeks to commemorate. Inevitably, as these proposals mature, they run into the reality of raising the funds to capitalize the facilities. It is then that we see legislative initiatives to have the Federal taxpayer finance these centers, often using funds allocated to the defense of our country.

Where do we draw the line on these worthy ventures, Mr. President? In the Military Construction Authorization Act for Fiscal Year 1985, the Armed Services Committees debated long and hard on this one. We drew the line by limiting each service to one museum which would be constructed with appropriated funds. Even in these limited situations, the conferees urged joint public and private capital funding.

Today there are numerous other military museums which receive modest levels of appropriated operating support from their associated military bases. But actual construction of museums has generally been limited to one official museum for each service. The official Navy and Marine Corps museums are at the Washington Navy Yard. The official Air Force museum is located at Wright Patterson Air Force Base in Ohio, and was built with a combination of private and public funds.

I believe that this is an appropriate balance—one official, federally capitalized museum for each military service. The proliferation of other military museums, supported by local communities would make the demands on ever more scarce defense funds intolerable if they were also eligible for appropriated fund support for capitalization.

As of this moment, before we pass this bill, we have a pretty good policy. Not perfect. Certainly there are exceptions. But we have a pretty workable policy, an equitable policy regarding the capitalizing of military museums. The conference report on the fiscal year 1992 Defense appropriations bill ignores this policy and asks us to open the floodgates to funding all sorts of museums.

Mr. President, I am a realist. There is nothing that can be done on this bill to fix this problem. But I can see it coming. Next year we will have more museums. If we are going to open up the Department of Defense budget for museums, every Member of Congress will want a piece of the action. Why build museums the old-fashioned way, by raising private funds? There is a lot easier way—let the taxpayer do it. Mr. President, if this practice continues, I will no longer try to prevent the members of the Armed Services Committee from promoting their own museums and earmarks.

I can see it now. San Francisco, a city that prides itself on its fine food, can host the national museum on MRE's, "meals ready to eat." Buffalo, one of the cities with the greatest annual snowfall, can become the museum to house the famous Schwarzkopf sand boot. The New York garment industry can open a museum with the old Air Force uniforms that are being discarded. All of this can be accomplished the easy way, with taxpayer money, while at the same time we give out involuntary pink slips to people who are having to leave the military.

LEGISLATING ON AN APPROPRIATIONS BILL

Mr. President, there are other serious problems with this conference report. One of the fundamental premises of the legislation process is the separation of the authorization and the appropriations process. The Senate embodies this principle with Senate rules that prohibit legislating on an appropriations bill.

My colleagues should be disappointed by the specific examples of legislating on this appropriations bill. I already mentioned the waiver of the Competition in Contracting Act and the waiver of merit review, both of which are specified in title 10, United States Code. These are two instances where the law of the land is waived on an appropriations conference report.

But there are other areas of concern. Section 8137 of the bill amends section 2208 of title 10 by adding an entirely new authorization for government depots to team up with private contractors to compete with other private contractors. Mr. President, this provision has potentially far reaching consequences. Depots, which do not have to amortize their buildings, would be allowed to join private companies to compete against other private companies that do have to amortize their investments. That could be a sweet deal for private companies that team up with depots.

This could constitute a de facto government subsidy to one private firm to compete against another private firm. There might be a good reason to do this. I do not prejudge it. It might be possible to develop rules and guidelines to avoid the obvious potential pitfalls. This provision might have the beneficial outcome of putting more workload in Government depots, although potentially at the expense of private enterprises. But we have no idea if that will be done. This provision was not in either appropriations bill when passed and has never been the subject of hearings or any rigorous review. And it is clearly, clearly legislation on an appropriations bill which emerged from the conference.

This is not the only instance of substantive legislation in this conference report. Section 8064 legislates timetables for actions involving several military installations taking place under the base closure and realignment process. This is a very unfortunate precedent. We established the base closure process to be independent of individual, parochial interests, which we all have. We all represent individual parochial interests, and we always will. That is the nature of the process. But we managed to keep it separate until now.

Senator DIXON, I understand, will have more to say on this provision. He has been very involved in drawing up the base closing report and in protecting it, and this now undermines the all-or-nothing concept. I know Senator DIXON, the Senator from Illinois, who has been very, very involved in this, will explain that in more detail.

Unfortunately, as I said earlier, there is little that can be done on this bill. It comes to the Senate with no possibility of amendment, and at this late hour, none of my colleagues would welcome the prolonged deliberations that these legislative provisions deserve.

Mr. President, I want to say a word about the F-117 Stealth aircraft, and I want to thank Senators INOUYE and STEVENS for supporting that aircraft in the Senate bill. It was dropped in the conference.

Mr. President, I predict we will see the day when we regret this missed opportunity. The F-117 was the super star of Desert Storm. This tiny fleet of aircraft conducted the lion's share of the strategic bombing in the war. No other aircraft in the Air Force's inventory provides the unique combination of precision accuracy and survivability as does the F-117.

Unless the Air Force starts operating the B-2—and I know the individual occupying the Chair now shares my hope that that will be a reality, but it is a big question mark, and I think we all have to understand that—unless we have the B-2, the F-117 will be the only Stealth attack aircraft in the Air Force inventory for the next 20 years.

If we get into a conflict again—and I hope and pray we do not—but if we go to war again, whether it is someplace in Northeast Asia, whether it is in the Middle East, wherever it is, everybody in this body knows that one aircraft will be indispensable to our operations, and that is the F-117. If we have any kind of war in the near term, the F-117 will be the one aircraft, the only one that I know of, that we will need more of. We will need it. We have 56 of those aircraft. We used every one of them in the Persian Gulf war.

By contrast, we have now 1,800 F-16's. We used 15 percent of the F-16's in the Persian Gulf war. That is a superb aircraft. There is no doubt about it being a superb aircraft. In our own conference report on the authorization, we were required to add back 48 F-16's. I am not sure what the appropriators did on that, but I do want to thank the appropriators, Senators INOUYE and STEVENS for, in the Senate bill, backing what I think is an essential move now, particularly as a hedge against the B-2, and that is to begin producing a small additional number of F-117's which can be used for reconnaissance, or can be used for an attack role, as they have been used.

I am disappointed the conference report was not able to bring that back. I know the House conferees opposed it, and I know the Senate conferees supported it. Despite my disappointment, Mr. President, I understand that the Appropriations Committee has every right to fund programs at levels below those authorized. That is their right.

In this instance, while I disagree with the outcome, I am disappointed with the outcome, I cannot fault the Appropriations Committee on any procedural ground, and I do not oppose the conference report because of this omission.

Mr. President, I should also point out that this bill contains substantial funds that exceed the levels contained in the authorization bill at both the account level as well as the program, project, and activity level.

Mr. President, the law requires—as Senator MCCAIN, the Senator from Arizona, made very clear in his earlier, I thought, superb presentation—the law requires that the defense appropriations be authorized. There are a number of accounts in the defense appropriations conference report that exceed the levels authorized in the authorization conference report, in violation of the explicit requirement in law that funds may not be appropriated unless they are specifically authorized in law.

These accounts are the large lines in the bill where funds for such things as O&M, shipbuilding, and Guard and Reserve equipment are carried. The chairman and ranking member of the defense subcommittee have acknowledged that they are over the authorized level for some accounts.

Mr. President, we know and recognize that when both the Armed Services and Appropriations Committees are marking their bills to the same funding total in the budget resolution, the Appropriations Committee will not fund every program we authorize, and that inevitably there will be areas where they exceed our authorization ceiling. I know that some of that is inevitable. I understand it.

But the agreement between the committees, which is an explicit agreement in writing, and the requirement also in law is that when they do exceed authorized levels, they make these accounts subject to authorization. Unfortunately, that was not done in this conference report.

So we did not have, unfortunately, a carrying out of the explicit written agreement between the authorizers and the appropriators.

Mr. President, the exact wording of our agreement, which has been signed off on by the leaders on both sides, and all the members of the committee know about it—on our committee, at least—the exact wording is:

> The Committee on Appropriations agrees not to appropriate more than is authorized unless the amount so appropriated is explicitly made subject to authorization, and further agrees not to appropriate funds for programs specifically terminated in the authorization bill. The Committee on Armed Services agrees not to include obligation floors in the authorization bills.

Mr. President, let me give just a small recitation of the accounts that are exceeded: Operation and maintenance, Navy Reserve, $0.9 million; operation and maintenance, Marine Corps Reserve, $0.8 million; operation and maintenance, Army National Guard, $1 million; operation and maintenance, Air National Guard, $5 million; National Board for the Promotion of Rifle Practice, $1 million; humanitarian assistance, $2 million; drug interdiction, $30 million; weapons and tracked combat vehicles, $103.8 million; Army ammunition, $6.7 million; shipbuilding, $787.5 million; missile procurement, Air Force, $30.6 million; procurement, Defense agencies, $11.8 million; Guard and Reserve equipment, $816.7 million; Coast Guard, $188.7 million; Mount Pinatubo claims, $150 million; real property maintenance, $500 million.

Mr. President, in addition, the Appropriations Committee transferred $8 billion of medical program funding from the services to the Office of the Secretary of Defense, so the operation and maintenance Defense agencies account exceeds the authorized amount by $7.775 billion for this account.

I understand fully that this is a technical change, so I do not include that $7 billion in my comments in terms of complaint.

Mr. President, the distinguished managers of the bill, Senator INOUYE and Senator STEVENS, have pointed out that many of these accounts exceed the authorized amount by only a small amount. That is true, Mr. President.

However, the requirement in law does not say only large unauthorized amounts need to be subject to authorization. It does not say that. It says unauthorized amounts. Some of the unauthorized appropriations, such as those for shipbuilding and guard and reserve equipment, are very large. The managers have pointed out that these funds support worthy projects that some or all of the members of the Armed Services Committee may think is a good idea. That may well be.

But, Mr. President, once again, the requirement is not that the good ideas need no authorization. The requirement is that all appropriations must be authorized by law. And, as I said, we understand that cannot always be done in a conference atmosphere. Taking that into account, we asked the appropriators to agree, and they did agree explicitly in writing, that when the accounts are exceeded, there will be a provision saying they are subject to further authorization by law. We felt that was a good compromise. We reached that compromise, facing reality several years ago, but that compromise is in no way adhered to in this report.

Mr. President, let me explain why the requirement for an authorization is crucial to the authorizing committee. And I hope other authorizing committees that are not involved in this debate this morning will understand that, in effect, our authorizing committee is making a stand for all authorizing committees today.

Mr. President, our agreement is that authorizations are ceilings and not floors. We do not compel the Appropriations Committee to fund programs we authorize. We cannot write floors into law, because that has the effect of compelling. We would like to many times. We understand that authorizing bills are ceilings, but not floors. Many times, we would like to change that, because we have projects that we believe are absolutely crucial.

But if the Appropriations Committee can come in under the authorized level, which they can and should, but if they can do that, and they can also exceed the authorized level, then clearly there is no point in having an authorization. If we are not a ceiling—we know we are not a floor—if we are not a ceiling, what are we, the authorizers?

I am certain that there are those who would support this. But I think there is a growing sentiment that at some point, we are going to have to address this fundamentally.

Mr. STEVENS. Mr. President, will the Senator yield right there?

Mr. NUNN. I will be glad to yield.

Mr. STEVENS. Mr. President, I have in my hand—and I would like to ask the Senator a question about this—the 1971 Authorization Act that was pre-

sented to the Senate by Senator Stennis on February 2, 1970. And for aircraft, it says for the Army, $292,100,000; for the Navy and Marine Corps, $2,416,700; for the Air Force, $3,255,500,000.

That is the authorization for aircraft. In the Senator's bill that was brought to the floor as a conference report this year, there are some 25 pages of authorization for aircraft. The detail and the acquisition for aircraft under the authorization bill replaces 2 lines, 2 lines. The Senator says that this must be authorized by law.

Until just recently the authorization was a general authorization. And that authorization was followed up by hearings by the Appropriations Committee, and the Appropriations Committee would fund those requests that came in the budget or not fund them. The Armed Services Committee established a ceiling. Now the Armed Services Committee establishes levels line by line. Now, is it the Senator's position that the Armed Services Committee should also provide the detail for the appropriations process and that we cannot deviate from that?

Mr. NUNN. I say to the Senator from Alaska everything he is saying was absolutely the fact when the Senator from Alaska and others signed the written agreement which I just recited, which was explicit, which took this into account, and which was a commitment, I thought, by all of us to try our best to adhere to it. I say further to my friend from Alaska that we have exactly the same accounts that the appropriators have.

Mr. STEVENS. No. No. We have exactly the same accounts that the authorization committee has because we have no alternative under the Senator's approach. The question that I am asking the Senator is: Why should the Senator have two functions, authorizations and appropriations, if we have no alternative other than to either fund or not fund precisely what the other committee tells us to do when we are dealing with a different group in the House than the Senator deals with in the House when he goes to conference?

Mr. NUNN. I just recited very clearly to the Senator from Alaska that we understand the practicalities and we provided in a written agreement, which the Senator signed, that any appropriations above the authorization would be made subject to authorization. That was what the Appropriations Committee committed to in writing, but it has not been fulfilled. I would say further to the Senator, is he concluding that we should not have both the authorizing and appropriations committee? I would say the Senator from Georgia has reached exactly the same conclusion.

Mr. STEVENS. Mr. President, this Senator has reached that conclusion. I would like to ask the Senator another question. The Senator's committee and our committee received the budget. The Armed Services Committee does not track the budget. It writes up its own budget, right? And when we get to the point of signing a letter, as we did, we agreed to track the authorizing bill. We did. When we left this Senate, the Senator gave us a letter thanking us for our cooperation, an historic act of cooperation between the two committees. The Senate appropriations bill this year tracked the authorization bill. When we got to conference, the Senator changed the authorization bill. I have it right here. As a matter of fact, it happens to be 718 pages long as it was delivered to us the night before we finished the conference. Now, we have an appropriations report that is 211 pages long and deals with the same subject. But my question to the Senator is, Does the Senator believe that we ought to have tracked this, this 718-page bill that we received 18 hours before we finished?

Mr. NUNN. If the Senator will check with the staff, he will find that staff had 99 percent of that for several days, in fact a good many days, before we finished formally our report. The committee staff worked together very closely, and I think they will acknowledge to the Senator from Alaska that that is the case.

Mr. President, may I finish my remarks.

Mr. STEVENS. May I just ask two more questions and I will retire.

The Senator asked us to have our staffs track it. In the 1970's, the authorization committee had 19 members of staff. In 1981, they had 36 members of staff. To date, they have 50 members of staff. Our staff has decreased on the Appropriations Committee. The Armed Services Committee staff has increased. Is not this sort of a staff battle now?

Mr. NUNN. If it was a staff battle, I would not be standing here on the floor of the Senate. I do not fight staff battles.

Mr. President, may I finish my remarks.

Mr. STEVENS. My second question—I had a second question.

Mr. NUNN. I have the floor. I would like to finish my remarks.

The PRESIDING OFFICER. The Senate will please be in order.

Mr. STEVENS. The Senator was in order, Mr. President.

The PRESIDING OFFICER. The Senator will be in order, and the Chair asks, please, that the Senator from Alaska address the Chair properly. I hope that we can keep a civilized atmosphere on the floor of the Senate.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia has the floor. Does the Senator from Georgia yield further to the Senator from Alaska?

Mr. STEVENS. I thought the Senator yielded for two questions, Mr. President.

The PRESIDING OFFICER. I admonish the Senator from Alaska once again. The Senator from Georgia has the floor. If the Senator from Georgia wishes to yield to the Senator from Alaska, without losing his right to the floor, he has that right. The Senator from Alaska has no right to the floor at this moment.

What is the pleasure of the Senator from Georgia?

Mr. NUNN. Mr. President I would like to finish my remarks, but I see the Senator from Alaska is very compelling in his urge to ask the second question, so I will be glad to yield to him for a second question.

The PRESIDING OFFICER. Does the Senator from Georgia yield without losing his right to the floor?

Mr. NUNN. I yield without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Georgia was recognized and yielded to the Senator from Alaska without the Senator from Georgia losing his right to the floor.

Mr. STEVENS. I am pleased to have the guidance of the Chair. I was going to ask a question with the Senator not losing his right to the floor if I asked the question. I will not ask the question in view of the attitude of the Chair.

Mr. NUNN addressed the Chair.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, I will not go into the details of some of the points that Senator MCCAIN made very well, but I would agree with him on his points about the air cushion landing craft vehicles which were added at the same time we cut the ship that carried them, the LSD, and do not really have any ship to carry the ones we are now building because of that.

Mr. President, I would also like to point out that there are items in here that certainly affect my State of Georgia, and, like every Senator, I am very interested in those. The C-130 aircraft are built in Georgia. Contrary to what some people believe, the F-117's are not built in Georgia, have no relationship to Georgia whatsoever. The B-2 has no relationship to Georgia. But, the C-130 does. Our authorization bill has 28 of those C-130's. That is above the budget request. There is tremendous pressure from our colleagues and from the Guard forces around the country because these are their favorite aircraft. They perform a tremendous function. And everyone knows they are a great aircraft. It is the best tactical aircraft in the world. The Appropriations Committee has added 42 instead of 28. Now, I agree with that. I agree with that, but I do not believe it ought to be in here without being made subject to authorization, even though it is a program I favor.

Mr. President, these are just a few examples in the appropriations conference report where there are over 170 items that exceed the level set in the authorization act. Some of these, probably a large number, are sound recommendations and stand up to scrutiny and our committee will likely approve them. Some of them we cannot, I suspect. I believe that these appropriations in excess of authorization require the Armed Services Committee to take action to provide the authorization required in law and deny it where it is not needed. We will certainly turn to that task next year to the best of our ability.

Mr. President, I want to close my remarks by stepping back from the details of this conference report and looking more philosophically at what is happening. We are all spending our last days of this session in a pressure cooker environment, rushing to complete big, complex, detailed, and very important bills within a few hours. This conference report is replete with special exemptions and waivers from standing law. In my view, this is not how the process is supposed to work.

We have Senate rules that prohibit legislating on appropriations bill, and yet we have legislation on this bill that was never included in either appropriations bill in the first place. This is not my view of how the process is supposed to work.

All of these examples have one thing in common. They reflect the breakdown in the legislative process. Last year, Senator BYRD delivered a landmark speech on the workings of the Congress, and he spoke of the breakdown of legislative process, and I quote Senator BYRD: "I do not want to see the legislative process perverted here. This is exactly what we are doing when we attach authorizing measures to appropriations bills."

Mr. President, the problems we face transcend the immediate problems we face in this conference report. These are just examples. They go to the heart of the current way we function in the Congress.

Mr. President, there have to be fundamental changes made in the way we operate. With regret, Mr. President, with sadness, and again with my own sincere thanks—and I mean this sincerely—to the Senator from Hawaii and the Senator from Alaska for the thousands of hours they and their staffs put in. I know they are absolutely dedicated to our national security, as I have said. We agree far more than we disagree, but as a matter of principle I will oppose this conference report.

Several Senators addressed the chair.

The PRESIDING OFFICER (Mr. BAUCUS). The Senator from Virginia.

Mr. DIXON. Mr. President, I wonder if the Senator from Virginia will yield to accommodate me about a matter.

The PRESIDING OFFICER. Does the Senator from Virginia yield the floor?

Mr. WARNER. I would like to hear the question first and perhaps yield the floor.

Mr. DIXON. May I advise my friend from Virginia and my other colleagues on the floor, that at 11:20 I have a window to do a speech to a soybean conference back in my State. I have a statement I very much would like to make that will not take that much time. If I could be accommodated now, so that I could then go utilize that window to accommodate farm groups in my State that are concerned about this disastrous drought that we have, I would then return prior to 12.

Would my colleague mind if I took not more than 10 minutes to say what I would like to say at this point?

Mr. WARNER. Mr. President, I would like to accommodate our good friend, a very valued member of the Armed Services Committee at this time.

Mr. DIXON. I thank my colleague.

Mr. WARNER. I expect that the time will be coming from that of the Senator from Georgia.

Mr. NUNN. I will be glad to yield the Senator 15 minutes.

The PRESIDING OFFICER. Does the Senator from Virginia yield the floor?

Mr. WARNER. I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois. The time to be charged to the time allocated to the Senator from Virginia.

The Senator from Illinois.

Mr. DIXON. Mr. President, I am very disappointed that the conference report on the fiscal year 1992 Defense appropriations bill contains a legislative provision that would alter the current timetable for actions involving several military installations impacted by the base closure and realignment process. This is a very unfortunate precedent.

The provision I am referring to is section 8064. This section says that:

> The Secretary of Defense shall ensure that at least 50 percent of the Joint Service Missile Mission is in place at Letterkenny Army Depot by the time Systems Integration Management Activity and the Depot Systems Command are scheduled to relocate to Rock Island Arsenal. This provision is in no way intended to affect the move of the 2.5- and 5-ton truck maintenance mission from Letterkenny Army Depot to Tooele Army Depot.

The statement of managers accompanying the conference report goes on to say:

> It is not the intention of the conferees to impede the realignment of the Systems Integration Management Activity and Headquarters, Depot Systems Command but to ensure that the Army's plan to establish the Joint Missile Service at Letterkenny Army Depot is implemented.

The problem, Mr. President, is that this provision does interfere with the Army's current plans to implement the recommendations of the Base Closure and Realignment Commission which have been approved by Congress with respect to relocating two missions from Letterkenny Army Depot to Rock Island Arsenal, and the consolidation of missile maintenance work from several locations to Letterkenny.

Army officials indicate that under their current implementation plan—the plan which was the basis of the Secretary of Defense's recommendation to the Base Closure and Realignment Commission—the Systems Integration Management Activity and the Depot Systems Command at Letterkenny Army Depot are scheduled to move to Rock Island Arsenal in fiscal year 1994.

Missile maintenance workload from several Army, Navy, and Air Force depots is scheduled to be consolidated at Letterkenny Army Depot during fiscal years 1996 and 1997. Acceptance of this work at Letterkenny will require new facilities at the receiving site, and careful coordination of the shift of workload to preclude adverse readiness imparts on several critical missile systems.

So under the provision in this fiscal year 1992 Defense appropriations bill, Army officials say they will have to either slow down the moves from Letterkenny Army Depot to Rock Island Arsenal, or speed up the move of missile maintenance workload from other depots to Letterkenny Depot.

Why is this a matter of importance, Mr. President? Cannot the Army simply accelerate its missile transfer plans? Perhaps; the Service has not determined what it would require to make these moves sooner. The principal issue, I believe, is the precedent this provision sets. I would like to place this provision in the context of the overall base closure process.

The Defense Base Closure and Realignment Acts of 1988 and 1990 were based upon a compact between the legislative and executive branches which said that both branches would be bound, short of complete rejection, to the base closure and realignment recommendations of an independent commission. Both Congress and the President were linked to an all-or-nothing choice of the Commission's recommendations. In both 1989 and 1991, the other body decisively rejected resolutions of disapproval of the Commission's closure and realignment recommendations. In both cases, no Senator ever moved a resolution of disapproval. So in each instance, the Senate tacitly approved the Commission's recommendations.

Despite substantial disagreements with the 1989 recommendations, the all-or-nothing compact was kept. Once it approved the package of recommendations, Congress did not attempt to interfere with its implementation.

The 1991 process, while not perfect, was a substantial improvement over its

predecessor. Congress and the President again approved the Commission's base closure and realignment recommendations.

Despite painful closures experienced in each of these rounds by members of the Armed Service Committees, these committees were careful during deliberation over this year's National Defense Authorization Act to do nothing to taint the base closure process or weaken the all-or-nothing compact.

Members of these committees had good reason to attempt to interfere with these closures. My own State of Illinois saw the closure of two major bases in the 1989 process: Chanute Air Force Base and Fort Sheridan. In the 1991, Rock Island Arsenal received a substantial reduction of employment.

Other committee members in both bodies experienced very controversial closures. The States of Indiana, Michigan, Massachusetts, Colorado, South Carolina, Maine, Arizona, Florida, New Hampshire, New Jersey, and Pennsylvania, to name a few, were all confronted with base closures. These actions substantially impacted local communities represented by influential Members on both sides of the aisle.

Despite these politically unpopular actions, not one member on the Senate Armed Services Committee attempted to weaken the all-or-nothing compact by imposing legislation to block or delay the recommendations of the Defense Base Closure and Realignment Commission, or the timing of the implementation of these recommendations.

To the contrary the National Defense Authorization Act this year made several changes to strengthen the process to ensure that the 1993 and 1995 closure cycles would be even more open, fair, and equitable.

In this process, we did clarify the legislative intent regarding the exclusion of the civil works activities of the Corps of Engineers from the base closure process. This was a position supported by Secretary of Defense Cheney. While this clarification in effect excluded from closure certain Corps of Engineers offices, this was a policy issue, not one driven by particular Member interest. It reiterated a position outlined to the Commission by the Armed Services Committees' leadership before these functions were ever recommended for closure, that the civil works functions of the Corps of Engineers were outside the scope of the base closure statute.

Mr. President, section 8064 in this bill, while not blocking any action recommended by the 1991 Base Closure and Realignment Commission, affects the timing of realignment actions approved by the Base Closure and Realignment Commission. And in doing so, it weakens, for the first time, the Congress' resolve to live with a balanced base closure process. It suggests that the Congress is willing to break, for the first time, its all-or-nothing compact with the executive branch.

Section 8064 does this by directing the Secretary of Defense to complete at least half of the planned realignment of depot level missile work to Letterkenny Army Depot by the time that installation is due to transfer two management headquarters to Rock Island Arsenal.

I should reiterate, Mr. President, that even with the relocation of these activities to Rock Island in my State, this installation will experience a net loss of personnel.

Mr. President, by supporting the legislation in section 8064, this Congress, once again, unfortunately, appears to be attempting to block or to otherwise interfere with or micromanage the agreed-upon base closure and realignment process through subsequent legislation.

This is not a signal we should be sending to the executive branch, which must make difficult recommendations in light of a declining force structure, declining over the next 5 years from 2,100,000 to 1,600,000.

It is not the signal we should be sending to our colleagues who also experience difficult base closures. This is not the signal we should be sending to the American people whose communities are often severely impacted by these difficult decisions.

Congress and the executive branch have worked together to attempt to assure all impacted parties that the base closure process is fair, with no undue advantage to anybody.

Section 8064, while not directly blocking a base closure or realignment recommendation, gives the appearance of doing so and, in my view, is a step in the wrong direction. Provisions like 8064 weaken the perception of fairness and the balance between the legislative and executive branches. They are ill-advised and should be avoided in the future.

Mr. President, this is the first precedent in a long line of what I think will be bad examples of compromising what the base closure commission does.

I yield the floor.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wish to accommodate other Members. As yet, I have not had an opportunity to deliver my remarks. And, at the same time, I have obligations in the conference on the highway report.

What is the desire of the various Members?

Mr. GLENN. Ten minutes.

Mr. WARNER. On my side of the aisle, are there others who desire to speak?

Mr. McCAIN. Five more minutes.

Mr. WARNER. At an appropriate time I will come in and try to——

Mr. BINGAMAN. I would like about 5 minutes, Mr. President.

Mr. WARNER. Five minutes. Very well. I will yield the floor and allow the Senator from Ohio to proceed.

The PRESIDING OFFICER. Does the Senator from Georgia yield time to the Senator from Ohio?

Mr. NUNN. Mr. President, I yield 10 minutes to the Senator from Ohio.

Mr. WARNER. May I inquire? The Senator from Virginia has what time remaining?

The PRESIDING OFFICER. Eighty-four minutes remaining.

Mr. WARNER. I misinterpreted the Chair's remark. Eighty-four.

The PRESIDING OFFICER. Yes.

Mr. WARNER. As I understand it, the Senator from Alaska, as an accommodation to the Senator from Arizona, allocated time to the Senator from Arizona. I ask unanimous consent that that time be restored to the Senator from Alaska, and it will come out of the time allocated by the Senator from Virginia, thereby reducing the 84 to how many minutes?

Mr. McCAIN. Sixty-four minutes.

The PRESIDING OFFICER. The Senator is correct.

Without objection, it is so ordered.

Mr. GLENN. Mr. President, I rise wearing two hats here today; one, as a member of the Senate Armed Services Committee and the other as chairman of the Governmental Affairs Committee.

It involves an amendment I would have proposed yesterday, had the parliamentary situation been a little bit different on the supplemental. But that opportunity is gone, and so we will not have the opportunity to vote on the amendment I would have proposed.

The amendment would have had the affect of prohibiting a mandated, noncompetitive extension of the current CHAMPUS reform initiative contract. And, two, to prohibit a mandated expansion of the CHAMPUS reform initiative that I feel should rather have been done on the merits.

The reason I say I represent Governmental Affairs on this also is that we have done a lot of work through the years on the Federal acquisition regulations and the Competition in Contracting Act. I think we can point to savings under those acts that would literally save us tens of billions of dollars through the years.

Mr. President, the CHAMPUS reform initiative—and CHAMPUS stands for civilian Health and Medical Program of the Uniformed Services—provides for a contract for the delivery of civilian medical care to the families of military personnel, military retirees, and their eligible dependents in the States of California and Hawaii. It is not a small bill. It is an annual cost to the Department of Defense of about $800 million. The current 5-year contract expires February 1, 1993. DOD already has pub-

lished in the Commerce Business Daily announced plans for a new request for proposal for another 5-year contract to be awarded competitively.

The current contractor for CRI, Foundation Health Corp., located in California, has been lobbying, of course, for the noncompetitive extension of the contract.

Mr. President, I do not blame them. That is fine. I do not fault them for that, for wanting a noncompetitive extension, because contracts are profitable, I presume. Otherwise they would not want to continue them.

I will go further to say CHAMPUS beneficiaries have expressed general satisfaction for the health care services they receive. I fully support the program, and I believe CRI should continue to be the mode of civilian health care delivery for people in California and Hawaii. I think it has been an excellent program. I, too, want to see it expanded. I am not opposed to it.

CRI has proven to be not only effective, from the standpoint of patient satisfaction, but in holding down cost. Depending on cost-benefit analyses, a case could be made for the expansion of CRI in other States.

Mr. President, my problem is not with the concept of CRI, but with the procurement of CRI services as proposed in the Defense appropriations conference report. It would noncompetitively extend the current CRI contract for 1 year. It would overturn a provision in the Defense authorization conference report we just passed that would ensure that the CRI contract would be renewed competitively.

In fact, what we put in the Defense authorization conference report was in reaction to a provision in the House defense appropriations bill that would mandate noncompetitive extension of the existing CRI contract.

Let me give credit. Our Senate appropriators, including Senator INOUYE and Senator STEVENS, initially supported the Defense authorization conference provision, but in the give-and-take of the appropriations conference, they had to give on this particular point.

So I am sorry that this had to occur because I think fair procurement policy and the experience we have had with competitive bidding would indicate that we should have gone that direction. But that is what happens in conferences.

Mr. President, current Federal procurement statutes require competition for the award of Federal contracts, and they may sole source these things only under very limited circumstances that are very specifically prescribed by law. Obviously, the Department of Defense saw no circumstances that led it to think that sole sources of this would have been any advantage because it has already announced its intention to issue an RFP for competitive bidding.

If we allow a noncompetitive 1-year extension of the current CRI contract, I believe we are turning a blind eye to the contracting regulations.

I mentioned the Competition in Contracting Act and the Federal acquisition regulations. We would be singling out for special treatment a company that just happens to be in the district of a senior member of the House Appropriations Committee. In doing so, we would be excluding other companies who may be equally or more competent in providing the needed services.

Mr. President, aside from fairness, there is the issue of cost. Requiring a noncompetitive extension of the current CRI contract could potentially cost taxpayers millions of dollars. There are other companies who could compete for, and possibly win, a competitive contract that could result in lower cost and equal or even better health care delivery to CHAMPUS beneficiaries.

Mr. President, for those reasons, I regret I did not have the opportunity to obtain a vote in favor of a more fair and open competition covered by the amendment that I would have submitted yesterday.

Mr. President, briefly, involving a very different subject, I want to take just a couple minutes to remark on the amendment we passed yesterday as part of the supplemental that would provide for abortion services in U.S. military hospitals overseas. I think that is a very important issue, but I do not know what the President's view is on this. I heard a rumor that he will automatically veto a bill that has that type of provision in it.

Mr. President, open access to abortion services is the law of the land in this country. It was not until June 1988 that there was a Department of Defense specific restriction on this when there was a memo sent out by Assistant Secretary of Defense for Health Affairs Mayer that said there could be no further consideration, no further activity, like that in any U.S. military hospital overseas, no matter what, even though the recipients of these services were prepaying the costs themselves. And I might note there were very, very few such procedures being conducted.

Mr. President, what Dr. Mayer obviously was taking into account in his memo was President Reagan's views, his personal ideological views, but not those views shared by most Americans, since about 63 percent of Americans polled indicate that they do not object to abortions.

So, really it is a matter of fairness for our people in the military. We have certain health care standards in this country. We take care of our military people here, and that includes access to abortions.

I would say to my Senate colleagues, if it was your daughter or your wife in the military in some hospital in a Third World country where some of our military people are stationed, would you want your wife or your daughter going into one of those hospitals? I have been in some of them, and they did not come up to American standards. Many are dirty, infection rates are higher, and AIDS rates are higher in many of those countries. Would you as a military spouse or parent not want your wife or daughter to be treated in a well equipped, staffed, and managed American hospital there overseas?

I think I know your answer before I even ask the question. It is not a matter of cost to the Government, since the individual perpays the cost. It is a matter of fairness. It saves the rights of American service personnel and their female dependents from what could be looked at as an imposition of Presidential ideology.

Are individual rights going to prevail, or are preferences of a particular President? Abortion in this country is legal. That has not changed. There are no taxpayer dollars involved in providing this service in U.S. military hospitals overseas, because the person would pay for these services, as they did prior to the 1988 DOD memo.

Mr. President, I would say that our military people overseas are there to protect our freedom. Yet we seem to be unable, because of Presidential fiat, to let those same people who are out there protecting our freedom to have the medical freedom that every woman has inside the continental United States. To me, that is just not fair.

So I would hope that President Bush would avail himself of this opportunity to correct an inequity by not opposing this provision now in the supplemental. I note that we have an increasing number of women in the military, and after the newly mandated Presidential Commission on Women in the Military gets finished with its assessments a year from now, I have no doubt we are going to have women filling even more roles in our military and in increasing numbers.

So what I say is let American law prevail in this issue, and let it follow American women wherever they go in the military all over this world. They are not always where they can get good medical help. So let American laws prevail. Let the Constitution of the United States prevail. Let the compassion that people normally show in this regard prevail. Let respect for our servicewomen prevail as they represent us all around this world. Let sanity prevail.

I would urge that President Bush not veto anything because of this provision. But when the law changes in this country, if it ever does, then we will reflect that change in the military. But the law right now permits abortions in this country—and I would hope that we would have the women who represent us in the military have the same right by extending medical services to them in U.S. military medical facilities overseas, as we outlined yesterday.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

The Senator from Alaska.

Mr. STEVENS. Mr. President, I regret the last occasion when I was on my feet that the Presiding Officer indicated that I was out of order, and I want to call the Senate's attention to rule XIX, paragraph 2, that restrains any Senator, including the Chair, from imputing to a Senator conduct unbecoming a Senator. And I further call to the attention of the Chair that a Senator that is called to order by the Chair may appeal the ruling of the Chair and the appeal would be subject to debate, unlimited debate.

This Senator does not appreciate being called to order when he is not out of order.

Mr. President, it is regretful that I hear that the members of the Armed Services Committee will vote against this bill for the first time. Should that happen, this Senator denounces the agreement we entered into before. Every member of the majority of the Armed Services Committee in the House voted for this bill. Every member on the majority side. To have the majority on this side now say they are going to vote against this bill because it was entered into in good faith with members of the other body after serious negotiation to me transgresses the agreement we had.

We said we would do to the best of our ability what we could to live up to the authorizing committee. We did not say that we pledged to bring back as a matter of rote every single item the authorization committee entered into in a conference that was with different Members of the House.

Again, I repeat to the Senator from Georgia that this was delivered, the tables that are contained in this report that is 718 pages were delivered to me in the afternoon of Thursday. We completed our agreement with the House on Friday. This Senator almost got no sleep on Thursday night because this very able staff member as he went back to work with the staff almost all night gave me a series of things to read over to be prepared for the conference the next day.

It is a matter of fact that we have tried to do our best to work with the Armed Services Committee. I hope we can continue. But for this Senator, it will be determined by whether these Senators carry out their threat to vote against this bill. This bill is a good faith compliance with the agreement we had with the Armed Services Committee.

Let me point out, for instance, the conversation that just took place concerning our announcement that the university grants under this bill are not subject to competition.

If one looks at page 500 of the Armed Services Committee report, you will find this statement: Because FFRDC's are largely exempt from the requirements of the Competition and Contracting Act, placing work at the FFRDC's tends to be both more rapid and less burdensome. But the FFRDC's cannot be allowed to exploit unfair competitive advantages."

In other words, the creation of the Armed Services Committees, the FFRDC's, are already not subject to competition and yet we are criticized for making the universities not subject to competition.

That was not our idea. That came from the House. Everyone here knows it came from the House. With the FFRDC's, the Senate Armed Services Committee insisted that the House go back up to the level of $1.6 billion. We have reduced the FFRDC's down in negotiation to $1.453 billion.

We have brought them down. Now, we have brought them down because we did include the money, almost $100 million, for the universities. But neither of them are subject to the competition requirements of the law.

I do believe that the problem in dealing with the separate Members of the House is they have different goals, as we have separate goals. But we signed an agreement in the past, in 1986. To my memory, it said, to the best of our ability we would comply with the agreement that we would try to track one another's bill.

This Senator once again now is disturbed about the continuing feeling that the members of the Armed Services Committee somehow or other think they could have done a better job in the conference with the House Members we met with. Maybe next year we ought to switch and see if we can improve the bill. There are 20 of us. There are 20 Armed Services Committee people. Maybe we should switch and let us negotiate with the House Armed Services Committee and let them negotiate with the House Appropriations Committee.

I am not being facetious. The problem is we negotiate with different people from different States who have different priorities, and each of us have come back with a different bill than the Senate approved in the first instances. Those two bills, by definition, almost track one another.

I think Members of the Senate who are criticizing this bill now—and it is not perfect. There are a great many things in there that we argued against and, very reluctantly, at the last minute, agreed that we would work out some sort of compromise in order to bring the Senate a bill this year that I think is a very vital bill to preserve the defenses of this country.

But, Mr. President, above all I want to ask the members of the Senate Armed Services Committee to reconsider their threat. Because if every member of the House Armed Services Committee that they met with, and the conferees come back with their conference report on the majority side, can support this bill and did, then I wonder why there is this feeling by the Senate Armed Services Committee that we brought back an imperfect product.

Mr. McCAIN. Mr. President, as acting manager for Senator WARNER, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator may proceed for 5 minutes.

Mr. McCAIN. Mr. President, I would like to respond just briefly to the Senator from Alaska on the issue of the FFRDC's. He read from the Defense Authorization Act concerning the lack of competition in FFRDC's. Specifically:

> Because FFRDC's are largely exempt from requirements of the Competition in Contracting Act, placing work at FFRDC's tends to be both more rapid and less burdensome * * *.

Let us also keep in mind the committee also said:

> * * * but FFRDC's cannot be allowed to exploit unfair competitive advantages. The conferees note again the sizable growth—23 percent—in manning levels at FFRDC's since the historic peaks of the defense budget in 1985, and declare their intentions to work with the Department to develop a long-term plan to provide stable reductions in FFRDC manning in future years, commensurate with the needs of DOD for such services and the level of defense spending.
>
> Finally, the Department of Defense is enjoined from creating additional FFRDC's, unless such additional FFRDC's are authorized in law.

So I think it is important for us to recognize here, Mr. President, that comparing the FFRDC's and the expenditures earmarking for universities is clearly apples and oranges. Contracts awarded by FFRDC's are exempt from the Competition in Contracting Act.

However the agencies situated in the Department of Defense contract with such organizations on the basis of agency requirements, not on the basis of congressional earmarking of projects for specific institutions.

In fact, the defense authorization report, as I just mentioned, in language explicitly endorsed by the Defense Appropriations "Statement of Managers," placed a series of limitations on man-year levels at all the FFRDC's to prevent unreasonable growth in these institutions. And I might add, only three FFRDC's have a specific authorization in the Defense authorization bill. The rest are funded by the agencies based on work to be performed. So it is important to recognize that there are some significant differences here.

Also, Mr. President, I want to point out a need for reform that I have mentioned earlier, and which this discussion highlights and emphasizes.

Three years ago, we began this process of reform with an amendment to

the authorization act that I drafted, and that required that the justification for the budget submission be explained in an annual net assessment by need, a budget where expenditures can be related to their impact on national security and where the budget data are organized under a clear definition of roles and missions. We need a budget that shows how expenditures will shape viable programs by role and mission over a period of at least 5 years, and which shows the need for continuity and stability by the Joint Chiefs of Staff which allows the authorizing committee and the appropriators to better authorize and fund our Nation's security and our defense forces.

In fiscal year 1991 we amended the authorization act to require a budget submission that showed how the budget would be spent by role and mission and over a period of at least 5 years. This new form of submission must begin in fiscal year 1993.

If we get a clear definition of how money is to be spent by role and mission, and over time, from the President, the Secretary of Defense, and the Chairman of the Joint Chiefs of Staff, I think we may be able to avoid the kind of micromanagement which we all decry. I think we may be able to achieve better synchronization between the authorizing and appropriating committees. Our goal should be to advise and consent on the overall level of defense spending and to work with the administration in forging effective forces for each role and mission at the least possible cost. We can only do this if we have budget data that allow us to do this.

This will not, however, end the need for a stable agreement between the authorizers and the appropriators. I would like to say to my friend from Alaska that I do not quite understand the logic of destroying the present agreement if one or more or all members of the authorizing committee do not agree with the product.

I would suggest that if agreements require that all parties vote for any piece of legislation that comes out of such an agreement, that would be binding on Members of this body in such a way which I think would prevent this Senator from entering into any such agreements in the future.

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

The PRESIDING OFFICER. Who yields time?

Mr. EXON addressed the Chair.

Mr. NUNN. Mr. President, I yield to the Senator from Nebraska 10 minutes.

The PRESIDING OFFICER. The Senator from Georgia yields 10 minutes to the Senator from Nebraska.

Mr. EXON. I thank the Chair and I thank my colleague, the chairman of the Armed Services Committee.

First let me start out by saying, Mr. President, that the references made to my friend and colleague from Alaska while this Senator from Nebraska was in the Chair were only an attempt by this Senator as Presiding Officer of the Senate to abide by the rules of the U.S. Senate which provides that the Chair will do everything within its power to see that debate flow freely in the U.S. Senate and that the ongoing heated discussions that take place are done in a manner in accordance with the rules.

There are times when the Chair must take action to make sure that those rules are applied. Certainly the Chair had no intention of being unduly harsh on any Member of the Senate on either side of the aisle.

The Senator from Nebraska in 13 years here has been in the Chair on many, many occasions and I believe that most would agree that I have been fair to all Senators, regardless of their political affiliation, in trying as best I could, to make sure that the debate is handled in the Senate in a way that is entirely proper.

If I offended anyone, I apologize. I was only trying to do and carry out the duties as I saw them as an occupant of the Chair during the last hour or so.

Mr. President, we are here engaged in a typical clash between appropriators and the authorizing committees. This is not the first or the last time on the Senate floor that we are going to have sharp differences of opinion. And I guess the only way we resolve these is to state our views, try and make them clear, and have a clear-cut explanation of why we are, many of us, opposing this particular appropriation conference report. It has nothing to do whatsoever with personalities. It, rather, has to do with regard to the mechanics in the future workings of the U.S. Senate.

Ever since the establishment of the Budget Committee, before this Senator came to the U.S. Senate, there has been this ongoing problem with the authority of the Budget Committee, the authority of the appropriating committee, and the authority of the authorizing committees. And I suspect until that matter is better resolved than it has been thus far, these kinds of clashes will continue to take place.

I also want to say from the beginning that I have the highest respect for the Appropriations Committee, its leadership, and especially the leadership of the Senator from Hawaii and the Senator from Alaska, who are the ranking member and chairman of the subcommittee of Appropriations having to do with national defense. Certainly, with regard to the Senator from Alaska and the Senator from Hawaii, I salute them for their understanding. I salute them for the cooperation, generally, that we have had over the years. And I think that they try just as hard as we do in the authorizing committee to do what is best and fair overall.

There has never been a perfect bill passed in the U.S. Senate. I suspect most would agree, at least, this measure is far from a perfect one. The numbers indicate, however, that with about a third of the Senate—approximately 33 Members of the 100-Member body—serving on the Appropriations Committee, the largest committee by far of any of the committees in the Senate, I guess I would have to say that all that the appropriators need on each and every bill of this type is 17 defections from the rest of the Senate that serves on authorizing committees to get their way.

So there is no question but what the Appropriations Committee remains, in my opinion, the most powerful committee as far as getting their will, more than any other committee of the Congress.

Having said that, I have some serious reservations about the speed with which we are moving. Always as is the case when we come up against deadlines, as we are right now, and so many of these important matters come down to deadlines. Not only do we have a deadline on this Defense appropriations bill, but certainly within the next few hours sometime, we are going to have brought forth from the authorizing committee the highway bill, which has been under intense negotiations between the House and Senate now for, lo, these many weeks and even months.

I suspect we may have another rather heated debate when the highway bill comes up. I do not know whether or not it will take the same general character of this debate. But I suspect it is always difficult to work out the differences between the Senate and the House bills. It is an especially difficult proposition, trying to work them out hurriedly, if not expeditiously, as we rush to adjournment.

The PRESIDING OFFICER. The time of the Senator from Nebraska has expired.

Mr. EXON. I was allotted 10 minutes. Has 10 minutes expired?

The PRESIDING OFFICER. The Chair corrects itself. The Senator from Nebraska has 5 minutes remaining.

Mr. EXON. I thank the Chair. I may have to ask for some additional time.

Mr. President, just let me say I think it would be wise for us to vote down the appropriations measure, which would mean we would not, very likely, finish our activity before Thanksgiving. But, coming, up, is an arbitrary date when we would all like to leave and carry on other important business. Setting all that aside, our first responsibilities, Mr. President, I suggest, are to remain here as long as is necessary up until Christmas or thereafter, to complete our work in an orderly fashion before we adjourn.

Mr. President, I am in opposition to the supplemental appropriations bill to eliminate a fiscal year 1992 Defense ap-

propriations bill provision mandating that $25 million in fiscal year 1991 Strategic Environmental Research and Development Program [SERDP] funding be set-aside for an Arctic region supercomputer center.

Last year, I joined Senators NUNN, GORE, BINGAMAN, and other of my Armed Services Committee colleagues to establish a program to substantially increase the defense department's contributions to countering major environmental threats, such as global warming and hazardous waste cleanup, facing the United States and world. The Defense community has a great amount of resources, equipment and expertise not presently available in the commercial sector which can aid in this fight to save our environment.

The sum of $150 million was appropriated for the SERDP in fiscal year 1991 with the condition that $25 million be noncompetitively directed to the State of Alaska for the establishment of an Arctic region supercomputing center. Because this mandate was contained in report language, the Department of Defense was able to rightfully ignore the provision. But in this year's fiscal year 1992 Defense appropriations, however, the Alaska set-aside was again stated, this time as bill language.

The resources of this fledgling research and development program are too scarce for it to be the victim of this type of raid. The Statute creating the SERDP sets forth an independent procedure by which worthy programs are selected and funded. The Alaska supercomputer and its center are not a product of this merit-based process. The earmarking of this $25 million to one State, to one program, is an egregious example of Pork-Barrel politics at the expense of the integrity of the SERDP itself. This is not good government and, if allowed to continue, it will handicap our Nation's ability to direct scarce funding to our growing environmental problems.

Mr. President, I urge my colleagues to reject this conference report for several reasons, including the ones that I have just enumerated.

This bill also fences funds contained in the fiscal year 1992 Defense appropriations bill for the construction of four new military museums.

Mr. President, it seems to me in these very, very difficult times of cutting back on defense, we cannot go about creating a whole series of new museums. It simply does not make sense.

These four new museums mandated in the Defense appropriations bill and totaling $11.7 million represent collectively the illegitimate twin of the noncompetitive earmarking of university grants also contained in the 1992 Defense appropriations bill.

None of these museums were funded in the Senate-passed version of the bill, and none of these funds have been requested by the military services. Perhaps these four museums are warranted and perhaps their locations are appropriate. But we will never know and 46 States will be automatically excluded from the running. The four new museums are just the most recent examples of how a small group of Congressmen attempts to subvert the proper, competitive establishment of such institutions. I urge my colleagues to not be part of these parochial, pork-barrel games and vote against the conference report.

This is not the first time this battle against pork-barrel spending has been joined. In the whole, it comes up time and time again. It will come up time and time again in a whole series of areas.

Each year, the Senate Armed Services Committee drafts a Defense authorization bill which ignores the siren call to load up the bill with earmarked funding for universities in particular congressional districts or to fund other dubious, rigged, noncompetitive projects. And each year, under the strong guidance of committee chairman, Senator NUNN, and ranking minority member, Senator WARNER, we have achieved this goal of not earmarking these types of funding.

Mr. President, I ask for 4 minutes of additional time.

Mr. BINGAMAN. How much time remains to the Senator from Georgia?

The PRESIDING OFFICER. The Senator from Georgia has 16 minutes remaining.

Mr. BINGAMAN. Mr. President, I ask the Senator from Nebraska if he could do with 2 minutes. We have three or four other Senators waiting on the floor wishing to speak during that 16 minutes remaining.

Mr. EXON. I would certainly agree with that, so long as those of us who have not had a chance to speak on this do not have to yield to other Senators who have already spoken.

Mr. BINGAMAN. We will be glad to allocate the time in that way, if the Senator requests.

I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator from New Mexico yields 2 additional minutes to the Senator from Nebraska.

Mr. EXON. Mr. President, what we have been attempting to do in the Armed Services Committee is strike a blow, if you will, for government, good government. However it is with equal regularity that the Defense appropriation have been undercut, which gives some leeway properly to the appropriator, but yet they have kind of filled in these, changed it around for university set-asides.

This year's bill contains $95 million in university set-asides and earmarks spread over 13 States that are purposely and wrongfully, in my opinion, not intended to meet the rigors of competition, competition based on merit, competition based on cost, competition based on even more simply whether the program is deserving of taxpayers' dollars.

It is clear that the Congress should not be in the business of directing scarce funds on a preferential basis to the universities in the States of the selected few Senators and Congressmen. The American people expect more of their elected officials. They deserve a higher standard for accountability at a time when our Federal deficit is running wild, devouring the budget, at a time when social services are being squeezed by the forces of a worsening domestic economy. And $95 million in the earmarked university funding may not amount to much when compared to the overall defense budget or the entire Federal budget, but its the most significant and it is the most symbolic thing that we are doing wrong.

It is significant because the $95 million is a great deal of money even by those standards of those here in Congress. It is symbolic because it is affront I suggest to a basic pillar of good government and the trust with which the American people have placed in us and in this great institution.

In conclusion, simply let me say I have no personal involvement in this or criticism of the bill with regard to the strategic programs. I have worked very closely with the Senator from Alaska and the Senator from Hawaii. I have no basic complaint with the agreements and arrangements that they came to as incorporated in this bill, except the fact that I might add I think we are spending more money on the strategic defense initiative than is justified under the circumstances.

Just let me say that it is not because of any particular program that I reluctantly will oppose this bill. It is the overall thrust of the measures that have been outlined as wrong by myself and other members of the Armed Services Committee.

Mr. President, I yield the floor.

Mr. BINGAMAN. Mr. President, I yield myself 4 minutes.

Mr. EXON. Mr. President, I ask the Senator from New Mexico whether or not the Senator from New Mexico has previously spoken on this subject.

Mr. BINGAMAN. The Senator from New Mexico has not spoken on this subject, I will respond.

Mr. EXON. I have no objection.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I am going to follow the lead of the chairman and ranking member of the Armed Services Committee in voting against the conference report.

This is the first time that I have voted against a conference report on the Defense appropriations bill in the

years that I have been in the Senate, and I do so not so much because of the substance of that report but as a reflection of my strong belief that the process that we need to follow has broken down.

I do believe that, in the past, the bill was presented to the Senate floor in a way—with the exception of last year—the bill was presented to the Senate floor in a way that made it subject to amendment. I think in 1988, Senator NUNN was able to eliminate, and Senator DANFORTH with him, a series of porkbarrel university projects because the bill at that time was subject to amendment. Others have been able to at least get a hearing for their differences on the bill because it was subject to amendment. Unfortunately, because of the success that occurred in 1988 in eliminating some of the provisions, we find that now the bill comes back to us—it did last year, it does again this year—in a way that makes it unamendable. Accordingly, our ability to have input, our ability to amend, our ability to meaningfully oppose particular provisions is eliminated.

Others have spoken about the specific problems of the bill. Let me just cite a few of those. Clearly, there is a problem with university set-asides. Mr. President, let me just cite a particular instance that I experienced a few months ago where a president of a leading university in this country mentioned that he felt that the earmarking of funds for particular universities had become so prevalent in the Defense bill that he had no alternative but to essentially do as the Romans do when in Rome. He felt that he, as many other presidents probably have also previously decided, that in order to protect the interests of his university, he would have to go the now-accepted route of hiring a lobbyist in Washington to look out for the university's research budget, to urge, through that lobbyist, that funds be included in the Defense appropriations conference report. That is where they are included, I call to my colleagues' attention, because that is a place where they are not subject to amendment. There is no effort being made on the floor to strike those because that would not be within the procedures of the Senate. This conference report is not subject to amendment. We have no option but to vote up or to vote down on it.

Mr. President, I feel that the Senate can only function well where there is an opportunity for all Members to state their views, to offer their amendments, to deliberate issues on the Senate floor. The great thing that distinguishes this institution from other institutions, not only in this country but worldwide, is that we do have a right of amendment. That right has been denied us in this case. The bill that comes to us is not subject to amendment.

Mr. President, I will conclude by saying that it is with regret that I have to vote against this conference report. I hope very much that the procedural problems that are causing me to do that can be remedied before this process, once again, goes forward next year.

Mr. President, the Senator from Michigan has requested 5 minutes. He has not previously had a chance to speak on this bill, and I yield him 5 minutes of the time the Senator from Georgia has been allocated.

Mr. STEVENS. Mr. President, before the Senator from Michigan speaks, it was called to my attention that the dialog I had with the Senator from Georgia was charged partially against his time. I would like to give 10 minutes back to the Senator from Georgia so that there will not be an imbalance.

The PRESIDING OFFICER. The Senator has that right. The Chair is assuming that time would be taken from the time of the Senator from Alaska.

Mr. STEVENS. That is correct.

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

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Michigan is recognized.

Mr. LEVIN. I thank my friend from New Mexico. Mr. President, I will try to do this in less than 5 minutes so I can yield back time for others.

First, let me thank the members of the Appropriations Committee and their staffs because the bill contains so many good things and they have extended so many courtesies that that is the first thing I want to say to them, to acknowledge what they have done in this bill which contains so many positive things.

I am an authorizer, and I look at the world that way, and I know that they understand that. The improvements that this bill contains, as I said, are many. I am glad that they removed funds for MX missiles, which are unnecessary and were not requested. I am glad the appropriators have reduced funds for mobility for the small ICBM, a program that the President terminated in September. I am glad that the appropriators reduced funds for Trident II missiles that were not requested. I applaud their reducing funds for the advance cruise missile, a nuclear missile which has had considerable problems in development.

I am troubled by a number of aspects of this bill. Others have spoken about them. And whether one votes for or against the appropriations bill from an authorizing point of view, there are a number of troubling aspects to this bill.

First is the waiver of the Competition in Contracting Act.

Mr. President, one of the things that does concern me is the waiver of the Competition in Contracting Act. That is an act that I have had a great deal of input in and helped to write. That act is being waived so that competitive procedures need not be used for grants and award contracts in institutions of higher learning. I think it is a significant mistake to do that. That waiver of competition is opposed by associations of universities, and I want to just name a few that feel strongly that we should have competition for grants and awards to universities: The American Association of Universities strongly supports competitive procedures. The National Association of State Universities and Land Grant Colleges and many individual university presidents have spoken out about the importance of this. I know the appropriators are in a difficult position when they go to conference. I know this is not their idea, but the problem is it comes back to us unamendable. It was added in conference, and it represents a significant departure from what we must be all about in our universities.

Second, there are many unauthorized appropriations in this bill, and, again, I know that many of these were imposed by the House of Representatives in conference. But, nonetheless, there was an understanding that, to the extent possible, we would avoid any unauthorized appropriations which are not later subject to authorization. That provision that unauthorized appropriations be subject to later authorization was not added in this bill, and that represents a significant undermining of the authorization process. All Members of this body who are members of authorizing committees must be concerned by this development.

So, there are items in this bill that are deeply troubling to me on principle and, I think, must be resolved somehow by the leadership of this body. Conflict is going to occur in a legislative process. That is always the way it has been, it is always the way it is going to be. But there are now some basic conflicts which are again surfacing between the authorizing and the appropriations process which I believe the leadership of this body must attempt to resolve. The authorizing committee, being the Armed Services Committee, sets ceilings for expenditure. The appropriators set floors. When that basic approach is deviated from significantly, we have then undermined either the appropriating process or the authorizing process. And when we authorize on appropriations bills, when we waive the Competition in Contracting Act on an appropriations bill, we have deviated significantly from a process which has allowed us of function smoothly.

So I would hope that the leadership of this body would try to pull us together after this session is over to find a way that we can avoid the kind of process conflict into which we are all plunged.

Again, I want to end by thanking my friends on the Appropriations Committee. I particularly want to thank Sen-

ator INOUYE, who has labored so mightly with so many of us to make possible so many projects that we feel and he feels are important in many of our States. And I want to end as I began with a note of gratitude to him and the other appropriators. I thank the Chair.

Mr. STEVENS. Will the Senator yield for just a moment on my time?

Mr. LEVIN. I think my time is up.

Mr. STEVENS. I have time. I yield to the Senator 2 minutes to answer my question.

When the Senate passed this authorization bill, the Senate level of university research initiatives was $107 million. When the conferees from the Senate Armed Services Committee came back from their conference with the House it was $182 million. That is exactly what happened to the appropriations. What is the difference?

Mr. LEVIN. The difference is that the Competition in Contracting Act was waived.

Mr. STEVENS. It was waived by the Armed Services Committee on the FFRDC's.

Mr. LEVIN. I do not believe that we waived the Competition in Contracting Act, and I stand subject to correction on this.

Mr. STEVENS. Look at page 500 of your report, I would say to the Senator.

Mr. LEVIN. I believe that the Competition in Contracting Act has not been applied to other FFRDC's and other legislative actions, including the legislative action of the authorizers. That is a legislative bill.

But FFRDC's have not been subject, as I understand it, to the Competition in Contracting Act which is one of the reasons we have problems with FFRDC. And the last thing we ought to do is extend that further and then say because FFRDC's are not subject to competition the way others are, that we therefore should waive the Competition in Contracting Act for universities. I believe we have made a mistake.

Mr. STEVENS. I just yielded the Senator 2 minutes.

Mr. LEVIN. If I could continue my answer to the Senator from Alaska.

Mr. STEVENS. I yielded the Senator 2 minutes. I have limited time; he has limited time. I will be happy to yield him another 2 minutes to answer a question, if he wants to do it. But the question is this: House members of the Appropriations Committee tell us those Armed Services Committee people, they have an initiative and they put it up to peer review. They are basically people from the State where the peer review grants are awarded; we want some of these university grants for our districts, and we yielded to them as you yielded to the ones in your conference.

Now, why is it that the Armed Services Committee people on our side are going to vote against this bill when the Armed Services Committee people on the other side, particularly on the majority side—there were some conservatives who did not vote for it and will not vote for a bill like this, but why is it that Senators are united now to vote against the bill when each one came to me and asked me to support additions to this bill, including the Senator from Michigan?

Mr. LEVIN. I thank my friend from Alaska. What I have tried to seek consistently with the appropriating committee—and I again thank the appropriaters for their cooperation—is items which have been authorized by the authorizers. That is No. 1.

No. 2, we have not waived CICA before in an appropriating bill as far as I know. CICA is here being waived for universities and the universities, the associations of universities do not want waiver of CICA. They do not want to abolish competition. And the reason given by them is because they want fairness for all universities and States.

If I can now direct my answer to the first question of my friend from Alaska, I agree with the Senator. I think some States and some universities have been left out by the competition process, and that is why it was attempted in an authorizing bill to provide that a minimum amount of money for research and development grants would go to smaller universities.

But all smaller universities then ought to be able to compete for those funds. We should not just say that we are going to waive the Competition in Contracting Act so we can give grants to certain universities that have been omitted from the competition process or from the peer review process. If that peer review process has not worked well, we should amend the peer review process or do what we have done in other bills, which is to require that a minimum amount of money go to universities which have been left out of the process. But process is key, just as it is on this floor. And that is what we have tried to restore.

Mr. STEVENS. The Chair is watching my time, I say to my friend.

The PRESIDING OFFICER. The Senator has used the 2 minutes.

Mr. STEVENS. I thank the Chair.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, from the time allotted to Senator WARNER, which I am authorized by him to allocate, I yield myself 8 minutes.

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

Mr. WALLOP. Mr. President, I thank the Chair.

This is a difficult time, it is clear, and you see the tensions that this dispute has raised. The reason tensions are raised is that the process has now completely collapsed. There is no means by which, whether in the Armed Services appropriations, authorization or budget or any other committee's appropriations, authorization or budget we can any longer make sense, whether it is economic, whether it is philosophical or whether it is just pure accounting sense.

There are too many says. There are now three says. There is the authorization say, budget say, and appropriations say.

What has happened now and why the tensions are so great is that the authorization process has become irrelevant, at least so far as the Senate Armed Services Committee is concerned. We are reduced by the statements of the managers of the appropriations bill to saying, "Gee, thank you, daddy." "Look in the bill, you have some nice things in there." "Gee, thank you, daddy." "But hush, child, don't you dare express any reservations about what you thought was your obligation."

Mr. President, I am one who will right now say to the distinguished Senator from Hawaii and the distinguished Senator from Alaska, "Thank you, daddy." There are some nice things in there for Wyoming, for which I asked, which the committee authorized—in fact, authorized a little bit more than was appropriated, but we got something. "Gee, thank you, daddy." But that is now our role and it is not an appropriate role.

There is no structure, Mr. President, when three committees exist. What happens then, as has been demonstrated on this floor, is that pride now becomes more important than principle, seniority more important than pride, and local economies more important than national force structure, pride or principle.

The pork now, Mr. President, is more important than the pig.

Too many says means that there is no circumference or boundary around, in this instance, the needs of America's military force. There is no budget pie; there is only a pile. And you can throw on a piece, take off a piece; it does not change the shape of the pile.

What is important, Mr. President, is somehow or another we get to a process within this body where there is a circumference; and that in order to argue a piece out of the budget pie, you must find some other satisfactory insertion to go into that pie so that the shape essentially does not change.

When you have nothing but a pile, there is no shape, there are no means by which anybody can render a judgment. That is why seniority becomes more important, that posture on the committee becomes more important; that the right sort of committee becomes more important than the whole philosophical view.

So when, Mr. President, we hear a threat to abandon the agreement, it is

a hollow threat. We really do not count anymore in the process other than being able to express our gratitude if the appropriators condescend to follow our priorities. And clearly I do, as do others, have that gratitude. But we no longer have a meaningful role in the authorizing committee in shaping America's military forces, any role except that of supplicant, a beggar coming to those who hold the real power.

Our role in the Armed Services Committee now has been reduced to approving nominees of the President, promotions of military officers, to give comment on treaties like the one we are about to consider, but not to approve or disapprove it, to pass a Persian Gulf resolution to go to war with forces over which we had little or no say in shaping or producing.

So what now happens, Mr. President, is that we are faced with a conference report of the Appropriations Committee. It is unamendable. We now have two roles left to us. One is to comment, and having included, "Gee, thank you, daddy," to say what frustrates us, and vote against it—nothing else is left to us by way to shape this document.

Mr. STEVENS. Mr. President, will my good friend yield for a moment?

Mr. WALLOP. On the Senator's time without losing my right to the floor.

Mr. STEVENS. I call attention to the report of the DOD authorization bill which was presented to the floor, all 718 pages. It was unamendable. It was unamendable, exactly as ours is unamendable, because that is the only way we can get a bill.

Mr. WALLOP. I say to my friend from Alaska, that it is unamendable except by the Appropriations Committee which has just amended it. That is what brings us into the argument in which we now find ourselves. They amended it at will.

So the role of the Armed Services Committee is just as what I said it was, the role of supplicant and grateful beggar, if we get the few crumbs offered to us for those things for which we ask.

And I have absolutely the greatest respect for the Senator from Alaska, and the Senator from Hawaii. They are, I know, patriots. And they are, I know, among the few of those of us in the Senate who have actually stood up for the defense priorities and the purposes which the Senate Armed Services Committee has authorized in legislation. Lord knows where we would be without the two of them: That I absolutely will stipulate.

But nonetheless, on a whole variety of little areas we authorizers simply no longer have any say. In competition with our priorities, for example, we have in here $300,000 for the Maryland Hospital Association, clearly one of America's critical defense needs. You could go on and ridicule many more such pork barrel items.

I do not mean to ridicule anything but the process itself which has now become so corrupt that neither the appropriaters nor authorizers nor the Budget Committee really have a coherent role except to play with a pile. There is no longer any boundary line against which the changes are measured.

That is not to fault the Appropriations Committee. It is a frustration beyond reach of the authorizing committee. We really do no longer have anything else to do.

What I am saying today is the Congress of the United States, through its Budget Act and appropriations process, now is totally sick. It does not work.

The Senator from Alaska well knows that we are now in the idiotic posture that sales of the assets of the United States that would bring multimillions of dollars to the Treasury of the United States do not count as money. That is where we are. We have a process that has no economic sense, no accounting sense, no philosophical sense, no sense whatsoever, and that is why we are engaged in prodigal discussions where the pork has become more important than the pig.

That is not the fault of the Senator from Hawaii, or Georgia, or Virginia, or Alaska, or Wyoming, or anywhere else. It is what we have allowed ourselves to lapse into. It brings us in rage and frustration to the floor right now where those of us who thought we had a role find ourselves having none.

Mr. President, I yield the floor and the time that I have yielded myself in this heavy note of frustration. This is an irresponsible process engaged in by a now irresponsible body. If we do nothing else in the year in front of us without politics involved, we ought to see if there is not a better way.

Mr. President, I yield the floor.

Mr. SIMON. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Would a point of order rest against an appropriations matter where the appropriations exceed the authorization?

The PRESIDING OFFICER. The Parliamentarian informs the Chair that there is no Senate rule nor precedent that would provide for such a point of order.

Mr. SIMON. I thank the Chair.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. PRYOR. I want to ask a question if I could get 30 seconds.

Mr. BINGAMAN. Mr. President, I yield 30 seconds or a minute to the Senator from Arkansas.

Mr. PRYOR. Mr. President, if I could get the attention of the distinguished Senator from Alaska, Senator STEVENS, who appears to be managing this bill, I have one question that would be answered with a yes or no answer. Are there items in this appropriations bill on the Department of Defense that are not authorized by the Armed Services Committee, the authorization committee?

Mr. STEVENS. The answer is yes.

Mr. PRYOR. Mr. President, I thank the Chair. I thank the Senator from Alaska.

The PRESIDING OFFICER. Who yields time.

Mr. WALLOP. Mr. President, I yield myself 30 more seconds out of time allotted to Senator WARNER.

Mr. President, the amendment which I would have proposed if this bill were amendable would have restored two critical features to an important initiative the Senate Armed Services Committee undertook this year.

One of the major features of our bill for fiscal year 1993 was a program to enhance modernization within the Marine Corps.

As a result of several trips to the gulf by members of our committee, after-action reports from the services, and testimony from ground commanders following the war in the Persian Gulf, the committee pulled together a number of modernization initiatives carefully structured to improve areas of the Marine Corps where they had not kept pace with the other services.

These measures were enthusiastically adopted by members of the Senate Armed Services Committee and readily agreed to by conferees in the Senate-House Defense authorization conference.

These enhancements focused on armor, fire support, night fighting capabilities, tactical intelligence and mine detection, and clearance.

Together, the appropriations bills of the Senate and the House included the modernization enhancements for the Marine Corps which our committee had recommended.

Unfortunately, the outcome of the appropriations conference did not include two critical aspects of this modernization package—the multiple-launch rocket system [MLRS] for the Marines and Naval ship-to-shore fire support.

Our committee recommended in the committee report that the Marines should begin to receive in fiscal year 1993 the MLRS with which the Army is already equipped.

This system proved especially effective for the Army during the war in the gulf.

In fact, Marine Corps units were supported by Army National Guard MLRS artillery units during Marine operations in Saudi Arabia and Kuwait.

The amendment which I would have proposed would have restored the 9 MLRS launchers the Senate and the DOD Senate-House conference had originally authorized plus the 10,000 rockets that were authorized.

Mr. President, another critical area we addressed in this initiative is the

fire support provided by the Navy for Marine Corps amphibious attacks and operations ashore.

We are now in the process of phasing out of the Navy the last remaining battleship.

I wish that we could afford to keep at least two of these ships in service, but the Navy has concluded that the personnel and operating costs are just too high.

Under these circumstances, we must devise new, cost-effective ways to provide the vital ship-to-shore fire support which our Marines are sure to need at some point in the future.

My amendment would have restored $4 million for studies by the Navy and the Institute for Defense Analysis to determine the best alternatives for both the near term and the future for this type of fire support.

Both rocket and gun systems were to be considered in these essential analyses.

I hope the Navy will find a way to conduct these studies anyway within the funds provided for fiscal year 1993.

Mr. President, I am prohibited from offering an amendment on this bill. I hope that my colleagues on the Appropriations Committee will support these initiatives next year in the appropriations process.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, an outside observer listening to this debate might be inclined to recall the line from Shakespeare in Romeo and Juliet, where one of the characters says: "A plague on both your houses."

Here we are with a deficit that will reach $362 billion in 1992, with a recession that has millions of Americans desperately searching for work, but who can find none, which is now stretching into its 17th month, with a Soviet empire that has dissolved, collapsed, and in danger of turning inward and devouring itself, and we are standing here conducting what is essentially a turf war over which Senate committee's military spending is going to be protected.

The simple fact is that both of these bills spend too much. Oh, yes, I understand, both bills do conform to the budget agreement. But let us be honest about it. This budget agreement relative to military spending is a relic of a bygone age, put together at a time when the country was in a state of high anxiety, facing what we thought might be a war in the Middle East. But today this is a new world. And I defy anyone to justify spending $290 billion on military, with the economy in this country in the condition it is in today.

According to the Congressional Budget Office, that $290.3 billion in budget authority that is contained in this bill before us is some $4.7 million above last year's budget authority level in nominal dollars.

That is just one evidence, one measure of how out of touch with the world we live in this whole debate is that we are engaged in today. As I stand here. approximately—it is very difficult to get a precise figure—500,000 U.S. troops are deployed overseas in 136 foreign bases, in 20 foreign countries, supported by 200,000 to 300,000 civilian employees, all overseas; about 25 percent of our total active duty forces, outside of this country, serving on foreign soil; 300,000 troops in Europe, supported by almost an equal number of civilian employees and dependents.

What does that say about a country that is in desperate condition with regard to its balance of trade and balance of payments? Supporting this massive military establishment abroad, for what?

To be sure, the administration proposes to cut that number in Europe by 150,000 in the mid-1990's. But we have to ask ourselves, what are those troops doing there now? Who are they defending? Who are they defending against?

The General Accounting Office says—and the Comptroller General appeared before our Budget Committee and testified—that we are spending over $1 trillion—a figure that boggles the mind—on the acquisition and development of over 100 major weapons systems that were conceived and designed in the days of the cold war, which is now over. Half a trillion dollars of that $1 trillion remains unspent. But, again, that is one-sixth of the yearly gross national product of this country.

I ask my colleagues, what threat is there that justifies that kind of spending? Is it paranoia that drives it?.

Congress is recognizing the problem, to some degree. We have gone on record now against the MX missile. We have had a growing opposition to the B-2 bomber, but that weapon system, like so many, in like Hydra in the Greek mythology. If you cut off one head of the serpent, it grows another.

But we are still nowhere near a true recognition of what kind of cuts are required to bring our defense budget into conformity with reality, into conformity with international reality, Mr. President, and the fiscal reality this country faces today in 1991.

Let us look at what we are doing with one system: Strategic defense initiative.

I see the distinguished Senator from Arkansas [Mr. PRYOR], on the floor. He has long been critical of our spending in this area. But in this one area, strategic defense initiative, star wars, here is a system that we spent over $24 billion for, and as far as I can ascertain, we have received nothing for it. Now we are adding $1 billion to last year's spending level on this level, bringing it up to almost $5 billion, and we are on the road toward spending $10 billion to $30 billion in additional dollars in some new variation, a new variation that has never been adequately analyzed, nor even fully debated in this body.

There is a refreshing element to this discussion, though, and let me point it out. Some of the documentation from the Armed Services Committee refers candidly to spending in the appropriations bill that is unauthorized and, conversely, to authorize programs that the appropriators chose not to fund.

So that laymen can understand what we are discussing here, these are programs that one highly defense-protective committee or another judges to be unnecessary for protecting this country's security.

The Armed Services Committee—made up of distinguished Senators, experts in the field of national security and weapons systems and military spending, et cetera—has authorized some 2 billion dollars' worth of programs and weapons systems that have been judged unnecessary by the Defense Appropriations Committee, made up of equally distinguished and energetic and learned Senators in the field of national defense, weapons acquisition, et cetera.

The Defense Appropriations Committee has appropriated some $3.4 billion for programs and projects judged unnecessary by the authorizing committee.

So what we have before us today, and really what we are arguing about, is some $5 billion worth of military spending that one committee of defense experts—the Armed Services Committee—or the other committee of defense experts—the Appropriation Subcommittee—contends is unwarranted.

An unbiased observer might say, well, OK, stop right here, argue no further. You are both right. Let us cut the programs the authorizers do not want, and let us cut the programs the appropriators do not want, and then let us put that $5 billion into something that the Nation can agree that it truly needs, such as either reducing these massive budget deficits or, if we do not want to do that, let us put it into our deteriorating education system.

Just this morning I heard, as I was getting up, on National Public Radio, the sad story of a town in Massachusetts where they are cutting the number of teachers in the school system by one-third.

The sizes of the classes are going up from 30 to 50 students. It is being repeated all across this country because we do not have the funding to finance education. Yet the administration comes before the country with some sort of slick public relations medicine show calling it "Education 2000" and saying in 2 years we are going to have the best math students and total literacy all cross this country. Absolute poppycock.

Why do we not put this $5 billion into an egregious health care system that

leaves 37 million Americans with no health care whatsoever in this country?

Let us just look at some of the unappropriated authorizations. What that means is that the experts on the Armed Services Committee said that we need it. There are four F-117 Stealth fighters that cost one-half billion dollars. They were not requested by the administration. They did not want them. The Air Force said they did not want them. But they are in the authorization bill, anyway. I wonder why.

There is $115 million in the authorization bill for a small intercontinental ballistic missile program. Who are we going to use that against? It is a program that even the President says is no longer needed in his dramatic call for reducing nuclear weapons.

Let us look at the other side of the coin. Let us look at the unauthorized appropriations. In it there are $787 million for shipbuilding, much of it for ships behind schedule and over budget, and $117 million to upgrade the F-14 Tomcat airplane, an aircraft the Secretary of Defense has repeatedly attempted to cancel over the past 2 years.

So I would just sum it up by saying this, Mr. President. This is a debate that confirms what virtually everybody else has already recognized. We are funding defense programs and projects that are no longer warranted. They are not needed. The two committees can agree that some of these things are not needed. We cannot afford it.

Mr. President, I think we need to put some reality into this debate here. And it is my hope that this debate will lead us next year into a more rational disposition of the very limited fiscal resources this country has. I think we now know that our resources are not infinite. In my view that means we will have to reduce defense spending substantially below the levels charted out by the President and charted out by the budget agreement itself.

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

The PRESIDING OFFICER. The Senator from Tennessee has 18 minutes remaining.

Mr. SASSER. Mr. President, I yield 5 minutes to the distinguished Senator from Illinois [Mr. SIMON].

Mr. SIMON. Mr. President, I rise in opposition to the conference report. I have great respect for Senator INOUYE and Senator STEVENS. But, for a variety of reasons, I think it is a mistake to move ahead. Part of it is provincial, real candidly.

Part of this conference report is to say we are not going to move some people from Pennsylvania to the Rock Island Arsenal that were called for in the base closing commission. We have already in the State of Illinois been hurt substantially by base closings.

But it is much more than that. Part of it is we have $3.4 billion in appropriations above the authorization, as the chairman of the Senate Budget Committee has so eloquently pointed out.

I just had a discussion with the Senator from Arkansas [Mr. PRYOR]. We are going to consider putting in a new rule in the Senate that you cannot appropriate for what has not been authorized. It would be a very practical way of getting ahold of things a little more around here.

But it is just unrealistic. When Senator SASSER, with whom I agree on everything but one issue, talks about $4 billion that we have spent on star wars, when we have schools that are inadequately funded, something is wrong in terms of how we are facing the future.

I am just reading the rough draft of a manuscript right now by the distinguished economist Lester Thurow. The book will be out in a few months. And let me tell you that book is going to stir some people, if we have any common sense at all about what has happened, where we are, and where we are headed if we do not change our habits. And we are just drifting along as though there were no crisis. That is what has happened.

I just saw this week a press release from the Pentagon saying that by the end of 1995 we are going to reduce our troops in Western Europe by 50 percent. By the end of 1995. Now, if we had all kinds of money and we were just overflowing, we had no trade deficit, maybe that would make sense.

If we can move so many troops for Desert Storm and if we recognize we have an economic storm here at home, why cannot we get half those troops out by the end of 1992?

I think it is totally irrational for us just to continue to drift, and that is what this appropriation does again; it continues to drift.

I hope we turn it down. I hope, at the very least, if then the Appropriations Committees come back and just eliminate everything that is not authorized we will save $3.4 billion. That is a substantial sum. We will have at least made a little progress. And my hope is we can get a majority in this body to vote against this conference report and then come back, and this will be one step down a road to fiscal common sense.

Mr. President, I yield back the remainder of my time to Senator SASSER.

Mr. DOMENICI. I wonder if the Senator from Wyoming would yield a few moments to the Senator from New Mexico.

Mr. WALLOP. I am happy to yield 3 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. DOMENICI. Mr. President, that is extremely generous of the Senator because he is yielding his time, and I do not believe I agree with his position and I think he knows that.

Mr. President, let me talk to a couple of points that Senator SASSER raised in the few moments that I have. First of all, the chairman of the Budget Committee would have the Senate believe that the defense number, that is the cap, came from the budget agreement of last year. The truth of the matter is it was approved by the U.S. Senate twice, not last year or the year before, but this year.

The U.S. Senate voted for an authorization bill and an appropriations bill before conference, both of which had the number that we are talking about today. So I do not think we really should be arguing that the defense number is a vestige of the past unless we really believe that the overwhelming vote twice by the U.S. Senate for these numbers is also a vestige of the past. Perhaps some would conclude that it is.

My second point, with reference to authorization and appropriation, I surely hope that everyone knows that there are many things done that are not authorized because rule 16 provides for the Appropriations Committees to move the adoption of certain levels of funding without authorization.

Let me suggest if that was not the case we would have no foreign aid, I say to the distinguished chairman, who by coincidence is on the floor. More years than not we had no authorization for foreign aid and we appropriated it.

Rule 16.2 of the U.S. Senate envisions exactly what is occurring here today. It occurs when we fund the Department of Energy, for which there is no current authorization; exactly the same when we funded Justice Department.

I say to my good friend, who is worrying about this issue—I see him there—the entire Justice Department is without authorization. And would it not be interesting if you could indeed say we will have no Justice Department because there is no authorization?

Beyond that there are many more, and the rules of the United States Senate clearly contemplate as one of the methods of appropriating what the Government of the United States needs is by the Appropriations Committee finding it necessary.

If I read the rule right, there are three reasons and three ways that you can appropriate. One is if it is authorized. There is another one. And the third one envisions exactly this because it says the Appropriations Committee may move the funding even if it is not authorized, and that is because it may be needed. That is because indeed you may not have everything authorized.

That may be the wisdom of somebody that knew that we have a very confused system and we ought not fail to

fund something because of the confusion. I believe that is the case.

I do not think we ought to kill an appropriation bill for defense at this late date.

I do not think at this late date, over this kind of issue, we ought to kill the defense appropriations bill. For those who do not want this much spent on defense, they have a very valid reason to vote no. For those who want to vote against it because of the technical arguments made here today, I do not believe that should be the case. For those who say it breaks the budget, let me suggest that is absolutely wrong. It might be that you do not choose to spend the money this way, but it does not break the budget.

Clearly, it is within the budget. And I submit that that same problem is the case in every appropriations bill. We are not spending it exactly where somebody wants, but it is within the budget. Nobody seeks to change those bills because they have projects or programs that are not authorized.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. PRYOR. Will one of the managers yield me 1 minute?

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

The PRESIDING OFFICER. The Senator from Georgia has 10 minutes.

Mr. NUNN. I yield 2 minutes to the Senator from Arkansas.

Mr. PRYOR. Mr. President, my name has been brought into the debate a couple of times. I would like to respond to rule 16.2 that the distinguished Senator and my friend from New Mexico has just mentioned. Rule 16.2, Mr. President, has now been superseded by something that takes precedence over the rules of the U.S. Senate, as august as this body might be, and that is the law of this land.

I would like to quote title X, section 114, which is today the current law on authorization of appropriations.

Once again, title X, section 114, subsection (a), and I urge my friend from New Mexico to listen to this, because it says:

> (a) No funds may be appropriated for any fiscal year to or for the use of any armed force or obligated or expended for [procurement, R&D. etc.] unless funds therefore have been specifically authorized by law.

That is the law of this land. And what we are doing today by appropriating unauthorized funds to the extent of $3.3 billion is not only illegal, it is wrong. And the Senator cited the Justice Department and the Energy Department, which lumbered along here for years with no authorization. Perhaps that is what is wrong with those two departments. There was never any oversight; never any questions. And that is what is happening today in many of these defense expenditures.

Mr. President, I think without question that a questioning of the parliamentary situation of this and perhaps a point of order might well lie under citing title X, section 114, and I may get to it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. SASSER. Mr. President, I yield 10 minutes to the distinguished Senator from Colorado, and reserve the remainder of my time, which I think would be about 3 or 4 minutes.

The PRESIDING OFFICER. The Senator would be correct. The Senator has 13 minutes remaining.

The Senator from Colorado is recognized for 10 minutes.

Mr. WIRTH. Thank you, Mr. President.

I thank the distinguished chairman of the Budget Committee, and I am proud to be a member of the Budget Committee. I thank him for yielding me some of his time.

Mr. WIRTH. Mr. President, we are in a situation today where the American public is looking at us askance. The American public is looking with great skepticism at what we do in the U.S. Senate, on what goes on in the other body at the other end of the Capitol, and in the administration, and in Washington overall. For a variety of reasons, they are saying, "You just don't get it."

And they are right. What are we debating here is another reflection of the fact that we are collectively pointing out to the American public that "We just don't get it." The context that we are talking about are tens—in fact, hundreds of billions of dollars. We are here, Mr. President, talking about close to $300 billion; in fact, in this bill, $275 billion and, in addition, $15 billion in the Department of Energy in defense programs. We are talking about a $290 billion defense appropriation.

Mr. President, people who are not familiar with the ins and outs say: Well, how much is this $290 billion? Compared to what? Is this a lot; is this a little bit? What is this compared to?

I think we have to put that, first of all, into context. And, Mr. President, I have a chart that I think helps a great deal to do that.

What this chart points out, Mr. President, is that the peacetime average in the United States since World War II, when the cold war was on, the peacetime average that we spent was almost $240 billion; a little less than that. In 1991 dollars, same-year dollars, everything adjusted for inflation, we are talking about the same numbers. Since 1945, when the cold war was on, we have spent $235 billion to $240 billion.

We spent more than that during the Korean war. There was a bump-up here. We spent more than that during the war in Vietnam. And then we had that massive ramp-up in the last decade. But the peacetime cold war defense budget was $235 billion to $240 billion.

Mr. President, the cold war is over. The cold war is over. We spent $235 to $240 billion at the height of the cold war. With Brezhnev in the Kremlin and the Soviets in Afghanistan, we spent $235 to $240 billion. And today, we are talking about $290 billion. That is the context in which we are operating, Mr. President. "We just don't get it."

This chart is a dramatic illustration of the fact that we are now way up here; we are way above even the peacetime cold war average, and the cold war is over. That is what this debate should be all about.

Mr. SASSER. Will the Senator yield?

Mr. WIRTH. Yes; I yield to the distinguished Senator from Tennessee.

Mr. SASSER. If I understand what the Senator is telling us here, you are saying these are in constant 1991 dollars, the same dollars, 1991 dollars?

Mr. WIRTH. In 1991 dollars.

Mr. SASSER. So the cold war average was $235 billion?

Mr. WIRTH. That is right.

Mr. SASSER. And now that the cold war is over, we are spending $290 billion in constant 1991 dollars?

Mr. WIRTH. That is right.

Mr. SASSER. So we are in essence spending about what?

Mr. WIRTH. $55 billion more.

Mr. SASSER. $55 billion more, with the cold war being over, than the cold war average?

Mr. WIRTH. That is correct. For the peacetime cold war average, there was a bump-up during the Vietnam war. But without the conflict going on—we are just in a state of cold war—we are now spending $55 billion a year more, same dollars, than we were at the height of the cold war.

Now, that is the context in which this debate must occur, and that is the context with which the American public ought to measure the performance of this institution and the performance of their Government.

Why is that? Because the American public knows—and apparently "we don't get it," because we are locked into these budget ceilings, and the cold war is over—the American public knows that out there, right on the homefront, in our own backyard, we are facing very, very significant problems. Middle-class kids cannot go to college anymore. Higher education is becoming the purview of the privileged few. You cannot afford to buy a new house.

People in this country know that they do not have access to the opportunities we once had. And yet, what are we doing? With this accelerated budget, we are building an advanced tactical fighter to face the Soviet stealthy threat. If you believe the Soviet Union is embarked upon the building of Stealth aircraft which we have to encounter with the next generation, then

you ought to support this budget. I do not think so.

They know that one quarter of the kids in the country eligible for Head Start are enrolled. The other three quarters are not. We do not have the money for that. Yet we are building B-2 bombers at almost a billion dollars a copy. The costs of enrolling all of those kids in Head Start is the cost of a B-2 bomber. The cost of enrolling every eligible kid in Head Start—and we know that is the greatest education program with the greatest return—the cost of that is two B-2 bombers.

We know about the child immunization programs. We could immunize every child in the United States, 100 percent of those immunized, for more than a decade for less than the cost of one Seawolf submarine.

These are the kinds of choices that we in the United States have to make and we are not doing it. That is why the American public is saying to us: "You don't get it"; and we do not.

In addition to the very clear budget choices, as well—that we have, Mr. President—as very clear signals and messages and crying and yearning and begging from the American public to change what we are doing here, in addition to that there are a set of new frontiers out there that we have not even begun to address.

The distinguished chairman of the Armed Services Committee, Senator NUNN, along with Senator GORE and others, began a program of looking carefully at a whole new set of national security challenges related to the environment—global climate change, the destruction of the ocean, the hole in the ozone, the population issue—a whole set of issues that are a lot more of a threat to us than the new Soviet stealthy airplane. I am sure that that is true. Yet that environmental money was cut in half by one project earmarked in here and we had to beg, borrow, and steal just to get a small allocation of money for these issues related to this new international global environmental threat. We just do not get it.

The examples, over and over again, Mr. President, ought to be the ones that are talked about. The American public is saying to us, change your priorities.

We are building nuclear weapons in my own backyard in Rocky Flats, CO; a nuclear weapons plant right on the edge of the city of Denver.

They are saying to us we have to have a whole lot of new W-88 warheads for the Trident. To meet what threat? The President of the United States called for "radical changes in the nuclear postures of both sides" in his September 27 speech. Where is the radical change? This is incremental, not radical, change. This is incrementalism from what we were doing before.

My final point in the remaining time is the military abortion issue. We have debated on any number of occasions the military abortion provision. Women are treated as second-class citizens in the military. We have debated that over and over again. That provision was dropped out in conference. The argument was made that severe House opposition dropped this out. The House voted, by a vote of 220 to 208, to include the provision to treat women in the military the way women are treated elsewhere in our society. The House voted for that by a majority of 220 to 208; not severe House opposition. We voted on this floor last night with 57 votes in the U.S. Senate, more than a majority of the U.S. Senate, to treat women in the military the way women are treated elsewhere. Yet it got dropped—I believe in a very disgraceful fashion—in this appropriation bill. There is no reason for that. The American public is saying to us, You just don't get it. And they are right. I hope we will vote down this appropriations bill.

I thank the distinguished chairman of the Budget Committee for yielding me his time.

DEFENSE AND NEW BUDGET REALITIES

Mr. WIRTH. Mr. President, the fiscal year 1992 Defense appropriations before the Senate conforms to the caps contained in last year's budget agreement. Along with Department of Energy defense programs, we will spend $290 billion on defense this fiscal year. Those caps and that budget agreement, however, are obsolete.

This bill puts us on spending path that will impoverish vitally needed programs for Americans here at home. As Dr. Reischauer, Director of CBO, testified before the Senate Budget Committee on July 16, continued adherence to the administration's proposed defense plan and the budget agreement targets will require us to reduce spending on domestic discretionary programs in fiscal year 1994 and fiscal year 1995.

There is no rationale for sustaining these high defense budgets, Mr. President, in light of the dramatic changes in the world and pressing needs at home. Last year's budget agreement was fashioned in light of the collapse of the Warsaw pact. Since that time, we have witnessed the effective collapse of the Soviet Union.

A new political reality dawned on September 27 when George Bush embraced radical reductions and fundamental changes in our nuclear posture toward the Soviet Union. The President called for "radical changes in the nuclear postures of both sides." He validated deep cuts and unilateral moves. Noting that the "Soviet nuclear stockpile now seems less an instrument of national security and more of a burden," President Bush conceded that our security is now based on cooperation with the Soviets rather than containment.

In that speech, the President also stated that "changes that allowed us to adjust our security strategy a year ago have greatly accelerated." At the same time, however, his administration continues to cling to the defense budget levels agreed last year as if nothing has changed. Secretary Cheney touts the fact that he plans to cut the defense budget by 22 percent by fiscal year 1996—and that further reductions are impossible.

Under the administration plan, however, we will still be spending more on defense in 1995 than we were in 1980. In 1980, we spent $243 billion counted in 1992 dollars. We will spend $290 billion this year. In 1995, under current plans, we will allocate $264 billion for national defense. This is $20 billion more than the pre-Reagan defense budget.

The projected defense budget for 1995 is also significantly higher than the peacetime cold war average for defense spending—approximately $240 billion in 1992 dollars. We will still be spending more on defense in the mid-1990's than we did when the Soviets were in Afghanistan and Brezhnev was in the Kremlin. The world has changed and so must we.

We hear from the administration that we cannot possibly afford to cut defense any further. We hear that by 1996 we will only be spending 3.6 percent of GNP on defense, as if somehow defense had become an entitlement program. We hear that there is an irreducible minimum below which we cannot go.

This is nonsense. We must make choices. We must decide priorities. We must allocate finite resources among competing claims. Defense is an insurance policy. The risk has been radically reduced. So too should the premium. So too should the kind of insurance we buy.

I believe we can and shculd cut defense spending significantly below the Bush administration 5-year plan. The distinguished chairman of the Senate Budget Committee, Senator SASSER, has argued that we could prudently cut another $100 billion in budget authority and $70 billion in outlays from the 1993-97 defense budget. This translates into a 6-percent cut from the President's proposed build-down of the defense budget through fiscal year 1997.

The CBO has analyzed the programmatic impact of a defense budget reduction of this magnitude. The first and most obvious area for cuts is in strategic nuclear forces, beginning with the elimination of the B-2 bomber—saving $8 billion over the next 4 years. We should move rapidly toward a world in which we deploy the absolute minimal number of nuclear weapons necessary for deterrence.

CBO has estimated that we could save $26 billion in strategic budget authority by planning for a strategic nuclear force of 6,000 warheads—rather

than the 10,000 permitted by START. Six thousand warheads is twice the number most strategic analysts agree would be necessary for deterrence of attack upon the United States. Why do we need to proceed with expensive programs, such as the W-88 silo-busting warhead for Trident? This year, we shall spend nearly $500 million to resume operations at the Rocky Flats nuclear weapons plant for the sole purpose of manufacturing more W-88 warheads. Rather than building more warheads, we should focus our efforts on reducing nuclear forces in tandem with those of the Soviet Union.

We must also make changes in our conventional force posture. The Defense Department claims that American security in the 1990's requires a irreducible minimum force. This level just happens to be the forces left in place after the administration proposed defense reductions are implemented: 1.6 million Americans on active duty in 12 Army divisions, 15 Air Force wings, and 12 aircraft carrier battle groups—in addition to 1 million reservists. This force is considered by the Bush administration to be the minimum capability necessary to deal with undefined future threats to American interests in the Middle East, East Asia, Central America—anywhere and everywhere.

Cutting conventional forces beyond the Bush plan is both possible and prudent. We can do so through deeper manpower reductions and cuts in procurement. We should place many planned new starts such as the advanced tactical fighter, on hold and cancel troubled programs, such as the Seawolf submarine. There is little rationale for building weapons designed in the 1980's for a Soviet threat of the 1990's. We should rely on proven weapons platforms—F-15, F-18, *Los Angeles*-class submarines—with appropriate upgrades, rather than on new starts to deal with undefined threats.

Defense reductions will cause pain—among the dedicated men and women who are separated from service and for the many companies and workers who would have built defense systems we can no longer afford. We must face up to these choices. We can avoid the pain of further defense cuts—but at a great cost to our economic and social well-being.

Mr. President, as we reduce defense spending, we must take special care to maintain a viable defense industrial and technology base—so important to our defense and to our national economy. I have spent a great deal of time chairing a task force—staffed by the Defense budget project and the Henry Stimson Center and with a very capable membership, including Martin Marietta CEO Norm Augustine—on this subject. That task force has made several key recommendations on preserving the defense industrial base as we cut defense spending. I ask unanimous consent that a statement of that task force be entered in the RECORD at this point.

General Powell has explained that "we no longer have the luxury of a threat to plan for. What we plan for is that we are a superpower." America must remain engaged in the world. We must continue to lead, but we need not—nor can we afford, nor should we—assume the full burden of international security. We must learn from the coalition success of Desert Storm and assure a more equitable sharing of the burden of security.

President Bush was absolutely correct in bringing together broad international support for Desert Storm. Future conflicts will almost certainly demand such international support. Rather than sizing our forces and shaping our policies to act unilaterally—as the Bush administration proposes—we should engage more actively in plans for coalition defense against plausible threats to American interests. We have already done so successfully in Europe and Northeast Asia. We need to build on that model of collective security, not turn our backs on it.

Finally, Mr. President, we must begin to think of ourselves as a superpower not in terms of military prowess alone, but in terms of our economic vitality—a far more important criteria than our ability to deploy expeditionary forces abroad. And our status as an economic and social superpower is in serious jeopardy.

Record deficits—$362 billion for the current fiscal year alone—threaten long-term growth. Crumbling infrastructure, poor educational achievement, inadequate health care undermine America's economic future—and with it our ability to do all the things we hope to achieve at home and as a leader in the world of the next century.

What good will our forces be to the Nation if we go broke buying them or have to pass the hat to deploy them? How sustainable is American international leadership if we are weak and divided here at home?

The end of the cold war provides a new opportunity—a responsibility—to refocus our energies on the sources of American pride and power. We must seize that opportunity and meet our responsibility to lead, to shape priorities. This session of the 102d Congress is almost over, but I look forward to a vigorous debate in the next session on these issues.

Before concluding, Mr. President, I would like to add my voice to that of Senator NUNN and others in expressing concern over noncompetitive earmarks in the Defense appropriations bill. We have been through this before, and sadly we are here again arguing against so-called university pork. I am also deeply concerned that over half of the moneys appropriated in this bill for the Strategic Environmental Research and Development Program [SERDP] have been earmarked for a project in Alaska. A supercomputer for Arctic research may be meritorious, Mr. President. So too may be the many proposals that will be unfunded by the SERDP because of this earmarking. We must find some way to avoid these earmarks in the coming session. We do not have the resources to squander.

A final note on the military abortion provision. I thought that I heard the distinguished chairman of the Defense Subcommittee say this morning that the abortion provision was dropped in conference due to "severe House opposition." Mr. President, that provision was passed by a rollcall vote of 220 to 208 in the House, and I am disappointed that this effort to provide simple fairness to servicewomen and military dependents was dropped by the conferees.

Mr. President, I ask unanimous consent that a CBO study on defense spending options be printed in the RECORD.

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

[Task Force on Defense Spending, the Economy and the Nation's Security, Sept. 17, 1991]

STATEMENT: PRESERVING THE DEFENSE INDUSTRIAL BASE

The sustained decline in U.S. defense spending since fiscal year (FY) 1985 has raised concerns about the future of the nation's defense industrial and technology base. The resulting decline in demand for defense goods and services is likely to divert U.S. industrial and technological resources away from the defense market, with the risk of leaving the United States with a weakened defense industrial and technology base which is less capable of meeting future U.S. national security needs.

The end of the Cold War and growing federal budget deficits have combined to place strong downward pressure on U.S. defense budgets. According to current projections, the U.S. defense budget will decline by 31.7 percent in constant dollars between FY 1985 and FY 1996. This ongoing decline has meant lower demand for goods and services, with defense procurement projected to fall 48 percent, and research and development spending (R&D) projected to fall 23 percent over the same time period. While this decline in DoD demand has not been felt equally across the many industrial sectors supplying the defense market, it has caused a reduction in the number of firms receiving defense contracts.

New international realities and declining levels of defense spending demand a reassessment of U.S. defense industrial base policy. We believe that the federal government should, among other activities, define policies which will help preserve and strengthen the base through greater integration with the dynamic, innovative, and market-driven national commercial industrial base. Declining defense spending levels have illuminated the weaknesses in current DoD industrial base policy and planning, weaknesses which may compromise the ability of the defense industrial and technology base to meet U.S. national security needs in an era of declining defense budgets. If the United States is to maintain a technologically advanced, cost-

effective, and mobilizable defense industrial and technology base in an era of declining demand for defense goods and services, DoD will have to review and change policies which have traditionally inhibited the flow of government funded basic research discoveries, innovative dual-use technologies, advanced commercial technologies, process improvements, effective management systems, and human resources between the defense and commercial sectors of the U.S. economy.

As we identified in our July 30, 1990 *Statement on adjusting to Lower Defense Budgets*, we believe that an integrated defense industrial base, combining, to the greatest degree possible, the industrial and technological strengths of defense and commercial work, will assist the United States in maintaining its superiority in a military systems and technology while enhancing the survivability of modern and economically competitive defense industrial base. This conclusion has been widely supported by the findings of groups such as the defense Department's Defense Science Board, the Center for Strategic and International Studies, the Carnegie Commission on Science, Technology and Government, and the Office of Technology Assessment, among others, which addressed the needs of the defense industrial and technology base and identified possible federal approaches to preserving and strengthening its capabilities.

Given the diverse nature of the firms and industries supplying DoD, it is our belief that greater defense/commercial integration can, will and should spring primarily from decisions made by firms in the private sector. The challenges for the federal government are to ensure that this market-driven transition does not result in the loss of vital domestic capabilities and technologies which the market may undervalue and to facilitate the transition by eliminating existing federal policy obstacles to greater integration. Thus, we feel that the public sector also has a role to play in facilitating the industrial transition to lower levels of defense spending and must take clear and decisive steps in two areas:

(1) To define the basic security challenges to the United States, and the resulting requirements for a viable U.S. defense production and research base; and

(2) To facilitate the private sector transition, where feasible, to an integrated defense industrial and technology base by removing the public policy barriers which inhibit interaction between the defense and commercial sectors of the economy.

DEFINING DEFENSE PRODUCTION AND RESEARCH BASE REQUIREMENTS

With the decline in some elements of the Soviet Union's military power, it has proven difficult to focus federal attention on new and emerging threats to U.S. national security and the industrial base resources necessary to meet these potential treats. In order to design effective defense industrial base policy, the Congress and DoD must seek to define better a set of threat contingencies, or "stress" cases, to which the defense industrial and technology base will need to respond. Such an effort will also require an assessment of current strengths and weaknesses in the base and its ability to mobilize and respond. Policy makers must also plan future DoD procurement and research budgets in ways that reflect these security requirements and provide some resource predictability for planners within the production (manufacturing and services) and research base.

To evaluate the existing capabilities of the defense industrial and technology base, policy makers will require better information than is currently available on the composition of the base at the prime and subcontracting levels; bottlenecks in research, production and supply; and the potential costs (in terms of price, time, efficiency, and preparedness) of various production and research funding decisions currently being made on major DoD programs. In addition, attention must be directed toward measuring and identifying the effect of foreign supplied goods and technologies on the defense industrial base and its ability to meet U.S. National security objectives in a time of crisis.

PROVIDING THE INCENTIVES FOR DEFENSE/COMMERCIAL INTEGRATION

Current DoD acquisition and cost recovery policies constitute a significant barrier to greater defense/commercial integration. We urge the Congress and DoD to modify defense acquisition, military specification and contractor oversight policies in order to meet the following six goals:

(1) To encourage greater contractor investment in cost-saving technologies and process improvements within the base, thus making firms more efficient and competitive in the commercial market;

(2) To bring greater realism and stability to development and production funding over the long-term, allowing firms to anticipate demand, plan accordingly and limit the risk associated with contracting in a declining market;

(3) To lower the overhead costs associated with defense production, making defense contracting more appealing to the private sector and opening up DoD procurement to greater numbers of commercial producers;

(4) To reduce the risk associated with developmental contracts, raising the potential return on R&D investments and encouraging the dual-use application of defense technologies, thus making such contracts more rewarding and appealing to firms in both sectors;

(5) To ensure continued private sector investment in defense-related R&D, thus levering greater investment in dual-use and commercially-oriented R&D by defense contractors; and

(6) To support the creation of stronger links between the defense/government research sector and the commercial sector, thus helping to promote the transfer and commercialization of technologies from federal laboratories.

These goals can be advanced through a careful review and revision of existing DoD policies, including:

Expanding process improvement programs such as the Manufacturing Technology program (MANTECH) and the Industrial Modernization Incentives Program (IMIP);

Implementing multi-year procurement planning and budgeting, and applying selectively second source contracting for major weapons systems and other large procurement programs;

Reviewing and eliminating many military standards and specifications (MILSPECS) to allow DoD and contractor use of appropriate commercial products and technologies;

Restricting contractor oversight and auditing requirements when a firm's historical performance warrants it;

Avoiding the use of fixed-price contracts for developmental efforts and ensuring full contractor cost recovery for research and development efforts;

Granting contractors greater proprietary data and technical rights on DoD funded research projects;

Enhancing support for the Independent Research and Development (IR&D) R&D cost-recovery program, lifting IR&D cost ceilings and streamlining the cumbersome and costly technical review process, thus letting market forces determine contractor investment;

Placing greater emphasis on the funding of technology base programs;

Using technology base funding and the support of the Defense Advanced Research Projects Agency (DARPA) to support the development of dual-use technologies; and

Institutionalizing closer collaboration between DoD and the military services, as well as between DoD and other federal agencies that are involved in technology development, such as the Departments of Energy, Commerce and Agriculture, NASA and the National Institute for Science and Technology (NIST).

The members of the Task Force who endorse this statement are listed below. While each of the signatories supports the broad thrust and overall recommendations contained in the statement, they may not necessarily agree with every specific phrase.

Senator Tim Wirth, Colorado, Task Force Chairman.

Dr. Gordon Adams, Director, Defense Budget Project.

Mr. Norman Augustine, President, Martin Marietta Corporation.

Dr. Barry Blechman, Chairman, Henry L. Stimson Center.

Representative Tom Campbell, California.

Governor John Carlin, former Governor, State of Kansas.

Governor Richard Celeste, former Governor, State of Ohio.

Dr. Robert Costello, Hudson Institute.

Mr. Sandy McDonnell, Chairman Emeritus, McDonnell Douglas Corporation.

Dr. William J. Perry, Chairman, Technology Strategies and Alliances.

Mr. Harold Palmer Smith.

Mr. Preston Townley, President, The Conference Board.

Dr. Murray Weidenbaum, Washington University.

Mr. J. Fred Weintz, Jr., Limited Partner, Goldman Sachs and Co.

Mr. Earle Williams, President, BDM International Corporation.

Mr. Charles Zracket, The MITRE Corporation.

[CBO Staff Memorandum]

IMPLICATIONS OF ADDITIONAL REDUCTIONS IN DEFENSE SPENDING, OCTOBER 1991

In view of the worsening outlook for the deficit and the evolving situation in the Soviet Union, some Members of Congress have raised the possibility of making cuts in defense spending that are greater than those planned by the Administration and required by the Budget Enforcement Act of 1990. This Congressional Budget Office (CBO) staff memorandum, prepared at the request of the Chairman of the Senate Budget Committee, examines two defense spending paths. The Chairman specified the main aspects of each alternative. The first alternative would reduce national defense budget authority to $275 billion by 1997, compared with about $305 billion under the Administration's plan. The second scenario would lower the national defense budget to $250 billion by that same year. In keeping with CBO's mandate to provide neutral and nonpartisan analysis, this memorandum discusses the implications of these two alternatives but makes no recommendations about their desirability.

This memorandum was prepared by R. William Thomas under the supervision of Robert

F. Hale. Barbara Hollinshead, Raymond J. Hall, William P. Myers, Amy Plapp, and Lisa Siegel of CBO's Budget Analysis Division prepared the estimates of defense costs under the supervision of Michael A. Miller. Questions regarding the force implications of these cuts may be addressed to William Thomas at 226-2900; budgetary questions should be addressed to Barbara Hollinshead at 226-2840.

INTRODUCTION AND SUMMARY

The Soviet military threat continues to recede. The collapse of a strong central government in the Soviet Union seems to reinforce earlier judgments by intelligence professionals that Soviet conventional military forces no longer represent an immediate threat to the security of the United States and Europe. Ratification of the Conventional Forces in Europe (CFE) Treaty will confirm a momentous reduction of armaments in the European theater, the area where the two most costly wars of the twentieth century have begun. The leaders of the United States and the Soviet Union have recently signed the Strategic Arms Reduction Talks (START) Treaty, the first such accord to mandate reductions in strategic warheads. Moreover, each head of state has since ordered the elimination of thousands of tactical nuclear weapons and proposed even more significant steps to limit strategic forces.

At the time, the deficit outlook for the United States has deteriorated. The Congressional Budget Office (CBO) predicts that in 1992 the deficit will reach $362 billion. Although the deficit is expected to decrease in the years beyond 1992, it will remain substantial through the decade if no further deficit reduction measures are adopted. Because of the magnitude of the projected deficit, the Congress is constrained in its ability to commit additional resources to social needs, such as health care, education, research, and investment in public infrastructure. Indeed, spending for nondefense activities would actually have to be reduced in real terms in 1994 and 1995 if the Congress approves the defense budget the Administration proposed while also complying with the limits last year's budget agreement set.[1]

One way to reduce the federal deficit or to provide more resources for nondefense spending is to impose heavier cuts on defense spending than those proposed by the Administration. This Congressional Budget Office staff memorandum examines two alternative defense budget paths that were specified by the Chairman of the Senate Budget Committee. The first of these would reduce national defense budget authority to $275 billion by 1997, and additional reduction of about $30 billion, or 10 percent, beyond the cuts the Administration proposed. The second alternative would achieve a national defense budget of $250 billion by 1997, an additional reduction of about $55 billion, or 18 percent (see Table 1). In the first scenario, active-duty military personnel would be reduced by 90,000 a year, while the second envisions a decrease of 110,000 a year.

TABLE 1.—ALTERNATIVE NATIONAL DEFENSE BUDGETS

[In billions of current dollars]

	1992	1993	1994	1995	1996	1997	Total 1993–97
Administration's budget projection[1]							
Budget authority	290.8	290.9	295.0	297.9	300.3	304.9	1,489.0

[1] See testimony of Robert D. Reischauer before the Senate Budget Committee, July 16, 1991.

TABLE 1.—ALTERNATIVE NATIONAL DEFENSE BUDGETS—Continued

[In billions of current dollars]

	1992	1993	1994	1995	1996	1997	Total 1993–97
Outlays	298.2	292.8	289.9	291.4	295.8	294.6	1,464.4
Alternative I:							
Budget authority	290.8	287.8	288.3	286.4	281.4	275.0	1,418.9
Outlays	298.2	291.6	286.5	284.1	281.8	270.4	1,414.4
Alternative II:							
Budget authority	290.8	284.0	278.9	271.7	261.4	250.0	1,346.1
Outlays	298.2	289.7	280.4	273.2	265.7	249.3	1,358.3

[1] As reestimated by CBO. Estimates for 1994 and beyond exclude the change in accrual accounting for retirement costs proposed by the Administration and thus exceed figures reported by the Administration by about $3 billion. Outlay estimates reflect CBO assumptions about timing of outlays.

Source: Congressional Budget Office.

Alternative I, which reduces defense spending to $275 billion by 1997, would save a total of $70 billion of budget authority, or 5 percent of the Administration's projected funding for the 1993–1997 period. Savings in outlays would total $50 billion over the same period. Two-thirds of the reduction in budget authority—nearly $47 billion from 1993 through 1997—would be drawn from the investment appropriations. This represents 7 percent of the investment spending planned by the administration for the five-year period. A reduction of this size could mean canceling one or two major modernization programs and delaying several others. By 1997, under the across-the-board cuts assumed in this memorandum, the active-duty military would be about 12 percent smaller than the Administration's base force. The forces that would remain, however, would be able to maintain their training and operating tempos at current rates and would not lack equipment.

Alternative II, which achieves a $250 billion national defense budget by 1997, would reduce defense budget authority below the Administration's plan by $143 billion, or 10 percent, in the 1993–1997 period. Of this amount, $86 billion—almost twice the amount in Alternative I—would be cut from investment programs the Administration plans. Savings of this magnitude could require canceling several major acquisition programs and delaying others. Military forces would be nearly one-fifth smaller than the Administration's planned base force by 1997 under this alternative The forces that would remain might, because of the investment reductions, need to continue to operate older equipment longer than planned, but they would retain the funding necessary to maintain readiness at current levels.

Although this memorandum addresses implications of the alternative budget cuts on military forces, personnel and readiness, and investment, it does not attempt to determine whether the defense forces that would be retained under the smaller budgets would be adequate to meet U.S. security needs.

THE ADMINISTRATION'S PROPOSED DEFENSE REDUCTIONS

The Administration's plan for reducing the military establishment calls for cutting the number of active-duty military personnel to 1.63 million by 1997, a 21 percent reduction from the 1990 level of 2.07 million, with selected reserve forces reduced by almost the same percentage. Table 2 specifies the forces that are planned for 1997, the final year of DoD's Future Years Defense Program (FYDP). The Administration refers to these forces as the "base force." Twelve active Army divisions would remain in the base force, down from 18 in 1990, while the 10 existing National Guard divisions would be consolidated into six. Air Force tactical fighter wings would be reduced from 36 to 26, with all but one of those that would be eliminated being taken from the active component. The number of active and reserve Navy combatant ships would be reduced to 448, down from 545 in 1990. Twelve aircraft carriers would remain in the base force, together with 11 active and two reserve air wings.

TABLE 2—PROPOSED MILITARY FORCE REDUCTIONS

	1990	Base force[1]	Percentage reduction
Active forces:			
Ground Forces:			
Army divisions	18	12	33
Marine brigades	9	[2]7	22
Naval Forces			
Aircraft carriers	13	12	8
Carrier air wings	13	11	15
Ships[3]	545	448	18
Air Force			
Tactical fighter wings	24	15.5	35
Strategic Forces			
Land-based ICBMs	1,000	550	45
Sea-launched ballistic missiles	608	432	29
Strategic bombers (PAA)	228	181	21
Reserve forces:			
National Guard divisions	10	6	40
Marine brigades	3	3	0
Carrier air wings	2	2	0
Tactical fighter wings	12	11	8

[1] Forces planned for 1997 by the Administration.

[2] Estimated by Congressional Budget Office based on U.S. Marine Corps personnel reduction.

[3] Includes reserve forces ships.

Source: Statement of General Colin Powell before the House Appropriations Committee, Subcommittee on Defense, September 25, 1991, except as noted.

Note: ICMB=intercontinental ballistic missiles.

Budgetary implications

The Administration's changes in military forces, together with changes in investment spending, would result in military budgets substantially lower in real terms than that of 1990. In the President's national defense budget, as reestimated by CBO, national defense budget authority (expressed in constant 1992 dollars) would decline by 21 percent between 1990 and 1995, with an additional reduction of 6 percent planned for 1995 and 1997.

The reduced level of budget authority for 1992 and 1993 complies with the limits imposed by the Budget Enforcement Act of 1990. The act limits overall discretionary expenditures beyond 1993 but does not impose separate limits on defense or other budget categories. The Administration's budget proposals for 1994 and 1995 suggest that both defense and nondefense discretionary expenditures would be reduced in real terms in order to comply with the limits in the act.

ALTERNATIVE I. A REDUCTION TO $275 BILLION BY 1997

The first alternative examined in this memorandum sets the target level of national defense budget authority at a nominal level of $275 billion in 1997, about 10 percent below the Administration's proposed budget figure of $305 billion.[2] Reductions in active-duty personnel under Alternative I would amount to 90,000 people in each year between 1993 and 1997. This would leave 1.44 million people on active duty in 1997, compared with about 1.63 million under the Administration plan.

CBO makes several other assumptions in this memorandum about the nature of the additional reductions. It assumes that the

[2] The Administration estimates the Department of Defense's total obligational authority in 1997 at $288 billion. CBO projected 1996 data for other elements of the national defense budget (chiefly Department of Energy defense programs) to arrive at the $305 billion figure.

number of selected reserve personnel will not be reduced by more than the Administration has proposed, which is consistent with the spirit of recent Congressional action. Indeed, the House and Senate have not even accepted all of the Administration's proposed cuts in reserve forces for 1992.

In order to avoid reducing funds available for activities related to readiness, money in the operation and maintenance appropriation (which pays for many day-to-day operating costs) is assumed to be reduced in proportion to reductions in spending for personnel. After spending reductions for personnel and for day-to-day operating activities are calculated, all remaining savings would be achieved by reducing spending for investment. The various categories of investment funds (procurement; research, development, test, and evaluation; military construction; and defense investment by the Department of Energy) are assumed to be reduced in proportion to their current budget shares. Finally, to avoid imposing precipitous budgetary cuts, reductions are assumed to begin in 1993 and to increase gradually through 1997.

Budgetary savings

Budgetary savings would be substantial under Alternative I. Compared with the Administration's plan, the alternative would reduce defense budget authority by about $30 billion, or 10 percent, in 1997 and by a total of about $70 billion, or 5 percent, over the 1993–1997 period (see Table 3). Savings in the investment appropriations equal $47 billion in 1993–1997. Thus, the investment appropriations contribute about two-thirds of the total savings in budget authority, but make up only 44 percent of overall spending in 1993–1997. Operating savings of $23 billion make up the balance of the total savings in budget authority.

TABLE 3.—REDUCTIONS BELOW THE ADMINISTRATION'S BUDGET UNDER ALTERNATIVE I

[In billions of dollars]

	1993	1994	1995	1996	1997	Total
Operating appropriations:						
Military personnel	0	0.1	0.8	2.8	6.4	10.0
Operation and maintenance	0	.1	.9	3.1	7.2	11.3
Other	.1	.2	.4	.5	.7	1.9
Subtotal	.1	.4	2.0	6.4	14.4	23.2
Investment appropriations:						
Procurement	1.6	3.3	5.4	7.1	9.0	26.5
Research, development, test and evaluation	1.0	1.9	2.7	3.4	4.1	13.1
Military construction	.1	.3	.5	.6	.7	2.3
Atomic energy	.3	.6	1.0	1.4	1.7	4.9
Subtotal	3.0	6.3	9.5	12.5	15.5	46.8
All appropriations:						
Budget authority	3.1	6.7	11.5	18.9	29.9	70.0
Outlays	1.1	3.3	7.3	14.0	24.2	50.0

Source: Congressional Budget Office.

Note: All data are shown as reductions budget authority, except for the final line, which shows outlay reductions. Numbers may not add to totals because of rounding.

Alternative I would also result in substantial reduction in defense outlays. Compared with the Administration's plan, outlays would be reduced by about $50 billion during the 1993–1997 period. Reductions in the investment appropriations produce $29 billion, or 58 percent of this amount, as compared with $21 billion, or 42 percent, from reduced operating and support outlays.

The budgetary reductions under Alternative I would be substantially larger than those the Administration proposed. Alternative I would result in an average real decline in total national defense budget authority over the 1993–1997 period of about 5 percent a year, compared with an average annual real decline of 3 percent under the Administration's defense plan. By 1997, the $275 billion national defense budget would be about 33 percent smaller in real terms than the budget in 1990, compared with a reduction of 26 percent under the Administration's plan.

The $275 billion budget would, after adjustment for inflation, approximately equal defense budgets in the mid-1970s, when defense spending fell to its lowest level since 1950. However, the budget under Alternative I would considerably exceed the level of defense spending during the 1947–1950 period, between World War II and the Korean conflict.

Reduction in numbers of forces

DOD has many ways to reduce its active-duty military forces to accommodate the additional reduction in active-duty military personnel assumed in Alternative I. To illustrate one possible outcome, Table 4 shows reductions in numbers of forces, assuming that, compared with the Administration's plan, the number of active forces in each service is reduced below the Administration's proposed level by 12 percent, the same percentage by which overall active-duty personnel are reduced. There are no additional cuts in reserve forces beyond those proposed by the Administration. The method used to generate the force cuts under Alternative I assumes that additional cuts are made proportionately by each military service and that support functions (for example, training, medical care, and administration) are reduced in proportion to cuts in combat forces.

TABLE 4.—REDUCTIONS IN ACTIVE-DUTY MILITARY FORCES UNDER ALTERNATIVE I BY 1997, ASSUMING PROPORTIONAL CUTS

	Administration's Base Force	Alternative I	Reduction
Army divisions	12	10⅔	1⅓
Carrier battle groups	12	10 or 11	1 or 2
Navy ships	448	396	52
Air Force tactical fighter wings	15½	13½	2
Active Marine Corps brigades	7	6	1

Source: Congressional Budget Office.

An additional cut of 12 percent in Army forces would result in the elimination of about one and one-third divisions (four combat brigades) together with their supporting forces. This would leave the Army with fewer than 11 active divisions. The reduction of Navy personnel could result in the elimination of one or two carrier battle groups (leaving 10 or 11) and the loss of 52 combatant and support ships (leaving 396). The Air Force would have to reduce its 15.5 tactical fighter wings by 2, leaving 13.5, and make concomitant reductions in airlift, strategic bombers, and tanker forces. The active component of the Marine Corps would lose one more brigade, reducing each of the three active Marine Expeditionary Forces to a two-brigade unit by 1997.

The across-the-board pattern of reductions could be altered if disproportionately large reductions were made in certain categories of forces. Table 5 illustrates some possibilities. For example, if a decision were made to eliminate three tactical fighter wings, rather than the two wings that were eliminated under the across-the-board cuts, then savings in operation and support costs would increase by $2 billion in 1993–1997. Those savings could be used to minimize reductions in other types of units, whose operation costs are also shown in Table 5.

TABLE 5.—SAVINGS UNDER ILLUSTRATIVE OPTIONS THAT REDUCE OPERATION AND SUPPORT SPENDING

[In billions of dollars of budget authority and thousands of persons]

Force(s) eliminated	Average annual savings	Total savings in 1993–97	Reduction in personnel
Heavy army division (Europe) (3 brigades)	2.4	12.0	46
Active round-out division in U.S. (2 brigades)	1.8	8.8	34
Marine expeditionary brigade	1.0	5.0	20
Aircraft carrier battle group	1.1	5.6	19
Carrier air wing	.4	2.0	6
10 Attack submarines	.4	1.8	5
Tactical fighter wing	.4	2.0	6
50 Minuteman missiles	.1	.5	1
20 B–52 bombers	.3	1.7	5
1 Poseidon submarine	.1	.5	1

Source: Congressional Budget Office.

Note: Annual savings in operation and support costs and personnel include direct, indirect, and overhead figures. Savings for the period 1993–1997 assume that the reduction is implemented in 1993.

More far-reaching changes could also be made in some types of forces. Some observers have proposed that, in the wake of improvements in relations between the United States and the Soviet Union, the two superpowers should seek significant reductions in their nuclear weapons. If such reductions could be achieved within a few years, reductions in conventional military forces could be even smaller than those proposed in Alternative I while still achieving the required budgetary savings.[3] The implications of making deep strategic cuts in the context of the overall budget limits set by Alternative I are presented in the Appendix.

Effects on personnel and readiness

Under Alternative I, active-duty personnel would be reduced by 90,000 a year, compared with the Administration's proposed annual reductions averaging 52,000 in the 1993–1997 period. In view of the smaller size of the military under the alternative, the services could further reduce the numbers of new personnel they bring in. Relying exclusively on cuts in enlistments, however, would unbalance the military's grade structure. In the short run, promotions would be slowed and senior personnel would be forced to perform the work of more junior personnel; in the longer run, a shortage of people qualified to fill leadership roles could develop.[4] Therefore, the services probably would involuntarily separate even more personnel than under the Administration's plan. Alternatively, the Congress could enact an early retirement plan or other monetary incentive designed to increase the number of voluntary departures. The savings shown for this alternative, however, implicitly assume that additional losses represent involuntary separations and that no new separations benefits are made available.

Reducing the size of the military at a faster pace may add to the burden the services bear during the transition, but should not affect readiness of the forces that remain after the drawdown is complete. As units are eliminated, personnel who still have tours of duty to complete will need to be reassigned, perhaps physically moved, and often retrained for new jobs. Transferring equipment or preparing it for storage will absorb time that might otherwise be spent on training activities. Thus, some loss in overall military readiness is likely during the transition

[3] See testimony of Robert D. Reischauer before the Senate Committee on Foreign Relations, September 25, 1991, for estimates of savings from reducing strategic forces.

[4] For a more complete discussion of personnel issues, see Congressional Budget Office, "Managing the Reduction in Military Personnel," July 1990.

period. The larger cuts that Alternative I imposes could exacerbate these problems. However, once this transition period is past, the day-to-day operating funds available to a typical unit will remain unchanged from current levels and training and activities related to readiness could continue largely intact.

Changes in investment

Alternative I would cut $15.5 billion from DoD's investment program in 1997 and a total of $46.8 billion for those programs in 1993 through 1997 (see Table 3). CBO assumes that cuts in procurement, research and development (R&D), military construction, and defense investment programs in the Department of Energy are proportional. Thus, procurement cuts would amount to $9 billion in 1997 and $26.5 billion in the 1993–1997 period. Research and development cuts would amount to $4.1 billion in 1997 and $13.1 billion over the five-year period. These numbers are, of course, only representative of the magnitude of the cuts required. The actual mix of procurement and R&D cuts could vary to reflect the priorities of the Congress and the Administration.

Investment savings of these magnitudes could be accomplished by delaying a number of acquisition programs. Alternatively, the Administration and the Congress could accomplish most of the reduction by terminating or scaling back a few large programs. Table 6 lists some examples of specific reductions, together with potential savings.

TABLE 6.—SAVINGS UNDER ILLUSTRATIVE OPTIONS THAT REDUCE INVESTMENT SPENDING

[In billions of dollars of budget authority]

Option	Reduction
Reduce funding for modernization of armored systems [1]	2.3
Cancel C–17 airlift aircraft [2]	19.4
Terminate production of new B–2 bomber	20.9
Reduce spending for strategic defense initiative [1]	20.3
Cancel national aerospace plane [1]	1.4
Cut development and testing of nuclear warheads by one-third [1]	13.0
Cancel F–22 program [2]	11.8
Cancel aircraft carrier purchase	4.2
Cancel SSN–21 submarine program [2]	17.3

[1] 1993–94 compared with the administration proposals.

[2] For a discussion of pros and cons, see Congressional Budget Office, "Selected Spending and Revenue Options," June 1991.

[3] Some of the savings might have to be devoted to purchases of other systems to meet mission needs.

Source: Congressional Budget Office.

Note: These options are presented as illustrations, not as recommendations.

ALTERNATIVE II. A REDUCTION TO $250 BILLION BY 1997

Alternative II would achieve a national defense budget of $250 billion by 1997. Reductions in the number of active-duty personnel would be set at 110,000 a year, leaving the 1997 active-duty level at 1.34 million persons.

The assumptions made in analyzing Alternative II are generally the same as those used in analyzing the first alternative, with one important exception. Under Alternative II, it is assumed that the number of selected reserve personnel would be reduced about 22 percent below the Administration's proposal. Thus, by 1997, selected reserve forces would total about 700,000 people under this alternative, as opposed to the 906,000 in the Administration's plan (see Table 7 for details).

TABLE 7.—ALTERNATIVES FOR REDUCING SELECTED RESERVE PERSONNEL

[In thousands]

	1990 level	Base force and alternative I	Alternative II
Army National Guard	347	321	250
Army Reserve	299	230	180
Navy Reserve	149	118	90
Marine Corps Reserve	45	35	30
Air National Guard	117	119	90
Air Force Reserve	81	82	60
Total	1,128	905	700

Sources: Office of the Assistant Secretary of Defense (Reserve Affairs) for 1990 and Base Force; Congressional Budget Office for Alternative II.

Budgetary savings

Under Alternative II, reductions in budget authority below the Administration's proposed level would amount to about $55 billion or 18 percent in 1997, and would total $143 billion or about 10 percent in the 1993-1997 period (see Table 8). The resulting budgets would be smaller than all budgets since 1950, but still about 10 times larger than pre-World War II military budgets.

TABLE 8.—REDUCTIONS BELOW THE ADMINISTRATION'S BUDGET UNDER ALTERNATIVE II

[In billions of dollars]

	1993	1994	1995	1996	1997	Total
Operating appropriations:						
Military personnel	0.5	1.8	3.7	7.0	12.0	24.9
Operation and maintenance	.5	2.0	4.1	8.0	13.5	28.2
Other	.2	.5	.7	1.0	1.2	3.6
Subtotal	1.2	4.4	8.5	16.0	26.7	56.8
Investment appropriations:						
Procurement	3.1	6.3	10.0	13.0	16.4	48.7
Research, development, test, and evaluation	1.9	3.7	5.0	6.3	7.4	24.2
Military construction	.2	.6	.9	1.1	1.4	4.2
Atomic energy	.6	1.2	1.8	2.5	3.0	9.1
Subtotal	5.8	11.7	17.6	22.9	28.1	86.1
All appropriations:						
Budget Authority	7.0	16.1	26.1	38.9	54.8	142.9
Outlays	3.0	9.5	18.1	30.1	45.5	106.1

Source: Congressional Budget Office.

Note: All data are shown as reductions in budget authority, except the final line, which shows outlay reductions. Numbers may not add to totals because of rounding.

Outlay reductions under this alternative would total $106 billion in the 1993–1997 period. Reductions in 1994 and 1995 would be about three-quarters of those needed to avoid any real reductions in nondefense spending while still complying with last year's budget agreements.[5]

Changes in numbers of forces, personnel, and readiness

The additional 100,000 active-duty personnel eliminated under Alternative II would require somewhat larger cuts in active-duty forces than the cuts under Alternative I. If cuts in the military services were made as they were in Alternative I, each service would be reduced about 18 percent more than it would be under Administration plans. For the Army, this would result in the elimination of two divisions (six combat brigades) from the active component, leaving 10 divisions (see Table 9). Four combat brigades would be eliminated from the Army's reserve components, leaving fewer than five National Guard division. The reduction in Navy personnel could result in the elimination of two carrier battle groups (leaving 10) and the loss of about 80 combatant and support ships from the 448-ship fleet in the base force. The Air Force would be reduced to 12.5 tactical fighter wings in the active component and about 8.5 in the reserved component. Although the active component of the Marine Corps could retain three divisions, each with two brigades, the reserve division would lose one of its three brigades.

TABLE 9.—REDUCTIONS IN MILITARY FORCES UNDER ALTERNATIVE II BY 1997, ASSUMING PROPORTIONAL CUTS

	Administration's base force	Alternative II	Reduction
Active forces:			
Army divisions	12	10	2
Carrier battle groups	12	10	2

TABLE 9.—REDUCTIONS IN MILITARY FORCES UNDER ALTERNATIVE II BY 1997, ASSUMING PROPORTIONAL CUTS—Continued

	Administration's base force	Alternative II	Reduction
Navy ships	448	368	80
Air Force tactical fighter wings	15½	12½	3
Marine Corps brigades	7	6	1
Reserve forces:			
National Guard divisions	6	4⅔	1⅓
Tactical fighter wings	11	8½	2½
Marine Corps brigades	3	2	1

Source: Congressional Budget Office.

Because it cuts more personnel and forces, this alternative would make the transition to a smaller force more difficult. For example, involuntary separations of career military personnel might increase by about 100,000, compared with those necessary under the Administration's plan. Faced with this increase, the Congress might feel it necessary to increase incentives for voluntary

[5] For a more complete discussion of this issue, see testimony of Robert F. Hale before the Senate Budget Committee, July 16, 1991.

separation in order to ease this burden. Once this transition period passed, however, the readiness of the remaining units should not be adversely affected.

Effects on Investment

Reductions in investment spending would be substantial under Alternative II. Investment funding in 1997 would be reduced by $28 billion, a reduction of 21 percent below the Administration's proposal (see table 8). The total reduction of $86 billion through 1997 would represent a cut of 13 percent in the Administration's planned investment spending for that period. Assuming the proportional cuts that are used in analyzing these alternatives, procurement programs would have to be reduced below the Administration's request by $16.4 billion (21 percent) in 1997 and research and development appropriations by $7.4 billion (21 percent).

Achieving these substantial additional cuts in investment would require canceling a number of the larger defense procurement and research programs and slowing acquisition of other weapon systems. Reductions in minor procurement would also be required.

The cutbacks that would occur under this example could increase shortfalls in spending for procurement over the long run. During the next decade or so, the Administration plans to equip many military units with new and expensive weapons. CBO estimates that under the Administration's plan, procurement budgets in the next decade would have to rise substantially above levels planned for the mid-1990s.[6] The additional reductions in funding for procurement under this alternative could exacerbate this problem. However, further reduction in numbers of forces under this alternative would reduce long-term procurement needs. Reductions in procurement might also prompt the services to hold down the cost of new weapons, thus helping to minimize shortfalls in procurement funding over the long run.

Near-term effects of Alternative II on the defense industrial base may be of even greater concern. Procurement budgets have fallen sharply in recent years, the legacy of large budgets in the 1980s combined with the reductions in forces and tight budgets expected in the 1990s. Coupled with the high prices of many new weapons, the lower procurement budgets of the 1990s will eliminate the purchase of many types of arms. The predictable result: the industrial base for weapons production will shrink, perhaps jeopardizing the ability of the United States to produce weapons in large quantities later in the 1990s or in the next decade, should that be needed. The substantial reductions in procurement under Alternative II could heighten concern over this problem.

OTHER APPROACHES

Other approaches to cutting defense spending are certainly possible. The pattern of reductions laid out in the two alternatives presented above limits the pace of cuts in personnel, leaving the balance of cuts to come out of spending for investment. Within each category, the alternatives assume proportionate cuts in individual appropriations. The Congress, however, has many other options if it determines that additional cuts in defense spending are appropriate. It could cut only active forces, or both active and reserve forces. It could reduce the appropriation for day-to-day operating costs (operation and maintenance) beyond those cuts assumed here, either by mandating additional efficiencies in day-to-day operations or by limiting funds for training and support.

Within the investment accounts, the Congress could follow the lead of the Administration and favor research and development funding by making larger reductions in procurement appropriations at a time when the services enjoy equipment surpluses. Conversely, it might seek additional cuts in research and development appropriations, restoring them to their historical balance with procurement spending. Planning future defense budgets will require careful consideration of the nation's military priorities and may depend, as well, on how the world political situation evolves.

APPENDIX

A DEEPER CUT IN STRATEGIC FORCES

Recent days have seen dramatic proposals by Presidents Bush and Gorbachev to eliminate land-based tactical nuclear warheads and to negotiate major reductions in strategic warheads. Smaller reductions in spending for conventional forces would be possible if the Administration and the Congress were to agree to a schedule and program for such strategic reductions. This Appendix describes one illustrative example.

The example, which constitutes a third alternative, postulates that the United States would reduce strategic nuclear warheads to a total of 6,000 by 1997, as compared with the approximately 10,500 strategic warheads it would possess under the START treaty limits. The Soviet Union would also limit its warheads to 6,000.

The resulting strategic force, although smaller than current forces, would still provide the United States with substantial ability to absorb a first-strike attack and retaliate against a wide variety of targets. The United States would retain a triad of delivery systems, consisting of 97 B-1 and 30 B-2 bombers, 18 Trident ballistic missile submarines, and land-based missiles. But under this approach, a number of current Administration initiatives to modernize forces would be terminated or scaled back. In particular, the option assumes that the small intercontinental ballistic missile program would be terminated, only 30 B-2 bombers would be bought, and that fewer Advanced Cruise Missiles and D5 Trident missiles would be purchased than current Administration proposals specify. This illustrative example also assumes that the United States and the Soviet Union agree to reduce the number of strategic warheads to 6,000 in time to begin making the cuts in 1993. If they were to agree later, savings would be smaller in the 1993-1997 period.

This alternative would draw a much greater share of its overall savings from strategic programs than would Alternative I. Reductions in strategic programs, compared with the Administration's plan, would save $26.3 billion over the 1993-1997 period, leaving about $44 billion to be achieved through cuts in conventional force programs (see Table A-1). Only some $24 billion would be saved from operating budgets over the five-year period.

TABLE A-1. REDUCTIONS BELOW THE ADMINISTRATION'S BUDGET UNDER ALTERNATIVE III

[In billions of dollars]

	1993	1994	1995	1996	1997	Total
Operating appropriations:						
Strategic forces	0.7	0.9	1.2	1.5	1.6	5.9
Conventional forces	0.	0.	.8	4.9	12.8	18.5
Subtotal	.7	.9	2.0	6.4	14.4	24.4

TABLE A-1. REDUCTIONS BELOW THE ADMINISTRATION'S BUDGET UNDER ALTERNATIVE III—Continued

[In billions of dollars]

	1993	1994	1995	1996	1997	Total
Investment appropriations:						
Strategic forces	2.8	1.8	2.2	6.9	6.7	20.4
Conventional forces	0.	4.0	7.3	5.6	8.8	25.7
Subtotal	2.8	5.8	9.5	12.5	15.5	46.1
All appropriations:						
Budget authority	3.5	6.7	11.5	18.9	29.9	70.5
Outlays	1.6	3.6	7.2	13.9	24.3	50.5

Source: Congressional Budget Office.

Note: All data are shown as reductions in budget authority, except for the final line, which shows outlay reductions.

Conventional force reductions would still be necessary to meet the overall target for reducing military personnel set in Alternative I. Strategic force reductions provide relatively little savings in personal and operating costs. This alternative, however, would delay the schedule for implementing the conventional force reductions described in Alternative I by about two years, thus giving the Congress and the Administration more time to assess international developments before initiating the process of reducing conventional forces below the Administration's base force level.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

Mr. NUNN. I yield the Senator from Tennessee 5 minutes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for 5 minutes.

Mr. GORE. My thanks to my distinguished chairman, my colleague, the Senator from Georgia.

What we are hearing here today is that this process has begun to break down in serious ways. It needs attention. We cannot fix it here today. But what happened yesterday and what happens with this bill here today serves notice on the Senate that, as the new session begins in January, we really have to think about some major changes in the way the process works.

I say this with regret because, in many ways, the process has worked in that the personal relationships between the authorizers and the appropriators are very good and strong, and on a number of issues the appropriators have been very responsive to members of the authorizing committees.

In my own case, I would like to note my appreciation for the fact that the appropriators moved toward the authorizing bill on the issue of the small ICBM and mobility in a way which preserves this option and confronts the administration with an opportunity to make a major strategic choice wisely which can save money and move us and the Soviet Union toward a stable balance.

I also want to acknowledge the grain of truth in what my colleague from New Mexico said earlier about the fact that a lot of agencies and departments get money appropriated when they are not authorized. That is true. The breakdown really began in the willingness of Congress, beginning some years ago, to allow agencies and major parts

[6] See, for example, Testimony of Robert F. Hale before the Subcommittee on Projection Forces and Regional Defense of the Senate Armed Services Committee, June 14, 1991.

of the Government to continue operating without being authorized. But that has not been the case with the Pentagon. It has not been the case with the Armed Services Committee.

I hold no brief here that our chairman is more able than any other chairman in either body of Congress. But he is pretty able. And we who serve on that committee have tried very hard to make sure that there is an authorizing bill every year that pays careful attention to every detail that has to be authorized. And where the process is working, for the Congress to then sanction an action that ignores the work that has been put in is wrong. I think it is unfortunate that to that extent cooperation between defense authorizers and appropriators has broken down.

Those of us who have worked hard on the authorizing legislation are left with the feeling that this year, the process has not done justice to our labors. We are also left with the feeling that precedents are being set which make it increasingly difficult—perhaps even impossible—to justify what we are all doing as a rational and, somehow, coherent process.

If we are spending too much money overall—and I believe we are—then why not put the burden back on the appropriators to find an authorizing bill before appropriating? That will, over time, cut down on what is approved and authorized and appropriated overall.

Let me just give two concrete examples of what leaves me feeling dissatisfied and inclined to vote against the bill before us. I have worked hard for the last 2 years on the Strategic Environmental Research and Development Program. Senator NUNN and I have brought this forward, and others on the committee worked to improve it. The program is designed to stimulate and finance innovative research into environmental issues with a view toward helping the Departments of Defense and Energy better handle their environmental challenges. Other aspects of the program are aimed to promote data exchange across the barriers between the defense establishment and the private sector in areas of environmental concern.

To manage this process, our legislation created a carefully balanced governing council of officials from both DOD and DOE, backed up by a science advisory board drawn broadly from the community of nongovernmental experts. We worked hard to devise a system that would look hard for good programs to back, that would make well-considered choices in an atmosphere as objective as we could make it.

Now let us look at the outcome of the process. This year's appropriations bill takes $25 million out of the total $150 million appropriated for SERDP, and mandates that it will be spent at one particular institution for one particular kind of research that has not been peer reviewed, has not been examined by any of the members of this science advisory council, and has no backing from the SERDP governing council.

The question of the merit of this directed application is not an issue here, nor are the intentions of the principal sponsor of this particular project at issue here. I am sure that one could find some merit. I know that those enthusiastic about it believe it is merited, but it ought to compete. It ought to be considered along with the other projects that need priority attention. What bothers me is that this proposal did not have to compete against others, was never evaluated against others, and will go forward at the expense of all other possibilities.

Now, the second example. I worked hard for 2 years to get data from the intelligence community made available to environmental scientists when the national security data is scrubbed out of it. I have worked very carefully with the chairman of the Intelligence Committee, Senator BOREN, with our counterparts in the Intelligence Committee in the other body, with Senator NUNN and the staffs of the Commerce Committee, the Armed Services Committee, and the Intelligence Committee.

In fact, just 2 days ago, I conducted another lengthy roundtable session with intelligence experts and environmental scientists. Now I find in this bill there is allocated $1 million to a consortium for an Earth science information network designed to do precisely this. And to this hour, the combined efforts of the Intelligence Committee staff, the Armed Service Committee staff, and the Commerce Committee staff have been unable to find out where the Earth science information network is, who it is, what it is, who sponsors it. We do not know.

When members of an authorizing committee put 2 years' worth of work in trying to solve a complex set of problems for the benefit of this country, and then in the dead of night the work is partially undone and steered toward a mysterious location which the Intelligence Committee, the Armed Services Committee, and the Commerce Committee cannot even find yet, then the process had broken down. In spite of all the efforts that have been made to cooperate, which are appreciated, overall the process is not working. As a result, I will stand with my chairman, Senator NUNN, and I will vote against this bill.

The PRESIDING OFFICER. The Senator's time has expired. Who yields time?

FUNDS APPROPRIATED TO KANSAS STATE UNIVERSITY, SALINA CAMPUS

Mr. DOLE. Mr. President, I commend the chairman and ranking member of the Defense Appropriations Committee, Senator INOUYE and Senator STEVENS, for their hard work and enduring commitment to our national security. The process of building down our forces while ensuring that our vital interests are secure in this uncertain world is a formidable task. This bill strikes the difficult balance between limited resources, an uncertain security environment, and preservation of our industrial base, and yet, it will keep America strong.

Further, I wish to thank the distinguished chairman and ranking member for their thoughtful consideration and recognition of the leadership displayed by Kansas State University, and particularly the college of technology at the Salina campus in the field of aerospace. It is my understanding that this bill appropriates a grant of $7.7 million to Kansas State University at Salina to purchase equipment and to administer comprehensive professional pilot, aviation maintenance, and avionics training programs.

Mr. INOUYE. The distinguished Republican leader is correct. This bill, as outlined in the conference report, specifically appropriates a grant of $7.7 million for the Salina campus of Kansas State University. These funds are for the purposes stated by the Republican leader. I wish to add that Kansas has long stood at the forefront of world aviation. This is due to the high level of skill and commitment of that great State's work force and to the educators and administrators of Kansas universities and colleges. Kansas has led the Nation in providing state-of-the-art training and educational programs such as this one. Kansas State University is to be commended for this forward thinking and innovative approaches to aerospace engineering, education, and training.

Mr. STEVENS. Mr. President, I agree with the distinguished chairman's characterization of the leadership role that Kansas plays in America's aerospace and defense industry. I want to add that Kansas State University has invested heavily in the ability to extend its fine educational and training services nationwide through satellite transmission. It is my understanding that the Strategic Air Command and the Kansas National Guard are keenly interested in utilizing the educational and training services represented in this grant. I strongly encourage their fullest participation and recommend that all of the military services make the maximum use of this cost effective, state-of-the-art approach to education and training.

Finally, let me note that a full description of the intended use of this $7.7 million grant is not detailed in this report. I would ask the distinguished Republican leader if he wishes, for the record, to outline the program for which these funds will be utilized.

Mr. DOLE. I thank the managers of this bill for their comments. I would

like to provide a brief description of the program that for which this grant is intended. It is my understanding that $7.7 million is to be disbursed by the Department of Defense to Kansas State University. The funds will be used to purchase aircraft, single engine and multiengine flight simulators, equipment for composites and electronics laboratories, turbo engines for laboratory use, a turbine thrust cell, a painting and stripping station, computer hardware and software, avionic stations and associated equipment, a nondestructive ultrasound testing laboratory, and for administrative purposes. Further, it is my understanding that this is a one-time appropriation and that course curriculum and configuration control of this equipment will be the sole responsibility of Kansas State University unless otherwise provided for by the Department of Defense.

Mr. INOUYE. Mr. President, the distinguished Republican leader's understanding of the nature of this appropriations grant to Kansas State University is consistent with my own and reflects the intent of this bill and conference report.

Mr. STEVENS. Mr. President, I agree with my colleague, the distinguished chairman.

Mr. DOLE. Mr. President, I would like to conclude my remarks by commending Jon Wefald, president of Kansas State University and his fine staff, Mel Chastain, Larry Pankratz, Tom Cornelius and others whose superb leadership and tireless efforts will build this program into one of the premier aviation programs in the country. It has been a long time since that day in the early 1960's when, as a junior Congressman from the Kansas First Congressional District, I was notified that Schilling Air Force base in Salina, Kansas, and in my district, was to be closed. I recall trying to get the assistance of then Senators Pearson and Carlson. But, I could not get through to discuss this terrible event. After numerous attempts to get through, Frank Carlson's administrative assistant finally returned my call. I explained that Schilling Air Force Base was going to close and asked what could be done about this. The response provided this junior Congressman with a tough political lesson. The young man on the phone said, "Congressman DOLE, we don't announce base closings in this office, just base openings".

It has been a little over 30 years since I had to make that announcement to the people of Salina. But, I am delighted to announce this base opening—at the very same location.

SHARED FLEXIBLE COMPUTER INTEGRATED MANUFACTURING FACILITY

Mr. DOMENICI. Mr. President, the conference report, in amendment numbered 97, includes the following provision, "* * * not less than $3 million of the funds appropriated in this paragraph [Research, Development, Test and Evaluation, Defense Agencies] shall be made available as a grant only to the New Mexico State University for laboratory and other efforts associated with research, development and other programs of major importance to the Department of Defense."

I would like to take a moment to clarify the importance of this appropriation.

This country's defense capabilities are maintained, in large part, by civilian contractors to the Department of Defense. These contractors, be they large corporations working on multibillion-dollar procurement contracts, or smaller companies with just a few employees, provide essential manpower, materials, and manufacturing know-how that have helped to keep this country's military the most technologically advanced in the world. I believe it is vitally important that we support this correlation between our industrial and manufacturing base and our military might.

Mr. INOUYE. I certainly concur in this sentiment.

Mr. DOMENICI. I thank the chairman. The funding in the bill will help to ensure that we maintain this country's preeminence in the manufacturing of defense and commercial components. The $3 million is to be coordinated by the National Center for Manufacturing Science and provided to the Shared Flexible Computer Integrated Manufacturing Facility at New Mexico State University. This facility will work with small- and medium-sized companies to share resources, technology, personnel, and the most advanced manufacturing equipment. This facility will train personnel so they become familiar with state-of-the-art machine tool technology. These activities will provide opportunities for smaller domestic manufacturers to contribute to the Nation's defense manufacturing base.

Mr. STEVENS. Mr. President, I join Senator DOMENICI in his support for this endeavor. I certainly support efforts that coordinate our commercial and military industrial efforts.

Mr. DOMENICI. Mr. President, I want to thank the chairman and ranking member for their support of this initiative.

Mr. STEVENS. Mr. President, I have in my hand an article entitled "Peer Review: Treacherous Servant, Disastrous Master." It is from the Technology Review for October 1991, a very pertinent article. Let me just quote in part:

Peer review, out of control, makes science a jungle where politics rules and fraud is tolerated.

Another quote:

Peer review suggests trial by a jury of one's peers, a jewel in the crown of Western democracy—surely an excellent model. But it takes more than a jury to have a fair trial. A lynch mob is also a peer panel. Rules and procedures—jury selection, rules of evidence, the requirement that evidence be heard in public—and a judge to interpret and enforce them are necessary if fallible people are to render fair decisions.

Another quote:

Peer review resists investigation. Only insiders know the details of each decision. They may not tell the truth, and the technical background needed to extract the facts is hard for outsiders to learn. Lacking the omniscience of Orwell's Big Brother, we must be content with horror stories of reviewing gone wrong.

Another quote:

The Federal Government uses a variety of ways to decide how to fund science. Department of Defense managers can fund whomever they like, without having to get advice.

A whole series of reviews of the processes of peer review.

I ask unanimous consent this be printed in the RECORD, and I call it to the attention of anyone who wants to talk any more about peer review.

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

[From Technology Review, Oct. 1991]

PEER REVIEW: TREACHEROUS SERVANT, DISASTROUS MASTER

(By Charles W. McCutchen)

"Peer review, out of control, makes science a jungle where politics rules and fraud is tolerated."

Science has become a profession: grants and research contracts are what it lives on. Whereas a rich dilettante like Lord Rayleigh could retire to his country estate and do acoustics or whatever else he wanted, modern scientists must sing for their supper. They do not sing to their patron, the U.S. taxpayer. They sing to other scientists, who wield over them the power of professional life and death via peer review.

Peer review, the evaluation of a specialist's work by others in the same field, is an inevitable consequence of specialization. Example: though anyone can tell if a bridge design is truly bad—the bridge collapses—it makes sense to have other engineers check the plans before the bridge is built. Science uses peer review to determine which projects to pay for and which articles to publish, and, recently, to judge cases of alleged misconduct.

Peer review suggests trial by a jury of one's peers, a jewel in the crown of Western democracy—surely an excellent model. But it takes more than a jury to have a fair trial. A lynch mob is also a peer panel. Rules and procedures—jury selection, rules of evidence, the requirement that evidence be heard in public—and a judge to interpret and enforce them are necessary if fallible people are to render fair decisions. Specialist peer review is fraught with biasing influences. Specialists compete with one another and, at the same time, fight collectively for their profession.

Peer review is at best a treacherous servant, but scientists often forget that a jury trial is more than a jury, and act as if the use of peers automatically sanctifies the resulting decisions. Establishment scientists have been treated well by peer review; scientific administrators use it. Both want to believe in it, and the need engenders beatification by faith. "Peer review is the distin-

guishing characteristic of science," they say. "It makes science what it is."

They are right—in a way. Every scientist is an informal peer reviewer. A scientist's work affects science only if others accept it. But formal review of grant applications, manuscripts, and fraud allegations also makes science what it is, and here human failings can yield improper decisions whose practical consequences and poor ethics propagate throughout science.

Peer review resists investigation. Only insiders know the details of each decision. They may not tell the truth, and the technical background needed to extract the facts is hard for outsiders to learn. Lacking the omniscience of Orwell's Big Brother, we must be content with horror stories of reviewing gone wrong. Though such stories do not directly reveal the frequency of mistakes, they show which human failings are involved, and thus the likelihood of trouble and how to reduce it.

PEER REVIEW AND GRANT GIVING

The federal government uses a variety of ways to decide how to fund science. Department of Defense (DOD) managers can fund whomever they like, without having to get advice. They do not compete for contracts with the scientists they might choose. Instead, they shine in the success of the programs they manage, and should something go wrong in a program, the manager is responsible. These are all good features. Unfortunately, managers are subject to agency politics.

As consultant to a small firm, I watched the Navy fail to give a fair hearing to our best idea, Sea Knife, a fast boat of strange but simple shape that rides smoothly in rough water. We decided that the Navy's small-boat people would not admit that a craft by outsiders might be better than theirs. But having figured a way around this obstruction, we were funded to build Wavestrider, a faster though rougher-riding and more complicated boat. We got unrelated contracts to explore far-out and ultimately unsuccessful forms of marine propulsion. I think these were funded because they threatened no powerful group within the Navy.

At the National Science Foundation (NSF), too, managers make the final funding decisions but with the advice of peer reviewers. Managers benefit from the peers' specialized knowledge but have the authority to correct for peer bias. As at the Defense Department, should something go wrong, the program manager is responsible. For years, George Koo Lea, director of the fluid mechanics program, supported Van Chao Shein Mow, now of Columbia University, for work that was never novel and true at the same time. Workers in his field, the lubrication of animal joints, who disagreed with the professor had trouble getting funded by NSF.

At the National Institutes of Health (NIH), where I have worked since 1964 in biomechanics, optics, and fluid mechanics, peer reviewers effectively make the final decisions; managers are nearly powerless. In each discipline, a peer panel—the study section—evaluates grant applications. By secret ballot, each panel member gives an application a numerical score, and these scores largely decide its fate. An upper, advisory council can fund projects slightly out of the order of their scores without attracting comment, as can program managers. But when whistleblower Robert Sprague, a grantee for many years, did well in the study section but lost out at the advisory council, the event made news.

Since peer review puts a scientist's future at the mercy of competitors, is it any wonder that career issues are a respected, if unadmitted, influence on decisions? Would we not expect mutual assistance pacts to be accepted facts of life? Should we be surprised that politics is especially ripe in disciplines funded by NIH, where the power of scientists over one another is essentially unchecked? Van Mow receives three-fourths of all NIH support of research in joint lubrication and still accomplishes little. For years, those with contrary views received none. Support for research on lubricin, the lubricating chemical in joints, ceased in 1982.

Since power over grants confers power elsewhere, dissent in joint-lubrication research appears only in unrefereed publications such as conference reports and public lectures or in journals of distant fields. Timothy Harrigan and his then supervisor, MIT biomedical engineer Robert Mann, made an important contribution to the theory of how cartilage in joints deforms. Refused by the Journal of Biomechanics, it was accepted by Archives of Rational Mechanics.

If NIH grant administrators made the final funding decisions, they could be called to account for permitting cronyism. But peers are the ultimate authority, and because they exercise this power in secret, no one is accountable. This unaccountability makes the NIH system attractive to management. When a Professor Mow seems to have an inside track, NIH blandly declares that his success shows that his colleagues think well of him. Whoever gets funded, NIH can say the decision was out of its hands. However deserving Dr. X from Rep. Y's district may be, administrators can say they have no way of influencing X's funding. Privately, NIH officials admit there is politics in study sections but say it is a price worth paying to insulate grants in biomedical science from national politics. The cost was surrendering control of funding to scientific politicians.

NIH has one potential lever. The executive secretaries of study sections, who are NIH employees, appoint section members and could use that power to suppress the politics. Although members, who serve for four years, cannot succeed themselves, they expect a large say in the choice of their successors. A section secretary could threaten, "If you misuse your power, your successor will not be from your faction." But such action would require support from NIH management, because section secretaries are not famous scientists. The support would not be given, since NIH conceals this power of appointment. The handbook describing the study sections says that their members are "selected by the NIH" but supplies no details. The impression given is that peer review is above the vulgar mechanics of the appointing process. Without support from above, an executive secretary would need great courage to stop a determined cabal from controlling NIH funding in a discipline.

So cronyism proceeds. In 1976, Mow and Peter Torzilli published two spectacularly erroneous papers on joint lubrication. NIH knew experts held the papers to be nonsense. They predicted such a rapid flow of fluid through the porous joint cartilages that viscous losses would have generated heat 100 million times faster than mechanical work was being done on the joint. Yet Torzilli replaced Mow when the latter left the Orthopedics and Musculoskeletal Diseases Study Section in 1984.

INHERENT FAILINGS OF THE PROJECT GRANT SYSTEM

Politics is particularly bad in biomedical research because biomedical scientists directly control the flow of money that supports their disciplines. But even without politics, today's grant system, in which scientists propose future research projects to an agency, would be bad. The system gained its popularity after World War II when there were fewer scientists and most projects were funded. But even in those flush times, the Office of Naval Research, Atomic Energy Commission, and National Science Foundation all refused Donald Glaser when he asked for funds to develop the bubble chamber, later the standard device for observing particles in high-energy physics.

The great ideas in science in the next few years will be those not yet thought of. The system ought to select people likely to think them, but, alas, it is inherently biased against such speculation. Granting agencies want certainty, and reviewing peers fear unexpected discoveries by their competitors. As NIH puts it in a pamphlet for grant applicants, "Reviewers prefer limited clear goals that can be realistically approached; rather than broad, multiple questions or vague goals the entertainment of which is open to doubt."

The caution of officialdom displays itself in a 1940 report from the Gas Turbine Committee of the National Academy of Sciences: "Even considering the improvement possible . . . the gas turbine could hardly be considered a feasible application to airplanes mainly due to the difficulty in complying with the stringent weight requirements." Thus did great men, including engineer-fluid dynamicist Theodore von Kármán, evaluate the turboprop and jet engine.

The project grant system ignores the range of human talents. As well as inflicting anguish on inventive people, it has no official niche for promoters, people who make enterprises go, people like Vladimir Zworykin who persuaded RCA to spend its money developing television. The grant system does not eliminate such promotership; it just perverts it. Promoters pretend to be great and impossibly active scientists to get money in promoter-scale quantities. They sign every manuscript from their laboratories and accumulate reputations earned by the work of others.

The grant system disrupts the chains of authority and loyalty between scientists and universities. Each university scientist is like a pirate ship raiding the U.S. Treasury. The university provides docking space; in return, the scientist provides for his or her keep, and preferably more, out of grants. To the scientist, the university is a leech; to the university, the scientist is a prima donna. In the middle of these cross purposes, students are supposed to be taught.

PEER REVIEW OF JOURNAL ARTICLES

When peers referee journal articles, they perform a valuable service. They find mistakes and sometimes fraud, and they form a trial readership whose reactions show what to change to hold a reader's attention. A referee who knows the field can clarify what is and is not novel in a manuscript. Competent reviews take hours or days of hard work and are a tribute to those who do them.

Unfortunately, the power of referees, usually anonymous, permits self-interest, jealousy, revenge, and other unworthy motives to influence decisions. Dozens, probably hundreds, of letters to the editor over the years show that nastiness in reviewing contributes to a general unpleasantness in the publication process and in science as a whole.

Reviewing weeds out good manuscripts as well as poor ones. Frederick Lanchester's 1894 circulation theory of how wings lift, Chandra Bose's photon statistics in 1924,

Enrico Fermi's theory of beta decay in 1933, Herman Almquist's discovery of vitamin K_2 in 1935, Hans Krebs's citric-acid cycle in 1937, and Raymond Lindeman's trophic-dynamic concept in ecology in 1941 all were turned down at least once. Charles Fourier and Gregor Mendel had trouble getting published. We will never know how many deserving manuscripts remained unpublished.

The time and energy spent fighting to be published are lost forever. Lindeman died before his article appeared, and the delay Almquist suffered may have cost him a share in a Nobel Prize. The discoveries by Fermi, Almquist, Krebs, and Lindeman were held up only for a short time, but the circulation theory of lift was delayed over a decade.

My experience has been similar. Since Lord Rayleigh's time, it has been known that the wave nature of light spreads the image of a point source into a blur whose shape on the focal plane is described by the two-dimensional Fourier transform of the lens aperture. The image projected by a square lens is a diamond-shaped array of checkerboard squares. I realized that a Fourier-transform relation between aperture and image also holds true in three dimensions. When I attempted to publish this fact in the *Journal of the Optical Society of America*, referees rejected it. The editor kindly published it in response to my plea. This relation is now the starting point for calculating the three-dimensional resolving power of confocal scanning microscopes.

This evidence is anecdotal, so, by current convention, those who find it uncomfortable can ignore it. But in 1977 Michael Gordon wrote in the *New Scientist* that Henry G. Small of the Institute of Scientific Information had found "a significant negative correlation between referees' evaluations of [highly-cited chemistry] papers and the number of citations the papers subsequently received." Low citation scores followed high opinions by referees, and vice versa.

The inability of peer reviewers to judge good papers should be no surprise. A discovery is usually a better-than-his-or-her-average product of a brighter-than-average (or perhaps simply unusual) scientist; the resulting paper will likely be reviewed by an ordinary scientist, operating at an ordinary degree of inspiration, and possessing human imperfections. Truly novel papers may not be understood. Those understood will be envied and perhaps rejected with one excuse or another. In 1844, J. J. Waterston tried to publish a paper that anticipated by several years the kinetic theory of Clerk Maxwell and Ludwig Bolzmann. A referee pronounced it "nothing but nonsense, unfit even for reading before the [royal] society."

These famous examples of rejected discoveries end with World War II. With the rise of grant-supported science, few manuscripts are unembellished reports of discoveries. A discovery is too valuable to reveal in a journal article until it has been used in grant applications. By the time most discoveries are published, they are already on the rumor circuit, and the papers announcing them include data generated in work the grants paid for.

It is follow-up papers that most scientists write and that referees are most likely to approve. A paper starkly describing something new looks strange and will be treated like the proverbial ugly duckling. An example: theoretical treatments of a plate planing on the surface of water like a surfboard demand that a sheet of fluid be ejected forward from under the plate. I found this not so in practice. Instead, there is a tumbling mass of foam where the plate meets the water. When I tried to report this in the Journal of Fluid Mechanics, none of the four referees disputed my findings, and three complimented my work. But the four were unanimous that my manuscript could not be published in the journal. One said my account was too sketchy even for a grant application. So far as I know, official fluid dynamics has not yet acknowledged the phenomenon, though my article is now Appendix D in Planing by Peter Payne.

Publications can lead to jobs and research support; NIH hired me as a result of my publications on joint lubrication. By denying publication to unadorned discoveries, refereeing obstructs this career channel and drives innovators to the granting agencies and ultimately to the establishment. A deadening uniformity is enforced. Dilettantes are squeezed out, not because they are bad scientists but because they do not belong to the union. This is a major loss. A Parisian gardener was the first to reinforce concrete with steel. Lanchester, inventor of the circulation theory of lift, was a mechanical engineer, not a fluid dynamicist. The inventor of the traveling wave amplifier was trained as an architect, and two musicians invented Kodachrome.

Adding to the number of scientists by drawing from the fat middle of the bell curve of ability may retard rather than accelerate progress. As reviewing peers, the new recruits may silence and starve better scientists out of science. This happened to Douglas Kenyon, who once calculated the flow of water though joint cartilage. He now works for the Marathon Oil Co., and calculates the flow of petroleum through rock.

I call the cooperation of referees with the establishment an "evolved conspiracy." Referees, doing what their personal devils make them do, force innovators into the arms of the establishment, and the establishment is happy with this fact. Were it unhappy, changes would be made.

MISUSING PRIVILEGED INFORMATION

Reviewing of journal articles and grant applications gives reviewers the intellectual pleasure of interacting with authors and proposers, as well as education that, I suspect, has led to more advances than generally realized. These rewards are legitimate. Some rewards are not.

An obvious misuse of privileged information is rejecting or delaying a competitor's paper. The anonymity of referees ordinarily renders this untraceable. In 1978 Vijay Soman and Philip Felig rejected an article on anorexia by Helena Wachslicht-Rodbard and others to ensure priority for an article of their own. The action was detected only because the offenders plagiarized the reviewed article, and their manuscript was sent to Wachslicht-Rodbard for review.

Under cover of anonymity, reviewers can steal ideas from grant applications and manuscripts. There have been many private complaints by apparent victims. Theft is hard to prove, but it is known that the composition of the first material that was superconducting at the temperature of liquid nitrogen was leaked from a paper that Maw-Kuen Wu et al. submitted to Physical Review Letters; the leak was revealed because yttrium was wrongly called ytterbium in the manuscript. This error turned up on the grapevine.

A few proved cases do not show that stealing is common. But the rewards are large, especially now that professors must win grants to get tenure and promotions. It is bad form for victims to complain in public. Indeed, it is half-accepted that big fish will appropriate the success of little fish. Jocelyn Bell's discovery of pulsars won a Nobel prize for her superiors but not herself. There was an outcry but not of the size the injustice deserved, nor did the superiors seem embarrassed.

PEER REVIEW AND FRAUD

The current attempt to deal with scientific fraud is science's first brush with formal self-regulation. Self-regulation of any profession runs afoul of collective self-interest and pack loyalty. When disciplinary committees operate in secret, these influences have full rein. Need I enlarge on the ineffectiveness of the disciplining of doctors by doctors?

Though a few fraud cases are famous, most investigations have been ineffective: a top HIH administrator told me that no university can bring itself to use the word "misconduct." He exaggerated. A very few small fry have been found guilty—for example, the unfortunate Lonnie Mitchell of Coppin State College in Baltimore. He had his grant application prepared by a professional writer who plagiarized someone else's application that Mitchell had provided as a model. Alas, the plagiarizee reviewed Mitchell's proposal.

The vast majority of scientists who stand accused before a university bar of justice are exonerated. Tim Beardsley recently reported in Scientific American that the accused was found guilty in only 16 of 110 cases completed by the Office of Scientific Integrity (OSI) since it took over as NIH's fraud squad in early 1989. According to Lyle Bivens, head of the Office of Scientific Integrity Review (OSIR), which oversees OSI for the Department of Health and Human Services (HHS), NIH has reversed only one university exoneration. At face value, this says that most fraud charges are baseless, but we have only the word of the universities and OSI that this is true. Details of the exonerations, including the names of accuser and accused, are secret. (I am suing HHS under the Freedom of Information Act in an attempt to lift this secrecy.) Where secrecy has been penetrated, exonerations have been found to be mistaken. Both the University of Wisconsin and OSI declared James Abbs innocent of Steven Barlow's charge that he had forged an illustration for a journal article by making a smoothed tracing of a figure in an article co-authorized by Abbs and Barlow. Neurology has published a letter to the editor in which I demonstrated the relationship between the figures. Abbs's published response gave no satisfactory explanation of the resemblance.

A little-known case is revealing. The University of Medicine and Dentistry of New Jersey, and later OSI and OSIR, all told Gene L. Trupin that he was wrong in claiming that Barbara Fadem had stolen his research. OSI and OSIR ignored obvious signs of trouble. Just one example: in defending herself and other members of the university faculty against a lawsuit by Trupin, Fadem said that a journal article he and she co-authored proved that Trupin knew certain facts when the article was submitted. Court records show the facts in question were added to the article at the proof stage, 10 months after the date of submission. OSI knew about this dodge at the time it found Fadem innocent. It also knew that the suit was settled out of court in 1988 with a $60,000 payment to Trupin.

As long as NIH's watchdog is blind to evil when it wants to be, is it any wonder scientists learn that ethical pliability is a professional necessity, and find it prudent to discover that what looks like fraud is a "scientific disagreement," an "error," or "sloppiness"?

One might think a determined whistleblower could force OSI to conduct a real investigation. Not so. Once OSI receives an accusation, it tells the whistleblower little or nothing. As the whistleblower who got the Abbs case reopened I was volunteered no information: OSI's predecessor office did not tell me to prepare a 10-minute presentation, but I was never summoned to make the presentation, nor told it was called off. Meanwhile, OSI's impenetrable secrecy encouraged Abbs to complain that this constitutional rights to due process were being trampled. He sued and won on a technicality. DHHS is both appealing the verdict and, as the judge required, going through the steps laid out by the Federal Administrative Procedures Act.

Universities routinely use peer panels to investigate and judge fraud. This shifts responsibility but does not get justice done. A powerful accused scientist or pack solidarity can frighten a panel into seeing no evil. The panel that the University of Wisconsin convened to investigate Abbs's alleged faking ignored blatant inconsistencies in his submission. For example, Abbs falsely claimed that accuser Steven Barlow had displaced one record before comparing it with the other. The public gaze might shame a panel out of doing a whitewash, but panels operate in secret. Incredibly, in its filing under the Administrative Procedures Act, DHHS proposes that determinations of guilt no longer be printed in the Federal Register. Secrecy, secrecy, ever more secrecy.

Secrecy gives full rein to subterranean forces, and a major scientist can bring great force to bear. Panels at MIT, Tufts, and NIH all said, wrongly, that no misconduct was involved in a paper co-authored by Thereza Imanishi-Kari, Nobel laureate David Baltimore, and others. It is a matter of record that Baltimore used both a letter-writing campaign and professional lobbyists in an unsuccessful attempt to get Congress to halt Rep. John Dingell's (D-Mich.) investigation of that matter. (It was Rep. Dingell's investigation that finally forced NIH to mount a real investigation of its own.)

Media interest in the Baltimore affair is more than instinctive celebrity chasing. Fake work impedes progress much more if a major scientist is involving than otherwise, because others must pretend to agree with it if they want jobs or grants. I know of no attempt by other scientists to duplicate the precise experiments in the Baltimore affair. Scientists supposedly delight in providing one another wrong, but they hesitate to embarrass someone with power and the willingness to use it.

Because no one at NIH is accountable for the decision to fund Professor, no one feels betrayed, no one is angry or ashamed if X commits fraud. So NIH washes its hands of the matter and passes off the consequent cover-up as political realism. As an official in the Department of Health and Human Services said to me about OSI: "They have to compromise." Expedient exonerations are excused as being for the good of science. If the public got the idea that a lot of fraud exists, the argument goes, it might not support research. The whistleblowers is, figuratively, given a loaded pistol and told to do the proper thing.

According to the New York Times, retired Harvard microbiologist Bernard Davis believes it would have been better had the Baltimore affair been dropped. The biomedical science establishment would rather let fraud continue than have it publicized, a policy that will keep fraud going forever. Concealment requires that the sinners keep their funding. Abbs and his laboratory received millions in government support after the initial brushing off of the complaint against him. So long as such scientists are protected and fed, their species will multiply.

By not using its control over who gets funded, NIH has given up the power that would go with being paymaster. Despite signing $7 billion a year in checks for research, NIH was unwilling or unable to prevent MIT's whitewash of Imanishi-Kari, Wisconsin's of Abbs, and numerous similar instances.

Were NIH to invoke its power of the purse, a university might say it was applying improper influence, a confrontation NIH evidently fears. James Wyngaarden, ex-director of NIH, and Joseph E. Rall, ex-deputy director for intramural research, have both said that universities have run ineffective investigations, but NIH has never punished—or even tongue-lashed—them for doing so. Nor has it said that running a bogus investigation is unethical. Yet unless NIH greatly expands OSI, the agency will depend on university investigations of fraud.

Compare NIH with NSF, where managers make the final decision about who gets funded. With responsibility comes accountability—for such odd decisions as siting the National Earthquake Engineering Research Center in Buffalo, N.Y., rather than in California. One can also question the reasons for moving the National Magnet Laboratory from MIT to Florida State University. But whatever one may think of them, these decisions show that NSF has power. If NSF wanted a university to investigate a fraud, the school would remember the movability of laboratories before doing a whitewash. Perhaps this power is reflected in the apparent lack of fraud in the parts of science NSF funds.

TAMING A FRACTIOUS HORSE

Reform the grant system: Suppose politics could be eliminated from NIH study sections. Suppose DOD and NSF program managers were all smart and incorruptible. The project grant system would still be a time-destroying Moloch, demanding and reviewing long applications, most of which are not funded, and it would still sponsor sure things rather than imagination. Block grants to universities would be better. The schools would decide who to support however they wished, using any system they wished, from despotism, to democracy. Universities have made good choices in the past. The University of Michigan found the initial, essential money for Donald Glaser's bubble-chamber research.

Each year, universities would go to the federal government and argue for support. Let them bring citation scores, rumors of Nobel Prizes almost awarded, whatever they want. Out of this free-for-all, a formula would emerge, no doubt with loopholes and exceptions, and the negotiators would return home exhausted and tell the troops how they made out. The mutual dependence of scientists and brass would develop the loyalty upward and downward that makes institutions bearable to their members.

Under the block-grant system, everybody in a university would be in the same lifeboat and would benefit collectively from one another's success. Still, researchers would continue to compete within the school, so to dull the teeth of university politics, perhaps 10 percent of federal support should remain as grants to individuals.

No-fault publication: Specialist journals should never reject. If scientists are worth paying, they are worth hearing from. A referee who thought a paper wrong could try to argue the author out of publishing it, invoke a six-month cooling-off period, impose a length limit of a page or two, and have signed comments published along with the paper. If no-fault publication results in a flood of garbage, it shows that scientists are creating garbage. Better we learn about this than conceal it.

General-circulation journals like Science and Nature would still reject most manuscripts they receive. Their editors, not reviewers, should make the final decision. Editors are the filter that catches reviewer misbehavior. Essay-form reviews can be windows into a reviewer's motives, and having one reviewer from outside the specialty under review is a wise precaution against discipline politics.

Editors of all journals should ask reviewers to be as kind as possible, and authors should know the identity of writers of adverse reviews. A referee whose identity is known is less likely to steal from a paper, reject or delay it for professional advantages, or be pointless nasty. On the other hand, favorable reviews should be anonymous to discourage reviewers from trying to curry favor with authors. There is no way to keep them from informing authors privately, but the rule would remind them it is unethical.

Fraud: The fraud problem reflects the ethics at the top of biomedical science. By not retaining for itself final authority over funding decisions, NIH left this power unguarded for ambitious scientists to pick up. With power came arrogance and the feeling that rules were for lesser beings. The cure is obvious. End the carving of their own cake by biomedical scientists, and the steamy politics will dry up.

If funding is not reformed, the scientific establishment will remain the problem, and the solution must come from elsewhere. John Dingell cannot interest himself in every fraud case, so the public's sense of fair play must be enlisted as a force for justice. Whistleblower and accused should know everything that occurs at every stage of an investigation so they can object and, if necessary, complain in public. The final conclusions of all fraud investigations should be made public.

If a peer panel has to make the final decision, as it might in cases of fraud, only extraordinary measures will yield justice. Because panel members are specialists judging fellow specialists, Precautions beyond those in jury trials are needed to counter the effects of politics and pack loyalty. Accused and accuser, or their advocates, must have the right to question panel members in public about decisions before they become final. Unless these or very similar reforms are instituted, OSI should be closed, because it cannot yield justice.

Using peer review is like riding a fractious horse. One must understand its bad habits and never let it forget who is boss. Kept under control, peer review can yield good advice. Given its head, it will hurt people, serve the interests of the reviewing peers, and warp the institutions that use it. Where possible, peers should not make the final decisions but should advise the decision makers, who can filter peer self-interest from peers' recommendations. As a fractious horse is only as good as its rider, peer review is only as good as the program managers and editors who use it, but these people are visible and can be called to account for their decisions.

(Charles W. McCutchen emerged from Cambridge University in 1957 with a doctorate in

nuclear physics and a gadgeteering outlook. Introduced to joint lubrication by the New Scientist, he discovered the physical principle that accounts in part for the low friction of animal joints. Long interests in boats and model airplanes induced self-education in fluid dynamics. He found that the trout tail is a self-cambering hydrofoil, and that the seeds of ash and tulip trees rotate as Flettner rotors as well as spin around their heavy ends like maple seeds. Later, he used shadowgraphs of thermally stratified water to render visible the wake of a swimming tropical fish. In 1980, he published a warning in the Journal of Aircraft that the pitching motion of unstable airplanes should be controlled from the front. Several new and proposed fighters follow this practice.

(McCutchen has experienced reviewing both as reviewee and reviewer. Getting published was not a problem in nuclear physics or its instrumentation. At the other extreme, he found the Journal of Fluid Mechanics uncrackable.

(Seeing his own theory of joint lubrication displaced by what he calls politically enforced nonsense gave McCutchen a strong interest in the influence of scientific politics upon funding and in scientific misconduct in general. His friendship with NIH fraud busters Ned Feder and Walter Stewart introduced him to many instances of fraud, including the Abbs case touched on in this article.)

Mr. STEVENS. Mr. President, I ask my friend from Hawaii, does he desire some of my time? How much time do I have left?

The PRESIDING OFFICER (Mr. GORE). The Senator from Alaska has 12 minutes remaining.

Mr. STEVENS. I give all but 2 minutes to my good friend from Hawaii who must manage the bill and answer these allegations.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. I thank my friend from Alaska for his generosity.

Mr. President, the Senator from Georgia placed into the RECORD a copy of a letter that he and other Members of the authorization committee addressed to Senator STEVENS and myself. So, Mr. President, I ask unanimous consent that a reply by Senator STEVENS and myself, together with an analysis of the briefing prepared by the Armed Services Committee and the slide presentation be printed in the RECORD at this time.

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

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, November 22, 1991.

Hon. SAM NUNN,
Chairman, Committee on Armed Services, U.S. Senate, Washington, DC.

The Hon. JOHN W. WARNER,
Ranking Minority Member, Committee on Armed Services, U.S. Senate, Washington, DC.

DEAR SAM AND JOHN: We thank you for your letter of congratulations regarding the conclusion of our conference on the Defense Appropriations bill. We appreciate the support that you offered to us when our bill was brought before the Senate for consideration.

We are disappointed that you cannot fully endorse our conference agreement. I am sure you understand that no conference agreement ever fully satisfies any member or either body. All parties must be willing to compromise to reach accord. While there are items in your conference with which we are not in complete agreement, such as the funding level and stipulations involving the B-2 bomber, we none the less supported this policy decision of your Committee in our conference and have voted in favor of your conference report on the floor.

You can be assured that the Senate conferees struggled hard to uphold Senate positions, particularly those of import to the Committee on Armed Services, including the overall funding level for SDI, the initiative on a limited ABM site and the termination of the F-14 remanufacturing program.

We are concerned that the members of the Armed Services Committee may not be fully aware of the agreement of the two committees. The agreement calls for both committees to try to avoid reversing the policy decisions of each other, recognizing that, because the House is not a party to this agreement, neither committee can guarantee outcomes which are determined in concert with the House.

We are more disturbed that the description of unauthorized appropriations may be overstated. From the review of our staff, most of the $3.3 billion described as over authorization represent decisions that have been previously approved by the Senate and were not opposed by the Armed Services Committee. These include $600 million for sealift, $188 million for the Coast Guard, and $150 million for claims resulting from the volcano at Mt. Pinatubo. Additionally, the $710 million noted as over authorization for corporate information management and $500 million for real property management are merely reallocations of funds authorized in the Defense Authorization Act. Together these represent more than two thirds of the funds cited in your letter.

The remaining funds are primarily modest amounts, except those for National Guard and Reserve Equipment. While we recognize that these funds have not been specifically authorized, we believe it is an appropriate reallocation of savings identified in our conference; one which, we believe, will be supported by the Senate, to continue to vigorously support modernization of our National Guard and Reserve forces.

With the assistance of our staff, we reviewed the briefing charts used by the Armed Services Committee to explain the differences between our two committees and we have prepared a memo on that subject. To aid in your understanding of the specific proposals in the conference report, we have attached a copy of this memo for your review.

We hope that this letter and the attached memo will serve to alleviate your concerns about our conference agreement, and trust that this explanation willl allow you to support our conference report.

Sincerely,

DANIEL K. INOUYE,
Chairman, Subcommittee on Defense, Committee on Appropriations, U.S. Senate.

TED STEVENS,
Ranking minority Member, Subcommittee on Defense, Committee on Appropriations, U.S. Senate.

MEMORANDUM

To: Senator SAM NUNN, Senator JOHN WARNER.

From: Senator DANIEL K. INOUYE, TED STEVENS.

Date: November 22, 1991.

Re: Commentary on briefing slides presented in November 22, 1991, Senate Armed Services Committee meeting on the FY 1991 Defense appropriations conference report.

Our analysis makes reference to the briefing slides used in the meeting. We have attached a copy of them and will refer to them in order.

Slide 1—This slide quotes existing statute on the requirement for authorization prior to the obligation or expenditure of funds.

Slide 2—This slide presents a synopsis of the memorandum of agreement between the Armed Services Committee and the Appropriations Committee. Clearly, the parties to the agreement understood that, in point of fact, the agreement could not be regarded as binding, because the House counterpart committees would not be bound by the agreement. The conditional aspect of the agreement is recognized in the actual text of the agreement. To wit:

"6. Both Committees pledge to try to avoid reversing the policy directions of the other committee."

"7. The Committee on Appropriations agrees to try to avoid the incorporation of legislative provisions in annual Defense Appropriations Bills * * *"

We would note, therefore, that the agreement is, essentially, a pledge to make a good faith effort to maintain comity between the two committees. On this point, there can be no question. The Defense appropriations subcommittee has made a concerted effort to support and advance the policies and the positions of the Armed Services Committee throughout the year and in conference. We have shared our markup notes prior to subcommittee markup, we have supported Armed Services Committee positions on the floor both in support of your bill and in our bill. Indeed, from our perspective, comity between the two committees this year has been at its highest point in recent years.

To repeat, the appropriations subcommittee on Defense has worked assiduously to support armed services positions both on the floor and in conference. The bill which the Senate Defense Subcommittee managed on the floor conformed to the Senate passed authorization. In conference, however, the Senate conferees had to yield to the House on several issues to achieve an overall agreement.

In this regard, it should, perhaps, be noted that several Senators on the authorization committee had written to Chairman INOUYE advocating positions held by the House and which, as it happens, were often at odds with those of the Senate passed authorization.

Slide 3—This slide presents an overview of the "problems" the Armed Services Committee has with the FY 1992 Defense appropriations conference report.

The first bullet asserts that the appropriations conference provides $3.3 billion in 17 accounts in excess of authorization. We will address this assertion when we comment on the more detailed slides which follow.

The second bullet asserts that there is "significant 'legislating'" in the appropriations bill. The first assertion is that the bill waives title 10 requiring competition on university grants. That is accurate. The underlying legislation in title 10 requires that, for a grant to be made to a specific college or university, the provision of law making the grant must specifically waive the competition requirement. We have done so. We have followed, with precision, the process established by your committee and required in law.

The assertion is also made that an amendment to allow military depots to become subcontractors to commercial defense contractors is "significant" legislation. The amendment was accepted in conference as part of a compromise agreement involving programs of interest to both Senate and House conferees. It is doubtful that overall agreement could have been reached without this or a similar compromise.

The third bullet asserts that the conference agreement reverses policies established by the authorization committees. It is true that the conference agreement allowed the non-competitive extension of a CHAMPUS contract. However, Senate conferees were successful in resisting an effort by the House to both extend and significantly expand the CHAMPUS contract. Because of Senate action, meaningful competition will occur in the expansion of the CHAMPUS reform initiative to New Mexico, Nevada, Arizona, and the tidewater area of Virginia. We tried to uphold the policy, but we were unable to get the House to agree to the recompetition of a contract which had been won through competition in previous years.

On the suggestion that the appropriations conferees reversed certain program directions it can be said that we did, in fact, allow side-by-side testing of radar warning devices for the B-1B bomber. This was in contravention of authorization direction, but we did not regard it as a significant departure since it was allowed in last year's appropriation.

On the question of the P-3B aircraft, we did not reverse authorization. This is, simply, a misstatement of fact.

The slide correctly indicates there was a problem in the classified portion of the conference agreement, but as soon as it was brought to the attention of the Senate conferees, we moved to correct the error.

Slide 4—This slide discusses possible courses of action. We will not comment on these other than to suggest that perhaps there should have been some discussion of how the Armed Services Committee might work more closely with the appropriations committee to avoid a recurrence of problems. Throughout the past year, the Defense appropriations subcommittee staff has attempted to engage the Armed Services Committee staff in discussions which might lead to enforceable criteria on grants to colleges and universities. We would welcome an opportunity to move these discussions forward.

Slide 5—This slide discusses "university set-asides." It is inaccurate and fails to note that at least four university grants are authorized, another is in the statement of managers and may be competed, and several were put in by Senate conferees at the behest of members of the Armed Services Committee. Among the latter are:

Senator DIXON—Illinois Institute of Technology.

Senator KENNEDY—New England Consortium for Photonics Research.

Senator KENNEDY—Northeastern University.

Senator GLENN—Medical College of Ohio.

It should also be noted that the item which leads the armed services list of university set-asides, "Prostate research at Walter Reed," is not a university set-aside. The program funds valid health research at the Walter Reed Army Institute of Research.

Slide 6—This slide presents information on other "set-asides." As with the previous slide, it is inaccurate and fails to note that, of $146.1 million in appropriations on the list, $87.2 million is authorized, $37 million is in the budget request and authorized, and $25 million is in for the release of prior year funds.

As for the museums, a total of $11.7 million in appropriated funds is provided for four museums all of which are also supported by private contributions. It is interesting to note that in the conference agreement we provide appropriated funds in support of private museums. In other instances, private organizations support museums on military installations. For example, a museum at Warner Robbins Air Force Base in Georgia is supported by private contributions, but land and facilities (valued at in excess of $1.3 million) is provided by the Air Force for use by the private organization.

Slide 7—This slide portrays appropriations accounts which are said to exceed authorization. For the Guard and Reserve operation and maintenance account, we admit that we exceed authorization by $7.7 million. These accounts total $7,361,200,000. It cannot, reasonably, be said that the appropriations conference exceeded the authorization level in any meaningful way.

We did provide $1 million above authorization for the National Board for the Promotion of Rifle Practice. We funded the account at the Senate authorized level. The House did also. The amount was not in our conference.

We did provide $2 million in excess of authorization for humanitarian assistance by the Military. It is puzzling that those who proposed $1 billion in aid to the Soviet Union would now object to a $2 million increase for humanitarian assistance programs of the U.S. Military.

On the Army ammunition account, we were hard pressed to keep the level as low as we did. Many Senators, most notably Senator DIXON of the Armed Services Committee wrote to the Defense subcommittee requesting increases in funding for Army ammunition. We are $6.7 million over authorization in this $1,369,000,000 account.

For National Guard and Reserve equipment we did exceed authorization, but one may well ask, if we are able to achieve savings in other areas, are we wrong to put additional funds into the Guard which has been underfunded for years and is in need of modernization if it is to meet the challenges of the future. Even at the appropriations level, the account is some $638 million blow the amount provided to the Guard last year.

By the way, of this $816 million over authorization, $354 million is for C-130 aircraft and $129 million is for MH 53 helicopters. Both items are of great importance for Senators and Congressmen.

The $710.3 million for the "corporate information management" program funds a Defense Department initiative which we hope will save money in the procurement and management of computer appropriations accounts into one to improve management and our oversight. That is our job.

The same reasoning applies to the real property maintenance account.

As an aside, let me note that funding for shipbuilding, the real property maintenance account all passed the Senate—without complaint from the authorization committee—at higher levels than emerged from conference.

Slide 8 This slide purports to depict programs which were funded in excess of the authorized level. We will not comment on all of them, but we will note that the Senate conferees had to accept House positions on these items—in part to reach an overall agreement, in part to protect items of particular interest to Senators. For example, Senator DIXON favors the AV-8B aircraft, Senator MACK favors the Tagos Surtass ship, and we would have lost funding for the tri-service stand-off attack missile (of interest to Senator NUNN) had we not accepted the House favored stand-off land attack missile.

The inclusion of on item is particularly disturbing. Senator GLENN, a member of the Armed Services Committee, wrote to the Defense Subcommittee enlisting our support for procurement of truck engines because, without funding for these additional truck engines, yet another plant in his State would be closed. Therefore, he asked that we give "fullest consideration to including language directing the Army to purchase additional Hercules multi-fuel engines in this year's Defense appropriations legislation." We did so. We acted to support a fellow Senator and a member of your committee, who was faced with a particularly difficult situation, and now we are criticized for doing so.

Slide 9—This slide lists unappropriated authorizations. Since the appropriations committee is not required to fund all authorized programs and is, indeed, fulfilling its responsibilities to the Senate by examining programs and determining the proper level of funding, it is unclear what factual point the Armed Services Committee wished to establish in this slide.

CURRENT LAW ON AUTHORIZATION OF APPROPRIATIONS

Title 10, section 114.

(a) No funds may be appropriated for any fiscal year to or for the use of any armed force or obligated or expended for [procurement, R&D, etc] unless funds therefore have been specifically authorized by law.

MEMORANDUM OF AGREEMENT BETWEEN ARMED SERVICES AND APPROPRIATIONS COMMITTEES

Avoid reversing other committee's policy decisions.

Avoid legislating on appropriations bill.

Authorizations are ceilings—subsequent authorization required if appropriations exceed authorization.

Authorizations do not establish obligation floors.

Authorizations should avoid financing restrictions on flexibility of appropriations.

PROBLEMS WITH FY 92 DEFENSE APPROPRIATIONS CONFERENCE REPORT

Substantial unauthorized appropriations:

$3.3 B. in 17 accounts at account level (excludes $8.0 B. consolidation of medical funds); and

$4.9 B. in 170 lines at line item level.

Significant "legislating" in the appropriation bill:

Waive title 10 requiring competition on university grants; and

Amend title 10 to permit military depots to become subcontractors to commercial defense contractors

Policy reversals:

Noncompetitive extension of $1.0 B.+ CHAMPUS contract;

Reverses certain program direction (e.g., B-1B, P-3B); and

Classified programs.

POSSIBLE COURSES OF ACTION

Oppose appropriations conference report on Senate floor.

Address issues on subsequent legislation (e.g., fiscal year 1992 supplemental appropriations bill).

Report out supplemental authorization bill.

Encourage DOD to submit rescissions.

Earmarks in Fiscal Year 1992 DOD Appropriations Bill/Report

	Millions
University set-asides:	
Prostate research at Walter Reed ...	$2.0

Neuroscience R&D at Louisiana State	10.0
Marywood College, Pennsylvania	10.0
University of Texas at Austin	6.0
Northeastern University	6.0
Texas Regional Institute for Environment R&D	5.0
Kansas State University	7.7
University of Wisconsin	1.6
Boston University	29.0
Medical College of Ohio	0.25
University of South Carolina	0.5
George Mason University	0.75
Monmouth College, New Jersey	2.3
University of Minnesota	10.0
University of St. Thomas, Minnesota	0.5
Brandeis University	2.0
New Mexico State University	3.0
Penn State University	5.0
Illinois Institute of Technology	2.0
Monterey Inst. for International Studies	6.8
St. Francis College, Pennsylvania	2.5
Oregon Graduate Institute, HDTV Research	1.3
Subtotal	114.2

Earmarks in Fiscal Year 1992 DOD Appropriations Bill/Report

	Millions
Other institutional set-asides:	
National Center for Manuf. Sciences	$30.0
US-USSR joint seismic research	5.7
Mississippi Resource Development Corp	1.0
Letterman Army Hospital, Presidio, CA	37.0
Maryland Hospital Association	0.3
Fort Irwin Public School Construction	22.0
Fort Bragg Public School Construction	10.0
Post Traumatic Stress Centers, PA & Hawaii	0.6
National Biomedical Research Foundation	10.0
Army Environmental Policy Institute	4.5
Arctic Region Supercomputer	25.0
Subtotal	146.1
Museums:	
Naval Undersea Museum, Keyport, Wash	2.1
National D-Day Museum Foundation	4.0
Airborne & SOF Museum Foundation	4.0
Restoration of USS Blueblack, Oregon	1.6
U.S.S. *Bennington* Transportation to Vermont	
Subtotal	11.7

Unauthorized Appropriations Account Levels

	Millions
O&M, Navy Reserve	$0.9
O&M, Marine Corps Reserve	0.8
O&M, Army National Guard	1.0
O&M, Air National Guard	5.0
Rifle practice	1.0
Humanitarian assistance	2.0
Drug interdiction	30.0
Weapons & tracked combat vehicles	103.8
Army ammunition	6.7
Shipbuilding	787.5
Missile Procurement, Air Force	30.6
Procurement, Defense Agencies	11.8
Guard and Reserve Equipment	816.7
Coast Guard	188.7
Corporate Information Management	710.3
Mount Pinatubo Claims	150.0
Real Property Maintenance	500.0
Account subtotal:	3,346.8
O&M, Defense Agencies;	7,755.4

Unauthorized Programs

	Millions
Bradley Advance Procurement	$50
Field Artillery Ammo. Vehicle	60
F-14 Upgrades	175
AV-8B Modifications	40
SLAM Missile	130
Tagos Surtass Ship	149
Tags 39/40 (Ship Claim)	55
Sealift	600
LCACS	238
Army Truck Engines	20

Unappropriated Authorizations

	Millions
9 F-18 Aircraft	$202
4 F-117 Aircraft	560
21 Trident II Missiles	140
1 LSD-41 Amphibious Ship	245
6 MX Test Missiles	255
SICBM	115
Precompetitive Technology	40
Critical Technology Centers	50
Manuf. Extension Program	50
13 UH-60 Helicopters	83
9 HH-60 Helicopters	165
Standard Missiles	83
Marine Corps MLRS	95
F-18 R&D	64
Advanced Cruise Missile R&D	80
Balanced Technology Initiative	35

Mr. INOUYE. Mr. President, I have been in this Chamber since 9 this morning, and I have been showered with nearly 3 hours of painful criticism. It has not been one of my happier days. But I believe the concerns of my colleagues are deserving of my response.

First of all, this may sound trite, but I do so with all seriousness. This Congress of the United States is two bodies: The U.S. Senate and the U.S. House of Representatives. The chairman of the Armed Services Committee spoke eloquently of an agreement that is in existence between the Defense Subcommittee and the Armed Services Committee. Yes, we did sign this agreement and we did so with all solemnity, and we have done our best to live up not only to the letter but to the spirit of that agreement.

In fact, I recall not too long ago, about September 26, when I had the privilege of debating the defense appropriations measure and just before its passage, the chairman of the Armed Services Committee stood to commend the work that Senator STEVENS and I had performed on this measure. And if my recollection is correct, most, if not all, of the members of the Armed Services Committee voted for the passage of the defense appropriations bill.

We were commended because we lived up to the letter and the spirit of the agreement. But I am certain that all of us realize that this agreement does not affect the Members of the House. Our bill had over 200 statutory differences with the House and about 400 differences in report language. So, obviously, we had to go into conference to iron out our differences.

If the Members of this body expected the conferees on the part of the Senate to return with the identical bill that we passed, then something is wrong with our dreaming mechanism. No such thing will ever happen. It is a give and take process. We have to accept propositions made by the House that may be personally objectionable, but we bite our tongues. We insist that the House agree upon amendments that we have in our bill that may be unacceptable to them, but they take it.

It is not an easy process. We sat in conference for over 3 days. We came forth with a measure which was not amendable. I agree with that. It was like the authorization bill; it was returned here unamendable.

Why did we work towards this unamendable bill? Because my colleagues wanted an unamendable bill. The leadership wanted an unamendable bill. Time was passing. All of my colleagues wanted to go home. If we had an amendable bill, we would be here until Christmas. The House has an unamendable bill; we have an unamendable bill.

The second criticism: That we have unauthorized amounts in this measure. Mr. President, I plead guilty. Yes, we have amounts that are unauthorized. In fact, there are $397 million worth of unauthorized dollars in this bill requested by members of the Armed Services Committee. We were asked to accommodate our colleagues in the Armed Services Committee. I will not mention names. One member said he needed $20 million to re-engine the 2½-ton trucks. They are still in good use.

They were not authorized. We accommodated that member.

Another said we need research and development at universities, $35 million. We accommodated that member.

Another member spoke of the procurement of radios which proved so effective in Desert Storm, radios that men carried in combat. That was $35 million, unauthorized.

Then we appropriated $40 million for special operations, unauthorized again, Mr. President.

And one of the members wanted $61 million for ships. They were not authorized but requested by the Navy. We were convinced they were important. We appropriated the funds.

Another member of the committee requested $149 million for ships that the Navy wanted but not authorized. We appropriated $149 million.

And one member came up with a very reasonable amount, just $5 million for research. We did our best to get that, and he got $5 million.

One member of the committee wanted the remanufacturing of a certain sophisticated aircraft that goes upwards instead of horizontally. That was $40 million.

Another wanted some money, $1.5 million, for artillery fuses. We assisted in that—a total of $397.7 million.

These were in our bill which the House accepted. We in turn as part of the bargain accepted $11 million worth of museums. They were not in our bill, but they were in the House bill. These are museums to honor those men and women who served on submarines.

One called for the transfer of a ship from one State to another so that that ship can be made into a museum—from Washington to Oregon.

Another called for $150 to transfer a ship's bell from the west coast to the east coast, and we are complaining about that because it was not authorized.

They wanted a museum for the airborne troops.

Now, these are not horrendous amounts. The total amount is $11 million, and I plead guilty. They are not authorized. But they take our unauthorized $397 million. So they can go back to their constituents and say, "You see, they were not authorized but I got it for you."

But all of these Members are now going to vote against the measure because we put in $11 million for museums, for submariners, for the 82d Airborne, for the ship in Washington to be shipped over to Oregon, and the bell from the west coast to the east coast.

Then we come to universities. Some of the universities were authorized, in fact over half were authorized. Yes, I plead guilty. The others were not, but they were in a general account of research and development that was authorized. The amount involved, Mr. President, over a $274 billion budget, it is less than one-tenth of 1 percent, and this is the area of concern that my colleagues have been telling us all morning.

I wish I could come forward and accommodate all. Title X, incidentally, is the law of the land, as my friend from Arkansas stated, and so the Defense Department is well aware of title X. If that project is not authorized, as they will always do, they pick and choose. We will get a list of rescissions. They will not spend the money. So we are not violating any laws.

We realize that these amounts are subject to authorization. But, Mr. President, you know and I know that if this bill passes and is signed into law, though it is not authorized, Members will call upon the Secretary of Defense and say, "Look, we want you to spend this money. It's very important for the security of this country."

Mr. President, I agree with one and all that the cold war with the Soviet Union is over. I wish, as chairman of the committee, we could cut defense by 90 percent. That is what happened after World War II, Mr. President. They cut it down by 90 percent because euphoria was all over the world. Peace was upon us.

Then in June of 1950, the North Koreans looked at us and said. "Aw, Americans have no stomach for war. They have given up." They crossed that border. The only thing we had were cooks, stevedores, and clerks in Japan to stem that force. The first 10,000 casualties were unnecessary. They were casualties because they were not equipped and they were not trained.

Then take Desert Storm, the war of which America seems to be so proud. I think we should remind ourselves that in January of 1990, General Schwarzkopf was ready to be retired and the central command was ready to be terminated. Why? Because policymakers said peace is in the Middle East. "We don't need General Schwarzkopf. We don't need the central command."

That was the national policy. And in that same month our Department of Commerce was ready to establish a trade fair in Baghdad to sell the Iraqis computer technology, aerospace technology. It is a good thing that this subcommittee was alert to all of this. And remember colleagues in this body who stood up and sang the praises of Saddam Hussein, suggesting that he visit us, to speak to us as a man of peace? Well, this committee did not fall for that. Even if the cold war was over, we knew that there were trouble spots.

Who can tell me as to what will happen in North Korea? I do not want to gamble with the lives of Americans. I would rather spend and save lives than gamble and lose lives.

The bill is not a perfect bill, Mr. President. We are not suggesting it is, but we have tried our best, absolutely our best. I think we came forth with a measure that lived up to the expectations of this body.

Finally, I want to point out a few things about the criticisms of unauthorized amounts. For example, they mentioned the number $3.3 billion and they cited $600 million for Sealift, not authorized. In September, this body voted for $2 billion in Sealift, and in conference we reduced it to $600 million. All of us voted for that.

Then we were told that we went $710 million above authorization for certain management initiatives. We authorized that. What we did is we put them all together to get better efficiency.

Then we were told that we overspent $500 million in real property maintenance. Every command had a real property maintenance. Now we put it under one office so we know how it is spent. We are saving money.

We were told that we spent $188 million for the Coast Guard, and yet this body in September approved $318 million for that. We reduced that amount.

Mr. President, we appropriated $150 million to assist our men in the Philippines, and assist the military in the Philippines to evacuate as a result of Mount Pinatubo. The Senate had approved $289 million. We reduced that amount. Technically, they were not authorized, but this body voted for it. If that is not authorization, I do not know what is. It passed the Senate almost unanimously.

Now we are told because we appropriated $11 million for museums, which was not authorized because we spent about $50 million for universities that was not authorized, they are going to vote against it. If that is the will of the Senate, so be it.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired.

THE U.S.S. "LEXINGTON"

Mr. SHELBY. Mr. President, would the distinguished chairman of the subcommittee please yield?

Mr. INOUYE. I am happy to yield to my colleague from Alabama, Senator SHELBY.

Mr. SHELBY. I thank the chairman. I would like to take this opportunity to discuss with him a provision in the conference report on H.R. 2521, which directs the Navy to evaluate the feasibility of returning the U.S.S. *Lexington* to Quincy, MA, for conversion to a museum. The language goes on to state that the Navy shall work with the Massachusetts Commonwealth and the city of Quincy to perform this evaluation. I am concerned about the effect this provision could have on the evaluation the Navy is currently performing on applications made by the cities of Mobile, AL, Corpus Christi, TX, and Quincy, MA, regarding the conversion of the U.S.S. *Lexington* into a floating museum. Does this provision in any way preclude the Navy from evaluating all sites on an equal basis?

Mr. INOUYE. I understand the concern of the Senator from Alabama. I would like to take this opportunity to assure you that this language is not meant to direct the Department of the Navy in any way.

Mr. BENTSEN. If the distinguished chairman would continue to yield,

Mr. INOUYE. I am pleased to yield to my friend from Texas.

Mr. BENTSEN. I thank the chairman for his courtesy. I would also like to express my concern about this provision in the conference report on the Defense appropriations bill. The cities of Corpus Christi, Mobile, and I am sure Quincy have made serious bids on the *Lexington*. This is an effort that has gone on for over 6 months. Each city brings unique qualifications to this competition. However, I fear that this provision could pressure the Navy into making a decision based on congressional influence rather than on the qualifications of the bidders?

Mr. INOUYE. I assure the Senator that this language is not intended to prejudice this competition in any manner. The committee expects the Navy to be objective in its conclusions.

Mr. GRAMM. Would the chairman of the Defense Subcommittee yield to me for a question?

Mr. INOUYE. I will certainly yield to the distinguished Senator from Texas.

Mr. GRAMM. I thank the chairman. Mr. President, the city of Corpus Christi, TX, also has a special connection to the U.S.S. *Lexington*. This great Texas city would have been the final duty station for the "Lady Lex" as she carried out her mission of training future naval aviators. Her berth next to the Texas State Aquarium will result in hundreds of thousands of visitors to this historic Navy carrier. Is it the chairman's understanding that the ongoing Navy evaluation of potential sites for the U.S.S. *Lexington* meets the requirement for the feasibility study outlined in the conference report?

Mr. INOUYE. The answer to my friend's question is yes. The Navy is currently involved in a feasibility study that certainly meet the criteria outlined in this provision.

Mr. HEFLIN. I ask if the chairman would yield to me also on this important issue.

Mr. INOUYE. I am delighted to yield to the senior Senator from Alabama.

Mr. HEFLIN. I thank the chairman. Mr. President, the Senator from Texas points out that the competing cities bring unique qualifications to this competition. The city of Mobile, in my home State of Alabama is the home of the battleship, U.S.S. *Alabama* and the attack submarine U.S.S. *Drum*. It has 27 years of experience in maintaining these museums. Mobile is an ideal location and has proven it can perform this activity. I am particularly concerned by the language that states that the Navy has until May 1, 1992, to provide the results of the evaluation as well as a plan that includes a delivery schedule, total costs, and sources available to fund the conversion to and operation of this museum. Would the distinguished Senator explain the intent of this language, and the extent of the Navy's obligation?

Mr. INOUYE. The Navy is responsible for the delivery schedule and should provide an estimate of the annual maintenance costs the cities can expect. It is wholly the cities' responsibility to inform the Navy of sources available to fund the delivery, conversion to and operation of the *Lexington* as a museum. After evaluating the merits of the three competing cities' proposals and making their decision, the Navy has until May 1, 1992, the provide each of the cities with an explanation of their respective proposal, and a formal explanation of the criteria used by the Navy in making their selection. This provision does not, however, preclude the Navy from reaching a decision on this important matter at any time between now and May 1, 1992.

Mr. SHELBY. If the Senator will yield, I thank the distinguished chairman for his patience and his response. I also want to thank my colleagues for their attention to this matter of vital importance to our constituents.

Mr. STEVENS. What is the time remaining, Mr. President?

The PRESIDING OFFICER. Senator WARNER controls 46 minutes, Senator STEVENS controls 2 minutes, Senator SASSER controls 3 minutes.

Mr. STEVENS. Mr. President, there seems to be no one wishing to claim time at this time.

I suggest the absence of a quorum, and ask that it be taken from Mr. WARNER to start with, for 5 minutes, and we will see what happens.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. STEVENS. Mr. President, I have been informed that it would be agreeable with Senator WARNER, instead of using the time in the quorum call, that I use that 5 minutes. So I ask to be recognized for the balance of the 5 minutes of his time.

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

The Senator from Alaska has 3 minutes remaining.

Mr. STEVENS. Mr. President, the real problem about this unauthorized appropriations question is that those of us who represent the Senate on this conference agreed there are unauthorized items, items that were not addressed in the Armed Services Committee authorization conference report, but they were, in fact, in the Senate bill when the Senate bill went to conference.

That is the problem that we face. We go to conference as Senate conferees to defend the bill passed by the Senate. Now we have come back with a substantial portion of what was in that bill, and because the authorization committee changed this bill in conference, we are now told that we were wrong and we brought back unauthorized items.

That is so because some of these items are items that do get out of control.

Take for instance the unauthorized item that is listed in terms of the DOD medical programs. Those funds support all military hospitals, clinics, and the CHAMPUS program. The Armed Services Committee obviously does not oppose the total amount. The consolidation, however, was brought about by this conference report.

That was endorsed by the Department of Defense, it was included in the House-passed bill. The administration urged our committee to recede to the House position because they felt this approach would improve both the quality of health care provided to the military and the costs of such services.

Our committees have disputed over the appropriate level of funding for these programs for several years. But we also have another dispute. That is in the National Guard and Reserve. Almost half of the difference in the National Guard and Reserve equipment funding supports the acquisition of C-130 aircraft for the Wyoming and Ohio National Guards and reservists who we believe needed these new items.

Of the five accounts identified by the Armed Services Committee totaling $1.15 billion, 64 percent, or $3.3 billion of the amount they identified, were included in the Senate-passed appropriations bill. The Senator from Hawaii has already indicated Sealift, Coast Guard, and the corporate information management.

I am particularly concerned about the Mount Pinatubo claims. The great disaster in the Philippine led the Senate to pay $281 million for claims in damages and relocation costs due to the volcanic eruption in the Philippines. That was reduced to $150 million. Yet this great disaster, which we must pay for, was not included in the DOD authorization bill. This is one of the items that is listed as being overages in that 36 percent that we are over of the appropriations bill because we are in unauthorized items.

I really think the worst one is the real property maintenance item. That is listed as being identified again in the staff document from the Armed Services Committee as being something that is unauthorized.

The Senate-passed bill included $1 billion in additional funds to address the backlog of real property maintenance. Because of the lack of funds, we reduced that one-half billion dollars.

Mr. President, I think there are a lot of people in the Senate that are getting disturbed by the charge regarding the unauthorized appropriation accounts, a charge which has been leveled by the staff from the Armed Services Committee. Actually, our conference report reduced the funding for those items they have specifically indicated. An those items were in our Senate bill when we passed the bill. I think the charge is unfairly leveled and, Mr. President, if this bill goes down because of that charge, we will not get another bill this year. We will get a continuing resolution, and we will be facing this bill next year. We will be facing this bill next February or March and, in the meanwhile, the defense of this country will be severely hampered, in my judgment.

I reserve the remainder of my time.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I yield myself 5 minutes out of the time allocated to Senator WARNER.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, although the substantial majority of provisions in this conference report are balanced and responsible, I think the merits of the bill before us are overshadowed by a very fundamental flaw. In addition to serving the national security interests of the United States, this conference report has been used as a vehicle for serving numerous special interests at the expense of the American taxpayer and, unfortunately, at the expense of U.S. national security.

For that reason, I am regrettably compelled to vote against this conference report when it comes to a vote shortly.

I want to make it clear, Mr. President, that I do not fault any member of the Appropriations Committee for this problem. I am convinced that this is a systematic problem that now plagues the appropriations process whereby provisions are added during conference that were never debated or approved by the Senate or the authorizing committee.

Today, as so many times before, the Senate is faced with a conference report packed full with special interest items, leaving many of us with no recourse other than to vote against the entire report. I am not going to take the time to enumerate the special interest items contained in this report, or the unauthorized items contained in this report. Previous speakers have done that at length. I simply want to state that an established procedure, codified in law and in Senate procedures, of the past has been thrown to the wind.

This conference report waives the legal requirement to have competition in awarding university research grant. It exceeds, by several billion dollars, the authorized level for some 170 line items in the defense budget. It funds numerous other special item projects that were neither requested by the administration nor authorized by this Congress.

Mr. President, as many Members here know, I have, along with Senator MCCAIN, pursued in the last 3 years, the concept of line-item veto. We call it enhanced rescission. It is a modified form of the line-item veto process. I have not pursued that because I thought it was the perfect instrument, that it was a means of achieving the kind of fiscal discipline we need to run a fiscally sound budget process or balance the budget. I realize it is a partial step. But I have advocated it and urged the Senate to endorse it, because it is one very substantial way that we can gain some control over what I see as an appropriations process that simply has very little discipline.

As I and Senator MCCAIN have offered that in the past, others have come to the floor, who are the opponents of our attempts, and have indicated that, well, if we are dissatisfied with items in appropriations bills, we ought to come forward at the time those bills come before the Senate and express our dissatisfaction and offer amendments to remove items that we do not feel meet the test of authorization, or simply were added to satisfy particular members of the Appropriations Committee.

But, as so often is the case, we find ourselves in this exact situation that we are in today—with items added in conference, after the appropriations bill has come through the Senate—with very little or actually no other recourse except to vote for or against the whole bill.

In voting against it, we vote against many items we feel are important to our national security. In voting for it, we have to swallow the inclusion of many items that we feel are simply unnecessary, which have been deliberated on and rejected by the authority committee or—in many cases that we face here today—never even discussed, never even raised, never even debated.

So we go home to our constituents and they say: we noticed that the university of such and such, or the museum at fort so and so got an appropriation. You are on the Armed Services Committee, Senator COATS. How come we do not get appropriations for our particular universities or museums?

Then we try to explain—if it is explainable—the process of authorizing and appropriating, and how each take place on a separate track, and why being on the authorizing committee does not put a particular Representative or Senator in a position to make decisions on the Appropriations Committee that perhaps violate the decisions of the authorizing committee.

People back at home scratch their heads and say:

> I would never run a business that way. You can never run a household that way. What an arcane, ancient, unworkable system you have instituted in the U.S. Congress to deal with decisions relative to our national security and the way in which you spend our tax dollars.

Would it not make better sense to combine the two efforts so that those who were making the decisions about what was best for our national security were also the same people who were making decisions about how much we should spend? And should we not have a system whereby items of expenditure are debated as to their merit, and discussed, and vetoed on by members of the committee that are charged with making a determination as to whether this was a wise expenditure of money, or whether it was a necessary item to protect our national security?

So the enhanced rescission, or line-item veto, process that Senator MCCAIN and I have offered year after year—and we intend to do that again in the next session—simply makes a point that we need to gain some control over a process here that puts all of us in this position, on one of the waning days of this Congress, with no other choice but up or down on the whole bill. It does the very same for the President.

We think line-item veto is, as I said, certainly not perfect. It may be a blunt instrument, but apparently the only instrument available to us at this particular time, absent significant congressional reform in terms of the way we make the decisions.

Mr. President, I do not take pleasure in voting against the defense appropriations report. I support a strong defense and believe that this bill, for the most part, solidly funds our national security requirements. Unfortunately, if we do not draw a line on the practices that are part of this bill before us today, I am concerned that in the future scarce funds for defense will increasingly be decided not on the basis of what is in the best interest of the taxpayer or the national security, but whether or not the particular Member sits on the Appropriations Committee.

At some point, if we continue this process, I am concerned that our military readiness will be in jeopardy. I think today is time to draw the line. As I said, I think this is a systemic problem. I do not fault any member of the Appropriations Committee. I fault the process. I think we need to send the signal loud and clear that the current process needs to be changed.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STEVENS. How much time remains, Mr. President?

The PRESIDING OFFICER. Senator WARNER controls 31 minutes; the Senator from Alaska controls 2 minutes; and the senior Senator from Tennessee controls 3 minutes.

Mr. NUNN. Mr. President, I do not know what the Senator from Alaska would like do at this point, but I think we can wind it up a little early, if the Senator from Hawaii and the Senator from Alaska would like to do that. I do not have time remaining, but the Senator from Virginia has authorized me, in absence of anyone managing the bill on that side, to deal with his time.

So I would suggest to my friends from Hawaii and Alaska that we could wrap this up a little early if they would like to summarize it.

The PRESIDING OFFICER. The Senator from Hawaii.

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

The PRESIDING OFFICER. The clerk will call the roll, and the time will be charged equally.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. SIMON. Mr. President, I ask unanimous consent to proceed for 2 minutes as if in morning business.

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

ZAIRE

Mr. SIMON. Mr. President, this morning's New York Times, on the editorial page, has an op-ed piece by Dr. William Close, who at one point was the personal physician of President Mobutu of Zaire. That is a condensation of a larger letter to me, as chairman of the Senate Subcommittee on African Affairs, that outlines in some detail what is happening, and why the United States has to do whatever it can in the way of leveraging pressure for a change in Zaire to avoid massive bloodshed.

I ask unanimous consent to print Dr. Close's letter to me in the RECORD at this point.

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

MARBLETON, WY,
November 17, 1991.

Hon. PAUL SIMON,
Chairman, Subcommittee on African Affairs, U.S. Senate, Washington, DC.

DEAR MR. SIMON: In 1960, King Baudouin handed the Belgian Congo back to the Congolese and their new prime minister, Patrice Lumumba. Two days later the army mutinied for the promised benefits of independence and more pay and the country exploded into a collection of regional governments. Col. Joseph Mobutu—an officer with some training as a journalist—took over. Lumumba escaped from house arrest but was caught and later assassinated. Mobutu enlisted the few university graduates available and, as young "technocrats," they kept the government going. Then, under the protection of the United Nations and with the encouragement of Western powers, an elected government was formed by Cyrile Adoula, a labor leader from a small tribe, therefore acceptable to most in the country.

Unfortunately for the Congolese people the country was (and still is, potentially,) one of the wealthiest in Africa. A third of the size of the United States, the Congo—now known as Zaire—mines diamonds, gold, uranium, copper, as well as strontium, germanium, and cobalt—especially valuable to the arsenals of superpowers. I call these riches "unfortunate" because the Congolese found themselves and their country coveted targets in the cold war struggle between the USA and the USSR. The efforts of the Adoula government were handicapped when the mineral-rich southeastern province of Katanga (Shaba) tried to break away from the central government. And, soon after, rebels backed by China and Cuba devastated two thirds of the country killing most of the Congolese who could read and write. Reenter, in 1965, Colonel Mobutu who took control of the government again. He remains in power to this day.

After crushing the rebellion and welding together the regions into the semblance of a nation, President Mobutu encouraged foreign investments and the Congo/Zaire began a decade of growth and success. He was widely acclaimed as a smart politician, and Americans were proud of the fact that he had been aided by many different US Government agencies and big business.

I travelled to the Belgian Congo with a missionary organization in 1960, arriving just before independence. When the mutiny broke out there was a massive exodus of Europeans. I too tried to leave but couldn't: the roads to the airport had been blocked. So, looking for someway to help, I drove over to the 1500 bed Hospital des Congolais. An old Belgian was the only surgeon left. I offered to help him and when, a week later, he had to escort a wounded police commissioner back to Europe, I found myself the only surgeon in the hospital. My assistant was a Belgian nun. We had no lab and did our own gas-oxygen-ether anesthesia. We averaged 350 operations a month. During most of that first year, there were only three doctors for the whole hospital.

After a year and a half, I was appointed chief doctor for the Congolese Army by President Mobutu. I also became his personal physician. Five years later, he asked me to run the city hospital. With the help of doctors recruited from the United States, Canada, and Europe, I renovated and staffed the hospital, turning it into a national referral center of over 2000 beds. Our occupancy rates often reached 120%. Until recent events in Zaire, that hospital—renamed "Mama Yemo" after the President's mother—was one of the biggest centers in Africa for patients with AIDS: it is now destroyed.

By the end of 1976 I had been overseas for 16 years and was ready to come home. Things were getting sticky with the president. Among other things, we needed additional money to buy protein-rich food for the hundreds of children in our pediatric division. Since extra-budgetary expenses were prohibited—even back then the country's economy was in disarray—I suggested to the president that he ground a flight of Italian jets scheduled for the independence day parade and use the fuel money to buy food. Following a sharp exchange, he snatched up the telephone and called the governor of the national bank. I collected the money, and the jets buzzed his grandstand on the following day. Then a couple of months later, he insisted I rehire a doctor I had fired for corruption. It became more and more difficult to see the president, and it seemed clear to my wife and me that our ability to continue constructive work in the country had come to an end. We returned to the United States, and I became a village doc in the Rocky Mountains.

Then one morning a month ago I awoke to the news that the army in Zaire had again mutinied and that civilians in Kinshasa (Zaire's capital) had joined in the pillaging. Belgian and French troops were flown in to protect their own citizens and to evacuate them. It had taken Mobutu 15 years to return the country to the chaos of the sixties and worse. Now the infrastructure is destroyed, the people are starving and sick, and "peace" is being kept not by the United Nations but by thugs from the president's special detachment. Civil war may follow, provoked by Mobutu's strong-arm men and his intransigence before the forces for democracy. As he recently pronounced to the world press: "La démocratie, c'nest moi!"

France and Belgium have publicly withdrawn support from Mobutu. The House and Senate have called upon the U.S. Government to do the same, but our Administration's leadership has chosen to stay silent about a dictator whom some apparently still consider a friend. Certainly during the cold war, the Gulf war, and more recently in the Angolan conflicts, Mobutu was a useful ally. His corruptibility was an asset to us as it was to international entrepreneurial companies out for a quick buck. Now that the country is without an effective government, without banks, food, or medicines, and now that all the expatriate technical experts have been evacuated along with the Belgian and French troops, "our friend" Mobutu has become an embarrassment to us and a deadly threat to his own people. Although clear pronouncements from Congress and fuzzier intervention from the State Department have called for real distance between ourselves and Mobutu, the continued silence of our Administration's policymakers remains an enigma. Our lack of leadership in dissociating ourselves from "our man in Kinshasa" three weeks ago when the Belgian and French troops were still there has increased violence throughout Zaire. But some in high government positions still think Mobutu will share power. Others even believe that if he no longer controls the army, finances, and the mines, that civil war will break out. The fact is that the longer Mobutu clings to power the more brutality and repression will spread. Those still loyal to him in the presidential special detachment cannot quiet the miserable thousands in the capitol's teaming slums for long. Fear battles anger and frustration as food, medicine and, this week, fuel supplies run out. The national treasury has been raped for years by Mobutu. Last week the national currency soared from 44,000 to 57,000 for one dollar overnight: On October 1 the exchange rate was $1=Z 21,000.

The U.S. Government needs to dissociate itself from Mobutu. This message must come from the White House since the world is aware of the long-standing relationship between Presidents Bush and Mobutu—a relationship which Mobutu has distorted and exploited. The U.S. Government should clearly state that it would support the establishment of a transitional government which represents the major political parties and the critical interests of the people. The U.S. Government should strongly oppose any Zairian military intervention in the process of democratization, committing itself only to the support of an international peacekeeping force if so requested by the legitimate government or by a legitimate national conference.

Finally, through the years, I remember a number of patients rushed to my clinic near the presidential estate in Kinshass with wounds raked across their bodies like razor slashes. Mobutu kept a leopard called Mimi in his private zoo. Mimi allowed only the president to caress her. I sewed up all others who even tried, including one of his daughters. Eventually a barrier was built to keep people at a distance from the cage.

The spots on Mobutu's leopard hat will neither change nor fade. He can no longer be petted and, indeed, must now be isolated where he can terrorize those within his reach no more. It will take years for Zaire to recover from its present wounds. Old friends have a duty to send a message to Zaire that we no longer condone his mauling of the people.

Respectfully yours,

WILLIAM T. CLOSE, M.D.

Mr. SIMON. Mr. President, if no one else seeks the floor, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, FISCAL YEAR 1992—CONFERENCE REPORT

The Senate continued with the consideration of the conference report.

Mr. STEVENS. How much time remains?

The PRESIDING OFFICER. The Senator from Alaska has 1½ minutes remaining, the senior Senator from Tennessee has 2½ minutes remaining, and the Senator from Virginia has 27 minutes remaining.

Mr. STEVENS. Mr. President, I ask unanimous consent that we yield to the chairman of our Appropriations Committee 5 minutes.

The PRESIDING OFFICER. From whose time?

Mr. STEVENS. From the combined time that is left.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

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

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, I have listened to the debate today with a great deal of concern. I have heard what I would characterize pretty much as a general assault upon the Appropriations Committee of the U.S. Senate. I understand the feelings of Senators who have expressed themselves today, and I sympathize with some of those feelings.

I would like to say that, if we have problems between the authorizers and the appropriators, then we ought to sit down together and try to work out those problems and not take it out on this bill. This bill has required many hours of thought and labor on the part of members of the Subcommittee on Appropriations for the Department of Defense and on the part of staff. There have been conferences with the House of Representatives. I am a conferee. It was not possible for me to attend the conferences except in one instance only.

There has been an allusion to an agreement. Has that agreement been put in the RECORD?

I ask unanimous consent that the entire agreement be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. BYRD. I have tried in good faith to live up to that agreement. I do not think anybody questions that. I am sure they do not. And I am sure that Senator INOUYE, Senator HATFIELD, and Senator STEVENS have tried to live up to that agreement.

I think we have to remember, however, that that agreement was just among us Senators. It did not include the Members of the House of Representatives or even our counterparts in that body. Consequently, when our conferees go to conference with the House, our conferees try in good faith to live up to the letter and the spirit of the agreement. But we are only half, one body as against the other. We cannot force the House Members to conform to our own internal agreement. Consequently, if we get a bill out of conference, sometimes we have to give a little and take a little, and we may have to take something we do not like.

So I hope that Senators will apply a little bit of mercy to our conferees in recognition of that fact. We cannot bludgeon the Members of the other body; we cannot shove that pile of papers under their noses and say, "There is the agreement. You have to stick to it." They do not have to do so. They do not have to live up to that agreement.

There are those who have expressed concerns that matters were added in conference that were in neither bill. Well, that has been going on around here for a long, long time. As long as those matters are not entirely irrelevant to either bill, the conferees have a wide latitude in adding matters to bills that do not go to the conference in either bill. And that is done not just where appropriators are concerned. That is done, I venture to say, in most of the committee conferences that take place here between these two bodies.

This bill is important to the Nation. I want Senators to contemplate what will happen if they vote this conference report down. It is my understanding that all the members, or most of the members, of the Armed Services Committee, with the exception of myself, will vote against this conference report. They have a right to do that. And there will probably be other Members who will vote against the conference report for other reasons. They do not like it because we are spending, they say, too much money on defense or because some language was taken out that they helped put into the bill by way of an amendment on the Senate floor.

But let me say this. I have been saying that we need to reduce the spending for defense, we need to spend more money on the infrastructure of this country.

The PRESIDING OFFICER. The 5 minutes allocated to the President pro tempore has expired.

Mr. BYRD. Mr. President, I ask unanimous consent that I may speak for an additional 5 minutes.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. I went to the budget summit. And it was ROBERT BYRD who stood in that summit and led the fight for more money for infrastructure, both physical and human. There are some others in this body who did not want to reduce defense spending at the summit. I felt then and I feel now that we can stand some reductions in defense spending.

I do not approve of everything in this conference report. There are some things I would rather not have in it. I do not know everything that is in it. Only a few Senators really know that. But, I am going to vote for it, I urge the Members of this Senate to vote for this conference report. Let us not take it out on this conference report because we do not like something that happened in the conference.

I have explained that no man is master of any other man. And the Senate conferees are not masters of House conferees. They cannot lash the Members of the House, as the Persian Kings could lash their soldiers going into battle. We cannot do that. We have to do with what we have and do the best we can. Let us not take it out on this bill.

Now, what will happen if we vote this conference report down? I want Senators to think about that. We have both party leaders here hoping—and all Senators, I think most Senators, want likewise—to adjourn sine die next Tuesday—before Thanksgiving.

If we vote this conference report down, we may not adjourn next Tuesday. It is going to take some longer time.

What are our alternatives? One is a continuing resolution. I do not know how that would work out. Some of those Senators who want more cuts made in this bill than we were authorized to spend last year for some particular weapons system, may not find a continuing resolution to their liking. Or, we can insist on our amendments, ask for another conference and appoint conferees. They may be the same conferees but we have to appoint them again.

So those are the alternatives, as I see it. We have to go back to conference and have all this to do over again. And the next conference report may not be any more to our liking than this one is.

I say, my friends, we are taking quite a responsibility on ourselves. If we, out of some kind of pique—and we may be justified in having a pique—but if we, out of some kind of pique, say we are going to vote against this conference report because of thus and so, I hope we will rethink that position.

As I say, if there is some problem here, let us sit down and try to resolve it between the authorizers and the appropriators.

Let me add this. I daresay—I cannot show for a fact—but I imagine a good many of the items in this bill that are not authorized were put in there at the

request of Members of the Senate who are not on the Appropriations Committee. I know that happens in appropriations. Senators come to me, they come to other subcommittee chairmen on the Committee on Appropriations and say I want this, I want that, and we try to help them, if the items can be justified. They are not necessarily authorized by any particular law but very few Senators in this body can stand up and say to me that they have never asked me to put anything in the Interior appropriations bill. Very few Senators can say that. There may be some. I will not say all of them have. But we all do these things.

And not only that, but we put in items that the Members of the other body requests. I have had Members of the other body call me on the telephone: Please help me on this item on the bill; I need this, I need that. And we try to be of service because, after all, we think we are spending money for the good of the country, to up-build the country, to enhance the welfare and the standard of living of the American people, to enhance the economy. The same is probably true of this bill. And that is the way I look at it.

We spend money in this country; it is a heck of a lot better than sending it overseas.

But we all try to accommodate. Now you say you want to take it out on the Appropriations Committee. Let those who say that, search their minds and their hearts and try to remember whether or not they have ever asked the Appropriations Committee to do something for them. Think about it. And you will be back again. You will be asking again. The Appropriations Committee does not have the staff to deal adequately with the executive branch. We have less than 90 members on our total staff, yet we have to deal with the budget across the board. And our subcommittees have even fewer members.

I am just not going to sit still and see this assault made on the Appropriations Committee without saying something in return to try to lay the record straight.

Finally, Mr. President, there is no general prohibition—I have heard some things said on the floor today that I think ought to be corrected for the record—there is no general prohibition in the Standing Rules of the Senate or the precedents against making appropriations for a project or a program in the absence of an authorization. Such a point of order might lie against a particular amendment offered by an individual Senator. Points of order in the Senate regarding items of appropriations in excess of authorizations may be made against an amendment when that amendment is pending. It may be made. It is merely a majority vote, and so the Senate may vote otherwise. But Senators have that opportunity if they want to make a point of order.

In the instant case, however, there is no amendment pending. We have a conference report. I have heard it said, "I may make a point of order against this conference report." Well, budgetary discipline is provided by the Congressional Budget Act. The Constitution of the United States gives the Senate the authority to determine its own rules and, as such, the Senate may establish procedures that are inconsistent with provisions in the statutes because the Congress enacts the statutes. And if Congress wants to enact a statute today that is not in conformity with a statute that was enacted yesterday, Congress can do that. The section of the United States Code that was cited earlier is arguably a restriction on the agencies that have received appropriated funds for which there is no authorization.

(Ms. MIKULSKI assumed the chair.)

Mr. BYRD. Madam President, I have here that statute that was quoted in part. I am not sure it was read in its entirety.

I ask unanimous consent that it be included in its entirety.

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

§ 114. Annual authorization of appropriations

(a) No funds may be appropriated for any fiscal year to or for the use of any armed force or obligated or expended for—

(1) procurement of aircraft, missiles, or naval vessels;

(2) any research, development, test, or evaluation, or procurement or production related thereto;

(3) procurement of tracked combat vehicles;

(4) procurement of other weapons;

(5) procurement of naval torpedoes and related support equipment;

(6) military construction;

(7) the operation and maintenance of any armed force or of the activities and agencies of the Department of Defense (other than the military departments);

(8) procurement of ammunition; or

(9) other procurement by any armed force or by the activities and agencies of the Department of Defense (other than the military departments);

unless funds therefor have been specifically authorized by law.

(b) In subsection (a)(6), the term "military construction" includes any construction, development, conversion, or extension of any kind which is carried out with respect to any military facility or installation (including any Government-owned or Government-leased industrial facility used for the production of defense articles and any facility to which section 2353 of this title applies), any activity to which section 2807 of this title applies, any activity to which chapter 133 of this title applies, and advances to the Secretary of Transportation for the construction of defense access roads under section 210 of title 23. Such term does not include any activity to which section 2821 or 2854 of this title applies.

(c) The size of the Special Defense Acquisition Fund established pursuant to chapter 5 of the Arms Export Control Act (22 U.S.C. 2795 et seq.) may not exceed $1,070,000,000.

(d) Funds may be appropriated for the armed forces for use as an emergency fund for research, development, test, and evaluation, or related procurement or production, only if the appropriation of the funds is authorized by law after June 30, 1966.

(e) In each budget submitted by the President to Congress under section 1105 of title 31, amounts requested for procurement of equipment for the reserve components of the armed forces (including the National Guard) shall be set forth separately from other amounts requested for procurement for the armed forces.

(f) The amounts of the estimated expenditures and proposed appropriations necessary to support programs, projects, and activities of the Department of Defense included pursuant to paragraph (5) of section 1105(a) of title 31 in the budget submitted to Congress by the President under such section for any fiscal year or years and the amounts specified in all program and budget information submitted to Congress by the Department of Defense in support of such estimates and proposed appropriations shall be mutually consistent unless, in the case of each inconsistency, there is included detailed reasons for the inconsistency.

(g) The Secretary of Defense shall submit to Congress not later than April 1 of each year, the five-year defense program (including associated annexes) used by the Secretary in formulating the estimated expenditures and proposed appropriations included in such budget to support programs, projects, and activities of the Department of Defense.

(Added Pub. L. 93-155, title VIII, § 803(a), Nov. 16, 1973, 87 Stat. 612, § 138; amended Pub. L. 94-106, title VIII, § 801(a), Oct. 7, 1975, 89 Stat. 537; Pub. L. 94-361, title III, § 302, July 14, 1976, 90 Stat. 924; Pub. L. 96-107, title III, § 303(b), Nov. 9, 1979, 93 Stat. 806; Pub. L. 96-342, title X, § 1001(a)(1), (b)-(d)(1), Sept. 8, 1980, 94 Stat. 1117-1119; Pub. L. 96-513, title I, § 102, title V, § 511(4), Dec. 12, 1980, 94 Stat. 2840, 2920; Pub. L. 97-222 §2(b), July 10, 1981, 95 Stat. 124; Pub. L. 97-86, title III, § 302, title IX, §§ 901(a), 902, 903, Dec. 1, 1981, 95 Stat. 1104, 1113, 1114; Pub. L. 97-113, title I, § 108(b), Dec. 29, 1981, 95 Stat. 1524; Pub. L. 97-214, § 4, July 12, 1982, 96 Stat. 170; Pub. L. 97-252, title IV, § 402(a), title XI, §§ 1103, 1105, Sept. 8, 1982, 96 Stat. 725, 738, 739; Pub. L. 97-295, § 1(3), (4), Oct. 12, 1982, 96 Stat. 1289; Pub. L. 98-525, title XIV, § 1405(2), Oct. 19, 1984, 98 Stat. 2621; Pub. L. 99-145, title XII, § 1208, title XIV, § 1403, Nov. 8, 1985, 99 Stat. 723, 743; renumbered § 114 and amended Pub. L. 99-433, title I, §§ 101(a)(2), 110(b)(1)-(9), (11), Oct. 1, 1986, 100 Stat. 994, 1001, 1002; Pub. L. 99-661, div. A, title I, § 105(d), title XIII, § 1304(a), Nov. 14, 1986, 100 Stat. 3827, 3979; Pub. L. 100-26, § 7(j)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 100-180, div. A, title XII, § 1203, Dec. 4, 1987, 101 Stat. 1154.)

Mr. BYRD. Madam President, I thank Senators for their courtesy in allowing me to speak for these few minutes. I do not speak out of anger or out of rancor. I think however, we are on the verge of doing something that will be very hurtful to the institution, and that Senators will come to regret.

I hope that Senators will rethink their position if they have decided to vote against this conference report on the basis of some of the arguments that have been made today. And, as I say, if there are problems between the authorizers and appropriators, let us sit down and try again to resolve those problems. But do not let us vote

against this conference report for that reason only. We are going to be here several days if we do that, and the American people, more than ever, will wonder—will wonder if we still retain our senses.

EXHIBIT 1

AGREEMENT BETWEEN THE ARMED SERVICES AND APPROPRIATIONS COMMITTEES

To improve the working relationship between the Committees on Appropriations and Armed Services:

1. The Chairman and Ranking Member of each full Committee shall be considered ex officio members of the other full Committee.

The Chairman and Ranking Member of the Committee on Armed Services shall also be considered ex officio members of the Committee on Appropriations Subcommittee on Defense.

The Chairman and Ranking Member of the Subcommittee on Defense shall also be designated to be ex officio members of the Armed Services Committee.

2. Ex officio members may participate in all meetings, hearings and markups of the respective committees and subcommittees through the legislative process, but may not vote.

3. Amendments on behalf of the respective committees may be offered by ex officio members if such amendments have been authorized by a majority vote of the members of the respective committees.

4. Committee staff shall make all markup materials available to ex officio members prior to subcommittee and full committee markups of annual and supplemental authorization and appropriation bills.

5. Designated staff from each committee will be admitted to all subcommittee and full committee markups and included in all conference meetings on annual and supplemental authorization and appropriation bills.

6. Both committees pledge to try to avoid reversing the policy directions of the other committee.

7. The Committee on Appropriations agrees to try to avoid the incorporation of legislative provisions in annual Defense Appropriations bills whether such initiatives are offered during the Committee markups, the Senate floor or during the House-Senate Conference on such bills, and the Armed Services Committee shall join in such resistance.

8. The Committee on Appropriations agrees not to appropriate more than is authorized unless the amount so appropriated is explicitly made subject to authorization, and further agrees not to appropriate funds for programs specifically terminated in the authorization bill. The Committee on Armed Services agrees not to include obligation floors in authorization bills.

9. The Armed Service Committee will resist statutory proposals that restrict the flexibility of the Appropriations Committee in making financial adjustments using prior year funds. However, nothing contained herein shall restrict the Armed Services Committee or any member thereof from opposing the appropriation of funding at a level above account levels or for unauthorized programs, projects or activities.

The purpose of this agreement is to improve the working relationship between the Committees on Appropriations and Armed Services. Nothing contained in this agreement shall be construed to restrict the rights and prerogatives of any Member of either Committee.

Committee on Armed Services:
SAM NUNN, Chairman.
JOHN WARNER, Ranking Member.

Committee on Appropriations:
ROBERT C. BYRD, Chairman.
MARK O. HATFIELD, Ranking Member.
DANIEL K. INOUYE, Chairman, Subcommittee on Defense.
TED STEVENS, Ranking Member, Subcommittee on Defense.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Madam President, I yield such time to the Senator from Georgia as he may require, first making the parliamentary inquiry: The Senator from Virginia has about 21 or 22 minutes remaining?

The PRESIDING OFFICER. The Chair wishes to advise the Senate that Senator WARNER has 23 minutes remaining of the time that he controls. Senator STEVENS of Alaska has 1 minute in the time that he controls. And Senator SASSER of Tennessee, 2 minutes for the time that he controls.

Mr. WARNER. Madam President, I yield such time as the Senator from Georgia may require.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. I thank the Chair. I thank my friend from Virginia.

Madam President, let me say first in response to the Senator from West Virginia, that I will always be glad to sit down with him, the Senator from Hawaii, the Senator from Alaska, the Senator from Virginia and others to try to see if we can make this process work. We have been trying for about 5 years now.

When the Senator from West Virginia took over the Appropriations Committee, one of the first things we did—I cannot think of anyone more cooperative in terms of trying to work these matters out than the Senator from West Virginia—we did sit down, we did negotiate, we did get our staffs involved, we did talk about the ramifications of the differences between appropriations and authorization.

We came on the floor and the Senator from West Virginia clearly agreed with the position I had taken that appropriations bills should respect the ceilings of authorization bills, and that the authorization process was a ceiling; that the appropriation process was a floor. In other words, the appropriators have every right to cut any program they choose to that is in the authorization. And yet they are not supposed to, according to the custom and according to what I read as the law—they are not supposed to go over the authorization.

So we ended up with an agreement. The agreement is right here, and I am glad the Senator from West Virginia said it should be put in the RECORD in toto, and I agree with that.

It could not be clearer. It was—every word was negotiated. It has been signed by Senator BYRD, Senator HATFIELD, Senator INOUYE, Senator STEVENS and myself and Senator WARNER.

And I understand the conferences. I understand we cannot bind the House. We get in our conference each year and we have floors on the House side. We have minimum expenditures that are mandated in the House bill. We had at least 15 to 20 floors this year that would have precluded the appropriators from going below that amount because it would have been automatic in law. They can always come along perhaps later and repeal that law. That would have been against the spirit of our agreement.

The Senator from West Virginia and I had an explicit understanding that we would not undermine their floor position, their ability to cut our bill, and they would not undermine our ceiling. If the Appropriations Committee can cut what we authorize, then we certainly are not a floor and we should not be. But if the appropriators can go above what we authorized in accounts and in broad categories, then we are not a ceiling either. If an authorization committee is not a ceiling and not a floor, then that committee has no reason for existence. We might as well abolish the authorizing committees, put everybody on the Appropriations Committee, have one gigantic Appropriations Committee, and then we would all be in there together and we would be making decisions together.

Madam President, the exact language that we believe should be adhered to that was explicitly agreed to in this written agreement that is now going to be part of the record, paragraph 8 says:

The Committee on Appropriations agrees not to appropriate more than is authorized unless the amount so appropriated is explicitly made subject to authorization, and further agrees not to appropriate funds for programs specifically terminated in the authorization bill. The Committee on Armed Services agrees not to include obligation floors in authorization bills.

That is the exact language.

Madam President, we had some 15 or 20 floors in this bill from the House. We told them something very simple, I say to my friend from West Virginia.

We told the authorization conference, the House conferees, who had the floors in their bill that we would not bring back floors in this bill in our authorization bill because it would breach the agreement, and we would just not do it. We would not bring back that kind of breach of the agreement. We insisted that the House drop all their floors, their minimum expenditure provisions in the bill. We have adhered explicitly to that agreement since the day this agreement was signed.

Madam President, what we ask the appropriators to do is nothing that

would be mission impossible. We do not say you basically have to come back and never exceed an authorization. We know that, by the nature of accomplishment, is impossible. What we do ask is for them to live up to the agreement which they signed which says the "Committee on Appropriations agrees not to appropriate more than is authorized unless the amount so appropriated is explicitly made subject to authorization."

In reading this conference report, there is nothing in there that says these unauthorized appropriations are made subject to further authorization. That was the whole agreement that we had, that we would be able to come back with a subsequent bill, take a look at the unauthorized appropriations and then make our judgment on it. Frankly, we approve most of them. We find reasons most of the time that the appropriators are correct. But that is the agreement we had, and I have to say it has not been lived up to.

Madam President, I have to say also that there is nobody in this body, and we can stipulate this for the record, that has not written the Appropriations Committee or contacted them and asked for some project for their own State. We can stipulate that. I would say anyone who has never talked to the appropriators and asked for anything for their own State is probably not representing their own State very well.

But I would also say that I do not believe that we forfeit our right to determine how to vote as U.S. Senators on the appropriations bill or a final conference report of an appropriations bill because we have tried from time to time to protect our State and to get certain funds for our State. The only place you can get those funds is through the appropriations bill. We are not going to be put in the position, I do not believe, in this body that we disqualify ourselves to judge the merits of an appropriations bill if we have ever asked for any help for our State. I do not think anyone intends to insinuate that.

Madam President, I will close my remarks by saying that I am not lobbying people to vote against this bill. I have stated my views on the floor. Everyone will make their own decision. I expect this conference report would be agreed to like most other conference reports. It is an important bill. There is no doubt about that. But I cannot support the bill because I cannot support the earmarkings of defense funds for specific university projects that are outside the competitive process. I cannot support taking $94.6 million and saying that 38 of our States cannot compete because the appropriations conference decided that these universities would get this money and there would be no competition. And remember, I say to my colleagues, remember that the Competition in Contracting Act, which is explicitly waived in this bill, gives the Secretary of Defense the right to make a sole-source award if there are unique reasons for doing so. If the University of Texas or the University of Georgia or the University of West Virginia is the only university that can perform a certain function, they have every right in the Department of Defense to have a sole-source contract. But the only reason I can figure out you want to make sure there is no competition is because that university must not be the best one around. Why else would you not be willing for that university to compete?

So, Madam President, I cannot support the earmarkings of defense funds for specific university projects outside of competitive procedures. I know that is done in other appropriations bills. It has been done in other appropriations bills. But I do not believe anybody believes it is a good idea, and I think we would be making a very bad mistake to begin doing it in defense appropriations. But we are if we agree to this conference report.

Madam President, I cannot support the inclusion of legislative provisions which specifically negate and overhaul and break new ground on an appropriations bill, and we have several of those in this bill which I have enumerated. I cannot support the beginning of another long line of people and military bases coming up and saying: "We want a museum." I cannot support the beginning of that precedent which is going to come back to haunt us, and that precedent is clear and present in this bill. I cannot support $3.3 billion in appropriations at the account level that exceed the authorization level which are not made subject to authorization in accordance with the explicit written agreement that we have with the appropriators.

Madam President, as I have said earlier, this will be the first defense appropriations bill I vote against, and I do so with great reluctance and great sadness. I also will repeat what I said at the outset. You will never find the Senator from Georgia not willing to sit down and try to work something out. I suspect so far in the last 5 years I have spent about a hundred hours sitting down and trying to work things out in this vein. And that is exactly what we thought we had worked out when we signed this piece of paper with the appropriators.

Madam President, I will vote against this conference report.

Several Senators addressed the Chair.

Mr. BYRD. Will the Senator yield for a question?

Mr. NUNN. I will be glad to, if I have further time from my friend from Virginia.

Mr. WARNER. Madam President, the Senator has the time.

Mr. BYRD. Madam President, I have two questions. One: As the bill was written when it passed the Senate before it went to conference, did the distinguished Senator from Georgia, the chairman of the Armed Services Committee, did he at that time have any problem with that bill insofar as the agreement was concerned?

Mr. NUNN. I will say to my friend from West Virginia, no, I did not. I thought that the bill was in compliance with our agreement at that time, and I will say in further response to him, we basically stated in this agreement we signed that we are not talking about simply a Senate bill, we are talking about what comes back from the conference.

Mr. BYRD. The Senator says that, but the Senator also knows that we cannot control the House Members. I have said this. I do not need to repeat it. The point I am making is that when this bill left the Senate and went to conference, it had not, in the words of the distinguished Senator from Georgia, broken any agreement.

Mr. NUNN. The Senator is correct.

Mr. BYRD. So that whatever is in this conference report that is not in conformity with that agreement was put in there by the conferees.

Mr. NUNN. The Senator is correct.

Mr. BYRD. I would say our Senate conferees perhaps did the best they could. I would want to think they did the best they could.

Now, the agreement does not say that if a bill leaves the Senate and meets the requirements of the agreement, if it comes back otherwise in the conference report, we are to be held responsible, the Senate is to be held responsible, the committee is to be held responsible, and the conference report should be opposed. Is the Senator saying that members of the Appropriations Committee are bound by this agreement to oppose the conference report because, in the conference, Senators had to agree with some things with the House that do not conform to this agreement—and we have already stipulated, I guess we have, that the House Members are not bound by this agreement—is the Senator saying that the agreement applies, that we who were signatories of the agreement, myself being one, are bound in conscience to vote against this conference report because it does not conform to the requirements of this agreement which only applied to the Members of the Senate? And the Senator has already agreed that when this bill went to conference, it met these requirements.

Mr. NUNN. I say to the Senator from West Virginia that I do not think anyone is bound to vote against this conference report. I exercise my rights as a Senator to vote against the conference report, and I say why. I do not say the Senator from West Virginia has a duty to vote against this conference report.

I do say I do not think the appropriators who negotiate for the House Appropriations Committee are any more tenacious, any more diligent, any tougher in adhering to their position than the authorizers from the House. We knock out the floors in the House bill because we insist on doing so.

The Senator from West Virginia and I have talked about that on many occasions. He has brought to my attention a couple times where we inadvertently had floors in our bill, and we have gone back and taken them out. I think the Senator from West Virginia will be the first person on the floor to protest against an authorization bill that had floors in it.

And so I am saying to him there is no one who has an obligation to vote against this report. But I do believe the appropriators have an obligation to do their very best to live up to the agreement in the conference. They will not always succeed. They will not always succeed. But I do not believe, I would have to say, that there has been a very vigorous effort by appropriators to put in the conference report when the ceilings are exceeded the very simple sentence that would say, "This unappropriated amount is subject to further authorization."

That is all that is required to live up to this agreement—one simple sentence. But it has not been put in this conference report. I do not believe much time was spent trying to negotiate that agreement. I hope the Senator from Alaska and the Senator from Hawaii will correct me if I am wrong, but my guess is that the subject was not brought up at the conference.

Mr. BYRD. Madam President, will the distinguished Senator yield for another question.

Is the Senator telling me that we are expected to wrench out of the House conferees their agreement to such language in a conference report? They have to take back to their House the same conference report we have to bring back to the Senate. Is he expecting us to exact that pound of flesh from the House conferees?

Mr. NUNN. I would say I have the same expectations of the appropriators that the appropriators have of us in not having floors in our bill. And I also would say we discussed that very specifically when we drew up that agreement where that is exactly what the appropriators agreed to do.

Mr. BYRD. The words say "will try."

Mr. NUNN. Did the appropriators try?

Mr. BYRD. Ask them.

Mr. NUNN. If they tried, I would like to know about it. I do not gather there was much effort to put in that very simple sentence. I may be wrong. If that was the subject of intense negotiation, I would like to know about it.

Mr. BYRD. Madam President, will the Senator take another question.

Mr. NUNN. I will be glad to.

Mr. BYRD. Does the able Senator really mean to tell this Senator that he thinks the House, which is not bound by this agreement, would agree to that sentence in the conference report that is taken back to the House?

Mr. NUNN. I would say it would be just as likely they would agree with that as the House Armed Services Committee would agree to drop all their floors which they felt very strongly about and which they dropped.

Mr. BYRD. Well, the distinguished Senator from Georgia is assuming that they would. I do not think we have any right to assume that.

On final question I would like to ask the distinguished Senator. And I do not mean for this question to be unfair. I think he knows that I have urged that we stay with the agreement.

Mr. NUNN. I know that.

Mr. BYRD. Does he know that?

Mr. NUNN. Yes, I know that, and I appreciate that.

Mr. BYRD. Would he be willing to say, if he thinks so, that members of the Appropriations Committee have broken faith—those of us who signed this agreement—have broken faith with this agreement?

Mr. NUNN. When the Senator from West Virginia uses the word "faith," that gets into subjective judgment. What I say is the agreement itself is broken and everyone has to examine their own conscience about whether faith has been broken. I do not accuse any Senator of breaking faith. What I do say is that the agreement itself has been broken.

Mr. BYRD. Madam President, will the Senator yield to me for 1 minute?

Mr. NUNN. Yes, I will be glad to.

Mr. BYRD. Madam President, my conscience is clear. I do not think faith has been broken by Senate conferees. And I do not think the agreement has been broken. The agreement applies to Senators, and the Senator from Georgia has already indicated that when this bill went to conference, it met with his approval so far as the agreement is concerned.

Mr. NUNN. Is that a question?

Mr. BYRD. No, I did not say it was to be a question. I asked the Senator if he would yield to me for a minute.

Mr. NUNN. Yes, I will be glad to.

Mr. BYRD. We speak of our consciences. The Senator feels good in his conscience; I feel good in mine. I am going to support my Appropriations Committee. The conferees worked hard. I think they did their best. And I will not imply that they broke faith or that they did not try. But when this bill left this body, it met with the agreement. We cannot be responsible for the House, and we cannot insist to the point of futility that a conference report be written to satisfy ourselves when we cannot get House conferees to agree with everything we want. If we do that, may I say to my friend from Georgia, there will be a good many bills that will die in conference.

Mr. NUNN. I say to my friend from West Virginia, I understand his point, but I would also say if the agreement does not apply to conferences, it has no effect. There is no reason in struggling all year long to live up to something in the Senate and then as soon as we get to conference drop the principle altogether.

I hope that there was a real effort. I hope there was a real effort. And if there has been, then fine. I make no judgment about anyone's good faith here. I am not talking about good faith. I am talking about the agreement itself and the process itself. I think all of us in the Senate are probably coming to a conclusion slowly but surely that the process itself is badly flawed; that we ourselves are going to have to correct that process. I think we either have to put everybody on the Appropriations Committee or we need to abolish the authorizing committees or we need to combine the two and abolish the Budget Committee or find some way to get three layers down to two layers.

I just read the other day the proposal of the Senator from Kansas [Mrs. KASSEBAUM] which says that we ought to have a leadership committee that would take the place of the Budget Committee. Senator INOUYE from Hawaii has cosponsored that. The leadership committee would be composed of the ranking member and the chairman of each one of the committees, including authorizers, and that would substitute for the Budget Committee. And then what we would have is the authorizing and Appropriations Committees merged with the subcommittees moving into the authorizing committees and then that committee would do both the authorizing and the appropriating. We would cut one whole layer out of the process.

I know it has to be studied carefully. But the Senator from Kansas, Mrs. KASSEBAUM, has a very good idea. The Senator from Hawaii has cosponsored that.

It is absolutely absurd to go through the budget process, authorizing process, and the appropriating process. It is absolutely absurd to come on the floor and debate a defense bill twice and have two conference reports and to have to go through this over and over again. The process itself is absurd, and I think all of us had better start examining whether we want to continue to be a part of a process that is so apparently flawed and, in my opinion, is not producing the kind of results the American people have every right to demand.

So this goes far beyond this particular bill. It goes to the process the Senate is going through now, and I think all of us need to examine our own feel-

ings about this in the months and weeks to come.

I yield the floor. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I stand foursquare with the Senator from Georgia, my chairman, Mr. NUNN, on this matter and will vote no for the first time against the Defense appropriations bill.

Mr. INOUYE addressed the Chair.

Mr. WARNER. I yield the remainder of my time.

The PRESIDING OFFICER. The Senate will come to order. It is very difficult for the Chair to hear because of conversations on the floor.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia had 1 minute and 13 seconds remaining. The Senator from Alaska has 1 minute remaining. The Chair advises the Senator from Tennessee he has 2 minutes remaining.

Does the Senator from Alaska seek recognition?

Mr. SASSER. Madam President, I yield back the remainder of my time.

THE DEFENSE CONFERENCE REPORT

Mr. LEAHY. Mr. President, I oppose attempts by the Senate Armed Services Committee to scuttle the Defense appropriations conference report.

My chairman from Hawaii knows that he and I are united in providing a strong defense for our Nation, but that we do disagree on our support for several programs. Our differences, however, do not affect my admiration for his leadership on the Appropriations Committee.

Mr. President, while I disagree with many of the provisions and the level of spending in the Defense Appropriations Act, I want to make it clear that I strongly oppose the efforts by the members of the Senate Armed Services Committee.

The authorizing committee has objected to provisions in the Defense appropriations bill that are insignificant compared to what really is happening around here.

Yesterday, we authorized billions of dollars for star wars and the B-2 bomber. We have put ourselves on course to deploy an antiballistic missile system that will cost our Nation tens of billions of dollars. The defense budget is nearly $300 billion.

And what issues do the Armed Services Committee choose to complain about in the appropriations conference report? Provisions that amount to less than 1 percent of the Defense budget.

They have even taken aim at the $150 it will cost the Navy to transport the bell of the U.S.S. *Bennington* from California to Bennington, VT.

So Mr. President, I would have much more sympathy for the authorizers if their bill had actually differed considerably from the appropriations conference report. I say next year, let us go after the B-2 again. Let us ground star wars. Let us discover the peace dividend. But today, I say approve the appropriations report and leave our sacred bell alone.

FISCAL YEAR 1992 DEFENSE APPROPRIATIONS BILL CONFERENCE REPORT ON H.R. 2521

Mr. DOMENICI. Mr. President, I rise in support of the conference report accompanying H.R. 2521, the Department of Defense appropriations bill for fiscal year 1992.

This bill provides $269.9 billion in budget authority and $176.1 billion in new outlays for the Department of Defense in fiscal year 1992.

When outlays from prior-year budget authority and other adjustments are taken into account, the conference agreement totals $269.9 billion in budget authority and $275.4 billion in outlays for fiscal year 1992.

I commend the conferees for producing a bill within the subcommittee's section 602(b) allocation and that consistent with the budget agreement.

This bill funds a number of worthwhile programs within the Department of Defense.

I am pleased to note that one of these programs is SDI, which is funded at $4.15 billion, representing the highest level of funding in the history of the SDI Program.

I think the events in the Persian Gulf last winter and in the Soviet Union last summer underscore out need for missile defenses.

While I am pleased with the overall funding level for SDI I must note a concern I have with the new focus on near-term technologies over follow-on technologies.

This is something we will have to think more about in the months and years ahead.

Mr. President, this bill marks the culmination of my first year as a member of the Defense Appropriations Subcommittee.

It has been a great pleasure for me to work with the distinguished subcommittee chairman and ranking member, Senator INOUYE and Senator STEVENS. I have enjoyed working with them on this very complex bill, and I look forward to my participation in the year's to come.

I also wish to thank them for the consideration and courtesy they have extended to me, and to my staff, during this past year.

The committee staff they have assembled is both professional and dedicated, and it is a pleasure to work with them.

I also want to express my appreciation to my fellow conferees for their support of a number of ongoing projects and programs important to my home State of New Mexico.

I particularly want to thank my colleagues for their overwhelming support for funding in the amount of $30 million to pay claims authorized in the Radiation Exposure Compensation Act of 1990. Recognition of these claims is long overdue, and the funding in this bill will make significant progress in paying these much-needed benefits.

I urge the adoption of the conference report.

U.S.S. "LEXINGTON"

Mr. HEFLIN. Mr. President, most Members are probably not aware that for the last few months three cities, Mobile, AL, Corpus Christi, TX, and Quincy, MA, have been locked in a competition to receive the U.S.S. *Lexington*, a recently retired aircraft carrier. I was pleased that this competition has been conducted fairly, with each city wanting to be judged on the merits of their proposal.

But now, just days before the Secretary of the Navy is to make his decision, some persons in the House attempted to tilt the playing field and give an unfair advantage to Quincy. Behind the closed doors of the conference committee, they managed to slip in the report a paragraph that, had it gone unnoticed, might have been construed as directing the Navy to send the *Lexington* to Quincy.

Mr. President, I see this move as a slap in the face to the people of Alabama and to all others who have worked so hard on this project. Should Alabama win the competition, the *Lexington* will be placed beside the historic U.S.S. *Alabama* and U.S.S. *Drum* in Mobile's Battleship Park. This park stands as a monument to our Nation's armed services and veterans, and through years of hard work, the park has grown to become Alabama's No. 1 tourist attraction. In fact, I think it is fair to say that the Battleship Park has also become a monument to the hard work and patriotism of the people of Alabama. Mr. President, I cannot sit still and let the proud addition of the U.S.S. *Lexington* be stolen from us.

The distinguished managers of this bill, Senators INOUYE and STEVENS, also feel that this should be a fair competition, and earlier entered into a colloquy with me to clarify the intent of the *Lexington* language. They agreed that the proposals of the three cities should be judged on their merits, and the Navy should work equally with each of the competitors.

I believe the floor action of the Senate will convince the Secretary of the Navy that it is the intent of Congress that fairness should prevail and that his decision should be entirely on the merits. I firmly believe that the merits of the decision are clearly with Mobile.

Mr. THURMOND. Mr. President, I want to compliment Senator INOUYE, the chairman of the Subcommittee on Defense Appropriations, and Senator STEVENS, the ranking member, for their efforts in getting this Defense appropriations conference report to the floor. In my judgment, this report reflects their strong commitment to this Nation's defense and support for our men and women in uniform.

Mr. President, although in many areas this is a good bill, I am disappointed that the report contains almost $11 billion for 18 accounts that breach authorization ceilings or are new accounts that were not authorized by the Armed Services Committee. These appropriations were included in the bill despite a longstanding agreement between the Appropriations and Armed Services Committees to avoid this situation. In addition, these appropriations contradict title 10, section 114(a) which states: "No funds may be appropriated for any fiscal years to or for the use of any armed force or obligated or expended for [procurement, R&D, etc.] unless funds therefore have been specifically authorized by law."

As the senior member of the Armed Services Committee, I am aware that the problem of unauthorized appropriations has existed for quite some time. However, over the past years, these unauthorized appropriations have grown in numbers and scope. In this conference report, the Armed Services Committee has identified at least 170 programs for which $4.9 billion was appropriated, but which are not authorized. What is most ironic is that many of these programs were at one time or another considered by the Armed Services Committee, but deemed not high enough in priority in view of the drawdown in the force structure and budget.

Mr. President, I know my colleagues will agree with me that the United States and the Defense Department must encourage our academic institutions to maintain a strong research program. The university research initiative and similar programs sponsored by the Federal Government are essential in this endeavor.

Without Federal funding, our colleges and universities could not devote the resources to those multidisciplinary fields of research which are essential to our Nation, both in defense and commercial applications.

To receive the most benefit from the dollars committed to these research programs, we must ensure that there is competition. Competition fosters initiative and innovation, both of which are critical to research.

The bill before us takes away that competition by earmarking $94.6 million for 16 universities including $500,000 for my State. This is in contradiction to the Competition in Contracting Act and deprives other colleges and universities the opportunity to compete for the precious research and grant dollars.

Earmarking, although politically beneficial, is not in the best interest of scientific research of our Nation and I urge my colleagues to reject it.

Mr. President, I hope that both the chairman and ranking member of the Defense Appropriations Subcommittee will work with the Armed Services Committee to resolve these problems. Since the conference report can not be amended, I would urge them to go on record as encouraging the Secretary of Defense to seek authorization before he obligates any of the funds that are appropriated, but not authorized.

Finally, as the ranking member of the Subcommittee on Strategic Forces and Nuclear Deterrence, I am dismayed that the conferees on the Appropriations bill deleted funding for the 6 MX test missiles. These missiles were critical to test the reliability of the MX missiles currently deployed. Because of these cuts, some experts estimate, the Nation will have to begin to retire our deployed MX missiles earlier, rather than later in the century.

Mr. President, this conference report represents a great deal of hard work and commitment by the members of Defense Appropriations Subcommittee. It has its shortcomings, but it is the bill that funds our Nation's defense for the next year and I therefore reluctantly will vote for it.

Thank you, Mr. President.

Mr. PELL. Mr. President, yesterday I voted with considerable misgivings for the Defense authorization bill for fiscal year 1992. I stated at the time that it seemed beyond belief to me that we were voting for a bill which authorized $2 billion more than the amount authorized for the current fiscal year, notwithstanding the fact that the major threats to our national security seem to have evaporated.

Today, we are being presented with an appropriation bill which provides $3.4 billion more than yesterday's bill authorized. And it would appropriate some $2 billion more than was appropriated for the current fiscal year. Again, we are going in the wrong direction, only more so. And, unfortunately, from my point of view, this bill just goes too far.

In addition to the question of the magnitude of defense expenditures, I also want to state my complete agreement with the Senator from Georgia [Mr. NUNN], and others who have spoken here today, on the need to maintain the integrity of the authorization process. The appropriation process is supposed to flow from the duly constituted authority of the authorizing committees and we should draw the line now to make sure that this principle is adhered to.

When I cast my vote for yesterday's bill, I did so primarily out of parochial interest in assuring that provision was made for the third Seawolf submarine, the production of which is of such paramount importance to the economy of my State. My vote today in no way should suggest that my concern in this regard has diminished. But I am mindful that the Senate has spoken its will conclusively in support of this program by a 90 to 10 vote when the appropriation bill was before us earlier this year. If the conference report is rejected, I urge that prompt action be taken to return the DOD appropriation to us in acceptable form.

ANTARCTIC LOGISTICS

Ms. MIKULSKI. I understand the DOD appropriations conference report earmarks $105 million for the logistical and environmental activities associated with the U.S. Antarctic Program. The balance of the budget for this program—a total of $88 million—has already been appropriated in the VA, HUD, and Independent Agencies Appropriations Act for fiscal year 1992 to the National Science Foundation. When these bills are taken together, we have provided a total of $193 million for this program. This equals the President's request for this program.

As I am sure the Senator from Hawaii knows, this is a very important program—not only for research purposes, but also because it serves as the way in which the Nation exercises its active and influential presence on this vital continent. It is my understanding that the administration's policy—as expressed in various National Security Council memorandums, a Presidential memorandum, and other administration reports—with respect to the management and budgeting for this program is that NSF is to be the lead agency to ensure that the program is managed as a single package.

I would like to ask the distinguished chairman of the Defense Appropriations Subcommittee, with the funds in the defense bill being provided directly to the Defense Department and $88 million already appropriated to the NSF, how can we ensure that the program is managed as a single, unified operation?

Mr. INOUYE. I appreciate the question from the Senator from Maryland, and the chair of the VA, HUD, and Independent Agencies Appropriations Subcommittee. I want to say at the outset that I share with the Senator from Maryland the concern about the need to have this national program operate in a well-coordinated fashion.

In this bill, we have provided $105 million for U.S. Antarctic logistics support. Of this amount, $75 million is for the budget request for personnel, air operations, surface transportation, Antarctic Continent operations, United States and New Zealand operations, and major construction and procurement.

In addition, we have provided $30 million, consistent with the administra-

tion's position, to support the continuation of the President's safety, environmental, and health initiative in the Antarctic. I am well aware of the critical safety and environmental requirements that must be addressed in the future and expect the administration will respond to maintain and strengthen this Nation's active and influential presence in the Antarctic through this initiative.

It is my own view that the Navy is to use these funds consistent with the budget request and Presidential Memorandum 6646 which, as the distinguished Senator from Maryland knows, designates the National Science Foundation with overall management responsibility for U.S. activities in the Antarctic. It is my expectation that the Navy will coordinate its activities closely with the NSF to provide the support necessary to meet Antarctic Program objectives.

Let me say to the Senator, it is my intent to work with the administration to see that these funds are made available to the NSF as quickly as possible so that this complex program is managed as effectively and efficiently as possible.

In that way, it will allow the program to be operated with NSF as the lead agency managing the program so that the National Science Foundation can maintain its active and influential presence in the Antarctic.

As the Senator from Maryland knows, to provide the funds for the Antarctic activity, we were required to rescind a total of $75 million in domestic budget authority. Of that amount, $5 million is to come from NSF's research and related activity. The remaining $70 million, in whole or in part, from either or both of the following two sources: NSF and unobligated funds from the assisted housing programs in HUD. I would expect that the administration's proposed programmatic allocation of the rescission be submitted to the committee as part of the respective agencies' fiscal year 1992 operating plans.

Mr. STEVENS. I want to add my voice to the comments just made by the chairman of the Defense Appropriations Subcommittee. This is an important national program that needs to be managed as a single package.

Ms. MIKULSKI. I appreciate the chairman's explanation and the remarks of the Senator from Alaska. Given the unique nature of this program, I want to join with the Senator from Hawaii and the Senator from Alaska in urging the administration to consolidate the appropriated resources from the DOD bill with those appropriated to NSF in the VA, HUD, and Independent Agencies Appropriations Act. I also want to associate myself with the statement by the Senator from Hawaii regarding the administration's submittal of its operating plans as the vehicle for addressing the rescission. I look forward to working with the chairman and other Senators to encourage this to happen as expeditiously as possible.

FAST SEALIFT PROGRAM

Mr. JOHNSTON. Mr. President, as I understand it, the legislation proposed by the House supporting the Fast Sealift Program required that all fast sealift vessels be constructed in private U.S. shipyards. The conference report now before the Senate changes that requirement and provides that 15 percent of the funds appropriated for the Sealift Program may be utilized by the Department of Defense to acquire ships constructed in foreign shipyards.

Was it the intention of the conference that the funds now set aside for the acquisition of the ships constructed in foreign shipyards may be spent to acquire existing ships heretofore built in foreign shipyards as well as brand new, state-of-the-art vessels that citizens of the United States might now build, with a substantial investment of private funds for commercial utilization, under contract with the Navy?

Mr. INOUYE. Yes. As the conference report states, no more than 15 percent of the funds available to the Department of Defense for sealift may be used to acquire ships constructed in foreign shipyards. This provision is broad enough to authorize the Navy to acquire precisely the type of sealift vessels it needs, whether those vessels be newly constructed or previously used. However, any necessary conversion work must be done in a U.S. shipyard.

Mr. JOHNSTON. With reference to the 85-percent balance of Fast Sealift Program funds still reserved for the construction or conversion of sealift vessels in private U.S. shipyards, do I correctly read the conference report to state that, under existing law, the Defense Department is not precluded from contracting with U.S. citizens for the construction of sealift ships the Navy needs, and to share the cost of construction with those private citizens who will operate the vessels commercially with U.S. crews until they are needed for military use?

Mr. INOUYE. Yes. That was the intention of the conference. The conference report authorizes the Defense Department to consider a CRAF-like program such as the Senator describes for sealift.

GUARD AND RESERVE END STRENGTH

Mr. FORD. Mr. President, as cochairman of the Senate National Guard caucus, I am deeply concerned about the large reductions that the Department of Defense has proposed for the Selected Reserve end strengths, particularly for the Army National Guard and the Army Reserve. It is the feeling of the caucus that sufficient and compelling justification has not been provided for these reductions and that they have been developed not on the basis of force structure but rather on a share-the-pain budget approach. Consequently, the caucus has worked hard this year to forestall cuts it believes are disproportionate and completely unjustified.

Thanks to the great cooperation of our colleagues on both the Armed Services and the Appropriations Committees, the efforts of the caucus have been largely successful. I am concerned, however, about language relating to the selected Reserve in section 8067 of the conference report that is now before us, and am wondering if the chairman of the Defense Subcommittee could clarify the intent of this provision.

Mr. INOUYE. I am happy to respond to my distinguised colleague from Kentucky, but I wish first to pay tribute to his unrelenting defense of the selected Reserves. His continued strong and effective leadership in this area is greatly appreciated by this Senator and the men and women who proudly serve this country in the Guard and Reserves.

Now to section 8067. As the conference report clearly states, the conferees believe that during a period of decreasing Defense budgets, it makes sense to put more, not less, force structure in the Reserve component. The conferees were concerned that the Department of Defense would, because of mounting budget pressures, unilaterally decide to reduce the Reserve component end strength below the authorized levels established within the fiscal year 1992 authorization bill. There is, as the Senator knows, no floor on end strength in the authorization bill. The Department could reduce end strength well below the authorized amount.

In order to prevent this undesired outcome, the conferees propose to put into law an end strength floor, below which the Department can not go in fiscal year 1992. The conference did provide the Department a small measure of flexibility by allowing reduction below the fully authorized end strength levels of up to 2 percent—2 percent, and no more. Unlike the authorization bill, the appropriations bill establishes a minimum level. Furthermore, I would note that this conference report fully funds the authorized end strength levels for the Reserve components and any further reductions are not necessary to meet budget constraints.

Mr. FORD. A paramount objective of the Senate Naional Guard caucus this year has been to diminish the effect of final cuts in end strength on the Army Guard Reserve. Is it the intent of the Defense Subcommittee that these reductions be accomplished through attrition and reduced accession, rather than through involuntary separation?

Mr. INOUYE. If the Department does make additional end strength cut, it is the desire of this Senator that reductions be made through attrition and reduced accessions. Having fully funded

the authorized end strength, I can see no justification for involuntary separations and can state that the committee would take a dim view of any attempts by the Department to do so.

Mr. FORD. The conferees have included a reporting requirement which asks the Defense Department to provide to the subcommittee a listing of all units being reduced, realigned, or inactivated in fiscal year 1992 by March 15 of next year. I hope there will be no inactivations on that list, but would also like to know if the subcommittee and other interested Members of the Senate will be given adequate time to review the list before the Department takes any action on it.

Mr. INOUYE. In my view, the intent of the managers is that the Department provide a complete listing of any proposed reductions, realignments, or inactivations to Congress before any action is taken. We would expect this list to be received well in advance of any action by the Department.

Mr. FORD. Is it also the understanding of the subcommittee that reductions are to be distributed evenly throughout the Army Guard and Reserve, thereby avoiding disproportionate cuts in any State or region? I am specifically concerned about preserving historic National Guard units in Connecticut and Massachusetts.

Senator DODD has worked very hard on behalf of those units in his State which have such an important link with our past, and would like to speak on their behalf at this time.

Mr. DODD. I thank the Senator from Kentucky for giving me this opportunity to address the issue of potential cuts in the National Guard. And let me also take this opportunity to thank the Senator from Kentucky for his efforts and the efforts of his staff to make sure that my office was kept abreast of the latest developments on this important issue. The selfless generosity of the Senator from Kentucky has not gone unnoticed.

I must say, Mr. President, that the issue of the National Guard is one that I feel very strongly about. I served in the Army Reserve myself, some time ago, and I know from firsthand experience the importance and enduring value of our Nation's Guard and Reserve. There is certainly no component of our Armed Forces that provides more service to the Nation at a lower cost than the National Guard.

In Connecticut, however, we have an additional cause for concern. Many of the Army National Guard units in my State date back to the pre-Revolutionary War era. In fact, three units of the 43d Brigade—the 102d Infantry, the 169th Infantry, and the 192d Field Artillery—trace their lineage back to the year 1672. These units have taken part in nearly every major conflict the United States has fought.

To sever this fragile link with the past would be an incomprehensible mistake, in my view. That is exactly what the Quicksilver plan would have done. And that is why, as I understand it, the authorizing committees sought to ensure that end strength would be held at 440,000—and why language in their conference report stated the expectation that an equivalent force structure allowance would be maintained.

I look forward to hearing from the Senator from Hawaii exactly what the committee's intention was in regard to the preservation of historical units and the equitable distribution of cuts in the National Guard.

Mr. INOUYE. I would like to assure the Senator from Connecticut that I am very sensitive to his concerns about potential cuts to historical units and pledge to him my support to ensure that these units are not eliminated in any proposed force structure reduction. We should not and can not lose our link to the honorable past symbolized by these units in Connecticut. I repeat that the statement of the managers mandates a report to Congress before any force structure reduction or adjustments are made by the Department.

Mr. DODD. I thank the chairman for his explanation and assurances and compliment him on his foresight in providing a legislated floor which protects Reserve component end strength in fiscal year 1992.

Mr. FORD. I thank the chairman for his clarification on this matter. We appreciate the action of the appropriations conferees in establishing a floor beyond which end strength and force structure cannot be reduced, even though we do not necessarily agree with the levels which may be reached as a result of this conference report. We would appreciate working with the subcommittee next year to see that an appropriate, mutually agreed-upon floor is established in the fiscal year 1993 bill.

NEUROSCIENCE CENTER

Mr. MACK. Mr. President, we refer to the statement of manager's language within the Defense agencies RDT&E section of the fiscal year 1992 DOD conference report on appropriations pertaining to the Neuroscience Center. This language reiterates the intent of Congress as previously stated in the fiscal year 1990 and fiscal year 1991 DOD authorization bills. I take this opportunity to again express my great enthusiasm for this project which provides $18 million for a collaborative spinal cord injury, paralysis, neuroscience research, education, and training facility and I reiterate that the Federal contribution should constitute no more than one-third of the total cost of the biomedical complex in which this facility would be located. Having worked with the Department of Defense for the last 3 years on this funding, I feel confident DOD understands the intent of Congress.

Mr. KASTEN. I am happy to support the comments made by my friend and colleague, Senator MACK. We have worked together for some time on funding for such a facility. Indeed, this provision reinforces the language contained within the last two DOD authorization bills.

Mr. STEVENS. I concur with my colleagues and am happy to lend my support to this provision.

Mr. INOUYE. Spinal cord injury is a highly technical and very important field of medical research. It is without hesitation that I support the thoughts expressed by my colleagues.

Mr. SANFORD. Mr. President, the role of the U.S. Congress in helping to mold what is our total national security structure is one of the most important functions of the institution. It is here where the merits of defense programs and strategies are debated and where the world events that change the course of history can be folded into those strategies and debates. I support the conference report of the Defense appropriations bill for fiscal year 1992 because we have debated the merits of its content and the great magnitude of events in Eastern Europe, the Soviet Union, the Middle East, and the fiscal constraints right there in our own country have been factored into this final form.

I stated earlier for the record my support for the Defense authorization bill which passed this Chamber 2 days go. I took note of the tremendous amount of work that went into that legislation. No less effort went into the legislation now before this body. As with the authorization conference report, the appropriations conference report is an essential element to our national security arrangement. Also, as with the authorization report, the appropriations report has in it sections that are of exceptional importance to North Carolina.

The North Carolina Air National Guard will finally receive aircraft to modernize its current fleet composed of the oldest and least efficient of C-130's in the Air Guard and Reserve. The appropriations conferees noted the importance of the Guard and Reserve by including language that states that more not less resources should be directed toward them. Our force structure should continue to reflect this philosophy.

It must be noted that the hardware provided for in the appropriations bill is important to all of the services based in North Carolina. There are, however, sections that affect industry, small businesses, and colleges and universities. Small businesses adversely impacted by the large deployments from Desert Storm and Desert Shield will have made available to them loans to assist in their recoveries. The jobs and services these businesses provide cannot be lost in our current economic environment.

There are civilians that work at Cherry Point Marine Corps Air Station that stood to lose their jobs due to an A-76 cost study to go to a private contractor for facility maintenance, utilities, and motor transport services. While all of the jobs would not be lost, Federal benefits that many of those employees had worked for for close to 20 years would have been lost. Both Houses strongly agreed on this measure.

North Carolina takes exceptional pride in hosting tens of thousands of soldiers, sailors, marines, and airmen at their respective bases and posts but it has few major defense contractors. AT&T facilities in Burlington and Greensboro NC, do, however, make a significant contribution to our national defense with work on systems for the U.S. Navy's antisubmarine warfare community. Funds for the enhanced modular signal processor are provided for in this bill.

The airship and aerostat industry is a key component not only within the military, but it is also a key component to the U.S. Customs Service in the continuing war on drugs. Facilities in northeastern North Carolina make these airships and aerostats for the military and the Customs Service. This bill continues to provide funds for these systems so valued by the Department of Defense, the Department of the Treasury, and the Department of Transportation.

It has been noted during debate on this legislation of how significant Fort Bragg is to our national security. The men and women who serve there are provided for more than adequately by this appropriations bill. The education of their children is also provided for with a section that would help to support a public school on military property that would primarily serve dependents of military and Department of Defense personnel. It must not be forgotten that Fort Bragg is the birthplace and home of the Airborne. The Congress has provided funds to make note of this by showcasing the Airborne and special operation's contribution to past, present, and future American military operations in a consolidated facility on post at Fort Bragg.

Mr. President, I do wish to take note of the objections to this legislation by some Members of the Senate, especially the chairman of the Armed Services Committee, Mr. NUNN. During my time here in the Senate he has been most accommodating to me in meeting the interests of our Armed Forces as those interest pertain to North Carolina. It is not an easy decision for me to support this legislation. Along with agreeing with the senior Senator from Georgia on most defense issues, I support wholly his opposition to earmarks for colleges and universities in appropriations bills.

It is my hope that future differences of opinion between authorizers and appropriators will not manifest themselves so late in the process as to threaten the actual passage of these measures. Solutions to such disagreements need to be immediate. I was greatful to hear this opinion also of the chairman of the Appropriations Committee, Senator BYRD. He too has been most accommodating to the interest of the people of North Carolina. I so much appreciate his efforts. Under his leadership and that of the chairman of the Armed Services Committee, I feel confident future discord will be eliminated. I will vote for the Defense appropriations conference report ever mindful of the debate surrounding it and ask that my colleagues do the same.

Mr. MACK. Mr. President, I feel it is incumbent upon me to explain my opposition to the Defense appropriations conference report, since there are many elements in it which I strongly support.

I fought hard for the continuation of the F-14 Tomcat in the Senate Armed Services Committee and the authorization conference. My belief in the need for the F-14, both as world-class fighter and possible bridge to the Navy's next generation attack plane, is a matter of record. Unfortunately, those efforts were unsuccessful. I applaud the appropriators for their decision to spend $175 million to upgrade F-14's now in the fleet.

Similarly, I worked diligently to see an additional T-AGOS ship built next year at Tampa Shipyards. While that proposal was turned down by the Armed Services Committees, I was delighted that the appropriators agreed to fund $149 million for the new ship.

Furthermore, the appropriators agreed to fund a spinal cord injury research facility, which the University of Miami will have the opportunity to compete for. I am confident that the Miami proposal is so strong that it will win that competition.

The appropriators also allotted vital additional funds to improve Eglin air Force Base's test range in the Gulf of Mexico.

The appropriators demonstrated great wisdom in their conference with the House by insisting on fully funding the Strategic Defense Initiative Program developed by Senate Armed Services Committee. We are now poised to take the first steps toward providing the American people with the same kind of security from the terror of ballistic missiles that our troops in Desert Storm had. Such protection is our right. Under this plan, for the first time, we will have it.

In short, there is much to like about this Defense appropriations conference report. I wish I could have supported it. However, an important line of jurisdiction was crossed by the appropriators which called into question the very purpose of the Armed Services Committee. Indeed, the role of authorizing committees in general is sternly challenged. Therefore, I had no choice but to oppose this worthy bill.

Mr. STEVENS. Madam President, in 1984 I suggested a revision of the Senate so that we would recognize the fact that there are 100 of us dealing with 450 people in the other body. That is exactly what the Senator from Georgia is doing now. I lament the fact that Senator INOUYE and I are managers of the bill. But, once again, in bringing this appropriations bill to the floor, the time that has been consumed here today has been consumed two-thirds by the authorizing committee and one-third by those who brought the bill to the floor.

I urge that the bill be approved, and again I point out to the Senate that if it is not approved we will be operating under a continuing resolution until March 15.

Mr. INOUYE addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii, the chairman of the Defense Appropriations Committee.

Mr. INOUYE. I urge adoption of the conference report.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Is all time yielded back?

Mr. STEVENS. Parliamentary inquiry. I ask the Chair: Did the agreement that we entered into pertain to time on a motion to reconsider?

The PRESIDING OFFICER. The agreement is silent on that.

Mr. STEVENS. Pardon?

The PRESIDING OFFICER. The agreement was silent on the debatable motion. A motion otherwise debatable would be decided without debate.

Mr. STEVENS. I am sorry. A motion otherwise debatable if this bill were to be defeated, and is a motion to reconsider, is there time for the debate of that motion or not?

The PRESIDING OFFICER. There would be no time to debate the motion.

The question is now on agreeing to the conference report. On this question, the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Louisiana [Mr. BREAUX], the Senator from Iowa [Mr. HARKIN], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

Mr. SIMPSON. I announce that the Senator from Colorado [Mr. BROWN] and the Senator from Utah [Mr. GARN] are necessarily absent.

On this vote, the Senator from Utah [Mr. GARN] is paired with the Senator from Colorado [Mr. BROWN].

If present and voting, the Senator from Utah would vote "yea" and the Senator from Colorado would vote "nay."

The PRESIDING OFFICER (Mr. ROBB). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 66, nays 29, as follows:

[Rollcall Vote No. 272 Leg.]

YEAS—66

Adams	Domenici	Lieberman
Akaka	Durenberger	Lott
Baucus	Ford	Lugar
Bentsen	Fowler	Mikulski
Biden	Glenn	Mitchell
Bond	Gorton	Moynihan
Boren	Graham	Murkowski
Bryan	Gramm	Nickles
Bumpers	Hatch	Packwood
Burdick	Hatfield	Pressler
Burns	Heflin	Reid
Byrd	Helms	Rockefeller
Chafee	Hollings	Rudman
Cochran	Inouye	Sanford
Craig	Jeffords	Seymour
Cranston	Johnston	Shelby
D'Amato	Kassebaum	Simpson
Danforth	Kasten	Specter
Daschle	Kennedy	Stevens
DeConcini	Kerry	Symms
Dodd	Lautenberg	Thurmond
Dole	Leahy	Wofford

NAYS—29

Bingaman	Levin	Roth
Bradley	Mack	Sarbanes
Coats	McCain	Sasser
Cohen	McConnell	Simon
Conrad	Metzenbaum	Smith
Dixon	Nunn	Wallop
Exon	Pell	Warner
Gore	Pryor	Wellstone
Grassley	Riegle	Wirth
Kohl	Robb	

NOT VOTING—5

Breaux	Garn	Kerrey
Brown	Harkin	

So the conference report was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table. The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator will please suspend. The Senate is not in order.

Mr. LEAHY. Order, Mr. President.

The PRESIDING OFFICER. The Senate is not in order.

The Chair requests those Senators carrying on conversations not formally recognized by the Chair please take them to the cloakroom.

The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I ask unanimous consent to speak for up to 5 minutes as if in morning business.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from Florida is recognized for up to 5 minutes as if in morning business.

Mr. GRAHAM. Thank you Mr. President.

SURFACE TRANSPORTATION CONFERENCE COMMITTEE

Mr. GRAHAM. Mr. President, as we are working through our agenda on the floor there are several conference committees meeting on important matters. One of those is the Conference Committee on Surface Transportation.

This is an issue of great concern to all Members of the Congress and the people that we represent. It is an especial issue of concern to the approximately 20 States which, for the last several decades, have been described as the donor States. These were the States which, during the time that we have been building our Interstate System, have been sharing substantial amounts of their contributions to the Federal highway trust fund with other States in order to be able to complete a National Interstate System.

We have explained to our citizens why it was necessary for them to make that contribution as a Nation, and they have been very generous and understanding for the better part of a half century in doing so. Now, Mr. President, the Interstate System is essentially complete.

That great effort, which started under President Eisenhower, is now entering its very last stages, a great national accomplishment. We believe, therefore, that it is time for the Congress to reexamine the priorities, the standards, the sense of obligation of all of the States toward the future of America's transportation system. And thus we are deeply interested in the decisions that are going to be made in the next few hours or days relative to the next 6 years of distributing what will be approximately $150 billion of Federal funds for the transportation-related programs.

In that regard, Mr. President, we are concerned about the fact that at this point it has been difficult to get a clear picture, a clear understanding of the direction the conference committee is likely to take. I am very pleased that the representative of the Senate, the chairman of the Senate conferees for purposes of the Surface Transportation Act, the senior Senator from New York, has agreed to meet with representatives of the donor States and, I am certain, with any other Senator who would be so interested.

I would like to use this opportunity to extend a broad invitation and request for interests by Senators so that we can have a clear understanding of what likely direction the conference committee will take, and that that understanding will be based on statistics, analysis of policy, rather than the almost hourly rumors that have been the basis of our information the past several days.

So, Mr. President, I wish to make these remarks in order to underscore the great significance of this decision to the Nation. The President and our leadership have described this highway bill as being one of the key building blocks of a national economic policy, not only for recovery from this immediate period of recession but also building a stronger, more competitive America for the future.

I agree with the importance being focused on this legislation. We want to be certain the funds are distributed based on the present and future needs of America, not a continuation of a policy of the past which was oriented toward a different goal; that is, the now-realized goal of completing the National Interstate System. This is a matter of deep concern and interest to all Members of the Congress and to all of our citizens.

I look forward to the opportunity of becoming, with my colleagues, more knowledgeable as to what is in this proposal. I hope that with that knowledge we cannot only help shape the final conference report that will be before us but be in a position to enthusiastically support that conference report. I hope that we would not reach a situation in which, during the last days of the session, we would be faced with a contentious disagreement as to whether the conference report in fact represented what is important and appropriate for the future of America. I believe the steps that have been taken by our distinguished colleague from New York will contribute toward the avoidance of that type of unfortunate, last-hour clash.

I thank the Chair.

The PRESIDING OFFICER. The Senator's time has expired. Who seeks recognition?

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the majority leader, Senator MITCHELL.

Mr. MITCHELL. Does the distinguished junior Senator from Florida wish to address the Senate on the same subject?

Mr. MACK addressed the Chair.

Mr. MITCHELL. How much time would the Senator from Florida like?

Mr. MACK. No more than 3 minutes.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senator from Florida be recognized for 3 minutes, following which time I be recognized.

The PRESIDING OFFICER. Without objection, the Senator from Florida [Mr. MACK] is recognized for up to 3 minutes.

SURFACE TRANSPORTATION CONFERENCE

Mr. MACK. Mr. President, my purpose for rising is to add my thoughts and comments to my colleague from

Florida with respect to the Surface Transportation Act. It is a very important measure for the Nation. It is a very important measure for the States.

I cannot let this opportunity go by without voicing some very strong concerns about what appears to be happening. As my colleague from Florida indicated, we do not have the exact figures, but it appears from the last information we have that somewhere around 88 cents per $1 will be coming back to the State of Florida, where the average, under the proposal, appears to be around $1.23. Florida, therefore, is going to be somewhere around 47th to 48th in rate of return.

It was not more than just a few weeks ago that Members of the various States stood on this floor to complain about what was happening to the extension of unemployment benefits, and the unfairness of those dollars. I must suggest that if an agreement cannot be reached, there are those of us who feel we must stand up and say that cannot happen again.

Florida received something like 53 cents out of every $1 that it sent to Washington in 1990, and in 1991 it is suggested around 61 cents. The State of Florida must have an opportunity to receive more funds than what is being proposed.

The problem can be addressed if a true minimum allocation of at least 90 percent can be fully funded—let me underscore that—fully funded, based on apportionments, allocations and demonstration projects. Currently the minimum allocation fund needs to be boosted to ensure proper funding of the Bentsen minimum allocation plan.

I must add again that if an agreement cannot be reached to accommodate all States, as we did during the unemployment extension bill, Senators must be prepared to stay in session to discuss the bill at length.

I thank the Chair.

UNIVERSAL ACCESS TO HEALTH CARE—NOW

Mr. DIXON. Mr. President, I rise to appeal to my colleagues and to President Bush to enact a Universal Access to Health Care Program before the end of this 102d Congress.

Our health care system is critically ill. We must find a cure. That cure will not be found in the continued application of more bandages to repair its many ailments. The diagnosis requires comprehensive surgery.

Some of the major symptoms are as follows:

Thirty-seven million Americans have no health insurance coverage;

Another more than 50 million Americans are underinsured. Two-thirds of the underinsured are full-time, hard-working taxpayers with incomes above the poverty level.

Spiraling health insurance rates have forced many employers to cut back on their health care spending. This has caused a reduction in health care coverage;

Throughout this country, many financially troubled hospitals and trauma centers have closed their doors;

Many physicians, hospitals, and other health providers will no longer treat the uninsured and underinsured; and

An increasing number of American families have to choose between receiving health care and buying food or paying the rent.

Mr. President, this is a disgrace for any industrialized Nation. And yet our health care system is the most expensive in the world. We spend more per person on health care than any other developed country—an average of $2,500 per year. In fact, the General Accounting Office estimates that in 1992, the United States will spend $707 billion on health care. The problem, however, is that our current health system is not a good value for that huge expenditure. We must halt this financial drain on our own pocketbooks, as well as on our national economy. And, we have to get much better value for the money we spend.

The American public is crying out to the President and Congress—no more increases in health care costs—give us reform.

Under our failing health care system, insurance rates have escalated so fast that they are out of reach for not only the working but also many middle-income families. Everyday, I hear from middle-income retirees who thought that they had prepared sufficiently for a comfortable financial retirement. However, these folks tell me how they are having to lower their standards of living on order to pay for the drastic rise in insurance premiums, and the escalating costs of medications, hospital bills, and physician fees.

In many inner-city areas, emergency rooms are crowded with uninsured and underinsured patients waiting to receive health treatment. In many rural and inner-city areas, uninsured and underinsured families wait to receive health care at the limited number of financially troubled hospitals that have not yet closed their doors.

Mr. President, over the years, Congress has attempted to respond to our health care crisis. As an example, in 1983 we changed the way Medicare reimburses hospitals. In more recent years, we reformed the way Medicare reimburses physicians and other health care providers. During the last Congress, we expanded Medicaid eligibility for pregnant women, children, and other groups. We provided refundable tax credits for health insurance premiums for qualified children. And during the last Congress we authorized States to continue to purchase health coverage for certain low-income workers.

Mr. President, although these and other provisions were enacted, far too many American families continue to be uninsured and underinsured, and health care costs keep rising.

Approximately 20 bills have been introduced during this Congress to provide health care reform. I pledge my support to legislation which will make health care accessible and affordable to all. It must offer preventive treatment and care. It must reduce administrative expenses. And the legislation must be economically realistic and fair to our small businesses.

During this 102d Congress, let us start on a legislative agenda to address the issue of affordable long-term care. I pledge my support for legislation which emphasizes immediate action to provide home and community-based services for the elderly and disabled, as well as support for family caregivers.

Mr. President, last week, Senator MITCHELL announced that beginning in early December, he and other Democratic Senators will hold a series of field hearings around the country on health care reform. One of the hearings will be in the city of Chicago in late January or early February. While we know what the health care problems are, the hearings will primarily provide more input in the shaping of solutions.

I will work with the Democratic leader and others in developing and shaping an alternative solution to our critically ill health care system and will give that legislation my full support for introduction in the spring and for immediate enactment.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

TREATY ON CONVENTIONAL ARMED FORCES IN EUROPE [CFE] (TREATY DOC. NO. 102-8)

Mr. MITCHELL. Mr. President, as in executive session I ask unanimous consent that the Senate proceed to consideration of Executive Calendar No. 16, that the treaty be advanced through its various parliamentary stages up to the presentation of the resolution of ratification; that the committee-reported conditions and declarations be considered agreed to except committee-reported condition No. 5, and that only two conditions be in order: One offered by Senator COHEN to condition No. 5, limited to 2 hours equally divided; one offered by Senators SMITH

and WALLOP, to the resolution of ratification; that Senator COHEN be recognized to offer his condition today under the time agreement stated above, and that following the disposition of the Cohen condition, there be 3 hours remaining to be equally divided in the usual form, for debate on the Smith-Wallop condition and general debate on the resolution of ratification today.

I further ask unanimous consent that notwithstanding any provision of rule XXII and solely for the purpose of completing action on this treaty, at 1 p.m. on Monday, the Senate resume executive session and the resolution of ratification, and there be 1 hour equally divided between the majority manager and Senator SMITH or their designees, to be followed immediately by the vote on the Smith-Wallop condition and the adoption of the resolution of ratification without any intervening action.

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

Mr. MITCHELL. Mr. President, this agreement having been agreed upon by the Senate there will now be 2 hours of debate on a condition to be offered by the senior Senator from Maine, following which there will be a vote on that condition. Therefore, Senators should expect to vote at approximately 5:15 today, on the condition offered by the senior Senator from Maine, should all the time be used. Should any time be yielded back the vote could, of course, occur before that.

Several Senators addressed the Chair.

Mr. STEVENS. Will the Senator yield?

Mr. MITCHELL. I yield.

Mr. STEVENS. If there is another disposition of the amendment of the Senator from Maine prior to the expiration of time, could we ask that Senators be notified? Some of us are going to be away from the building now. It is possible, I understand, there may be another disposition of this amendment prior to the vote. If that is the case I would like to be notified.

Mr. MITCHELL. Yes; we will notify all Senators of any disposition.

The PRESIDING OFFICER. Under the previous order, the clerk will report the treaty and then will report the amendment.

The treaty will be stated.

The legislative clerk read as follows:

Treaty Document No. 102-8, Treaty on Conventional Armed Forces in Europe [CFE]. Reported with conditions and declarations.

The PRESIDING OFFICER. Under the previous order the treaty will be considered as having passed through its various parliamentary stages up to and including the presentation of the resolution of ratification, which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and contest to ratification of the Treaty on Conventional Armed Forces in Europe (CFE), with protocols on existing types (with annex), aircraft reclassification, reduction, helicopter recategorization, information exchange (with annex), inspection, the Joint Consultative Group, and provisional application; all signed at Paris on November 19, 1990 (Treaty Doc. 102-8), provided that the Senate's advice and consent to ratification of the CFE Treaty is subject to the following conditions, which shall be binding upon the Executive, and the following declarations, which express the intent of the Senate:

(a) CONDITIONS.—

(1) TREATY-LIMITED EQUIPMENT.—The United States shall regard actions inconsistent with the Statement by the Union of Soviet Socialist Republics, dated June 14, 1991, resolving a dispute concerning the application of the Treaty's principal counting rules in Article III, as equivalent under international law to actions inconsistent with the CFE Treaty.

(2) DATA.—Whereas data supplied by the Government of the Union of Soviet Socialist Republics pursuant to Article XIII and the Protocol on Information Exchange, regarding its equipment holdings in the Atlantic to the Urals area as of November 19, 1990, differed from United States estimates of such equipment, the United States shall—

(A) continue to seek clarification of those holdings of Treaty-limited equipment as of November 19, 1990; and

(B) seek to obtain additional reductions of equipment in Treaty-limited categories in the event the President determines that actual holdings of Treaty-limited equipment by any state party exceeded its declaration concerning its holdings of such equipment as of November 19, 1990.

(3) EQUIPMENT EAST OF THE URALS.—The United States shall regard militarily significant actions inconsistent with the Statement by the Representative of the Union of Soviet Socialist Republics to the Joint Consultative Group, dated June 14, 1991, with respect to certain equipment in Treaty-limited categories located outside of the Atlantic to the Urals area, as potentially warranting a United States response pursuant to Article XIX; and, in the event of such actions, the President shall report to the Senate concerning the appropriate United States response.

(4) SOVIET EQUIPMENT TEMPORARILY IN THE BALTICS.—The United States shall regard actions inconsistent with the Statement of the Chairman of the Joint Consultative Group on October 18, 1991, with respect to the inclusion in the reduction liabilities set forth in the Treaty of equipment owned by the Union of Soviet Socialist Republics and temporarily located on the territory of Estonia, Latvia, or Lithuania, as equivalent under international law to actions inconsistent with the CFE Treaty.

(5) AREA OF APPLICATION AND NEW STATES.—If in the future a new state is formed in the "area of application" that existed on the date of Treaty signature and such state declines to accept the obligations of the Treaty, the President—

(A) shall consult with the Senate regarding the effect on the Treaty of such developments;

(B) shall, if he determines that such state's holdings, or potential holdings, of equipment in Treaty-limited categories are of such military significance as to constitute a changed circumstance affecting the Treaty's object and purpose, and if he decides not to invoke the withdrawal right under Article XIX, request the depositary to convene, in accordance with paragraph (2) of Article XXI, an extraordinary conference to assess the viability of the Treaty and to determine if an amendment is needed to accommodate the changed circumstance, or undertake other appropriate diplomatic steps; and

(C) shall, if he has made the determination described in paragraph (B), submit for the Senate's advice and consent any change in the obligations of the states parties under the Treaty that is designed to accommodate such circumstance and is agreed to by all states parties, unless such change is a minor matter of an administrative or technical nature.

(b) DECLARATIONS.—

(1) ACCESSION TO THE CFE TREATY.—The Senate urges the President to seek the accession to the Treaty by any new state that may in the future be formed in the land area that constituted the "area of application" on the date of Treaty signature.

(2) TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally-based principles of treaty interpretation set forth in condition (1) in the resolution of ratification approved by the Senate on May 27, 1988, with respect to the INF Treaty.

(3) FURTHER ARMS REDUCTION OBLIGATIONS.—The Senate declares its intent to approve international agreements that would obligate the United States to reduce or limit the Armed Forces or armaments of the United States in a militarily significant manner only pursuant to the Treaty Power as set forth in Article II, Section 2, Clause 2 of the Constitution.

(4) COMPLIANCE ISSUES AND FUTURE STRATEGIC ARMS TREATIES.—The Senate declares that it will take into account, as part of its consideration of the START Treaty, whether—

(A) the SS-23 missiles of Soviet origin that the President has determined constitute a probable violation of the INF Treaty have been dismantled in accordance with procedures consistent with such Treaty; and

(B) the large phased-array radar located at Krasnoyarsk, which constitutes a violation of the 1972 ABM Treaty, has been dismantled in compliance with such treaty.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. PELL. Mr. President, I hope very much that the Senate will give an overwhelming endorsement today to the ratification of the Conventional Forces in Europe Treaty.

The Committee on Foreign Relations gave careful consideration to this treaty in hearings beginning this summer, clarified certain matters in the resolution of ratification and voted the treaty favorably reported in a unanimous vote on Tuesday. The majority's work on the treaty was undertaken by the chairman of the Subcommittee on European Affairs, the Senator from Delaware [Mr. BIDEN], who worked closely with the committee's ranking minority member, the Senator from North Carolina [Mr. HELMS]. Both deserve our

commendation and thanks for a job well done.

It is appropriate that this treaty precedes the Strategic Arms Reduction Treaty, which the Senate will consider next year. The committee has already held three hearings on START since the presidents of the United States and the Soviet Union signed that treaty last summer. The President is expected to submit START shortly, and I will chair hearings on that treaty early in the next session.

The PRESIDING OFFICER. The Senator from North Carolina [Mr. HELMS].

Mr. HELMS. Mr. President, the proposed Conventional Forces in Europe [CFE] Treaty has been largely overtaken by events, because of the Soviet unilateral military withdrawal from Eastern Europe, the fall of communism in Eastern Europe, the dissolution of the Warsaw Pact, and the ongoing collapse of the former Soviet Union itself.

But there are some important benefits to the CFE Treaty. The key effect of the treaty is that it codifies the former Soviet Union's military withdrawal from Eastern Europe, it reduces the major armament holdings in Soviet European-based forces by more than half, it destroys a large quantity of these weapons, it places one-fifth of the remaining weapons in storage, and finally, it distributes the rest of the Soviet armaments geographically under ceilings. These reductions will improve substantially the military balance that currently exists among the various countries of Eastern and Central Europe. The CFE Treaty will greatly reduce the threat of a surprise conventional attack on NATO, and it nullifies the Brezhnev doctrine.

The Chairman and I have joined in proposing a resolution of ratification which contains five conditions and four declarations intended to rectify the flaws in the CFE Treaty. We have worked closely with the bipartisan leadership of the Senate, and Armed Services Committee, and the Intelligence Committee, and consulted closely with the administration. I wish to thank Chairman PELL and Senator BIDEN for their constructive cooperation throughout the CFE process.

Mr. President, as the Senate considers its advice and consent to the proposed CFR Treaty, we must be aware of the fact that the Soviets have already violated it. Moreover, there is a major conceptual flaw in the Treaty. These related facts require a condition to the resolution of ratification regarding the data provided by the former Soviet Union. This condition, which is condition No. 2 in the Committee Resolution of Ratification, requires some discussion, and that will happen.

Mr. President, the Senate Committee on Armed Services deferred to the Senate Intelligence Committee on the issue covered by condition No. 2, but the Intelligence Committee decided not to take a position on this issue or to make any recommendation. Thus, condition No. 2 is the only way for the Senate to address this issue.

This conceptual flaw concerns the fundamental obligation of the CFE Treaty, and it has two elements.

The fundamental obligation of the CFE Treaty is the obligation to reduce conventional forces. The first element in this conceptual flaw arises from the Soviet declaration of false data on their conventional forces when they signed the treaty exactly 1 year ago, on November 19, 1990. Second, it stems from the fact that some officials in the executive branch mistakenly I think, propose to use this false Soviet data as the baseline to calculate the Soviet obligation to reduce its forces. I vehemently disagree with the executive branch on this point.

The precise terms of the CFE Treaty are explicit on how to calculate the Soviet obligation to reduce their conventional forces. In the event that the data provided by the Soviets at the time of signature is found to be false, then data on Soviet forces actually in the treaty zone derived from United States intelligence must be used to calculate the Soviet reduction obligation.

According to unclassified, authoritative testimony to the Committee on Foreign Relations, the fact of gross Soviet data falsification at the signing of the CFE Treaty is indicated by conclusive evidence from United States intelligence-U.S. national technical means of verification. United States intelligence has collected smoking gun evidence proving conclusively that at least about 4,000 Soviet pieces of treaty-limited equipment were in the treaty zone at signature, but were not declared by the Soviets. In addition, due to the fact that subsequently the Soviets slightly corrected their CFE data provided at the time of signature, they have in effect admitted in diplomatic channels that their data declared at treaty signature was indeed false. Moreover, authoritative testimony to the committee indicates that the magnitude of the Soviet data falsification violation is militarily significant.

Mr. President, President Bush is required by law to report to Congress every year by December 1—about 9 days from now—on Soviet noncompliance with arms control treaties. Indeed, I am advised that such a report on the Soviet violation of the CFE Treaty at signature by providing inaccurate data is already being prepared. Thus the President's report on the Soviet CFE data falsification is impending.

The clear fact that the Soviets provided false data on the day of signature of the CFE Treaty, which is about to be confirmed by an impending Presidential report, means that the Soviets violated their obligation under the CFE Treaty to provide accurate data at signature. Thus the Soviets have violated the CFE Treaty even before it is ratified.

Mr. President, one of our colleagues on the Committee on Foreign Relations at the Committee markup conceded that the Soviets has falsified their data significantly, even agreeing that there was smoking gun evidence of this fact. He even agreed that this false Soviet data declaration at signature constituted a technical violation of the CFE Treaty, and he supported my condition No. 2 on data as the best solution to the problem.

I agree that it is a violation, but it much more than a technical violation. It is a fundamental violation. But my colleague argued that the magnitude of the Soviet data falsification is not ultimately resolvable. I would urge my colleagues to read the national intelligence estimate on the monitoring of the CFE Treaty. It is no secret that the NIE's best estimate, based upon United States national technical means of verification, is that the Soviets clearly provided inaccurate data, and failed to declare about 18,000 pieces of equipment that were in the zone at signature.

Thus, the fact that the Soviets lied has been clearly established, and all that remains is for the Senate to enact an effective condition solving this problem.

As one Senator who has been deeply concerned with Soviet violations of arms control treaties over the years, I am more than a little bit alarmed that the Senate is being asked to vote its advice and consent for the President to ratify the CFE Treaty only about 2 weeks before an impending report to the Senate will confirm that the Soviet data falsification at signature constituted fraud in the inducement and also a clear violation of the treaty.

As a matter of principle, the Soviets should not be allowed to benefit from this attempted fraud. Indeed, a basic principle of both domestic law and international law is that a party to a contract or a treaty should not benefit from fraud. Yet, if this false Soviet baseline data is used for the reduction calculation, the Soviet obligation to reduce will be minimized; it will be cut to about half of what it should be.

Unfortunately, most officials in the executive branch nevertheless advocate using this fraudulent Soviet data in order to calculate this minimized Soviet reduction obligation. The executive branch wants to accept the false Soviet data apparently because it believes that extensive further diplomatic efforts would be required to achieve Soviet compliance with their full obligation to reduce. And the unspoken premise of the executive branch is that these additional negotiations might still fail to achieve full Soviet compliance.

Now I agree that one way to solve this problem would be to delay Senate

advice and consent to the CFE Treaty until the President reports on December 1 on the Soviet data falsification violation at signature, and takes appropriate steps to achieve compensating Soviet reductions. Another option for the Senate would be to condition its advice and consent to the treaty, or the treaty's entry into force, on the receipt of the Presidential report and a further Presidential assurance that the United States had obtained adequate compensation for the Soviet data falsification at signature.

There are several other defects in the treaty that the Senate might also want to correct, such as inserting the new name of the former Soviet Union into the treaty everywhere the old name appears in the treaty. Just last week the rump State Council of the former Soviet Union approved the Nation's new name, the "Union of Sovereign States." Moreover, we could change Gorbachev's new title to "President of the Union of Sovereign States." Even the State Department has advocated these changes in the treaty.

Finally, there is another possible reason for Senate delay. On December 1 the Ukraine Republic plans to vote on its independence from the former Soviet Union. The Ukrainian vote in favor of independence is expected to be overwhelming. The Senate could wait and see what effects Ukrainian independence, and the dissolution of the Red army to form a new Ukrainian national guard, might have on the viability of the CFE Treaty.

Unfortunately, Mr. President, all of the above options would certainly delay the advice and consent vote beyond this session, and could even kill the treaty. Although I believe that the CFE Treaty is largely overtaken by events—such as the dissolution of the Warsaw Pact and the former Soviet Union—the treaty still does have some merit. CFE does repeal the Brezhnev doctrine on the subjugation of Eastern Europe, and therefore it protects the newly won sovereignty of the former members of the Warsaw Pact in Eastern Europe. Moreover, it protects the sovereignty of the Baltic States, and it encourages the further dissolution of the Soviet empire.

The Senate can solve the problem of the inaccurate Soviet data, and the Senate must solve this problem. I believe that the solution is simple, and it is proposed as condition No. 2 in the resolution of ratification proposed by the Committee on Foreign Relations.

The false data that the Soviets declared at signature is technically not a legal part of the treaty, and it was not part of the formal and official CFE Treaty documents originally sent to the Senate. The Soviet data has still not been officially and formally sent to the Senate. Therefore, the Senate should require, as a condition of its advice and consent to ratification, that the false Soviet-declared data should not be used to calculate the Soviet reduction obligation.

In the event that the impending Presidential report confirms a Soviet violation of the obligation to declare accurate data at treaty signature—a violation which testimony shows has already occurred—the correct interpretation of the CFE Treaty clearly requires that data on the number of pieces of Soviet Treaty-limited equipment actually present in the treaty zone of application at signature must be derived from Unites States national technical means of verification. The treaty's provisions explicitly indicate quite clearly that this data on Soviet forces derived from United States national technical means of verification should instead be used as the baseline to calculate the Soviet reduction obligation.

The precise provisions of the CFE Treaty require that United States national technical means of verification be used to verify all Soviet locational and numerical declarations, to validate all Soviet data, and most significantly, to calculate the Soviet reduction obligation in order to ensure compliance.

Using this data obtained from United States national technical means of verification results in a Soviet reduction obligation that is almost double the obligation based on the false Soviet data.

The Senate should not allow the Soviets to benefit from their attempted fraud. But unless the Senate fixes this conceptual flaw by attaching a condition to its resolution of ratification consenting to the CFE Treaty, the Senate will be approving the erroneous use of deliberately false Soviet data in order to calculate a minimized Soviet reduction obligation.

A grave matter of principle is therefore at stake for the Senate in addressing this major conceptual flaw in the proposed CFE Treaty. The Soviets have clearly violated the treaty even before its ratification by providing false data. The Senate should avoid approving a resolution of ratification which implies acceptance of this fraudulent Soviet data which violated the treaty. The United States must have the political will to interpret the CFE Treaty in accordance with its precise terms, to calculate properly the Soviet reduction obligation, and to enforce full Soviet compliance. Unless the Senate demonstrates this political will by approving a condition fixing this conceptual flaw, the Senate will be an accomplice in a major Soviet deception, and the proposed CFE Treaty could fail to achieve its intended objectives.

Here is the proposed Senate condition No. 2 on data:

(2) Data. Whereas data supplied by the Government of the Union of Soviet Socialist Republics pursuant to Article XIII and the Protocol on Information Exchange, regarding its equipment holdings in the Atlantic to the Urals area as of November 19, 1990, differed from United States estimates of such equipment, the United States shall—

(a) continue to seek clarification of those holdings of treaty-limited equipment as of November 19, 1990; and

(b) seek to obtain additional reductions of equipment in treaty-limited categories in the event the President determines that actual holdings of treaty-limited equipment by any state party exceeded its declaration concerning its holdings of such equipment as of November 19, 1990.

This condition No. 2 on data to the resolution of ratification will solve the problem of Soviet violation of the CFE Treaty at signature. "Actual holdings of Treaty-limited equipment" by the former Soviet Union at treaty signature would be determined by United States national technical means of verification.

This chart on the Soviet obligation for conventional force reduction under the CFE Treaty illustrates the major conceptual flaw in the CFE Treaty. The chart shows the magnitude of the attempted Soviet fraud. It shows that the Soviet-declared fraudulent data is a maneuver designed to cut their obligation to reduce their conventional forces almost in half.

The maximum number of treaty-limited equipment allowed under the treaty is 53,650. The Soviets have declared that they have 19,670 items over that number, items they would have to eliminate. But our national technical means of verification indicate that the Soviets had about 18,000 more pieces of treaty-limited equipment in the treaty zone at signature that they did not declare.

Therefore, the Soviet obligation to reduce is not 19,670, but actually in excess of 37,670, almost twice as large an obligation as they have admitted. This is a fundamental inaccuracy which must be addressed in the resolution of ratification.

Condition No. 2 requires the President to make a finding on whether the declared data is inaccurate. This would occur anyway by law on December 1, and would be based upon U.S. national technical means. As I said, I am confident that he will make such a finding. If he finds such a violation, then condition No. 2 requires him to seek compensation through additional reductions of equipment.

Some argue that this additional obligation to reduce has already been addressed by the Soviets to a certain extent in a side-agreement signed on June 14 which is not part of the treaty. But this agreement does not go far enough, and unless it is addressed within the treaty itself, it allows the Soviets to get by with fraud.

I think that condition No. 2 places the proper framework on the central obligation of the treaty, the obligation to reduce equipment based on real numbers, not on false declarations.

With this condition and the other conditions and declarations, I am prepared to support the treaty.

The Senate should act to prevent the Soviets from succeeding in this deception. Condition No. 2 to the resolution of ratification can correct this Soviet fraud. Finally, Mr. President, I ask unanimous consent that my additional views to the Committee on Foreign Relations report on the CFE Treaty be printed in the RECORD.

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

ADDITIONAL VIEWS OF SENATOR JESSE HELMS ON THE PROPOSED CFE TREATY

MAJOR CONCEPTUAL FLAW IN THE PROPOSED CFE TREATY

Summary: There is a major conceptual flaw in the proposed Conventional Forces in Europe—CFE—Treaty which requires a condition with regard to the declared data provided by the Soviet Union. This condition, which is Condition No. 2 in the Committee resolution, require some additional analysis in depth.

This conceptual flaw concerns the fundamental obligation of the proposed CFE Treaty, and it has two elements.

The fundamental obligation of the proposed CFE Treaty is the obligation to reduce conventional forces. The first element in this conceptual flaw arises from the Soviet declaration of false data on their conventional forces. Secondly, it stems from the fact that some officials in the Executive Branch mistakenly propose to use this false Soviet data as the baseline to calculate the Soviet obligation to reduce its forces.

The precise terms of the CFE Treaty are explicit on how to calculate the Soviet obligation to reduce their conventional forces. In the event that the data provided by the Soviets at the time of signature is found to be false, then data on Soviet forces derived from U.S. Intelligence must be used to calculate the Soviet reduction obligation.

According to unclassified testimony to the Committee, the fact of gross Soviet data falsification at the signing of the CFE Treaty is indicated by conclusive U.S. intelligence evidence. In addition, due to the fact that subsequently the Soviets slightly corrected their CFE data provided at the time of signature, they have in effect admitted in diplomatic channels that their data declared at Treaty signature was false. Moreover, the President is required by law to report to Congress every year by the First of December on Soviet non-compliance with arms control treaties, and such a report on the Soviet data falsification in the CFE Treaty is already being prepared. Finally, testimony to the Committee indicates that the magnitude of the Soviet data falsification is militarily significant.

The fact that the Soviets provided false data on the day of signature of the CFE Treaty, which shortly will be confirmed by a Presidential Report, means that the Soviets violated their obligation under the CFE Treaty to provide accurate data at signature. Thus the Soviets have violated the CFE Treaty even before it is ratified.

As a matter of principle, the Soviets should not be allowed to benefit from this attempted fraud. Indeed, a basic principle of both domestic law and international law is that a party to a contract or a treaty should not benefit from fraud. Yet if this false Soviet baseline data is used for the reduction calculation, the Soviet obligation to reduce will be minimized—it will be cut to about half of what it should be.

Unfortunately, most officials in the Executive Branch nevertheless advocate using this fraudulent Soviet data in order to calculate this minimized Soviet reduction obligation. The Executive Branch wants to accept the false Soviet data apparently because it believes that extensive further diplomatic efforts would be required to achieve Soviet compliance with their full obligation to reduce. And the unspoken premise of the Executive Branch is that these additional negotiations might still fail to achieve full Soviet compliance.

But the Senate must solve this problem. This solution is simple, and is proposed as Condition No. 2 in the Committee resolution.

The false data that the Soviets declared at signature is technically not a legal part of the Treaty, and it was not part of the formal and official CFE Treaty documents originally sent to the Senate. It still has not been formally sent to the Senate. Therefore, the Senate should require, as a condition of its advice and consent to ratification, that the false Soviet-declared data should not be used to calculate the Soviet reduction obligation.

In the event of the impending Presidential Report confirming a Soviet violation of the obligation to declare accurate data at Treaty signature—a violation which has in fact already occurred—the correct interpretation of the CFE Treaty clearly requires that data on the number of pieces of Soviet Treaty-Limited Equipment actually present in the Treaty zone of application at signature must be derived from U.S. National Technical Means of verification. The Treaty's provisions explicitly indicate quite clearly that this data on Soviet forces derived from U.S. National Technical Means of verification should instead be used as the baseline to calculate the Soviet reduction obligation.

The precise provisions of the CFE Treaty require that U.S. National Technical Means of verification be used to verify all Soviet locational and numerical declarations, to validate all Soviet data, and most significantly, to calculate the Soviet reduction obligation in order to ensure compliance.

Using this data obtained from U.S. National Technical Means results in a Soviet reduction obligation that is almost double the obligation based on the false Soviet data.

The Senate should not allow the Soviets to benefit from their attempted fraud. But unless the Senate fixes this conceptual flaw by attaching a Condition to its resolution of ratification consenting to the CFE Treaty, the Senate will be approving the erroneous use of deliberately false Soviet data in order to calculate a minimized Soviet reduction obligation.

A grave matter of principle is therefore at stake for the Senate in addressing this major conceptual flaw in the proposed CFE Treaty. The Soviets have violated the Treaty even before its ratification by providing false data. The Senate should avoid approving a resolution of ratification which implies acceptance of this fraudulent Soviet data which violated the Treaty. The United States must have the political will to interpret the CFE Treaty in accordance with its precise terms, to calculate the Soviet reduction obligation, and to enforce full Soviet compliance. Unless the Senate demonstrates this political will by approving a Condition fixing this conceptual flaw, the Senate will be an accomplice in a major Soviet deception, and the proposed CFE Treaty could fail to achieve its intended objectives.

Here is the proposed Senate Condition No. 2 on Data:

"(2) Data.—Whereas data supplied by the Government of the Union of Soviet Socialist Republics pursuant to Article XIII and the Protocol on Information Exchange, regarding its equipment holdings in the Atlantic to the Urals area as of November 19, 1990, differed from United States estimates of such equipment, the United States shall—

(a) continue to seek clarification of those holdings of Treaty-limited equipment as of November 19, 1990; and

(b) seek to obtain additional reductions of equipment in Treaty-limited categories in the event the President determines that actual holdings of Treaty-limited equipment by any state party exceeded its declaration concerning its holdings of such equipment as of November 19, 1990."

This Condition to the Resolution of Ratification will solve the problem of Soviet violation of the CFE Treaty at signature.

The following chart on the Soviet obligation for conventional force reduction under the CFE Treaty illustrates the major conceptual flaw in the CFE Treaty. The chart shows the magnitude of the attempted Soviet fraud. It shows that the Soviet-declared fraudulent data is a maneuver designed to cut their obligation to reduce their conventional forces almost in half. The Senate should act to prevent the Soviets from succeeding in this deception. The Condition to the Resolution of Ratification can correct this Soviet fraud. *End Summary.*

INTRODUCTION: SHORT EXPLANATION OF SOME DETAILS OF CFE'S CONCEPTUAL FLAW

A. U.S. national intelligence estimates show that the Soviets declared false CFE data

According to unclassified testimony to the Committee derived from National Intelligence Estimates, U.S. Intelligence has conclusive evidence that the Soviet Union deliberately falsified its declared data on the day of signature of the CFE Treaty, November 19, 1990.

The Acting Director of Central Intelligence testified publicly to the Committee on Foreign Relations on July 17, 1991, that:

"[W]hen the Soviets tabled their figures on Treaty-Limited Equipment holdings as of 19 November, 1990, there were *major discrepancies* between those figures and our most recent estimates available at that time . . . We have *confirmed* that some of the weapons being moved east of the Urals did not arrive at their destination until a month or so after signature . . . We also *know* that a number of items that the Soviets claimed to have eliminated by 19 November were still in the zone."

These public intelligence judgments based upon our National Intelligence Estimates clearly indicate that the Soviets deliberately falsified their initial data declaration at Treaty signature. It should be re-emphasized that these unclassified judgments are derived from the classified National Intelligence Estimates.

Since the signing of the CFE Treaty on November 19, 1990, the Soviets have even admitted their data falsification in diplomatic channels, when confronted with them by U.S. negotiators, thus confirming that the deliberate falsification occurred.

The Chief U.S. CFE negotiator, Ambassador James Woolsey, even termed this false Soviet data declaration flagrant "fraud." This assessment of fraud can only be interpreted to mean that Ambassador Woolsey believes that the Soviets violated their obligation under the CFE Treaty to declare accurate data at Treaty signature. Moreover, the

Executive Branch is already preparing a non-compliance report for the President to deliver to Congress in December, 1991, on the Soviet CFE data falsification. The Presidential Report is required because the Soviet data declaration was clearly inaccurate, and the Soviets clearly violated their obligation to declare accurate data upon signing the CFE Treaty.

The intelligence evidence that the Soviets grossly under-declared their forces at the time of Treaty-signature is conclusive. There is "smoking gun" evidence that thousands of pieces of Soviet Treaty-Limited Equipment were present in the zone of Treaty application and yet were not declared on the day of signature.

Indeed, our best intelligence indicates that the Soviets had about 18,000 pieces of Treaty-Limited Equipment (TLE) inside the zone of application that they did not declare at the time of Treaty signature. Originally, just after CFE Treaty signing on November 19, 1990, U.S. Intelligence concluded that the "major discrepancy" between U.S. evidence and the Soviet data declaration was as large as a Soviet under-declaration of 35,000 to 40,000 pieces of TLE. But after a thorough restudy of all the U.S. evidence collected during 1990, which is described in more detail below, U.S. Intelligence concluded that the "major discrepancy" was about 18,000 pieces of un-declared TLE.

Within this block of 18,000 pieces of un-declared Soviet TLE, there is conclusive, "smoking gun" evidence of about 4,000 undeclared pieces of TLE within the zone on the signature date.

Indeed, the Chief U.S. CFE negotiator has testified publicly that about 4,000 un-declared pieces of TLE were clearly still inside the zone on the date of signature, and that a total of about 18,000 TLE are estimated to have been in the category of un-declared but inside the zone on date of signature.

Ambassador Woolsey, the U.S. Chief CFE negotiator, testified to the Committee in open session on July 25, 1991, as follows:

"* * * We believed, based on information that had been provided to us by the Intelligence Community, that there were * * * data problems * * * with respect to the aircraft, there was approximately 1,000 aircraft * * * that the Soviets * * * did not declare. And we raised this issue in the Joint Consultative Group, and after discussions there they *increased* their notified holdings by between 100 and 200 aircraft. There were still 800 or so aircraft that they did not notify * * *. There was also about 1,000 pieces of ground * * * based equipment which we believe * * * [with] reasonably good confidence were not declared properly * * *. Now in addition to this approximately *800* or so aircraft and *800* or so pieces of ground equipment, there are another, let us say in the *very low thousands*, pieces of equipment that, I believe it is fair to say we believe we have some evidence to suggest were not destroyed in time and/or alternatively did not get out in time, that is, were not destroyed by November 19th or did not get out by November 19th."

Thus we have public testimony from the U.S CFE negotiator to the Committee that there is hard evidence that at least about 4,000 Soviet pieces of TLE were clearly in the zone of Treaty application, but were not declared.

The evident Soviet purpose in their data falsification was to avoid having to destroy the full 18,000 un-declared pieces of TLE in the zone. In the months following the signature date of November 19, 1990, all of these 18,000 pieces of un-declared TLE have evidently been removed from the CFE Treaty zone of application, and by being East of the Urals, they are now immune from destruction under the Treaty.

Testimony to the Committee from the Chairman of the Joint Chiefs of Staff, quoted in detail below, also shows that the magnitude of this deliberate Soviet data falsification is so large that it must be regarded as "militarily significant."

B. Soviet violation of CFE obligation to provide accurate data

Testimony therefore shows that the Soviets have committed a militarily significant, fundamental violation that goes to the heart of their most significant obligation of the Treaty, even before the Treaty is ratified. The gross Soviet data falsification at signature is a violation of the CFE obligation to provide accurate data. Moreover, the obligation to reduce TLE is the central obligation of the Treaty, and the data upon which this obligation is based is the cornerstone of the central obligation. Since the data (either declared by a State Party to the Treaty or derived from U.S. National Technical Means) is so important to calculating the central obligation of the Treaty—the reductions, the Soviet data falsification could be viewed as defeating the object and purpose of the Treaty.

Indeed, this gross Soviet data deception is more than "bad faith" or simple "fraud." Under international law, it is "fraud in the inducement" to sign the CFE Treaty, that is to say fraud intended to induce the other party to accept unequal terms. Thus Soviet "fraud in the inducement" could give the United States the right to refuse to ratify the Treaty, or to withdraw from it.

C. What is the correct method for calculating how much the Soviets must reduce?

The proposed CFE Treaty, of course, requires the NATO group of nations and the former Warsaw Pact group of nations to reduce their conventional forces to agreed-upon levels equal for each group. The Soviet obligation is to reduce its forces along with its former Warsaw Pact allies to the agreed level.

The question then arises—what is the starting point for calculating the Soviet obligation to reduce? Is this starting point the level of forces which the Soviets declared at Treaty signature, or is it the level which U.S. National Technical Means of verification detected that the Soviets actually had in the zone on the day of signature?

Most officials in the Executive Branch are seeking to minimize the Soviet obligation to reduce. These officials hold that the Soviet reduction obligation should be calculated from the level of forces that the Soviets declared at Treaty signature. Under this method of calculation, the Soviet obligation to reduce would be only 19,670 pieces of Treaty-Limited Equipment. The probable reason for this attempt to minimize the Soviet reduction obligation is the presumed difficulty of the diplomatic effort it would take to achieve Soviet compliance with their full reduction obligation.

However, this Soviet-declared data is not a legal and integral part of the CFE Treaty; in fact, this Soviet-declared data has not even been officially and formally submitted to the Senate with the Treaty as part of the official documents included in the Treaty; and finally, U.S. Intelligence has established that it is grossly inaccurate.

The correct interpretation of the CFE Treaty, according to its precise provisions to be quoted below, shows that Soviet-declared data is only a supplement to the data gathered by U.S. National Technical Means of verification for calculating the Soviet reduction obligation.

The Treaty's terms precisely state and that U.S. National Technical Means of verification are required for "validation" of the Soviet-declared data. Moreover, there are locational and numerical constraints in the Treaty that can only be verified by National Technical Means. Finally, the Treaty explicitly states that U.S. National Technical Means of verification are to be used for "ensuring verification of compliance with the provisions of the Treaty." This means that U.S. National Technical Means of verification must be used to calculate the compliance obligation—the Soviet obligation to reduce.

In a circumstance in which the Soviets have clearly violated their obligation under CFE to provide accurate data at Treaty signature, only U.S. National Technical Means of verification can establish the baseline of how many pieces of Soviet TLE were in the zone on the day of Treaty signature. This view was provided in answer to one of my questions which was agreed to by an interagency group.

In sum, the Treaty clearly establishes that the Soviet obligation to reduce must be calculated from data on Soviet forces actually in the zone of application on the date of Treaty signature, as established by U.S. National Technical Means of verification.

Under this correct method of calculation, the Soviet reduction obligation would be the sum of the 19,670 pieces of Treaty-Limited Equipment *plus* the 18,000 pieces that the Soviets did not declare, or a total of 37,670 pieces—almost *twice* as much.

Thus we must almost *double* the Soviet reduction obligation.

A fundamental principle of both civil and international law is that a contracting party should not be able to benefit from false declarations in a contract or a treaty. This principle's practical effect in this case is that if we know from U.S. National Technical Means of verification that Soviet-declared data is grossly false, then we must use our own NTM data on actual Soviet forces in the zone in order to calculate the Soviet obligation to reduce.

D. Senate should not approve use of fraudulent Soviet data

The Committee and the Senate must resolve the related problems of the grossly inaccurate Soviet-declared data, and how to calculate the Soviet reduction obligation.

Otherwise, if the Senate does not solve this problem, the Senate will face the anomaly of having to vote to approve the grossly inaccurate Soviet-declared data being erroneously used to calculate the fundamental obligation of the Treaty. A Senate vote for the CFE Treaty, in the *hope* that on-site inspections (after ratification) can solve the data problem, would be like buying a "pig in a poke," or consummating a deal without knowing what we are getting into.

There is an acceptable way to solve the Senate's problems with the CFE Treaty, in the form of Senate Condition No. 2 to the Resolution of Ratification, which will be proposed during Committee mark-up on the Treaty. *(End Introduction.)*

I. BACKGROUND TO THE PROBLEM WITH THE SOVIET-DECLARED CFE DATA: LONG HISTORY OF SOVIET DATA FALSIFICATION IN SALT, MBFR, AND INF

Russian President Boris Yeltsin recently stated that the Soviet Union has provided

false data in arms control negotiations. Yeltsin recently told a group of 72 Senators and also a press conference at the White House in June, 1991, according to two transcripts and two translations, that Soviet hardliners falsified the numbers of Soviet weapons systems, and engaged in deception, throughout the last thirty years of arms control treaty negotiations with the West. Yeltsin's assessment is consistent with the facts of Soviet data deception in arms control negotiations long known to U.S. Intelligence.

In September, 1988, then-Soviet Foreign Minister Eduard Schevardnadze finally admitted that the Soviet Krasnoyarsk radar was a clear violation of the SALT I ABM Treaty. Schevardnadze also conceded that for years the Soviets has falsely denied their violations of arms control treaties to the world, thereby authoritatively conceding the magnitude of Soviet arms control falsification and deception.

Presidential reports to Congress since 1984 have confirmed several cases of Soviet data falsification and deception in SALT I, SALT II, and the INF Treaty.

A. Problems with Soviet data, case one: In SALT I the Soviets declare false intentions, capabilities, and data, and these are part of the agreement

There is a long history of Soviet data falsification and deception, dating back to the first strategic forces arms control agreements signed in 1972. This history suggests that the Soviet Union has engaged in "fraud in the inducement" since arms control involving strategic forces began.

In the SALT I Interim Agreement of 1972, the Soviets falsely declared that they did not intend to replace light ICBMs with heavy ICBMs, when in fact they had precisely such intentions and later proceeded to execute them.

Moreover, the Soviets falsely declared that they needed to be compensated for the short range of their SLBMs, by being allowed a higher total of SLBMs, when in fact they had already developed a long-range SLBM to overcome their "geographical asymmetry."

Finally, the Soviets declared a false number of the submarines that they then possessed. This false number was used in the negotiations and in the agreement to calculate a favorable weapons "replacement" quota for them, increasing their advantage in submarines and SLBMs.

The President's General Advisory Committee on Arms Control concluded in 1984 that the Soviet negotiating deception resulting in the Soviet replacement of light ICBMs with heavy ICBMs, when SALT I's Article II prohibited such replacement, was a circumvention of SALT I which defeated its object and purpose.

A fourteen year-old CIA study also confirmed that the Soviets falsified their number of submarines, and hid the long range of an SLBM designed to overcome their "geographical asymmetries" until after the agreement entered into force.

Thus there is official confirmation that the Soviets negotiate deceptively in SALT I, provided some false information on their intentions and capabilities, and provided some false data.

The United States agreed to this false Soviet-declared data at the time, it was included in the agreement, and the United States therefore in effect became a complicit party to the Soviet data deception.

B. Problems with Soviet data, case two: False Soviet data is agreed to by the U.S., and is made part of SALT II Treaty

In the SALT II Treaty of 1979, the Soviets declared much more data on their strategic forces, and this data declaration was in the form of a "Memorandum of Understanding" which was linked directly to the Treaty. In fact, it was considered to be tantamount to a protocol to the Treaty. Moreover, the United States stated in this "Memorandum of Understanding" that it "agreed" with this Soviet-declared data. This "agreed" Soviet-declared data was sent to the Senate as an official part of the unratified SALT II Treaty.

However, it later turned out that the Soviet-declared SALT II data was false in several ways. The eight Presidential Reports to Congress on Soviet Non-compliance with Arms Control Treaties beginning in 1984, together with the Defense Department series begun in 1981 entitled *Soviet Military Power*, have officially confirmed the following Soviet SALT II data falsifications:

—The Soviets failed to declare about 50 to 200 mobile SS-16 ICBMs that were probably deployed at the time, and in effect falsely declared that they had zero mobile ICBMs;

—The Soviets failed to declare that about 200 of their AS-3 cruise missiles carried on their 100 older Bear bombers had a range of more than 650 kilometers, and therefore they falsely declared that they had "zero" heavy bombers equipped for cruise missiles capable of a range in excess of 600 kilometers, when they actually had at least 100 such bombers;

—The Soviets falsely declared in a statement that was made an integral part of the Treaty that their 400 intercontinental Backfire bombers did not have intercontinental range or radius capability, did not have inflight refueling capability, and would not be produced at a rate in excess of 30 per year, in order to exclude all Backfire bombers from counting in the Treaty. Yet all these Soviet Backfire data declarations turned out to be false.

Thus the United States had another bad experience with including Soviet-declared data in the SALT II Treaty, because the Soviets falsified some of their data. Moreover, the United States made the mistake of "agreeing" with the Soviet-declared data that later turned out to be false. In effect, the United States again became a complicit party to the Soviet data deception.

C. Problems with Soviet data, case three: Soviets declare false INF data, but it is not made part of the INF Treaty

The fact that we later discovered that in SALT II the Soviets falsified data that was part of the Treaty and which the United States "agreed" to had an important effect. Ever since SALT II, the United States has been reluctant to agree to the accuracy of Soviet-declared data or to including Soviet-declared data in arms control treaties.

In the case of the 1987 INF Treaty, the Soviet-declared data was *not* agreed to by each side, and it was not included in the Treaty. But the Soviet-declared data was nevertheless sent to the Senate as if it was part of the Treaty, even though it was not a legal and integral part of the Treaty. And during the ratification process the state Department vigorously defended the accuracy of the Soviet-declared INF data, even though the Treaty said that only the Soviets were responsible for the accuracy of their own data.

Just as happened in SALT I and SALT II, later it turned out that the Soviets had again falsified some of their INF data. The State Department was embarrassed by the discovery later that some Soviet-declared INF data was false, because the State Department had repeatedly vouched for its accuracy in public when advocating the Treaty. But defending the accuracy of Soviet-declared data again turned out to be a losing proposition. These Soviet falsifications of their data declared for the INF Treaty have been confirmed by several National Intelligence Estimates and Presidential Reports to Congress on Soviet Non-compliance with Arms Control Treaties.

The most important unclassified examples of Soviet INF data falsification, and there are many more than those listed below, are the Soviet failures to declare:

—At least 120 Soviet-controlled SS-23s covertly deployed in Eastern Europe, which President Bush termed showed Soviet "bad faith" in the INF negotiations, which the U.S. INF negotiator termed "deceit and mendacity" during the negotiations, and which President Bush recently stated constituted a "probable violation" of the INF Treaty;

—The true dimensions of their SS-20 missile second stages, SS-20 canisters, end caps for the SS-20 Re-entry Vehicles, and SS-23 missiles;

—About 85 Treaty-Limited Items of INF missiles and equipment detected at the time of INF Treaty signature at non-declared sites;

—At least 300 or more covert Soviet SS-20 launchers and missiles which had probably been produced at the time of INF Treaty signature.

D. Conclusion: The Soviets continued to falsify data whether the data was included in the treaties or not

We have not yet mentioned the fourth case, the 1973-1989 aborted negotiations on the Mutual and Balanced Force Reductions, in which the main obstacle to agreement was longstanding Soviet falsification of their force data.

According to press reports, a spy for the CIA who later defected to the West, Polish Army Colonel Roman Kuklinski of the Polish General Staff, has given the United States voluminous documentary evidence of the systematic data deception that the Soviet General Staff engineered throughout the MBFR negotiations.

According to several reports, a U.S. Intelligence study, reportedly based upon Colonel Kuklinski's evidence, stated:

"We believe Soviet officials *deliberately under-stated* the number of Warsaw Pact military servicemen in Central Europe that would be subject to an MBFR agreement."

Thus we have four major case studies of Soviet data deception—SALT I, SALT II, INF, and MBFR.

In sum, we have the following history of false Soviet-declared arms data:

—In the case of the SALT I Agreement, some Soviet-declared data was false, it was part of the agreement, the United States agreed to it and therefore became a complicit party to the Soviet data deception;

—In the case of the SALT II Treaty, some Soviet-declared data was false, it was part of Treaty, the United States agreed to it and therefore again became a complicit party to the Soviet data deception;

—In the case of the INF Treaty, some Soviet-declared data was false, it was not part of the Treaty, the State Department nevertheless defended its accuracy, but in ratifying the Treaty which depended on this non-integral data for the implementation of the Treaty, the United States yet again became a complicit party to the Soviet data deception;

—In the MBFR negotiations, we know that the Soviets systematically falsified their data, and this deliberate falsification became the main reason for the failure of the negotiations;

—In the cases of the SALT I Agreement, the SALT II Treaty, and the INF Treaty, the partly false Soviet data was sent to the Senate.

The Executive Branch has thus "agreed" to partly false Soviet-declared data in SALT I, SALT II, and even in the INF Treaty. And the United States Senate has repeatedly become a complicit party to Soviet data deception by ratifying or approving these Agreements and Treaties.

A good case can be made that the Soviet data falsification was so significant that the Soviet Union engaged in "fraud in the inducement" in SALT I, SALT II, MBFR, and the INF Treaty.

There are reports that the Soviets have also again falsified some of their declared data in the proposed START Treaty, as a 65 page CIA study points out.

In view of this history, the Senate should be aware of the non-legal status of the Soviet-declared CFE data, and whether or not it is accurate. In the most recent case—the INF Treaty—on May 26, 1988, the Senate gave its advice and consent for the President to ratify a Treaty which used for its compliance and implementation Soviet-declared data that can now be demonstrated to be partially false.

In the case of the proposed CFE Treaty, the Senate would be wise to avoid a situation in which it gives its advice and consent for the President to ratify a treaty which either makes use of false Soviet-declared data, or depends upon false Soviet-declared data for compliance and implementation. Otherwise, the Senate could even yet again a fourth time become a complicit party to Soviet data deception.

II. THE PROBLEM WITH THE SOVIET-DECLARED CFE DATA

A. U.S. intelligence detects 18,000 Soviet undeclared TLE

As noted, according to public, unclassified testimony and press reports, U.S. National Technical Means of verification have detected about 18,000 *more* pieces of Soviet Treaty-Limited Equipment—TLE—in the Treaty zone of application at date of Treaty signature on November 19, 1990, than the Soviets declared. This inescapable conclusion was reached after an intensive re-study by U.S. Intelligence of all the evidence of Soviet forces in the CFE zone during 1990. Further, we have seen that the original "data gap" was as large as 35,000 to 40,000 pieces of Soviet undeclared TLE. Finally, as further noted, there is hard evidence of this Soviet under-declaration of data. The only discernible purpose for this under-declaration is to minimize the Soviet obligation to reduce.

Within this block of 18,000 undeclared TLE, there is positive, conclusive evidence that a batch of about 4,000 combat aircraft TLE and ground TLE were not declared by the Soviets, even though they were clearly in the zone at the time of Treaty signature. The evidence in these cases is "smoking gun" quality—hard evidence from U.S. National Technical Means of verification on the day of Treaty signature. These 18,000 pieces of Soviet undeclared TLE, including the 4,000 "smoking guns," are clearly a violation of the CFE Treaty.

As noted, this judgment of the magnitude of undeclared Soviet TLE—18,000 pieces including the 4,000 "smoking guns"—is thus based upon hard intelligence evidence and sound analytical methodologies. An intensive re-study of all the evidence on Soviet forces in the CFE zone of application throughout 1990 was conducted by U.S. Intelligence.

One methodology reportedly entailed macro-counting Soviet equipment in the 900 or more "Objects of Verification" in the Atlantic to the Urals zone. The second methodology reportedly entailed micro-counting Soviet equipment being stockpiled and stored at scores of Soviet military depots East of the Urals. These two "macro-micro" methodologies can be compared to counting first the "bean pods" in the military bases inside the Treaty zone (because most Soviet equipment there is under cover inside sheds), and then counting the "beans" themselves in mostly open storage concentrations in the depots East of the Urals.

The Intelligence Community is thus confident that this hard evidence and the two counting methodologies show that the Soviets grossly under-declared their data by about 18,000 pieces of TLE, and that the Soviet purpose in this was clearly to minimize their reduction obligation. This Soviet purpose is confirmed by the strong likelihood that all of this undeclared Soviet TLE has probably been moved East of the Urals by now, where it will not have to be reduced under the terms of the Treaty.

B. Legal status of Soviet CFE data

What is the legal status of this Soviet-declared CFE data? In the case of the CFE Treaty, the Senate has not even formally and officially been sent the Soviet-declared CFE data, surely because the State Department does not believe that it is legally part of the CFE Treaty or that it is an integral part of it.

Indeed, Ambassador Woolsey has authoritatively told Committee staff that he does not regard the Soviet-declared CFE data to be a legal and integral part of the CFE Treaty. But there seems to be a more fundamental reason why the Senate has not been formally and officially sent the CFE data that the Soviets declared at signature. Perhaps the real reason that the Soviet-declared data was not sent was because the State Department does not once again want to have to vouch for the accuracy of false Soviet-declared data, especially Soviet-declared data which this time is so grossly and deliberately inaccurate. Thus the Senate should also be cautious with regard to the Soviet-declared CFE data.

There is thus an anomalous situation with regard to the CFE Treaty. Unlike the INF Treaty, which simply banned all the types of INF missiles and the missiles themselves that were declared, (as it turned out we have confirmed that the number of Soviet INF missiles was falsely under-declared), there is a more fundamental problem with the Soviet-declared CFE data. The Soviet-supplied CFE data is not part of the Treaty, even though the Executive Branch believes that this data must be used to calculate the key obligation of the CFE Treaty.

C. Should the Senate agree to use deliberately and grossly false Soviet-declared data in CFE?

But is it reasonable to use a set of data which is not legally and integrally part of the CFE Treaty, and which was not officially and formally furnished to the Senate, in order to calculate the fundamental Soviet obligation of the Treaty—the Soviet reduction obligation?

More significantly, is it reasonable to use this data for such a calculation even when we clearly know it to be grossly and deliberately inaccurate?

The CFE Treaty contains numerical and locational constraints on "Treaty-Limited Equipment" or TLE. The Treaty is also supposed to be monitored by National Technical Means of verification. Indeed, the numerical and locational constraints on the TLE contained in the Treaty can only be verified by National Technical Means. Moreover, even the CIA has stated that verification of the baseline data is crucial to having parity after the reductions, and National Technical Means of verification are the only means to verify the Soviet baseline data.

Thus this Soviet under-declaration of 18,000 pieces of Treaty-Limited Equipment goes to the heart of the fundamental Soviet obligation under the Treaty—the obligation to reduce to equal levels of forces for the groups of nations.

Finally, as is discussed in more detail below, the Chairman of the Joint Chiefs of Staff has testified to the Committee that illegal TLE numbering more than 15,000 pieces would be a "military significant" violation.

The Soviets thus have under-declared their CFE data on November 19, 1990, by at least 18,000 pieces of TLE, which is a military signficant amount.

This "data gap," or under-declaration problem is therefore an important case of Soviet "fraud in the inducement" to the CFE Treaty, a violation at the signature of the Treaty serious enough to allow the United States to withdraw from the Treaty or refuse to ratify it. This Soviet data fraud must be considered as part of the problem of calculating the Soviet reduction obligation under the terms of the Treaty.

III. CALCULATION OF THE SOVIET OBLIGATION TO REDUCE

According to Ambassador James Woolsey, the U.S. chief negotiator, and also to most other Executive Branch officals, the way to calculate the Soviet obligation to reduce is to simply subtract the allowed Soviet TLE holdings contained in the Treaty's statement of permitted holdings at the end of the 40 month period from the Soviet data declared at Treaty signature. The result is supposed to be the total number of TLE that the Soviets are obligated to destroy. The State Department and most other Executive Branch officials agree with this method of calculating the Soviet obligation to reduce.

Using this methodology, the Soviets would have to reduce by 19,670 pieces of TLE.

Thus it can be argued that the Soviet data declaration at Treaty signature is the most important input, indeed, the only input, for calculating the Soviet reduction obligation. But this Soviet-declared data is not a legal, integral part of the Treaty; it has not even been officially and formally furnished to the Senate; it is clearly grossly false; and a proper interpretation of the Treaty shows that it cannot be the only input into the calculation.

A. The Soviet data declaration not formally and officially sent to the Senate

Moreover, the fact that the Senate does not even officially and formally have the Soviet data declaration is significant, and needs re-emphasis.

The Soviet-declared data has not even been formally and officially sent to the Senate as part of the CFE Treaty. The Soviet data was only sent informally and unofficially to the Committee on Foreign Relations long after the Treaty itself was submitted to the Senate, and it was only sent because of repeated staff requests for it.

If the Senate does not officially have the Soviet-declared data, then the Senate cannot calculate the Soviet reduction obligation under the proposed Treaty, even using the method suggested by Ambassador Woolsey and most Executive Branch officials. But

even if the Soviet-declared data had been formally and officially sent to the Senate, it is not regarded by the Executive branch to be an integral or legal part of the Treaty.

In sum, if the Soviet data declaration is not before the Senate and is not legally an integral part of the Treaty, and is deliberately and grossly false, then clearly there must be another input for calculating the Soviet obligation to reduce. We must seek to interpret the Treaty to determine the proper method of calculating the Soviet reduction obligation.

B. U.S. NTMs are the main input into the calculation

A fundamental principle of both civil and international law is that a contracting party should not be able to benefit from false declarations in a contract or a treaty. This principle's practical effect in this case is that if we know from U.S. National Technical Means of verification that Soviet-declaration data is grossly false, then we must use our own NTM data on Soviet forces in the zone at signature in order to calculate the Soviet obligation to reduce.

The top official in the Executive Branch with explicit responsibility for verification believes that what follows is a description of the proper, correct method for calculating the Soviet reduction obligation.

A full and careful study of the relevant provisions of the proposed CFE Treaty shows that the correct method for calculating the Soviet CFE reduction obligation is as follows:

For full compliance with the intended reduction obligations, a State must:

Provide complete and accurate data on the numbers of all of its armaments and TLE that are in the zone of the Treaty, and their location, as of the dates of signature and entry into force. The quantity of such TLE that must be declared as a state's reduction obligation and reduced by the Treaty-specified procedures by 40 months after entry into force of the Treaty must not be less than: the difference between the *higher* of the *actual number* of TLE present in the zone at the date of signature or entry into force, and the state's declared maximum holdings.

Three provisions of the CFE Treaty provide the basis for this conclusion that data on Soviet TLE *actually present* in the zone at the date of signature or entry into force are the main determinant of the Soviet obligation to reduce. These three provisions are as follows:

(1) There are locational and numerical data declarations and constraints in the Treaty, which can only be verified by U.S. National Technical Means of verification.

For example, Sections II. and III. of the Protocol on Notification and Exchange of Information state that:

"each State Party shall provide to all other States party information on—*overall numbers* and the *numbers by type* of its holdings of battle tanks, armored combat vehicles, and artillery limited by the Treaty in each of the areas [of application of the Treaty] * * * each State Party shall [also] provide to all other States Parties the following information—the designation and peacetime location * * * specifying the *geographic* name and *coordinates* [of its] battle tanks, armored combat vehicles, artillery, combat aircraft, and attack helicopters * * *"

This Treaty language clearly implies that U.S. National Technical Means of verification will be used to validate the Soviet data declaration.

(2) Soviet data declarations are not intended to be used for implementation and compliance all by themselves. U.S. National Technical Means of verification specifically are to be used to *validate* Soviet data.

For example, Article XIII .3 of the Treaty states that:

"Each State Party shall be responsible for its own information; receipt of such information and of notifications shall not imply *validation* or acceptance of the information provided."

This Treaty language clearly means that U.S. National Technical Means of verification are required to validate the Soviet data declaration.

(3) Finally and most significantly, U.S. National Technical Means of verification are clearly intended to be the main source of data on Soviet forces covered by the Treaty, for purposes of implementation and *compliance*.

Article XV of the Treaty states:

"For the purpose of ensuring verification of compliance with the provisions of the Treaty, a State Party shall have the right to use national or multinational technical means of verification * * *"

Thus the precise provisions of the CFE Treaty require that U.S. National Technical Means of verification be used to verify all locational and numerical declarations, to validate all data, and most significantly, to calculate the reduction obligation in order to ensure compliance. In sum, these provisions of the CFE Treaty clearly indicate that U.S. National Technical Means of verification showing evidence of *actual* Soviet TLE holdings in the zone at the time of signature and entry into force must be the fundamental determinant of the Soviet reduction obligation.

C. Even the CIA states that baseline verification is vital for parity

Moreover, even the Intelligence Community stated in a document dated October 17, 1990, that "baseline verification" is one of the three main verification tasks of the CFE Treaty.

The Intelligence Community emphasized, regarding baseline verification, that:

"We must be confident that the starting figures, from which the required reductions in TLE will be calculated, are *correct*. Otherwise there is no assurance that reductions will result in *parity*."

Thus even this Intelligence Community statement also strongly implies that U.S. National Technical Means of verification will be used as an important input into determining the Soviet obligation to reduce.

Using the correct methodology to calculate the Soviet reduction obligation thus would add the 18,000 pieces of Soviet undeclared TLE to the 19,670, resulting in a total Soviet obligation to reduce 37,670 pieces of TLE. This is almost a *doubling* of the Soviet obligation to reduce.

D. The magnitude of the Soviet under-declaration

As noted, according to press reports and to open testimony, the Soviet have clearly under-declared their CFE data on the date of Treaty signature by about 18,000 pieces of TLE.

This "data gap" or under-declaration problem is therefore an important case of Soviet "fraud in the inducement" to the CFE Treaty. More significantly, this Soviet misbehavior goes to the heart of the fundamental obligations of the CFE Treaty.

The next question is whether the 18,000 pieces of TLE, of which the 4,000 "smoking gun" cases are only a part, are "militarily significant."

E. JCS chairman says more than 15,000 illegal TLE are "militarily significant"

On July 16, 1991, the Chairman of the Joint Chiefs of Staff, General Colin Powell, testified to the Committee as follows:

"* * * Senator Helms, 15,000 treaty-limited pieces of equipment that had been covertly infiltrated back into the ATTU [Atlantic to the Urals zone of the CFE Treaty] in violation of this Treaty, that indeed is *militarily significant*."

Now General Powell was speaking hypothetically of the infiltration of illegal TLE into the zone, but what is important here is the level of illegal TLE, whether infiltrated or covert or undeclared, that is assessed as "militarily significant." If 15,000 illegal TLE that are infiltrated are assessed as "militarily significant," then it is reasonable to conclude that 15,000 covert or undeclared TLE would also be "militarily significant."

Finally, because the prevailing Executive Branch calculation of the Soviet reduction obligation has the Soviets reducing by about 19,670 pieces of TLE under the Treaty, if 18,000 undeclared TLE is *not* "militarily significant," then the ostensible 19,670 TLE reduction is also not "militarily significant." Thus if 18,000 pieces of TLE are not militarily significant, then the entire CFE Treaty may therefore not be "militarily significant." And if CFE is not militarily significant, then it may be judged to be irrelevant.

But the most logical and correct interpretation, based upon General Powell's testimony, is that the Joint Chiefs of Staff assess both 18,000 pieces of TLE and 19,670 pieces of TLE as being militarily significant.

IV. CONCLUSION: SOVIET VIOLATION OF CFE AT THE OUTSET

In conclusion, here is how we must describe the false Soviet data declaration gap at Treaty signature:

(1) The Soviets have deliberately tried to minimize their reduction obligation by systematically falsifying their data at the date of signature by 18,000 pieces of TLE;

(2) This gross Soviet falsification was intended to save the Soviets from destroying about 18,000 pieces of TLE, almost as many as the 19,670 TLE that the prevailing Executive Branch methodology has calculated that they will have to destroy under the Treaty;

(3) The gross Soviet falsification of their declared data at signature is "fraud in the inducement," and is a violation of their obligation to provide accurate data at Treaty signature;

(4) The JCS Chairman, General Powell, has testified to the Committee that illegal Soviet TLE above 15,000 is "militarily significant," and thus this Soviet data falsification which would save the Soviets from destroying 18,000 pieces of TLE is a "militarily significant" number.

In sum, the Soviets have already violated the CFE Treaty in a militarily significant way:

—The Soviets have minimized their reduction obligation by deliberately falsifying their data at the date of signature by about 18,000 TLE, despite their Treaty obligation to provide accurate data;

—This Soviet falsification saves the Soviets from destroying about 18,000 TLE;

—The JCS Chairman, General Powell, has testified to the Committee that illegal Soviet TLE above 15,000 is "militarily significant," and thus this Soviet data falsification saving about 18,000 Soviet TLE from destruction is militarily significant.

Thus by violating their CFE Treaty obligation to provide accurate data at signature, the Soviets have already violated the CFE

Treaty in a militarily significant way, even before ratification.

Finally, use of the correct methodology to calculate the Soviet obligation to reduce would almost *double* the number of pieces of Soviet TLE required to be dismantled by adding in the 18,000 Soviet undeclared pieces of TLE to the 19,670, resulting in an obligation to reduce 37,670 pieces of TLE.

V. SENATE CONDITION TO CFE RESOLUTION OF RATIFICATION

The United States has been deeply worried about the potential of the Soviet Union to circumvent the CFE Treaty with the 57,300 or more TLE that they have withdrawn behind the Urals prior to the entry into force of the Treaty. The United States has therefore tried to get the Soviets to agree to further reductions of their forces beyond the Urals, outside the Treaty. This was the purpose behind the Soviet statement of June 14, 1991.

On June 14, 1991, the Soviet Union made the following "political commitment." The Soviets stated that between 1991 and 1995, they would:

"* * * destroy or convert into civilian equipment no less than 6,000 battle tanks, 1,500 armored combat vehicles, and 7,000 pieces of artillery from among the conventional armaments and equipment in the Treaty-limited categories beyond the Urals * * *"

These additional, pledged reductions would total 14,500 pieces of TLE. The United States would be notified about the timing and location of these reductions, and the United States would use National Technical Means of vertification to observe these reductions, rather than on-site inspections.

This is thus a Soviet political commitment to reduce a total of 14,500 pieces of TLE, or about 25 percent of the 57,300 Soviet pieces of TLE that they have admitted withdrawing behind the Urals in 1989, 1990, and 1991. It is significant that a total of 14,500 pieces of TLE is approximately equivalent to the 18,000 pieces of TLE that U.S. Intelligence believes was undeclared at signature.

In sum, it would be possible to solve the inter-related Soviet data falsification problem and the problem of establishing the correct methodology for calculating the Soviet reduction obligation, by conditioning the Senate's advice and consent to the resolution of ratification to say that the Soviet political commitment to dismantle these 14,500 pieces of TLE are an approximate equivalent to the 18,000 under-declaration, and are thus an adequate compensation to the United States for the Soviet under-declaration.

PRESIDENT BUSH CONFIRMS SOVIET VIOLATION OF INF TREATY

Mr. HELMS. Mr. President, my critique of the INF Treaty in 1988 was based upon my assessment that the Soviets had engaged in negotiating deception to preserve covert INF missile forces, that the Soviets had falsified their declared data on the numbers of their INF missiles, and that they had illegally retained banned INF missiles as covert forces.

As I stated in April, 1988, during the debate over the INF Treaty:

* * * The Soviets failed to declare their actual inventory of INF missiles in 1987, and they did not act in good faith. The INF Treaty is therefore not a "global ban on INF missiles," as was claimed in 1987 by its supporters.

In January 1990 a local newspaper in Eastern Germany published a story about Soviet-origin SS-23 missiles being covertly deployed at a military base nearby. In February, 1990, United States intelligence national technical means of verification reportedly detected some Soviet covert SS-23's at this eastern German base.

In April 1990, the Soviets finally admitted that they had covertly provided SS-23 missiles banned by the INF Treaty to three Eastern European nations. The Soviets covertly provided at least 72 SS-23 INF missiles to East Germany, Czechoslovakia, and Bulgaria. The Soviets covertly controlled these SS-23 INF missiles and their nuclear warheads.

But according to a Soviet report to the United Nations, a total of at least 120 banned SS-23's of Soviet origin are still unaccounted for, are not dismantled, and they violate the INF Treaty.

In March 1990, the former Chief U.S. INF negotiator, Ambassador Maynard Glitman, termed this Soviet covert SS-23 deployment "deceit and mendacity," and he added that "deceit and mendacity" had characterized Soviet private and public behavior before, during, and after the INF Treaty negotiations. But at the time of the INF Treaty ratification hearings, I do not recall any testimony from Ambassador Glitman, or from any other executive branch witness, about Soviet "deceit and mendacity," although I asked about Soviet deception.

In August 1990 the Senate unanimously passed a Helms amendment to the fiscal year 1991 Defense authorization bill requesting that before the United States signed a Start Treaty with the Soviets, a Presidential report be sent to the Senate on whether the covert Soviet SS-23's in Eastern Europe violated the INF Treaty.

A similar Helms amendment to the fiscal year 1992 Defense authorization bill again requesting a supplemental report from the President on the SS-23 violation was also passed unanimously by the Senate in July 1991.

In June 1991, Russian President-elect Boris Yeltsin publicly attacked Soviet falsification and deception in all arms negotiations. The U.S. Chief CFE negotiator, Ambassador James Woolsey, also has accused the Soviets of fraud in the CFE negotiations. President Bush agreed with Ambassador Glitman on Soviet bad faith in the INF negotiations, and the President characterized the Soviet covert SS-23's as an act of bad faith in his February 1991 report to Congress on Soviet noncompliance with arms control treaties.

The United States has long had strong evidence that the Soviets controlled both the covert SS-23's, and also their nuclear warheads, which were covertly deployed in Eastern Europe.

Mr. President, I ask unanimous consent that a supplemental report from the administration on SS-23 missiles in Eastern Europe, dated September 19, 1991, be printed in the RECORD.

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

U.S. ARMS CONTROL AND DISARMAMENT AGENCY,
Washington, DC, September 19, 1991.

Hon. JESSE HELMS,
Ranking Republican, Committee on Foreign Relations, U.S. Senate.

DEAR SENATOR HELMS: On behalf of the administration, I am transmitting a Supplemental Report on SS-23 Missiles in Eastern Europe.

In the February 1991 Report to Congress on Soviet Noncompliance with Arms Control Agreements, the United States examined the question of SS-23 missiles discovered in former non-Soviet Warsaw Pact (NSWP) countries. The United States has received additional information since that Report was written. This new evidence permits the United States to update the finding.

The United States has found that the Soviet Union had understandings that constituted what amounted to an undisclosed program of cooperation. Thus, the United States has reaffirmed its previous finding that the Soviet Union negotiated in bad faith. The United States further found that the Soviet Union has probably violated the Elimination Protocol of the Treaty by failing to eliminate in accordance with Treaty procedures, re-entry vehicles associated with and released from programs of cooperation.

The Administration views the SS-23 issue as the most serious question to arise in the years of INF Treaty implementation. As our analysis continues, the Administration is committed to keeping the Congress fully informed of our findings.

Sincerely,

STEPHEN R. HANMER, Jr.,
Acting.

SUPPLEMENTAL REPORT TO CONGRESS ON SS-23 MISSILES IN EASTERN EUROPE,
September 18, 1991.

The President's February 1991 Report to Congress on Soviet Noncompliance addressed whether SS-23 missiles located in three Eastern European countries are accountable as being in Soviet possession at any time after November 1, 1987 or were third party systems. This is a supplement to that Report, providing an updated finding on the issues of programs of cooperation and negotiating behavior. The United States will continue to seek evidence from all parties involved regarding the transfer and possession of these systems and is continuing to study the issue of possible unaccounted for SS-23 missiles, which this supplemental Report does not address.

I. PREVIOUS FINDING

In the February 1991 President's Report, on the question of possession and fraud, the President found that:

"Based upon the evidence available to date, the United States Government cannot make a judgment that Soviet actions with regard to the transfer of SS-23 missile systems constitute a violation of the INF Treaty. Neither does the available evidence absolve the Soviet Union from responsibility. In any case, Soviet failure to inform the United States of the existence of SS-23 missile systems in the GDR, Czechoslovakia, and Bulgaria during the negotiations and in the interim period preceding the GDR announcement, constitutes bad faith. As such the Soviet Union bears political responsibil-

ity to facilitate the destruction of this entire class of Soviet-produced missiles. The United States has concerns about the very existence of these systems and will continue to seek evidence from all parties involved to made a definitive judgment regarding possession. The U.S. objective is the destruction of this class of weapon system which was banned by the INF Treaty."

New evidence obtained since that report was prepared permits the United States to update this finding.

II. BACKGROUND

During the INF Treaty negotiations, the Soviet Union never said that it had transferred, either because of an existing pattern or program of cooperation or for any other reason, Soviet-origin shorter-range missiles to any country.

Paragraph 9, Section II, of the Elimination Protocol required that "during the last fifteen days, a Party shall withdraw to its national territory reentry vehicles which, by unilateral decision, have been released from existing programs of cooperation and eliminate them during the same timeframe in accordance with the procedures set forth in this section." The INF Treaty, however, does not define the term "programs of cooperation" (POC).

A program of cooperation is understood for purposes of the INF Treaty to be an arrangement between parties to the POC involving a missile manufactured by the supporting party and owned by the supported party, and a warhead manufactured, owned, and provided by the supporting party. This arrangement would commit the supported party to provide the missile for use with the supporting party's warhead and would commit the supporting party to provide the warhead. A POC can additionally include arrangements for some or all of the following:

Proposals approved by heads of government;

Commitments to supply nuclear warheads;

Technical information and training to employ the missile are provided to the supported party by the supporting party;

Maintenance and security of the missile is provided by the supported party;

Maintenance and final security of the warhead is provided by the supporting party.

Evidence now indicates that these countries each fielded 24 SS-23 missiles that would be employed in accordance with Soviet military planning. These countries were supplied with connecting sections and training equipment related to nuclear employment. The United States has confirmed that the connecting section is only used to mate a nuclear warhead to the SS-23 missile. Security measures used with regard to the SS-23 units were extensive and went beyond those in place for other forces.

When the United States has pressed the Soviet Union to provide information related to the SS-23 missiles, the Soviet Union has told the United States that it should seek information from the owners of these missiles—the former GDR, Czechoslovakia, and Bulgaria. However, the Soviet Union insisted that these countries observe contractual obligations associated with the transfer of the SS-23 missiles. This has effectively impeded the United States' ability to obtain information from these countries.

III. FINDING

The United States believes that the Soviet Union had understandings that Soviet manufactured SS-23 missiles transferred to at least one of the East European countries could be mated with Soviet nuclear reentry vehicles. Within the common meaning of the term, these understandings constituted what amounted to an undisclosed program of cooperation.

With respect to the SS-23s, the United States reaffirms its previous finding that the Soviet Union negotiated in bad faith.

The Soviet Union was required to eliminate, by May 31, 1991, any reentry vehicles unilaterally released from programs of cooperation. Although we have no evidence that the Soviet Union has retained SS-23 reentry vehicles, neither have they notified us of the destruction of any SS-23 reentry vehicles previously associated with programs of cooperation under this provision. The existence of a POC creates a strong presumption that allowances were made within the warhead stockpile system to provide reentry vehicles for missiles associated with POCs. The United States therefore believes that the Soviet Union has probably violated the Elimination Protocol of the Treaty by failing to eliminate in accordance with Treaty procedures, re-entry vehicles associated with and released from programs of cooperation.

The Soviet Union has impeded United States efforts to gain information that might resolve this issue. The United States will continue to seek evidence from all parties involved regarding the transfer and possession of these systems; to press the new authorities in Moscow to give a full accounting of this issue and to eliminate any remaining re-entry vehicles formerly associated with and released from programs of cooperation; and to press for destruction of the remaining SS-23 missiles.

Mr. HELMS. Mr. President, this supplemental report reaffirms President Bush's finding that the Soviets engaged in bad faith in the INF Treaty negotiations, but it finds for the first time that the Soviet covert SS-23 deployment in eastern Europe probably violated the INF Treaty.

I would point out, however, that there is even more evidence proving conclusively that the Soviets controlled the 120 covert SS-23's in Eastern Europe and their nuclear warheads. I am advised that this additional new evidence will be contained in the next Presidential Report to Congress on Soviet noncompliance with arms control treaties, due by law on December 1, 1991.

Mr. President, on July 17, 1991, the Acting Director of Central Intelligence, Mr. Richard Kerr, testified in public to the Committee on Foreign Relations on monitoring the CFE Treaty. In his unclassified testimony, the Director of Central Intelligence stated specifically that under the INF Treaty:

* * * The detection of a single proscribed [INF] weapon [is] a violation [of the INF Treaty] once the reductions period is completed."

Well, I must agree with the acting DCI, Mr. Richard Kerr. The 3-year INF reduction period was over on May 31, 1991, and after that date, all United States and Soviet INF missiles and all their support equipment, anywhere in the world, were supposed to be completely destroyed. But there is still newer evidence of Soviet control of the 120 covert SS-23's, and this new evidence will prove conclusively that the Soviets violated the INF Treaty with their covert SS-23 deployment. In his December 1, 1991, report to Congress on Soviet violations, I believe that this new, conclusive evidence will allow the President to find that the Soviet covert SS-23's are an unqualified violation of the INF Treaty.

Mr. President, we should recall that former Secretary of State George Shultz stated during the INF Treaty ratification hearings to the Committee on Foreign Relations that the United States would react strongly to any Soviet violations of the INF Treaty. But the United States has not reacted strongly to the Soviet violation of the INF Treaty. The Soviet SS-23 violation is thus certain to become an issue in the impending START ratification debate.

Mr. President, I have some additional comments related to the CFE Treaty.

Kommunist, the ideological journal of the Communist Party of the Soviet Union, had a very interesting statement in the edition signed to press on April 5, 1991. Kommunist stated:

Thanks to this transfer of armaments [East of the Urals before the CFE Treaty was signed], unprecedented in peacetime (and even in wartime), we will not only have about one third of all armaments remaining in Europe under the Paris [CFE] Treaty, but we will also keep a quantitative advantage in land armaments over NATO, China, and Japan combined.

I wonder whether the Soviet Union subverted the CFE Treaty by maintaining its military superiority under the CFE Treaty.

This same edition of Kommunist also claims that Soviet defense spending will rise by at least 26 percent in 1991. But this rise in Soviet defense spending is inconsistent with the Soviet force reductions we envisage occurring under CFE.

It would seem that the United States is reducing its defense budget by about 25 percent over the next 5 years, when there is evidence that the Soviets may be increasing their defense budget by at least 25 percent over the same 5 years.

On January 3, 1991, Moscow's Komsomolskaya Pravada stated that:

When the [CFE] Treaty was signed, it was praised and supported by none other than Marshal D. Yazov. This was natural. Another thing was strange: to hear a contrary opinion from his very mouth a bit later during the work of the 4th Congress of the Peoples' Deputies. * * * High officials of the Ministry of Defense also responded negatively to the document at a closed meeting which recently occurred with the editors of military publications. Just where are they [the Soviet military] speaking the truth—in Paris or in Moscow?

This statement in Komsomolskaya Pravda suggests that at least some elements in the Soviet military oppose the CFE Treaty. I am advised that as recently as October 1991, after the recent coup attempt, that the Soviet

General Staff is still resisting the CFE Treaty.

There is thus a legitimate question, given the Soviet under-declaration of data and their reopening of CFE's article three, about whether the Soviet military is likely to implement the CFE Treaty faithfully.

Finally, Russian President Boris told a group of 72 Senators on June 19, 1991, that Soviet hardliners falsified the numbers of Soviet weapons systems in arms control negotiations.

Yeltsin stated to Senators:

In the past, the Soviet Union used false statistics in arms negotiations. This must not be repeated.

Later the same day, Yeltsin met with the Secretary of Defense, and he reportedly said much the same thing.

My distinguished colleague, Senator MALCOLM WALLOP, and I wrote a letter on June 25, 1991, to Defense Secretary Cheney, asking some questions about Yeltsin's statement on Soviet falsifications and deceptions in arms control negotiations.

The Soviets have the following track record of negotiating deception in arms control treaties:

Five cases of negotiating deception in SALT I of 1972;

Six cases of negotiating deception and data falsification in SALT II of 1979; and

Three cases of negotiating deception and data falsification in the INF Treaty of 1987.

Moreover, it is well known that the 1972–88 mutual balanced force reduction treaty negotiations finally could not be consummated because of deliberate, systematic Soviet data falsification.

This same problem has recurred in the 1990 CFE Treaty data.

Finally, as I have mentioned before, the Chief U.S. Negotiator of the INF Treaty, Ambassador Maynard Glitman, stated in March 1990, that the Soviets had engaged in "deceit and mendacity both inside and outside, privately and publicly, during and after the INF negotiations."

And President Bush accused the Soviets of "bad faith" in the INF negotiations in his February 1991 Report to Congress on Soviet Arms Violations.

Thus, unfortunately, there is much independent evidence supporting Yeltsin's attack on the manifold lying and deception of the Soviet Union in the SALT I, SALT II, INF, MBFR, CFE, and START negotiations.

AMENDMENT NO. 1432 TO CONDITION NO. 5

(Purpose: To permit continued adherence to the Treaty by the United States under changed circumstances)

The PRESIDING OFFICER. Under the previous order, the Senator from Maine is recognized.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Maine [Mr. COHEN] proposes an amendment numbered 1432.

Mr. COHEN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

In the language proposed to be inserted by the Committee amendment, strike subparagraph (C) of condition (5) and insert in lieu thereof the following:

"(C) shall, if he has made the determination and decision described in subparagraph (B)—

"(i) submit for the Senate's advice and consent any change in the obligations of the states parties under the Treaty that is designed to accommodate such circumstance and is agreed to by all states parties, unless such change is a minor matter of an administrative or technical nature; or

"(ii) if no such change in the obligations of the states parties is agreed to by all states parties but the President determines nonetheless that continued adherence to the Treaty would serve the national security interests of the United States, seek the Senate's advice and consent to such continued adherence, notwithstanding the changed circumstance affecting the Treaty's object and purpose.".

Mr. COHEN. Mr. President, for the benefit of my colleagues, first, let me say I do not seek to delay this treaty. Some have suggested that perhaps several of us are trying to hold up the CFE Treaty. That is clearly not the case since I support the treaty, and I am aware of no effort being made in any way to delay this, and I am not trying to embarrass the administration or the Secretary of State in any way. My goal is simply to reaffirm what I believe to be the constitutional powers and responsibility of the Senate.

The administration's first, second, and, I must say, last line of defense is always that any amendment or condition attached to a treaty resolution of ratification is unconstitutional, per se. We heard this argument in a different form during the ABM debate. My colleagues may recall when we debated the INF Treaty, there was considerable discussion dedicated to the question of whether or not the administration was bound by the common understanding that occurred or was reached back in 1972 during the debate on the ABM Treaty, and that the view of the Reagan administration was that it was not bound by any such understanding.

I might suggest this is not too different from Justice Scalia's view that Congress does not think very seriously about issues and, indeed, when it does bother to think about issues, it should not be taken very seriously. I suggest that that particular view of Justice Scalia's is not very different, a difference of degree only, from the one that is often articulated by the administration when it comes to foreign policy.

My colleagues may recall that the administration has taken the position, particularly with respect to covert actions, even though this may be an instrument to achieve a legitimate foreign policy objective, that the President has the constituional power to withhold notice to the oversight committees at his sole discretion as to what is a reasonable timeframe. He would not even have to report to the Big Eight or, indeed, the Big Four; that would be solely at his discretion.

More recently, we saw the attitude reflected during the debate on the Persian Gulf resolution. There was some sentiment expressed within the White House that the administration did not even have to come to Congress to get a resolution or declaration of approval since the President had the inherent constitutional power to commit our forces to combat.

Many of us felt very strongly that that was clearly in contravention of the expressed wording of the Constitution. Fortunately, the administration ultimately agreed that it should come forward and seek the advice and consent, as such, of the Congress.

Too many, I think, have a view that the Senate, in particular, has a minor role in the field of foreign policy and that we are a nuisance that must be tolerated or, indeed, intimidated. Advice and consent in their view is "Let us just skip the advice, and you just stamp your consent and do not think about the issues and do not interfere with the work of serious-minded experts." I do not share that view and it is my hope that a majority of my colleagues will reject the view as well.

Mr. President, I am going to discuss briefly two issues that are of concern to me. Senator HELMS a moment ago outlined some of his questions about the Soviet behavior with respect to data exchange, and then I want to talk briefly about the Senate's role in advice and consent.

Soviet holdings in the covered area, the so-called ATTU, the Atlantic to the Urals region, as of July 1988, according to Eduard Shevardnadze was as follows: They had 41,580 tanks; 57,800 armored combat vehicles; 42,400 artillery pieces; and 9,400 combat aircraft.

I am just giving a partial listing. There were helicopters that I have not referred to as of yet.

Then about 16 months later, at the time the treaty was initiated, the Soviets declared that they had only 20,694 tanks; 29,628 armored combat vehicles; 13,828 artillery pieces; and 6,445 combat aircraft. In other words, the Soviets had asserted they removed nearly half of its tanks, half of its armored combat vehicles, and two-thirds of its artillery from the area that was designed to be covered by this treaty.

Then within 90 days, as they were allowed to do, they were allowed to make modifications to amend those particular declarations.

And, lo and behold, after being confronted by the United States and other parties to the treaty, the Soviet Union

declared its revised holdings in an upward fashion as follows: They said they had 31 more tanks, 262 more armored vehicles, 110 more artillery pieces, 166 more combat aircraft.

Mr. President, the first action, removing from Europe large amounts of equipment prior to signature of the treaty in order to avoid eliminating it, clearly contravened the entire objective of the treaty, itself. The objective of the treaty was in fact to reduce these weapons systems, to destroy and dismantle them, not to move them over the Urals. Yet that is precisely what the Soviets did.

Their explanation was that these 50-odd-thousand pieces of treaty-limited equipment were moved east of the Urals and they were incorporated in the Soviet forces there or stored for future use.

Indeed, the express wording of the treaty did not bar their movement, but that action clearly contravened the understanding of the negotiators. As a matter of fact, the Soviet Union's own treaty negotiators were kept pretty much in the dark by the Soviet military as to what was taking place.

In addition to that, the Soviets more boldly transferred, and did not declare, about 5,457 pieces of ground TLE, or treaty-limited equipment, to their coastal defense, naval infantry, strategic rocket forces, and civil defense. The Soviet contention that this equipment was not covered by the treaty was clearly at odds with the treaty and its failure to declare the equipment was a clear violation of the terms of the agreement.

They have made some concessions then. They have agreed to destroy a number of items, some 14,500 TLE located east of the Urals, a fraction of the over 57,000 that they admit to have moved out of the region.

We still have great discrepancy in terms of the declarations they made of the number of items that were in this region when the treaty was signed. The range is quite broad. I might say it is classified. The exact numbers are classified.

I would concede that the numbers are not militarily significant, but I do want to take the floor today to articulate the principle that we should not be negotiating treaties with a country that starts off by, No. 1, trying to evade and circumvent the terms of the agreement or the treaty and No. 2, then boldly makes a data declaration that is clearly false and further states that it is not bound by the clear language of the treaty.

I think this does not bode well for the future when we are talking about other significant agreements that pertain to our strategic relationship such as START I and II. And so I raise this solely to call attention to my colleagues that we have to be much more serious minded in dealing with these kinds of discrepancies rather than simply passing over them and saying it is militarily insignificant.

I might also point out—I see the Senator from Georgia on the floor—Senator NUNN, Senator LUGAR, Senator BOREN, Senator BRADLEY, and others are concerned about humanitarian relief for the Soviet Union. There are people who could be facing starvation in the Soviet Union this winter. Many of us are concerned about how we can be of assistance to relieve the prospect of mass hunger and riot and anarchy that could afflict that country. But it tells you something about the mindset of the Soviet military and something about how they set priorities that they would save weapons at the cost of food. And the audacity of the Soviets to circumvent the CFE treaty limits is even more astounding given that the movement of this equipment from Europe to Asia required the diversion of fuel and rail stock desperately needed by the Soviets to collect and bring in the record 1990 harvest to market.

I just want to quote one Soviet commentator who defended the Soviet military. He said:

> The military, in an effort to rectify, if only slightly, the mistakes of the [Soviet Union's] diplomats, organized the swift transfer beyond the Urals of thousands of tanks and guns and other equipment—at least there it would not have to be destroyed. It is unfortunate, of course, that all of this coincided with a record harvest occupying badly needed rail cars and making the job of transport more difficult. But who was to blame for that? First and foremost, the Foreign Ministry, which was rushing full steam ahead toward a treaty.

What they are saying basically is that the Soviet people prefer guns over butter and, given the choice of moving food and harvest to the marketplace and to the homes of the people of the Soviet Union, they chose to move weapons in order to circumvent the CFE treaty.

Mr. President, I suggest that we have to be very cautious in our future dealings not with an administration headed up by Brezhnev or Chernenko or Andropov, but one that is headed up at this time at least by President Gorbachev and President Yeltsin of the Russian Republic.

Mr. President, now I want to turn to the amendment that I have submitted at the desk.

From October 1985 until May 1988, the Senate's treaty making powers underwent an unprecedented assault. The point at issue was whether the Executive was bound to the common understanding of the meaning of the ABM Treaty that existed between the Executive and Senate in 1972 when the Senate gave its advice and consent to ratification and upon which the Senate had based its advice and consent.

Notwithstanding the authoritative representations that the Nixon administration had provided to Senate committees during the ratification hearings as to the meaning of the ABM Treaty, the Reagan administration argued that it could unilaterally adopt a new meaning related to the issue of ABM systems and components based on so-called other physical principles.

The Reagan administration's reasoning to justify its position shifted continuously, and not without contradiction. It engaged in what lawyers refer to as pleading the alternative. My client was not at the scene of the crime. If he was, he did not commit assault. If he did commit the assault, he was provoked and acted only in self-defense. And even if he was not acting in self-defense, he was suffering from temporary insanity.

The Reagan administration argued variously that authoritative representations on the treaty's meaning regarding the specific issue had not been made by the Executive. If authoritative representations had been made, they were made to Senate committees—not to the Senate—and, therefore, they did not reflect the understanding of Senate, per se. And even if these authoritative representations did reflect the understanding of the Senate at the time of ratification, the Senate's understanding of the treaty's meaning was not determinative and essentially irrelevant.

I joined Senator NUNN and other Members of this body and fought a bruising battle to defend the prerogatives of the Senate, as well as the integrity of the ABM Treaty, against this assault. Our unequivocal position, subsequently affirmed by the Senate and acquiesced in by the Reagan administration, was that when the Senate bases its advice and consent to a treaty upon certain understandings with the Executive as to the meaning of the treaty, those understandings cannot be unilaterally altered by the Executive.

During our consideration of the INF Treaty in 1988, the Senate insisted on defending its prerogatives by adopting a condition to the resolution of ratification regarding treaty making powers. This condition reaffirmed the principle, as stated in the Foreign Relations Committee report on the INF Treaty that:

> The meaning of a treaty is to be determined in light of what the Senate understands the treaty to mean when it gives its advice and consent.
>
> For the United States, the meaning of the treaty that the President ratifies is the meaning on which there existed a meeting of the minds between the President and the Senate at the time of Senate consent.

By proceeding with the ratification of the INF Treaty, the Reagan administration accepted this condition.

The CFE resolution of ratification now before the Senate specifically reaffirms, in one of its declarations, this INF Treaty condition.

Now, in the interest of time, Mr. President, I am going to simply ask

unanimous consent to have printed in the RECORD a number of statements that were made during the period of the ABM reinterpretation debates and the INF Treaty floor debate by Senator NUNN and Senator BYRD about the meaning of the Senate's role and expression of its powers under the Constitution as it pertains to advice and consent of treaties.

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

Senator BYRD. Senators have a responsibility to be very careful when they approve a treaty and make it the supreme law of the land, that they have an adequate understanding, a very clear understanding as to what they are voting to approve. (CONGRESSIONAL RECORD S2810, March 23, 1988.)

The constitutional framers did not intend for the words "advice and consent" to be symbolic. They meant for those words to be substantive, to have meaning. This amendment establishes and provides that there will be no reinterpretation after the Senate and Executive both agree, through shared understandings, as to what the treaty means—that there be no reinterpretation without further action and approval by the Senate thereof. (CONGRESSIONAL RECORD S6727, May 26, 1988.)

It shakes me a little bit when Senators reduce the constitutional role of this institution to partisan terms. I believe that every Senator first, last, and always ought to stand for this institution and its role under the Constitution, and we ought to carefully and zealously guard that role against any erosion from any quarter, from any party. (CONGRESSIONAL RECORD S6783, May 26, 1988.)

Senator NUNN. Because the Senate is an equal partner with the President in the treatymaking process, we have a direct, constitutional interest in ensuring that treaties are accurately presented and faithfully upheld. (CONGRESSIONAL RECORD S6773, May 26, 1988.)

Treaties are, if you believe the Constitution, the law of the land. But the administration says, "Leave that up to us boys. Don't you get involved in all those nitty-gritty things about what the Constitution means." (CONGRESSIONAL RECORD S6359, May 13, 1987.)

(A) treaty is the supreme law of the land. It is not just a piece of paper. * * * If we make a mistake in passing a bill, that can be fairly easily rectified simply by passing another bill repealing the first law. But when it comes to a treaty, if we make a mistake, we had better know it before we enter into its ratification. (CONGRESSIONAL RECORD S5267, May 9, 1988.)

Mr. COHEN. The amendment I am offering would address the situation in which the Ukraine or Russia, for example, decided to opt out of the CFE Treaty. Such a situation would be militarily significant and would constitute a change in circumstance. The Bush administration has suggested that in such a situation, it might withdraw from the CFE Treaty. As the CFE negotiator, Ambassador Woolsey, testified, "The Treaty won't work without the Ukraine in it." However, another option would be to negotiate changes in the Treaty to "make it work" notwithstanding the militarily significant changed circumstances.

The condition approved by the Foreign Relations Committee requires that if the President decides not to withdraw in response to such a situation, he shall make an effort to negotiate such changes. And it also requires, as is obviously appropriate, that any substantive change in the treaty be submitted to the Senate for its advice and consent.

What the condition does not address is what happens if the President is unsuccessful in negotiating the necessary treaty amendments. Given the multilateral nature of the treaty regime, this is not difficult to imagine.

Clearly, if the Ukraine or Russia were to opt out of the treaty, the treaty would no longer be the treaty to which the Senate had given its advice and consent. In such a situation, if the President wishes to continue adhering to the treaty, he should be required to come back to the Senate for its advice and consent. Otherwise, the United States would, in effect, be bound to a different treaty without the advice and consent of the Senate.

The Restatement of the Law, Foreign Relations Law of the United States, a well-respected if not an authoritative document, states that "the power of the President to terminate an international agreement does not imply the authority to conclude a new one in its place."

Amplifying on this point, the Foreign Relations Committee, in its report on the INF Treaty, noted that "Were the President to amend an agreement on his own, he would in effect be terminating an old agreement and entering into a new one."

The same is true if the Ukraine or Russia were to opt out of the CFE treaty: this would amount to a substantive alteration of the treaty. And continued adherence would amount to entering into a new agreement—something which requires the advice and consent of the Senate.

OBJECTION: WORDS, NOT MEANING, ARE WHAT COUNTS

One potential objection to the amendment that I have heard is that the "area of application" of the treaty is defined as "the entire land territory of the States Parties in Euope from the Atlantic to the Urals," and the "States Parties" include the U.S.S.R., but not the Ukraine, Russia, or Byelorussia.

Accordingly, goes this argument, if the Ukraine—or Russia for that matter—secedes from the U.S.S.R. and opts out the treaty, the "area of application" would not have changed in so far as the words of the treaty are concerned, since the U.S.S.R. will still be a "States Party"—it just won't include the territory of the Ukraine, or Russia, or whatever the case may be! In other words, the term "area of application" does not refer to a particular piece of real territory, but rather means whatever territory is associated at any given time with whomever is included under the term "States Parties."

This sophistry is not only substantively ridiculous, it is also contradicted by the ratification record. I would note that the treaty's definition of the term "area of application" [Article II.1(B)] states that: "In the case of the U.S.S.R., the area of application includes all territory lying west of the Ural River and Caspian Sea."

Under this argument, opponents of my amendment would claim the area of application had not changed even if, in the case of a truncated U.S.S.R., it included only a small fraction of the territory west of the Ural River and Caspian Sea. This is patently absurd. While the words, "area of application," would remain unchanged, the meaning of those words would have been substantially altered.

I would also note that during the ratification hearings, the administration clearly stated that for "purposes of the treaty the Soviet military districts identified in the treaty referred to "defined pieces of territory" delineated by the boundaries of those districts as of the date of signature, notwithstanding the likelihood that the borders of those military districts will be redrawn.

The military districts are not defined in article II, so they are not exactly analogous to the term "area of application." But, it is more than a little curious that the concept of military districts is tied to "defined pieces of territory" that do not change even if the borders of the districts change, whereas the concept of the "area of application" is asserted to have no relationship whatsoever to "defined pieces of territory." This is even more curious since the administration's article-by-article analysis discusses the definition of the term "area of application" by referring to a Soviet map that delineates both the eastern edge of the area of application and the borders of the Soviet military districts.

Perhaps this is merely a curiosity and is not determinative on the question I am addressing, but I thought it worth bringing to the Senate's attention.

In any event, the argument that the words "area of application" would not be changed if the Ukraine or Russia were to opt out of the treaty ignores the fact that the meaning of the words would change—and change significantly.

The simple and undeniable fact is that the meaning of the treaty would no longer be that to which the Senate had given its advice and consent.

To continue to adhere to the treaty would, to use the words of the Foreign Relations Committee report on the INF Treaty, "in effect, be terminating an old agreement and entering into a new one." And this simply cannot be done without the advice and consent of the Senate.

OBJECTION: AMENDMENT JEOPARDIZES TREATY

Another potential objection that I have heard from one Senator who supports the CFE Treaty is that the adoption of my amendment would somehow endanger the CFE Treaty.

Let me first state that I strongly support the CFE Treaty. There should be no question on that.

Such concerns about the amendment, to the extent that they exist, seem to stem from the view of the White House counsel that the amendment is somehow unconstitutional because it intrudes on the President's prerogatives. This is not a situation with which the Senate is unfamiliar. White House counsel as is well known, has a rather expansive view of Presidential prerogatives and a rather restrictive view of Senate and congressional prerogatives.

Every year when the Armed Services Committee produces a defense bill, for example, we are provided a laundry list of provisions that are asserted to be unconstitutional, usually including numerous report requirements. Seldom, if ever, does the Senate alter our bill in response, notwithstanding intimations that, absent changes, the bill might never be enacted. This is a wolf howl we have heard too often and which, accordingly, has lost much of its credibility.

The notion that the President would not proceed with ratification of this treaty if my amendment is adopted is without merit. The President is as committed to this treaty as anyone. He is personally responsible for its most important contents, which resulted from his bold initiative of May 1990. The notion that he would need to come back to the Senate in the event that the treaty's meaning is transformed by the Ukraine's opting out cannot possibly be perceived as so objectionable that he would abandon the treaty.

Indeed, everything we have heard from the administration in recent days is that this treaty is so important we cannot dare delay its approval.

I should also note that my amendment strictly addresses relations between the Executive and the Senate. It would impose no obligation of any other party to the treaty, nor even require notice to any other party. There is no possibility that this amendment or the underlying condition adopted by the Foreign Relations Committee could be killer provisions, nor is there any basis on which they reasonably could be perceived as being killer provisions.

If anything, the fact that a few have expressed such concerns supports the view that this amendment is needed. I say that because such concerns seem to reflect the view that the treaty is so important that all other considerations be set aside. That is precisely the attitude that I fear could happen if the Ukraine were to opt out and the President unable to negotiate a fix in an unwieldy, multilateral regime. In that situation, a President—not necessarily this President—might share the view that the treaty is so important we would need to live with it, even though it was no longer the CFE Treaty as we now know it.

It is argued that no President would reach such a conclusion—that he would instead certainly withdraw from the treaty. But the fact that some believe that treaty is so important that all other considerations should be set aside, in my view, justifies my concern that a similiar view could prevail in the future. And that is why I want to ensure that, in such a circumstance, the Senate's prerogatives are protected.

The lesson of recent years—most notably the ABM Treaty reinterpretation debate—is that the Senate cannot base its advice and consent to treaties on the good intentions of a specific administration, nor can the Senate entrust the protection of its prerogatives to the Executive.

Now, to illustrate the point of my amendment Mr. President, just look at this map. If, for example, the Ukraine were to say that we are now independent and we do not believe we are bound by the terms of this treaty, if you pull the Ukraine out, that is the size of the gaping hole that is left in terms of what area is covered by the terms of the treaty.

One can go further and take out Byelorrusia, if they should opt out, and that is what we are left with. And, of course, if the Republic of Russia, itself, should pull out, then the entire thing would collapse, Obviously.

But leaving this kind of a gap and still saying that we have an agreement with the territory of the U.S.S.R., it seems to me to be patently absurd.

Now, the Foreign Relations Committee recognized this. And what the Foreign Relations Committee did was to attach a condition.

FIFTH CONDITION AS ADOPTED BY FOREIGN RELATIONS COMMITTEE

Under section (A) of the fifth condition approved by the committee, if any newly formed state opts out of the treaty, the President is required to consult with the Senate.

If the President determines that the new state's holdings of treaty-limited equipment are of such military significance as to constitute a change circumstance affecting the treaty's object and purpose, and if he decides not to withdraw from the treaty, section (B) requires one of two actions. Either the President shall call for a extraordinary conference of treaty parties to assess the viability of the treaty and determine if a treaty amendment is needed to accommodate the new circumstance. Or, the President shall undertake other unspecified "appropriate diplomatic steps."

Section (C) requires that any change in the treaty's obligations that result, regardless of the mechanism the President pursues under section (B), shall be submitted to the Senate for its advice and consent unless it is a minor matter of an administrative or technical nature.

COHEN AMENDMENT TO COMMITTEE'S FIFTH CONDITION

My amendment would leave untouched the fifth condition as adopted by the committee, but it would add a new provision to section (C).

This new provision would state that if the President is unable to negotiate changes to make the treaty work, but he believes that it is nonetheless in the U.S. interest to still participate in the treaty, he must obtain the Senate's advice and consent to continued participation since the treaty would no longer be the treaty to which the Senate had given its original advice and consent.

UKRAINE, RUSSIA, BYELORUSSIA NOT EXPLICITLY CITED

Mr. President, I should note that condition 5 as adopted by the committee does not explicitly refer to the Ukraine, Russia, or Byelorussia, and my amendment would not change that aspect of the amendment.

The reason that it is not necessary to explicitly cite them is that the ratification process has clearly established a common understanding that if any one of these three Republics opts out of the treaty, that would be of such military significance as to constitute a changed circumstance. And that changed circumstance is what triggers sections (B) and (C) of the fifth condition.

BUSH ADMINISTRATION ON OPTING OUT BY UKRAINE, RUSSIA, BYELORUSSIA

During the ratification process, authoritative statements by administration officials made a distinction between a decision to opt out of the CFE Treaty by Russia, the Ukraine, or Byelorussia, on the one hand; and, on the other hand, opting out by one of the other small Soviet Republics in the Atlantic to the Ural [ATTU] region, such as Georgia, Armenia, Azerbaijan, or Moldavia.

In the latter case, in which one of the smaller states opted out, the administration testified it probably would be a matter of secondary concern, so long as treaty-limited equipment under the control of central authorities remain subject to the treaty, as has been provided for in the case of the Baltic republics.

In the former case involving the Ukraine, Russia, or Byelorussia, however, the administration clearly indicated that a decision to opt out of the treaty by any of these countries would amount to a militarily significant changed circumstance and would seriously bring into question the continued validity of the treaty. Accordingly, section (B) of the fifth condition would be invoked.

In written response to a question from Senator BIDEN, Secretary of State Baker stated:

In order to safeguard the integrity of the treaty regime, it almost certainly would be necessary for all three of these Republics—Russia, Ukraine, and Byelorussia—as they are likely to retain significant amounts of equipment in treaty categories, to participate in CFE.

If these republics should become independent states and choose not to participate in the treaty, the United States and its allies would consider an appropriate response. The treaty contains mechanisms for withdrawal should this be necessary.

Similarly, in a written response to a question from Senator WARNER, Under Secretary of State Bartholomew stated:

It is the position of the administration that, in order to maintain the integrity of the treaty regime, an independent Ukraine holding significant amounts of equipment in treaty categories would almost certainly need to be a CFE participant * * * Should an independent Ukraine nevertheless refuse to participate in the Treaty, the appropriate U.S. response would depend on the precise circumstances at the time. A decision to withdraw, e.g., would always be an option.

Again, in a hearing before the Senate Intelligence Committee on November 13, Ambassador Woolsey stated further:

[Non-participation in the treaty regime by an independent Ukraine] fundamentally would call into question the viability of the treaty. * * * The treaty won't work without the Ukraine in it.

And in a letter to Senator BIDEN dated November 22, 1991, Secretary Baker stated:

In all likelihood, the emergence of an independent Ukraine or Byelorussia that declined to participate in the CFE Treaty would indeed result in the President's determining that a "changed circumstance" had occurred. There is always the possibility that such a state would decide to hold no or only minimal amounts of equipment in treaty categories, in which case the military significance criterion specified in the Senate condition might not be met. We consider this very unlikely, however, and thus expect that the President would, indeed, determine that a "changed circumstance" had occurred.

In summary, the Bush administration's clear and consistent statements during the ratification process indicated that if the Ukraine or Byelorussia opt out of the CFE Treaty, this would be of such military significance as to constitute a changed circumstance, which would trigger section (B) of the fifth condition adopted by the Foreign Relations Committee.

In its report, the committee states that its intent is that this the fifth condition would be triggered if either the Ukraine or Byelorussia opted out or if Armenia, Georgia, and Azerbaijan were all to opt out.

I am not aware that the administration addressed the last case, in which the three Transcaucasian Republics all decided to opt out. Accordingly, I would hesitate to say that there exists a common understanding on that matter between the Executive and the Senate. But in the case of the Ukraine and Byelorussia, the record is clear.

In the case of Russia, the administration at times seemed to want to not focus on the possibility. A written response by Secretary Baker to Senator BIDEN stated:

For the Russian republic to "become an independent state," i.e. to withdraw from the union, would mean the disintegration of the union as we know it. We do not expect this to happen. However, if the union did completely disintegate, the Russian republic presumably would assume the international obligations of the former U.S.S.R.

However, other administration statements—such as Secretary Baker's other testimony I cited—certainly indicate that Russia's nonparticipation in the treaty would constitute a changed circumstance, and that would trigger sections (B) and (C) of the fifth condition.

Mr. President, let me emphasize, I would seek to impose no obligation on any other party to this treaty. We do not have to seek the consent of any of the other parties. We do not even have to notify them. This simply applies to th powers of the U.S. Senate. We are giving our consent today, based upon a representation as to the area that is covered by the terms of the treaty. If there is going to be a fundamental alteration of that understanding, a fundamental alteration of which areas are covered, it seems to me it follows not only logically but constitutionally that the President must come back to us and seek our advice and consent.

I know, for example, that this was the position that was articulated by the Senator from Delaware, who serves on the Foreign Relations Committee. I know that he has done extensive research, and his staff has done extensive research examining the constitutional basis for the Senate's role and responsibilities. I believe that he would agree to the merit of the position that I am articulating here today.

Mr. BIDEN. Will the Senator yield for 10 seconds?

Mr. President, on the merits, there is no question in my mind, absolutely none, that from a constitutional standpoint, the Senate has the authority to insist on the provision that the Senator is proposing.

Indeed, I drafted a provision along similar lines and I concluded not to move forward after encountering administration resistance. I felt it was important to get this done promptly; and I regard as highly unlikely the eventuality that is covered by the provision.

But I think the Senator has done good work on this. I think he is absolutely, positively right on the constitutional point. I disagree with him only in terms of facilitating this legislation, and measuring it against the prospect that his concern would in fact become a reality.

But on the merits, he is dead right. At some point, if the Senator from Maine will entertain it, I would like to propose to him a potential compromise that I hope would accommodate all he is seeking.

But I thank him for yielding to me.

Mr. COHEN. Mr. President, I thank the Senator from Delaware for his comments and his support of the constitutional position that I have outlined.

I would simply point out that up until this day or this moment, the administration has taken the position that there is no constitutional requirement for the President to return to the Senate to seek its advice and consent, even if there is a material change, and especially if the President is unable to get agreement by the states party to this treaty.

Mr. BIDEN. Will the Senator yield for another moment? Mr. President, not only has the administration taken that position; they have taken it one step further. They have argued that the Senate has no constitutional authority—no authority—to do what the Senator from Maine is suggesting.

And on that score, I believe they are dead wrong, from the constitutional point of view.

Mr. COHEN. I thank the Senator for his comments.

Mr. President, let me just reverse it the other way. Let us suppose that the administration came to the Senate today, and said: We have negotiated a treaty with the Soviet Union, except that the Soviet Union looks like this. It has a big hole here now, because the Ukraine has declared its independence and it has opted out. And we have Byelorussia declare its independence; it has opted out. We still have Russia there, at least temporarily. We would like you to ratify this treaty. We have a big hole here. There are a lot of weapons that we are concerned about. But we think, in the interest of the other 21 nations who agreed to this treaty, that we ought to go forward.

Do you think that the Senate is going to be rushing to give its advice and consent to go forward under these circumstances? I suggest to you, the answer is no—a resounding no. We are giving consent if the pieces are all there; if the pieces remain intact. If perchance, due to some circumstance in the future, one of these pieces should pull out, we think that is a fundamental change in the nature of the security relationship as it impacts upon Europe itself.

Right now, the Senator from Delaware has said it is very remote that the Ukraine would consider pulling out and not going along with this particular treaty. I agree.

But I must tell you that there is a great deal of instability right now. We are not too sure exactly what is going to happen in the Ukraine. We are not too sure who is going to be in charge in the Republic of Russia, depending upon what happens this winter.

I think that countries such as the united Germany are also examining options that they might have, depending upon that instability and how it

spreads throughout what remains of the Soviet Union.

So I do not think we can make any categorical assumptions today, given the great instability and the potential for anarchy spreading throughout the Soviet Union, as to what this map might look like 6 months from now or 6 years from now.

That is the reason I have simply said if it does change, that the President, and if he goes to this group of 22 and comes back having been unable to reach an agreement and he wishes to remain in the treaty, then he has to seek our advice and consent. The administration in response has been, "absolutely not." So, Mr. President, I, at this particular moment, intend to pursue the issue unless an acceptable compromise can be reached.

I will reserve the remainder of my time at this time.

Mr. SPECTER. Will the Senator yield for a question?

Mr. COHEN. Yes.

Mr. SPECTER. If the Senator's amendment is adopted, would that require the President, the executive branch, to go back and renegotiate the treaty?

Mr. COHEN. The condition that was attached by the Senate Foreign Relations Committee requires the following: If one of the big Republics should pull out, the President can withdraw. If he decides not to withdraw he is then required to go to this group of 22 and see if he cannot renegotiate some changes in the treaty that take into account the change in political and geographical circumstances. If he reaches an agreement with that group, he is required to come back and seek advice and consent. That is what the Foreign Relations Committee has done.

I simply add one refinement to it. Under the committee's condition if he cannot get such agreement, if they say, "We do not like it, but we are not in agreement with trying to renegotiate it," at that point, he can say, "I intend, unilaterally, to keep us in that agreement."

Under my amendment, after failing to negotiate an acceptable agreement with all of the nations, he would have to come back, and say to the Senate: Ladies and gentlemen, this is our situation; there has been a material change—something that in the ratification process I represented to you would constitute a material change—and I cannot get agreement with the other nations, but I still think it is in our interest to stay in this treaty. I would like to have your consent to that understanding.

Mr. SPECTER. Mr. President, I have one additional question either of the Senator from Maine or the Senator from Delaware.

Is it required, with the condition imposed by the committee in the current treaty, that the executive branch go back and get agreement from the other parties?

Mr. COHEN. I will try to answer. He has two options. He can either unilaterally withdraw; he can terminate our involvement under those circumstances, or he can go back and try to negotiate.

Mr. SPECTER. My question goes to the point and the issue raised by the Senator from Delaware as to whether there is going to be a delay here. A treaty has been agreed to. It has been submitted to the Senate. My question goes to the point as to whether what the committee has done will require resubmission to the parties, or whether what the Senator from Maine has done would require resubmission to the parties on the issue raised by the Senator from Delaware on getting it done.

Mr. BIDEN. Mr. President, the answer to the Senator's question is, unequivocally, no. If this passes as written by the committee, meaning the Senate consents to ratification with the conditions that presently are at the desk, there is no requirement whatsoever that the President renegotiate anything at all with any of the other 21 nations. None.

Mr. SPECTER. What would occur if the amendment of the Senator from Maine is adopted?

Mr. BIDEN. The same thing. No requirement. If the amendment of the Senator from Maine is adopted, there would be no requirement for the President to do anything with regard to the Soviet Union or any nation before ratifying the treaty.

Mr. SPECTER. Then why, if I may ask the Senator from Delaware, having agreed with the substance of what the Senator from Maine wants to do, does he disagree on the basis of expediting the conclusion of ratification?

Mr. BIDEN. For a very simple reason. And that is a very good question. When I sat down with the administration, Senator PELL having asked me to perform some of the responsibility relating to this, I sat down with the administration and tried to work out the various conditions that the Senator from Maine, and the Senator from Rhode Island, and the Senator from Delaware, and the Senator from Georgia, and the Senator from North Carolina, all thought were important. As we sat down to do that, the administration resisted any conditions at all.

In fairness to them, they had not contemplated, when this was being negotiated, disintegration of the Soviet Union. And after that occurred they believed that they were fully capable, under the terms of the treaty, without any conditions as proposed, to handle any exigencies that would occur—and they are occurring, by the way. But we wanted to make sure that they did certain things and, under certain circumstances, that they were required to come back. They were very reluctant, like all chief executives, to acknowledge that the Senate's role.

After torturous negotiations, led by Senator HELMS' staff and mine, we got to the point where they finally acknowledged the inevitable: that there is a Constitution, we are part of it. I am being a little facetious, but it is almost that bad. We got down to the point where we were concerned that there might be some Members of the Senate, in the waning days of this session, who would prevent us from getting to final ratification if, in fact, we attached additional conditions.

I want to clarify one point. When I said to the Senator from Maine that there was a remote pssibility, the remote possibility was not that the Ukraine might not federalize, nationalize federal troops, nationalize what are now part of the Soviet Army, nationalize the 6,500 "Soviet tanks" that are on Ukrainian soil. That is very possible. That is very possible, although they assert to us that the likely new leadership—the election has not taken yet—has asserted to the President, and to those of us who have met with him, that they will not do that. But that is possible. The remote possibility I was referring to is that if the Ukraine did that, that any President would say, notwithstanding the fact that the Ukraine now has 6,500 "Russian and Soviet Union tanks" under their possession, we are going to ignore that and say "business as ususal," and not expect the Ukraine to accept obligations, and then if they did not, to say, well, OK. That is what I consider remote, that any President would accede to remaining in the treaty after attempting—and failing—to renegotiate the terms of it with the Ukrainians and with the other parties. Can you imagine the President saying, well, I failed, and there are 6,000 Soviet tanks in the Ukraine, and they're not covered in the treaty but the good old United States is going to stay in the treaty anyway." That is what I think is remote.

Let me return to the question of conditioning our consent. This is from the Hill to the White House. That is the action we are talking about now. We can bind the President to anything we want to. We could say, constitutionally, Mr. President, we will accede to this treaty if every 2 years you bring it back to us. We will accede to this treaty if you put it in a blue binder and it has red stars on the cover, but not unless you do that. None of that requires the President to go renegotiate with other parties.

The White House is reluctant to acknowledge our constitutional authority to do what the Senator from Maine wishes to do. But since the possibility of a President remaining in a treaty that is overwhelmingly against our interest is very remote, I propose that we compromise with him on something we do not have to constitutionally com-

promise on, but that we do so as a matter of comity, without giving up the constitutional point. We can accomplish, I believe, the same end the Senator wishes to accomplish.

I would propose the following to my friend from Maine: Strike on line 9, "the Senate's advice and consent" and in lieu thereof put "a Senate resolution of support."

Mr. COHEN. Mr. President, let me respond to my colleague from Delaware. First, since the administration does not want to set any precedents in terms of resolving this perennial constitutional dispute between the executive and the congressional branches, let me indicate that if I were to agree to this modification, it would be very clear that the Senate makes no statement concerning a surrender of its constitutional prerogatives. We would have to reserve that particular battle for future treaties in other types of agreements that called for Senate advice and consent.

Second, could I inquire as to whether or not this particular proposal is agreed to or is acceded to by a reliable authoritative spokesman for the administration?

I do not want to go through this again, as we went through the reinterpretation of the ABM Treaty in which we were told that the representations made to the Senate committee were not by those in positions of authority, and that the representations were, even if authoritative to the committee, were not authoritative to the Senate itself.

So, at a future time if we should have either President Bush, or President Harkin, or President Cuomo, they would feel compelled to abide by the understanding reached with this administration, that they agree that, under those remote circumstances that the Senator referred to, the President would be duty bound to return to the Senate to seek its support for a resolution of support which I suspect would be interpreted to mean a majority vote as opposed to a two-thirds vote.

Mr. BIDEN. I would be happy to respond, and I would also like to know what future President Rudman thought about this. But I will ask him later.

Let me say that, as usual, the Senator from Maine puts his finger on the crux of the problem. With regard to whether or not we are yielding a constitutional point, the answer to that question is we are not yielding a constitutional point.

We set forth, in connection with the INF Treaty, a clear statement of principles about the President's latitude in interpreting and his inability to "reinterpret" treaties. We made it clear, as a result of the fight over the reinterpretation of the ABM Treaty, that Presidents cannot unilaterally reinterpret treaties. We wanted to make it clear that future Presidents, Cuomo, Rudman, et al., cannot reinterpret treaties.

Mr. COHEN. The Senator and I are in complete agreement on that.

Mr. BIDEN. But it is one thing to fight against the President acting unconstitutionally as did President Reagan when he sought to reinterpret ABM. That was a constitutional fight when it happened, and it was a fight the Senate needed to wage.

But here we are in a position where we already established the principle that treaty reinterpretation is not permissible. And we are making clear, since the President can't reinterpret the treaty, what he has to do instead. And the President would be bound to do it. So, we would not have to worry about President Rudman making a deal to send 6,500 tanks from the Ukraine to New Hampshire which, since he used to drive one of these things, he might consider doing.

All kidding aside, all future Presidents would be bound by all of the conditions that already are in the resolution at the desk. This would be an additional condition and equally as binding on a future President.

Mr. COHEN. I thank the Senator for his clarification of these issues and, Mr. President, the reason I have taken the floor to raise it is that I think in the past we have been too willing to surrender those constitutional powers, which I believe that we have, and that we seem not to be able to communicate with the administration to find any flexibility in their adamant position that the Senate has a very narrow, limited role.

So under the assurances given to me by the Senator from Delaware, I am prepared to offer a modification to my own amendment which I now send to the desk.

Mr. BIDEN. Before the Senator does that, if the Senator will withhold, let me give him further reassurance.

In the Resolution of Ratification, which is at the desk, it reads as follows:

> The Senate affirms the applicability to all treaties of the constitutionally based principle of treaty interpretation set forth in condition 1 of the Resolution of Ratification approved by the Senate on May 27, 1988, with respect to the INF treaty.

So, we speak explicitly to the question of whether or not a future President can unilaterally reinterpret this and other treaties.

Mr. WALLOP. Mr. President, will the Senator yield for a question?

Mr. BIDEN. Surely.

Mr. WALLOP. Is the language that Senator BIDEN read, seeking to condition Presidential behavior on other existing treaties or just Presidential behavior with regard to this treaty?

Mr. BIDEN. The principle applies to all treaties. But that is not what we are talking about. We only have one treaty before us, so what we are doing is we are making it clear on the treaty before us the principle that was established in connection with the INF treaty is applicable to this treaty as well.

The Senator from Wyoming and I might argue whether or not it applies to all treaties. I suspect we would. But stating those generally valid principles by way of emphasizing that they apply to this treaty.

Mr. WALLOP. I would say to my friend that this treaty before us reaches far enough without reaching into all other Presidential prerogatives. I appreciate the narrowing of the words as I heard them read the first time.

Mr. BIDEN. If I could have figured out a way to ensure that all treaties in the future are implemented according to those principles, I would have.

I do not want to mislead anybody. As long as the Senator from Delaware is in the Senate and as long as I am on the Foreign Relations Committee, and as long as there are treaties that come before us, I will attempt to uphold those principles.

Mr. SPECTER. Will the Senator from Delaware yield for a question?

Mr. BIDEN. I am delighted to.

The PRESIDING OFFICER (Mr. KOHL). The Senator from Maine has the floor.

Mr. COHEN. I yield.

Mr. SPECTER. I thank the Senator from Maine.

When the Senator from Delaware offers the interpretation that striking the language of advice and consent from the amendment and inserting instead the Senate resolution of support, does the Senator from Delaware have any agreement by the administration that that is the same?

Mr. BIDEN. I never got to answer that.

With the permission of the Senator from Maine, I would like to answer that question, if I can.

Mr. COHEN. I yield to the Senator from Delaware.

Mr. BIDEN. The answer is, yes, the chief negotiator of this treaty, Mr. Woolsey, has agreed to this language, although as a practical matter, it would not matter whether or not they agreed to the language. It is irrelevant from the legal standpoint whether or not they agree. That is not relevant to whether or not the President is bound by the condition.

Mr. SPECTER. If the Senator from Maine would yield for one further question?

Mr. COHEN. I yield for one question.

Let me also indicate that Ambassador Woolsey has indicated to us that he would not give such an assurance to the Senator from Delaware unless he had the support of the administration giving that assurance. So he is not only speaking on behalf of himself but the administration.

Mr. SPECTER. The additional question I have to the Senator from Dela-

ware relates to his statement that deleting the advice and consent and inserting the Senate resolution of approval of support would have the same effect. The question that I have is whether either has any effect as a matter of law.

There is a constant argument with the executive branch and the Senate as to what authority the Senate has. And when the Senator from Delaware makes his declaration that as long as he is in the Senate many things will occur, that situation will change if he became the President, which might be a more likely possibility than the Presidency of Senator RUDMAN.

I compliment the Senator from Maine for what he is doing here and the Senator from Delaware. These are very, very important considerations. But the recurrent question which is in my mind that I state for either of the Senators on their feet is whether this amounts to anything in terms of obligating the President. The cases in the field are very muddled as to justiciability and what happens anywhere.

But if there is agreement by the President, and then we have to assume or presume agreement by succeeding Presidents, at least there is agreement by the President that they will follow the intent of the Senator from Maine, and with the change in the language the Senator from Delaware articulates that the result will be the same, that they will come back and require the same set of actions and that would satisfy me.

Mr. BIDEN. Mr. President, I am using up all of the time of the Senator from Maine. If I could, on my time for 3 minutes, respond to that, and then yield the floor back to the Senator from Maine, if I may.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware for 3 minutes.

Mr. BIDEN. I say to my friend from Pennsylvania, I held extensive hearings on the constitutional powers of the President relating to the treaty-making clause of the Constitution. The Senator from Pennsylvania is correct. There is precious little case law on this issue.

But there is no question among major constitutional scholars, starting with probably the most notable in this area of foreign relations law, Prof. Louis Henkin, that the Senate can place binding conditions upon its advice and consent.

But there is also no denying that any President of the United States can precipitate a constitutional crisis. Any President of the United States can come along and say, "I don't believe that is what the treaty means. I don't believe that, I am not going to abide by that provision," and precipitate a constitutional crisis.

The least important factor here is that a President promises something. No President can bind the next President by what he says. But he can bind the Executive permanently by what he does—if he ratifies a treaty pursuant to our conditioned consent. We bind all future Presidents by stipulating the conditions, and the President binds his successors by defacto accepting the conditions when he acts on the conditioned consent.

So although it is helpful to know that the President agrees with this, the main reason it is helpful is so that we do not have five Senators standing up objecting to it. That is all its value is. It is of no legal value; none whatsoever. It is of significant political value so we get this thing passed. But it is of no consequence in terms of the record, in terms of a future President, and in terms of how a court would construe the interpretation of these provisions relative to a future President.

There is no question that we can attach to that resolution of ratification whatever conditions we wish. The President does not have to accept them. The President cay say, "OK, if that is what you are going to make me do, I am not going to ratify the treaty. We are not going to place the treaty into effect. We are out. I am not going to do it." Or the President can say, by his actions in ratifying the treaty, "I accept the conditions laid down here."

None of these conditions require the President to go out and renegotiate something with any other nation. But, once he puts this treaty in effect, after we consent to ratification—we are not ratifying—he makes it the law of the land. Once he does that, he is bound, and future Presidents are bound.

And unless a President is deciding to retire very rapidly after that, one is not likely to do that. And I know of no precedent in American history where a President has been unwilling—the closest we have ever come, closest we have ever come is a showdown on broad-narrow interpetation of ABM.

I yield the floor.

Mr. NUNN. Mr. President, what is the time allocation? I have not been informed. Is this on the Cohen amendment?

Mr. COHEN. I think the Senator from Delaware has used all of the time of the Senator from Maine.

Mr. BIDEN. I beg your pardon? How much time does the Senator from Delaware have?

The PRESIDING OFFICER. Eighty-three minutes and twenty seconds.

Mr. BIDEN. Three minutes?

The PRESIDING OFFICER. Eighty-three minutes.

Mr. BIDEN. I yield whatever time the Senator from Georgia would like.

Mr. NUNN. I do not need much time.

I thank the Senator from Maine [Mr. COHEN] for his leadership in this. I also thank the Senator from Delaware for, I think, a superb job of guiding this treaty through the Senate—which I anticipate will happen.

I favor this treaty. I think the resolution of ratification reported by the Foreign Relations Committee on November 19 should be approved.

On November 18, 1991, the Armed Services Committee reported its views and recommendations on this treaty in the form of a letter to the Foreign Relations Committee, which has jurisdiction over treaties.

Mr. President, I ask unanimous consent that the Armed Services Committee report be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. NUNN. In preparing our report to the Foreign Relations Committee, Senator WARNER and I consulted with all members of the committee on the recommendations and proposed conditions identified in the committee's letter. With the exception of the additional views that certain Members appended to the letter, the letter can be said to reflect the corporate view of the committee on this treaty. The recommended conditions contained in the additional views carry the approval only of those Senators who signed the additional views.

In its report to the Foreign Relations Committee, the Armed Services Committee concludes that the CFE Treaty "promotes the national security interests of the United States, our allies in NATO, and the emerging democracies of Eastern Europe." There are numerous reasons why we reached this determination.

First, measured by military criteria, the treaty is demonstrably and overwhelmingly favorable to the United States and its NATO allies. Under the equipment cascading plan developed by General Galvin, the Supreme Allied Commander in Europe, the United States can meet its reduction obligations under CFE by transferring older equipment to allies, who will in turn transfer their even older equipment to other allies. As a result of this cascading, the United States will have to destroy no equipment as a result of the treaty. Let me repeat that. The United States will not be required to destroy any equipment under this treaty.

In some areas, such as combat aircraft, the CFE ceilings are set so high compared to current United States and allied inventories that we could actually increase our holdings and still remain within the bounds of the agreement. Excluding the over 10,000 pieces of military equipment acquired by Germany following its absorption of the former German Democratic Republic, NATO will have to destroy only a few thousand weapons to reduce its holdings to treaty levels.

By comparison, the Soviet Union must destroy almost 22,000 items of combat equipment under the terms of the treaty. In addition, the Soviets

have pledged to eliminate another 16,000 pieces of equipment in partial compensation for the tens of thousands of weapons they rushed out of the CFE region prior to or shortly after treaty signature. In sum, then, the Soviet Union will destroy about 38,000 weapons under or in relation to CFE, NATO will destroy a few thousand mostly older weapons, and the United States will destroy none. That is truly an astonishingly asymmetrical outcome—an outcome Senators should keep firmly in mind as we consider any proposed condition that might have the effect of impeding or even derailing ratification.

Second, it is important to note that our negotiators, led by our supremely talented and experienced Ambassador, Mr. R. James Woolsey, were able to adjust many aspects of the treaty text in midnegotiation to reflect the dramatic developments that occurred in 1990 in the Soviet Union and Eastern Europe. As a result, the CFE Treaty evolved to a significant degree from the strict bloc-to-bloc parity accord that had originally been envisioned to a far more pluralistic concept of security and stability in Europe. For example, Soviet troops cannot be stationed under the treaty on the territory of any nation in Eastern Europe unless that nation consents. Hungarian, Czech, or Polish inspectors can conduct onsite visits to declared Soviet equipment sites on Soviet soil west of the Ural Mountains. And if one of the former Wasaw Pact allies of the Soviet Union should decide to formally withdraw from the Group of Six and petition to join NATO's Group of Sixteen, article XXI of the treaty provides a mechanism for adjusting the accord to reflect this changed circumstance.

The military significance of these features, in tandem with the zonal structure of the agreement and the so-called sufficiency rule, is profound. Not only is what remains of the Soviet Union's once formidable short-warning attack posture sharply reduced quantitatively, it is removed geographically well to the east. As a result, this once canonical threat—a threat that drove NATO's conventional and nuclear defense posture and budgets for decades—is virtually eliminated.

Were a reactionary regime to come to power in the Soviet Union at some point in the future intent on reasserting its influence and/or control over Eastern Europe or intent on again threatening the security of Western Europe, it would likely conclude rather quickly that such ambitions were impossible within the terms of the CFE Treaty. For example, the 13,150 tanks the Soviets are allotted under the Group of Six's CFE apportionment would not have to confront the 20,000 tanks allowed NATO under the agreement, they would also have to deal with the 6,850 tanks deployed under the accord by the emerging democracies of Eastern Europe. Thus using a crude static comparison in tanks, a hypothetical future Soviet regime that returned to Brezhnev-era foreign policies would have to comtemplate a highly disadvantageous 1-to-2-attack ratio in tanks if that regime were intent on aggression against Western Europe. Indeed, the 13,150 Soviet tanks would have first to defeat Eastern Europe's 6,850 tanks before they could even engage NATO's 20,000-tank force.

Clearly, then, the CFE Treaty will erect significant barriers against the resurrection of a clear and present Soviet invasion threat against NATO. In all likelihood, a future Soviet regime intent on pursuing such designs would, as preconditons, have to abrogate the treaty and then methodically rebuild its conventional war fighting capabilities if it were to again achieve a position of preponderance. These developments would in turn provide the United States and its allies with unequivocal warning of the growing danger and allow the alliance time to reconstitute its conventional and theater nuclear deterrent postures.

Third, the CFE Treaty will put in place a far-reaching verification and inspection regime that will further enhance the transparency of military developments within the Soviet Union. As previously mentioned, an important aspect of this verification regime is that it will allow Eastern European nations to conduct inspections on Soviet soil and thereby build confidence in their state-to-state relations.

Finally, the CFE Treaty will establish a foundation for a continuing dialog and consultation within its 22 States Parties on security issues. Through its implementation arm, the so-called Joint Consultative Group, as well as the extraordinary conferences which can be convened pursuant to article XXI, the accord constitutes a flexible mechanism for adapting to developments and changed circumstances as they arise in Europe in the months and years ahead.

For all these reasons, the Armed Services Committee recommend that the Foreign Relations Committee report the treaty favorably to the Senate. The committee did not, however, believe that there were no issues of serious concern associated with this treaty. Many Members felt the treaty had been largely overtaken by political developments in Europe and this was of decreased relevance. Many Members were disturbed that the Senate was being asked to enter into a contractual relationship with the Soviet Union when the continuing disintegration of central authority and sovereignty in that nation has yet to run its full course. And all Members were concerned by the discrepancies in the Soviet Union's data declaration of November 19, 1990.

For these reasons, the Armed Services Committee did not recommend that the treaty be approved unconditionally. Rather, we recommended that the treaty be approved subject to three specific conditions. The first two conditions recommended by the committee concern the legal status of the side agreements that deal, respectively, with the naval infantry dispute and the question of Soviet forces still in the Baltic nations. The third recommended condition concerns the implications of Ukrainian independence for the viability of the treaty. I will not explain these three amendments in my remarks today, since they are discussed at some length in the Armed Services Committee report. I would say, however, that in my judgment the conditions addressing these three subjects contained in the resolution of ratification reported by the Foreign Relations Committee is consistent with the three conditions recommended by the Armed Services Committee.

Mr. President, as evidenced by the additional views attached to our letter, although the Armed Services Committee was largely in agreement with regard to the CFE Treaty, a split did occur within our ranks on two points.

First, eight members of the committee—Senators WARNER, THURMOND, COHEN, WALLOP, LOTT, COATS, MACK, and SMITH—recommended a stronger condition on the data discrepancy issue than that contained in the resolution of ratification reported by the Foreign Relations Committee. The Foreign Relations Committee-proposed condition would require the President to continue U.S. efforts to account for and/or eliminate these discrepancies. The condition proposed by eight members of the minority side of the Armed Services Committee would prohibit the President from entering the CFE Treaty into force until the Soviet Union had accepted the United States intelligence community's estimate of Soviet equipment holdings in the CFE zone as of November 19, 1990, and agreed to destroy the equipment that it had previously undercounted.

In the body of its report to the Foreign Relations Committee, a majority of the members of the Armed Services Committee agreed that this is an issue of serious concern. However, since the Armed Services Committee had not held a hearing on this subject but had instead only participated in the Intelligence Committee hearing on the matter, the majority of members on the Armed Services Committee deferred to the Intelligence Committee in making recommendations to the Foeign Relations Committee on an appropriate condition on this subject.

In its November 18, 1991, letter to the Foreign Relations Committee, the Intelligence Committee stated:

> We endorse continued efforts to arrive at an accurate accounting of what TLE the Soviet Union had in the ATTU on November 19, 1990, and to gain agreement to destruction

obligations proceeding from such an accounting.

This is the approach incorporated in condition two in the resolution of ratification that is now before the Senate.

Mr. President, I believe it is evident that the Soviet Union undercounted the treaty-limited equipment it had in the CFE zone on November 19 last year. I believe we should continue vigorous United States efforts to get an accurate count and to persuade the Soviet Union to take appropriate actions to reflect these revised levels. I do not, however, believe that we should hold the entry into force of this treaty hostage to getting the Soviets to accept current United States intelligence estimates. Such a requirement, in my view, is disproportionate to the benefits we will achieve in terms of Soviet equipment destruction if the treaty is entered into force. I also believe that establishing such a rigid requirement would also ignore the fact that the Soviet Union has already said in so many words that it recognizes that it undercounted its equipment holdings and has already committed to destroy equipment now stored east of the Urals in what amounts to compensation for this error.

Mr. President, I do not intend to go further into the data discrepancy matter in my remarks today. I would, however, recommend that my colleagues find a moment to read the transcript of the classified November 13, 1991, testimony on this subject to the Intelligence Committee by Mr. Doug MacEachin, Chief of the Arms Control Intelligence Staff at the CIA. I would also commend to the attention of my colleagues the excellent statement on this subject made in open session during the treaty markup in the Foreign Relations Committee by the senior Senator from Indiana [Mr. LUGAR].

Mr. President, I ask unanimous consent that the November 19 statement by Senator LUGAR be printed in the RECORD following my remarks.

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

(See exhibit 2.)

Mr. NUNN. The second disagreement over proposed CFE conditions that emerged within the Armed Services Committee concerns the so-called second vote issue on CFE ratification. Let me explain what we do agree on and what we do not agree on. We all agree that should the Ukraine or any other large Soviet republic with sizable military forces or a significant military potential become independent and foreswear the CFE Treaty, an extraordinary and fundamentally changed circumstance would be created. Should these events transpire, the condition reported by the Foreign Relations Committee requires a number of actions: The President must consult with the Senate; he must convene an extraordinary conference of the CFE states pursuant to article XXI or undertake other appropriate diplomatic steps to collectively assess the situation; he must submit any material changes in our obligations under the treaty or in relation to the treaty that result from this conference or these diplomatic undertakings to the Senate for approval; and if no changes are made in our obligations and he elects not to withdraw the United States from the treaty, he must tell the Senate why. That is what we all agree upon.

The proposed condition by eight Republican members of the Armed Services Committee would go one step farther. It might go so far as to specify that if, notwithstanding the emergence of a heavily armed and independent Ukraine that remains outside the CFE regime, the President makes no changes in the treaty and elects not to withdraw the United States from the treaty, then he must nonetheless withdraw the United States from the treaty unless he resubmits the treaty to the Senate and the Senate votes to sustain his decision to keep the United States within the treaty.

Mr. President, I have consistently fought long and hard for the prerogatives of the Senate under the Constitution in the area of treatymaking. While I have not reached a decision on the merits of the condition now before the Senate, I would point out that should the scenario addressed by the Senators' proposal ever materialize, the Senate would have recourse available to it in the absence of this proviso. In the case of CFE, as in the case of any treaty, the Senate can act if it believes that the United States should not remain within a treaty despite the President's determination to keep the United States in that treaty. For example, the Senate could pass a resolution expressing the sense of the Senate that the United States should withdraw from that treaty. Failing all else, the Senate, in concert with the House, could pass a bill that, as domestic legislation, would take precedence over and in effect vitiate the treaty. It may be, however, that if modified as suggested by Senator BIDEN, the condition proposed by Senator COHEN would be acceptable.

Mr. President, before I conclude my remarks I would like to take note of an insightful article that appeared in the November 3, Washington Post. The op-ed was written by two former senior Senate staffers, Alton Frye, who was formerly chief of staff to Senator BROOKE, served as a close consultant to Senators COHEN and BAKER, and is now the Washington director of the Council on Foreign Relations; and Jeffrey H. Smith, a Washington attorney who was formerly general counsel of the Armed Services Committee under me.

In the article, Mr. Frye and Mr. Smith tackled a very difficult question; namely, how can the United States preserve the basic framework of international security arrangements and arms control agreements as the Soviet Union undergoes momentous change? I believe it is very much in our interest to protect the gains we have made over so many years. Many of these gains have been codified in various agreements that must be honored by the Soviet Union and any successor states or breakaway republics. In particular, the authors address questions about how to preserve the Soviet obligations under existing agreements such as the Nonproliferation Treaty, the U.N. Charter, and the Conference on Security and Cooperation in Europe.

They urge—and I wholeheartedly agree—that the United States and its allies make clear that we will not recognize or trade with any Soviet successor, government, or republic state unless it formally accepts its treaty obligations under these agreements. They also urge the United States to assist the Soviets and the republics with technical measures to assure strict command and control arrangements over Soviet nuclear weapons and they suggest that the recent initiative taken by Presidents Bush and Gorbachev to further reduce nuclear weapons be codified in agreements that fit within existing verifications schemes. They also argue that we should insist that any break away republics not exceed a pro rata allocation of the quotas assigned to the Soviet Union for conventional military hardware under the CFE Agreement.

Finally, and this is particularly germane to our proceedings today, they urge rapid ratification of CFE and START, despite the fluid situation in Moscow. They point out, quite correctly, that unless these agreements are ratified, and made applicable to any republics that may break away, the United States will have no formal legal agreement which we can use to try to constrain any future Soviet militarism, should it raise its head again.

Mr. President, I think this is a piece that deserves close attention of the Senate. I am very pleased that two of our distinguished former staffers have written this thoughtful piece and I request that it be printed in the RECORD.

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

(See exhibit 3.)

EXHIBIT 1

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, November 18, 1991.

Hon. CLAIBORNE PELL,
Hon. JESSE HELMS,
Hon. JOSEPH R. BIDEN, Jr.,
Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR SENATORS PELL, HELMS, AND BIDEN: The Committee on Armed Services has completed its review of the Treaty on Conventional Armed Forces in Europe (CFE) and has concluded that the Treaty promotes the

national security interests of the United States, our allies in NATO, and the emerging democracies of Eastern Europe. The Committee recommends that the Committee on Foreign Relations report the Treaty favorably to the Senate, subject to certain conditions.

First, the Committee believes that the CFE resolution of ratification should condition the Senate's advice and consent on its understanding that the June 14, 1991 side agreement resolving the naval infantry dispute has the same legal force and effect as the Treaty itself. In a February 5, 1991 letter to Secretary Baker, the Chairmen and Ranking Minority Members of the Armed Services Committee and the Senate Select Committee on Intelligence urged the Administration not to submit the CFE Treaty to the Senate until the naval infantry dispute and certain other post-signing discrepancies were resolved. In a March 7 reply, Secretary Baker stated that the Soviet interpretation of the application of the Treaty to naval infantry units "flatly contradicts the language of the Treaty and has no basis in the negotiating record." Secretary Baker's letter also stated: "This is an issue of priciple, a clear-cut case of the Soviet Union failing to fulfill a Treaty obligation. We have repeatedly made clear to Soviet officials, at very high levels, that they should abandon this wholly unsupportable position."

Notwithstanding its original demand that the Soviet Union recant its unacceptable interpretation of Article III, the Administration elected to deal with this problem through the mechanism of a side agreement that establishes obligations outside the framework of the Treaty. While that approach will result in Soviet equipment holdings under CFE at the same level as if they had never asserted that naval infantry equipment was exempt, the decision to resolve this dispute through a separate side agreement has the disadvantage of leaving the Soviet Union in disagreement with the 21 other CFE signatories over the interpretation of a key provision in the Treaty. As noted in the State Department's Article-by-Article Analysis of the Treaty: ". . . it should be noted that the Soviet Union, in contrast to the other 21 Signatories to the Treaty, does not subscribe to the analysis of the scope of Article III counting rule described above."

It is highly unusual for an administration to submit a treaty for advice and consent by the Senate with an open acknowledgement that the parties are in disagreement over a fundamental point of treaty interpretation. This anomoly is only tolerable to the Senate due to the corrective effect of the June 14, 1991 side agreement; however, this makes it all the more important that the Senate act within the resolution of ratification to ensure that the side agreement is afforded the same legal force and effect as the Treaty. A condition making this explicit will help guarantee that any Soviet action inconsistent with or in violation of the June 14, 1991 side agreement is treated by the United States with the same gravity as any Soviet action inconsistent with or in violation of the Treaty.

The June 14, 1991 side agreement raises another point of concern to the Committee: The Executive Branch's continuing practice of using legally binding side agreements and political commitments to establish obligations outside the framework of an arms control treaty. President Bush's July 9 letter of transmittal for the CFE Treaty describes the June 14 side agreement on naval infantry as "associated with, but not part of, the Treaty." The practice of relying upon agreements and commitments outside the framework of treaties began with the Soviets' "political commitment" on Backfire bomber issues in SALT II, was repeated in the case of various definitional and verification issues in INF, and has now been repeated with regard to a variety of issues related to CFE and START. The Committee believes that the practice of relegating "too hard to solve" negotiating issues to side agreements, rather than resolving them within the confines of the treaty proper, threatens to detract from the Senate's role under the Constitution as a comaker of treaties. Absent a change in approach, the Committee believes that it is necessary for the Senate to attach conditions to the resolution of ratification that predicate the Senate's advice and consent to arms control treaties upon the understanding that the various side agreements have the same legal force and effect as the treaties.

Second, the Committee recommends that the CFE resolution of ratification also condition the Senate's advice and consent on its understanding that the October 18, 1991 side agreement dealing with the accountability and inspectability of Soviet forces in the independent Baltic nations has the same legal force and effect as the Treaty. The Committee recognizes that this side agreement responds to a development (the Soviet Union's formal recognition of Baltic independence) that arose well after the Treaty was signed. Nonetheless, the Committee would note that the Administration chose to address this development through the mechanism of a side agreement that established obligations outside the framework of the Treaty, rather than as an amendment or protocol to the Treaty that would have required formal approval by the Senate. As with the naval infantry side agreement, failure to affirm the legal force and effect of this side agreement in the resolution of ratification would detract from the Senate's Constitutional role in the treaty-making area.

Third, the Committee recomends that the resolution of ratification include a Condition addressing the possibility that the Ukraine or some other republic of the formerly Soviet Union with large military forces or a significant military potential might achieve independence and elect not to be bound by or accede to the Treaty or for other reasons remain outside the CFE regime. In response to a quesiton we submitted in advance of our first hearing, Secretary Baker stated:

It is the view of the Administration that in order to safeguard the integrity of the Treaty regime, it almost certainly would be necessary for Ukraine and Byelorussia, if they were not bound as part of the USSR or any successor state, and retained significant amounts of equipment in Treaty categories, to accede to CFE.

During our November 4 hearing, Ambassador Woolsey testified that should such a scenario play out, it would provide grounds for U.S. withdrawal from the Treaty: "Certainly a country the size of the Ukraine, if it had substantial military forces, could, I would think, also be regarded as a fundamental change of circumstances under the Treaty, the old doctrine of 'rebus sic stantibus.' "

The Committee recognizes that there have been many signals emanating from the Ukraine, including the October 30 Kiev communique between the Ukraine and Russia, indicating that the Urkaine intends to observe the CFE Treaty. Nonethless, many issues remain unsettled, including the quesiton of which current CFE state or states in the Group of Six would yield entitlements of Treaty-Limited Equipment (TLE) to the Ukraine to establish Ukrainian TLE allotments in the event the Ukraine joins CFE as a sovereign state.

The Committee believes the uncertainties in the current situation are such that the resolution of ratification should include a Condition requiring certain actions in the event former republics become independent and decline to be bound by the CFE Treaty or, assuming that they are not bound under international law in the absence of any action on their part, decline to accede to the Treaty. In such a Condition, such developments with respect to the Ukrainian, Belorussian or Russian republics would be recognzized as a military signficant changed circumstance—a point that was acknowledged in our hearings by numerous Adminstration witnesses.

In the event of such developments with these three republics, the Condition should require the President to consult immediately with the Senate as to whether the United States should exercise its withdrawal rights under the Treaty. If, after such consultation, the President elects not to exercise withdrawal, the Condition should, at a minimum, require him to request the Treaty Depository to convene an extraordinary conference of the States Parties pursuant to Article XXI, with representatives of the new state in question invited, to assess the continued viability of the Treaty and whether amendments are necessary and appropriate to deal with these changed circumstances.

If, following such a conference, the new state in question still refuses to accede to or be bound by the Treaty, the Condition should require the President to immediately transmit to the Senate any amendments agreed to during such conference, or if no such amendments have been agreed to, a recommendation as to whether the United States should continue to be bound by the Treaty or to withdraw from the Treaty and his explanation of his reasons for such recommendation.

Finally, we would note that we have reviewed the draft legislation on CFE "cascading" that has been negotiated between the House Foreign Affairs Committee and the Defense Department, and we have no objection thereto assuming it is not amended. We recognize that this CFE implementing legislation, which would amend the Arms Export Control Act to permit certain specified weapons transfers within NATO for the purpose of modernizing our allies equipment, is under the jurisdiction of your committee, but we would recommend that you act on this matter before the Senate adjourns.

We have consulted with all Members of the Committee on the recommendations outlined above and no objection has been raised. However, certain Members of the Committee have identified in the attached Additional Views other proposed Conditions, including one on the issue of the Soviet declaration of TLE in the area of application on November 19, 1990—a declaration that is disputed by U.S. intelligence. While the other Members of the Committee agree that this is an issue of serious concern, they have deferred to the Senate Select Committee on Intelligence in making recommendations to your Committee on an appropriate Condition on this subject.

Sincerely,

SAM NUNN,
Chairman.
JOHN W. WARNER,

Ranking Minority Member.

ADDITIONAL VIEWS OF SENATORS WARNER, THURMOND, COHEN, WALLOP, LOTT, COATS, MACK, AND SMITH

We agree with the Committee's letter report on the Conventional Armed Forces in Europe (CFE) Treaty and endorse the recommended conditions to any Senate approval of ratification of the CFE Treaty in at least the specific areas addressed in the letter. We believe, however, that further recommendations are necessary to protect the Senate's constitutional prerogatives in the Treaty-making process and to assure future U.S. national security interests.

Specifically, the inaccuracy of Soviet data declarations of Treaty Limited Equipment (TLE) in the area of application at the time the CFE Treaty was signed on November 19, 1990 is a serious concern. While the Administration has attempted to resolve this issue, significant differences still exist between the Soviet data declaration and U.S. intelligence estimates of the number of Soviet TLE in the area of application. These differing estimates range in the thousands of pieces of TLE above the amount included in the Soviet declaration.

We believe this discrepancy represents a significant question about Soviet probility and good faith with respect to their obligations under the terms of the CFE Treaty. While the Administration has expressed its intention to continue to work to achieve a resolution of this data dispute, it has not yet been able to do so. The June 14, 1991 resolutions of the Article III dispute and the issue of Soviet equipment transferred to locations east of the Urals do not resolve this issue.

We do not believe this is necessarily an issue over the military significance of the unreported Soviet equipment, and we make no judgment as to the military significance of this equipment or which U.S intelligence estimate of unreported TLE is most accurate. Instead, we believe there is a very important principle associated with this issue with respect to maintaining the integrity of the arms control process, particularly as it might set a dangerous precedent for START. Consequently, we believe this issue must be resolved before the United States assumes responsibility for its obligations under the terms of the Treaty.

In order to resolve this issue in a manner consistent with U.S. national security interests and what we view as the national interests of the other State Parties to the Treaty, we propose the following reservation to the CFE Treaty which should be included in the resolution of ratification. The reservation would read as follows:

"Whereas, data supplied by the Government of the Union of Soviet Socialist Republics pursuant to Article XIII and the Protocol on Information Exchange, regarding its equipment holdings in the Atlantic to the Urals area as of November 19, 1990, differed from United States estimates of such equipment, the United States shall not be bound by the terms of the Treaty unless and until—

(A) the President has certified to the Senate his best estimate of the amounts and types of equipment holdings of the Union of Soviet Socialist Republics in the Atlantic to the Urals area of application on November 19, 1990;

(B) the President has certified to the Senate that the Union of Soviet Socialist Republics has agreed that the Soviet equipment holdings described in (A) are the amounts and types of equipment holdings in the Atlantic to the Urals area of application on November 19, 1990; and

(C) the President has certified to the Senate that the Union of Soviet Socialist Republics has agreed that it will destroy such amounts and types of equipment as required by the Treaty based on the amounts and types certified pursuant to clause (A) either as required by the Treaty or, if such equipment is no longer in the Atlantic to the Urals area, in accordance with destruction procedures similar to those provided for in the Treaty."

Additionally, while the Committee letter suggests a general condition designed to deal with the possibility of the Russian, Ukrainian, or Belorussian Republics becoming independent and not agreeing to the Treaty, we believe we should provide our views on a specific reservation designed to deal with this situation.

We believe that the resolution of ratification should provide for very specific procedures to be followed in the event that the Ukrainian, Belorussian, or Russian Republics were to become independent and not agree to be bound by the terms of the Treaty. Administration officials consistently testified that, if such a circumstance should arise, it would amount to a militarily significant changed circumstance and would seriously bring into question the continued validity of the Treaty. While we recognize the possibility exists that other Soviet republics might well become independent in the future and might, for whatever reason, not agree to be bound by the provisions of the CFE Treaty, it is less likely that such situation would amount to militarily significant changed circumstances.

Therefore, we suggest that the Foreign Relations Committee include in the resolution of ratification two conditions dealing with the creation of new states in the Treaty area of application: one condition applicable with respect to the Ukrainian, Belorussian, and the Russian Republics, and another condition applicable with respect to the creation of new states in any other area. Furthermore, we suggest that the Foreign Relations Committee include a condition relating to creation of new states in the Ukrainian, Belorussian, or the Russian Republic that might go so far as to mandate U.S. withdrawal unless the President resubmits to the Senate for its advice and consent the Treaty or amendments to the Treaty which are designed to deal with the changed circumstances.

John Warner, Dan Coats, Bob Smith, Strom Thurmond, Bill Cohen, Connie Mack, Malcolm Wallop, Trent Lott.

ADDITIONAL VIEWS OF SENATORS SMITH, WALLOP, AND MACK CONCERNING THE CFE TREATY

We, as members of the Armed Services Committee, have reviewed the Treaty of Conventional Armed Forces in Europe (CFE), and share the view of our colleagues that, with the inclusion in the Resolution of Ratification of certain conditions to the Senate's advice and consent, the Treaty would promote U.S. national security interests. In our opinion, however, further clarification on a variety of issues is needed before the Senate discharges its constitutional prerogatives.

We recognize that the Administration considers prompt ratification of CFE an urgent priority. It is neither our wish nor intent to prevent timely disposition of this matter. However, the Warsaw Pact dissolution and subsequent disunion of the USSR are extraordinary transformations which have injected great uncertainty into the legal, political, and military foundations of the Treaty. We are concerned that precipitant consideration, prior to resolution of technical discrepancies, and ongoing political proceedings among the Group of Six, particularly the former Soviet Union, could severely undermine the Senate's province and contribution to the ratification process.

For instance, with respect to treaty limited equipment (TLE) within the ATTU zone, there exist significant disparities between U.S. intelligence estimates and the Soviet data declaration provided at the time of Treaty execution. Although numerical estimates of unreported TLE differ among elements of the intelligence community, there is consensus that some TLE, and quite possibly a substantial amount, was not reported. Under-reporting of TLE would significantly diminish Soviet reduction obligations under the Treaty, and could prove to be militarily significant. Yet, to our knowledge, this matter remains unresolved. In our opinion, ratifying CFE prior to resolution of data base discrepancies would imperil Treaty efficacy and set a dangerous precedent for consideration of the Strategic Arms Reduction (START) Treaty.

Furthermore, the abortive August 1991 coup has triggered unprecedented political and military discord within the former Soviet Union. Rising nationalism and sovereignty claims among the republics have eroded internal symmetry, and shifted the power balance within the Group of Six. At present, it is unclear how these developments will transform the Soviet political and military framework, and whether the individual republics will, in fact, accede to the Treaty. Both Secretary Baker and Ambassador Woolsey have affirmed that Treaty viability hinges on participation by the republics, particularly Russia, Ukraine, and Belorussia. We share this view, and believe it would be premature for the United States to act on the Treaty prior to the impending referendums on independence in Ukraine and Belorussia.

Moreover, we are concerned that, in the wake of the Warsaw Pact dissolution, the bipolar structure of the Treaty may actually jeopardize the long term security interests of emerging East European democracies, such as Poland and Czechoslovakia. Its merits note that many East European nations have expressed interest in affiliating with NATO. It is not inconceivable that, in the future, these nations may determine a need to augment their armed forces in response to unforeseen regional security threats. However, within the existing bloc-to-bloc Treaty structure, larger TLE holders, such as the Russian republic or some other former Soviet state system, could exercise a de facto veto over such augmentations by refusing to lower their own equipment allocations. We believe this matter warrants consideration.

The fundamental objective of the Treaty has always been to eliminate the massive disparity between NATO and Warsaw Pact force levels, and to reduce the threat of surprise attack or large scale offensive action against Western Europe. This imperative has been largely accomplished, irrespective of CFE, through the demise of the Warsaw Pact and disunion of the USSR. Nonetheless, we believe that, with the inclusion of certain conditions, the Treaty would retain a degree of flexibility and efficacy necessary to promote U.S. and NATO security interests.

In our opinion, the national security interests of the United States, and our NATO allies, would be best served by resolving the

aforementioned issues *prior* to ratification. While we understand the Administration's desire to secure prompt approval of the accord, it should be noted that formal transmittal and subsequent Senate action were unduly delayed because of Soviet Article III violations. Given present uncertainties regarding the legal, political, and military foundations of the Treaty, we recommend the Senate defer action until these questions are resolved. However, should the Senate elect to proceed with ratification at this time, we believe the suggested conditions of the Republican Armed Services Committee members should be wholly incorporated to condition Senate advice and consent.

MALCOLM WALLOP.
BOB SMITH.
CONNIE MACK.

EXHIBIT 2

DATA DISCREPANCY ISSUE

(By Richard G. Lugar)

Mr. Chairman: It has been clear for months that the data discrepancy issue would be a thorn in our side as we considered the CFE Treaty. Of the three major post-signature issues, this one was given initially the least attention by the Administration.

I agree that it constitutes a problem area. But I also believe that it is not ultimately resolvable, and certainly cannot be resolved through a condition on the resolution of ratification.

The data describing Soviet holdings of equipment in the zone, submitted by the Soviet delegation on November 19, 1990, diverged significantly from U.S. intelligence estimates, raising questions both about our ability to monitor the Treaty's provisions effectively and about some major Soviet cheating. The Soviets reported thousands of fewer items of equipment in the zone of application than our estimates would lead us to expect, and thus the amount of equipment that they will have to destroy in order to reach Treaty-mandated levels was also lower than we expected. In addition, we discovered undeclared equipment at several sites.

The Intelligence Community experienced great difficulty during the Fall of 1990 in estimating accurately how much Soviet equipment was in the zone. The huge amount of equipment moved by the Soviets east of the Urals prior to Treaty signature accounts for much of the discrepancy. As of mid-1988, U.S. estimates roughly matched what the Soviets acknowledged they had at the time. By early 1989, the Soviet unilateral force reductions and withdrawals from Central Europe had begun. By early 1990, the pace and size of the Soviet withdrawal of equipment from the zone increased to the point that the Intelligence Community, while recognizing the scope and direction of the Soviet effort, was unable to identify all of the units in the Treaty zone from which equipment was being withdrawn. Richard Kerr, Deputy Director of the Central Intelligence Agency, admitted in testimony that the Intelligence Community essentially lost its place and was unable to keep up the data base. A thorough review of all the available evidence since Treaty signature had narrowed the gap significantly.

Some fear that there may have been thousands of pieces of equipment that the Soviets did not declare and may have left in the zone illegally to avoid destroying them. But if there were a substantial amount of undeclared equipment in the zone, most of it had been withdrawn or is being destroyed. Though there are a number of "smoking guns" we have raised with the Soviets, we have little meaningful evidence to back up the bulk of our suspicions. For this reason, the problem cannot be completely resolved.

Deputy Director Kerr testified that the Intelligence Community believes that the figures submitted by the Soviets on November 19, 1990, reflect what they intended to have in the zone when the Treaty entered into force, if not before. Thus, the Intelligence Community believes that the Soviets were not necessarily trying to violate the Treaty in order to avoid their destruction liability, but simply failed operationally to carry out by Treaty signature all of the withdrawals or destruction of equipment that they intended. Kerr characterized Soviet failure to declare all of their equipment in the zone at Treaty signature as a "technical violation".

There is a fundamental philosphical disagreement about whether most of the discrepancy should be characterized as "undeclared" equipment. Most Administration experts believe that, while we can legitimately continue to press the Soviets for full resolution of our concerns, for the most part we cannot prove that the Soviet declaration is wrong. Others, however, place the burden of proof on the Soviets. They argue that the U.S. position should be that the Soviets failed to declare these thousands of pieces of equipment unless they, the Soviets, prove that the equipment was not in the zone at Treaty signature.

Moreover, there is a tendency to confuse the nature and basis of our estimates of Soviet equipment with those of the Soviet declaration of data. Intelligence estimates and Soviet data declarations are apples and oranges. In an ideal world, they would be identical. But in the real world, there will inevitably be discrepancies. For example, the Intelligence Community's estimate in the Fall of 1990 was not a "snap-shot" of the zone on the date of signature. But that is precisely what the Soviet data declaration was supposed to have been. An estimate, by definition, uses incomplete information and analytical assumptions to develop a model of what the force should look like—it has never been possible to precisely count and document every piece of equipment.

When it signed the Treaty, the Administration believed that, to meaningfully affect the strategic balance, there would have to be Soviet cheating on a huge scale, which could be detected. But, as a political matter, the view that large-scale Soviet cheating could be detected was drawn into question as a result of the data discrepancy issue.

The simple response is that we can monitor the Treaty effectively. First, we will be monitoring not primarily pieces of equipment, but "militarily significant change" in the zone. The standard of "military significance" focuses on fighting force. Equipment by itself is not a direct military threat. It must be part of cohesive units of trained personnel and a large amount of support equipment. This factor makes significant change easier to detect and increases warning time.

In addition, when the Treaty is implemented, we and our allies can use the tools provided by the Treaty—on-site inspection and notifications—to enhance greatly our monitoring capability. We will be able to check out our estimates by going to specific sites for a close-up look, and we will be able to compare our estimates with what the Soviets tell us about their forces. The Soviets will be less likely to falsify their declarations intentionally because of the fear of being discovered through on-site inspections or other means. But on-site inspections can only be undertaken once the Treaty is implemented.

The intelligence problem behind the data discrepancy issue was likely unique. The Intelligence Community has learned from its errors; the Treaty will improve our monitoring capability greatly; and the risk of a recurrence of the problem should be virtually eliminated.

When the Treaty is implemented, the Intelligence Community may also get a better grip on the question of equipment illegally in the zone. But since so much of the equipment has been removed from the zone or destroyed, we are unlikely to ever get a true picture of Soviet holdings in the zone at Treaty signature.

Thus, Mr. Chairman, I think it important that the Committee call attention to the problem in the resolution of ratification, and I think the language contained in the Committee draft does so in a firm yet reasonable way. But together, more stringent language designed to "solve" the data discrepancy issue—an issue that is unresolvable—could only endanger the Treaty.

EXHIBIT 3

[From the Washington Post, Nov. 3, 1991]

DEALING WITH THE UN-SOVIET UNION

(By Alton Frye and Jeffrey H. Smith)

The move to independence by the Ukraine and other former Soviet republics has created grave international security problems. The parliament in Kiev contemplates an army of 400,000 men or more, larger than Germany's will be. Russian President Boris Yeltsin has said his government may need an army. Other newly independent republics also talk of separate forces.

In several regions where Soviet nuclear weapons are deployed, there are strong hints the weapons could become bargaining chips for the republics in future talks with Moscow. The prospect of multiplying armies and proliferating fingers on the nuclear trigger demands sober action by the United States.

President Bush's unilateral initiatives on nuclear weapons are an attempt to turn the dangers arising from Soviet fragmentation into opportunity. Bush acted within the context of numerous agreements negotiated over the years with the Soviet Union, including the Nuclear Non-Proliferation Treaty (NPT) the acts of the Conference on Security and Cooperation in Europe (CSCE), the Anti-Ballistic Missile Treaty (ABM) and the as-yet unratified Strategic Arms Reduction Treaty (START) and Conventional Forces in Europe Treaty (CFE).

It is essential that the new republican governments adhere to these deals—and that the further nuclear reductions promised by Soviet President Mikhail Gorbachev in response to Bush's cutbacks take place.

The Soviet Congress of Peoples' Deputies has pledged that all international agreements and obligations will be "unswervingly observed in the transitional period" and has urged secessionist republics to join the NPT and CSCE. This fell short of the traditional principle that successor governments accept their predecessors' international legal obligations. (To this day, for example, the United States and some former British colonies respect an extradition treaty dating from the years of empire.)

In the START agreement, the Soviet Union declared more than 20 deployment, production and other sites outside Russia as subject to the treaty's limits. The Ukraine's legislature has acknowledged central authority over nuclear forces on its territory and proclaimed its intent to become a nuclear-free zone by the mid-1990s. At the same time,

leaders in Kiev are pressing for a future role regarding nuclear weapons in Russia. These pressures, and similar efforts in Kazakhstan and Byelorussia, make the first priority for the United States to firm up commitments to maintain effective, responsible control over nuclear systems deployed outside Russia.

Except for the central government or Russia, if it assumes control of Soviet nuclear forces, the United States should treat all governments that emerge in the territories of the old Soviet Union as "non-nuclear weapons states" within the meaning of the NPT. Any nuclear weapons that remain on their territory should do so only in an alliance relationship with the central government or Russia comparable to the basing agreements for U.S. nuclear systems in NATO or elsewhere.

Republics defined as non-nuclear-weapon states are obligated under the treaty not to acquire nuclear explosives. But the central government (or Russia) is required by START to carry out reductions and enforce other treaty strictures on intermediate nuclear forces and anti-ballistic missile defenses.

Complications abound. For some ABM Treaty provisions, for instance, it may be necessary to grandfather the successor republics in which ABM radars or other facilities are installed. The only Soviet ABM test range permitted under the treaty, Sary Shagan, is located in Kazakhstan, as is the major Soviet missile test and space launch complex at Baikonur. Only if other republics agree will the Soviet Union's nuclear successor (Gorbachev's or Yeltsin's government) be able to exercise its ABM treaty rights.

The unratified START and CFE treaties pose different considerations. START would remove thousands of strategic weapons. The Soviets continue to modernize their vast arsenal, the gravest threat ever faced by the United States. We cannot miss the opportunity to reduce that peril.

Equally, CFR is vital to America and her allies. Its provision for redeployment and destruction of massive amounts of conventional equipment—tens of thousands of tanks, armored vehicles, artillery and helicopters—should guarantee that the turn toward stability at lower force levels in Europe is irreversible.

These treaties are the framework for mutual predictability and for correcting Soviet military excesses. They also are indispensable to relieving some of our own defense burdens.

Given such momentous stakes, U.S. policy must be precise and explicit:

International agreements: The United States and its allies should make clear that apart from the Baltics, they will not recognize or trade with any Soviet successor government or republic government or support its participation in the United Nations unless it formally accepts treaty obligations to prevent nuclear proliferation and to honor other international convenants.

Nuclear weapons: Washington should insist on firm evidence that strict command-and-control arrangements govern Soviet nuclear weapons. Preferably, these should be moved to Russia, but Ukrainians and others who favor non-nuclear status for themselves are not keen to enhance Moscow's nuclear monopoly. Because the United States maintains nuclear weapons in other countries, it cannot easily press that demand. Moreover, there is concern about moving weapons during periods of instability.

Bush's concern for the "physical security" of weapons points the way. Washingon should offer technical assistance and equipment to bolster command and control wherever Soviet nuclear weapons are located, including help in installing two-key systems for all weapons. One idea worth pursuing would be to add post-launch destruct mechanisms, used on test rockets, to all ballistic missiles.

Short-range nuclear weapons: The matching pledges by Bush and Gorbachev to eliminate short-range ground-launched nuclear weapons and to remove nuclear weapons from surface ships should be codified and confirmed. Reciprocal unilateral reductions will build more confidence if the two sides fit them into existing verification schemes.

Force limits: The United States and its allies should declare that under no circumstances should any military forces deployed by the separate republics exceed a pro rata allocation of the quotas assigned to the Soviet Union by the conventional force reduction accord. The onus is on the successor governments to satisfy the so-called transparency requirements—restraints on military maneuvers, mutual observation and inspection procedures—of the CSCE accords and to move forward with CFE force reductions. We should not wait for the dust to settle in the intra-Soviet bargaining to send that message loud and clear.

Treaty ratification: The United States should ratify CFE and START expeditiously. Although the situation in Moscow is fluid, the risks of delay are greater than the risks of proceeding now. Unless CFE and START are brought into force, there will be no effective limits on any new leadership inclined toward militarism.

Despite uncertainty about which post-Soviet governments will be accountable for particular obligations, the political flux in the former Soviet republics invites creative action by the U.S. Senate to tie the new regimes to accords that are so critical to American security.

Problems will surely arise in the implementation of such complex agreements but they can be resolved through the mechanisms for clarification and enforcement contained in the treaties. Shaping the international obligations of the new republics is now the crucial objective. American approval of CFE and START could be decisive in locking them into the reductions process. For that purpose "wait-and-see" is worthless. The moment calls for "commit-and-constrain."

AMENDMENT NO. 1432 TO CONDITION NO. 5, AS MODIFIED

Mr. BIDEN. Will my colleague yield?

Mr. NUNN. Mr. President, as I sense it—and I have not been here for this whole debate—but has there been an agreement to modify the Cohen amendment?

Mr. BIDEN. I say to the Senator, yes. The Senator is about to send up his modification, I believe.

Mr. COHEN. I believe I had sent the modification to the desk.

The PRESIDING OFFICER. Is there objection to the modification?

Without objection, the amendment is so modified.

The amendment (No. 1432), as modified, is as follows:

In the language proposed to be inserted by the Committee amendment, strike subparagraph (C) of condition (5) and insert in lieu thereof the following:

"(C) shall, if he has made the determination and decision described in subparagraph (B)—

"(i) submit for the Senate's advice and consent any change in the obligations of the state parties under the Treaty that is designed to accommodate such circumstance and is agreed to by all states parties, unless such change is a minor matter of an administrative or technical nature; or

"(ii) if no such change in the obligations of the states parties is agreed to by all states parties but the President determines nonetheless that continued adherence to the Treaty would serve the national security interests of the United States, seek a Senate resolution of support to such continued adherence, notwithstanding the changed circumstance affecting the Treaty's object and purpose.".

Mr. NUNN. Mr. President, I did discuss this briefly with the Senator from Maine, the Senator from Delaware, and Ambassador Woolsey. I think this is a good modification. I think it is a very sound approach. It addresses circumstances we are not sure of now and cannot be sure of.

The Senator from Maine makes an absolutely valid point that if the Ukraine decides to form a very large army and does not become part of the CFE Treaty, it could make an enormous difference in the balance of power. I think those circumstances would warrant both the President taking another look at the treaty and the Senate of the United States taking another look.

The reason I think this is an improvement is that I could foresee if you had a two-thirds requirement you might have some real difficulty. The way this condition is now modified it is clear it would require a majority vote and it would be a resolution of support or resolution, I assume, of disapproval of the President's decision. Is that the correct interpretation?

Mr. COHEN. That is correct. A resolution of support for a President declaring this in our interests to stay in. He can pull out unilaterally. He does not need our consent to do that although under the Goldwater case that still might be the possibility of someone questioning whether the President can unilaterally terminate a treaty. That was discussed in Goldwater versus Carter. And, of course, the Supreme Court said that is a political question, go back and fight it out within the Executive. That is where the question rests.

Mr. NUNN. I believe this is a real improvement and contribution to the treaty itself and I certainly will support this.

I believe it is preferable to the original language. I believe I understood the intent of the original language but under certain circumstances it seems to me the results of what would be required would be a little bit vague.

For instance, it will take a two-thirds vote to approve the CFE Treaty Monday. But if the Ukraine decided to form their own army and then they did not adhere to the CFE Treaty, and made it clear they would not, and the

President said, "Notwithstanding that, I am going to stay in the treaty," then the Senate of the United States would have to act.

I was a little bit puzzled under the original language whether the President of the United States would have to have a two-thirds vote to stay with the treaty then or whether it would take two-thirds of the Senate to get out of the treaty or to force the President out of the treaty.

So I think this is a preferable approach.

I could also have envisioned under the original language—let us assume 60 percent voted and said the President is correct, we want to stay in the treaty. That would not be two-thirds.

So, really, in effect, you could have the failure of getting two-thirds, basically, overrule the President in his determination, whereas, in approving the treaty in the first instance two-thirds were required.

In other words, what I was concerned about is whether 35 percent or 40 percent could undo what it had taken two-thirds of the Senate to ratify.

Maybe I missed something in the original proposal and maybe there was an explanation for it. But that did give me concern. But I am fully in accord with what I understand to be the Cohen amendment as it has now been modified.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask unanimous consent that a letter to me dated November 22 from Secretary Baker outlining in detail the administration of and support of all of the other conditions that are in the treaty worked out by myself and Senator HELMS and Senator PELL, under Senator PELL'S leadership on our side, be printed in the RECORD at this time.

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

THE SECRETARY OF STATE,
Washington, DC, November 22, 1991.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Subcommittee on European Affairs, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: The unanimous recommendation of the Foreign Relations Committee that the Senate give its advice and consent to the Treaty on Conventional Armed Forces in Europe (CFR) was very gratifying. I appreciate your and the Committee's efforts on behalf of this landmark agreement. The reductions, limitations and military transparency it will bring about will put security relations in Europe on a new and positive basis and significantly enhance stability there. This has become more important than ever in these uncertain times.

I understand, however, that amendments to the Resolution of Advice and Consent reported by the Foreign Relations Committee may be offered when the Treaty goes to the Senate floor. One which reportedly is being considered would require, under certain circumstances, the resubmission of the Treaty in its entirety for Senate advice and consent. That would be unprecedented and unconstitutional and therefore wholly unacceptable to the Administration.

Another potential amendment would deal with the CFE data issue along the lines proposed by minority members in their section of the Armed Services Committee's report on the Treaty. Quite frankly, such a reservation would make it impossible for the United States to ratify the Treaty because the conditions specified could never be fulfilled. The Treaty would never go into effect, and its many benefits would never be realized.

I understand as well that, despite the careful crafting of the language of the condition on new states, there is some concern in the Senate that important changes in Treaty obligations could occur which would not be submitted to the Senate for its advice and consent. I would like to reassure you that the Administration intends to implement the condition adopted by the Foreign Relations Committee in good faith and in the spirit in which it was negotiated. Specifically, we will implement the condition as follows:

(a) In all likelihood, the emergence of an independent Ukraine or Byelorussia that declined to participate in the CFR Treaty would indeed result in the President's determining that a "changed circumstance" had occurred. There is always the possibility that such a state would decide to hold no or only minimal amounts of equipment in Treaty Categories, in which case the military significance criterion specified in the Senate condition might not be met. We consider this very unlikely, however, and thus expect that the President would, indeed, determine that a "changed circumstance" had occurred.

(b) If, in order to accommodate such a changed circumstance resulting from the emergence of a new state, Treaty participants were to agree to a "change in the obligations" through a legally-binding side agreement, rather than a Treaty amendment, the Administration would submit such agreement to the Senate for advice and consent, just as it would an amendment to the Treaty.

(c) The Administration would not agreee to such a "change in the obligations" solely through administrative or technical changes to the Treaty.

As Acting Secretary of State Eagleburger noted in his letter of November 19, the Resolution already approved unanimously by the Foreign Relations Committee contains a sound and workable approach to dealing with these complex issues. I urge you and the entire Senate to proceed with its advice and consent based on the Resolution as it now stands.

Sincerely,

JAMES A. BAKER III.

Mr. COHEN. Will the Senator yield?

I want to clarify for the record. Earlier I indicated Ambassador Woolsey had stated that he would not speak unless he had the support of the administration. It was another administration official who made that representation, that if Ambassador Woolsey came and supported the modification language that I have now submitted to the clerk, that he would be acting on behalf of the administration.

Mr. BIDEN. Mr. President, it is further my understanding from our staff conversations that Ambassador Woolsey in fact does support this modification. And a point that Senator HELMS made to me, which is very important that it be restated: When I was going through what authority the Senate had and did not have relative to treaties, I left out a very important one, and Senator HELMS pointed it out to me. That is that the Senate, if it desired—and it does not—but if it desired, it could require the President to go back and renegotiate any portion or all of the treaty. It could do that. It could do that. It could say "We will pass this treaty conditioned only upon you getting the Russians to agree to the following two points and change paragraph 7 and 9 to thus and so."

We could do that. That is not what we are doing here. That is not what we are doing here. And, again, I want to make it clear the administration—directly through the representation in a letter which is now in the RECORD, from Secretary Baker—has gone into detail and agreed to and is supportive of all the conditions that are in the ratification instrument and Ambassador Woolsey has verbally acknowledged that the amended amendment, the modified amendment of the Senator from Maine, is also acceptable to the administration.

I know there are a lot of Senators trying to catch planes.

Before I yield the floor, let me ask of my colleagues from Maine, would it be his desire to seek a rollcall vote on this?

Mr. COHEN. It is not. I do not seek a rollcall vote. I am not aware of anyone on my side who is seeking a rollcall vote.

Mr. BIDEN. I know of no one on our side. I, obviously, am not the leader. I do not have the authority to free people up. I know there are a lot of people knocking on our door asking whether or not they could catch their planes.

I do not know what I would do, but I tell you I do not think there is going to be a rollcall vote. We may be able to pass this very quickly.

Before we do pass it, maybe we could move to third reading of the modified amendment and pass it and then continue this discussion so Senators would be assured that there was not going to be a rollcall vote and they could catch their planes.

Would anyone object to that?

Mr. SPECTER. Mr. President, that is agreeable to this Senator, and I will make a few comments on this, asking unanimous consent that they be printed prior to the voice vote.

Mr. BIDEN. Mr. President, I move——

Mr. COHEN. Will the Senator withhold the request for a moment?

Mr. JEFFORDS. Mr. President, the CFE Treaty is a landmark agreement which enhances the security of all signatory nations. It is the foundation for a new order in Europe. It shuts the door on the cold war and opens the way

to an era when cooperation can replace competition.

By requiring dramatic cuts in Soviet conventional armed forces, the CFE Treaty enhances the security not only of Western European nations but also of the emerging democracies in Eastern Europe which now can turn their attention to building new societies without fear of being overrun.

I fully support the CFE Treaty and will vote for it.

I also will vote in favor of the amendment offered by my friend from Maine. If there is one thing certain about the Soviet Union's future it is that nothing is certain. It is important to recognize that we are not sure who we are dealing with there. We cannot tolerate a situation in which a Soviet republic with large holdings of treaty-limited equipment does not accede to the treaty. The Senate must be able to have a say in such a case.

The CFE Treaty is a remarkable achievement. The Cohen amendment makes it an even stronger guarantee of U.S. security. Will the Senator from Delaware allow me to ask just one question?

Mr. BIDEN. Surely.

Mr. JEFFORDS. The Senator from Maine, Mr. Presient, I would like to direct my question to the Senator from Maine on his original amendment that I had agreed to support. Now that it is changed, I would like to know the significance of the change and, in particular, if we were to pass a resolution not supporting the President, as to the ramifications or legal authority or power, if any, that it has.

Mr. COHEN. Mr. President, let me respond to my colleague from Vermont. The change has been brought about by an agreement reached with the administration. Frankly, my purpose was to assert the Senate's prerogative and constitutional authority to require the administration to seek the advice and consent of a significant change in our original understanding. To the extent that the administration is at least willing at this time to say we will return to the Senate and ask for a resolution of support, that achieves my objective; namely, that the administration will come back to us.

The understanding was reached in order to avoid a major controversy or debate that was just articulated by Senator NUNN and I suspect will be commented on further by the Senator from Pennsylvania; namely, whether or not we would have to have a two-thirds approval or resolution of approval or resolution of disapproval if the President should come back.

That could take up considerable time. It might forestall the resolution, the final passage of this treaty for some time. So in an effort to strike a compromise, I agreed to the modified language which will achieve my objective, and that is a recognition on the part of this administration if there were such a fundamental change, the President would come back and seek our advice in the sense that he would seek a resolution of approval for us to stay in the treaty. So it achieves my objective and I think it would preserve at least the prerogatives of the Senate.

Now what is its legal implication? I suspect it is more of a political obligation. This administration is not going to commit on this treaty or any other treaty that it is surrendering any of its perceived constitutional powers. That is a matter that will have to be fought out on each and every treaty that comes before this body.

The only way to resolve that is, in fact, to have a political confrontation, as we had during the INF Treaty, over the interpretation of the ABM language. So I suggest to my friend from Vermont that it is more of a political statement than a legal one.

Mr. JEFFORDS. I thank the Senator for the answer, and that is my understanding. I also believe, then, if the President did not come back, it still would only be a matter of political aspects of us being able to point that fact out and to bring, through moral persuasion or otherwise, upon the President to at least explain his actions or to come back in some way to us; is that correct?

Mr. COHEN. If the unfortunate thing should occur and we see the disintegration of the Soviet Union and one of the major Republics forming its own army and not agreeing to the terms of this treaty, and if the President were to either not disengage from the treaty, nor seek to modify it with the other nations, and not come back to the Senate, I would say that President is, indeed, troubled politically in terms of future relationships and future battles, and a number of conditions certainly would be imposed in various and sundry ways.

Second, with respect to binding future Presidents, the Senator from Delaware already indicated we cannot do that. A future President can come back and say, "I disagree with that interpretation." That in itself would precipitate another political confrontation, a constitutional crisis, as such.

So basically what this President is doing is saying, "I intend to be bound by the understanding reached under this modified condition" and that is all we can ask of this President at this time.

Mr. BIDEN. Mr. President, may I respond to the Senator's question as well?

Mr. JEFFORDS. I would appreciate the response.

Mr. BIDEN. I want to make a clear distinction here. There are political requirements a President has and there are legal requirements, and sometimes a legal requirement, in effect, imposes a political requirement.

The President, when Senator COHEN's amendment condition is passed, will be legally bound—legally bound—to come back to the Senate. He will be legally bound. But a President, on matters of dispute between the President and the Congress, can ignore a legally binding requirement, but only at his political risk.

As the Senator from Pennsylvania points out, there is precious little case law in this area, but there is a legally binding requirement once we pass this treaty with the Cohen condition on it that the President come back and say, A, the Ukraine is now independent; B, they choose not to stay in the treaty; C, they have x number of tanks or any other treaty-covered equipment; D, they present a threat to us; and E, it does not matter to me, I am going to stay in, anyway.

That is what has to happen before we get to the Cohen condition. They are the antecedent events that must occur. If he gets to that point, he then, under the law of the land—this treaty becomes the law of the land—he is required to come back and say: "Senate, I want to stay in the treaty and I do not want to renegotiate anything. Is it OK?"

He has to come up and ask us that and we have to pass a resolution either saying it is OK or it is not OK.

If we say it is not OK, he can still do it. But he will have paid a big political price for doing it.

In contrast, if he negotiates an amendment to the treaty, in that circumstance, he has to come up to the Senate and get two-thirds of the Senators to say that is OK, Mr. President, to change it that way, binding the United States that way. Otherwise there is no new agreement concerning the Ukraine or whatever other republic may have caused the changed circumstance.

That is a legally binding requirement that the President cannot ignore under the law; he cannot ignore that. But what he is required to do under the Cohen amendment condition is different. He must simply come up and ask for a vote. He is legally required to do that. Once we vote, he is not legally bound by the vote.

But the Senator from Maine and I understand that it is unlikely politically that the President would ignore that vote. If 51 or more Senators vote no to staying in, the political pressure on that President would be overwhelming.

That is the value, in my view, of the Senator from Maine seeking to deal with this gray area. We have never dealt with this area before, to the best of my knowledge.

Mr. SPECTER addressed the Chair.

Mr. JEFFORDS. Mr. President, I would just like to conclude, if I may. I thought it was important that we being it out, so we all understand the impli-

cations of what we are doing here. And I appreciate the clear understanding which has been given me by both the Senator from Maine and the Senator from Delaware.

We are moving into a very difficult time when we are not sure who we are dealing with, and thus I believe it is very important that we are careful as to—that we know exactly the kinds of problems we are getting into and the kinds of solutions that we have arrived at.

I would conclude by commending the Senator from Maine, and I will support him on the amendment.

I yield the floor.

Mr. BIDEN. Mr. President, I would like to make a unanimous consent, if my colleagues will allow. I ask unanimous consent that the Senate be in order to vote on the amendment of the Senator from Maine at this time, notwithstanding the time agreement.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Mr. President, reserving the right to object, I had sought recognition earlier and I think I had recognition but yielded to the Senator from Vermont.

Mr. BIDEN. I will withhold, if the Senator likes.

Mr. SPECTER. I would like to make a very brief comment.

Mr. BIDEN. I withhold the UC.

The PRESIDING OFFICER. On whose time is the Senator speaking?

Mr. SPECTER. I seek time from the distinguished Senator from Delaware.

Mr. BIDEN. Surely. The Senator may take the time he wants.

Mr. SPECTER. When I say a brief comment, it will be 3 minutes.

Mr. President, I wish it was clear, as the Senator from Vermont stated. I do not believe that on this record there is very much which is clear. But I want to compliment, again, the Senator from Maine and the Senator from Delaware for providing what is a very useful debate to express the view of the Senate that if there is change in the republics involved, with the withdrawal of major ones like the Ukraine or others, that this is a matter which the President ought to bring back to the Senate.

When the Senator from Delaware says that it is legally binding, I have to respectfully disagree with him on the proposition that you cannot take it to court and get it enforced.

The area of treaty ratification responsibility is an extraordinarily complicated one, and on the current state of the law, there is very little, if anything, you can take to court and get enforced. That depends upon the constituency of the court. And there is a Justice Powell concurrence in the Goldwater case which suggests there are some issues which can be resolved in court.

But the practical impact is, I think, a profound one. I think on the face of the treaty, which is a good treaty, where you bind the U.S.S.R., the Union of Soviet Socialist Republics—that is still its name, Republics in plural—where you have a given number, including the Ukraine—for example, if the Ukraine is out, there would be a solid position that the treaty is not binding anymore because the republics are not the same. And it is material with the Ukraine being out on the very good chart which the Senator from Maine has.

We have had a lot of discussion here today, Mr. president. I think it is important to assert the constitutional role of the Senate. And just for a brief comment, I agree with much of what the Senator from Maine has said today. I do not agree with an earlier comment about the ABM Treaty with respect to narrow and broad, not because of the lack of standing of the Senate, or a new meaning to "other physical principles," but because my view of the ABM Treaty is that on the three critical factors—the negotiating record, the ratification record, and the subsequent practices of the parties—I come to a different conclusion than does the Senator from Maine in saying that it is a broad interpretation.

But I thank my colleagues for the discussion today, and I think it is very useful. But I do not believe there is anything very clear or anything very legally binding.

I thank the Chair and yield the floor.

Mr. COHEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COHEN. Mr. President, I was going to respond to my colleague from Delaware by saying we have the situation, I believe, under the terms of this condition as now modified, that the President is, in fact, legally bound to come to the Senate under the conditions which the Senator from Delaware outlined. But that for enforcement purposes, we have grave difficulty, I think, in bringing it into a court of law. The Supreme Court might very well say this is not a justiciable issue; this is a political thicket into which the Court will not step, and you go fight it out on another constitutional basis or battle between the executive and congressional branch. That, in all likelihood, would be the situation.

So while it may be a legal obligation in terms of its enforcement, it would be political in nature. And so that is the difficulty in trying to articulate what is legal and what is not.

The Restatement of the Foreign Relations Law of the United States recognizes this principle. It says:

> There is no authoritative doctrine indicating limits on the price the Senate can exact as a condition for its consent. * * * A condition relating to the treaty before it and having plausible relation to its adoption or implementation is presumably not improper and if the President proceeds to make the treaty, he is bound by the condition.

So he is bound by the condition. Now, how do we enforce it? Well, we might enforce it on the next item that would come before the Senate that the President had some interest in. That may be one way of doing it.

Second, I want to respond briefly to the comments made by the Senator from Delaware. He indicated that no President under these circumstances, where the Ukraine is out, would ever ignore the implications of that, and say: "I want to stay in."

Now, the Senator from Wyoming may get up and talk about what we have just waived in terms of thousands of pieces of equipment that the Soviet Union had, in fact, left in these areas bound by the treaty on the date of signature, and which we have decided to waive because we have come to the judgment that it is militarily insignificant under the circumstances. I believe that it is perhaps militarily insignificant, but I think the principle that we have established by doing it is very dangerous as it pertains to future agreements.

But here we have a case where we have thousands of weapons which were not counted, that should be counted, that we have simply given precatory language inserted in the treaty as such: We urge the President to continue to seek to resolve this. But here we had a decision made to waive that and continue to go forward with the terms of the treaty.

So I do not rule anything out in the future. I would not say that anything is impossible. What I want to ensure is that if one of these circumstances should occur, where one of the major Republics in fact opt out of the treaty, the President is duty bound to come back to us. If he chooses not to do so, he has precipitated a crisis, and the Senate would then act accordingly.

Mr. President, I have no further need for time, and I would at the appropriate point, if the Senator from Delaware is finished, urge adoption of my amendment.

Mr. BIDEN. I reinforce the point my friend from Maine made, our friend from Pennsylvania is a fine lawyer, but he is dead wrong on the law. He is confusing the ability to enforce—the ability to enforce—with legality. And there is a distinction with a difference.

But I yield back the remainder of my time.

Mr. COHEN. I urge adoption of the amendment.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to the amendment, as modified.

The amendment (No. 1432), as modified, was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. COHEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question now occurs on the condition, as amended.

The condition, as amended, was agreed to.

Mr. BIDEN. Mr. President, I move to reconsider the vote.

Mr. COHEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WALLOP. Mr. President, could I inquire of the chairman now, under the unanimous-consent agreement, as I understand it, time is now to be divided, I think it is—is it 3 hours today?

Mr. BIDEN. I think it is 2 hours today.

I would ask the Chair, what does the unanimous-consent agreement call for on the next item?

The PRESIDING OFFICER. Three hours on the Smith-Wallop amendment.

Mr. BIDEN. Is it 2 hours today, or 3 hours today and 1 hour on Monday?

The PRESIDING OFFICER. Three hours today, plus an hour on Monday.

Mr. BIDEN. I thank the Chair.

Mr. WALLOP. Could I further ask the Chair. As I understood it, the phrasing of the unanimous consent said that 3 hours today was equally divided, but it was on the Smith-Wallop amendment and general debate. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WALLOP. Did that agreement assert itself as to who was in charge of the time?

The PRESIDING OFFICER. Senators SMITH and WALLOP control half, Senator BIDEN controls the other half.

Mr. WALLOP. Under those circumstances, does the majority leader seek recognition.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, I thank my colleague.

Mr. President, I am advised that the Senate has just adopted a modified condition offered by the distinguished Senator from Maine that was to be the subject matter of the vote which was to occur at or about 5:15 p.m. That matter now having been disposed of, there will be no further rollcall votes today.

The Senate will, however, remain in session for the purposes of debate pursuant to the agreement as referred to in the colloquy between the Senator from Wyoming and the Senator from Delaware.

There will be votes on Monday. Under the agreement already obtained, there will be at least two votes at 2 p.m. There may be votes on Monday prior to and subsequent to that depending upon what occurs with respect to other business that we are attempting to resolve now or during the course of the day.

So Senators should be aware that they must be present on Monday. At least two votes are now scheduled for 2 p.m. The possibility of votes prior to that and subsequent to that continues to exist.

We will have a final announcement in that regard before the end of the day, or actually, it will be sometime this evening when this debate concludes.

Mr. COHEN. Would it be possible to assure any of us that the votes on Monday will not proceed prior to 2 o'clock? I have postponed a trip back to Maine as it is, and I still plan to go tomorrow. I will get back here by 2, but prior to that time it will be difficult.

Mr. MITCHELL. Mr. President, it is, of course, my desire to accommodate every Senator and, in particular, my colleague from Maine. We may be able to do that. I will try very hard to do that. But I am not able to say that now, for this reason: We are trying to finish by Tuesday. So Monday will be the next-to-the-last day of the session. We have still a fairly substantial number of matters to try to dispose of.

I assure my colleague I will do the very best I can. But I am not able at this moment to make that commitment. I will have to discuss it further with the Republican leader and with other Senators as well.

I thank my colleague, Mr. President. I thank the Senator from Wyoming for his courtesy.

I yield the floor.

Mr. WALLOP. Mr. President, will the Senator from New Hampshire yield 15 minutes to the Senator from Wyoming?

Mr. SMITH. I yield 15 minutes.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Does the Senator from New Hampshire offer a condition at this time?

Mr. WALLOP. Mr. President, I would say it is not the obligation of the Senator to offer that at this time. It is for general debate or debate upon the condition.

Mr. SMITH. If it please the Chair, we can offer it now. The vote, by agreement, is not until Monday.

The PRESIDING OFFICER. The agreements with time constraints require that they be offered.

Mr. WALLOP. Will the Chair restate that?

The PRESIDING OFFICER. The agreements with time constraints require that they be offered.

Mr. WALLOP. Mr. President, that does not constrain the agreement; it merely constrains the time this afternoon for debate on it, general debate on the agreement, does it not?

The PRESIDING OFFICER. If there is no objection, time will run on the agreement. The Senator from New Hampshire controls an hour and a half.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. SMITH. Parliamentary inquiry. Mr. President, did you say that the amendment, did you make some ruling on the amendment being offered now or on Monday?

The PRESIDING OFFICER. If there is no objection, we can run time without the condition being offered. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, will the Senator yield?

Mr. SMITH. I yield to the Senator from Wyoming whatever time he desires.

Mr. WALLOP. Mr. President, I thank the Senator. I will say there is nothing devious about this delaying introducing the amendment, no strategy, no tactic is this. We are waiting for it to reach a final form. It is my understanding that it will be introduced here shortly.

Mr. President, one of the problems that we always have with arms control is that despite the best intentions of the negotiators, the democratic nations that enter into them, and their negotiators, they become political documents and not military documents. The Secretary of State last night as much as verified that to me when he told me that the reason this Congress and this country ought not to wait until the compliance report due December 1st is in is because the United States is supposed to lead. Already other nations have entered into this agreement.

But I would say that if it was anything but a political document and if it really was a military document, we would at least take time to understand whether or not the requirements under the agreement and the protocols have been or are likely to be met. But the Secretary of State deems the military requirements to be essentially irrelevant and so, too, is this Senate about to deem them.

I would just say there are several things the Senator from Maine mentioned. I will get to that in a minute. But one of the things this treaty does not talk anything about is completely ignoring the history of Europe; the possibility that peacekeeping forces might have to be put into place between traditional rivalries, Germany and Russia, with Poland in the center, and Czechoslovakia, Hungary, and yet there is nothing in this treaty which permits them to be put in place in violation of the numerical limits that would be stationed in any of those lands.

If you are serious about the history of Europe and you are serious about the potential of instability in those newly released lands of the Warsaw Pact, you might just pause to consider what would happen if traditional rivals on either side threatened the peace or security of somebody in between. But that is not what we are doing here. What we are doing is making a political statement.

If it was more than a political document and insisted on some military

relevance, we might have noticed that the notice required—under the terms of the treaty, prior to the movement of troops—that it would, if it existed in January, have prevented us from the buildup in the gulf. But it does not have a military relevance, and so, according to the Secretary of State, the United States must do this without asking these kinds of questions.

Mr. President, these CFE negotiations began in March 1989 with a mandate to eliminate the disparities in conventional force levels in Europe, in order to strengthen stability, security, et cetera, and to eliminate the capability of any nation to launch surprise attacks.

At that time, Mr. President—it seems hard to remember—the Soviet-Warsaw Pact forces—there was a Warsaw Pact in 1989, but it seems hard to remember—enjoyed a significant numerical advantage over the conventional forces of NATO.

We were told that a CFE treaty to be negotiated under the mandate agreed to by NATO and the Warsaw Pact would require the destruction of almost 120,000 of the weapons that were there, including, Mr. President, 100,000 Soviet weapons, to create a balance of conventional forces between NATO and the Warsaw Pact.

But that is not the case under the treaty that is in front of us. Under this treaty, and a related legally binding side agreement, the Soviets will only have to destroy about 23,400 pieces of equipment instead of 100,000, less than a quarter of the amount estimated when the negotiations began. It is for several reasons.

As soon as the negotiations began, the Soviet Union began the move massive amounts of equipment to locations east of the Ural Mountains, outside the area of application of the treaty limitations. By their own count, the Soviets moved 57,300 pieces of treaty limited equipment, called TLE's, out of the area of application of the treaty since January 1989, and some before signature last November 19, but a portion of it after the treaty was signed, in direct violation of the treaty provisions and the protocol.

That has been the experience of arms control. Yet, we go back like lemmings to the sea. The Soviets are today in violation of the agreements that they undertook under this treaty.

The Secretary of State says, no matter, we can ignore them. Mr. President, we ignore them here, we ignored them in INF, we ignored them in SALT II, and we ignored them in SALT I and the ABM Treaty. And if they are of no significance to us. we will ignore them in START II, whether or not they are of significance to us.

That is going to be the basis upon which the Senator from New Hampshire and I wish to offer our amendment.

As soon as CFE negotiations began, there were massive amounts of Soviet equipment moved to locations east of the Ural Mountains, and outside of the area of the treaty limitations. Now what happened when those things went out of the treaty zone? It falsified the required declaration of equipment holdings in the treaty zone at signature on November 19. In addition, the Soviets did not include over 3,700 pieces of TLE equipment and claimed the equipment had been redesignated as naval infantry, coastal defense, or strategic forces units and was therefore not covered by the conventional forces treaty.

That was serious enough to attract our attention and that has been, in one way or another, short of resolved, brushed under the carpet.

Finally, the Soviets deliberately understated the total amount of the treaty-limited equipment in the zone on November 19 of this year, again to avoid destroying large numbers of equipment under the treaty. It could amount to as many as 18,000 pieces of equipment, according to some intelligence experts.

The Soviets have stated their data declaration reflected what they had intended to have in the zone at the time of the signature but they have just not been able to be in compliance. They then proceeded to continue to move the equipment out of the zone after the treaty was signed, in violation of the treaty itself.

Those items were supposed to be destroyed, were they not? So they understate them, and then say, we could not get around to destroying it. Instead of destroying them, they take them out of the zone, and that is militarily signicant.

So now that we see is that under the treaty, the Soviets will only have to destroy about 23,000 pieces of equipment instead of 100,000, including the naval, infantry, and coastal defense equipment. Even including the additional 14,500 older pieces of equipment east of the Urals, which the Soviets promised to destroy sometimes over the next several years, the total Soviet destruction requirement is left at half of the amount that was expected by the negotiators. Less than half, Mr. President. Yet, the negotiators, the administration, and the Secretary tell us that it was not military significant.

If it was not, one has only to add, why was it negotiated in the first place? If it was military insignificant, it is an irrelevant exercise is it not, even that we complete this treaty? If none of the numbers mean anything, there was no point in negotiating them. If there was a point in negotiating them, there is a point in seeing to it that they are complied with under some set of circumstances. But, no, we did not do that, because this is a political document and not a military document.

On the very day the treaty was signed, the Soviets submitted a false statement to all other signatories, not the United States by itself, but to all other signatories. While a deliberate understatement of holdings in the conventional categories limited by the CFE treaty may or may not be that significant, any discrepancy, I say again, in the data of a future declaration would certainly be a matter of grave concern.

What reason, may I ask, would the Soviets have to think there is any particular requirement that we might hold them to under anything they negotiated, if we are so quickly willing to forget these CFE violations?

Yet American government continues down this road, always pursuing the illusory dream that this time, with this treaty, we can finally reach utopia. In the immortal words of Dr. Johnson, our unflagging pursuit of arms control through such treaties represents "the triumph of hope over experience."

I don't intend to take the Senate's valuable time belaboring further details of the treaty. It is a complex document, full of arcane legalisms and convoluted matters of international law that could take hours to discuss fully. In any case, I believe the treaty to be largely irrelevant. Its fundamental purpose has always been to eliminate the massive imbalance in conventional forces between NATO and the Soviet bloc, and thereby reduce the possibility of a surprise attack or aggression against our European allies. But that goal has for the most part been accomplished by the strength and resolution of America and her allies, and by the march of recent history—not by CFE. The end of the Warsaw Pact and the collapse of the Soviet empire make a conventional war threat against Europe essentially bizarre.

Despite that fact, the administration is in great haste to have this treaty ratified. I cannot help but recall the words of French Gen. Pierre Bosquet, watching the gallant but foolish charge of the Light Brigade at Balaclava in 1854. "C'est magnifique, mais ce n'est pas la guerre," He said. "It is magnificant, but it is not war."

CFE may appear magnificent to the theologians and disciples of arms control, Mr. President, but it is no treaty. It is a form of magical incantation that we chant to soothe ourselves. It is an exercise in solipsism, something we do exclusively to and for ourselves, that has little relation to the objective world. As something we do simply to satisfy our own inscrutable inner longings, CFE is without seriousness. It is strictly a political document, a public relations confidence game. The Secretary of State has said as much when pleading for the haste to ratify not for our stature. When we should be leading, we are now eight. Has any Senator heard a more profoundly strategic concept of politics not policy.

If we were serious, Mr President, we would not approach the problem of conventional forces this way. For if reducing or eliminating weapons is so important, then why would we ignore the discrepancy in the accounting of treaty-limited equipment? The Soviet-reported TLE data have been shown by United States intelligence to be considerably—and consistently—understated. Were we serious, would we not want this matter resolved, prior to ratification? Of course but only if military considerations held at least equal sway to political ones.

The treaty's sponsors tell us Soviet violations are "militarily insignificant." Perhaps so, Mr. President. I repeat, there is little likelihood of a Soviet conventional attack on Western Europe. But while these discrepancies may be militarily insignificant, they are significant for what they reveal about the arms control process.

Mr. President, I am far more concerned about the process that brought us to this point than I am about the obvious deficiences in this treaty. CFE may well be largely irrelevant. But the flawed process that produced it, and our inability to change our behavior in the last quarter century, may well spawn other flawed treaties that do matter, treaties which may indeed have a profound impact on our security—START, for example.

CFE is further evidence of a bankrupt process, Mr. President. We have pursued arms control blindly and doggedly, the process has now become an end in itself. We have lost sight of its goal, of the national interests that we purport to serve by following the treaty road. We have totally confused means and ends. We have made sacred icons of arms treaties. We genuflect before the altar of the religion of arms control. But if this religion has failed, if SALT I, SALT II, and especially the ABM Treaty have fallen short of their promise and in fact have made the world less secure, then a false god is worshipped.

Mr. President, it troubles me that the White House is asking the Senate for a blank check in ratifying this treaty. There are major unresolved issues—the data discrepancy, the question of new states or successor states—that ought to be resolved before we ratify—if we are serious, that is.

The issue of successor states especially is no trivial matter. After all, with whom are we making this treaty? With the so-called Soviet Union, which no longer exists? With fifteen constituent Republics? With five Republics? Just trust us, says the Secretary of State—we will fix all that later.

I believe in the Constitution, and I strongly support the President's role in treaty-making and foreign policy. He is the Chief Executive, the Commander in Chief; his treaty prerogatives surpass those of the Senate. And this Senate's conduct is not so exemplary that I would want to see its treaty-making role elevated at the expense of the executive. But the President is setting a dangerous precedent in asking the Senate for an open-ended consent to the treaty. The President may indeed have the preeminent treaty-making prerogative, but I am sorry to say he—or more accurately his State Department—has exercised it badly.

I suspect some in the administration know this. The President's men are well aware that many critical issues in the treaty remain unresolved. Yet they demand adamantly that we ratify it simply on its promise that they will be resolved after that fact. They castigate those who want it delayed until the outstanding issues are settled. Mr. President, this is the behavior of embarrassed men, of timid men who want to rush this severely flawed treaty through the Senate before full public scrutiny reveals its weaknesses.

One might ask, Mr. President: since the treaty is not a document with a military rationale; and since, as I have already acknowledged, the threat of conventional war in Europe has largely faded anyway, why make such an issue over it? Why not let the administration have its political triumph, hollow though it may be? Why not give the acolytes of arms control another innocuous icon for their devotions?

The answer is simple, Mr. President. What is ultimately at stake here is not merely conventional arms in Europe, or the political fortunes of the administration, or the constitutional powers of the Senate. What is at stake is the truth.

If we ratify a CFE Treaty so manifestly deficient, one clearly negotiated in bad faith by the Soviets, one that dismisses, glosses over, or conceals so many unresolved issues, then I submit, Mr. President, the Senate is simply colluding in a lie to the American people.

(Mr. BRYAN assumed the Chair.)

Mr. WALLOP. Mr. President, as I have demonstrated, there are major unresolved issues in the CFE Treaty. These are issues of importance, if you believe that arms control treaties ought to have some relevance to armaments and arms control.

Mr. President, I guess I view the Secretary of State and the President as setting a dangerous precedent in asking the Senate for an open-ended consent to this treaty. There is a report, I point out, that is due on December 1 on Soviet compliance. The report could tell us of the nature of the threat that may be arrayed against us and the nature of the instability that could be caused by it. But we have decided to proceed and ignore that report.

So, I have no doubt but what the Senate will ratify the treaty. It always ratified arms control treaties. But I would say that treaties are not panacea to the problems of instability in the world. I shall be voting against the resolution and in doing so will be hoping to do more than just criticize. I truly do not relish the constant role of critic of arms control. But in speaking against this resolution let me assure my colleagues that a safer and more secure Europe is indeed possible, is indeed desirable, and could indeed be achieved, but not through this treaty.

It will never result from exercises in self-delusion and magical incantation. Peace and stability do not come if we focus merely on arms and ignore the deeper factors which breed conflict.

Mr. President, let me conclude by saying that arms do not drive nations to acts of aggression. Men do. Treaties control neither men nor arms. If the history of this century has taught us nothing else, it has taught us that they do not control arms.

Treaties control neither men nor arms. Democracy, Mr. President, and governments of laws can control men. When men can change laws enjoy liberty and personal property treaties are unnecessary and so too are arms. When the opposite exists free people arm themselves, but sadly, Mr. President, free people also believe the incantations of leaders who tell them they are safe, when indeed at times they are not and cannot be made safe by the mere expressions of treaties or hopes.

Mr. President, may I say that I thank my friend from New Hampshire and am a proud cosponsor of the condition of which he will shortly be the principal sponsor.

The PRESIDING OFFICER. Who yields time?

The Senator from New Hampshire [Mr. SMITH].

Mr. SMITH. Mr. President, I was somewhat taken aback by the rush to bring this treaty to the floor of the Senate, as was previously mentioned by my colleague from Wyoming. The constitutional role of the Senate in treaties is very clear with respect to advise and consent. And I resent efforts to usurp the Senates' prerogatives.

It took some 15 years to reach the culmination of this treaty, and it seems to me that we ought to be able to fully debate it here in the Senate without having to feel rushed within an abbreviated time limit.

Frankly, it was a struggle to get the opportunity to debate this treaty at all. There were many who did not want to debate it, which is something that I have a difficult time understanding. But he that as it may, we have entered an agreement here where we can debate the treaty for a few hours. But considering the significance of the accord and the constitutional responsibility that we have in the Senate I am somewhat puzzled, as a former teacher of the Constitution, as to why there would be so much reluctance on the part of many in the administration and some here in

the Senate to allow us to exercise that constitutional prerogative.

In any case I am for the opportunity to debate it, and believe the nation's interests are promoted by doing so.

I also intend to lay down an amendment on behalf of Senator WALLOP and myself, which I feel is very important.

Mr. President, I would point out at the beginning of my remarks, that I am not necessarily opposed to the CFE Treaty. What I am opposed to is rushing helter-skelter to judge this accord before we have considered all the information that we should have at our disposal.

Let me just comment generally on the treaty. It is a watershed event. It is an accord with 22 signatories and is something we sought for some 15 years through the MBFR negotiations, and the CFE talks. Without question, it will eliminate a fundamental cause of tension and instability in Europe.

Mr. President, this treaty will not only end Soviet conventional superiority in the European theater, I think it will reverse it.

But I think it is also important to point out that the treaty has been overtaken by events. In fact, you might compare the treaty and events in Europe to a horse race in which suddenly one horse moved out ahead of the other, that horse in this case being the unfolding of events, the falling of the Berlin Wall, and the rapid domino effect of the fall of communism.

It is interesting that years ago the domino theory was emphasized to explain how countries succumbed to communism. I do not know anyone who expected the domino theory to be applied to countries falling away from communism. That is what has happened, and it is certainly welcome.

But even before this treaty was signed, the Soviet Union was forced to begin withdrawing thousands of tanks, artillery pieces, and other armored weaponry from Eastern Europe.

This occurred in part because of Soviet unilateral reductions and in part because of bilateral agreements, with Hungary, Poland, Czechoslovakia, and Germany. However, I would also emphasize this was occurring because the Soviet defense establishment sought to avoid the destruction requirements of the CFE Treaty itself.

We do not know which of those three conditions was most important in the minds of the Soviet planners. But we do know that Soviet capabilities remain robust in any event.

This treaty will not require the Soviet Union to destroy some 100,000 pieces of equipment as administration officials predicted. More than half of this equipment has been moved out of the treaty zone and only a fraction of it will be destroyed.

Now some say "why dwell on the fact that the West was unable to require the destruction of Soviet forces retreating from Eastern Europe and from the cold war? Either way, the equipment is no longer there, so its not a threat." Well, the fact is that by removing the equipment, the Soviets substantially reduced their destruction obligation, which would allow them to reconstitute the threat rather easily in the future.

And what about verification? The treaty does provide on site inspection to confirm compliance. But as we know from experience, onsite inspection and verification has not been one of the bulwarks of Soviet cooperation.

We must insist on full verification of compliance because without it the treaty is useless.

Mr. President, I ask unanimous consent to print in the RECORD at the end of my remarks the additional views of Senators SMITH, WALLOP, and MACK concerning the CFE Treaty.

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

(See exhibit 1.)

Mr. SMITH. Mr. President, in spite of the worthwhile objectives of the treaty, I think our national interests would be best served by slowing this process down. I realize that many of my colleagues do not agree, but it is better to err on the side of caution. I see absolutely no reason, why this treaty has to be approved or ratified by the U.S. Senate within the next 2 or 3 days. If anybody has a good reason, I have not heard it. Let me be clear; that does not mean that I am opposed to the treaty. It means that I am opposed to ratifying the treaty before we have the information at hand that we need to make an informed judgment.

Mr. President, the basic premise of any arms accord should be to further the U.S. national security interests. That must be the primary objective. Yet, all too often, we end up ratifying treaties and perpetually binding ourselves to them when prudence would suggest that we do otherwise. This is certainly the case with the 1972 Anti-Ballistic Missile Treaty, which is basically an obsolete relic of the mutual assured destruction era, but continues to compel blind and unfailing adherence by the United States, even though it contradicts our national securities interests.

Against this backdrop, over the past several months I have worked very closely with my colleagues on the Armed Services Committee to examine the CFE Treaty and determine whether it advances our national security.

And while I have concluded that the treaty could, with the inclusion of certain conditions to advise and consent, promote our security interests, I believe that further clarification on a variety of issues is needed before the Senate discharges those constitutional prerogatives.

And again, I repeat, we have had to fight just to get a few hours to discuss those issues.

Mr. President, as my colleagues know, the CFE negotiations were an outgrowth of the largely unsuccessfully mutual and balanced force reduction talks of the 1970's and 1980's. Unlike the MBFR talks, which centered primarily on manpower reductions, the CFE negotiations targeted equipment holdings in the area between the Atlantic Ocean and Ural Mountains. The fundamental objective of the negotiations was to eliminate the massive disparity between NATO and Warsaw Pact force levels, and to reduce the threat of surprise attack or large-scale offensive action against Western Europe.

The treaty was signed by the 22 NATO and Warsaw Pact states on November 19, 1990. According to the terms of the treaty, each group of States is permitted to keep in the treaty area a maximum of 20,000 tanks, 30,000 armored combat vehicles, 20,000 artillery pieces, 6,800 combat aircraft, and 2,000 attack helicopters. Clearly, the reduction obligations of the Warsaw Pact, also known as the Group of Six, exceed those of the NATO Group of Six within the zone. Nonetheless, new issues have arisen which call into question the veracity of Soviet data, and inject great uncertainty into the legal, political, and military foundations of the treaty.

First, and perhaps foremost, it has become evident that the Soviets lied about the quantity of treaty limited equipment within the treaty zone. Although numerical estimates of unreported equipment differ among elements of our intelligence community, it is clear that a substantial quantity numbering in the thousands was not reported at the time of the treaty execution.

This intentional deception—and it was intentional—occurred after the Soviets had already conducted a massive transfer of some 57,000 pieces of equiment out of the treaty zone to avoid accountability. These actions substantially diminished the Soviet reduction obligations, and sent a clear message that the Soviets negotiated the CFE Treaty in bad faith.

Furthermore, Mr. President, following formal signing of the treaty, the Soviets recategorized three regular army divisions near the Baltic and Black Seas as naval infantry units for coastal defense. This reinterpretation by the Soviets represented a blatant attempt to exempt these forces from treaty ceilings. Although the United States and other states parties flatly rejected the Soviet action, incredibly, a compromise was struck which allowed the Soviet Union to withdraw nearly 50 percent of the equipment to territories out the treaty zones.

Frankly, that is an outrage. The United States should not have participated in a compromise on this matter. By doing so, we legitimized a flagrant violation rewarded the Soviets for reneging on a legally binding commitment.

What about the future? What are the implications for START and other treaties? What message have we sent the Soviets?

What we have told them is, "We don't have a problem with cheating. We are not going to make you answer for it. Go ahead, you will get away with it." That is a pretty sad satement of U.S. resolve.

Mr. President, a critical issue in our deliberations is the current status of the U.S.S.R., if it even still exists. The abortive August 1991 coup has triggered unprecedented political and military discord within the former Soviet Union. Amid rising nationalism and competing sovereignty claims, it is unclear what type of coalition will emerge and whether the Republics will, in fact, accede to the treaty. These are critical, yet unanswered questions.

Both Secretary Baker and Ambassador Woolsey have affirmed that treaty viability hinges on participation by the Republics, particularly the Ukraine, Russia, and Byelorussia. In fact, in a hearing before the Select Committee on Intelligence, when asked about the effect of nonparticipation by an independent Ukraine, Ambassador Woolsey stated: "It fundamentally would call into question the viability of the treaty * * *. The treaty won't work without the Ukraine in it." This is a very sobering statement, indeed.

If it will not work without the Ukraine, why do we not defer action until we know whether the Ukraine will participate in the treaty.

Why are we hastily moving to ratify the accord prior to the upcoming referendums on independence—in both the Ukraine and Byelorussia? It makes no sense.

I know there is pressure—pressure from the administration, and pressure from my colleagues in the Senate—but international law on this matter is highly ambiguous.

To say the least, there is no definitive precedent concerning the legal obligations of successor states, like Russia, Byelorussia, and the Ukraine. At last check, the administration had propounded three separate theories concerning the liabilities incurred by independent entities of a former state party.

Some within the administration believe ratification of the treaty by the U.S.S.R. would be binding on its Republics until they became independent states, which could happen either when the U.S.S.R. recognized their independence, as in the case of Baltics, or when the Republic in question met the requirements for statehood under international law.

However, it is not clear whether such seceding states would be obligated under international law to abide by CFE after they became independent if they did not indicate their intention to be bound. Some precedents support the view that a seceding state is entitled to a clean slate as matter of law while other precedents indicate that treaty obligations remain binding on such a state.

There are divergent interpretations, and they are not very clear.

The Vienna Convention on Secession of States, to which neither the United States nor the Soviet Union is a signatory or a party, takes the position that, as it was in former colonies, where a part of a state breaks away to form a new state, treaty relations continue and the new state does not have the option to pick and choose which treaties it will adhere to.

On the other hand, the third restatement on foreign relations law take the position that in such a situation a new state has the right to a clean slate, that is to decide which of the treaty obligations of its parent state it will accept and which it will not accept.

The administration has taken a view that the Baltic States are entitled to a clean slate. But in that case, the United States never recognized the forcible incorporation of the Baltic States into the Soviet Union in the first place.

The point being, Mr. President, there is absolutely no definitive precedent concerning the legal obligations of successor states. And that is, in itself, a reason why we ought to slow down, take a deep breath, and seek further clarification before we ratify.

The impression I get is that the administration is saying "Trust us, you ratify the treaty and we will work out the details."

Mr. President, I spent a lot of time teaching the Constitution. That is not how the process should work. That is not advise and consent.

On a great many issues, I am very confortable deferring to the administration. But in this case, the Senate's constitutional obligations are clear. And when we are dealing with constitutional obligations of advice and consent, rash action merely for appearance sake undermines the process and the product. It is irresponsible for us to ratify this accord without a clear understanding of exactly who is bound by the treaty and what their legal obligations are.

Moreover, I am concerned that in the wake of the Warsaw Pact dissolution, the bipolar structure of this treaty may actually jeopardize the long-term security interests of emerging East European democracies such as Poland and Czechoslovakia.

As my collegues know, many East European nations have expressed interest in affiliating with NATO. It is not inconceivable that in the future these nations may determine a need to augment their armed forces in response to unforeseen regional security threats. They may want to join NATO, as well.

However, within the existing bloc-to-bloc treaty structure, larger equipment holders such as the Russian Republic or some other former Soviet state system, could exercise a de facto veto over such augmentation by refusing to lower their own equipment allocations. This scenario benefits neither the West or the emerging East European democracies.

Mr. President, I am aware that the administration considers prompt ratification of CFE an urgent priority. Indeed, I have discussed it personally with Secretary Baker. But I have yet to hear a good reason why, other than for appearances, we ought to rush to ratify this treaty now.

On the contrary, there exist a variety of serious and compelling reasons for the Senate to defer consideration. And these involve national security, first; constitutional prerogative, second; and precedent, third. These are not simply appearances; but important issues of precedent, constitutional prerogative, and national security.

While the resolution of ratification reported out of the Foreign Relations Committee attempts to address these issues, in my opinion the recommendations fall short, far short. The national security interests of the United States and our NATO allies would best be served by resolving these issues prior to ratification, not after ratification.

Given present uncertainties in the legal, political, and military foundations of the treaty, the responsible course of action would be for the Senate to temporarily defer action until the various transformations have played out and data discrepancies have been resolved. To hastily rush this treaty through without the benefit of thoughtful debate and clarification of these issues would undermine the Senate's constitutional jurisdiction and, in my opinion, set a terrible, terrible precedent for future treaties.

Mr. President, I would like to say at this point, as I near conclusion of my remarks, that if there are no other Senators who wish to speak on my side, I will be happy to yield back my time. So I would serve notice if there are Senators who wish to speak, they may want to come to the floor. Otherwise it is my intention to yield back the time in deference to the Chair and to my colleagues, who might be otherwise inconvenienced on this Saturday afternoon.

Mr. President, in conclusion I want to reiterate the following points.

No. 1, the Soviets have blatantly lied—just as they have done in the past, about their equipment holdings from the very start.

No. 2, data discrepancies, about what equipment and weaponry they had in the treaty zone have yet to be resolved.

No. 3, the Soviet Union is dissolving. We do not even know who we signed the treaty with. We do not know who will accede the treaty in the future. Is it the Soviet Union? Or is it the Union

of sovereign States? Will Byelorussia? Will the Ukraine? Will Russia? How do you enforce a treaty when you do not know who the participants are? It is unclear what type of confederation will emerge and whether the individual republics will accede to the treaty.

No. 4, the administration has provided no definitive guidance on successor State obligations in international law, as I have already indicated. And until these issues are resolved, it would be irresponsible and dangerous for the Senate to act on this treaty.

Mr. President, I yield the floor.

EXHIBIT 1

ADDITIONAL VIEWS OF SENATORS SMITH, WALLOP, AND MACK CONCERNING THE CFE TREATY

We, as members of the Armed Services Committee, have reviewed the Treaty on Conventional Armed Forces in Europe (CFE), and share the view of our colleagues that, with the inclusion in the Resolution of Ratification of certain conditions to the Senate's advice and consent, the Treaty would promote U.S. national security interests. In our opinion, however, further clarification on a variety of issues is needed before the Senate discharges its constitutional prerogatives.

We recognize that the Administration considers prompt ratification of CFE an urgent priority. It is neither our wish nor intent to prevent timely disposition of this matter. However, the Warsaw Pact dissolution and subsequent disunion of the USSR are extraordinary transformations which have injected great uncertainty into the legal, political, and military foundations of the Treaty. We are concerned that precipitant consideration, prior to resolution of technical discrepancies, and ongoing political proceedings among the Group of Six, particularly the former Soviet Union, could severely undermine the Senate's province and contribution to the ratification process.

For instance, with respect to treaty limited equipment (TLE) within the ATTU zone, there exist significant disparities between U.S. intelligence estimates and the Soviet data declaration provided at the time of Treaty execution. Although numerical estimates of unreported TLE differ among elements of the intelligence community, there is consensus that some TLE, and quite possibly a substantial amount, was not reported. Under-reporting of TLE would significantly diminish Soviet reduction obligations under the Treaty, and could prove to be militarily significant. Yet, to our knowledge, this matter remains unresolved. In our opinion, ratifying CFE prior to resolution of data base discrepancies would imperil Treaty efficacy and set a dangerous precendent for consideration of the Strategic Arms Reduction (START) Treaty.

Furthermore, the abortive August 1991 coup has triggered unprecedented political and military discord within the former Soviet Union. Rising nationalism and sovereignty claims among the republics have eroded intenal symmetry, and shifted the power balance within the Group of Six. At present, it is unclear how these developments will transform the Soviet political and military framework, and whether the individual republics will, in fact, accede to the Treaty. Both Secretary Baker and Ambassador Woolsey have affirmed that Treaty viability hinges on participation by the republics, particularly Russia, Ukraine, and Belorussia. We share this view, and believe it would be premature for the United States to act on the Treaty prior to the impending referendums on independence in Ukraine and Belorussia.

Moreover, we are concerned that, in the wake of the Warsaw Pact dissolution, the bipolar structure of the Treaty may actually jeopardize the long term security interests of emerging East European democracies, such as Poland and Czechoslovakia. It merits note that many East European nations have expressed interest in affiliating with NATO. It is not inconceivable that, in the future, these nations may determine a need to augment their armed forces in response to unforeseen regional security threats. However, within the existing bloc-to-bloc Treaty structure, large TLE holders, such as the Russian republic or some other former Soviet state system, could exercise a de facto veto over such augmentations by refusing to lower their own equipment allocations. We believe this matter warrants consideration.

The fundamental objective of the Treaty has always been to eliminate the massive disparity between NATO and Warsaw Pact force levels, and to reduce the threat of surprise attack or large scale offensive action against Western Europe. This imperative has been largely accomplished, irrespective of CFE, through the demise of the Warsaw Pact and disunion of the USSR. Nonetheless, we believe that, with the inclusion of certain conditions, the Treaty would retain a degree of flexibility and efficacy necessary to promote U.S. and NATO security interests.

In our opinion, the national security interests of the United States, and our NATO allies, would be best served by resolving the aforementioned issues *prior* to ratification. While we understand the Administration's desire to secure prompt approval of the accord, it should be noted that formal transmittal and subsequent Senate action were unduely delayed because of Soviet Article III violations. Given present uncertainties regarding the legal, political, and military foundations of the Treaty, we recommend the Senate defer action until these questions are resolved. However, should the Senate elect to proceed with ratification at this time, we believe the suggested conditions of the Republican Armed Services Committee members should be wholly incorporated to condition Senate advise and consent.

MALCOLM WALLOP.
BOB SMITH.
CONNIE MACK.

The PRESIDING OFFICER. The Senator from Indiana [Mr. LUGAR] is recognized.

Mr. LUGAR. May I ask the distinguished Senator from New Hampshire whether I might have 25 minutes that have been allocated to him?

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

The PRESIDING OFFICER. The Senator from New Hampshire has 45 minutes.

Mr. SMITH. I yield 25 minutes to the Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 25 minutes.

Mr. LUGAR. Mr. President, I believe that the committee has discharged its responsibilities with respect to the CFE Treaty in a most commendable way.

We had a good series of hearings with administration witnesses and private citizens, General Galvin provided the committee with his insights on the military implications for NATO of the treaty, and General Powell did the same with respect to U.S. national security interests.

I thought that our hearings with members of the U.S. intelligence community, both open and closed, were particularly instructive. I particularly appreciated the way in which the intelligence community worked with Senators to sort out some of the problems associated with the data issue.

And last, I was most pleased with the way in which committee staff worked with individual Members and with the administration in developing appropriate language for the resolution of ratification. Ambassador Woolsey may have decided that it was easier to negotiate the treaty with 21 other nations than to work out acceptable language with the Senate on the resolution of ratification, but we appreciated his efforts on the side of the administration.

The way in which the committee has dealt with the CFE Treaty augurs well for timely but thorough consideration of the START Treaty during the next session of the Congress.

Most of the committee hearings on the CFE Treaty were held prior to the failed coup attempt in the Soviet Union in August. Since that time, what has been at issue is not the overwhelming merits of the treaty but rather its relevance. As we have witnessed the disintegration of the Soviet Union, the utility of the treaty regime as a predictable and stabilizing element in the newly emerging security order has become apparent.

But this treaty is also a living document, containing sufficient flexibility in its mechanisms to accommodate the changes that will accompany the sorting out process inside the U.S.S.R. Indeed, it is my hope that Senate consent to the ratification of this treaty will provide added incentive to the participants in the CFE 1-A talks as they seek to supplement treaty-mandated equipment limitations with personnel and military manpower limitations.

DATA DISCREPANCY ISSUE

Mr. President, I think it important that a record be established with respect to one of the more controversial issues that has arisen during consideration of the CFE Treaty.

It has been clear for months that the data discrepancy issue would be a thorn in our side as we considered the CFE Treaty. Of the three major postsignature issues, this one was given initially the least attention by the administration.

I agree that it constitutes a problem area. But I also believe that it is not ultimately resolvable, and certainly cannot be resolved through a condition on the resolution of ratification.

The data describing Soviet holdings of equipment in the zone, submitted by

the Soviet delegation on November 19, 1990, diverged significantly from United States intelligence estimates, raising questions both about our ability to monitor the treaty's provisions effectively and about some major Soviet cheating. The Soviets reported thousands of fewer items of equipment in the zone of application than our estimates would lead us to expect, and thus the amount of equipment that they will have to destroy in order to reach treaty-mandated levels was also lower than we expected. In addition, we discovered undeclared equipment at several sites.

The intelligence community experienced great difficulty during the fall of 1990 in estimating accurately how much Soviet equipment was in the zone. The huge amount of equipment moved by the Soviets east of the Urals prior to treaty signature accounts for much of the discrepancy. As of mid-1988, United States estimates roughly matched what the Soviets acknowledged they had at the time. By early 1989, the Soviet unilateral force reductions and withdrawals from Central Europe had begun. By early 1990, the pace and size of the Soviet withdrawal of equipment from the zone increased to the point that the intelligence community, while recognizing the scope and direction of the Soviet effort, was unable to identify all of the units in the treaty zone from which equipment was being withdrawn. Richard Kerr, Deputy Director of the Central Intelligence Agency, admitted in testimony that the intelligence community essentially lost its place and was unable to keep up the data base. A thorough review of all the available evidence since treaty signature has narrowed the gap significantly.

Some fear that there may have been thousands of pieces of equipment that the Soviets did not declare and may have left in the zone illegally to avoid destroying them. But if there were a substantial amount of undeclared equipment in the zone, most of it has been withdrawn or is being destroyed. Though there are a number of smoking guns we have raised with the Soviets, we have little meaningful evidence to back up the bulk of our suspicions. For this reason, the problem cannot be completely resolved.

Deputy Director Kerr testified that the intelligence community believes that the figures submitted by the Soviets on November 19, 1990, reflect what they intended to have in the zone when the treaty entered into force, if not before. Thus, the intelligence community believes that the Soviets were not necessarily trying to violate the treaty in order to avoid their destruction liability, but simply failed operationally to carry out by treaty signature all of the withdrawals or destruction of equipment that they intended. Kerr characterized Soviet failure to declare all of their equipment in the zone at treaty signature as a technical violation.

There is a fundamental philosophical disagreement about whether most of the discrepancy should be characterized as undeclared equipment. Most administration experts believe that, while we can legitimately continue to press the Soviets for full resolution of our concerns, for the most part we cannot prove that the Soviet declaration is wrong. Others, however, place the burden of proof on the Soviets. They argue that the United States position should be that the Soviets failed to declare these thousands of pieces of equipment unless they, the Soviets, prove that the equipment was not in the zone at treaty signature.

Moreover, there is a tendency to confuse the nature and basis of our estimates of Soviet equipment with those of the Soviet declaration of data. Intelligence estimates and Soviet data declarations are apples and oranges. In an ideal world, they would be identical. But in the real world, there will inevitably be discrepancies. For example, the intelligence community's estimate in the fall of 1990 was not a snapshot of the zone on the date of signature. But that is precisely what the Soviet data declaration was supposed to have been. An estimate, by definition, uses incomplete information and analytical assumptions to develop a model of what the force should look like—it has never been possible to precisely count and document every piece of equipment.

When it signed the treaty, the administration believed that, to meaningfully affect the strategic balance, there would have to be Soviet cheating on a huge scale, which could be detected. But, as a political matter, the view that large-scale Soviet cheating could be detected was drawn into question as a result of the data discrepancy issue.

The simple response is that we can monitor the treaty effectively. First, we will be monitoring not primarily pieces of equipment, but military significant change in the zone. The standard of military significance focuses on fighting force. Equipment by itself is not a direct military threat. It must be part of cohesive units of trained personnel and a large amount of support equipment. This factor makes significant change easier to detect and increases warning time.

In addition, when the treaty is implemented, we and our allies can use the tools provided by the treaty—on-site inspection and notifications—to enhance greatly our monitoring capability. We will be able to check out our estimates by going to specific sites for a closeup look, and we will be able to compare our estimates with what the Soviets tell us about their forces. The Soviets will be less likely to falsify their declarations intentionally because of the fear of being discovered through on-site inspections or other means. But on-site inspections can only be undertaken once the treaty is implemented.

The intelligence problem behind the data discrepancy issue was likely unique. The intelligence community has learned from its errors; the treaty will improve our monitoring capability greatly; and the risk of a recurrence of the problem should be virtually eliminated.

When the treaty is implemented, the intelligence community may also get a better grip on the question of equipment illegally in the zone. But since so much of the equipment has been removed from the zone or destroyed, we are unlikely to ever get a true picture of Soviet holdings in the zone at treaty signature.

I discussed this issue during markup of the treaty before the Senate Foreign Relations Committee. Subsequent to those remarks, the new Director of the CIA, Bob Gates, corresponded with me in order to restate the intelligence community's view on the so-called data discrepancy issue.

I ask unanimous consent that Director Gates' letter to me be printed in the RECORD.

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

THE DIRECTOR OF CENTRAL INTELLIGENCE,
Washington, DC, November 21, 1991.

Hon. RICHARD G. LUGAR,
Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR SENATOR LUGAR: As the Senate considers the CFE Treaty, I would like to restate the intelligence community's view of the data discrepancy issue. The Foreign Relations Committee heard testimony on this subject from Acting DCI Kerr in July of this year. It was also addressed in closed session before the Senate Select Committee on Intelligence and is incorporated in their report to the Foreign Relations Committee. Let me say at the outset, I believe your statement during the Foreign Relations Committee's November 18 consideration of the treaty captures the essentials of this issue.

The intelligence community believes the figures provided by the Soviet Union on November 19, 1990 reflect the amount of treaty-limited equipment they intended to have in the Atlantic-to-the-Urals zone—if not on or shortly after treaty signature, certainly by the time the agreement entered into force. As you know from the testimony of intelligence community witnesses, prior to treaty signature the Soviets embarked on a massive reduction program, including both destruction of equipment at sites within the treaty zone and removal of equipment from the zone to locations east of the Urals.

Our evidence clearly shows they failed to meet the goals of that ambitious effort. We have unambiguous evidence of the presence in the zone on the treaty signature date of roughly 1,500 pieces of treaty-limited ground force equipment and combat aircraft which were not included in the Soviet data declaration. This was mainly older model equipment, stored in the open, and in the weeks and months following treaty signature we saw much of it in the process of being destroyed.

When challenged by United States and NATO representatives to explain these specific discrepancies, the Soviets have acknowledged the fact that this equipment was still in the zone at the time of signature, but claimed it was no longer in service and, in effect, was derelict at the time the treaty was signed. This is generally consistent with our evidence, although the Soviets did still have an obligation to report it.

There is substantial circumstantial evidence that there were up to a few thousand additional unreported pieces of equipment still in the zone at treaty signature. Some of these were in the process of being destroyed, and others appear to have been part of the amount moved to the east but which did not clear the zone until shortly after treaty signature. The actual amount of late shipments may have been higher, but evidence is lacking.

We think the pattern of evidence for all of this is more indicative of a failure to fully implement the destruction and shipment plans on schedule than of a deliberate effort to deceive. Nearly all of the activities I have described were carried out in the open with no discernible efforts at concealment or deception.

As you are aware, there was also—at the time of signature—a sizeable discrepancy between the intelligence community's most recent detailed estimates of the numbers and locations of Soviet equipment in the treaty zone and the data declared by the Soviets. The intelligence community had anticipated that at least some such discrepancy would occur as a result of the turbulence and dislocation produced by the U.S.S.R.'s pretreaty reduction efforts. For example, while we were able early in the process to detect and assess the general order of magnitude of the movement east of the Urals, there was an unavoidable time lag in our ability to identify and confirm the sites inside the treaty zone from which the equipment had been drawn.

A detailed review of the sites at which the Soviet declaration showed difference from what had been held in the earlier intelligence estimate was able to turn up at least some evidence to support the Soviet claims for about half of the differences. For the remainder, the available evidence could neither support nor disprove the Soviet declaration.

Continuing collection and analysis has enable us to confirm that the bulk of the equipment withdrawals from the treaty had in fact occurred within 1 and 2 months of the treaty signature date. But whether they had actually been completed by the treaty signature date is something we cannot confirm or refute. Given the nature of the circumstances under which the Soviet drawdown occurred, it is unlikely that we will obtain evidence to narrow the time frame any further.

If I may be of any further assistance in meeting your needs for information regarding the CFE treaty, please let me know.

Sincerely,

ROBERT M. GATES,
Director of Central Intelligence.

Mr. LUGAR. Let me touch on the highlights of the Gates' letter.

The Intelligence Community believes the figures provided by the Soviet Union on November 19, 1990, reflect the amount of treaty-limited equipment they intended to have in the Atlantic-to-the-Urals zone—if not on, then shortly after treaty signature, and certainly by the time the agreement entered into force. Prior to treaty signature, the Soviets embarked on a massive reduction program, including both destruction of equipment at sites within the treaty zone and removal of equipment from the zone to locations east of the Urals.

Director Gates writes:

Our evidence clearly shows they failed to meet the goals of that ambitious effort. We have unambiguous evidence of the presence in the zone on the treaty signature date of roughly 1500 pieces of treaty limited ground force equipment and combat aircraft which were not included in the Soviet data declaration. This was mainly older model equipment, stored in the open—and in the weeks and months following treaty signature, we saw much of it in the process of being destroyed.

Mr. President, when challenged by United States and NATO representatives to explain these specific discrepancies, the Soviets have acknowledged the fact that this equipment was still in the zone at the time of signature, but claimed it was no longer in service and, in effect, was derelict at the time the treaty was signed. This is generally consistent with the evidence of the United States intelligence community, although the Soviets did still have an obligation to report it.

Mr. President, there is also substantial circumstantial evidence that there were up to a few thousand additional unreported pieces of equipment still in the zone at treaty signature. Some of these were in the process of being destroyed, and others appear to have been part of the amount moved to the east but which did not clear the zone until shortly after treaty signature. The actual amount of late shipments may have been higher, but evidence is lacking.

On this point, Director Gates' conclusion is instructive:

We think the pattern of evidence for all of this is more indicative of a failure to fully implement the destruction and shipment plans on schedule than of a deliberate effort to deceive. Nearly all of the activities I have described were carried out in the open, with no discernible efforts at concealment or deception.

Mr. President, there was also—at the time of signature—a sizable discrepancy between the intelligence community's most recent detailed estimates of the numbers and locations of Soviet equipment in the treaty zone and the data declared by the Soviets. The intelligence community had anticipated that at least some such discrepancy would occur as a result of the turbulence and dislocation produced by the U.S.S.R.'s pretreaty reduction efforts. For example, while the intelligence community was able early in the process to detect and assess the general order of magnitude of the movement east of the Urals, there was an unavoidable time lag in the intelligence community's ability to identify and confirm the sites inside the treaty zone from which the equipment had been drawn.

A detailed review of the sites at which the Soviet declaration showed differences from what had been held in the earlier intelligence estimate was able to turn up at least some evidence to support the Soviet claims for about half of the difference. For the remainder, the available evidence could neither support nor disprove the Soviet declaration.

Director Gates' conclusion bears importantly on an amendment proposed for consideration in the minority part of the additional views of the Senate Armed Services Committee report to the Senate Foreign Relations Committee, Director Gates writes:

Continuing collection and analysis has enabled us to confirm that the bulk of the equipment withdrawals from the treaty (zone) had in fact occurred within 1 or 2 months of the treaty signature date. But whether they had actually been completed by the treaty signature date is something we cannot confirm or refute. Given the nature of the circumstances under which the Soviet drawdown occurred, it is unlikely that we will obtain evidence to narrow the time frame any further.

Mr. President, let me reiterate my earlier conclusion in a most succinct way: The data discrepancy issue is a product of sloppy execution on the part of the Soviet Union rather than a case of willful misconduct. When challenged by United States negotiators, the Soviets admitted that they blew it, both operationally with regard to the withdrawal and destruction of equipment and procedurally with respect to the reporting obligations concerning derelict equipment.

I think it important that the Foreign Relations Committee called attention to the problem in the resolution of ratification reported out of committee. And I think that the language contained in the resolution of ratification recommended by the committee does so in a firm yet reasonable way.

But, Mr. President, attempts to craft tougher, more stringent language in condition form designed to solve the data discrepancy issue—an issue that is unresolvable—could only endanger the treaty, a tready that, by all accounts, is overwhelmingly in the interest of the United States.

Mr. President, I thank the Chair and I thank the distinguished Senator from New Hampshire for giving me this time.

Mr. PELL. Mr. President, I would like to offer a few general comments.

The CFE Treaty will end the substantial numerical disparity which has existed for decades between East and West. That balancing of forces, taken together with the sovereignty changes in Eastern Europe and the decisions by the two leaders in September and October to dramatically reduce tactical nuclear weapons will mean that we and

our allies and former adversaries can cooperate, rather than confront, and seek mutual solutions, rather than devoting so much energy and money dealing with the military threat in Europe has essentially evaporated.

In this new situation massive nuclear arsenals as the guarantors of peace and stability are much more widely perceived as unnecessary. While we must retain reasonable defenses, we can take advantage of the reductions required in START and look ahead to opportunities to reduce the arsenals to a small fraction of their present size and to bring about other arms control in the period ahead.

News reports constantly remind us that there are serious threats to peace in the world, many of them growing. Specific and urgent concerns include the continual spread of weapons of mass destruction and the means to deliver them.

Saddam Hussein of Iraq has been hurt, but he remains on the scene. There will be other Saddam Husseins in the future. Malevolent and meretricious leaders will be scheming to threaten and bully others. Recent arms control successes, such as the START and CFE Treaties will help, as will such steps on recently enacted legislation establishing sanctions on nations that use chemical and biological weapons and on companies that engage in illicit sales supporting chemical and biological weapons programs. We must be vigilant and steadfast in our efforts.

Mr. President, the CFE Treaty is an important part of the continuum of arms control. The CFE Treaty codifies the destruction of a very considerable amount of conventional military equipment, some 37,000 Soviet pieces of treaty-limited equipment, called TLE, and some 10,000 Eastern European TLE and 10,000 German Democratic Republic TLE. This gives a total of almost 60,000 TLE that will be destroyed pursuant to the CFE Treaty. In addititon, as a result of the treaty, the Soviets have moved massive amounts of equipment from the Atlantic-to-the-Urals region, reducing the Soviet levels of equipment from about 150,000 in January 1989 to the treaty-limited level of 53,000 in 1995. This reduction of some 100,000 pieces of Soviet equipment in the ATTU region is greater than the total of 76,000 possessed by NATO. By contrast, NATO will destroy only about 2,000 TLE, without counting the equipment of the former German Democratic Republic. The United States will transfer, in a process called cascading, about 3,000 TLE to other NATO nations, thus accomplishing worthwhile reductions and allowing our allies to improve qualitatively within the ceilings.

Because of the shifts in military equipment, the time NATO would have to react to a major Soviet buildup has been greatly increased, from a matter of days or weeks to a year or more. The minimum distance that Soviet Forces would need to travel from its western border to Berlin will now be about 500 miles. The distance to Berlin for the large amount of TLE east of the Urals will now be about 2,500 miles, the distance from Washington, DC, to California.

The treaty also opens up the most industrialized portions of Soviet territory to an extensive verification regime of routine and challenge inspections. The transparency created through data declarations, notifications and on-site inspections, along with U.S. national technical means, should greatly enhance confidence in the ability to determine compliance to the CFE.

I have in my hand the Soviet military declaration which contains the unit-by-unit structure, and the listing of the locations of each of the 73,000 TLE that the Soviets declared. This is a significant document. When the Chairman of the Joint Chiefs of Staff, Gen. Colin Powell, testified before the committee, he stated:

> I can tell you that as Commander of the V Corps in Germany 5 years ago, I would have paid a fortune for such a document such as this which tells me where those forces are. But even more importantly, with this information, we are now also, with the treaty, able to visit many of these units, look at much of the equipment, and to verify on site throughout this entire region, the accuracy of the information being provided to us.

Yes, this is an amazing document, none of us could have predicted that this stabilizing information would be so accessible to the military leaders of all the 22 CFE nations.

In the remaining time allotted to me, I would like to address three issues. Two of these are addressed in the resolution of ratification, namely the data issue and the issue of the SS-23's from the INF Treaty. In addition, I would like to discuss the verifiability of the treaty.

SOVIET TLE MOVED FROM THE ATTU AFTER NOVEMBER 19, 1990

There has been a considerable discussion about the Soviet equipment that left the ATTU region after November 19, 1990. Administration witnesses testified before the committee that there was a great deal of confusion as the Soviets moved some 70,000 TLE from the ATTU region, a force about the size of all of NATO's holdings. The administration has described the movement of this equipment as an Oklahoma land rush.

Richard Kerr, the Acting Director of Central Intelligence testified:

> The massive shift took place so rapidly that we were unable to identify all the units in the treaty zone from which the equipment was withdrawn. * * * At this time, our best judgment is that the Soviet November 19 figures reflected what they intended to have in the zone when the treaty entered into force—if not before. * * * We have confirmed that some of the weapons being moved east of the Urals did not arrive at their destination until a month after the date of signature.

The very able CFE negotiator, Ambassador James Woolsey testified that about 4,000 to 5,000 Soviet TLE above those declared were probably in the ATTU on November 19. About 1,500 of these were older aircraft, such as Mig-21's and Beagle bombers, or older T-10 tanks (built in about 1945) and the Soviets may well have been unaware of their actual locations. In several cases, the United States had to tell the Soviets where to look for these TLE. A further undeclared 3,000 or so TLE may also have been in the treaty zone on November 19, 1990, but this can not actually be proven. On June 14, 1990, the Soviets made a politically binding, unilateral statement that stated that they would destroy an additional 14,500 TLE of those that had been transferred to east of the Urals. Thus, the Soviets will have balanced the violation, of the equipment departing after November 19, 1990, with the unilateral destruction of 14,500 TLE, plus the destruction of 3,738 TLE pursuant to the article III dispute. No one is exactly sure that all the extra 4,000 to 5,000 TLE were actually in the ATTU on November 19, 1990. This is the best estimate made by the Government, based on reasonably good evidence.

It has been charged that substantially larger amounts of TLE than were declared might have been in the ATTU on November 19, 1990. There is no compelling evidence that one can confirm or negate such a charge. Gen. John Galvin, Supreme Allied Commander, Europe stated:

> In fact, out of the 57,000 plus 10,000 plus 7,000, there are about 18,000 pieces of equipment that we have not been able to specifically note. Part of that is because there is covered storage and we are not able to look into buildings, and part of it is simply that that is a great deal of equipment scattered over the whole Soviet Union, and it is hard to say what is what. This is, of course, a very strong argument for the treaty itself and for the verification regime that we will work with the treaty. The Soviets moved that equipment there, and I have asked differed Soviet leaders, such as General Moiseyev, why. His answer has been, it is a question of a management problem that we have had in trying to figure out what equipment we are going to need for a reorganized, smaller Soviet military.

It is the opinion of all adminstration experts that we shall problably never really know the answer on the possibility of a violation of an undeclared total of an additional 18,000 TLE in the ATTU on November 19. The intelligence community simply could not keep up with the flow of equipment, and they cannot confirm or negate the charge of a violation of an additional 18,000 TLE. On-site inspections will be able to tell us what is in the ATTU after the treay enters into force, but they will not tell us when these 18,000 TLE left the zone. Because this issue

involves much detail, we cannot really address the facts here. However, for the record, I am attaching some tables of data on the Soviet declarations. In addition, a classified appendix to the committee report is available for Senators to read in S-407.

VERIFIABILITY

All of the intelligence agencies testified in closed session on the ability of the monitoring regime to determine if the other State Parties are in compliance with the provisions of the CFE Treaty. In all cases, the administration witnesses stated that the CFE Treaty was verifiable.

When the executive branch testified that the CFE Treaty was effectively verifiable and that the ratification of the CFE Treaty was in the national interest, they took into account a number of factors: The definition of a militarily significant violation of the CFE Treaty as determined by the Joint Chiefs of Staff; the ability to monitor and detect such a violation; and the time it would take NATO and the United States to respond effectively to the additional militarily threat. In the closed hearings and in classified documents, the executive branch has explained in some detail their reasoning behind the finding that the CFE Treaty is verifiable. The classified appendix to the CFE Report (Ex. Rept. 102-22) contains a staff analysis on these issues.

Various circumvention situations and scenarios were examined in terms of military significance, monitorability, and timely warning. When the Senate votes on the CFE Treaty, they will also be asked to make a collective judgment on all of these issues together. These judgments on verifiability of the CFE Treaty by the executive branch and the Committee on Foreign Relations were not made on the basis of any one provision as the basis for successful monitoring and verification. Rather, each provision is seen as part of an interlocking web of constraints that are designed either to deter cheating through the chance of detection, through the expense of clandestine facilities, and to make its timely detection likely.

The Senate Select Intelligence Committee has also examined the verifiability of the CFE Treaty. In a letter to the committee of November 18, the chairman, the Senator from Oklahoma [Mr. BOREN] and the ranking minority member, the Senator from Alaska [Mr. MURKOWSKI] stated:

> We also believe that U.S. intelligence is justified in having high confidence that it could detect any violation of the treaty in which the Soviets attempted to move large quantities of TLE (i.e., thousands of pieces of equipment) as whole divisions, combat wings, or partial units back into the ATTU in a short period of time—weeks to months. U.S. intelligence would detect such cheating well before it reached the levels identified by the Joint Staff as militarily significant. Similarly, the formation of new combat ready divisions within the ATTU from covert production facilities would also be detected before it reached militarily significant levels by the Joint Staff's criteria.

THE INF EXPERIENCE

Because the committee added a declaration on the SS-23 missiles covered by the Intermediate Nuclear Forces [INF] Treaty, I would like to add some background information. The INF experience with on-site inspections has generally been regarded as favorable. The two sides have removed a total of some 1,846 Soviet INF missiles and 846 U.S. INF missiles. Because 654 of the Soviet missiles were the three-warhead SS-20's, the number of removed warheads for the Soviets was far greater for the Soviets with 3,154 warheads than for the United States with 846 warheads.

In response to a question for the record by the committee, the On-Site Inspection Agency stated that in fewer than 1 percent of the 653 INF inspections were there any significant problems. On July 25, Gen. Robert Parker, the Director of the On-Site Inspection Agency testified that "the Soviets have been very cooperative in ensuring that the aspects of the [INF] treaty have been implemented."

On the other hand, one serious problem did take place during the 3-year destruction period. The Soviets had three undeclared programs of cooperation [POC] with three of the former Warsaw Pact nations, which contained 72 SS-23 missiles. Unfortunately, the Reagan administration steered clear of discussions in the negotiation that would have put the Soviets on the spot with regard to any such missile transfers to Eastern nations then allied with them in order to not to bring the issue of West German Pershing I missiles into the negotiations. As a result, the German missiles were handled separately in tandem with INF, and the missiles in the hands of Soviet allies were not dealt with at all in INF.

It is not known exactly how high in the Soviet bureaucracy the issue on the SS-23 programs of cooperation rose in the Soviet policy process. Because of the great confusion of the late 1980's in the Soviet Union, it is possible that the highest level of Soviet leaders did not focus on the already-transferred SS-23 missiles in the three former Warsaw Pact nations. On balance, because the INF Treaty helped pave the way for other Soviet reductions and because of the relative small size of the undeclared SS-23 force, the problem should be put into context. When one does this calculation, it is clear the United States bears a certain responsibility for not being sufficiently alert to this possible problem, that the Soviet Union should have fully disclosed the presence of the SS-23's on the soil of these nations, and that it is a problem that can be resolved.

Mr. President, I ask unanimous consent the material to which I referred be printed in the RECORD.

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

TABULAR DATA ON TLE REMOVED FROM THE ATTU

TABLE 1.—Soviet Statement on Unilateral Reduction of Ground TLE from the ATTU

	Into storage	To units	Total
Tanks	8,400	8,000	16,400
ACV's	4,700	11,200	15,900
Arty	23,400	1,600	25,000
Total	36,500	20,800	57,300

Table 2.—Soviet TLE removed from the ATTU. Column (1) is the Soviet TLE in the ATTU in July 1988, numbers agreed to by both sides; (2) is the November 19, 1990 Soviet declaration, as amended in February 1991 of TLE in the ATTU; (3) is the Soviet TLE moved from the ATTU prior to November 19, 1990, obtained from (1) minus (2); (4) is the June 1991 Soviet statement of the movement of 57,300 to east of the Urals; and (5) is "other," the sum of the statements of 10,900 destroyed in the ATTU or exported from the ATTU, and 8,900 MT-LB APCs converted to "Look-Alikes;" and (6) is the sum of "June 1991" and "Other."

	July 1988	November 1990	Early move
Tanks	41,580	20,725	20,855
ACV's	57,800	29,890	27,910
Artillery	42,400	13,938	28,462
A/C	9,400	6,611	2,789
Helos	1,150	1,481	0
Total	152,330	72,645	79,011

	June 1991	Other	Total
Tanks	16,400	4,100	20,500
ACV's	15,900	12,300	28,200
Artillery	25,000	3,400	28,400
A/C		2,789	2,789
Helos			0
Total	57,300	22,589	79,889

Table 3.—Total TLE Removed from the ATTU: The total amount of the five kinds of Soviet TLE taken out of the ATTU between January 1989 and 1995, after destruction under CFE is completed, is a total of the following entries:

TLE moved/destroyed/converted from ATTU before November 1990	80,000
TLE to be reduced by CFE	19,689
TLE to be destroyed pursuant to Article III dispute	3,738
Total Soviet TLE moved out of ATTU, destroyed, or converted	103,000

In addition, the other members of the WTO will also reduce their TLE by the following amount:

TLE reductions for former WTO members, B/C/H/P/R	10,149
TLE reductions for the German Democratic Republic	10,675
Total TLE from the six former non-Soviet WTO members	21,000

Combining the reduction numbers for the Soviets with those of the other six former WTO members, we obtain:

Soviet TLE moved out of ATTU, destroyed, or converted	103,000

Six former non-Soviet WTO members TLE destroyed	21,000
Total WTO TLE moved out of ATTU, destroyed, or converted	124,000
TABLE 4.—TLE To be reduced	
Soviet CFE declarations	19,689
June 1991 Article III declaration	3,738
Soviet declaration of June 1991, E of Urals	14,500
Soviet destruction/export prior to November 1990	10,900
Soviet conversion of MT-LB's to "Look-Alikes"	8,900
Total Soviet TLE destroyed or converted	57,700

To this amount, we will now add the TLE of the six other former WTO members:

B/C/H/P/R former WTO nations	10,139
GDR equipment now owned by FRG	10,675
Total TLE destroyed by non-Soviet WTO nations	21,000

Combining the TLE that will be destroyed or converted, we obtain: 57,700 + 21,000 = 79,000 destroyed (or converted).

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 1433

Mr. SMITH. Mr. President, under the unanimous-consent agreement, I at this point would like to offer an amendment on behalf of myself and Senator WALLOP. I send it to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], for himself and Mr. WALLOP, proposes an amendment numbered 1433.

Add after Condition (a)(5)(C), the following condition:

"(6) U.S. OBLIGATION TO THE TERMS OF THE TREATY—The United States shall not be bound by the terms of the Treaty unless and until the Congress has received, pursuant to public law 99-145, the President's Soviet Noncompliance with Arms Control Agreement report and the President has certified through the report that the Soviet Union is not in violation or probable violation of the terms of the CFE Treaty and protocols thereto.".

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DOLE. Mr. President, just a little over a year ago, on November 19, 1990, the Conventional Forces in Europe Treaty was signed by 22 nations in Paris. In the 12 months since signature, a great deal has occurred in the world, particularly in the Soviet Union. Inevitably these events have colored the way we view this treaty today.

A year ago, this treaty was seen as a tremendous accomplishment. Yet, today, in the aftermath of the August Soviet coup, the treaty somehow seems anticlimatic. Some of my colleagues have even suggested that the treaty is irrelevant.

But, I would argue that the CFE Treaty is not irrelevant. And, I don't think that we should minimize the achievement of this agreement. When we began the CFE negotiations in March 1989, we had hopes of positive changes in the Soviet Union, but we could not and did not predict the dramatic developments in Eastern Europe and the Soviet Union that were to follow. I would like to remind my colleagues—those who with the aid of hindsight have downplayed the significance of this treaty—that when this treaty was being negotiated, our proposed terms seemed radical, almost unachievable.

Yet, today before us, we have a treaty which will limit the Soviet Union to 13,300 tanks in the Atlantic to Urals area, when at one time it had more than three times that amount. This treaty will also limit the Soviets to no more than 13,700 pieces of artillery, and 20,000 armored combat vehicles.

Our negotiator, Ambassador Jim Woolsey, did a superb job of negotiating a verifiable treaty which will codify the elimination of the overwhelming Soviet conventional advantage in Europe. He managed to forge an agreement that is characterized not only by strict limits on numbers of equipment, but also on deployment. The geographic zones established by this treaty will reenforce the numerical limitations on conventional forces. Moreover, Soviet reductions will be achieved through the verifiable destruction of equipment in the treaty zone. This is not a treaty which moves the threat—it eliminates the threat.

And, let us not forget that while it is hard enough negotiating such a complex treaty just with the Soviets, Ambassador Woolsey had another 20 nations to negotiate with. Sure, some of them are our allies, but negotiating with your friends can at times be as tough as negotiating with your adversaries.

In my view, the CFE Treaty establishes a stable security frame work in Europe at a time when the situation in parts of Eastern Europe, as well as the Soviet Union are very uncertain. For the first time in over four decades, the West will no longer need to prepare to defend against a surprise conventional attack on Western Europe.

While I believe that the CFE Treaty will contribute positively to our Nation's security, I recognize that it has its flaws and will not necessarily accommodate, without significant changes, potential future developments in the Soviet Union.

As such, I commend the Committee on Foreign Relations for including in the resolution of ratification a condition which addresses the potential for new states on the territory of the Soviet Union. I believe we all recognize that this is a very real possibility, and I certainly appreciate the action they take. I think we all recognize that there is a very real possibility that the Soviet Union, with whom this treaty was negotiated, may look very different in the future and may indeed be dissolved into a number of independent states. Condition No. 5, as crafted by the Foreign Relations Committee, takes this possibility into account and preserves the Senate's constitutional role in the treatymaking process.

I would like to commend the distinguished chairman of the European Subcommittee, Senator BIDEN, the distinguished ranking Republican on the Foreign Relations Committee, Senator HELMS, and the distinguished chairman, Senator PELL, for their efforts in drafting the conditions that are part of this resolution of ratification. I know that they and their staffs worked hard to incorporate the views of other Senators, as well as the administration.

I also want to commend the work done by the Armed Services and Intelligence Committees. Both committees held hearings which explored, in detail, the potential impact of changes in the Soviet Union on the CFE Treaty.

I think that all of my colleagues support the conditioning of Senate advice and consent to the treaty on the understanding that the June 14, 1991, side agreement has the same legal force as the treaty itself, and that actions contrary to that and other Soviet statements will be considered inconsistent with the CFE Treaty.

While I understand that the administration, and Secretary Baker, in particular, worked hard to resolve the interpretation dispute with the Soviets regarding article III of the treaty, as well as the problem of Soviet movement of equipment east of the Urals, I am uncomfortable with the increasing trend of resolving fundamental treaty matters via statements or agreements that are not part of the treaty, and thus do not require the advice and consent of the Senate. In my view, these matters should be taken up within the confines of the treaty—in other words as an amendment or protocol to the treaty.

Another area of serious concern to me is the question of discrepancy in Soviet data. In my view, we must have confidence in data submitted by the Soviets in accordance with arms control agreements or we will not be able to have confidence in the integrity of that agreement.

Prior to treaty signature, the Soviets moved thousands of pieces of equipment east of the Urals. However, according to the Director of Central Intelligence, Robert Gates, there is substantial circumstantial evidence that

there were indeed several thousand unreported pieces of equipment in the zone at the time of treaty signature. But, his analysis is that this was, "indicative of a failure to fully implement the destruction and shipment plans on schedule" rather than a "deliberate effort to deceive," since Soviet equipment movements were carried out in the open. He notes also that the intelligence community had anticipated that at least some discrepancies would occur as a result of the turbulence and dislocation that resulted from this effort to reduce equipment in the zone prior to treaty signature.

The bottom line, according to Mr. Gates, is that although we could confirm that the bulk of equipment withdrawn by the Soviets occurred within 1 or 2 months of treaty signature, given the nature of the circumstances under which the Soviet drawndown occurred, it is unlikely that the United States will obtain evidence to narrow the time frame any further.

Mr. President, I realize that this is inconclusive, and I wish it weren't—but, I am not an intelligence expert. So I am going to rely on Robert Gates' judgment on this very complicated issue.

On balance, I believe that the Conventional Forces in Europe Treaty is in the national security interest of the United States and worthy of the Senate's support. I, therefore, urge my colleagues to vote in favor of the resolution of ratification.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Does the Republican leader yield the floor?

Mr. DOLE. I yield the floor.

Mr. SMITH. Mr. President, I have no further requests for time on my side, and I just want to yield back the remainder of my time.

The PRESIDING OFFICER. The Senator has that right.

The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I would just use a few moments of the time—I have not used any—and I will be very brief.

Mr. President, this amendment, obviously well-intended, is nonetheless a killer amendment, plain and simple. If the Senate adopts this amendment, we can quite frankly kiss the CFE Treaty goodbye.

Obviously, this issue is complicated by the question of classification, but I can say this: The intelligence community simply cannot certify exactly how many tanks, armored combat vehicles, and artillery were in the Atlantic to the Ural zone at the time of the treaty signature. I repeat: Such a classification simply cannot be made, not possible, no way, no possibility of them being able to certify with any degree of certainty. All the intelligence community can do is develop an estimate. And I repeat again and again, an estimate. All it is capable of doing is estimating how much equipment was in the zone at the date of the treaty signature.

Mr. President, the supporters of this amendment, in my view, simply underestimate or do not understand the difference between evidence and estimates. We are confident that a small number of pieces of Soviet equipment were not declared.

The CIA has told the committee openly that the number is about 800. These are the so-called smoking guns. There is a somewhat larger number of undeclared equipment that was probably in zone at the time of the treaty.

But, Mr. President, the Bush administration is seeking to obtain additional reductions of this amount, as well they should, and that is exactly what the committee condition that is before the Senate requires.

So much for the smoking guns.

But this agreement goes much farther. This amendment proposed goes much further. It requires the administration to make a determination it cannot reasonably make beyond the smoking guns. The reason such a determination cannot be made is obviously difficult to discuss in open session.

But we all know that Soviet forces in Eastern Europe have undergone enormous changes, and it is precisely at such a time when a typical model for estimating Soviet equipment would not be too accurate. It is in that circumstance that the typical model no longer has much relevance, the model by which the agencies, intelligence communities would be used to be able to have a reasonable estimate. In other words, the amendment would require us to hold the Soviet side accountable for estimates about which we may not have much confidence.

The basic issue is this: Do we want a treaty? Do we want to ratify this treaty so that 23,000 Soviet tanks and other equipment will be destroyed? Or do we want to vote for an amendment that will kill the treaty and never see these 23,000 pieces of equipment destroyed?

Before answering it, I hope my colleagues will remember that the United States will not be required to destroy any equipment as a consequence of this treaty. This is what I would call a good bargain, Mr. President. The result of the treaty will be that the United States will destroy no equipment, and the Soviet Union will destroy 23,000 pieces of equipment. That is a good bargain by any standard.

Mr. President, to me, this is not a close call. Let us ratify this treaty. Let us trust President Bush to secure the additional reductions if we have the evidence. But let us not permit a bad intelligence treaty, a bad intelligence estimate to kill a good treaty.

Mr. President, I know of no other Democrat or Republican seeking to speak in opposition to the treaty this afternoon. And it is my understanding that there is 1 hour, evenly divided, on Monday to discuss this issue, one-half hour under the control of the Senator from Delaware.

The PRESIDING OFFICER. The Senator is correct.

Mr. BOREN. Mr. President, I am pleased to support the Senate's advice and consent to ratification of the CFE Treaty. Political and military relations in Europe are changing rapidly, and this treaty will help ensure that they evolve in a manner consistent both with U.S. interests and with the interests of world peace.

CFE is both a disarmament treaty and an arms control treaty. It will require the Soviet Union to destroy or convert over 23,000 tanks, armored combat vehicles and artillery. Another 12,000 pieces of Eastern European equipment will also be destroyed, as well as 10,000 items once owned by East Germany.

By 1995, when all that is done, Soviet military equipment in Europe will be reduced to roughly two-thirds the amount of NATO equipment in the region. Regional subzones will ban the massing of this equipment in those areas that NATO commanders have viewed as most threatening. The continuing data exchange and onsite inspection requirements imposed by the treaty, will work to prevent violations and to reassure all countries that no nation is preparing to take aggressive action.

Mr. President, the CFE negotiations began when the cold war was not quite over, and the treaty was designed primarily to prevent a general war between the Warsaw Pact and NATO. The Warsaw Pact no longer exists. NATO itself is in search of a new mission. But the fact is that this treaty will also perform important functions in the evolving new world order. The limitations on Soviet—or Russian—armaments in Europe will provide important reassurance to the Baltic States and to any newly independent states that may emerge from among the current Soviet Republics. Those limits and the right to participate in onsite inspection of Soviet or Russian forces will be, in turn, a strong incentive to newly independent states to accede to the treaty as well, thereby allowing them to enjoy the economic benefits of lower defense spending.

The CFE Treaty will be part of the structure of the new Europe. Adherence to it will be a major way in which new states can demonstrate their peace-loving nature and be welcomed into European statehood. Ratification by the United States will be a token of our continuing commitment to NATO and European security, even as that security changes from a matter of cold war alliances to one of cooperation in the peaceful settlement of disputes. So

I urge all of my colleagues to join me in supporting ratification of this treaty.

As chairman of the Select Committee on Intelligence, I would also like to call my colleagues' attention to the fact that our committee has reviewed the implications of CFE for arms control monitoring. My friend, the distinguished Senator from Alaska, FRANK MURKOWSKI, who serves as vice chairman of the committee, and I recently sent a letter to Chairman PELL and Senator HELMS summarizing our findings in this regard, and I ask unanimous consent that this letter be inserted in the RECORD.

Mr. President, we found that U.S. intelligence will be able to monitor the destruction or conversion of treaty-limited equipment in Europe with high confidence. We are less certain at this point in time regarding equipment that the Soviet Union has pledged to destroy east of the Ural mountains, but the CFE Treaty countries plan to work out measures to make such destruction visible to our national technical means of verification.

We also believe that U.S. intelligence should be able to detect any violation of the treaty of military significance, specifically, involving combat ready units well before it would endanger NATO forces. We are less sure regarding small-scale violations, or even larger violations if they merely involve the covert movement or storage of equipment. As a result of the committee's review of the treaty, we are urging the U.S. intelligence community to vigorously develop monitoring strategies to detect any small-scale violations that might affect the military balance among States and Republics in Eastern Europe.

One issue that has prompted particular attention among Members of the Senate is the manifestly incorrect declaration of equipment holdings that the Soviet Union provided when the treaty was signed on November 19, 1990. The vice chairman and I discussed the relevant intelligence on that issue a classified attachment to our letter to the Foreign Relations Committee. I understand that the attachment is among the materials available to my coleagues in room S-407.

Without getting into classified material, I would just like to make a couple of personal points on this issue. First, we all agree that the Soviet declaration was grossly in error. Some of that has been corrected through the legally binding agreements reached on June 14, 1991, between the Soviet Union and the other CFE parties.

Second, we all know that some of the equipment in question has since been destroyed, while most of it has shown up belatedly at storage areas east of the Ural mountains. The Soviet Union has agreed to destroy some of this equipment and to store the rest of it in a manner that is not conducive to the quick formation of offensive forces.

The vice chairman and I endorse continued efforts to arrive at an accurate accounting of what equipment the Soviet Union had in Europe on November 19, 1990. We also endorse efforts to gain agreement to Soviet destruction obligations proceeding from such an accurate accounting. Speaking for myself, I support the reservation on this subject that thas been proposed by the Foreign Relations Committee.

But personally, Mr. President, I do not believe that United States intelligence will ever be able to give us a precise count of what equipment the Soviets had west of the Urals on that day. I believe that it would be unwise to force the President to propound such a number. The result would be an invitation to come up with some unsupported figure, rather than an encouragement to pursue this issue in a reasonable manner with the Soviets. And we should remember that the data discrepancy problem was the product not of Mr. Gorbachev and Mr. Shevardnadze, but rather—as far as we can tell—of the very Soviet military that attempted last summer to overthrow the Gorbachev government.

Finally I would note that we on the Intelligence Committee did find some areas in the CFE Treaty that could result in compliance disputes down the road. The report of the Foreign Relations Committee cites these concerns, as well as some others that they noted. I hope that U.S. diplomats will make it a priority, with the other States Parties to this Treaty, to work out in advance whatever procedures and definitions are needed to avoid such disputes.

In my view, Mr. President, this is a fine treaty. I am delighted to support it. But experience has proven that no treaty is perfect. We on the Intelligence Committee have reviewed these matters and submitted our findings so that the Senate will have the benefit of full information as we cast our votes on advice and consent to ratification. I again invite my colleagues to read both our letter to the Foreign Relations Committee, which is contained in their report, and the classified attachment to our letter, which is available in room S-407.

Finally, Mr. President, I want to note the extraordinary efforts of my good friend and fellow Oklahoman, Ambassador Jim Woolsey in negotiating this treaty. He is truly among our best and brightest. Jim has always come forward to serve our Nation and Presidents of both political parties. His distinguised career is well known to my colleagues, but we would be remiss if we did not thank him for the contribution he has made in bringing this historic treaty forward for ratification by the U. S. Senate.

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

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC, November 18, 1991.

Hon. CLAIBORNE PELL,
Chairman,
Hon. JESSE HELMS,
Ranking Minority Member,
Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR SENATOR PELL AND SENATOR HELMS: In order to assist the Committee on Foreign Relations and the full Senate in their consideration of whether to advise and consent to the ratification of the Treaty on Conventional Armed Forces in Europe (CFE), the Senate Select Committee on Intelligence has undertaken a thorough review of the ability of U.S. intelligence to monitor the compliance of the signatories with the provisions of that Treaty. In particular, the Committee has addressed issues surrounding the interpretation and implementation of the Protocol on Inspection, the effectiveness of the on-site inspection regime, the counterintelligence and security implications of the Treaty, and the ability of U.S. intelligence to detect politically and militarily significant violations of the Treaty.

The Committee began its work in March, 1989, with the beginning of the CFE negotiations. Both members and staff received regular briefings on the objectives and progress of the negotiations. The Committee's arms control staff also visited the negotiators in Vienna immediately prior to signing of the Treaty to keep abreast of the final details. Staff counterintelligence specialists visited military units in Germany to review preparations for CFE inspections. The Committee held eight on-the-record staff briefings and reviewed hundreds of documents and answers to questions. It also held two closed hearings, where it received testimony from senior officials within the Departments of State and Defense, the Intelligence Committee, and the Arms Control and Disarmament Agency.

In anticipation of the Treaty, the Committee wrote to Judge Webster, the then-Director of Central Intelligence, and General Colin Powell, Chairman, the Joint Chiefs of Staff, requesting a National Intelligence Estimate on the ability of U.S. intelligence to monitor Treaty compliance. The Committee requested that Chairman Powell identify for the Intelligence Community those levels of cheating that he would consider militarily significant, and asked the Intelligence Community to assess its monitoring capabilities in light of the Chairman's concerns. The Estimate provided to the Committee and a subsequent Memorandum to Holders of the Estimate have been, in our view, highly useful and relevant.

The Committee also received several briefings on the problems associated with the Soviet data submitted at the time of Treaty signature on November 19, 1990. Based on the Committee's assessment of the issue, we, along with other members of the Senate, wrote to Secretary Baker and urged him not to send the Treaty forward for Senate consideration until these issues were resolved. We believe that the prompt action of the Senate helped to contribute to the June 14 agreements which have allowed the Senate to proceed with the Treaty ratification process.

This letter reflects the views of the Chairman and Vice Chairman of the Committee as they pertain to the subjects discussed below.

MONITORING JUDGMENTS

We believe that by a combination of on-site inspection, National Technical Means

and cooperative measures, U.S. intelligence will be able to monitor the destruction or conversion of Treaty-limited equipment (TLE) in the Atlantic to the Urals (ATTU) region with high confidence. For the 14,500 pieces of equipment to be destroyed or converted east of the Urals and not subject to on-site inspection (pursuant to a political agreement of June 14, 1991), the ability of U.S. intelligence to minotor Soviet compliance will depend upon the form of cooperative measures that the Soviet Union has pledged to undertake to make the destruction visible to national technical means of verification. The specific cooperative measures are yet to be agreed upon by the signatories.

We also believe that U.S. intelligence is justified in having high confidence that it could detect any violation of the Treaty in which the Soviets attempted to move large quantities of TLE (i.e., thousands of pieces of equipment) as whole divisions, combat wings, or partial units back into the ATTU in a short period of time—weeks to months. U.S. intelligence would detect such cheating well before it reached the levels identified by the Joint Staff as militarily significant. Similarly, the formation of new, combat ready divisions within the ATTU from covert production facilities would also be detected before it achieved militarily significant levels by the Joint Staff's criteria.

While we believe that U.S. intelligence will detect any cheating that could threaten NATO forces (e.g., activity associated with combat ready units) before it becomes militarily significant, it will be more difficult to detect the covert transport and storage of equipment that is not integrated into combat units and to accurately characterize it as a CFE Treaty violation in a timely manner.

For example, the continued inability to resolve the issue of differences between the Soviet declaration of TLE holdings in the ATTU when the CFE Treaty was signed and the U.S. Intelligence Community's figures on Soviet holdings illustrates how difficult it can be to understand suspicious activity and to determine whether it is actually a violation. The Intelligence Community has detected numerous examples of equipment that appeared to have been improperly omitted from the Soviet data declaration. But even a year later, uncertainties remain regarding the amount of TLE that was improperly omitted and the possible impact of such omissions on the Soviet Union's equipment destruction obligations. It should be noted, however, that a major source of these ambiguities was the large-scale dislocation of Soviet forces as a result of equipment withdrawals and reductions preceding Treaty signature. Had the information exchange and on-site inspection provisions of the CFE Treaty been in place at the time, the Intelligence Community would have been better able to track the specifics of these changes.

The data discrepancy issue is discussed in detail in the classified attachment to this letter. We endorse continued efforts to arrive at an accurate accounting of what TLE the Soviet Union had in the ATTU on November 19, 1990, and to gain agreement to destruction obligations proceeding from such an accounting.

The movement of TLE east of the Urals underscores the fact that the CFE Treaty does not apply to the Asian portions of the Soviet Union. This puts a burden on U.S. intelligence to guard not only against the covert reinsertion of Soviet equipment into the ATTU region, but also against a force buildup east of the Urals that could threaten either a breakout from the Treaty or an aggressive movement on the U.S.S.R.'s eastern or southern borders. We will urge the Intelligence Community to devote whatever resources are needed to accomplish this task.

We must also emphasize that U.S. intelligence will have difficulty detecting small-scale violations of the Treaty. Such violations would not pose a significant military threat to NATO, but are politically significant for two reasons. First, they can weaken, over time, the integrity of the Treaty regime, thus paving the way for larger-scale violations. Second, such violations may, in fact, be militarily significant to a small, neighboring state whose TLE allocation is not large. With the end of the Cold War, the territorial integrity of many such states—from Poland, Hungary and the Czech and Slovak Republic to the Baltic states and possible new states in the Soviet Union—could potentially become an element of U.S. national interest sometime in the future. We therefore will urge the U.S. Intelligence Community to vigorously develop monitoring strategies and allocate resources to monitor compliance with small-scale violations in potential trouble areas.

COMPLIANCE ISSUES

The Treaty imposes two regimes—a disarmament regime lasting forty months after entry into force, and an arms control regime which regulates the distribution of this lower level of forces in perpetuity. Overall, we believe that the Treaty and related protocols are well-crafted and create a useful on-site inspection regime which will help to deter cheating and, in concert with National Technical Means, to detect it if it occurs. Nevertheless, we believe that, given the complexity of this Treaty and its protocols, there are likely to be compliance issues regarding interpretation which, though not of a magnitude to require changes to the Treaty or conditions to the resolution of ratification, should be brought to your attention for consideration in the report accompanying the resolution of ratification.

First, the definitions and provisions in paragraph 1 of Article II regarding armored combat vehicles include several gaps that could result in compliance disputes. For example, armored ambulances and armored vehicles that are not intended to transport troops, such as armored communication vans or ammunition trucks, are not limited. Furthermore, paragraph 2 of Section I of the Protocol on Existing Types permits certain lightly armored vehicles (the MT-LB) to be "exceptionally modified" into armored personnel carrier look-alikes (the MG-LB-AT) at locations other than reduction sites, rendering them no longer subject to Treaty limits, although paragraph 32 of Section VI of the Protocol on Inspection does provide for visual inspection of the interior of such a vehicle from outside the vehicle.

Second, the counting rules in Article III that except certain otherwise Treaty-limited equipment (TLE) are not well-defined. Equipment may be excluded if it is in the process of manufacture or manufacturing related testing; used exclusively for purposes of research and development; part of historical collections; awaiting disposal; awaiting export or re-export,; held by organizations designed and structured to perform in peacetime internal security functions; or in transit within the ATTU for no longer than seven days. In the absence of further definitions, all these rules invite monitoring difficulties or compliance disputes.

Third, the ability of any state party to increase its TLE in the Atlantic-to-the-Urals (ATTU) zone during the 40-month reduction phase is unrestricted. In most instances such changes would be reportable within five days if they exceeded a unit's reported holdings for a category of TLE by 10 percent or more, pursuant to Article XIII and to subparagraph 1(B) of Section VIII of the Protocol on Notification and Exchange of Information. There is no obligation, however, for TLE produced in the zone and attached to units that are not a "permanent change in the organizational structure of . . . forces within the area of application" pursuant to subparagraph 1(A) of Section VIII to be reported until the next annual report on holdings. Although non-permanent units may be interpreted to be those units in transit through the zone and thus subject to the seven-day transit rule, this is not made explicit in the Treaty or Protocol text. Thus, the discovery of an undeclared unit with TLE in the ATTU zone during the reduction phase may or may not indicate a violation has taken place. It could be a non-permanent unit, and the length of time it can stay in the ATTU without being reported could be as long as a year.

Aside from strict Treaty interpretation issues, we note that the pace and quantity of reductions required by the Treaty, the lack of restrictions on units and TLE in the ATTU zone during the reduction phase and the many notification requirements suggest that this phase of the Treaty's implementation will be confusing. In our view, information overload is likely to occur during the reduction phase and may reduce the effectiveness of notifications and inspections, although the experience gained through the INF Treaty and the lengthy period of preparation and planning for CFE will help to offset likely information exchange, logistic and coordination problems.

The level of confusion during the reduction phase will depend in part on the future status of Soviet republics that have recently become independent or are seeking new status. The Baltic states, which have not signed the CFE Treaty and therefore are now outside the ATTU region, continue to host TLE on their territory which the Soviets have agreed to limit according to the terms of the Treaty. Arrangements must be made to insure that the inspection provisions of the Treaty will be adequately implemented in cooperation with the Baltic states; we understand that such arrangements are forthcoming. Decisions taken by the Ukraine, however, particularly with respect to the creation of its own military, may complicate or delay implementation of the inspection regime and of data exchanges.

Finally, we note that the Treaty text does not discuss the status of U.S. or other NATO-member forces deployed to the territory of a member of the Group of Six at the latter's request. Such a deployment would be subject to the Treaty ceilings for the subzone to which forces are deployed, as well as for the whole ATTU region. Consequently, the flexibility of NATO countries to move forces into the recipient state without abrogating the Treaty would depend on whether they could do so without exceeding the subzone ceilings. This would not be a problem if the forces were already in the subzone (e.g., being deployed from Germany to Poland). To move forces into the subzone, however, would require that the total already in the subzone be less than its prescribed ceiling. If such leeway did not exist, it could be achieved by reducing some other forces within the zone. Any force deployed onto the territory of a member of the Group of Six would also be subject to on-site inspections by other CFE signatories.

TREATY IMPLEMENTATION

Compared to other arms control treaties, the implementation and security costs for the CFE Treaty will be relatively small. Because the CFE Treaty covers only the territory from the Atlantic to the Urals, the United States will not be required to host any on-site inspections on its own territory. Because the number of objects of verification declared by the Soviet Union was much lower than had been anticipated, the number of on-site inspections that the United States will conduct on Soviet territory will be significantly reduced.

The On-Site Inspection Agency projects costs of $16 million in fiscal year 1992, $12 million in FY 1993, and significantly lower costs beginning in FY 1996. Total Executive Branch costs directly attributable to CFE implementation and security should be about $25 million per year in the early years of the Treaty.

Some officials have questioned whether the U.S. Government would be able to field sufficient numbers of on-site inspection personnel with the needed linguistic capabilities and/or substantive background. The Director of the On-Site Inspection Agency assured the Committee that sufficient numbers of linguists have been found and trained for the inspection role, and that sufficient numbers of substantive experts have been identified and are available for service on inspection teams.

COUNTERINTELLIGENCE AND SECURITY

As with the INF and TTBT agreements, inspections under the CFE Treaty will allow foreign governments access to U.S. facilities and personnel that were previously denied on national security grounds. Unlike earlier bilateral Soviet-U.S. inspection regimes, however, CFE may give such access to the governments of various countries whose future military objectives are uncertain. While the Cold War threat of a conventional NATO-Warsaw Pact war is gone, U.S. military capabilities and activities in Europe will continue to require substantial protection against disclosure to foreign governments of information not required for verification of compliance with the Treaty. The Gulf War demonstrated that U.S. and allied forces in Europe may be called upon to deter conflicts and conduct military operations worldwide. Security for the most sensitive capabilities deployed in Europe remain integral to U.S. military strength.

We are satisfied that the relevant inspection provisions are appropriately balanced to meet U.S. security needs as well as verification requirements. The parties are allowed to restrict access to buildings with doors narrower than two meters, to shroud sensitive features of weapons systems, and to declare "sensitive points" that may not be inspected. The executive branch plans to exercise these rights so as to limit disclosure of sensitive information that is not necessary for verification of compliance.

In addition, we found that the Executive branch is preparing effective security countermeasures to protect sensitive facilities as permitted by the Treaty. Commanders of military installations must have operational security (OPSEC) safeguards that are tested by mock inspections, and Army and Air Force counterintelligence units in Europe will assist the commanders. The Committee has been assured that, despite overall drawndowns and restructuring of U.S. forces, the Defense Department's counterintelligence components will maintain resources in Europe needed to deal with attempts by foreign governments to exploit the CFE inspection process for intelligence purposes contrary to U.S. interests.

Sincerely yours,

DAVID L. BOREN,
Chairman.
FRANK MURKOWSKI,
Vice Chairman.

Mr. MURKOWSKI. Mr. President, I rise today in support of the Senate's advice and consent to ratification of the CFE treaty.

As a member of both the Senate Foreign Relations Committee and the Select Committee on Intelligence, I had the opportunity to review the treaty from several perspectives. All in all, it is a remarkable accord. When ratified by all parties and brought into force, it will accomplish what was unthinkable only a few years ago—consensual agreement that no single State will dominate Europe from the Atlantic to the Urals; and in arms control regime that renders major offensive war between east and west next to impossible.

The geographic scope and complexity of the arms control architecture created by this treaty is unprecedented. Huge quantities of equipment will be identified; thousands of sites will be inspected; substantial movements of equipment will be monitored; and volumes of information will be exchanged and processed as treaty-limited equipment in the eastern bloc is moved and destroyed.

During our deliberations in both the Foreign Relations and Intelligence Committees, the questions were asked, "How will this treaty, whose foundations were laid during the cold war, have relevance in a vastly changed Europe that continues to quickly evolve? How will continuing changes in the political structure of the Soviet Union affect this treaty and compliance by emerging new nations?"

We don't know with certainty what will transpire in Ukraine, Byelorussia, or any of the Soviet Republics. But this treaty creates an architecture for peace and stability by introducing an element of predictability to this otherwise chaotic environment. We believe there are clear incentives for these emerging new nations to participate in and accede to the treaty, and we hope and trust that they will do so.

The Senate Select Committee on Intelligence, on which I serve as vice chairman, also took a careful look at the burdens this treaty will impose on our intelligence services. We looked at compliance and verification issues in detail. We explored issues involving the interpretation and implementation of inspection protocols; the effectiveness of the on-site inspection regime; the implications of the treaty on counterintelligence and security; and our ability to detect militarily significant violations.

We found that, through a combination of on-site inspection, national technical means and cooperative measures, we can monitor the destruction and conversion of treaty limited equipment in the Atlantic to the Urals [ATTU] region with high confidence.

We believe we can detect any large scale, militarily significant cheating should it occur.

With respect to equipment moved or destroyed east of the Urals that is not covered by the treaty, the Soviets have pledged to make "east of Urals" destruction visible to national technical means, although specific cooperative measures have not yet been agreed upon.

While we did outline some concerns, I do not believe they are of sufficient magnitude to require changes to the treaty or conditions to the resolution of its ratification.

I know the chairman of the Intelligence Committee and my good friend, Senator BOREN, has already asked that the letter that he and I sent to Chairman PELL and Senator HELMS summarizing our committee's findings be placed in the RECORD, and I would invite all Senators to read it and the classified attachment available in room S-407.

Mr. President, this is a treaty worthy of our advice and consent, and I urge my colleagues to support its ratification.

Mr. COATS. Mr. President, although the CFE Treaty was negotiated at a time when the military and geopolitical situation in Europe was radically different than it is today, I am satisfied that this agreement can be adopted to the current environment. I agree that there are compelling reasons for ratifying the treaty. It will place a ceiling on armament holdings in Europe and create a legal framework that will help prevent the resumption of largescale military confrontation. The treaty's verification provisions also will contribute to openness and transparency in military affairs, and hopefully bolster mutual trust.

While I intend to support ratification of the CFE Treaty, I must express some grave reservations about the way the treaty was concluded and presented to the Senate. I believe that there are several unresolved issues that should be settled, if not before ratification then certainly before the United States is bound by the Treaty.

In particular, I am concerned about two issues. First, the data discrepancy between actual and declared Soviet holdings of treaty limited equipment at the time of treaty signature; and second, the procedure by which the United States responds to the emergence of independent countries in the former Soviet Republics who refuse to become parties to the CFE Treaty.

The resolution of ratification reported by the Foreign Relations Committee addresses these concerns in general terms, but I believe that the Senate must be more specific in conditioning its ratification of the CFE

Treaty. These concerns were addressed in a letter to the Foreign Relations Committee sent by the Republican Members of the Senate Armed Services Committee on November 18, 1991.

This letter urged the Foreign Relations Committee to adopt two additional conditions. First, a provision that would require the President to certify the actual amount of Soviet treaty limited equipment at the time of treaty signature, gain Soviet agreement with this estimate and, most important, get a Soviet commitment to destroy all equipment that was in excess of this level. Second, we recommended that the Foreign Relations Committee adopt a condition relating to the creation of new States in Russia, Byelorussia, and Ukraine—that if such States do not accede to the CFE Treaty the United States would either withdraw from the treaty or resubmit it for Senate ratification.

Mr. President, let me briefly discuss these two issues. While I am deeply concerned with both, the data discrepancy problem troubles me the most. On November 19, 1990, the day the CFE treaty was signed, the Soviet Union possessed in the treaty area of application substantially more treaty limited equipment than they had declared. Estimates of the actual discrepancy range from several thousand to tens of thousands of pieces of treaty limited equipment. The precise amount is less important than the fact that the Soviet Union attempted to cover up a treaty violation the very day the treaty was signed. Perhaps more important is the fact that the significance of this issue has been minimized by the United States.

I realize that the Soviet Union has made a unilateral political commitment to destroy equipment east and west of Urals to compensate for their excess possession. According to the Foreign Relations Committee report on the CFE Treaty: "Thus, the Soviets will have, at least, agreed to make amends." Making amends, however, is not really the issue. At stake here is not whether we get the Soviets to destroy some amount of equipment. This equipment may in fact not even be militarily significant. At stake is the integrity of the treatymaking and treaty-ratification process. By sweeping aside concerns about the data discrepancy issue we would be setting a terrible precedent for future arms control agreement. While a discrepancy in conventional equipment may be of little military consequence, a similar discrepancy relating to nuclear weapons certainly would be. To the extent that we are willing to allow a data discrepancy issue to go unsettled prior to ratification of the CFE Treaty, we will be in a worse position to deal with similar issues before start ratification.

Mr. President, I understand that Senator SMITH will offer an amendment on Monday to insert a condition to the CFE resolution of ratification similar to the one recommended by the Republican members of the Armed Services Committee. I will support this amendment and hope that the Senate will pass it. In considering this amendment the Senate must take into account that the data discrepancy issue arose only after the Soviets transferred some 57,000 pieces of treaty limited equipment from the area of application between January 1989 and November 1990. Also the Soviets transferred large amounts of equipment into naval and other units and claimed that it was exempt from the treaty. In other words, in anticipation of signing the CFE Treaty, the Soviets did everything within their power to circumvent the reductions that CFE would impose. With this as background, it seems even more unbelievable that the Soviet Union would then lie about their equipment holdings at the time of treaty signing. Thus I will support an amendment to settle the data discrepancy issue and require the Soviets to come into compliance with this understanding.

Mr. President, I am also concerned about the so-called successor State issue. In particular, the possibility that an independent Ukraine, Russia, or Byelorussia might refuse to become a party to the CFE agreement and thereby create a new and unexpected situation in Europe.

I acknowledge that the Foreign Relations Committee has already included a condition on this issue in its resolution of ratification. I have no argument with this condition, although I do believe that it should be strengthened to protect the Senate's treaty ratification role. The Foreign Relations Committee's condition states that if a new country emerges from a Soviet Republic and does not join the CFE Treaty, the President of the United States shall consult with the Senate, evaluate the new situation and consider whether treaty amendments are needed and submit such changes to the Senate for ratification.

The amendment offered today by the Senator from Maine [Mr. COHEN] addresses this issue. Specifically, this amendment would state that even if the CFE Treaty is not amended in response to the emergence of a new country that refuses to join the treaty, the Senate must provide its advice and consent as to whether the United States should remain a party. This provision would protect the Senate's ratification prerogative if changed circumstances alter the underlying assumptions of the treaty.

I do not believe this added condition is unreasonable or unconstitutional, as the administration has argued. If indeed a new situation emerges in Europe due to the independence of a large Soviet Republic such as the Ukraine, I believe that the Senate should review the continuing relevance of the CFE Treaty. Hence, I will vote to support the addition of this condition.

Mr. President, I support ratification of the CFE Treaty. As I said at the outset, however, I believe that we should settle the data dispute prior to ratification. Also, some additional time would help clarify many questions relating to successor States, especially the Ukraine, which will soon be holding an independence referendum.

I understand the administration's desire to have this important agreement ratified as soon as possible, but I also believe that it is more important to settle outstanding questions before the Senate renders its advice and consent. Since it is clear that we will not wait on these matters, I hope we will adopt the condition proposed by the Senator from Maine today and the condition by the Senator from New Hampshire on Monday.

SENATE ADVICE AND CONSENT TO RATIFY THE CONVENTIONAL ARMED FORCES IN EUROPE (CFE) TREATY

Mr. WARNER. Mr. President, I rise in support of Senate advice and consent to ratify the Conventional Armed Forces in Europe Treaty. The CFE Treaty represents the culmination of many years of negotiations on reducing conventional forces in Europe. While the CFE process itself was relatively short by almost any standard for arms control treaties, the genesis of the treaty can be traced back to the mutual and balanced force reductions, or MBFR, negotiations which started nearly 20 years ago in 1973. These arduous discussions lasted for over 15 years and ended formally in February 1989 as the CFE negotiations were about to begin. While no treaty resulted from the MBFR negotiations, they served as an important building block for the CFE process which began in March 1989 and ended with the signing of the CFE Treaty in Paris after less than 2 years of intense negotiations in Vienna.

Mr. President, this historic undertaking was accomplished with the very able talents of U.S. Ambassador James Woolsey. The Nation owes him a great deal of thanks for this important and historic document which awaits Senate approval.

Mr. President, the CFE Treaty is the first conventional arms control agreement since World War II. It was intended to significantly eliminate the overwhelming Soviet numerical advantage in conventional armaments that has existed in Europe since World War II, and the treaty still holds the promise of doing so. The problem we face today, however, is the fact that today's Europe bears no resemblance to the Europe which existed when the CFE mandate was drafted over 2 years ago. The military alliance structure which was present in 1989 is no longer in place in Eastern Europe. The dramatic

events of the past 2 years have caused some to raise serious questions that the CFE Treaty was structured in another era—the cold war. Indeed, some of the former members of the Warsaw Pact have indicated a desire to become members of the NATO alliance.

Mr. President, this very question about the relevance of the CFE Treaty in a few European environment was a main issue that I pursued during the Senate Armed Services Committee hearings on the military implications of the CFE Treaty. First, my primary objective was to better understand how the CFE Treaty will contribute to maintaining, if not further strengthening, stability during the next few years in light of the historic changes we have seen in the security structure of Europe. And second, I felt it was important to better understand how the treaty will contribute to, and not detract from, building a new stable security structure, one that addresses the growing emergence of ethnic and nationalist tensions in Europe, as opposed to the ideological tensions of the former bloc alliance system.

In this regard, administration witnesses testified that the CFE Treaty was even more urgently needed in this emerging European security environment because of the limits it places on existing states and the limits it may potentially impose on prospective emerging states like Soviet Republics such as the Ukraine and Belorussia. The administration also assured the committee that the CFE Treaty is extremely flexible and can be adapted to deal with the emerging European state structure and any new sources of tension and conflict. Secretary Bartholomew stated in our hearing that:

> We believe, in fact, that the [CFE] Treaty is more advantageous to the U.S. and to all involved in the more fluid situation existing today than ever before. * * * In our view, we would be far better off during these unsettled times if CFE were in force—providing an internationally-recognized framework of contraints on military activities and a forum for addressing questions and disputes.

Mr. President, I accept administration assurance about the relevance and relative importance of the CFE Treaty even though the treaty and its mandate were formulated based on a very different security environment. On this basis and having received assurances on a number of other issues which are discussed below and based on the acceptance of the Foreign Relations Committee's five proposed conditions, I encourage strongly Senate advice and consent to ratification of the CFE Treaty.

In providing my strong support for the CFE Treaty, I wish to express a concern over recent suggestions by some that the treaty is a vital arms control agreement, and that the very treaty itself is the anvil upon which a new security structure will be forged. This suggestion has been made primarily with the recalcitrant Republics of the former Soviet Union in mine—Republics which have indicated a desire to maintain national armies, independent of central government control. I do not doubt the general merits of this argument, but I am concerned that those who make it may be overstating the ability of the treaty alone to forge a stable security structure.

Arms control has a very important place in national security planning. But we must be careful not to place arms control agreements above prudent military force capabilities and sound alliance planning. Arms control agreements which merely regulate levels of military equipment do not prevent conflicts or wars. We learned from our experiences during the interwar period that naval arms control agreements, like the 1922 Washington Treaty, the 1930 London Treaty, and the 1935 Anglo-German Naval Agreement, did nothing to halt the march of war in Europe. In other words, arms control agreements cannot stop a leader whose intention is to use armed force to implement foreign policy objectives. At best, arms control agreements limit or regulate the options of military planners which, in turn, may preclude the use of force as an option. But again, as history has shown, leaders intent on using force to implement foreign policy objectives find ways to circumvent or ignore arms control treaties when such treaties stand in the way of their objectives.

Mr. President, much has changed in Europe. European security requirements and threats are emerging from traditional sources of tension and conflict, such as the longstanding ethnic and nationalist disputes that have been the cause of wars in Europe for centuries. With this emerging European security structure in mind, and after careful review of the treaty itself, the Senate Armed Services Committee determined that the CFE Treaty is in the U.S. national security interest and that of our European allies and friends. I supoort that conclusion. But my support must be tempered by an important caveat, that is, the forging of a new security structure cannot be accomplished by the CFE Treaty alone. Security in Europe, and indeed the world, requires a commitment to a credible military force posture that deters aggression, but at the same time is also capable of defeating aggression should that deterrent force fail.

Mr. President, I am concerned about the trend in our Nation, and in Europe, to reduce defense spending to levels that, in my opinion, could bring into question the credibility and effectiveness of our military forces. The collapse of the Warsaw Pact and dramatic changes in the Soviet Union do not obviate the need for a credible defense posture. The emergence of a multipolar world and the Persian Gulf war, in particular, have shown that the world is becoming less, not more, stable than the bipolar security structure of just a few years ago. For these reasons, we must not only negotiate and implement effective arms control agreements, but also maintain credible military forces capable of dealing with the new security structure that is emerging from the ruins of the cold war.

Mr. President, in expressing my general support for and caveats to the CFE Treaty, I also wish to address two specific issues that were raised in the additional views attached to the Armed Services Committee's letter report to the Foreign Relations Committee, which were signed by the vast majority of the Republican members. Before addressing these additional views, I want to state my strong support for the committee's letter report on the CFE Treaty which I signed with Senator NUNN on behalf of the members of the committee. The committee's endorsement for Senate approval of the CFE Treaty was qualified with three recommended conditions to the resolution of ratification, and these recommended conditions are included in the Foreign Relations Committee's resolution of ratification, which is before us today.

Mr. President, the Republican additional views, with which I am associated, express our serious concerns on two issues. Both of these issues are addressed in the five conditions attached in the Foreign Relations Committee proposed resolution of ratification, but we do not believe they go far enough in protecting both Senate prerogatives in the treatymaking process and the national security interest of the United States. These two areas of concern deal with, first, serious discrepancies in the Soviet declaration of the amount of their treaty-limited equipment, or TLE, located in the territory covered by the treaty at the time the treaty was signed on November 19, 1990, and second, whether the continued viability of the treaty would be in question if republics within the former Soviet Union were in the future to achieve independence and not accede to the obligations of the CFE Treaty.

Mr. President, while the Foreign Relations Committee included a condition that directed the President to continue to seek clarification on the discrepancies in declared Soviet TLE and to seek additional reductions in Soviet military holdings, this is, for all practical purposes, only a declaration of U.S. position, not a condition that will require any action to protect U.S. national security interest. The issue, Mr. President, is that significant differences still exist between the Soviet data declaration at the time the treaty was signed and United States intelligence estimates of the number of actual Soviet TLE in the territory covered by the treaty. The United States intelligence community has not yet

reached a consensus on the actual number of TLE in the area limited by the treaty, but these differences range from the low thousands above the number the Soviets declared at the time the treaty was signed to tens of thousands. This equipment includes tanks, artillery, and armored combat vehicles—critical military hardware necessary for conducting war.

Mr. President, we believe that this discrepancy raises a significant question about the probity and good faith of Soviet negotiators. While the administration has expressed its intention to continue to work to achieve a resolution of this data dispute, it has not been able to do so in the year since the treaty was signed. In raising this issue, however, I make no judgment as to the military significance of this equipment or which U.S. intelligence estimate of unreported TLE is most accurate.

For me, Mr. President, the issue is one of principle and precedent. In short, if we ignore this significant discrepancy in the Soviet declaration, we will only undermine the integrity of the arms control process. While the data discrepancy ranges in thousands of tanks, artillery, and armored carrier vehicles, the military significance of this discrepancy is debatable. But if a proportional percentage of strategic nuclear ballistic missiles were at issue, the military significance would be unquestionable. In other words, if we do not take seriously this issue, we will only encourage future parties to treaties to falsify data declarations, and retain equipment that is otherwise slated for destruction. This is a dangerous precedent.

For this reason, I believe it is important for the United States to resolve the data discrepancy question before the United States assumes responsibility for its obligations under the terms of the CFE Treaty. Our additional views included a draft condition to the treaty that would serve to protect U.S. national security interest in this regard.

Mr. President, our second concern relates to the prospect of Soviet Republics, like the Ukraine and Belorussia, becoming independent states while at the same time not acceding to the terms of the treaty. While I do not believe that it is important for all states in Europe to be party to the treaty, it is critical that certain states, that currently have large military holdings or could potentially acquire such military holdings, must be party to the treaty. In testimony before the Armed Services Committee, administration officials testified that:

> It is the view of the Administration that in order to safeguard the integrity of the Treaty regime, it almost certainly would be necessary for Ukraine and Belorussia, if they were not bound as part of the USSR or any successor state, and retained significant amounts of equipment in Treaty categories, to accede to the CFE Treaty.

I agree with this assessment. But as I stated above, the CFE Treaty was negotiated with the bloc-to-bloc security structure of the cold war in mind. With the dramatic changes that have taken place in Europe, particularly in the Soviet Union since the failed coup in August, the very future of the former Soviet Union is in question. While we have received assurances from certain Ukrainian officials of their intent to accede to the term of the treaty, we cannot be sure an independent Ukrainian would do so, given the uncertain course of events in that region.

For this region, Mr. President, we believe that the resolution of ratification should provide for very specific procedures to be followed in the event that the Ukraine, Belorussia, of the Russian Republic were to become independent and not agree to be bound by the terms of the treaty. We believe that the condition attached to the Foreign Relations Committee's resolution of ratification does not go far enough in the regard to protect Senate prerogatives given the administration's testimony that such a situation would constitute a changed circumstance from that which exists now as the Soviet debates its advice and consent to the treaty.

Mr. President, it is my understanding that a possible amendment on secessor states along the lines of the one recommended in our Additional views will be proposed today. I intend to support that amendment, for I believe that the Foreign Relations Committee's condition does not satisfy our concerns on this issue.

Mr. President, I wish to conclude with a restatement of my support for the CFE Treaty. While I have certain concerns and questions about the treaty given the historic changes that have taken place in Europe where this treaty applies. I accept administration assertions that the treaty will serve to help mediate the further evolution of the State and security structure in Europe. Thank you, Mr. President.

Mr. BIDEN. In light of the fact there is no one else seeking recognition, I am prepared to yield back the balance of the time that was allotted for debate on this subject under my control for today.

The PRESIDING OFFICER. The Senator has that right.

Mr. BIDEN. I yield back the time.

Mr. DOLE. Is time yielded back on this side?

The PRESIDING OFFICER. That is correct.

LEGISLATIVE SESSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for morning business.

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

The minority leader is recognized.

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 2035 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

STATEMENT ON NO. 1409 SPECTER-DOMENICI AMENDMENT

Mr. LEVIN. Mr. President, I am a strong and long-time supporter of individual retirement accounts. One of the reasons why I voted against the Tax Reform Act of 1986 was that it greatly reduced the availability of IRA's. I am a cosponsor of legislation to restore the full availability of IRA's.

However, I could not support the amendment before us last night offered by Senator SPECTOR. First, it creates the one year illusion that the money withdrawn from the IRA is tax free. In fact, this amendment offers the prospect of an "April 15 surprise" for the next 4 years. If, for example, an individual withdraws $10,000 for the purchase of a home and spends all of that money in the year it is withdrawn, he will have to find thousands of dollars from some other source over the next several years to pay the taxes owed on the amount withdrawn.

Second, I am concerned that this amendment could lead to substantial and sudden withdrawals from financial institutions at a time when we are making efforts to restore the financial industry to health. As a result, instead of creating confidence, this amendment could be counterproductive and lead to further uncertainty in the economy.

SPEEDING BANK CLOSINGS

Mr. DECONCINI. Mr. President, the October 30, 1991, Wall Street Journal carried a letter to the editor which I commend to my colleagues. Written by Joan Conway Waller of Dallas, it responds to a Wall Street Journal commentary piece on September 23, 1991 on speeding bank closings. Ms. Waller raises some interesting concerns about this approach to saving our banking system and I urge the administation and the House and Senate Banking Committees to consider the issues she raises. I ask unanimous consent that the entire text of this letter to the editor be printed in the RECORD at this point.

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

[From the Wall Street Journal, Oct. 30, 1991]

Letters to the Editor

AUDITOR, SPARE THAT BANK!

Your Sept. 23 Outlook column stated that faster bank closings will cut Federal Deposit Insurance Corp. losses. The conventional widsom, which you repeated, is that the earlier the FDIC closes a troubled bank, the less cost the taxpayers have to bear. In many cases, this is not true, I am an attorney, and I practice primarily in the regulatory area of bank law. Many of my clients are troubled banks, which come to me when they cannot be saved, and I have seen a number of them fail. Therefore, my evidence is empirical, although I deny that I am an empiric.

In many instances, a troubled bank will have had a change of management in the three years before the bank fails, usually precipitated when the board discovers the extent of the bank's problems. Therefore, the management in place when the bank fails is not the management that created the bank's problems. Usually new managers spend their time working out the bank's problem assets by collecting loans and selling off foreclosed real estate. Capital continues to decline before failure, as the bank recognizes losses. If the bank manages to cover its overhead, before provisions for losses, then the problem loans and real estate are being handled by the private sector, and we taxpayers do not have to pay the salaries of government employees to manage these assets. However, most failing banks not only cover their overhead, but also make enough money to pay some, although not all, of the losses they will face on their bad loans and foreclosed real estate.

When a bank in this condition is closed, the FDIC typically tries to transfer all liability for deposits as well as all assets to an assuming bank. However, during the examination that leads to the closure of the bank, the bank's assets are written down to "fire-sale" values. I have seen examiners cynically write off loans that are *current* in their payments and tell the bank "you can take [payments as] a recovery to your loan loss reserve" during an examination when the examiners know they will force a failure. When the bank fails, these loans are shown on the bank's books at artifically low values. In addition, the winner in the FDIC's bid process usually acquires the assets at a discount. In Texas, discounts of 20% to 30% are not uncommon, so the winning bidder pays only a fraction of book value for assets that already have been written down below their true value. Who pays for this double discounting? The FDIC, and ultimately the taxpayers.

The FDIC guarantees that it will suffer a loss every time it closes a bank. Doesn't it make sense to work with banks to keep them open if they have good management? Management certainly has a lot more incentive, and usually more experience, than the government employees who would take over trying to collect the bank's bad loans and sell its real estate.

Time and again, we see demonstrated the fact that private industry does a better, faster or less expensive job than the government. In light of that, it amazes me that newspapers continue to swallow the FDIC's claim that only by giving it more money and letting it step in earlier will the taxpayers be saved even greater losses. While statistics can be manipulated to support this claim, empirical evidence and common sense prove otherwise.

JOAN CONWAY WALLER.

DALLAS.

TECHNICAL CORRECTIONS TO FARM BILL—H.R. 3029

Mr. DURENBERGER. Mr. President, I rise in support of H.R. 3029 which will provide many important and significant changes to the 1990 farm bill.

I would especially like to commend Chairman LEAHY and the ranking member, Senator LUGAR, for their work on this bill. The efforts of the chairman and ranking member, as well as other members of the committee, to resolve the many highly technical issues surrounding exemptions of products from meat and poultry inspection requirements must be recognized.

The provisions for exemptions from inspection in this bill avoid the technical errors that are present in the House approved legislation. Furthermore, the House legislation—which only concerns meat-topped pizza—is too narrow in scope.

It would be short sighted for only a pizza exemption to be authorized by this legislation, as was authorized in the House. If we were to exempt pizza alone, the Senate would later have to consider burrito amendments, egg roll amendments, and others.

The provision in this bill directs the Department of Agriculture to assess the public health implications when considering exemptions from inspection. Based on those considerations, exemptions from inspection may be granted when the Secretary determines that the public health would not be jeopardized.

In those cases where the Department determines that exemptions from inspection requirements may be granted without any increased risk to public health, those noninspected facilities that manufacture product for resale must comply with good manufacturing practices established pursuant to 21 C.F.R. 110 et seq. Failure to apply those public health protections would pose a threat to public health and warrant revocation of the inspection exemption authorized herein. I believe this is fair.

This provision is a good one and will benefit everyone in the food and nutrition industry. It is supported by the Community Nutrition Institute, Consumer Federation of America, National Consumers League, Public Voice for Food and Health Policy, Consumers Union, Center for Science in the Public Interest, American Association of Meat Processors, American Meat Institute, International Food Service Distributors Association, National American Wholesale Grocers Association, National Association of Meat Purveyors, National Food Brokers Association, National Frozen Food Association, National Frozen Pizza Institute, and Western States Meat Association.

I strongly encourage my colleagues on the Senate Agriculture Committee to insist upon acceptance of the Senate language regarding exemptions from meat inspection.

I would also like to commend the Committee for their work on high moisture corn loans. The failure to authorize these loans in the 1990 farm bill has caused a great deal of concern in Minnesota and I am pleased that this problem has been corrected.

Again, I would like to reiterate my support for this bill.

THE GAG RULE

Mr. GORTON. Mr. President, yesterday the Senate passed for the second time the 1992 Labor, Health and Human Services, and Education appropriations. For nearly 6 months I have worked as a member of the Senate Appropriations Labor, Health and Human Services, and Education Subcommittee to complete this massive spending bill which includes funding for such important programs as the National Cancer Institute, the Corporation for Public Broadcasting, lead poisoning prevention, the Job Corps, and chapter 1 education. However, this bill is slightly different from the original appropriations bill we passed just a couple of weeks ago. The difference is the absence of a provision which would have prohibited funds for the Department of Health and Human Services to carry out the gag rule.

Last spring the U.S. Supreme Court in Rust versus Sullivan upheld the 1982 regulations prohibiting title X family planning clinics from counseling on abortion. The Senate responded by passing S. 323, the Pregnancy Counseling Act of 1991. That bill, sponsored by Senator CHAFEE would reverse the decision by the Court and allow health care providers at title X clinics to continue the long tradition of nondirective counseling. I supported that legislation and commend Senator CHAFEE for his efforts.

In addition to the Pregnancy Counseling Act of 1991, I opposed the gag rule during consideration of this appropriations bill. By not providing funds for the Department of Health and Human Services to enforce this regulation, the provision in the earlier bill would have effectively repealed the gag rule. Despite threats of a Presidential veto, I stood by the first appropriations bill because it contained this important provision.

On Monday, however, the President followed through with his threat to veto the bill. Despite efforts by those of us who oppose the gag rule to compromise with the administration, the bill was returned to the House of Representatives with a veto message clearly stating that the gag rule was the basis for nonsignature. This Senator deeply regrets that the veto occurred and that the House failed to override by 12 votes on Tuesday. I have stated

several times to my constitutents that I would have supported a similar veto override effort in the Senate were it necessary.

Of the three counseling options: prenatal care, adoption, and pregnancy termination, I obviously find the last the most tragic and undesirable. However, as long as abortion remains a legally protected right, it should not be the role of the Federal Government to censor discussion of that right. I will continue to work with Members of the Senate and the administration to overturn the gag rule. I must respect and protect the professional duty of health care professionals to disclose fully, in a nondirective fashion, the legal and medical options to a woman requesting information.

Health care professionals who dedicate their lives to serve others, and women whose lives depend on their advice, deserve freedom to discuss their difficult decisions.

HOUSE IS HOLDING UP CONFERENCE ON OLDER AMERICANS ACT

Mr. McCAIN. Mr. President, on November 12 the Senate adopted the Older Americans Act reauthorization bill and appointed conferees in the hope that this important legislation might be conferenced and signed into law before Congress recesses for the year. It is of great concern to this Senator, who is a sponsor and strong supporter of the Older Americans Act reauthorization bill, that the House appears to be holding up final action on this critical legislation for our Nation's seniors by not appointing its conferees.

As my colleagues know, the Older Americans Act provides for a number of programs that are essential to the livelihood of our Nation's most vulnerable elderly. It provides for an array of programs on which millions of older Americans depend—vital services including nutrition programs, seniors centers, community and social services, legal services, nutrition and health promotion programs, and care for frail and homebound seniors. In addition, the act provides job opportunities and protects the basic rights of seniors.

While current law certainly will continue if the reauthorization bill is not signed into law before the end of the year, the effect of this bill's delay will be very serious. For example, delay blocks an additional $70 million in funding for the commodities program that is the nutritional life-line for low-income seniors. Delay also blocks a critical new home health care program that was to have served as an alternative to institutional care. And, delay blocks the critical new elder rights program that was to tackle the tragedy and disgrace of elderly abuse.

Mr. President, this reauthorization bill is critical to improving the lives and well-being of millions of older Americans. It is unconscionable, in my view, that this legislation is being held up as a result of the House not appointing conferees.

Perhaps the fact that House conferees have not been appointed is an oversight, but I fear it is instead a ploy to avoid having to deal with the Senate's proposal to repeal the last bastion of age discrimination—the Social Security earnings test.

Mr. President, this proposal was adopted unanimously in the Senate and enjoys the support of a majority in the House. What's more, just as is the case with the Older Americans Act reauthorization bill, this proposal enjoys the support of seniors all over this country and of virtually all of our Nation's major seniors organizations. Accordingly, Mr. President, it is my sincere hope that the House will soon appoint its conferees so that we can complete consideration of this critical legislation and sent it to the President for his signature before we recess for the year.

JULIE JOHNS TO BE HONORED BY 1991 NATIONAL CARING AWARD

Mr. DOMENICI. Mr. President, it is my pleasure to announce that 17-year-old Julie Johns of Albuquerque has been named one of America's most caring people by the National Caring Institute. Johns will be honored with the 1991 National Caring Award at a ceremony in Washington DC, in December.

I am very pleased that Julie has been recognized for her selflessness and commitment to reaching out and helping others. This is not only a special award because Julie has been recognized as one of the most caring people in America, but it is also very special because these awards mark the formal beginning of the Hall of Fame For Caring Americans in Washington DC.

My congratulations go out to Julie. Johns was recognized for her work of almost 4 years with abused and abandoned children. While a freshman at Albuquerque Academy, Johns volunteered with Casa Angelica, a home for children who have severe cerebral palsy. As a volunteer with all Faiths, a receiving home for children whose parents are incarcerated, Johns tutored, conducted therapy, organized, and participated in holiday events and parties.

During her senior year, Johns completed a 6-week internship with Peanut Butter and Jelly, a therapeutic preschool for developmentally disabled children and their parents. Johns is currently a freshman at Vanderbilt University in Tennessee.

Twenty-one Americans were chosen by the Caring Institute among hundreds of people nominated. Twelve adults and nine young people were selected.

Recipients of the award will be honored at a ceremony in Washington DC, on December 5. The ceremony will also be the dedication of the Frederick Douglass Museum: the Hall of Fame for Caring Americans. The museum is the former Capitol Hill residence of Frederick Douglass.

Each of the recipients will receive a bronze statuette specifically designed for the purpose by the sculptor Frank Eliscu, probably best well known for having designed the Heisman trophy.

Julie is a very special and exceptional individual. She represents a high standard of social responsibility and is thereby a role model for the community.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,443d day that Terry Anderson has been held captive in Lebanon.

THE COMMITTEE REPORTED BILL TO H.R. 3029

Mr. LEAHY. Mr. President, I ask unanimous consent that a joint statement prepared by myself and Senator LUGAR be printed in the RECORD.

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

REGARDING THE COMMITTEE REPORTED BILL TO H.R. 3029 FOOD, CONSERVATION, AND TRADE ACT AMENDMENTS OF 1991

The Committee on Agriculture, Nutrition, and Forestry of the Senate did not prepare a committee report to the bill reported on November 21, 1991, the "Food, Agriculture, Conservation, and Trade Act Amendments of 1991", due to the short time remaining in the 1st session of the 102d Congress. Instead, the following statement reflects the intent of the Committee on the purposes and interpretation of the amendments which shall guide the Administration, in particular, the Department of Agriculture, in their implementation of the provisions contained in the Committee reported bill and additional guidance on other items contained in the Food, Agriculture, Conservation, and Trade Act of 1990 ("FACT Act").

The Committee reported bill contains a number of revisions and additions to the bill reported by the Committee on Agriculture of the House of Representatives. The amendments are largely technical or minor in their changes to the programs of the FACT Act. The subject areas of this bill include the agricultural commodities, conservation, trade and food aid, research, credit, crop insurance, Federal disaster assistance, rural development, agricultural promotion, food and nutrition, and miscellaneous technical corrections to agricultural authorities.

Cover Crops on Reduced Acreage. The Agricultural Act of 1949, as amended by the FACT Act, requires producers who participate in an acreage reduction program to plant an annual or perennial cover crop on fifty percent of the acreage that is required to be removed from production. Section 106 of this bill amends this cover crop provision by allowing voluntary annual or perennial covers to be maintained on these lands instead of having to establish such cover. The 1949 Act includes an exemption from this re-

quirement for arid areas (including summer fallow areas), as determined by the Secretary, and this exemption is retained.

The Committee recognizes that the final seeding dates established by the Department for these cover crops in 1991 achieved a balance between the important goals of protecting soil and water resources and wildlife protection, while allowing farmers the flexibility to deal with weed control and other agronomic problems in their fields. The Committee believes the Department should continue to make similar determinations in 1992 and beyond, and achieve this same balance between these objectives.

Limited rainfall in certain geographical areas of the country, and especially in the Great Plains region, prevents producers from planting for harvest a crop in successive crop years. Instead, a portion of land must lie fallow each year for the primary purpose of conserving both topsoil and subsoil moisture. The subclause exempting arid and summer fallow areas from the cover crop planting requirement recognizes this common agronomic practice, and provides relief from the provision for areas where such a requirement may contradict prudent farming decisions.

The Committee intends that the 1991 determination of such arid areas shall apply to crop years 1992 through 1995.

Peanut Quota Fall Transfers. Section 358b(a) of the Agricultural Adjustment Act of 1938, as amended by section 803 of the FACT Act, permits so-called fall leasing of unfilled quota from one qualifying farm to another, provided sufficient acreage had been planted on the transferring farm to have produced under normal circumstances 90 percent of the basic farm quota. Previously, the law required plantings that under normal circumstances would have produced the quota of the transferring farm. The change was made to give greater flexibility to the program and to assure adequate production of quota peanuts to meet domestic needs. Certainly, it was the intent that producers be allowed to take full advantage of the fall leasing provision.

The Department, however, in regulations issued pursuant to the FACT Act, has placed a new restriction [7 C.F.R. 279.212(e)(iii)(B), 56 Fed. Reg. 16219, 38320] on fall transfers not intended by the FACT Act. The regulatory restriction, under certain circumstances, will not permit the fall transfer of unmarketed quota. The new regulations creates a particular hardship for many farmers who, because of last year's severe drought, were not able to produce their normal crops. The restriction could also work to limit the supply of peanuts for domestic food consumption in short crop years, such as 1990.

The change made by the Congress in the FACT Act relating to fall transfers did not intend any such restriction or limitation as the Department prescribed by regulation. The technical amendment to peanut title contained in section 124 of this bill would require the Department to revise the regulations by removing the limitation provided under 7 C.F.R. 729.212(e)(iii)(B) so as to bring the regulations into conformity with the FACT Act and the intent of Congress.

Integrated Farm Management. Section 201 of this legislation makes changes involving "traditionally underplanted acres" as they relate to the Integrated Farm Management (IFM) provisions of the FACT Act. The Committee intends that an IFM program participant may elect to assign traditionally underplanted acres, other than 0/92 acres, to the participant's "triple base" acres. This is the same treatment accorded producers with traditionally underplanted acres who are in the wheat, feed grain and other commodity programs, and it is the Committee's intent that producers receive the same treatment in this regard whether or not they enroll in the IFM program. Traditionally underplanted acres shall result in reduced payments only to the extent that total payment acres would otherwise exceed the net of total permitted acres minus traditionally underplanted acres.

The Committee also calls attention to the definition of "legume" and "grass" in the IFM provisions. It is the intent of the Committee that resource-conserving legume and grass crops include the full range of such crops used for soil building and nitrogen fixating purposes. It is further the intent of the Committee that such crops may be harvested for seed from permitted and setaside acres, except for bean crops. The Committee also intends that participants be permitted to incorporate existing cropland stands of perennial crops into the IFM farm plans.

Farms for the Future. In section 203, the legislation makes changes to the "Farms for the Future Act of 1990."

The Committee believes that under the terms of the FACT Act, USDA already has the authority to implement this program. However, the program was not implemented to provide funds to Vermont even though the Comptroller General has concluded that the State is entitled to the funds.

The changes in this legislation were made because the Department has issued draft regulations that are contrary to the intent and purposes of the Act.

The law requires, as the Conference Report on the FACT Act stated, that the Department of Agriculture was required to provide funding to the State of Vermont for farmland preservation. These changes make it clear that these funds are to be provided to the State of Vermont.

Alternative Agricultural Research and Commercialization Center. The intent of Section 1663(a)(2) of the FACT Act was to require the Secretary to establish regional centers once a fiscal year appropriation threshold of $5,000,000 was reached for the Alternative Agricultural Research and Commercialization Center. However, the statutory language was unclear, allowing an incorrect interpretation that the establishment of each of the regional centers would require an appropriation of $5,000,000 thus requiring that $30,000,000 be appropriated before six regional centers could be established. Section 405 of this bill clarifies the law to ensure that once $5,000,000 is appropriated, the Secretary shall establish at least two, but not more than six, regional centers. In addition, it will allow established regional centers to continue operating in years in which less than $5,000,000 is appropriated.

FmHA and Lands on Indian Reservations. Section 610 of the Agricultural Credit Act of 1987 (7 U.S.C. 1985) was included because Congress intended to prevent Indian-owned land on a reservation from passing out of Indian ownership as a result of any action by the Secretary pursuant to a lien held by the United States under a Farmers Home Administration (FmHA) loan or loan guarantee. It was the intent of Congress that all such land that an Indian borrower-owner is forced to relinquish title to be placed in FmHA's inventory and disposed of as provided for in that section. However, the Committee has been informed that the intent of this provision has not been achieved because the provision did not make it clear that the Secretary is to place all such land into inventory, not just administer, pursuant to section 610 of the 1987 Act, that land which happens to end up in inventory. As a result, it appears that the Secretary is selling Indian reservation land at foreclosure sales or encouraging or assisting in such sales prior to foreclosure.

To halt such sales, Section 501(f) of this bill requires the Secretary to take real property into inventory by accepting a borrower-owner's offer to voluntary convey or by bidding the higher of the fair market value of the property or the outstanding principal and interest of the loan at the foreclosure sale, if the delinquent borrower-owner is an Indian tribe or member of the tribe and if the real property is located within an Indian reservation. It provides an exception to that requirement if there are hazardous wastes located on the property. In that case, the Secretary shall accept a voluntary conveyance or bid the higher of the fair market value of the property or the outstanding principal and interest of the loan at a foreclosure sale only if it is the best interest of the Federal government.

The Committee does not intend this exception to allow FmHA to circumvent the intent of this provision, which is to retain as much Indian reservation land within Indian ownership as possible. Thus, the Committee expects this exception to be rarely used, and only when there are significant hazardous wastes on a property, and the cost of cleaning up those wastes is significant in comparison to the fair market value of the property. For example, it is not the Committee's intent for the Secretary to determine that it is not in the best interest of the Federal government to accept a voluntary conveyance or bid at a foreclosure sale because there is a buried gasoline storage tank on the property, or a pile of rubber tires, pesticide jugs or batteries.

Packers and Stockyards. Section 1008 provides that auction businesses that sell cattle by video or satellite would be authorized to collect branding inspection fees. The terms 'market agency' or 'dealer' shall not include a feedyard buying or selling livestock on its own account or on behalf of a customer.

APHIS User Fees. Section 1014 of the bill authorizes the Secretary to use any funds collected from international air passengers to be used to fund commercial aircraft inspections. This may allow the proposed commercial aircraft inspections. This may allow the proposed commercial aircraft inspection fee to be significantly reduced. When actual passenger collections lag behind costs, the Secretary may still have to implement an aircraft arrival fee based on existing aircraft arrival data (currently 246,000 per year).

The industry and the Animal and Plant Health Inspection Service (APHIS) disagree over what is the correct traffic estimate. Because of this disagreement, the Committee believes APHIS should consider using the figures of an independent agency not having an economic interest in this matter such as the Immigration and Naturalization Service (INS). The Committee recognizes that the Customs Service and the Department of Transportation currently uses INS traffic figures when estimating incoming international traffic. The Committee urges APHIS to review its traffic estimate procedure to determine why there is such a large discrepancy between APHIS and INS figures.

The Committee also emphasizes that it is the responsibility of APHIS to fully collect user fees from all carriers in a timely manner. Implementing an aircraft inspection fee due to collection difficulties merely results

in paying carriers subsidizing nonpaying carriers. The Committee is concerned that U.S. carriers could end up subsidizing foreign carriers, thereby reducing the economic competitiveness of domestic carriers.

AID Subcontractors. Section 407(d)(3) of the Agricultural Trade Development and Assistance Act of 1954, as amended by 1501 of the FACT Act, applies to freight agents used by the Agency for International Development (A.I.D.) under titles II and III without regard to whether the agent is engaging as a prime contractor or a subcontractor. The statute speaks of a single contract covering the services of freight agents, broadly described, which include both freight forwarders and charter brokers. This interpretation is consistent with A.I.D. practice.

GSM Export Credit Guarantees. The Committee is concerned about incidents where state trading enterprises (and former state trading enterprises) in nonmarket economies have failed to honor existig contracts with United States individuals and businesses. In light of such incidents, some members of the Committee believe that GSM export credit guarantees, made available to counties where a state trading enterprise (or former state trading enterprise) has failed to honor existing contracts or agreements with United States individuals and businesses should carefully be reviewed and considered.

Horse Protection. The Committee is aware that the National Horse Show Commission and APHIS are jointly developing written guidelines for inspections at horse shows, exhibitions, sales, and auctions. The Committee supports this improvement to the enforcement of the Horse Protection Act and urges the Department to work with the horse industry to make other necessary improvements to the enforcement program before the start of the 1992 show season.

Cost Estimate. Congressional Budget Office final cost estimates of the bill were not available at this time. The Congressional Budget Office has prepared a preliminary cost estimate of the bill, which indicates that the bill will not add to the Federal deficit, and will result in no change in direct spending.

LABOR-HHS APPROPRIATIONS BILL

Mr. CHAFEE. Mr. President, I supported the Labor-HHS appropriations bill approved by the Senate last night, but I did so with some reservation. Last week, we sent this bill to the President with a provision that would have delayed implementation of the gag rule for 1 year. The gag rule, as we all know, refers to 1988 HHS regulations which prohibit federally funded family planning clinics from providing any information to pregnant women about pregnancy termination, even when they ask for such information. The President vetoed this bill and the House failed by 12 votes to override the veto. In the interest of ensuring that the many programs in the Labor-HHS bill are funded, the measure before us no longer contains this critical delay of the gag rule. This is unfortunate.

Ever since this gag rule was imposed, I and many of my colleagues in the House and the Senate, have devoted a great deal of time and attention to trying to have it removed. I introduced legislation to overturn the regulations, and this measure was approved twice, once in the form of an amendment to the title X reauthorization legislation, and once a free-standing bill. Both the House and the Senate have approved, by large majorities, the provision which would delay implementation of the regulations, to give us time to try to work out a solution to this problem.

Since July of this year, I have been negotiating with representatives of the administration to try to reach some sort of acceptable compromise on this issue. After 4 months, we reached an agreement that I thought was fair. It was not optimal from my perspective, but after all, that is what compromise is all about. Unfortunately, that agreement was not acceptable to all parties in the administration, and thus we were unable to avoid the veto confrontation.

The President has assured me that he does not want to interfere with the free speech right of doctors, and that he does not want to impose any sort of gag on doctors. Pursuant to this objective, he issued a memorandum on November 5 to the Secretary of Health and Human Services, which says that the regulations will allow a woman to receive complete medical information about her condition from her physician. Secretary Sullivan, in turn, sent a memorandum to Dr. James Mason, Assistant Secretary for Health, instructing him to implement the regulations in accordance with the principles outlined in the President's memorandum. I ask unanimous consent that both of these documents be entered into the RECORD, immediately following my remarks.

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

(See exhibit 1.)

Mr. CHAFEE. There has been a great deal of debate about the effect, if any, of these memorandums on the implementation of the regulations. Some say that they are completely extra-legal, and therefore have no effect—the gag rule is still intact. Others say that doctors will be able to discuss any topic freely with their patients—the gag has been removed for doctors. Looking just at the memos, there is some uncertainty as to what the result of the President's actions are.

The President has stated publicly and privately that his intention is, and I am quoting here, "to allow patients and doctors to talk about absolutely anything they want." The President so stated in a press conference on November 8 when he was in Rome. I ask unanimous consent that the contents of this press conference be entered into the RECORD, immediately following my remarks.

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

(See exhibit 2.)

Mr. CHAFEE. I am heartened by this statement. But I must also point out that it is not consistent with the regulations, which specifically prohibit free discussion about pregnancy termination. It is my hope that those responsible for implementation of these regulations will enforce them in the spirit of the President's remarks. This will at least solve part of the problem.

But I must point out that there is still much at issue. While doctors may be allowed to talk freely with patients, it is clear that other health care professionals such as nurses, physician assistants and trained clinicians are still gagged. It is well-known that the title X program relies heavily on these other medical professionals. While there is always a medical director of the clinic who is responsible for the program, that doctor is rarely available to counsel women.

Most often, when a woman comes into a family planning clinic, she sees a nurse or a physician assistant, not a doctor. By allowing only doctors to provide information to women, the administration is telling us that these other professionals are not capable of providing basic information to women about health care. This is an insult to these professionals who are a critical component in the provision of quality and affordable health care services for low-income women and their families.

In addition, the memorandum reinforces the regulations' prohibition on referral for pregnancy termination services. The regulations make it very clear that the women are to be referred only for prenatal care to full service health care providers. That full service provider may also provide pregnancy termination services, but it also may not provide such services.

I would point out that in my home State of Rhode Island, there is only one full service health care provider that also provides pregnancy termination services. That provider is Women and Infants Hospital in Providence, but they only provide pregnancy termination services when there are severe medical circumstances, not first trimester, uncomplicated pregnancy termination services. Under these regulations, a woman in Rhode Island who asks where she can go to terminate her pregnancy would be referred to Women and Infants Hospital. She would go over there and only to find out she cannot have her pregnancy terminated there. So she would have to go to yet another place. This is cruel. Why should these women be sent on a wild goose chase?

These issues remain unresolved. We may have resolved the issue for physicians, but clearly, that is not enough. The gag is still intact for the majority of health care providers in title X clinics, and poor women still will not get full information about what their legal and medical options are and where they can go for services.

So, I voted for the measure last night because I want to see these programs

funded. But, I will be back with my legislation to overturn the gag rule when we reconvene in January. I will continue to bring this issue before the Senate until we can ensure that low-income women get the same quality of health care services that other women rightfully expect and receive from private health care professionals. A women who asks a medical question, whether she is rich or poor, deserves an honest answer. This is a simple and basic concept, and one that I intend to see carried out.

EXHIBIT 1

TRANSCRIPT OF PRESS CONFERENCE OF THE PRESIDENT, NOVEMBER 8, 1991

Q: Mr. President, those House and Senate leaders you just referred to got a bill passed in both houses this week which overturned your ban on abortion counseling and family planning clinics. Will you veto that, and why?

President BUSH. You know, the argument—this is a domestic issue here. The argument was the gag rule, the keeping patients from talking to their doctors about any array of options. That was the argument. That was the debate. You go back and look at the clips and look at some of the stories that were written, it is the patient-doctor relationship that people were arguing about. They were saying you are gagging doctors from giving a patient any solution they wanted.

That has been resolved by a directive from me to the secretary of HHS so it is no longer the question. Now they've got—somebody has some other ideas on that. But I will veto the legislation and get the veto sustained, and I already have taken care of quote, the gag rule, unquote, about which this was about.

Now, there are some other aspects of it on abortion where I have a difference with the Congress, a standing difference with them.

But on the gag rule, it is important to note that matter has been resolved. And clearly, under my directive, they can go ahead, patients and doctors can talk about absolutely anything they want, and they should be able to do that.

But let's not lose sight of what the argument was a few months ago when this first came out. It was the prohibition of a person to talk—the alleged prohibition of a person to talk to a doctor on—about abortion, or about having a doctor recommend abortion. That matter has been resolved.

So therefore, I think with that underway I will then go ahead and veto the bill and hope that it is sustained.

Q: Mr. President, you said that your ideas for an economic growth package are on the Hill and they won't do anything about them, the Democratically controlled Congress.

If that's the case, are you saying you can't do anything to help with the recession right now, you're helpless?

President BUSH. I think we're—I think you see these interest rates down, I think that will help tremendously. I think avoiding breaking the budget agreement will help. * * *

EXHIBIT 2

THE WHITE HOUSE,
Washington, November 5, 1991.

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

Throughout the debate about the relationship of the Title X family planning program and abortion counseling, some have raised questions about the regulations dealing with services offered to pregnant women.

We must ensure that the confidentiality of the doctor/patient relationship will be preserved and that the operation of the Title X family planning program is compatible with free speech and the highest standards of medical care.

In order to clarify the purpose and intent of these regulations, I am directing that in implementing these regulations you ensure that the following principles, inherent in the statute, are adhered to:

1. Nothing in these regulations is to prevent a woman from receiving complete medical information about her condition from a physician.

2. Title X projects are to provide necessary referrals to appropriate health care facilities when medically indicated.

3. If a woman is found to be pregnant and to have a medical problem, she should be referred for complete medical care, even if the ultimate result may be the termination of her pregnancy.

4. Referrals may be made by Title X progress to full-service health care providers that perform abortions, but not to providers whose principle activity is providing abortion services.

I am determined to assure the integrity of the Title X program in its mission to provide family planning services to low-income individuals; adherence to this guidance will produce this result.

GEORGE BUSH.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, November 19, 1991.

To: James O. Mason, M.D., Assistant Secretary for Health.

From: The Secretary, Louis W. Sullivan.

Subject: Implementation of the Title X Regulations.

On November 5, 1991, the President expressed to me his decision that, in implementing the Title X regulations, the Department of Health and Human Services should adhere to the following four principles:

1. Nothing in these regulations is to prevent a woman from receiving complete medical information about her condition from a physician.

2. Title X projects are to provide necessary referrals to appropriate health care facilities when medically indicated.

3. If a woman is found to be pregnant and to have a medical problem, she should be referred for complete medical care, even if the ultimate result may be the termination of her pregnancy.

4. Referrals may be made by Title X programs to full-service health care providers that perform abortions, but not to providers whose principal activity is providing abortion services.

My General Counsel has advised me that the directive contained in the President's memo of November 5, 1991, is fully consistent with all relevant statutory and regulatory authorities. Accordingly, I direct you to interpret and enforce the Title X regulations in accordance with the four principles that President Bush has articulated. Moreover, before issuing interpretations or program instructions relating to Title X, you should obtain assurance from the General Counsel that your guidance is consistent with this directive.

I am committed to preserving the confidentiality of the doctor-patient relationship and ensuring that the operation of the Title X family planning program is compatible with free speech and the highest standards of medical care. I know that I can count on you and the entire Public Health Service to assist me with this mission.

ADDITIONAL REMARKS OF SENATOR GORE ON FINAL PASSAGE OF S. 272, HIGH-PERFORMANCE COMPUTING ACT

Mr. GORE. Mr. President, yesterday, the Senate approved without objection a House-Senate compromise version of S. 272, the High-Performance Computing Act. I would like to take a few minutes to discuss the difference between the version of S. 272 approved by the Senate on September 11 and the bill passed last night. For the most part, S. 272 and the House version of the bill, H.R. 656, were quite similar and the compromise is not radically different from the legislation approved previously by the Senate.

One of the most obvious differences between the House and Senate versions was that the House bill contained several so-called buy America provisions that would have made it more difficult for Federal agencies participating in the High-Performance Computing [HPC] Program to make procurements from foreign companies. Both the U.S. Trade Representative and Dr. Bromley, the Director of the Office of Science and Technology Policy, have written letters saying they would suggest to the President that he veto the bill if this language was included in the final version of the bill.

Since the Senate bill did not include these provisions, and because of opposition to the provisions in both the Senate and the administration, in the final version of the bill the buy America provisions were substantially softened. Rather than requiring congressional approval of any procurement from other than an eligible American company, the compromise bill would require an annual report listing all procurements over $1 million from foreign countries and all research grants to foreign institutions. In addition, the Technology Administration of the Commerce Department is required to report on the implementation of the United States-Japan supercomputer agreement. Lastly, there is a language making clear that nothing in the bill changes the applicability of the Buy American Act to procurements made under the HPC Program.

The buy America provisions added to S. 272 in the House do raise an important issue—how Federal procurements can be used to advance U.S. technology. Other countries have a clear policy whereby the Government uses its procurement dollars to stimulate homegrown industry. In many cases, if a given product is available in the home market, the Government would buy it, even at a substantially higher

price. In other cases, the situation is less black and white, but the effect is the same—Government dollars directly or indirectly assist domestically owned firms.

In many cases, U.S. supercomputer companies have benefited from the early purchase of new models of supercomputers by Government agencies. Often, these new systems have hardware and software bugs that need to be fixed, and by working with researchers at the national labs, the NSF supercomputer centers, and elsewhere, these companies have been able to debug and upgrade their systems. Section 207(b) of the bill encourages such arrangements.

Many idealogues in the administration argue that the Federal Government should not make any distinction between United States and foreign firms—ever. In many high-technology fields that makes no sense whatsoever. Federally funded researchers need to do more, not less, to assist the U.S. high-technology industry. In addition, if a Federal agency is using supercomputers to develop software for designing the next generation of figher aircraft, for national security reasons it is best if the supercomputers used are American-made so that the software designers can freely discuss problems they might be having with the hardware. And they can work together on modifications that would make their software run more effectively. If the supercomputer is foreign-made, it is much more difficult for U.S. researchers to share their software and their technology.

The final version of S. 272 will provide Congress with a clearer picture of how procurements are being made under the HPC Program. The report called for in the bill will clearly identify procurements of foreign supercomputers and other technology. It will allow the Congress to determine whether monies authorized by the bill are helping U.S. high-technology industry to the maximum extent feasible. This is an important issue, one that, as chairman of the Science, Technology, and Space Subcommittee, I hope to explore in hearings next year.

There are a number of other significant differences between the Senate version of S. 272 and the final version. The House and Senate bills differed in the way they authorized funding for the HPC Program. The House authorized both existing and new programs—a total of almost $3 billion during the next 5 years—while the Senate bill authorized only new, additional funding—a total of $1.019 billion. It is worth noting that neither bill authorizes funding for the Defense Advanced Research Projects Agency at the Defense Department, which over the next 5 years will total over $1 billion. For fiscal year 1992, DARPA requested a total of $232.2 million for high-performance computing research and development. When both existing programs and the new initiative authorized by this bill are added together, funding for the High-Performance Computing Program will total over $4 billion for fiscal years 1992–96.

In the compromise bill, we used the House's approach and authorized both new and existing programs. In addition, the compromise includes language stating that the funding would be out of existing authorizations, which would include current and future NASA or NSF authorization bills, for instance.

Another important addition to the bill were House provisions authorizing high-performance computing efforts at the Department of Education, the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration. Although these agencies are not the largest contributors to the HPC Program, each will play an important role. NOAA, and especially the National Weather Service, have been pioneers in using supercomputers for weather forecasting and climate prediction. EPA researchers have developed state-of-the-art computer models of the formation and transport of smog. And the Department of Education has begun to develop new ways to use computers and networks in education. Although the Senate version of S. 272 did not include provisions on the Department of Education for jurisdictional reasons, I was glad we could incorporate such provisions in the final version. Some of the most exciting applications of advanced computing are in education, and the Department of Education has a key role to play.

There are many, many minor changes that have been made to the bill that passed the Senate in September. Three new definitions were added under section 4. The definition of "high-performance computing" was added to make clear that the HPC Program is to accelerate development and application of all types of leading edge computers, as well as high-speed computer communications technology. At several of the hearings held on S. 272, witnesses testified that computing and communications had actually merged. In many cases, it is now difficult to determine where the computer ends and the network begins.

The word "Network" refers to the National Research and Education Network, a national computer network connecting millions of computers around the country. It is worth noting that there are many different ways to define a network.

There is the physical definition. Using that definition, the network is defined as an assembly of connected cables or optical fibers.

There is the bureaucratic definition. In that case, you delimit networks according to who controls them. So, an agency's network is defined as those communications links that the agency can turn off if it wishes.

And there is the functional definition. A network is defined as all the communications links that link one computer to all the other computers with which it can communicate. That is a practical, easy to understand definition, and it is the one assumed in this bill.

So the National Research and Education Network, as defined by the bill, will consist of hundreds, even thousands, of smaller subnetworks. These subnetworks will be controlled and paid for by more than a dozen Federal agencies, by the States, by colleges and universities, and by the private sector. Each subnetwork will use compatible communications protocols and equipment so that traffic from one network can be transmitted via other networks. In this way it will be like the national telephone network, which consists of subnetworks run by hundreds of local phone companies and long-distance carriers, all interconnected.

It is worth noting that the NREN will rely largely on the existing physical network of telephone cables. In many cases, the same fiber optic cable that carries telephone conversations will be carrying NREN traffic. The NREN will not require installing a wholly new fiber optic network.

It is also important to note what the NREN does not include. When the bill refers to the Network it is referring to the communications links and servers transmitting data between computers attached to the network, but not to the computers themselves.

Section 101 of S. 272 instructs the President to implement the National High-Performance Computing Program, lays out the goals and components of the program, defines the role of the Director of OSTP in carrying out the program, and mandates that the President establish an advisory committee on high-performance computing. There were only minor changes made to this section. The bill that passed the Senate stated that "The President shall establish and, though the Director of OSTP, coordinate a National High-Performance Computing Program." The final version reads, "The President shall implement" the Program, and "The Director shall provide for interagency coordination of the Program." The language is basically equivalent. Under the bill, the Director, though the Federal Coordinating Council for Science, Engineering, and Technology [FCCSET], which he chairs, will work with the agencies to ensure that OMB is presented with a comprehensive, balanced annual research funding request. In that way, the agencies themselves, and the people who know their programs best, will do the difficult work of setting priorities for the program and deciding the

role of the participating agencies. This is much preferred to having each agency submit funding requests that duplicate or fail to take into account other agencies' programs.

This was one of the main reasons that the Congress created the Office of Science and Technology Policy in 1976. More and more, scientific and technical problems are so complex and broad that they cannot be addressed by one agency alone. Global change is an excellent example. Understanding the entire Earth system will require NASA satellite programs, university research funded by the National Science Foundation, oceanographic research funded by the National Oceanic and Atmospheric Administration, as well as programs at many other agencies. For more than 2 years, OSTP and FCCSET have been coordinating Federal global change research programs. The Committee on Earth and Environmental Sciences of FCCSET has prepared budget crosscuts showing how the different agencies' global change research programs relate to each other and contribute to the U.S. Global Change Research Program. Working together, the members of FCCSET have identified ways for researchers from their agencies to work together more effectively. They have succeeded in making the whole greater than the sum of the parts. The result has been a more cost-effective, more successful program.

Section 102 of the bill instructs NSF, the Defense Department, the Energy Department, the Commerce Department, NASA, and other agencies to support establishment of the NREN. It also makes clear that by 1996, parts of the network are to be capable of transmitting data at rates of at least one gigabit per second. Today, the fastest portions of the NSFNET and the Internet operate at 45 megabits per second. This represents a 30-fold increase in just 2 years. Even with this increase, the current network is fast becoming saturated; for the last 2 years, the amount of traffic on the NSFNET has grown at 10–15 percent per month. We need gigabit technology to deal with this ever increasing demand for bandwidth from the research, education, and business communities.

In the final version of the bill, section 102, which lists the characteristics of the Network, includes some small changes to the Senate's version of the bill. One provision states that the Network shall "link existing Federal and non-Federal computer networks, to the extent appropriate, in a way that allows autonomy within each component network." This means that the various networks must use compatible communications protocols and hardware. However, the bill makes clear that if a network provider determines it no longer wishes to be connected to the NREN, is has the option of disconnecting from the NREN.

This subsection of the bill also makes clear that most of the NREN will be built and run by the private sector. Much of the traffic on the NREN will be carried by lower-speed links which could be purchased from the private sector. On the other hand, the highest-speed links of the NREN are to be capable of transmitting data at a rate of billions of bits per second. At least initially, such high-speed networks will be experimental and will not be commercially available. In that case, the hardware and communications software needed will be developed and provided by industry and federally funded researchers at universities and government laboratories.

Title I of the bill also includes a provision on the key role that the Defense Advanced Research Projects Agency [DARPA] will play in developing gigabit networking technology for the NREN. DARPA has been developing computer networking technology for more than 25 years and is lead agency for developing NREN technology under the HPC Program. DARPA will also play a key role in developing the next generations of supercomputers. Even though DARPA will receive more funding for the HPC Program than any other agency, for jurisdictional reasons, S. 272 does not authorize funding for DARPA.

Title II of the bill defines the roles of the agencies participating in the HPC Program. Aside from the addition of provisions on the role of NOAA, EPA, and the Department of Education, and the new section 208 on fostering U.S. competitiveness, only minor changes were made to this title.

The language on NSF's role in the program makes clear NSF's prominent role in the program and the Network. NSF and DARPA account for more than two-thirds of the funding for the program. NSF is funding computing research at hundreds of colleges and universities throughout the country and manages NSFNET, the largest component of the Internet.

Section 203, which describes the Energy Department's role in the HPC Program and instructs the Secretary of Energy to establish collaborative consortia for high-performance computing research and development. These consortia will be like that being planned at Oak Ridge National Laboratory and involving the University of Tennessee and other universities, as well as industry. Unlike the Senate version of the bill, the final version includes specific authorizations for DOE, based on administration estimates.

Another significant change was made in section 204. The authorizations for the National Institute of Standards and Technology were somewaht reduced. Even with the reductions, authorizations for NIST rise from $3 million in fiscal year 1992 to $7 million in fiscal year 1996. This additional funding is essential if NIST is to carry out the responsibilities under the act for computer security, networking standards development, and basic and applied measurement research.

Once again, I thank my colleagues for their support of S. 272. I hope that this explanation clarifies some of the new language included in the final version of the High-Performance Computing Act.

SALUTE TO SENATOR ROTH

Mr. DOLE. Mr. President, this past week as we considered the unemployment bill, we witnessed a striking example of how well this system can work. We witnessed not only how it works when both sides of the aisle come together to resolve difficult legislative issues—but we also witnessed how one Senator can make a difference.

Of course, those who watched the process unfold last Thursday evening—and on into Friday—know that I am talking about BILL ROTH, the distinguished senior Senator from Delaware.

Last week's objective was to get an unemployment bill passed. Senator ROTH agreed with that objective, but he was not about to let it go through until he was satisfied that his home State of Delaware received its fair share of unemployment benefits.

I want to salute Senator ROTH for his dedication and for his key role on producing the compromise bill.

He is a solid legislator who is respected on both sides of the aisle on many issues.

Mr. President, I have to believe that this Thanksgiving a lot of unemployed Delawareans are going to be thankful for the leadership of BILL ROTH.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

STRENGTHENING EDUCATION FOR AMERICAN FAMILIES ACT

Mr. MITCHELL. Mr. President, I have discussed with the distinguished Republican leader our interest in proceeding to consideration of S. 2, that is the education bill now on the calendar. I believe it to be an important bill, and hope that we can proceed to it.

And accordingly I now ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 69, S. 2, a bill to strengthen education for American families.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object—and I shall object—but I want to concur with the statement of the majority leader. This is an important bill. There are negotiations underway even as we speak, I believe, with the Education Department, Secretary Alexander, members on the Labor-Education Committee.

But I, having said that, am constrained to object at this time. But I would hope that by next year, early next year, we will be in a position to pass this bill very quickly.

Therefore, I object.

Mr. MITCHELL. Mr. President, I am disappointed at the objection, and I will now state my intention to make a motion to proceed to the bill and to file a cloture motion on that motion to proceed prior to the end of this session of this Congress.

So that the first order of business when the Senate reconvenes on, as it now expected, January 21, 1992, will be a vote on a cloture motion on a motion to proceed to the education bill. I think it is of great importance. I regret that we cannot deal with it in this session, in view of the objection just made. But I want to state that I intend it have the highest priority and, therefore, it will be the first order of business on the very first day that the Senate is back in session next year.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 471 and 472.

I further ask unanimous consent that the nominees be confirmed en bloc; that any statements appear in the RECORD as if read; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

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

The nominations considered and confirmed, en bloc, are as follows:

NUCLEAR REGULATORY COMMISSION

E. Gail de Planque, of New Jersey, to be a member of the Nuclear Regulatory Commission for the term of 5 years expiring June 30,1995.

ENVIRONMENTAL PROTECTION AGENCY

Herbert Tate of New Jersey, to be an Assistant Administrator of the Environmental Protection Agency.

STATEMENTS ON THE NOMINATION OF HERBERT TATE

Mr. CHAFEE. Mr. President, I rise today in support of the confirmation of Mr. Herbert H. Tate, Jr., to the position of Assistant Administrator for the Office of Enforcement at the U.S. Environmental Protection Agency.

The position to which Mr. Tate has been nominated is an important one. The Environmental Protection Agency's Office of Enforcement is critical to the coordination of effective and efficient enforcement actions against violators of the environmental laws we pass. Laws passed to protect our environment, our health, and the health of our children.

Many of these environmental laws are complex. Their enforcement requires a working knowledge of separate and detailed laws on air, water, toxic substances, and solid wastes. But, perhaps most importantly, at a time when resources are in short supply, effective enforcement of these laws requires an ability to coordinate the myriad requirements applicable to all of our natural resources so that each suit filed by the EPA achieves the greatest amount of environmental benefit possible.

I have no doubt that Herb Tate is up to the task. Having spent nearly 5 years as the county prosecutor for New Jersey's largest county, Herb is accustomed to handling a large and difficult case load under the pressures of an ever-shrinking budget.

I am confident that Herb Tate will fulfill the responsibilities of his new position with distinction to the benefit of the EPA, the public and the environment.

Mr. LAUTENBERG. Mr. President, I rise to support the nomination of Herbert Tate to be the Assistant Administrator for Enforcement of the Environmental Protection Agency.

Mr. Tate is a fellow New Jerseyan who would bring to the position legal experience in both the private and public sectors. Of particular importance, he was the Essex County prosecutor where he managed a staff of 420, a budget of $18 million and 30,000 cases a year.

Herb Tate would be the first Assistant Administrator for Enforcement at EPA with prosecutorial experience. This experience clearly will be put to the test quickly at EPA. All too often over the past decade, Congress has labored hard to craft tough environmental laws, only to see the administration fail to enforce them. Herb Tate testified before the Senate Environment Committee that he would vigorously enforce the law.

Herb Tate made a number of specific commitments to enforce our laws.

We have seen some recent improvements in EPA's Superfund settlement efforts. EPA needs to keep the pressure on to get polluters to pay for high quality cleanups.

We need to be sure that in moving to settle cases with polluters, EPA does not settle for less than the level of cleanup that the public deserves.

We need to be sure that the EPA uses all the tools at its disposal—and we have given them some pretty good ones—to force polluters to cleanup.

Herb Tate testified about his commitment to prevent the compromising of cleanup quality, and to use aggressively Superfund's unilateral enforcement tools.

He also testified about his commitment to enforcing the Emergency Planning and Community Right to Know Act. That law is providing the people of this country the facts on what is being emitted into the environment, and it is creating incentives for industry to reduce pollution. It is critical that we take all necessary steps to enforce the law's reporting and emergency planning.

And EPA's clean water enforcement record needs significant improvement. The EPA IG says EPA is collecting penalties which are less than the economic benefit of violations. We are creating an incentive to pollute. This must stop. Herb Tate testified before the Environment Committee that he supported collecting penalties at levels which were at least as great as the economic benefit of the violation.

The Public Interest Research Group found that EPA frequently ignores violations, even when patterns of chronic violation appear. We need mandatory minimum penalties to stop these repeat offenders. Herb Tate promise to consider such penalties.

EPA's own statistics show that 12 percent of large factories are in significant violation of the act. It is inexcusable that 19 years after enactment of the Clean Water Act, so many large factories are still polluting our waters. Herb Tate committed to bringing all major facilities into compliance as quickly as possible.

And we see an OMB which is bottling up a congressionally mandated report to improve clean water enforcement. Herb Tate promised to review the causes of the delay and ensure that EPA was in compliance with legislation mandating this report.

The problems with clean water enforcement show what Mr. Tate will be up against, and how important it is that he succeed.

Our environmental laws are only as good as the administration's enforcement efforts. We need an Assistant Administrator for Enforcement at EPA who will move aggressively to stop providing incentives to pollute, to end chronic violations and to eliminate the level of significant violators. Herb Tate has promised to do the job.

Herb Tate has not only a huge responsibility, but also a major challenge. Herb Tate's testimony and record before the Environment Committee indicates that he is prepared for the challenge. So I support the nomination of Herb Tate to this important office. And I plan to work closely with Herb Tate to ensure that our environmental laws are enforced vigorously.

LEGISLATIVE SESSION

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

THE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration, en bloc, of calendar Nos. 311, 312, 313, and 314; that the committee substitute amendments and the committee amendments, where indicated, be agreed to, en bloc; that the several bills be deemed read a third time and passed; and that the motion to reconsider the passage of these items be laid upon the table, en bloc; that any statements relating to these calendar items appear at the appropriate place in the RECORD; and that the consideration of these items appear individually in the RECORD.

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

RELEASE OF RESTRICTIONS ON CERTAIN LANDS

The bill (S. 807) to permit Mount Olivet Cemetery Association of Salt Lake City, UT, to lease a certain tract of land for a period of not more than 70 years, was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 807

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

SECTION 1. RELEASE OF RESTRICTION.

Notwithstanding the Act of January 23, 1909 (chapter 37, 35 Stat. 589), the Secretary of the Interior shall execute such instruments as may be necessary to allow the Mount Olivet Cemetery Association of Salt Lake City, Utah, to lease for use other than as a cemetery, for a period of not more than 70 years, any portion of the land described in the first section of that Act, excluding the tract of land granted to Salt Lake City, Utah, pursuant to the Act of April 3, 1952 (66 Stat. 36), so long as such additional use will not prevent future use for cemetery purposes.

FISHLAKE NATIONAL FOREST ENLARGEMENT ACT

The Senate proceeded to consider the bill (S. 1182) to transfer jurisdiction of certain public lands in the State of Utah to the Forest Service, and for other purposes, which had been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 1182

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 "Fishlake National Forest Enlargement Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Certain public lands presently managed by the Bureau of Land Management (hereafter in this Act referred to as the "BLM") are adjacent to the Fishlake National Forest and are logical extensions of the forest.

(2) Those public lands are isolated and disconnected from other BLM lands and have been identified through the land use planning process of the BLM as suitable for transfer to the Forest Service.

(3) The Forest Service currently manages much of the livestock grazing on those public lands by cooperative agreement with the BLM.

(4) Administration of those public lands as part of the Fishlake National Forest would allow for more efficient and economical management by both the Forest Service and BLM.

SEC. 3. TRANSFER.

(a) IN GENERAL.—Effective on the date of enactment of this Act, jurisdiction over public lands designated on the map referred to in subsection (b), comprising approximately 10,172.89 acres is hereby transferred to the Secretary of Agriculture. Such lands shall be added to and administered as part of the Fishlake National Forest.

(b) MAP AND LEGAL DESCRIPTION.—The lands subject to this Act are those lands identified on a map entitled "Fishlake National Forest Enlargement", **[**dated and**]** *dated March 16, 1989, and* filed, together with a legal description of such lands, in the Office of the Chief of the Forest Service, United States Department of Agriculture and the Director, Bureau of Land Management, Department of the interior. Such map and legal description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such legal description and map may be made by the Secretary of Agriculture in consultation with the Secretary of the Interior.

(c) BOUNDARY.—(1) The boundary of the Fishlake National Forest is hereby modified **[**to include the lands transferred by subsection (a).**]** *as indicated on the map referred to in subsection (b).*

(2) For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601—9), the boundary of the Fishlake National Forest, as modified by this Act, shall be considered to be the boundary of theat national forest as of January 1, 1965.

SEC. 4. RIGHTS AND PERMITS.

(a) VALID EXISTING RIGHTS.—Nothing in this Act shall affect valid existing rights of any person under any authority of law.

(b) AUTHORIZATIONS TO USE LANDS.—Authorizations to use lands transferred by this Act which were issued prior to the date of transfer shall remain subject to the laws and regulations under which they were issued. Such authorizations shall be administered by the Secretary of Agriculture. Any renewal or extension of such authorizations shall be subject to the laws and regulations pertaining to the Forest Service, Department of Agriculture. The change of administrative jurisdiction resulting from the enactment of this Act shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

So the bill (S. 1182) was deemed read the third time and passed, as follows:

S. 1182

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 "Fishlake National Forest Enlargement Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) Certain public lands presently managed by the Bureau of Land Management (hereafter in this Act referred to as the "BLM") are adjacent to the Fishlake National Forest and are logical extensions of the forest.

(2) Those public lands are isolated and disconnected from other BLM lands and have been identified through the land use planning process of the BLM as suitable for transfer to the Forest Service.

(3) The Forest Service currently manages much of the livestock grazing on those public lands by cooperative agreement with the BLM.

(4) Administration of those public lands as part of the Fishlake National Forest would allow for more efficient and economical management by both the Forest Service and BLM.

SEC. 3. TRANSFER.

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(b) MAP AND LEGAL DESCRIPTION.—The lands subject to this Act are those lands identified on a map entitled "Fishlake National Forest Enlargement", dated March 16, 1989, and filed, together with a legal description of such lands, in the Office of the Chief of the Forest Service, United States Department of Agriculture and the Director, Bureau of Land Management, Department of the Interior. Such map and legal description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such legal description and map may be made by the Secretary of Agriculture in consultation with the Secretary of the Interior.

(c) BOUNDARY—(1) The boundary of the Fishlake National Forest is hereby modified as indicated on the map referred to in subsection (b).

(2) For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundary of the Fishlake National Forest, as modified by this Act, shall be considered to be the boundary of that national forest as of January 1, 1965.

SEC. 4. RIGHTS AND PERMITS.

(a) VALID EXISTING RIGHTS.—Nothing in this Act shall effect valid existing rights of any person under any authority of law.

(b) AUTHORIZATIONS TO USE LANDS.—Authorizations to use lands transferred by this Act which were issued prior to the date of transfer shall remain subject to the laws and regulations under which they were issued. Such authorizations shall be administrated by the Secretary of Agriculture. Any renewal or extension of such authorizations shall be subject to the laws and regulations pertaining to the Forest Service, Department of Agriculture. The change of administrative jurisdiction resulting from the enactment of this Act shall not in itself constitute a basis for denying or approving the renewal or reissuance of any such authorization.

BONNEVILLE SALT FLATS PRESERVATION STUDY ACT

The Senate proceeded to consider the bill (S. 1184) to direct the Secretary of the Interior to conduct a study to de-

termine the nature and extent of the salt loss occurring at Bonneville Salt Flats, Utah, and how best to preserve the resources threatened by such loss, which has been reported from the Committee on Energy and Natural Resources, with amendments; as follows:

(The part of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 1184

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 "Bonneville Salt **[Flat]** *Flats* Preservation Study Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) Bonneville Salt Flats, Utah, is a unique natural national treasure;

(2) an unexplained salt loss from the salt flat crust is occurring at Bonneville Salt Flats; and

(3) this salt loss is causing irreparable damage to Bonneville Salt Flats, which is placing at risk numerous public resources, including scenic, historic, economic, and recreational resources.

SEC. 3. STUDY.

Not later than two years after the date **[**of the enactment of this Act,**]** *funds are made available,* the Secretary of the Interior *(hereinafter "the Secretary")* shall conduct a study to determine the nature and extent of the salt loss from the salt flat crust occurring at Bonneville Salt Flats, Utah, and how best to preserve the resources (including scenic, historic, economic, and recreational resources) threatened by such salt loss. In conducting the study, the Secretary shall consider whether to *recommend that the Congress* designate the Bonneville Salt Flats as a national recreation area or a national conservation area. Within ninety days after the completion of the study, the Secretary shall submit **[**a report to the Congress concerning such study, together with recommendations, if any, of the Secretary.**]** *a report concerning the study, together with any recommendations, to the Congress.*

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 for fiscal years 1992 and 1993 to carry out this Act.

So the bill (S. 1184) was deemed read the third time and passed, as follows:

S. 1184

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 "Bonneville Salt Flats Preservation Study Act".

SEC. 2. FINDINGS.

The Congress finds that—

(1) Bonneville Salt Flats, Utah, is a unique natural national treasure;

(2) an unexplained salt loss from the salt flat crust is occurring at Bonneville Salt Flats; and

(3) this salt loss is causing irreparable damage to Bonneville Salt Flats, which is placing at risk numerous public resources, including scenic, historic, economic, and recreational resources.

SEC. 3. STUDY.

Not later than two years after the date funds are made available, the Secretary of the Interior (hereinafter "the Secretary") shall conduct a study to determine the nature and extent of that salt loss from the salt flat crust occurring at Bonneville Salt Flats, Utah, and how best to preserve the resources (including scenic, historic, economic, and recreational resources) threatened by such salt loss. In conducting the study, the Secretary shall consider whether to recommend that the Congress designate the Bonneville Salt Flats a national recreational area or a national conservation area. Within ninety days after the completion of the study, the Secretary shall submit a report concerning the study, together with any recommendations, to the Congress.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $1,500,000 for fiscal years 1992 and 1993 to carry out this Act.

RELEASE OF RESTRICTIONS ON CERTAIN LAND

The Senate proceeded to consider the bill (S. 1183) to reduce the restrictions on the lands conveyed by deed to the city of Kaysville, UT, and for other purposes, which has been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

That section 2 of the Act of June 8, 1926 (44 Stat. 708), is amended by striking the word "States." at the end of the first sentence, and inserting in lieu thereof the following: "States, except that the following shall not apply to those lands upon which communications facilities were located as of November 1, 1991, or prevent reasonable ingress and egress for the repair, maintenance, or improvement of such facilities, nor shall the foregoing prohibit the use of the lands described in section 1 for recreational purposes, so long as such recreational use is consistent with the protection of the watershed and water supply system of the city.".

NATIONAL FAMILY CAREGIVERS WEEK

NATIONAL POLICE OFFICER AND FIREFIGHTER RECOGNITION WEEK

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged, en bloc, from further consideration of the following joint resolutions: Senate Joint Resolution 225 designating "National Police Officer and Firefighter Recognition Week," and House Joint Resolution 125 designating "National Family Caregivers Week," and that the Senate proceed, en bloc, to their immediate consideration; that the joint resolutions be deemed read three times and passed, en bloc, and the motion to reconsider be laid upon the table; and that the preambles be agreed to; further, that the consideration of these items appear individually in the RECORD.

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

So the joint resolution (H.J. Res. 125) to designate the week beginning November 24, 1991, and the week beginning November 22, 1992, each as "National Family Caregivers Week," was deemed read the third time and passed.

The preamble was agreed to.

So the joint resolution (S.J. Res. 225) to designate February 3, 1992, through February 9, 1992, as "National Police Officer and Firefighter Recognition Week," was deemed read the third time and passed.

The preamble was agreed to.

The joint resolution, with its preamble, is as follows:

S.J. RES. 225

Whereas police officers and firefighters throughout the United States maintain a diligent and constant watch over our nation's communities;

Whereas police officers and firefighter unselfishly serve to preserve the domestic security of the United States on a daily basis; and

Whereas police officers and firefighters heroically display the spirit of true public service through the performance of life-threatening deeds for the protection of the citizens of the United States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That February 3, 1992, through February 9, 1992, is designated as "National Police Officer and Firefighter Recognition Week". The President is authorized and requested to issue a proclamation calling on the people of the United States to observe the week with appropriate ceremonies and activities recognizing all police officers and firefighters in the United States.

JOINT RESOLUTION INDEFINITELY POSTPONED—SENATE JOINT RESOLUTION 99

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 99, a joint resolution designating November 24–30, 1991 and November 22–28, 1992 as "National Family Caregivers' Week," the Senate companion to House Joint Resolution 125, and that the measure then be indefinitely postponed.

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

NATIONAL VISITING NURSE ASSOCIATIONS WEEK

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of Senate Joint Resolution 124, "National Visiting Nurse Associations Week," and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 124) to designate "National Visiting Nurse Associations Week for 1992.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

The PRESIDING OFFICER. The joint resolution is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the joint resolution.

The joint resolution was ordered to be engrossed for a third reading, was read the third time and passed.

The preamble was agreed to.

The joint resolution (S.J. Res. 124), with its preamble, is as follows:

S.J. RES. 124

Whereas Visiting Nurse Associations have served homebound Americans since 1885;

Whereas such Associations annually provide home care and support services to more than 1,500,000 men, women, children, and infants;

Whereas such Associations serve 422 urban and rural communities in 45 States;

Whereas such Associations adhere to high standards of quality and provide personalized and cost-effective home health care and support, regardless of an individual's ability to pay;

Whereas such Associations are voluntary in nature, independently owned, and community based;

Whereas such Associations ensure the quality of care through oversight provided by professional advisory committees composed of local physicians and nurses;

Whereas such Associations enable hundreds of thousands of Americans to recover from illness and injury in the comfort and security of their homes;

Whereas such Associations ensure that individuals who are chronically ill or who have physical or mental handicaps receive the therapeutic benefits of care and support services in the home;

Whereas, in the absence of such Associations, thousands of patients with mental or physical handicaps or chronically disabling illnesses would have to be institutionalized;

Whereas such Associations provide a wide range of services, including health care, hospice care, personal care, homemaking, occupational, physical, and speech therapy, "friendly visiting services", social services, nutritional counseling, specialized nursing care by registered nurses, and meals on wheels;

Whereas in each community serviced by such an Association, local volunteers support the Association by serving on the board of directors, raising funds, visiting patients in their homes, assisting patients and nurses at wellness clinics, delivering meals on wheels to patients, running errands for patients, working in the Association's office, and providing tender loving care; and

Whereas the need for home health care for young and old alike continues to grow annually: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That February 16 through February 22, 1992, is designated as "National Visiting Nurse Associations Week", and the President is authorized and requested to issue a proclamation calling upon the people of the United States to observe such week with appropriate programs, ceremonies, and activities.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MOUNT RUSHMORE COMMEMORATIVE COIN ACT AMENDMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of S. 108, a bill to make a technical amendment to the Mount Rushmore Commemorative Coin Act to conform to the intent of Congress, and the Senate proceed to its immediate consideration; that any statements with respect to this legislation be inserted at an appropriate place in the RECORD; that the bill be read for the third time, passed, and the motion to reconsider be laid upon the table.

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

The bill (S. 108) was deemed read the third time and passed is as follows:

S. 108

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

SECTION 1. DISTRIBUTION OF SURCHARGES.

Section 8 of the Mount Rushmore Commemorative Coin Act (104 Stat. 314; 31 U.S.C. 5112 note) is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) the first $18,750,000 shall be promptly paid by the Secretary to the Society to assist the Society's efforts to improve, enlarge, and renovate the Mount Rushmore National Memorial; and

(2) the remainder shall be returned to the Federal Treasury for purposes of reducing the national debt.".

SEC. 2. RETROACTIVE EFFECT.

If, prior to the enactment of this Act, any amount of surcharges have been received by the Secretary of the Treasury and paid into the United States Treasury pursuant to section 8(1) of the Mount Rushmore Commemorative Coin Act, as in effect prior to the enactment of this Act, that amount shall be paid out of the Treasury to the extent necessary to comply with section 8(1) of the Mount Rushmore Commemorative Coin Act, as in effect after the enactment of this Act.

Mr. PRESSLER. Mr. President, S. 108 amends the Mount Rushmore Commemorative Coin Act to allow specified surcharges to be paid to the Mount Rushmore National Memorial Society to assist its efforts at renovating our shrine of democracy. Mount Rushmore National Memorial celebrated its 50th anniversary with a formal dedication by President Bush on July 3, 1991. On July 16, President Bush signed into law the Mount Rushmore Commemorative Coin Act, which directs the Secretary of the Treasury to mint a set of commemorative coins in recognition of Mount Rushmore's golden anniversary. This coin act provides that 50 percent of the total surcharges received from the sale of the coins shall be used to improve and renovate the monument.

At the time this legislation was enacted, it was anticipated the amount of surcharges received from the sale of the coins would total approximately $17 million. Up to the present time, however, total surcharges received have amounted to only $11.5 million; and 50 percent of such surcharges are to be retained by the Treasury. The act further provides that coins may not be issued beyond this calendar year.

The National Park Service has estimated the cost of the renovations will total approximately $36 million. The projected amount of total surcharges is far short of that required from this source of funds if work on the monument is to continue as planned. Most of these funds are to be raised through private sources, but the proceeds from the coin surcharge are essential for the overall project. Without that funding source, the renovation work would be jeopardized.

In view of these developments, it is critical that S. 108 be adopted by the Senate. My legislation would permit the coin surcharge funds held by Treasury to be used for continuation of the work at Mount Rushmore. I urge my colleagues to support this effort. The people of South Dakota, the Mount Rushmore Society, and our State's congressional delegation have been united in this effort.

UNANIMOUS-CONSENT AGREEMENT—HOUSE JOINT RESOLUTION 346

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate considers House Joint Resolution 346, approving the extension of nondiscriminatory treatment with respect to the products of the Union of Soviet Socialist Republics, the statutory time limitation be reduced to 1 hour, with the time equally divided and controlled between the chairman and ranking member of the Finance Committee; that when the time is used or yielded back, the Senate without intervening action or debate proceed to vote on the resolution; that immediately upon disposition of House Joint Resolution 346, the Senate companion measure, Senate Joint Resolution 215, be indefinitely postponed.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

THE CALENDAR

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration en bloc of Calendar Nos. 349, 350, and 351; that the committee amendments where appropriate be agreed to; that the resolutions be agreed to; that the bills be deemed read a third time and passed and the motions to reconsider laid upon the table en bloc; that the preamble, where appropriate, be agreed to; that any statements relating

to these calendar items appear at the appropriate place in the RECORD; and that the consideration of these items appear individually in the RECORD.

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

IMPRISONMENT AND TRIAL OF DR. NGUYEN DAN QUE

The concurrent resolution (S. Con. Res. 78) regarding the unfair imprisonment and trial of Dr. Nguyen Dan Que by the Government of Vietnam, was considered, and agreed to.

The preamble was agreed to.

The concurrent resolution, and the preamble, are as follows:

S. CON. RES. 78

Whereas the normalization of relations with the Socialist Republic of Vietnam and the potential lifting of the economic embargo depend in part on that nation taking certain steps related to the recognition of certain human rights;

Whereas Dr. Nguyen Dan Que is a nonviolent advocate for human rights and democracy in the Socialist Republic of Vietnam;

Whereas Dr. Nguyen Dan Que's right to free expression is guaranteed by Article 19 of the Universal Declaration of Human Rights;

Whereas Dr. Nguyen Dan Que has been imprisoned for 12 of the last 13 years and has for 14 years suffered from ill health;

Whereas Dr. Nguyen has finally been charged with treason and trying to overthrow the Vietnamese government;

Whereas Dr. Nguyen is scheduled to go on trial November 29, 1991; and

Whereas numerous international human rights organizations have called for the release of Dr. Nguyen: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) Dr. Nguyen Dan Que should be accorded a fair and impartial trial as is his right under Articles 10 and 11 of the Universal Declaration of Human Rights;

(2) to ensure fairness and impartiality during his impending trial, international observers should be permitted access to all court proceedings and evidence; and

(3) if Dr. Nguyen is merely guilty of nonviolently expressing his views regarding human rights, he should be released immediately.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the following persons: the Permanent Representative of Vietnam to the United Nations, the Speaker of the Vietnamese National Assembly, the Foreign Minister and the Prime Minister of the Socialist Republic of Vietnam, as well as the Secretary of State and the President of the United States.

WITHDRAWAL OF SOVIET TROOPS FROM THE BALTIC STATES

The resolution (S. Res. 196) expressing the sense of the Senate that the Soviet Union should immediately begin a prompt withdrawal of Soviet Armed Forces from the Baltic States and undertake discussions with the governments of Lithuania, Latvia, and Estonia appropriate to facilitate that withdrawal, was considered, and agreed to.

The preamble was agreed to.

The resolution, and the preamble, are as follows:

S. RES. 196

Whereas the rightful independence of the Baltic States of Lithuania, Latvia, and Estonia from the Union of Soviet Socialist Republics has been recognized;

Whereas more than 100,000 Soviet military personnel continue to maintain a presence in the Baltic States; and

Whereas the continued presence of Soviet troops threatens the peace and independence of the Baltic States: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President should call upon the President of the Union of Soviet Socialist Republics to begin immediately a prompt withdrawal of Soviet armed forces from the Baltic States and to undertake discussions with the governments of Lithuania, Latvia, and Estonia appropriate to facilitate that withdrawal.

Mr. HATCH. Mr. President, I am pleased that the Senate has acted in an expeditious manner and adopted Senate Resolution 196 by unanimous consent. This sense-of-the-Senate resolution calls on the Soviet military to begin an immediate withdrawal of forces from the Baltic States, and undertake the appropriate discussions to facilitate that prompt withdrawal. In this effort, I was joined by Senators BRADLEY, DECONCINI, MCCAIN, GRASSLEY, DOLE, KASTEN, PRESSLER, D'AMATO, LUGAR, GARN, DIXON, DODD, and ADAMS.

Mr. President, this resolution demonstrates clearly that my colleagues in the Senate are strongly concerned about the continuing presence of large-scale offensive forces in the Baltic States and the highly destabilizing nature of these units. The Soviet Union has stationed approximately 135,000 troops in the Baltics, and unfortunately, they seem to be making themselves right at home.

The Soviets have maintained military installations in the Baltics since the end of World War II, and many thousands of troops have reportedly been sent to the Baltics after departing from East Europe. In addition, the Soviet military establishment in the Baltics appears to be playing some of its old games. On November 15, for example, Soviet military leaders stationed in the region proposed that military property in Latvia, Lithuania, and Estonia be privatized and sold to pay for the resettlement of Soviet troops. This tense situation has been exacerbated by reports filed by Estonian officials this week, which assert that the Soviets violated an agreement regarding the withdrawal of two paratroop units from Estonia. One unit has reportedly not moved and the other was redeployed to another base in Estonia. Such incidents are symptomatic of the far larger problem, that of Soviet forces violating the territorial integrity of the Baltics.

Mr. President, I hope that the Soviet leadership takes notice of Senate Resolution 196, because it not only complements the political and military objectives of the CFE agreement, but signals this Chamber's unswerving commitment to Baltic sovereignty.

FREEDOM OF EMIGRATION AND TRAVEL FOR SYRIAN JEWS

The concurrent resolution (H. Con. Res. 188) concerning freedom of emigration and travel for Syrian Jews, was considered and agreed to.

The preamble was agreed to.

MEASURE PLACED ON CALENDAR—H.R. 26

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 26, a bill to require the Federal depository institution regulatory agencies to take additional enforcement actions against depository institutions engaging in money laundering, and for other purposes, and that the bill be placed on the calendar.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT AMENDMENTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of H.R. 3576 regarding the reservation of assistance under the HOME Investment Partnerships Act for certain insular areas, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, the committee is discharged.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3576) to amend the Cranston-Gonzalez National Affordable Housing Act to reserve assistance under the HOME Investment Partnerships Act for certain insular areas.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1434

(Purpose: To amend the Cranston-Gonzalez National Affordable Housing Act to reserve assistance under the HOME Investment Partnerships Act for certain insular areas, extend time for a certain jurisdiction to submit a CDBG statement, and to clarify the authority of the Secretary of Housing and Urban Development regarding low-income housing covenants)

Mr. MITCHELL. Mr. President, on behalf of Senator RIEGLE, I send to the desk a technical amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. Mitchell], for Mr. RIEGLE, for himself and Mr. CRANSTON, proposes an amendment numbered 1434:

Strike all after the enacting clause and insert the following:

SECTION 1. RESERVATION OF ASSISTANCE.

Section 217(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(a)) is amended—

(1) in the first sentence of paragraph (1), by inserting "and after reserving amounts for the insular areas under paragraph (3)" before the first comma; and

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

"(3) INSULAR AREAS.—

"(A) IN GENERAL.—For each fiscal year, of any amount approved in an appropriations Act to carry out this title, the Secretary shall reserve for grants to the insular areas an amount that reflects—

(i) their share of the total population of eligible jurisdictions; and

"(ii) any adjustments that the Secretary determines are reasonable in light of available data that are related to factors set forth in subsection (b)(1)(B).

"(B) SPECIFIC CRITERIA.—The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas in accordance with specific criteria to be set forth in a regulation promulgated by the Secretary after notice and public comment.

"(C) TRANSITIONAL PROVISIONS.—For fiscal year 1992, the reservation for insular areas specified in subparagraph (A) shall be made from any funds which become available for reallocation in accordance with the provisions of section 216(6)(A).".

SEC. 2. DEFINITIONS.

Section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704) is amended—

(1) in paragraph (1), by striking "Guam" and all that follows through "the Marshall Islands" and inserting "the insular areas"; and

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

"(24) The term 'insular areas' means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.".

SEC. 3. EXTENSION OF TIME TO SUBMIT CDBG STATEMENT.

Notwithstanding any other provision of law, the City of Petersburg, Virginia is authorized to submit not later than 10 days following the enactment of this Act, and the Secretary of Housing and Urban Development shall consider and accept, the final statement of community development objectives and projected use of funds required by section 104(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(a)(1)) in connection with a grant to the City of Petersburg under title I of such Act of fiscal year 1991.

SEC. 4. LOW-INCOME HOUSING COVENANTS.

Section 515(p)(4) of the Housing Act of 1949 (42 U.S.C. 1485(p)(4)) is amended by adding at the end "The preceding sentence shall not be interpreted as authorizing the Secretary to—

"(A) limit the ability of a housing credit agency to require an owner of housing, in order to receive a low-income housing tax credit, to enter into a restrictive covenant, in such form and for such period as the housing credit agency deems appropriate, to maintain the occupancy characteristics of the project as prescribed in section 42(h)(6) of the Internal Revenue Code of 1986; or

"(B) deny or delay closing of financing under this section by reason of the existence, or occupancy terms, of any such restrictive covenant.".

Mr. RIEGLE. Mr. President, I offer this technical amendment which refines a provision that has recently passed the House.

This amendment will accomplish three things. First, it will ensure that insular areas including the U.S. Virgin Islands, Guam, Northern Mariana, and American Samoa are able to participate in the HOME Investment Partnerships Program. HOME was enacted last year as part of the National Affordable Housing Act and is designed to spur the creation of affordable housing opportunities for low-income people.

Second, the amendment would provide a one-time waiver to the city of Petersburg, VA, to submit its required final statement of community development objectives under the Community Development Block Grant [CDBG] Program. Due to extenuating circumstances, the city failed to meet a required deadline. Although HUD would like to give the city an extension of the deadline, existing law prohibits such action.

Third, the amendment includes legislative language to carry out already established congressional intent that the Low-Income Housing Tax Credit Program and the Farmers' Home section 515 program work together. The amendment removes the possibility of misinterpretation by Farmers' Home that could frustrate the ability of these two programs to work together.

This last provision is of great importance to affordable housing in rural areas. In August, the Michigan Office of the Farmers' Home Administration halted the approval of section 515 multifamily loans that were combined with the low-income housing tax credit. A Farmers' Home lawyer interpreted current law in a way that created a conflict between the tax credit and regulations for the section 515 program.

As a result, hundreds of low-income housing units in rural areas have been thrown into question. The Department's actions have already resulted in a major interruption in the ability of the State and local jurisdictions to provide low-income housing to people in rural areas in Michigan. Farmers' Home actions have also threatened to prevent projects from closing across the nation. Housing opportunities for hundreds for families could be jeopardized as loans are left uncommitted, tax credits go unused, and project development is stalled.

Last month, language was included in the fiscal year 1992 Agriculture Appropriations Act that was designed to clear up the problem. Astonishingly, however, Farmers' Home lawyers are choosing to ignore this congressional directive. They claim the language was not explicit enough to require them to change their obstructive practices. Farmers' Home actions are in direct conflict with congressional intent to provide more affordable housing in rural areas.

This amendment will make it crystal clear that Farmers' Home must allow the tax credit and section 515 program to work together. This amendment will allow State housing finance agencies across the nation to resume their efforts to provide affordable housing to people in rural communities.

Mr. President, this amendment has no budgetary impact and has been cleared by Members on both sides of the aisle. I urge my colleagues to join me in support of this amendment to H.R. 3576.

Mr. CRANSTON. Mr. President, I want to thank the distinguished chairman of the full committee, Senator RIEGLE, for his efforts in bringing this measure to the floor for consideration.

This is a technical amendment to H.R. 3576, a measure recently passed by the House. Both the House-passed bill and the amendment offered today amend the National Affordable Housing Act—enacted by Congress last year by a wide margin. The amendment allows the United States Virgin Islands, Guam, Northern Mariana, and American Samoa, to receive collectively a share of funding under the HOME Investment Partnerships Program.

The HOME Investment Partnerships Program—a major component of the National Affordable Housing Act—is designed to foster a network of partnerships among the Federal Government, States, local communities and the private sector to expand the supply of affordable housing.

HOME Program funds are allocated to States and local communities throughout the country on the basis of a formula. This formula evaluates each jurisdiction's share of need among for an increased supply of affordable housing. In the case of the insular areas, however, two factors combined to make them ineligible under the HOME Program. This amendment seeks to correct the two problems.

First, although the National Affordable Housing Act included the insular areas as eligible jurisdictions for participation in the Home Program, it identified them individually. As a consequence, when the formula was applied to each of the areas individually, their small size precluded them from meeting the minimum allocation level established in law. the amendment allows the insular areas to be considered as a collective unit, for purposes of allocation of funds for the HOME Program.

Second, the full range of data used in the formula for the allocation of funds is not available for the insular areas.

This amendment recognizes this fact by providing the Secretary of HUD the flexibility to establish a formula for the insular areas based on the available data for these areas.

Mr. President, the Home Program is designed to help address affordable housing needs wherever they exist. This amendment will ensure that the insular areas receive their fair share of funding under the HOME Program.

This amendment also provides a one-time waiver of existing law to allow the city of Petersburg, VA, to submit its final statement of community development objectives. The submission of the final statement is a prerequisite to the receipt of Community Development Block Grant [CDBG] Program funds. Due to several factors, including personnel changes in the city administration, the city of Petersburg missed the established deadline by 30 days. Although the city requested a waiver of the deadline from the Department of Housing and Urban Development, existing law and regulations for the CDBG program preclude HUD from providing the waiver through administrative action.

Mr. President, this amendment has no budget impact and has been cleared by both sides. I urge adoption of the amendment.

The PRESIDING OFFICER. Are there further amendments?

AMENDMENT NO. 1435 TO AMENDMENT NO. 1434

(Purpose: To permit the citizens of St. Charles Parish, Louisiana, to appeal a flood elevation determination)

Mr. MITCHELL. Mr. President, in behalf of Senator BREAUX, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL] for Mr. BREAUX, for himself and Mr. JOHNSTON, proposes an amendment numbered 1435 to amendment No. 1434:

At the appropriate place, insert:

SEC. . Notwithstanding the time limit set forth in section 1363(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104(c) and (d)), St. Charles Parish, Louisiana, may file an appeal with the Director of the Federal Emergency Management Agency with respect to certain flood elevation determinations for the area in and near the Ormond Country Club States located in St. Charles Parish, Louisiana, not later than June 1, 1992.

Mr. BREAUX. Mr. President, the amendment that we have offered to this legislation would grant St. Charles Parish, LA, approximately 180 days to appeal a decision by the Federal Emergency Management Agency [FEMA] that would have a drastic affect on local communities.

Under the National Flood insurance Program, a community has 90 days to appeal any changes in base flood elevation determinations by FEMA. On August 29, 1991, FEMA issued a new flood insurance rate map for parts of St. Charles Parish which will require new structures to be built at a new minimum base flood elevation of 8–9 feet. The current base flood elevation for the area is approximately 2 feet.

The parish has worked to submit an appeal to FEMA using data that was provided to them on June 27, 1991. Missing from the data was information from the Army Corps of engineers that is, I am told, vital to the parish's appeal. The Corps of Engineers was responsible for assembling the report upon which FEMA's decision is based. It is my understanding that the needed information was turned over to the parish at the end of this week. The statutory period for filing an appeal runs out on November 27, 1991. FEMA maintains that it has no legal authority to extend the deadline. The circumstances make it impossible for the parish to file a complete appeal before the end of the statutory deadline.

The new base flood elevation requirements will have a serious impact on the area's future development and it would be patently unfair to cause such a disruption without the local community having an adequate amount of time to present a complete appeal.

Our amendment would simply give the parish the time it needs to make use of the completed data from the corps.

I want to thank the chairman of the full Banking Committee, Senator RIEGLE, and the chairman of the Housing Subcommittee, Senator CRANSTON, for their assistance in this matter.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1435) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the substitute amendment, as amended.

The amendment (No. 1434), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. MITCHELL. I move to reconsider the vote.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 244, H.R. 794, establishing the Silvio Conte National Refuge.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 794) to establish the Silvio O. Conte National Fish and Wildlife Refuge along the Connecticut River, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with amendments; as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

H.R. 794

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

[TITLE I—SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE ACT

[SEC. 101. SHORT TITLE.

[This title may be cited as the "Silvio O. Conte National Fish and Wildlife Refuge Act".

[SEC. 102. FINDINGS.

[The Congress finds and declares the following:

[(1) The late Silvio O. Conte's many contributions to fish and wildlife conservation merit establishing a national fish and wildlife refuge in his honor.

[(2) The Connecticut River and its riparian lands are unique environmental resources which provide habitat for significant anadromous, migratory, and resident fish; migratory waterfowl; and other wildlife species, including such threatened or endangered species as the shortnosed sturgeon, bald eagle, Puritan tiger beetle, dwarf wedge mussel, Jesup's milk vetch, and piping plover.

[(3) The Federal Government has spent over $600,000,000 to clean up the Connecticut River and improve the quality of its fish and wildlife habitat, resulting in the reestablishment or improvement of the populations of many species such as the Atlantic salmon, American shad, bald eagle, and peregrine falcon.

[(4) The Connecticut River Valley is home to over 2,000,000 people, and environmental education and natural resource based recreation opportunities that are of great value.

[(5) The environment of the Connecticut River Valley is under enormous stress as a result of increased pressure from commercial and industrial development.

[(6) The environmental degradation of the Connecticut River and its riparian lands would result in the permanent loss of unique social, educational, and environmental assets and would devalue the significant Federal investment made to clean up the river.

[SEC. 103. DEFINITIONS.

[For the purposes of this title—

[(1) the "Advisory Committee" means the Silvio O. Conte National Fish and Wildlife Refuge Advisory Committee established under section 107;

[(2) the term "affected States" means the Commonwealth of Massachusetts, Vermont, New Hampshire, and Connecticut;

[(3) the term "refuge" means the Silvio O. Conte National Fish and Wildlife Refuge established by section 104;

[(4) the term "Secretary" means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service;

[(5) the term "selection area" means the lands, waters, and interests therein of the Connecticut River basin from its source to the sea including its tributaries and watersheds; and

[(6) the term "Service" means the United States Fish and Wildlife Service.

[SEC. 104. ESTABLISHMENT OF REFUGE; SELECTION OF LANDS.

[(a) ESTABLISHMENT OF REFUGE.—There is hereby established the Silvio O. Conte National Fish and Wildlife Refuge, consisting of the lands, waters, and interests therein designated pursuant to subsection (c).

[(b) PURPOSES.—The purposes of the refuge are—

[(1) to conserve, protect, and enhance the Connecticut River Valley populations of Atlantic salmon, American shad, river herring, shortnosed sturgeon, bald eagles, peregrine falcons, osprey, and other native species of plants, fish, and wildlife;

[(2) to encourage the natural diversity of plant, fish, and wildlife species within the refuge and to provide for their conservation and management;

[(3) to protect species listed as endangered or threatened, or identified as candidates for listing pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

[(4) to preserve and enhance the water quality of aquatic habitat within the refuge;

[(5) to fulfill the international treaty obligations of the United States relating to fish and wildlife; and

[(6) to provide opportunities for scientific research, environmental education, and recreational activities, to the extent compatible with the other purposes stated in this subsection.

[(c) SELECTION OF LANDS.—Within two years after the date of the enactment of this Act, and after consulting with the Advisory Committee, appropriate State and local officials and private conservation organizations, the Secretary shall—

[(1) define and designate the refuge boundaries, including all subunits, within the selection area; and

[(2) prepare a detailed map depicting the refuge boundaries designated under paragraph (1), which the Secretary shall keep on file and available for public inspection at the offices of the Service, and publish notice in the Federal Register of such availability.

[(d) REVISIONS.—The Secretary may make such minor revisions in the boundaries of the refuge defined and designated under subsection (c)(1) as may be appropriate to carry out the purposes of this title or to facilitate the acquisition of property within the refuge.

[SEC. 105. ACQUISITION.

[The Secretary may acquire for inclusion in the refuge, by purchase, gift, or lease, such areas of land and waters, or interests therein (including permanent conservation easements) within the boundaries defined and designated under section 104(c), as the Secretary determines to be suitable for the purposes of this title. All land, waters, and interests so acquired shall be part of the refuge.

[SEC. 106. ADMINISTRATION.

[(a) IN GENERAL.—The Secretary shall administer all lands, waters, and interests therein acquired under section 105 in accordance with—

[(1) the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and the Refuge Recreation Act (16 U.S.C. 460k–460k–4); and

[(2) the purposes of the refuge, as set forth in section 104(b).

[(b) USE OF OTHER AUTHORITY.—The Secretary may utilize such other statutory authority as may be available to the Secretary for the conservation and development of fish and wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive education, as the Secretary considers appropriate to carry out the purposes of the refuge as set forth in section 104(b).

[SEC. 107. SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE ADVISORY COMMITTEE.

[(a) ESTABLISHMENT AND FUNCTIONS.—There is hereby established a committee to be known as the "Silvio O. Conte National Fish and Wildlife Refuge Advisory Committee" (hereinafter referred to as the "Advisory Committee") which shall advise the Secretary on matters relating to the—

[(1) identification of areas of special concern within the selection area, the conservation of which by cooperative agreement would further the purposes for which the refuge is established;

[(2) identification of activities within or related to the selection area that may adversely affect the purposes for which the refuge is established;

[(3) provision of education outreach and informational programs; and

[(4) establishment of cooperative agreements with private landowners, Federal, State, and local governments or agencies, and conservation organizations, with respect to wise use and management of areas of special concern and the conduct of activities identified under paragraphs (1) and (2) of this section.

[(b) MEMBERSHIP; TERMS.—The advisory committee shall be composed of 15 members, each appointed by the Secretary for a term not to exceed 2 years, as follows:

[(1) 4 members, including 1 from each of the affected States, to be recommended by the Governor of each State as representing the cities or towns bordering the Connecticut River and its tributaries;

[(2) 4 members, including one from each of the affected States, to be recommended by the Governor of each State as representing State agencies with responsibility for conservation or water quality programs;

[(3) 4 members, including 1 from each of the affected States, to be appointed from recommendations made by the Governor of that affected State; who shall represent nonprofit conservation organizations or citizens groups with a direct interest in the purposes of the refuge;

[(4) 1 member of the Long Island Sound Management Conference;

[(5) 1 member from the Department of the Interior; and

[(6) 1 member from the Department of Commerce.

[(c) QUALIFICATIONS.—Members of the Advisory Committee shall have expertise or demonstrated interest in fish and wildlife conservation matters.

[(d) CHAIRMAN.—The Secretary shall designate 1 member of the Advisory Committee to be its Chairman.

[(e) VACANCIES.—Any vacancy in the Advisory Committee shall be filled in the same manner in which the original appointment was made.

[(f) COMPENSATION.—A member of the Advisory Committee shall not receive any compensation for service on the Committee.

[(g) MAJORITY VOTE.—The Advisory Committee shall act by affirmative vote of a majority of the members thereof.

[(h) TERMINATION.—The Advisory Committee shall function during the two years necessary for the Secretary to establish the refuge boundaries, and shall cease to exist after that time.

[SEC. 108. INTERPRETATION AND EDUCATION CENTER.

[The Secretary is authorized to construct, administer, and maintain, at an appropriate site near or within the refuge, an aquatic resources and wildlife interpretation and education center, along with administrative facilities, to provide an opportunity for the study and enjoyment of aquatic resources and wildlife in its natural habitats.

[TITLE II—FISH HABITAT CONSERVATION ACT

[SEC. 201. SHORT TITLE.

[This title may be cited as the Fish Habitat Conservation Act.

[SEC. 202. FINDINGS.

[(a) Fishery resources are integral components of, and play an essential role in, ecosystems where they occur. Self-sustaining fish populations are far more biologically desirable than those substantially dependent on artificial production systems. Fish have specific habitat requirements that are essential for them to complete their life cycle.

[(b) Despite statutory mandates, regulations and programs to control harvest and prevent environmental degradation, destruction of fish habitat has played, and continues to play, a significant role in the decline of fish populations. Some fish populations are so depleted as to warrant protection under the Endangered Species Act.

[(c) The United States Fish and Wildlife Service has authority to acquire fish habitat to protect or manage it, to provide recreational opportunities, and for other purposes under the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j) and the Refuge Recreation Act (16 U.S.C. 460k–460k–4) among other statutes, but has rarely used that authority.

[SEC. 203. PURPOSE.

[The purpose of this title is to protect, restore and conserve important fish habitat.

[SEC. 204. DEFINITIONS.

[For the purposes of this title—

[(1) the term "fish" means any freshwater, diadromous, and estuarine organism, other than a marine mammal or bird, and includes finfish, shellfish, crustaceans and other aquatic organisms, and the egg, spawn, spat, larval and other juvenile stages of all such organisms;

[(2) the term "fish habitat" means any area, landward of mean low tide, and adjacent wetlands, on which fish depend, directly or indirectly, to carry out their life processes, and includes—

[(A) any area used by fish for spawning, incubation, nursery, rearing, food supply, or migration; and

[(B) any area adjacent to the aquatic environment if such adjacent area—

[(i) contributes elements, such as the input of detrital material or the promotion of planktonic and insect populations providing food, which make fish life possible;

[(ii) protects the quality of water supplies on which fish are dependent; or

[(iii) protects the aquatic environment;

[(3) the term "Secretary" means the Secretary of the Interior acting through the Director of the United States Fish and Wildlife Service; and

[(4) the term "System" means the National Wildlife Refuge System administered

under the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee).

[SEC. 205. FISH HABITAT CONSERVATION PLANS

[(a) IN GENERAL.—The Secretary shall develop within one year after the date of enactment of this Act, and thereafter periodically review and revise, a national fish habitat conservation plan which shall specify the types of fish habitat which should be given priority with respect to Federal, State, and other acquisition. This plan shall identify types of fish habitats of concern, criteria for establishing acquisition priorities for each fish habitat type, and guidance for developing regional fish habitat conservation plans. The Secretary shall also develop, and periodically review and revise, regional fish habitat conservation plans that identify specific fish habitat to be acquired; determine whether Federal acquisition of specific areas is appropriate; identify, where appropriate, modifications in the management of fish habitat to help achieve the purposes of this title; and establish priorities for each region.

[(b) CONSULTATION.—The Secretary shall develop the plans required by subsection (a) after consultation with the following:

[(1) the Secretary of Commerce;

[(2) the chief executive officer of each State fisheries agency, and other appropriate representatives of each State;

[(3) Indian tribes; and

[(4) other interested entities that are knowledgeable about fish conservation.

[(c) FACTORS TO BE CONSIDERED.—The Secretary, in identifying fish habitats to be included in the plan required by subsection (a) and in establishing the basis for priorities for acquisition of those areas, shall consider—

[(1) the estimated cumulative loss, current rate of loss, and the threat of future losses of each fish habitat type;

[(2) the contribution of each fish habitat type to—

[(A) fishery resources;

[(B) commercial fisheries;

[(C) recreational fishing and other outdoor recreation; and

[(D) maintenance of biodiversity; and

[(3) other areas or concerns the Secretary considers appropriate.

[SEC. 206. IDENTIFICATION AND ACQUISITION OF FISH HABITAT.

[(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Secretary shall begin identifying and acquiring in accordance with this title lands, waters, and interests therein that are appropriate for inclusion in the National Wildlife Refuge System for the purpose of protecting important fish habitat. Upon the completion of the fish habitat conservation plans prepared under section 205 of this title, the identification of lands to be acquired for the conservation of fish habitat shall be based on those plans.

[(b) ACQUISITION PRIORITIES.—In setting land acquisition priorities for the United States Fish and Wildlife Service, the Secretary shall give equal consideration to fish habitat as is given to other types of habitat, and shall modify the United States Fish and Wildlife Service Land Acquisition Priorities System Application Manual accordingly.

[SEC. 207. ADMINISTRATION OF ACQUIRED LANDS, WATERS AND INTERESTS.

[(a) IN GENERAL.—All lands, waters, and interests therein acquired by the Secretary pursuant to this title—

[(1) shall be included in existing national wildlife refuges or shall be established by the Secretary as new units of the System, and in each case, shall be known as a "National Fish and Wildlife Refuge"; and

[(2) shall be administered as part of the System by the Secretary in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and the Refuge Recreation Act (16 U.S.C. 460k–460k–4).

[(b) FISH HABITAT PROTECTION PURPOSES.—The purposes of any unit of the System in which are included any lands, waters or interests therein acquired pursuant to this title shall include the following, which shall be in addition to any other purposes of the unit:

[(1) the conservation and enhancement of fish, wildlife, plants and their habitats;

[(2) preservation and enhancement of the water quality of aquatic habitats;

[(3) protection of species listed as endangered or threatened, or identified as candidates for listing pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1513 et seq.);

[(4) conservation of migratory birds;

[(5) management of corridors for the migration and dispersal of fish, wildlife and plants;

[(6) fulfillment of the international treaty obligations of the United States with respect to fish and wildlife; and

[(7) provision of opportunities for scientific research, environmental education, and recreational activities, to the extent compatible with the other purposes of this subsection.

[(c) COMMERCIAL FISHING.—The Secretary shall not acquire, pursuant to this title, lands, waters, or interests therein on which occur commercial fishing activities which would be incompatible with the purposes set forth in this section.

[SEC. 208. ANNUAL REPORT.

[On the date on which the President submits a budget to the Congress each year pursuant to section 1105 of title 31, United States Code, the Secretary shall submit to the Congress a report—

[(a) listing all the lands, waters, and interests therein identified in the fish habitat conservation plans prepared pursuant to section 105 of this title—

[(1) for the acquisition of which amounts are included in the President's budget; or

[(2) which have been acquired; and

[(b) listing those areas of fish habitat which the Secretary believes are appropriate for inclusion in the System, but which may not be acquired under this title.

[TITLE III—COASTAL WETLANDS GRANTS

[SEC. 301. COST-SHARING FOR STATE COASTAL WETLANDS GRANTS.

[(a) FEDERAL SHARE.—Section 305(d)(1) of the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954(d)(1)) is amended by striking "from which the principal is not spent" and inserting in lieu thereof "consisting of monies from a recurring source".

[(b) EFFECTIVE DATE.—This amendment shall apply to grants awarded in fiscal year 1992 and each fiscal year thereafter.]

TITLE I—SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE ACT

SECTION 101. SHORT TITLE.

This title may be cited as the "Silvio O. Conte National Fish and Wildlife Refuge Act".

SEC. 102. FINDINGS.

The Congress finds and declares the following:

(1) The late Silvio Conte was a long-time champion of the preservation of natural resources, including the Connecticut River, shepherding through Congress legislation meant to restore the river and its wildlife to health.

(2) The Connecticut River and its riparian lands are unique environmental resources which provide habitat for significant anadromous, migratory, and resident fish; migratory waterfowl; and other wildlife species, including such threatened or endangered species as the shortnosed sturgeon and bald eagle.

(3) Federal, State, and local governments have spent over $600,000,000 to clean up the Connecticut River and improve the quality of its fish and wildlife habitat, resulting in the reestablishment or improvement of the populations of many species such as the Atlantic salmon, American shad, bald eagle, and peregrine falcon.

(4) The Connecticut River valley is home to over two million people, and accordingly the river and riparian lands are of great value for environmental education and natural resource based recreation.

(5) The Connecticut River valley is threatened with spoilation, removal from public access, and ecological downgrading and is a significant source of energy and means of commerce for New England.

(6) Despoiling the Connecticut River and its riparian lands will result in the permanent loss of unique social, educational, and environmental assets and will devalue the significant Federal, State and local investments made to clean up the river.

SEC. 103. DEFINITIONS.

For the purposes of this Act—

(1) the term "affected States" means the Commonwealth of Massachusetts, and the States of Vermont, New Hampshire, and Connecticut;

(2) the term "refuge" means the Silvio Conte National Fish and Wildlife Refuge established under section 106 of this Act;

(3) the term "Secretary" means the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service; and

(4) the term "selection area" means the lands and waters of the Connecticut River basin, including the main stem of the river and its tributaries from its source at Fourth Connecticut Lake to Long Island Sound.

SEC. 104. PURPOSES.

The purposes for which the refuge is established are—

(1) to conserve, protect, and enhance the Connecticut River valley populations of Atlantic salmon, American shad, river herring, shortnosed sturgeon, bald eagles, peregrine falcons, osprey, black ducks, and other native species of plants, fish, and wildlife;

(2) to conserve, protect, and enhance the natural diversity and abundance of plant, fish, and wildlife species and the ecosystems upon which these species depend within the refuge;

(3) to protect species listed as endangered or threatened, or identified as candidates for listing, pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.);

(4) to restore and maintain the chemical, physical, and biological integrity of wetlands and other waters within the refuge;

(5) to fulfill the international treaty obligations of the United States relating to fish and wildlife and wetlands; and

(6) to provide opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation and access to the extent compatible with the other purposes stated in this section.

SEC. 105. SELECTION OF LANDS.

Within three years after the date of the enactment of this Act, the Secretary shall—

(1) consult with appropriate State and local officials, including those representing State government natural heritage inventory agencies, the Long Island Sound Management Conference as established under the National Estuary Pro-

gram, private conservation organizations, and other interested parties in designating the refuge boundaries;

(2) define and designate the refuge boundaries, including all subunits, within the selection area that would fulfill the purposes set forth in section 104 of this Act; and

(3) prepare a detailed map depicting the refuge boundaries designated under paragraph (2), which the Secretary shall keep on file and available for public inspection at offices of the United States Fish and Wildlife Service, and publish notice in the Federal Register of such availability.

SEC. 106. ACQUISITION AND ESTABLISHMENT OF REFUGE.

(a) ACQUISITION.—To the extent authorized under the Fish and Wildlife Act of 1956 (16 U.S.C. 742f–a–5), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460k–4–11), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Migratory Bird Conservation Act (16 U.S.C. 715–715s), the Emergency Wetlands Resources Act of 1986, as amended (16 U.S.C. 3901 et seq.), the North American Wetlands Conservation Act (16 U.S.C. 4401–4413), and other existing laws, the Secretary may acquire for inclusion in the refuge by purchase or donation such lands and waters or interests therein (including permanent conservation easements) within the boundaries defined and designated under section 105 of this Act. All lands, waters, and interests therein so acquired shall be part of the refuge.

(b) ESTABLISHMENT.—When sufficient property within the boundaries defined and designated under section 105 of this Act have been acquired to constitute an area that can be effectively managed as a refuge, the Secretary shall establish the refuge, to be named the "Silvio Conte National Fish and Wildlife Refuge," by publishing a notice to that effect in the Federal Register and publications of local circulation.

(c) BOUNDARY REVISIONS.—The Secretary may make such minor revisions in the boundaries of the refuge defined and designated under section 105 of this Act as may be appropriate to carry out the purposes of this Act or to facilitate the acquisition of property within the refuge.

(d) INTERIM REPORT TO CONGRESS.—Within one year of the date of enactment of this Act, the Secretary shall submit to the Committee on Environment and Public Works in the United States Senate and the Committee on Merchant Marine and Fisheries in the United States House of Representatives a report describing those lands and waters that the Secretary proposes to acquire under the Fish and Wildlife Act of 1956 (16 U.S.C. 742f–a–5), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460k–4–11), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), the Migratory Bird Conservation Act (16 U.S.C. 715–715s), the Emergency Wetlands Resources Act of 1986, as amended (16 U.S.C. 3901 et seq.), the North American Wetlands Conservation Act (16 U.S.C. 4401–4413), and other existing laws for inclusion in the refuge at a subsequent time. The Secretary also shall include in the report an estimate of the total number of acres of lands or waters or interests therein that may be acquired for inclusion within the refuge boundaries under the authority of this Act and other existing laws and the approximate cost of such acquisition.

SEC. 107. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall administer all lands, waters, and interests therein acquired under section 106 pursuant to—

(1) the provisions of the National Wildlife Refuge System Administration Act of 1966 (U.S.C. 668dd–668ee) and the Refuge Recreation Act (16 U.S.C. 460k–460k–4); and

(2) the purposes for which the refuge is established, as set forth in section 104 of this Act.

(b) OUTREACH AND EDUCATION.—The Secretary shall work with, provide technical assistance to, provide community outreach and education programs for or with, or enter into cooperative agreements with private landowners, State and local governments or agencies, and conservation organizations to further the purposes for which the refuge is established, as set forth in section 104 of this Act.

(c) USE OF OTHER AUTHORITY.—The Secretary may utilize such other statutory authority as may be available to the Secretary for the conservation and development of wildlife and natural resources, the development of outdoor recreation opportunities, and interpretive education, as the Secretary considers appropriate to carry out the purposes of the refuge as set forth in section 104 of this Act.

SEC. 108. SILVIO CONTE NATIONAL FISH AND WILDLIFE REFUGE ADVISORY COMMITTEE.

(a) ESTABLISHMENT AND FUNCTIONS.—Within three months after the date of enactment of this Act, the Secretary shall establish a committee to be known as the "Silvio Conte National Fish and Wildlife Refuge Advisory Committee" (hereinafter referred to as the "Advisory Committee") which shall assist the Secretary on community outreach and education programs that further the purposes of the refuge.

(b) MEMBERSHIP; TERMS.—The Advisory Committee shall be composed of fifteen members, each appointed by the Secretary within three months of the date of enactment of this Act for a term not to exceed three years, as follows:

(1) four members, including one from each of the affected States, to be recommended by the Governor of each State as representing the cities or towns bordering the Connecticut River and its tributaries;

(2) four members, including one from each of the affected States, to be recommended by the Governor of each State as representing State agencies with responsibility for conservation or water quality programs;

(3) four members, including one from each of the affected States to be appointed from recommendations made by the Governor of that affected State, who shall represent nonprofit conservation organizations or citizen groups with direct interest in the purposes of the refuge;

(4) one member of the Long Island Sound Management Conference; and

(5) two members to be designated by the Secretary, including one who represents the energy and commerce interests associated with the Connecticut River.

(c) CHAIRMAN.—The Advisory Committee shall elect one member of the Advisory Committee to be its chairman.

(d) VACANCIES.—Any vacancy in the Advisory Committee shall be filled in the same manner in which the original appointment was made.

(e) COMPENSATION.—A member of the Advisory Committee shall not receive any compensation for service on the committee.

(f) MAJORITY VOTE.—The Advisory Committee shall act by affirmative vote of a majority of the members thereof.

SEC. 109. INTERPRETATION AND EDUCATION CENTER.

The Secretary is authorized to construct, administer, and maintain at appropriate sites within the refuge, not more than four aquatic resources and wildlife interpretation and education centers, known as Silvio Conte National Fish and Wildlife Refuge Education Centers, along with administrative facilities, to provide opportunities for the study, understanding, and enjoyment of aquatic resources and wildlife in its natural habitats.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this Act.

[TITLE IV] *TITLE II*—MORRIS K. UDALL NATIONAL WILDLIFE REFUGE

SEC. 401. REDESIGNATION OF BUENOS AIRES NATIONAL WILDLIFE REFUGE.

(a) REDESIGNATION.—The Buenos Aires National Wildlife Refuge, located in the State of Arizona, is redesignated and shall be known as the "Morris K. Udall National Wildlife Refuge".

(b) REFERENCES.—Any reference in a law, regulation, map, document, paper, or other record of the United States to the national wildlife refuge referred to in subsection (a) of this section is deemed to be a reference to the "Morris K. Udall National Wildlife Refuge".

[TITLE V] *TITLE III*—CULEBRA NATIONAL WILDLIFE REFUGE

SEC. 501. HEADQUARTERS FACILITY FOR CULEBRA NATIONAL WILDLIFE REFUGE.

The headquarters facility and residence for the Culebra National Wildlife Refuge may be constructed on lands leased from the Commonwealth of Puerto Rico on a long-term basis.

[TITLE VI—PUBLIC SAFETY ON NATIONAL WILDLIFE REFUGES

[SEC. 601. PUBLIC SAFETY ON NATIONAL WILDLIFE REFUGES.

[The Director of the Fish and Wildlife Service shall ensure that efforts to conserve and manage wildlife populations on national wildlife refuges are conducted with full regard to public safety.]

The PRESIDING OFFICER. Without objection, the committee amendments are agreed to en bloc.

Mr. LIEBERMAN. Mr. President, the late Congressman Silvio Conte once said that there were two big events that he dreamed of: the Red Sox winning the World Series, and the salmon returning to the Connecticut River. We cannot legislate a victory for the Red Sox, but by passing this bill today, we have taken an enormous step toward granting Mr. Conte's wish.

The establishment of the Silvio Conte National Fish and Wildlife Refuge is a fitting tribute to a man who for most of his congressional career led the fight to restore the Connecticut River to health. This refuge would be comprised of critical habitat areas along the length of the river and within its watershed. The Connecticut River, 400 miles long and stretching from Vermont and New Hampshire through Massachusetts and Connecticut to Long Island Sound, is considered by many to be the backbone of New England. It is significant also as the only major river in North America without an industrialized city at its mouth.

My interest in this bill came initially from my concern for the health of Long Island Sound. The Connecticut River provides the sound with 70 to 80 percent of its freshwater. And because the river is tidal freshwater for 40 miles in Connecticut, it has spawned a wetlands complex of international significance, providing habitat to an astonishing array of rare and endangered plant and animal species. The bill we pass today is nearly identical to the one I intro-

duced earlier this year, and it will provide critical protection for many of the species we hope to see flourish: the bald eagle and peregrin falcon, the important shad and salmon populations, the whorled begonia and golden club.

This bill is important in another way. Recognizing the hard work and commitment of local organizations such as the Connecticut River Watershed Council and the Nature Conservancy, the Connecticut River Advisory Committees established by the State legislatures of Vermont and New Hampshire, the Long Island Sound Study, and the significant contributions made by the power interests along the river, the bill establishes an advisory committee to assist the Director of the U.S. Fish and Wildlife Refuge. I am very pleased to note that the U.S. Fish and Wildlife Service has been receptive to this notion, and has already begun to work with and listen to the local organizations and State governments already involved in protecting the Connecticut River, as well as meeting with local landowners who may find their property within the boundaries of the refuge. Director John Turner has shown, I think, a tremendous sensitivity to our New England tradition of home rule, and I think that all of us who have worked so hard to see Sil Conte's dream become a reality owe Mr. Turner our gratitude.

Finally, Mr. President, I would like to note that this bill has served to unite New England in a way that should also serve as a tribute to Mr. Conte. The entire New England delegation to the U.S. Senate supports this bill. And some of Sil Conte's other friends in the Senate, Senators COCHRAN, JOHNSTON, AKAKA, SPECTER, PRYOR, GORE, and D'AMATO also joined as cosponsors of my original bill. I am hopeful that our colleagues in the House will act quickly upon receipt of this bill and that before the end of this session President Bush, another supporter, will sign the Silvio Conte National Fish and Wildlife Refuge Act into law.

Mr. KERRY. Mr. President, I rise today in support of H.R. 794, the Silvio O. Conte National Fish and Wildlife Refuge Act, the last bill introduced by Sil Conte.

Throughout his life, Silvio Conte worked to preserve and protect our Nation's, and the globe's, precious and fragile environment. He was a leader on many issues in Massachusetts, but took a special interest in preserving our Nation's natural treasures. Sil was an avid fisherman and knew the true enjoyment that was possible from recreational activities on our scenic rivers and streams. As is reflected in his work, Sil believed the Connecticut River Valley to be of singular importance. This broad valley bridges four New England States and provides diverse recreational opportunities to millions of people. The river's watershed is home to innumerable species of animals, including our endangered national symbol—the beautiful bald eagle.

This bill will establish the Silvio O. Conte National Fish and Wildlife Refuge. The refuge, only the second of its kind in the nation, will consist of blocks of land from all across the Connecticut River basin designated by the Secretary of the Interior as having unique national qualities. Together, these sections of land will provide a vital refuge for wildlife across the Northeast. The bill also directs the Secretary to establish a plan for the protection of fish habitats. I believe this effort is critical in these days of rapidly deteriorating water quality and harmful development. Additionally, the bill will amend the Coastal Wetlands Planing, Protection and Restoration Act to allow an increase in the percentage of funds for coastal wetlands preservation that the Federal Government may provide.

Finally the legislation establishes up to four aquatic resources and wildlife interpretation and education centers that will be aptly known as the Silvio Conte National Fish and Wildlife Refuge Education Centers. It seems appropriate that the first center be located along the Connecticut River in western Massachusetts, in Sil Conte's congressional district. I know my colleagues and the Fish and Wildlife Service agree. I also hope that the cooperative spirit between the interested Federal, State, local, and private nonprofit entities that brought this legislation to final passage today will continue as we begin to develop the educational centers. During this time of deep fiscal constraints at all levels of government, a creative partnership to finance these centers is crucial to our success.

The many components of this bill constitute important actions toward the preservation and enhancement of our environment and the ability of our citizens to enjoy its use. In addition, I believe that the passage of this bill and the creation of this exceptional wildlife refuge is a fitting tribute to my beloved colleague, Mr. Conte. Sil Conte worked diligently over the past 30 years to preserve our environment. The Silvio Conte Refuge will be a lasting and noble acknowledgment of his labors. For these reasons I ask my colleagues to join me in supporting this legislation.

Mr. SMITH. Mr. President, I strongly support the passage of legislation to establish the Silvio O. Conte Connecticut River National Wildlife Refuge, H.R. 794. Like many of my colleagues, I have more than one reason to urge quick passage of this important bill.

First, in the 6 years I spent as a Member of the House of Representatives, I came to know Silvio quite well. Not only was he one of the most respected Members of the House, but he was known as a true champion for the people of western Massachusetts. Yet, Silvio was not only fiercely dedicated to protection of the natural resources of Massachusetts, but he also strongly supported preservation efforts throughout New England.

Clearly, Silvio's passing has left a real void in Congress. I can think of no better tribute to his years of hard work and dedication than to name this wildlife refuge in his name.

Second, I believe that this legislation will ensure the protection of one of our Nation's most important and historical riverways. This river, which has its source in northern New Hampshire, flows over 400 miles from my home State until it spills into the Long Island Sound. The wildlife refuge which is established by this legislation will actually comprise a chain of refuges dotting the riverbanks of New Hampshire, Vermont, Massachusetts, and Connecticut.

Not only has the Connecticut River served as an important source of commerce and industry, but more importantly, the river and its adjoining lands provide a vital habitat for anadromous fish, endangered species, migratory waterfowl, and other wildlife species. The intention of this legislation is to protect a select amount of habitat areas which serve a particularly vital function in the continued health and preservation of these species.

When I first became acquainted with this legislation, I have to admit that I was concerned about the potential for the widespread Federal purchase of private landholdings in New Hampshire. Due to the diligent efforts of Senator LIEBERMAN and his staff, my concerns about this legislation have been satisfied. Further, I received a letter from the Director of the Fish and Wildlife Service, John Turner, stating that "private property rights within the proposed refuge are protected." He went on to state that "our longstanding acquisition policy is to work only with willing sellers within approved boundaries as funds become available * * * Landowners are under no obligation to sell their property to the service."

Mr. President, I believe that this bill is in the best interests of the people of New Hampshire, the people of New England, and the Nation as a whole. I urge my colleagues to support its adoption.

I ask unanimous consent that the letter of Mr. Turner be printed in the RECORD.

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

U.S. DEPARTMENT OF THE INTERIOR,
FISH AND WILDLIFE SERVICE,
Washington, DC.

Mr. GEORGE W. MOULTON,
Mr. TOM LAURITSEN,
BRIDGES FOR TOMORROW,
Charlestown, NH.

DEAR MR. MOULTON AND MR. LAURITSEN: I have received a copy of your letter of July 9 to Senator Lieberman regarding the proposed Silvio O. Conte National Fish and Wildlife Refuge. We have a genuine and sincere interest in this project because we believe it has such enormous potential benefits—both environmental and economic—for the people of the Connecticut River Valley, so I would like to take this opportunity to provide the following assurances on the three important concerns you have expressed.

First, I agree that it is essential to recognize and respond to local concerns in order to have the Refuge come to fruition. Therefore, to ensure that your Joint River Commissions are fully involved in the decision-making process as a focal point for local concerns in the northern half of the Valley, I have instructed my Regional Office staff to continue to work with your two Commissions to assure that you are a part of this process.

Second, private property rights within the proposed Refuge are protected. Our longstanding acquisition policy is to work only with willing sellers within approved boundaries as funds become available. Over the past ten years, less than two-percent of such acreage was obtained through court action, while less than one-half-of-one-percent of the ownerships were acquired through the use of condemnation. We recognize the possible social and economic impacts of acquiring private property by exercising the Federal right of eminent domain, so we do our utmost to avoid using that approach. I wish to underscore this point: Landowners are under no obligation to sell their property to the Service.

Third, the same is true of conservation easement. The sale or donation of such an easement—which may regulate land use—is entered into willingly by a landowner, and any concerns must be resolved to the landowner's satisfaction before the easement is executed. And, of course, if a landowner does not want to sell an easement to the Service, the land will not be subject to any additional restrictions. The mere inclusion of property within the boundary of a refuge does not give the Service any authority whatsoever over how that property is managed or used.

Again, I want to assure the Commissions that we will do everything we can to affect a positive, productive, and cooperative atmosphere in which we can create this refuge together. Indeed, the authorizing legislation now before the Congress provides for full public participation in determining the boundaries of the new refuge, and all landowners will have an opportunity to participate.

The Service looks forward to working with your Joint River Commissions to enact and implement this legislation. If you have further questions or comments, please contact me or Regional Director Ronald Lambertson, at One Gateway Center, Newton Corner, Massachusetts 02158, (617) 965-5100.

Sincerely,

JOHN F. TURNER,
Director.

Mr. JEFFORDS. Mr. President, I rise in strong support of H.R. 794, the Silvio O. Conte National Wildlife Refuge Act. I am an original cosponsor of the Senate version of this legislation and am pleased to see that the Senate has seen the importance of acting quickly on this bill.

As my colleagues know, this bill would begin the process of creating a national wildlife along the Connecticut River in honor of my late good friend, Silvio O. Conte. No one devoted more time and effort to preserving the integrity of the Connecticut River than Silvio Conte.

During his service in the House of Representatives, Silvio Conte took on a tremendous task to repair the damage that the Connecticut River has incurred through 200 years of abuse and neglect. He saw Atlantic salmon were disappearing—this remarkable resource, which once abundantly ran freely through the river, was gone. Pollution had ravaged the river, and development was destroying its shorelines. Once the principle natural resource for New England, the Connecticut River was dying in the hands of neglect and mismanagement.

Silvio Conte set out to reverse this process, and the signs of his unyielding efforts can be seen today. The river is cleaner today, and the Atlantic salmon have returned. He fought hard to get fish ladders placed along the river, and these ladders were the first step in bringing the Atlantic salmon back. He was responsible for initiating the Connecticut River Atlantic Salmon Compact, an agreement between Vermont, Massachusetts, New Hampshire, Connecticut, and the Federal Government to promote the restoration of the Atlantic salmon run into the Connecticut River basin. In 1983, he directed through Congress the legislation required for the compact to take effect and to authorize the participation of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in the compact.

Mr. President, Silvio Conte's efforts can be felt in my home State of Vermont. He was instrumental in establishing the first and only salmon hatchery on the Connecticut River in Bethel, VT. This hatchery has played a vital role in restoring the Atlantic salmon runs to the Connecticut River.

Silvio Conte's efforts must be continued, and I commend the junior Senator from Connecticut, Senator LIEBERMAN, for carrying on these efforts. With the establishment of this refuge, we can be sure that Silvio Conte's efforts were not in vain. We can be sure that the Atlantic salmon will not again disappear. We can be sure that the Connecticut River will no longer be abused and neglected.

As Silvio Conte realized long ago, this Connecticut River and its watershed are too valuable to be destroyed. As the largest river in New England, it is the lifeblood of our natural resources. I am happy to support this important piece of legislation to establish this national wildlife refuge. I am proud at the same time to be able to bestow this well deserved honor on Silvio Conte by having the refuge named the Silvio Conte National Wildlife Refuge.

I urge my colleagues to support this important piece of legislation.

AMENDMENT NO. 1436

Mr. MITCHELL. Mr. President, I send an amendment to the desk on behalf of Senators BURDICK and CHAFEE, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. BURDICK, for himself and Mr. CHAFEE, proposes an amendment numbered 1436.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 26, strike lines 13 through 25, insert in lieu thereof the following, and re-designate titles II and III and the sections therein accordingly:

SEC. 109. INTERPRETATION AND EDUCATION CENTER.

(a) IN GENERAL.—The Secretary is authorized to construct, administer, and maintain at appropriate sites within the refuge, or pursuant to subsection (b) cooperate in the construction, operation and maintenance at an appropriate site, not more than four aquatic resources and wildlife interpretation and education centers, known as Silvio Conte National Fish and Wildlife Refuge Education Centers, along with administrative facilities, to provide opportunities for the study, understanding, and enjoyment of aquatic resources and wildlife in its natural habitats.

(b) COOPERATIVE AGREEMENTS.—The Secretary is authorized:

(1) to enter agreements to share the construction and operation of and the land acquisition for the center, including the costs thereof, with state and local governments and other public and private entities;

(2) to utilize appropriated or donated funds for construction, operation and maintenance expenses, provided that Federal interests arising from such expenditures are protected by a long-term lease, agreement, or transfer of property interest; and

(3) to interpret the Connecticut River's aquatic and wildlife resources in the context of the region's cultural, geological, and ecological history.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this Act.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. ESTABLISHMENT AND TERMS OF SILVIO O. CONTE MEMORIAL SCHOLARSHIP FUND.

(a) IN GENERAL.—In recognition of Silvio O. Conte's longstanding contribution and devotion to the conservation of our Nation's natural resources, and his life-long commitment to education, the Director of the United States Fish and Wildlife Service, hereinafter referred to as the Director, is authorized to

enter into an agreement with the National Fish and Wildlife Foundation, hereinafter referred to as the Foundation, and the University to Massachusetts/Amherst, hereinafter referred to as the University, to establish the Silvio O. Conte Memorial Scholarship Fund. The purpose of the agreement is to encourage students to enter the fields of fisheries and wildlife ecology and conservation, natural resources policy and administration, or ecology by establishing a scholarship fund at the University.

(b) TERMS OF AGREEMENT.—Notwithstanding the provisions of the Federal Grant and Cooperative Agreements Act of 1977 (31 U.S.C. 6301–6308), the agreement authorized under subsection (a) of this section shall direct that the University shall:

(1) establish the Silvio O. Conte Memorial Scholarship Fund for the purpose of awarding scholarships for a period not exceeding three years to eligible candidates in advanced degree programs in the fields of fisheries and wildlife ecology and conservation, natural resources policy and administration, or ecology;

(2) invest funds provided by the Director, the Foundation and any other contributors in interest-bearing accounts;

(3) award scholarships annually utilizing the interest generated from such investment accounts minus the amount equal to inflation;

(4) match the scholarship awards with inkind contributions of equal value, such as waivers of tuition or fees or the provision of other financial aid;

(5) establish eligibility criteria based upon financial needs, academic achievement, and potential contribution of the profession;

(6) announce the availability of the scholarship in a manner which ensures that it is widely distributed and that minority and socially-disadvantaged candidates are made aware of the opportunity;

(7) upon request by the Director, make available the investment accounts for his inspection; and

(8) prepare and provide to the Director annually a report regarding the expenditures from the investment accounts which shall include the number of scholarships awarded, the amount of each scholarship, and the share of each scholarship provided by the University.

(c) AUTHORIZATION.—The Director is authorized to make a one-time contribution of up to $50,000 to the University to establish the Silvio O. Conte Memorial Scholarship Fund.

(d) TERMINATION OF AGREEMENT.—At such time as the parties agree to terminate the agreement authorized under subsection (a) of this section, the principle and interest in the account shall be deposited in the Migratory Bird Conservation Fund.

SEC. 202. WILDLIFE INTERPRETATION AND EDUCATION CENTER.

Title II of Public Law 100–610 is amended by adding at the end the following new section: "Section 208. Wildlife Interpretation and Education Center.

"(a) The Secretary is authorized to construct, administer, and maintain at an appropriate site, a wildlife interpretation and education or visitor center.

"(b) The Secretary is authorized—

"(1) to enter agreements to share the construction and operation of and the land acquisition for the center, including the costs thereof, with state and local governments and other public and private entities;

"(2) to utilize appropriated or donated funds for construction, operation and maintenance expenses, provided that Federal interests arising from such expenditures are protected by a long-term lease, agreement, or transfer of property interest; and

"(3) to interpret the Pettaquamscutt Cove region's aquatic and wildlife resources in the context of the region's cultural, geological, and ecological history.".

Mr. CHAFEE. Mr. President, I offer this amendment in recognition of the significant contribution former Congressman Silvio O. Conte made to the conservation of our Nation's fish and wildlife. I can think of no more fitting tribute to this champion of the natural environment than to establish a scholarship at the University of Massachusetts in his honor dedicated to training professionals in the areas of fish and wildlife conservation and natural resources policy.

Under this amendment, the Department of the Interior and the National Fish and Wildlife Foundation will make a small initial contribution which the university will be required to invest in interest-bearing accounts to fund the scholarships. The university is required to match all scholarship awards with inkind contributions of equal value to the award. The restrictions of OMB Circular A110 and A133 shall not apply to any interest earned on Federal funds provided for this program. This is necessary to allow the University of Massachusetts to award scholarships with funds from accrued interest to eligible candidates in fish and wildlife conservation advanced degree programs and will ensure that the program will continue to provide scholarship benefits in the future.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1436) was agreed to.

Mr. MITCHELL. Mr. President, I mov to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1437

Mr. MITCHELL. Mr. President, I send an amendment to the desk on behalf of Senator SANFORD and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. SANFORD, proposes an amendment numbered 1437.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Add at the appropriate place in the bill the following new section:

SEC. . COST-SHARING FOR STATE COASTAL WETLANDS GRANTS.

(a) FEDERAL SHARE.—Section 305(d)(1) of the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954(d)(1)) is amended by striking "has established a trust fund, from which the principal is not spent, for the purpose of acquiring coastal wetlands, other natural area or open spaces." and inserting in lieu thereof—

"has established and is using one of the following for the purpose of acquiring coastal wetlands, other natural areas or open spaces:"

"(A) a trust fund from which the principal is not spent; or

"(B) a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees or taxes, cigarette taxes, tax check-offs, or motor vehicle license plate fees."

(b) EFFECTIVE DATE.—This amendment shall apply to grants awarded in fiscal year 1992 and each fiscal year thereafter.

Mr. SANFORD. Mr. President, I rise to offer an amendment to the Silvio Conte National Fish and Wildlife Refuge Act, S. 821. This amendment is of great importance to me and of concern to preservationists in other coastal States as well.

The Conte Refuge Act was significantly altered after its referral from the House. Specifically, I was concerned about the elimination of langauge passed by the House which extended favorable Federal matching fund support of 75 percent, under the National Coastal Wetlands Conservation Grants Program, to those States with trust funds, "consisting of moneys from a recurring source." Prior to the inclusion of this language by the House, only two States would have been eligible to receive the 75 percent Federal matching share. Only Michigan and Minnesota have trust funds qualifying under the original wetlands grant language; such language requires that States have funds "from which the principal is not spent."

My amendment to S. 821 will roughly replace, and clarify, the coastal wetland grants title that was stricken from H.R. 794, while also maintaining the original Coastal Wetlands Act langauge. My intent, as was that of involved House Members, is to allow States with recurring sources of funding dedicated to the acquisition of wetlands to receive the 75 percent Federal/25 percent State cost-share. My amendment should allow eight additional States to be eligible for the favorable Federal match. Each of these eight States has an annually recurring fund derived from either a real estate transfer tax, a cigarette tax, a tax check off or, as is the case in North Carolina, a license plate fee.

To avoid any misunderstanding as to what State funding mechanism might qualify as a recurring source, my amendment requires that a State have a fund "consisting of moneys from a dedicated recurring source." I certainly want to make it clear to my col-

leagues that my amendment does not apply to those States that might annually appropriate moneys for wetlands acquisition but do not have a dedicated source of funding for this purpose.

I understand that the National Coastal Wetlands Conservation Grants Program was designed to encourage States to establish dedicated funding sources in order to purchase coastal wetlands and open areas. My amendment is entirely consistent with this intent.

The grants program also gives priority to "coastal wetlands conservation projects in maritime forests on coastal barrier islands" (16 U.S.C. 3954(b)(2)). In my home State of North Carolina, authorities have recently filed for such a grant proposal to protect a substantial tract of rare evergreen maritime forest on the coastal barrier island of Bald Head. The plant community located here has a global rank of G-2, which means that 20 or fewer such communities remain in the world. Without a 75-25 cost share through the Wetlands Grants Program, conservation officials tell me that this fragile natural treasure, under threat of development, may well be lost forever. Critical projects may hang in the balance in the other States affected by my amendment, States that have made a long-term commitment to wetlands acquisition.

Mr. President, I am pleased that my amendment has been accepted as an appropriate part of S. 821. I am grateful to Senator LIEBERMAN, who has worked hard to bring this worthy piece of legislation to the floor, and Senators CHAFEE, BAUCUS, and others, who have been kind enough to agree to this amendment language.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1437) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1438

(Purpose: To delete Title II of the bill which proposes to change the name of the Buenos Aires National Wildlife Refuge to the Morris K. Udall National Wildlife Refuge)

Mr. MITCHELL. Mr. President, I send an amendment to the desk on behalf of Senator DECONCINI, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. DECONCINI, proposes an amendment numbered 1438.

Mr. MITCHELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 27, strike lines 1 through 13.

Mr. DECONCINI. Mr. President, I am offering an amendment that will strike title II of this legislation. This title redesignates the Buenos Aires National Wildlife Refuge in Arizona as the Morris K. Udall National Wildlife Refuge. This title was included in the bill that was sent over from the House.

In the past, Mo has strongly indicated to me his reluctance to have things named after him indiscriminately. I have consulted with Mo's family, and it was concluded that it would be a better course of action to wait on renaming this refuge or anything else for that matter, until the family is better able to be involved in this process.

The Buenos Aires Refuge is something that I know Mo feels very strongly about. In fact, had it not been for his leadership, it never would have been established. Therefore, the House action in this regard is commendable. However, in deference to the wishes of Mo and his family, I think we should postpone action on this proposal at this time. Therefore, I ask that my amendment be adopted.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1438) was agreed to.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. RUDMAN. Mr. President, I rise today to express my support for H.R. 794, the Silvio Conte National Fish and Wildlife Refuge Act. This bill was originally introduced by the late Representative from Massachusetts. The bill has been properly amended to name the wildlife refuge after him to make it a living example of his legacy. Sil Conte was a friend of mine. He had good humor and a heart of gold. I worked closely with him for many years in the appropriations process and learned quickly that Silvio Conte cared deeply for the people of this country, always stood his ground, and fought like the devil for the causes in which he believed.

One of those causes was the environment. Like Silvio Conte, I came from a part of the country with a great outdoors tradition. In New Hampshire, like western Massachusetts, hunting, fishing, and just being outside is a way of life for many people. And so Sil and I shared common ground in both our personal enjoyment of the outdoors and our belief that they must be managed properly so that future as well as present generations might enjoy them.

Shortly before his death, Silvio Conte introduced legislation to protect the fish and wildlife habitat along the Connecticut River, a river that flows 410 miles and traverses four of the New England States from its headwaters in New Hampshire to New York's Long Island Sound. For 32 years, Silvio Conte worked on similar protection efforts. As a member of the Migratory Bird Conservation Commission, he played a critical role in the acquisition of 80 national wildlife refuges covering some 3 million acres of wetlands and other wildlife habitat throughout the Nation. It is, therefore, fitting that legislation of this nature will stand as a living memorial in his name. In this regard, I am proud to be a part of the enactment of H.R. 794.

Since coming to the Senate, I have strongly supported efforts to protect our Nation's natural resources. In New Hampshire specifically, I have worked on a number of Wild and Scenic Rivers study and designation bills. These successful measures have increased public awareness of these resources and encouraged cooperative efforts in maintaining clean rivers for recreational as well as commercial use. The establishment of a national wildlife refuge on the Connecticut River will help preserve critical habitat and assist the hundreds of volunteers who have been working to protect the river under both the New Hampshire and the Vermont river protection programs. The New Hampshire Connecticut River Valley Resource Commission, as well as the Vermont Connecticut River Watershed Commission, have jointly coordinated these local efforts to preserve the river. In addition, Governor Gregg, a number of conservation organizations, and commercial interests in my State have supported this bill.

Mr. President, specifically, H.R. 794 would require the Secretary of Interior within 3 years, in consultation with State and local officials and the residents of the region, to define and designate the boundaries of a national wildlife refuge within the lands and waters of the Connecticut River basin. The Secretary would also be required to establish an advisory committee to assist the Fish and Wildlife Service with community outreach and education programs that would further the purposes of the refuge. The Secretary must also establish four aquatic resources and wildlife interpretation and education centers. It should be noted that the Fish and Wildlife Service has existing authority to establish a refuge without Congress enacting enabling legislation. However, the acquisition of such lands and waters must proceed through existing statutes. In other words, the Secretary's acquisition authority is not expanded under this legislation. It is worth noting that until land is acquired through the appropriate channels, approved by Congress, the Service has no power to manage the land within the refuge area.

As much as I support the concept behind this legislation, I do have certain reservations about the advisory committee, in particular, the make up of the committee. However, this does not prevent me from supporting the measure.

The Connecticut River and its tributaries are a unique environmental resource which provide habitat for significant anadromous, migratory, and resident fish, migratory waterfowl, and other wildlife species, including species such as the bald eagle and shortnosed sturgeon which are listed under the Endangered Species Act. One of the reasons that the Connecticut is so beautiful is that it is the only major river in the country without a city at it's mouth. In recent decades the Connecticut has been recognized as something even more vital—the ecological thread that ties New England together. Although the Federal Government has put millions of dollars into cleaning up the river over the years, it is still threatened with spoilage and ecological downgrading. In this respect, I believe, as Mr. Conte did, that this legislation will further the local protection efforts to protect this vital resource in the Northeast. Accordingly, Mr. President, I rise to support this legislation and encourage my colleagues to support it as well.

Mr. KENNEDY. Mr. President, I rise in support of this bill to establish the Silvio Conte National Fish and Wildlife Refuge. Enactment of this legislation would be a fitting tribute to Sil Conte's lifelong efforts to protect and preserve our Nation's precious natural resources.

Sil Conte had a particular interest in the Connecticut River Valley, which supports a delicate ecosystem of fish, birds and other wildlife, such as endangered bald eagles. The last bill that Sil introduced in Congress was designed to ensure the protection of this critical habitat—and do so in a way that more people could enjoy its natural beauty.

The bill before us today will carry out the vision Sil Conte had for the Connecticut River, and will help honor one of the finest and most beloved legislators this Nation has even known. I urge my colleagues to support this important legislation.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read the third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 794), as amended, was passed.

Mr. MITCHELL. Mr. President, I move to reconsider the vote by which the bill, as amended, was passed.

Mr. DOLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMPREHENSIVE DEPOSIT INSURANCE REFORM AND TAXPAYER PROTECTION ACT OF 1991

The text of S. 543, a bill to reform Federal deposit insurance, protect the deposit insurance funds, and improve supervision and regulation of and disclosure relating to federally insured depository institutions, as passed by the Senate on November 21, 1991, is as follows:

S. 543

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 "Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—BANK INSURANCE FUND RECAPITALIZATION

Sec. 101. FDIC borrowing authority.
Sec. 102. Recapitalizing the Bank Insurance Fund.
Sec. 103. GAO audit of recapitalization schedule.
Sec. 104. Emergency guarantee.

TITLE II—DEPOSIT INSURANCE REFORM

Sec. 201. Full faith and credit.
Sec. 202. Improving capital standards.
Sec. 203. Accounting and auditing reform.
Sec. 204. Annual examinations.
Sec. 205. Prompt corrective action.
Sec. 206. Standards for safety and soundness.
Sec. 207. Conservatorship and receivership amendments to facilitate prompt corrective action.
Sec. 208. Backup enforcement authority of FDIC.
Sec. 209. Capital maintenance commitments.
Sec. 210. Pass-through insurance coverage.
Sec. 211. Brokered deposits.
Sec. 212. Risk-based assessments.
Sec. 213. Risk-based reinsurance.
Sec. 214. Real estate lending standards.
Sec. 215. Restricting risky bank activities.
Sec. 216. Safeguards against insider abuse.
Sec. 217. Protecting depository institutions from abusive transactions with affiliates.
Sec. 218. Interbank liabilities.
Sec. 219. Reducing risk to payment system.
Sec. 220. Least-cost resolution.
Sec. 221. Early resolution.
Sec. 222. Federal Reserve discount window advances.
Sec. 223. Cross-guarantee liability.
Sec. 224. Granting deposit insurance.
Sec. 225. Disclosure by insured depository institutions and the Federal banking agencies.
Sec. 226. Consent to be bound by the Federal Deposit Insurance Act.
Sec. 227. Depository institutions lacking Federal deposit insurance.
Sec. 228. Uninsured wholesale banks.
Sec. 229. Study and report on core banking.
Sec. 230. Priority of claims.
Sec. 231. Sense of the Senate.
Sec. 232. Disclosure of certain information.
Sec. 233. Utilizing private sector.
Sec. 234. Sense of the Senate.

TITLE III—INTERSTATE BANKING AND COMBINATIONS

Sec. 301. Interstate banking.
Sec. 302. Conversion of banks to branches.
Sec. 303. Amendments to Federal Deposit Insurance Act and the Act entitled "An Act to Provide for the Consolidation of National Banking Associations".
Sec. 304. Acquisition of new interstate branches by national and State banks.
Sec. 305. Community Reinvestment Act evaluation of banks with interstate branches.
Sec. 306. State tax compliance.
Sec. 307. Use of names in host State.
Sec. 308. Consideration of displaced work force.
Sec. 309. Attorney General's determination on competitive factors.
Sec. 310. Regulations to prohibit branching for deposit production.

TITLE IV—JAMES MADISON-BILL OF RIGHTS COMMEMORATIVE COIN ACT

Sec. 401. Short title.
Sec. 402. Coin specifications.
Sec. 403. Sources of bullion.
Sec. 404. Issuance of coins.
Sec. 405. Sale of coins.
Sec. 406. Financial assurances.
Sec. 407. Distribution of surcharges.
Sec. 408. Audits.
Sec. 409. General waiver of procurement regulations.

TITLE V—CONSUMER PROTECTION

Subtitle A—Truth in Savings and Investments

Sec. 501. Short title.
Sec. 502. Findings and purpose.
Sec. 503. Definitions.
Sec. 504. Disclosure of yields and terms of accounts.
Sec. 505. Account schedule.
Sec. 506. Disclosure requirements for certain accounts.
Sec. 507. Distribution of schedules.
Sec. 508. Periodic statements.
Sec. 509. Payment of interest.
Sec. 510. Regulations.
Sec. 511. Administrative enforcement.
Sec. 512. Civil liability.
Sec. 513. Credit unions.
Sec. 514. Review of disclosure requirements for open-end management investment companies.
Sec. 515. Effect on State law.
Sec. 516. Effective date of regulations.

Subtitle B—Fair Lending Enforcement

Sec. 521. Short title.
Sec. 522. Appraisals.
Sec. 523. Consumer compliance programs.
Sec. 524. Enforcement of Equal Credit Opportunity Act.
Sec. 525. Home Mortgage Disclosure Act.

Subtitle C—Basic Financial Services Accounts

Sec. 531. Study and report on utilizing the United States Postal Service to provide Government check cashing services.
Sec. 532. Study and report on direct deposit program for Federal recurring payments.
Sec. 533. Government return of electronic payments.

Subtitle D—Miscellaneous

Sec. 551. Home Equity Loan Consumer Protection Act amendments.

Sec. 552. Directive to relieve regulatory burden.
Sec. 553. Expedited Funds Availability Act amendments.
Sec. 554. Truth in Lending Act amendment.
Sec. 555. Homeownership amendments.
Sec. 556. Discussion of lending data.
Sec. 557. GAO report on data collection under interstate branching.
Sec. 558. Notice of branch closing.
Sec. 559. Study and report on community lending.

TITLE VI—FOREIGN BANK SUPERVISION AND REGULATION

Subtitle A—Foreign Bank Supervision Act

Sec. 601. Short title.
Sec. 602. Regulation of foreign bank operations.
Sec. 603. Conduct and coordination of examinations.
Sec. 604. Supervision of foreign banks' representative offices.
Sec. 605. Reporting stock loans.
Sec. 606. Cooperation with foreign supervisors.
Sec. 607. Penalties.
Sec. 608. Powers of agencies respecting applications, examinations, and other proceedings.
Sec. 609. Penalties for failure to comply with agency subpoena.
Sec. 610. Clarifying managerial standards in the Bank Holding Company Act of 1956.
Sec. 611. Standards and factors in the Home Owners' Loan Act.
Sec. 612. Authority of Federal banking agencies to enforce consumer statutes.
Sec. 613. Criminal penalty for violating the International Banking Act of 1978.

Subtitle B—Regulation of Foreign Banks and Subsidiaries

Sec. 621. Amendments to the International Banking Act of 1978.
Sec. 622. Study and report on subsidiary requirements for foreign banks.

Subtitle C—Fair Trade in Financial Services

Sec. 631. Short title.
Sec. 632. Effectuating the principle of national treatment for banks and bank holding companies.
Sec. 633. Effectuating the principle of national treatment for securities brokers and dealers.
Sec. 634. Effectuating the principle of national treatment for investment advisers.
Sec. 635. Investigation and report on financial interdependence.
Sec. 636. Conforming amendments specifying that national treatment includes effective market access.

TITLE VII—BANK POWERS

Sec. 701. Short title.
Sec. 702. Limitations on certain nondeposit marketing activities in retail branches of FDIC-insured depository institutions.
Sec. 703. Limitations on certain nondeposit marketing activities in retail branches of federally insured credit unions.
Sec. 704. Insurance activities of national banks.
Sec. 705. Interstate insurance agency activities of banking subsidiaries of bank holding companies.
Sec. 706. Safeguards for sale of insurance.
Sec. 707. Insurance underwriting in bank restricted.

TITLE VIII—THRIFT-TO-BANK CONVERSIONS

Sec. 801. Short title.
Sec. 802. Streamlining conversion procedures.
Sec. 803. Retention of existing in-State branches by savings associations that convert to national banks.
Sec. 804. No recapture of thrift reserves on conversion.

TITLE IX—FINANCIAL INSTITUTIONS ENFORCEMENT IMPROVEMENTS ACT

Sec. 901. Short title.

Subtitle A—Termination of Charters, Insurance, and Offices

Sec. 911. Revoking charter of Federal depository institutions convicted of money laundering or cash transaction reporting offenses.
Sec. 912. Terminating insurance of State depository institutions convicted of money laundering or cash transaction reporting offenses.
Sec. 913. Removing parties involved in currency reporting violations.
Sec. 914. Unauthorized participation.
Sec. 915. Access by State financial institution supervisors to currency transactions reports.
Sec. 916. Restricting State branches and agencies of foreign banks convicted of money laundering offenses.

Subtitle B—Nonbank Financial Institutions and General Provisions

Sec. 921. Identification of financial institutions.
Sec. 922. Prohibition of illegal money transmitting businesses.
Sec. 923. Compliance procedures.
Sec. 924. Nondisclosure of orders.
Sec. 925. Improved recordkeeping with respect to certain international funds transfers.
Sec. 926. Use of certain records.
Sec. 927. Suspicious transactions and financial institution anti-money laundering programs.
Sec. 928. Report on currency changes.
Sec. 929. Report on bank prosecutions.
Sec. 930. Anti-money laundering training team.
Sec. 931. Money laundering reporting requirements.

SUBTITLE C—MONEY LAUNDERING IMPROVEMENTS

Sec. 941. Jurisdiction in civil forfeiture cases.
Sec. 942. Civil forfeiture of fungible property.
Sec. 943. Administrative subpoenas.
Sec. 944. Procedure for subpoenaing bank records.
Sec. 945. Deletion of redundant and inadvertently limiting provision in 18 U.S.C. 1956.
Sec. 946. Structuring transactions to evade CMIR requirement.
Sec. 947. Clarification of definition of financial institution.
Sec. 948. Definition of financial transaction.
Sec. 949. Obstructing a money laundering investigation.
Sec. 950. Awards in money laundering cases.
Sec. 951. Penalty for money laundering conspiracies.
Sec. 952. Technical and conforming amendments to money laundering provision.
Sec. 953. Preclusion of notice to possible suspects of existence of a grand jury subpoena for bank records in money laundering and controlled sustance investigations.
Sec. 954. Definition of property for criminal forfeiture.
Sec. 955. Expansion of money laundering and forfeiture laws to cover proceeds of certain foreign crimes.
Sec. 956. Elimination of restriction on disposal of judicially forfeited property by the Treasury Department and the Postal Service.
Sec. 957. New money laundering predicate offenses.
Sec. 958. Amendments to the Bank Secrecy Act.

TITLE X—ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION

Sec. 1001. Short title.
Sec. 1002. Asset conservation and deposit insurance protection.

TITLE XI—MISCELLANEOUS

Subtitle A—Presidential Insurance Commission

Sec. 1101. Short title.
Sec. 1102. Findings.
Sec. 1103. Establishment.
Sec. 1104. Duties of the Commission.
Sec. 1105. Membership and compensation.
Sec. 1106. Powers of Commission.
Sec. 1107. Staff of Commission; experts and consultants.
Sec. 1108. Report.
Sec. 1109. Termination.
Sec. 1110. Authorization of appropriations.

Subtitle B—General Provisions

Sec. 1121. Credit unions.
Sec. 1122. Strengthening Federal banking agencies' authority to remove persons guilty of misconduct.
Sec. 1123. Emergency liquidity.
Sec. 1124. Disclosure of Securities Investor Protection Act coverage.
Sec. 1125. Hiring and compensation authority of Securities and Exchange Commission.
Sec. 1126. Limitation on securities private rights of action.
Sec. 1127. Conversions during moratorium.
Sec. 1128. Qualified thrift lender test.
Sec. 1129. Consumer lending by Federal savings associations.
Sec. 1130. Noncontrolling investments in banks and bank holding companies by certain investment funds.
Sec. 1131. Limiting liability for foreign deposits.
Sec. 1132. Certain wrongfully withdrawn deposits treated as insured deposits.
Sec. 1133. Providing services to insured depository institutions.
Sec. 1134. Study and report on reimbursing financial institutions and others for providing financial records.
Sec. 1135. Removing cost limitation on construction of Federal Reserve bank buildings.
Sec. 1136. $1 coins.
Sec. 1137. Purchased mortgage servicing rights.
Sec. 1138. Credit card interest rates.
Sec. 1139. Restatement and reorganization of section 5136 of the Revised Statutes.
Sec. 1140. Sense of the Senate regarding the repeal of the luxury excise tax on boats.
Sec. 1141. Act not to affect application of Internal Revenue Code.
Sec. 1142. Community development authority of national banks.
Sec. 1143. Immunity.

Sec. 1144. Creditability of service.
Sec. 1145. Delegated processing.
Sec. 1146. Low-income housing covenants.
Sec. 1147. Examination and supervision fees for national banks and savings associations.
Sec. 1148. Interagency sharing of information.
Sec. 1149. Application of State law for insurance purposes.
Sec. 1150. Additional whistleblower protections.
Sec. 1151. Real estate loan portfolios.
Sec. 1152. Sense of the Congress regarding the credit crunch.
Sec. 1153. Reports of information regarding safety and soundness of depository institutions.
Sec. 1154. Technical corrections to the Federal Deposit Insurance Act.
Sec. 1155. Discrimination against reorganized debtors.
Sec. 1156. Real estate appraisal procedures.
Sec. 1157. Sanction for financing the use or acquisition of chemical or biological weapons.
Sec. 1158. Sanction for financing Chinese slave labor.
Sec. 1159. Employment Retirement Income Security Act
Sec. 1160. Sense of the Congress regarding competitive solicitation of resolution proposals.
Sec. 1161. Real estate.
Sec. 1162. United States policy toward Yugoslavia.
Sec. 1163. Credit card sales.
Sec. 1164. Special insured deposits.

TITLE XII—WORLD CUP USA 1994 COMMEMORATIVE COIN ACT

Sec. 1201. Short title.
Sec. 1202. Denominations.
Sec. 1203. Sources of bullion.
Sec. 1204. Design.
Sec. 1205. Sale of coins.
Sec. 1206. Issuance of the coins.
Sec. 1207. General waiver of procurement regulations.
Sec. 1208. Distribution of surcharges.
Sec. 1209. Audits.
Sec. 1210. Coinage profit fund.
Sec. 1211. Financial assurances.

TITLE XIII—WHITE HOUSE COMMEMORATIVE COIN ACT OF 1991

Sec. 1301. Short title.
Sec. 1302. Coin specifications.
Sec. 1303. Sources of bullion.
Sec. 1304. Selection of design.
Sec. 1305. Sale of coins.
Sec. 1306. Issuance of coins.
Sec. 1307. General waiver of procurement regulations.
Sec. 1308. Distribution of surcharges.
Sec. 1309. Audits.
Sec. 1310. Coinage profit fund.
Sec. 1311. Financial assurances.
Sec. 1312. Authorization of appropriations.

TITLE I—BANK INSURANCE FUND RECAPITALIZATION

SEC. 101. FDIC BORROWING AUTHORITY.

(a) TREASURY LOANS.—Section 14 of the Federal Deposit Insurance Act (12 U.S.C. 1824) is amended—

(1) by striking subsection (b); and

(2) by striking all that precedes the last sentence of subsection (a) and inserting the following:

"SEC. 14. BORROWING AUTHORITY.

"(a) TREASURY LOANS.—

"(1) AUTHORITY TO BORROW FOR INSURANCE COSTS.—The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury (hereafter referred to as the 'Secretary') is authorized and directed to make loans to the Corporation, in accordance with this section and subject to the limitations contained in section 15(c).

"(2) LOAN PURPOSES.—The Corporation may borrow from the Secretary under paragraph (1) only such amounts as are necessary, in the judgment of the Board of Directors—

"(A) to cover losses to the Corporation incurred in protecting depositors;

"(B) to cover administrative costs associated with resolving insured depository institutions; or

"(C) to cover such other costs as may be necessary to meet the Corporation's obligations under this Act.

"(3) PRIORITY FOR REPAYMENT OF LOSS BORROWING.—

"(A) IN GENERAL.—The Corporation shall apply amounts raised by semiannual assessments on members of a deposit insurance fund in the following order of priority:

"(i) Repaying as scheduled any borrowings under this subsection by that fund.

"(ii) Providing for the fund's expected operating expenses and any losses incurred by the fund in protecting depositors.

"(iii) Accumulating a cash reserve for the fund (which shall consist of cash and other liquid assets), except as provided in subparagraph (B).

"(B) ACCELERATED REPAYMENT REQUIRED.—After a fund's cash reserve reaches $5,000,000,000, all of the fund's assessment income in excess of amounts required under clauses (i) and (ii) of subparagraph (A) for that fund shall be used for accelerated repayment of borrowings under this subsection consistent with minimizing costs to that fund.

"(4) INTERIM RULE.—Until a risk-based assessment system becomes effective, if the Corporation has borrowings outstanding under this subsection on behalf of any deposit insurance fund or the reserve ratio of that fund remains below the designated reserve ratio, the semiannual assessment rate for that fund shall be not less than that in effect on July 15, 1991.

"(5) TERMS.—The Secretary shall make a loan under paragraph (1) only—

"(A) in accordance with a written agreement between the Secretary and the Corporation that—

"(i) sets forth a schedule for repaying the loan over a period not to exceed 15 years from the date of the loan; and

"(ii) provides that the loan shall bear interest at the current market yield (as of the date of the loan) on outstanding marketable obligations of the United States of comparable maturities; and

"(B) if the Secretary determines in writing that income to the fund on behalf of which the loan will be made will be sufficient to repay the loan in accordance with the agreement.

"(6) LIMIT ON TOTAL BORROWING FOR INSURANCE COSTS.—In no case shall the Corporation's aggregate outstanding loans under paragraph (1) exceed—

"(A) $30,000,000,000 at any time before the date on which the Bank Insurance Fund has first achieved the designated reserve ratio, as determined under section 7(b)(1), for any complete semiannual assessment period after December 31, 1991;

"(B) $10,000,000,000 at any time after the date described in subparagraph (A); and

"(C) $5,000,000,000 on behalf of the Savings Association Insurance Fund at any time.

"(7) PUBLIC DEBT STATUS.—All loans and repayments made under this subsection shall be treated as public debt transactions of the United States.

"(8) APPORTIONMENT OF LIABILITY.—A loan to the Corporation under paragraph (1) is a liability of a deposit insurance fund to the extent that the loan is used on behalf of that fund.

"(b) FEDERAL FINANCING BANK LOANS.—

"(1) AUTHORITY TO BORROW FOR WORKING CAPITAL.—The Corporation is authorized to borrow, and the Federal Financing Bank is authorized and directed to make loans in accordance with this subsection to the Corporation on behalf of the Bank Insurance Fund or the Savings Association Insurance Fund on terms prescribed by the Federal Financing Bank.

"(2) PURPOSES.—The Corporation, in any capacity, may borrow from the Federal Financing Bank under paragraph (1) only to—

"(A) directly or indirectly acquire, retain, maintain, liquidate, dispose of, or improve the assets of an insured depository institution, in the course of the Corporation's resolution activities; or

"(B) provide temporary liquidity to insured depository institutions, to the extent otherwise authorized by statute.

"(3) LIMITATION ON BORROWING FOR WORKING CAPITAL.—Aggregate loans to the Corporation under paragraph (1) may not exceed $45,000,000,000 at any one time on behalf of the Bank Insurance Fund.

"(4) REPAYMENT OF BORROWING.—Borrowing under this subsection shall be repaid by the sale of assets of failed institutions. In the event that the proceeds from the sale of assets are insufficient to repay an amount borrowed under this subsection to fund the acquisition of such assets, the amount of the shortfall shall be funded through borrowing under subsection (a), and shall be repaid through semiannual assessments in accordance with section 7(b).

"(5) EFFECT ON OTHER ENTITIES.—This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.

"(c) APPROPRIATIONS.—".

(b) LIMITATION ON TOTAL OUTSTANDING OBLIGATIONS.—Section 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1825(c)) is amended by striking paragraphs (5), (6), and (7) and inserting the following:

"(5) MAXIMUM AMOUNT LIMITATION ON OUTSTANDING OBLIGATIONS.—The Corporation may not issue any note or similar obligation, and may not incur any liability under a guarantee or similar obligation, if the aggregate amount of the Corporation's outstanding obligations on behalf of either the Bank Insurance Fund or the Savings Association Insurance Fund would exceed the sum of—

"(A) the amount of cash held by the Corporation for that fund;

"(B) 90 percent of the Corporation's estimate of the fair market value of assets held by the Corporation for that fund (other than assets described in subparagraph (A)); and

"(C) the aggregate amount of outstanding loans to the Corporation under section 14(a) on behalf of that fund.

The Corporation's estimate of fair market value under subparagraph (B) shall be based on the most recent audit of the Corporation by the Comptroller General, subject to any adjustments described in paragraph (3) or (4), and taking into account any transaction occurring since the date of the audit.

"(6) OBLIGATION DEFINED.—For purposes of paragraph (5), the term 'obligation' means—

"(A) any guarantee issued by the Corporation, other than deposit guarantees;

"(B) any loans made to or notes issued by the Corporation under section 14; and

"(C) the expected cost of any other note, bond, or contract for which the Corporation has a direct or contingent liability for any amount.".

(c) CONFORMING AMENDMENT DEFINING DEPOSIT INSURANCE FUND.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by adding at the end the following:

"(y) DEPOSIT INSURANCE FUND.—The term 'deposit insurance fund' means the Bank Insurance Fund or the Savings Association Insurance Fund, as the case may be.".

SEC. 102. RECAPITALIZING THE BANK INSURANCE FUND.

(a) IN GENERAL.—SECTION 7(B)(1)(C) OF THE FEDERAL DEPOSIT INSURANCE ACT (12 U.S.C. 1817(B)(1)(C)) IS AMENDED TO READ AS FOLLOWS:

"(C) ASSESSMENT RATES FOR BANK INSURANCE FUND MEMBERS.—

"(i) IN GENERAL.—If the reserve ratio of the Bank Insurance Fund equals or exceeds the fund's designated reserve ratio under subparagraph (B), the Board of Directors shall set semiannual assessment rates for members of that fund as appropriate to maintain the reserve ratio at the designated reserve ratio.

"(ii) SPECIAL RULES FOR RECAPITALIZING UNDERCAPITALIZED FUNDS.—If the reserve ratio of the Bank Insurance Fund is less than the designated reserve ratio under subparagraph (B), the Board of Directors shall set semiannual assessment rates for members of that fund—

"(I) that are sufficient to increase the reserve ratio for that fund to the designated reserve ratio not later than 1 year after such rates are set; or

"(II) in accordance with a schedule promulgated by the Corporation under clause (iii).

"(iii) RECAPITALIZATION SCHEDULES.—For purposes of clause (ii)(II), the Corporation shall by regulation promulgate a schedule that specifies, at semiannual intervals, target reserve ratios for the Bank Insurance Fund, culminating by the end of the period determined under clause (iv) in a reserve ratio that is equal to the designated reserve ratio.

"(iv) DATE FOR ACHIEVING DESIGNATED RATIO.—A schedule promulgated under clause (iii) shall provide for achieving the designated reserve ratio by the end of the period beginning on the date on which the schedule becomes effective and ending not later than the earlier of—

"(I) 15 years after that effective date, or

"(II) the number of years (rounded to the nearest whole number) after that effective date, determined as follows:

$$15 \times \left(1 - \frac{\text{reserve ratio}}{\text{designated reserve ratio}} \right)$$

"(v) AMENDING SCHEDULE.—The Corporation may, by regulation, amend a schedule promulgated under clause (iii), but such amendments may not extend the period determined under clause (iv).

"(vi) PROCEDURE FOR EXTENDING SCHEDULE.—If, during the period determined in clause (iv), when the Bank Insurance Fund's reserve ratio is being restored to the designated reserve ratio, the Corporation determines that maintaining assessments at levels sufficient to achieve the designated reserve ratio by the end of that period would significantly increase losses to the fund or would significantly impair the availability of credit, the following procedures shall apply:

"(I) REPORT REQUIRED.—The Corporation shall submit a report to the Congress that—

"(aa) sets forth a revised schedule of semiannual target reserve ratios for that fund, culminating in the achievement of the designated reserve ratio; and

"(bb) provides a detailed justification for the revision.

"(II) REQUIREMENT FOR CONGRESSIONAL CONSIDERATION.—The proposed revised schedule of semiannual target reserve ratios shall not be implemented unless the Congress, not later than 60 calendar days after receiving the report, enacts a joint resolution approving the proposed revision.

"(vii) PROCEDURES FOR EXPEDITED CONGRESSIONAL CONSIDERATION.—

"(I) JOINT RESOLUTION DEFINED.—For purposes of this clause, the term 'joint resolution' means only a joint resolution the matter after the resolving clause of which is as follows: 'That, pursuant to section 7(b)(1)(C) of the Federal Deposit Insurance Act, the Corporation may implement revisions to the schedule of semiannual target reserve ratios, culminating in the achievement of the designated reserve ratio for the Bank Insurance Fund, as proposed in the report submitted to the Congress on _____.', with the blank space being filled with the appropriate date.

"(II) INTRODUCTION.—On the day on which a report is submitted to the House of Representatives and the Senate under clause (vi)(I), a joint resolution with respect to the revised schedule specified in such report shall be introduced (by request) in the House of Representatives by the chairman of the Committee on Banking, Finance and Urban Affairs, for himself and the ranking minority member of the Committee, or by the Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

"(III) REFERRAL TO COMMITTEE.—Any joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and any joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

"(IV) DISCHARGE FROM COMMITTEE.—If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution and of any other joint resolution introduced with respect to the same matter.

"(V) EXPEDITED FLOOR CONSIDERATION.—Any such joint resolution shall be considered in the Senate in accordance with section 601(b) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(VI) JOINT RESOLUTION RECEIVED FROM OTHER HOUSE.—In the case of a joint resolution described in this clause, if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

"(aa) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(bb) the vote on final passage shall be on the joint resolution of the other House.

"(VII) COMPUTING TIME PERIODS.—In computing the 60-day period referred to in clause (vi)(II) and the 30-day period referred to in subclause (IV), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

"(viii) SPECIAL ASSESSMENT TO RECOVER LOSSES ON FOREIGN DEPOSITS.—

"(I) IN GENERAL.—This paragraph shall apply if—

"(aa) the Corporation incurs a loss with respect to an insured depository institution; and

"(bb) persons with foreign deposits at the institution receive more than they would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities.

"(II) SPECIAL ASSESSMENT REQUIRED.—The Corporation shall, as soon as practicable, recover the difference between—

"(aa) the amount that persons with foreign deposits at the institution received, and

"(bb) the amount that the Corporation estimates those persons would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities,

by imposing 1 or more special assessments on all members of the deposit insurance fund of which the institution was or is a member, in proportion to the foreign deposits held by those members at the beginning of the semiannual period containing the relevant date. The Corporation shall base the estimate required by item (bb) on the estimated loss that the Corporation will incur in the resolution actually undertaken with respect to the institution. Any calculation under this subparagraph shall be in the Corporation's sole discretion.

"(III) TIMING OF SPECIAL ASSESSMENTS.—

"(aa) IN GENERAL.—Special assessments under subclause (II) shall begin not later than the semiannual period beginning 90 days after the date on which the aggregate amounts calculated under subclause (II) (with respect to all institutions that were or are members of the deposit insurance fund), and not yet assessed, exceed $1,000,000.

"(bb) INTEREST ON DELAYED ASSESSMENTS.—Any amount calculated under subclause (II) and not yet assessed shall bear interest at the daily average yield on 3-month Treasury obligations.

"(IV) DEFINITIONS.—For purposes of this paragraph:

"(aa) CAPITAL CATEGORIES.—The terms 'adequately capitalized' and 'significantly undercapitalized' have the same meanings as in section 37 of the Federal Deposit Insurance Act.

"(bb) FOREIGN DEPOSIT.—The term 'foreign deposit' means any obligation of an insured depository institution described in subparagraph (A) or (B) of section 3(l)(5).

"(cc) RELEVANT DATE.—The term 'relevant date' means the date on which the earliest of the following occurs with respect to an insured depository institution:

"(AA) The institution is significantly undercapitalized, and has advances from a Federal Reserve bank outstanding for more than 5 consecutive days (without subsequently becoming adequately capitalized).

"(BB) The Corporation initiates assistance under section 13(c) with respect to the institution.

"(CC) A receiver or conservator is appointed for the institution.".

(b) ASSESSMENT RATE CHANGES.—Section 7(b)(1)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(A)) is amended by striking clause (iii) and inserting the following:

"(iii) RATE CHANGES.—The Corporation shall notify each insured depository institution of that institution's semiannual assessment. The Corporation may establish and, from time to time, adjust the assessment rates for such institutions.".

SEC. 103. GAO AUDIT OF RECAPITALIZATION SCHEDULE.

Section 17(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1827(d)(1)) is amended—

(1) by inserting "(A) FUNDS AUDIT.—" before "The Comptroller General" and appropriately indenting that subparagraph; and

(2) by adding at the end the following:

"(B) RECAPITALIZATION AUDIT.—As part of the audit required by subparagraph (A), the Comptroller General shall perform an audit of the Corporation's compliance with any recapitalization schedule promulgated under section 7(b)(1)(C) that is in effect at the time of the audit.".

SEC. 104. EMERGENCY GUARANTEE.

(a) GUARANTEE AUTHORITY FOR REPAYMENT OF STATE BORROWINGS.—Upon the written request of the State of Rhode Island and the Providence Plantations (hereafter referred to as the "State of Rhode Island") or the Depositors Economic Protection Corporation (hereafter referred to as the "Corporation"), established by the State of Rhode Island, the Secretary of the Treasury (hereafter referred to as the "Secretary") may guarantee the repayment of borrowing by the Corporation in an amount not to exceed $180,000,000, to assist in the repayment of depositors at certain State-chartered banks and credit unions in the State of Rhode Island that are in receivership and that were not federally insured at the time they were placed in receivership.

(b) LIMITATIONS ON GUARANTEE AUTHORITY.—The Secretary may only guarantee Corporation borrowing under this section if the guarantee provided under subsection (a) has no cost to the United States Government, taking into account the guarantee fees assessed and collected under subsection (e).

(c) BORROWING ELIGIBLE FOR GUARANTEE.—The Secretary may guarantee only Corporation borrowing under this section that—

(1) occurs not more than 1 year after the date of enactment of this Act;

(2) will mature not later than 10 years after the date of such borrowing; and

(3) is scheduled to be repaid in equal installments of principal during the last 5 years of the repayment term of such borrowing.

(d) SECURITY AND RATING REQUIREMENTS FOR GUARANTEE.—

(1) IN GENERAL.—The Secretary may not guarantee the repayment of any Corporation borrowing under this section unless the amount of the borrowing for which the guarantee is requested is fully secured—

(A) by the Corporation's grant in favor of the United States, as collateral for such borrowing, of a first mortgage lien on, and prior perfected security interest in, sufficient performing assets held or controlled by the Corporation, and any proceeds from the sale of such assets, so that the appraised market value of such pledged assets is equal to an amount that is not less than 2½ times the principal amount of such borrowing at the time of such borrowing; and

(B) by an irrevocable pledge by the Corporation of any revenue from the State of Rhode Island's sales tax which is dedicated to the Corporation under the laws of the State of Rhode Island in excess of the amount necessary to pay principal and interest on any obligation of the State of Rhode Island or the Corporation issued before the date of enactment of this Act for the purpose described in subsection (a), to the payment of the principal of, and interest on, such borrowing.

(2) INVESTMENT GRADE RATING.—The Secretary may not guarantee the repayment of any Corporation borrowing under this section unless each proposed borrowing has received the highest investment grade rating by a nationally recognized statistical rating organization.

(e) ADDITIONAL TERMS AND CONDITIONS.—In addition to security requirements under subsection (d), the Corporation shall be required to agree to the following terms and conditions in connection with the guarantee by the Secretary provided under this section:

(1) PLEDGE OF CERTAIN INCOME FOR REPAYMENT.—For each fiscal year of the Corporation, all rents, issues, profits, products, proceeds, revenues, and other income (including insurance proceeds and condemnation awards) received by the Corporation from or attributable to the assets pledged to the United States under subsection (d)(1), in excess of the amount necessary to pay the interest or principal and interest on any Corporation borrowings guaranteed under subsection (a) that is payable in such fiscal year, shall be deposited into a sinking fund or defeasance fund maintained by the Corporation irrevocably pledged and dedicated to the repayment of the principal of such guaranteed borrowings in the inverse order of the maturity of such principal installments.

(2) ASSESSMENTS AND COLLECTION.—The Secretary shall assess and collect from the Corporation, in connection with the guarantee provided under subsection (a), not less frequently than annually, a guarantee fee computed daily at a rate that is not less than one-half of 1 percent per year on the outstanding principal amount of the guaranteed borrowing. All funds received by the Secretary in payment of such fees shall be paid into the general fund of the Treasury.

(f) AUTHORITY TO PRESCRIBE ADDITIONAL TERMS AND CONDITIONS.—The Secretary may establish such additional terms and conditions in connection with the provision of a guarantee under this section as the Secretary may deem appropriate.

(g) BUDGET STATUS.—Notwithstanding the emergency need for the guarantee provided under this section, this section is subject to the Balanced Budget and Emergency Deficit Control Act of 1985 (as amended by the Budget Enforcement Act of 1990).

TITLE II—DEPOSIT INSURANCE REFORM

SEC. 201. FULL FAITH AND CREDIT.

Section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811) is amended to read as follows:

"SECTION 1. ESTABLISHMENT.

"(a) IN GENERAL.—There is hereby created a Federal Deposit Insurance Corporation (hereinafter referred to as the 'Corporation'), which shall insure the deposits of banks and savings associations in accordance with this Act.

"(b) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to the Corporation's obligation to pay insured deposits under this Act.".

SEC. 202. IMPROVING CAPITAL STANDARDS.

(a) PERIODIC REVIEW OF CAPITAL STANDARDS GENERALLY.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(o) PERIODIC REVIEW OF CAPITAL STANDARDS.—Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the deposit insurance funds, consistent with section 37.".

(b) REVIEW OF RISK-BASED CAPITAL STANDARDS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall revise its risk-based capital standards for insured depository institutions to ensure that those standards—

(A) take adequate account of—

(i) interest-rate risk;

(ii) concentration of credit risk; and

(iii) the risks of nontraditional activities; and

(B) reflect the actual performance and expected risk of loss of multifamily mortgages.

(2) INTERNATIONAL DISCUSSIONS.—The Federal banking agencies shall discuss the development of comparable standards with members of the supervisory committee of the Bank for International Settlements.

(3) DEADLINE FOR PRESCRIBING REVISED STANDARDS.—Each appropriate Federal banking agency shall—

(A) publish final regulations in the Federal Register to implement paragraph (1) not later than 18 months after the date of enactment of this Act; and

(B) establish reasonable transition rules to facilitate compliance with those regulations.

(4) DEFINITIONS.—For purposes of this subsection, the terms "appropriate Federal banking agency", "Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) CONFORMING AMENDMENT DEFINING FEDERAL BANKING AGENCIES.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by adding at the end the following:

"(z) FEDERAL BANKING AGENCIES.—The term 'Federal banking agencies' means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.".

SEC. 203. ACCOUNTING AND AUDITING REFORM.

(a) ACCOUNTING REFORM.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(p) ACCOUNTING REFORM.—

"(1) OBJECTIVES.—Accounting principles applicable to insured depository institutions should—

"(A) result in financial statements and reports of condition that accurately reflect the economic condition of those institutions; and

"(B) facilitate effective supervision of insured depository institutions, including

prompt corrective action to resolve troubled institutions' problems with no loss or minimal loss to the deposit insurance fund.

"(2) IMPROVING ACCOUNTING PRINCIPLES APPLICABLE TO INSURED DEPOSITORY INSTITUTIONS.—The Federal Financial Institutions Coordination Council, in consultation with the Securities and Exchange Commission, shall facilitate the development of accounting principles for insured depository institutions that meet the objectives set forth in paragraph (1).

"(3) STRINGENCY.—Each appropriate Federal banking agency—

"(A) shall prescribe accounting principles applicable to insured depository institutions that are no less conservative than generally accepted accounting principles; and

"(B) may prescribe accounting principles that are more conservative than generally accepted accounting principles as appropriate to facilitate effective supervision of insured depository institutions, including prompt corrective action to resolve troubled institutions' problems with no loss or minimal loss to the deposit insurance fund.

"(4) SECURITIES AND EXCHANGE COMMISSION'S AUTHORITY.—Paragraphs (2) and (3) shall not be construed as affecting the Securities and Exchange Commission's authority under the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934.".

(b) IMPROVEMENTS IN FINANCIAL MANAGEMENT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 36. EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

"(a) ANNUAL REPORT ON FINANCIAL CONDITION AND MANAGEMENT.—

"(1) REPORT REQUIRED.—Each insured depository institution shall annually submit to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State) a report that contains—

"(A) the information required to be provided by the institution's management under subsection (b);

"(B) the information required to be provided by an independent public accountant under subsections (c) and (d); and

"(C) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the institution's financial condition and management.

"(2) REPORT TO BE PUBLICLY AVAILABLE.—Annual reports required under paragraph (1) shall be made available for public inspection.

"(b) MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL STATEMENTS AND INTERNAL CONTROLS.—Each insured depository institution shall prepare—

"(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

"(2) a report signed by the institution's chief executive officer and chief accounting or financial officer, that—

"(A) states the management's responsibility for—

"(i) preparing financial statements;

"(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

"(iii) complying with designated safety-and-soundness laws; and

"(B) assesses, as of the end of the institution's most recent fiscal year—

"(i) the effectiveness of such internal control structure and procedures; and

"(ii) the institution's compliance with designated safety-and-soundness laws.

"(c) INTERNAL CONTROL EVALUATION AND REPORTING REQUIREMENTS FOR INDEPENDENT PUBLIC ACCOUNTANTS.—

"(1) IN GENERAL.—An insured depository institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in the internal control report required under subsection (b)(2).

"(2) ATTESTATION REQUIREMENTS.—Any attestation under paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

"(d) ANNUAL INDEPENDENT AUDITS OF FINANCIAL STATEMENTS.—

"(1) AUDITS REQUIRED.—The Corporation, in consultation with the Federal banking agencies, shall prescribe regulations requiring each insured depository institution to have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards.

"(2) SCOPE OF AUDIT.—In auditing any insured depository institution under this subsection, an independent public accountant shall determine and report on whether the institution's financial statements—

"(A) are presented fairly in accordance with generally accepted accounting principles; and

"(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

"(3) DEPOSITORY INSTITUTION SUBSIDIARIES OF HOLDING COMPANIES.—The requirements for an independent audit under paragraph (1) may be satisfied for an insured depository institution that is a subsidiary of a holding company by an independent audit of the holding company.

"(e) DETECTING AND REPORTING VIOLATIONS OF DESIGNATED SAFETY-AND-SOUNDNESS LAWS.—

"(1) IN GENERAL.—An independent public accountant shall apply procedures agreed upon by the Corporation to determine objectively the extent to which any insured depository institution or depository institution holding company has complied with designated safety-and-soundness laws.

"(2) ATTESTATION REQUIREMENTS.—Any attestation required under paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

"(f) FORM AND CONTENT OF REPORTS AND AUDITING STANDARDS.—

"(1) IN GENERAL.—The scope of each report by an independent public accountant under this section, and the procedures followed in preparing such report, shall satisfy generally accepted auditing standards and other applicable standards recognized by the Corporation.

"(2) CONSULTATION.—In implementing this subsection, the Corporation shall consult with the other Federal banking agencies.

"(g) IMPROVED ACCOUNTABILITY.—

"(1) INDEPENDENT AUDIT COMMITTEE.—

"(A) ESTABLISHMENT.—Each insured depository institution shall establish an independent audit committee consisting only of members of the board of directors of the institution who—

"(i) are not officers, employees, or major shareholders of the institution; and

"(ii) meet any additional requirements established by the Corporation.

"(B) DUTIES.—The independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for reports issued and audits made under subsections (b)(2), (c), and (d).

"(C) CRITERIA APPLICABLE TO COMMITTEES OF LARGE INSURED DEPOSITORY INSTITUTIONS.—The audit committee of each insured depository institution that the Corporation determines to be a large institution shall—

"(i) include members with banking or related financial management expertise;

"(ii) have discretion to retain independent legal counsel, at the institution's expense; and

"(iii) not include any large customers of the institution, as determined by the Corporation.

"(2) REVIEW OF QUARTERLY REPORTS OF LARGE INSURED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—The Corporation may require an independent public accountant retained by any insured depository institution that the Corporation determines is a large institution to conduct a review of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

"(B) REPORT TO AUDIT COMMITTEE.—The independent public accountant shall provide to the audit committee of the insured depository institution a report on any review conducted under subparagraph (A). The audit committee shall provide copies of any such reports to the Corporation, the appropriate Federal banking agency, and (in the case of a State depository institution) the appropriate State bank supervisor.

"(C) LIMITATION ON NOTICE.—Any reports under subparagraph (B) shall be made only for the information and use of the insured depository institution, the Corporation, the appropriate Federal banking agency, and any State bank supervisor that received the report.

"(3) QUALIFICATIONS OF INDEPENDENT PUBLIC ACCOUNTANTS.—

"(A) IN GENERAL.—No insured depository institution shall retain an independent public accountant to perform services under this section unless the independent public accountant—

"(i) has agreed to provide related working papers, policies, and procedures to the Corporation, the appropriate Federal banking agency, and (in the case of a State depository institution) the appropriate State bank supervisor, if requested; and

"(ii) has received a peer review that meets guidelines acceptable to the Corporation.

"(B) REPORTS ON PEER REVIEWS.—Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

"(4) ENFORCEMENT ACTIONS.—

"(A) IN GENERAL.—In addition to any authority contained in section 8, the Corporation or an appropriate Federal banking agency may, upon a showing of good cause, remove, suspend, or bar an independent public accountant from performing audit services under this section.

"(B) JOINT RULEMAKING.—The Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

"(5) NOTICE IF ACCOUNTANT'S SERVICES TERMINATE.—An independent public accountant who ceases to perform services for an insured depository institution under this section shall promptly notify the Corporation in accordance with such rules as the Corporation shall prescribe.

"(h) EXCHANGE OF REPORTS AND INFORMATION.—

"(1) REPORT TO THE INDEPENDENT AUDITOR.—

"(A) IN GENERAL.—Each insured depository institution that has retained an independent auditor to conduct an audit of the institution under this section shall provide the auditor a copy of the institution's most recent report of condition and most recent report of examination.

"(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided under paragraph (1), each insured depository institution shall provide the auditor with—

"(i) a copy of any supervisory memorandum of understanding with the institution and any written agreement between the institution and any appropriate Federal banking agency or any appropriate State supervisor which is in effect during the period covered by the audit; and

"(ii) a report of—

"(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 8;

"(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

"(III) any assessment of a civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

"(2) REPORTS TO BANKING AGENCIES.—

"(A) INDEPENDENT AUDITOR REPORTS.—Each insured depository institution shall provide to the Corporation, the appropriate Federal banking agency, and (in the case of a State depository institution) the appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report not more than 15 days after receiving any such report, qualification, or letter from the institution's independent auditors.

"(B) NOTICE OF CHANGE OF AUDITOR.—Each insured depository institution shall notify the Corporation, the appropriate Federal banking agency, and (in the case of a State depository institution) the appropriate State bank supervisor if the institution's independent auditor resigns or is dismissed, or if the institution engages a new independent auditor. Such notice shall—

"(i) state the reasons for the change; and

"(ii) be provided not more than 15 calendar days after the change occurs.

"(i) REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—Any insured depository institution that is a subsidiary of a holding company may satisfy the requirements of this section, other than any audit requirements established under subsection (d), if—

"(1) services and functions comparable to those required under this section are provided at the holding company level; and

"(2) either—

"(A) the institution's total assets, at the beginning of the fiscal year, are less than $5,000,000,000; or

"(B) the institution—

"(i) had total assets, at the beginning of the fiscal year, of not less than $5,000,000,000, nor more than $9,000,000,000; and

"(ii) when most recently examined by the Corporation or the appropriate Federal banking agency, had a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system).

"(j) EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.—If an insured depository institution's total assets at the beginning of a fiscal year do not exceed the greater of $150,000,000 or such amount (exceeding $150,000,000) as the Corporation may prescribe by regulation, this section shall not apply with respect to that institution during that fiscal year.

"(k) DESIGNATED SAFETY-AND-SOUNDNESS LAWS DEFINED.—For purposes of this section, the term 'designated safety-and-soundness laws' means statutes and regulations relating to safety and soundness that are designated under this section by the Corporation or the appropriate Federal banking agency.".

(c) EFFECTIVE DATE.—The requirements established by the amendment made by subsection (b) shall apply with respect to fiscal years of insured depository institutions that begin after December 31, 1992.

SEC. 204. ANNUAL EXAMINATIONS.

(a) IN GENERAL.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by inserting after subsection (c) the following new subsection:

"(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

"(1) IN GENERAL.—The appropriate Federal banking agency shall, not less than once during each 12-month period, conduct a full-scope, on-site examination of each insured depository institution.

"(2) EXAMINATIONS BY CORPORATION.—Paragraph (1) shall not apply during any 12-month period in which the Corporation has conducted a full-scope, on-site examination of the insured depository institution.

"(3) STATE EXAMINATIONS ACCEPTABLE.—The examinations required by paragraph (1) may be conducted in alternate 12-month periods, as appropriate, if the appropriate Federal banking agency determines that an examination of the insured depository institution conducted by the State during the intervening 12-month period carries out the purpose of this subsection.

"(4) 18-MONTH RULE FOR CERTAIN SMALL INSTITUTIONS.—Paragraphs (1), (2), and (3) shall apply with '18-month' substituted for '12-month' if—

"(A) the insured depository institution has total assets of less than $100,000,000;

"(B) the institution is well capitalized, as defined in section 37;

"(C) when the institution was most recently examined, it was found to be well managed, and its composite condition was found to be outstanding; and

"(D) no person acquired control of the institution during the 12-month period in which a full-scope, on-site examination would be required but for this paragraph.

"(5) CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Paragraph (1) does not apply to—

"(A) any institution for which the Corporation is conservator; or

"(B) any bridge bank none of the voting securities of which is owned by a person or agency other than the Corporation.

"(6) CONSUMER COMPLIANCE EXAMINATIONS EXCLUDED.—For purposes of this subsection, the term 'full-scope, on-site examination' does not include a consumer compliance examination, as defined in section 41(b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective 1 year after the date of enactment of this Act.

(c) TRANSITION RULE.—Notwithstanding section 10(d) of the Federal Deposit Insurance Act (as added by subsection (a)), during the period beginning on the date of enactment of this Act and ending on December 31, 1993, a full-scope, on-site examination of an insured depository institution is not required more often than once during every 18-month period, unless—

(1) the institution, when most recently examined, was found to be in a less than satisfactory condition; or

(2) 1 or more persons acquired control of the institution.

SEC. 205. PROMPT CORRECTIVE ACTION.

(a) ESTABLISHING SYSTEM OF PROMPT CORRECTIVE ACTION.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 37. PROMPT CORRECTIVE ACTION.

"(a) RESOLVING PROBLEMS TO PROTECT DEPOSIT INSURANCE FUNDS.—

"(1) PURPOSE.—The purpose of this section is to resolve the problems of insured depository institutions—

"(A) with no loss or minimal loss to the deposit insurance fund; and

"(B) when loss cannot be avoided, at the least possible long-term loss to the deposit insurance fund.

"(2) PROMPT CORRECTIVE ACTION REQUIRED.—Each appropriate Federal banking agency shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured depository institutions.

"(b) DEFINITIONS.—For purposes of this section:

"(1) CAPITAL CATEGORIES.—

"(A) WELL CAPITALIZED.—An insured depository institution is 'well capitalized' if it significantly exceeds the required minimum level for each relevant capital measure.

"(B) ADEQUATELY CAPITALIZED.—An insured depository institution is 'adequately capitalized' if it meets the required minimum level for each relevant capital measure.

"(C) UNDERCAPITALIZED.—An insured depository institution is 'undercapitalized' if it fails to meet the required minimum level for any relevant capital measure.

"(D) SIGNIFICANTLY UNDERCAPITALIZED.—An insured depository institution is 'significantly undercapitalized' if it is significantly below the required minimum level for any relevant capital measure.

"(E) CRITICALLY UNDERCAPITALIZED.—An insured depository institution is 'critically undercapitalized' if it fails to meet any level specified under subsection (c)(3)(A).

"(2) OTHER DEFINITIONS.—

"(A) AVERAGE.—

"(i) IN GENERAL.—The 'average' of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

"(ii) AGENCY MAY PERMIT WEEKLY AVERAGING FOR CERTAIN INSTITUTIONS.—In the case of insured depository institutions that have total assets of less than $300,000,000 and normally file reports of condition reflecting weekly (rather than daily) averages of accounting items, the appropriate Federal banking agency may provide that the 'average' of an accounting item during a given period means the sum of that item at the close of business on the relevant business day each week during that period divided by the total number of weeks in that period.

"(B) CAPITAL DISTRIBUTION.—The term 'capital distribution' means—

"(i) a distribution of cash or other property by any insured depository institution or

company to its owners made on account of that ownership, but not including—

"(I) any dividend consisting only of shares of the institution or company or rights to purchase such shares; or

"(II) any amount paid on the deposits of a mutual or cooperative institution that the appropriate Federal banking agency determines is not a distribution for purposes of this section;

"(ii) a payment by an insured depository institution or company to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance an affiliated company's acquisition of those shares or interests; or

"(iii) a transaction that the appropriate Federal banking agency determines, by order or regulation, to be in substance a distribution of capital to the owners of the insured depository institution or company.

"(C) CAPITAL RESTORATION PLAN.—The term 'capital restoration plan' means a plan submitted under subsection (e)(2).

"(D) COMPANY.—The term 'company' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

"(E) COMPENSATION.—The term 'compensation' includes any payment of money or provision of any other thing of value in consideration of employment.

"(F) RELEVANT CAPITAL MEASURE.—The term 'relevant capital measure' means the measures described in subsection (c).

"(G) REQUIRED MINIMUM LEVEL.—The term 'required minimum level' means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the appropriate Federal banking agency by regulation.

"(H) SENIOR EXECUTIVE OFFICER.—The term 'senior executive officer' has the same meaning as the term 'executive officer' in section 22(h) of the Federal Reserve Act.

"(I) SUBORDINATED DEBT.—The term 'subordinated debt' means debt subordinated to the claims of general creditors.

"(c) CAPITAL STANDARDS.—

"(1) RELEVANT CAPITAL MEASURES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), the capital standards prescribed by each appropriate Federal banking agency shall include—

"(i) a leverage limit; and

"(ii) a risk-based capital requirement.

"(B) OTHER CAPITAL MEASURES.—An appropriate Federal banking agency may, by regulation—

"(i) establish any additional relevant capital measures to carry out the purpose of this section; or

"(ii) rescind any relevant capital measure required under subparagraph (A) upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of this section.

"(2) CAPITAL CATEGORIES GENERALLY.—Each appropriate Federal banking agency shall, by regulation, specify for each relevant capital measure the levels at which an insured depository institution is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.

"(3) CRITICAL CAPITAL.—

"(A) AGENCY TO SPECIFY LEVEL.—

"(i) LEVERAGE LIMIT.—Each appropriate Federal banking agency shall, by regulation, specify the ratio of tangible equity to total assets at which an insured depository institution is critically undercapitalized.

"(ii) OTHER RELEVANT CAPITAL MEASURES.—The agency may, by regulation, specify for 1 or more other relevant capital measures, the level at which an insured depository institution is critically undercapitalized.

"(B) CRITERIA FOR SPECIFYING LEVEL.—

"(i) IN GENERAL.—The level specified under subparagraph (A)(i) shall be high enough so that the problems of insured depository institutions can be resolved with no loss or minimal loss to the deposit insurance fund by carrying out subsection (h) when the institution becomes critically undercapitalized.

"(ii) LIMITS.—The level specified under subparagraph (A)(i) shall require tangible equity in an amount—

"(I) not less than 2 percent of total assets; and

"(II) except as provided in subclause (I), not more than 65 percent of the required minimum level of capital under the leverage limit.

"(C) FDIC'S CONCURRENCE REQUIRED.—The appropriate Federal banking agency shall not, without the concurrence of the Corporation, specify a level under subparagraph (A)(i) lower than that specified by the Corporation for State nonmember insured banks.

"(d) PROVISIONS APPLICABLE TO ALL INSTITUTIONS.—

"(1) CAPITAL DISTRIBUTIONS RESTRICTED.—An insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized.

"(2) MANAGEMENT FEES RESTRICTED.—An insured depository institution shall pay no management fee to any person having control of that institution if, after making the payment, the institution would be undercapitalized.

"(e)PROVISIONS APPLICABLE TO UNDERCAPITALIZED INSTITUTIONS.—

"(1) MONITORING REQUIRED.—Each appropriate Federal banking agency shall—

"(A) closely monitor the condition of any undercapitalized insured depository institution;

"(B) closely monitor compliance with capital restoration plans, restrictions, and requirements imposed under this section; and

"(C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized insured depository institution to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

"(2) CAPITAL RESTORATION PLAN REQUIRED.—

"(A) IN GENERAL.—Any undercapitalized insured depository institution shall submit an acceptable capital restoration plan to the appropriate Federal banking agency within the time allowed by the agency under subparagraph (D).

"(B) CONTENTS OF PLAN.—The capital restoration plan shall—

"(i) specify—

"(I) the steps the insured depository institution will take to become adequately capitalized;

"(II) the levels of capital to be attained during each year in which the plan will be in effect;

"(III) how the institution will comply with the restrictions or requirements then in effect under this section; and

"(IV) the types and levels of activities in which the institution will engage; and

"(ii) contain such other information as the appropriate Federal banking agency may require.

"(C) CRITERIA FOR ACCEPTING PLAN.—The appropriate Federal banking agency shall not accept a capital restoration plan unless the agency determines that—

"(i) the plan—

"(I) complies with subparagraph (B);

"(II) is based on realistic assumptions, and is likely to succeed in restoring the institution's capital; and

"(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed; and

"(ii) if the insured depository institution is undercapitalized, each company having control of the institution has—

"(I) guaranteed that the institution will comply with the plan until the institution has been adequately capitalized on average during each of 4 consecutive calendar quarters; and

"(II) provided appropriate assurances of performance.

"(D) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The appropriate Federal banking agency shall by regulation establish deadlines that—

"(i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 30 days after the institution becomes undercapitalized; and

"(ii) require the agency to act on capital restoration plans expeditiously, and generally not later than 30 days after the plan is submitted.

"(E) GUARANTEE LIABILITY LIMITED.—

"(i) IN GENERAL.—The aggregate liability under subparagraph (C)(ii) of all companies having control of an insured depository institution shall not exceed an amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized.

"(ii) CERTAIN AFFILIATES NOT AFFECTED.—This paragraph does not require—

"(I) any company not having control of an undercapitalized insured depository institution to guarantee, or otherwise be liable on, a capital restoration plan; or

"(II) any person other than an insured depository institution to submit a capital restoration plan.

"(3) ASSET GROWTH RESTRICTED.—An undercapitalized insured depository institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

"(A) the appropriate Federal banking agency has accepted the institution's capital restoration plan;

"(B) any increase in total assets is consistent with the plan; and

"(C) the institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the institution to become adequately capitalized within a reasonable time.

"(4) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS, BRANCHING, AND NEW LINES OF BUSINESS.—An undercapitalized insured depository institution shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business unless—

"(A) the appropriate Federal banking agency has accepted the insured depository institution's capital restoration plan, the institution is implementing the plan, and the agency determines that the proposed action is consistent with and will further the achievement of the plan; or

"(B) the Board of Directors determines, upon a vote of three-fourths of all members,

that the proposed action will further the purpose of this section.

"(5) DISCRETIONARY SAFEGUARDS.—The appropriate Federal banking agency may, with respect to any undercapitalized insured depository institution, take actions described in any subparagraph of subsection (f)(2) if the agency determines that those actions are necessary to carry out the purpose of this section.

"(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED INSTITUTIONS AND UNDERCAPITALIZED INSTITUTIONS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

"(1) IN GENERAL.—This subsection shall apply with respect to any insured depository institution that—

"(A) is significantly undercapitalized; or

"(B) is undercapitalized and—

"(i) fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (e)(2)(D); or

"(ii) fails in any material respect to implement a plan accepted by the agency.

"(2) SPECIFIC ACTIONS AUTHORIZED.—The appropriate Federal banking agency shall carry out this section by taking 1 or more of the following actions:

"(A) REQUIRING RECAPITALIZATION.—Doing 1 or more of the following:

"(i) Requiring the institution to sell enough shares or obligations of the institution so that the institution will be adequately capitalized after the sale.

"(ii) Further requiring that instruments sold under clause (i) be voting shares.

"(iii) Requiring the institution to be acquired by a depository institution holding company, or to combine with another insured depository institution, if 1 or more grounds exist for appointing a conservator or receiver for the institution.

"(B) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

"(i) Requiring the institution to comply with section 23A of the Federal Reserve Act as if subsection (d)(1) of that section (exempting transactions with certain affiliated institutions) did not apply.

"(ii) Further restricting the institution's transactions with affiliates.

"(C) RESTRICTING INTEREST RATES PAID.—

"(i) IN GENERAL.—Restricting the interest rates that the institution pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located, as determined by the agency.

"(ii) RETROACTIVE RESTRICTIONS PROHIBITED.—This subparagraph does not authorize the agency to restrict interest rates paid on time deposits made before (and not renewed or renegotiated after) the agency acted under this subparagraph.

"(D) RESTRICTING ASSET GROWTH.—Restricting the institution's asset growth more stringently than subsection (e)(3), or requiring the institution to reduce its total assets.

"(E) RESTRICTING ACTIVITIES.—Requiring the institution or any of its subsidiaries to alter, reduce, or terminate any activity that the agency determines poses excessive risk to the institution.

"(F) IMPROVING MANAGEMENT.—Doing 1 or more of the following:

"(i) NEW ELECTION OF DIRECTORS.—Ordering a new election for the institution's board of directors.

"(ii) DISMISSING DIRECTORS OR SENIOR EXECUTIVE OFFICERS.—Requiring the institution to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the institution became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8.

"(iii) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the institution to employ qualified senior executive officers (who, if the agency so specifies, shall be subject to approval by the agency).

"(G) REQUIRING CHANGE OF AUDITOR.—Requiring the institution to retain a new independent auditor.

"(H) REQUIRING PRIOR APPROVAL FOR CAPITAL DISTRIBUTIONS BY BANK HOLDING COMPANY.—Prohibiting any bank holding company having control of the insured depository institution from making any capital distribution without the prior approval of the Board of Governors of the Federal Reserve System.

"(I) REQUIRING DIVESTITURE.—Doing one or more of the following:

"(i) DIVESTITURE BY THE INSTITUTION.—Requiring the institution to divest itself of or liquidate any subsidiary if the agency determines that the subsidiary is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

"(ii) DIVESTITURE BY PARENT COMPANY OF NONDEPOSITORY AFFILIATE.—Requiring any company having control of the institution to divest itself of or liquidate any affiliate other than an insured depository institution if the appropriate Federal banking agency for that company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

"(iii) DIVESTITURE OF INSTITUTION.—Requiring any company having control of the institution to divest itself of the institution if the appropriate Federal banking agency for that company determines that divestiture would improve the institution's financial condition and future prospects.

"(J) REQUIRING OTHER ACTION.—Requiring the institution to take any other action that the agency determines will better carry out the purpose of this section than any of the actions described in this paragraph.

"(3) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with paragraph (2), the agency shall take the following actions, unless the agency determines that the actions would not further the purpose of this section:

"(A) The action described in clause (i) or (iii) of paragraph (2)(A) (relating to requiring the sale of shares or obligations, or requiring the institution to be acquired by or combine with another institution).

"(B) The action described in paragraph (2)(B)(i) (relating to restricting transactions with affiliates).

"(C) The action described in paragraph (2)(C) (relating to restricting interest rates).

"(4) SENIOR EXECUTIVE OFFICERS' COMPENSATION RESTRICTED.—

"(A) IN GENERAL.—The insured depository institution shall not do any of the following without the prior written approval of the appropriate Federal banking agency:

"(i) Pay any bonus to any senior executive officer.

"(ii) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the institution became undercapitalized.

"(B) FAILING TO SUBMIT PLAN.—The appropriate Federal banking agency shall not grant any approval under subparagraph (A) with respect to an institution that has failed to submit an acceptable capital restoration plan.

"(5) DISCRETION TO IMPOSE CERTAIN ADDITIONAL RESTRICTIONS.—The agency may impose 1 or more of the restrictions prescribed by regulation under subsection (i) if the agency determines that those restrictions are necessary to carry out the purpose of this section.

"(g) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

"(1) IN GENERAL.—If the appropriate Federal banking agency determines (after notice and an opportunity for hearing) that an insured depository institution is in an unsafe or unsound condition or, pursuant to section 8(b)(8), deems the institution to be engaging in an unsafe or unsound practice, the agency may—

"(A) if the institution is well capitalized, reclassify the institution as adequately capitalized;

"(B) if the institution is adequately capitalized, require the institution to comply with 1 or more provisions of subsections (d) and (e), as if the institution were undercapitalized; or

"(C) if the institution is undercapitalized, take any 1 or more actions authorized under subsection (f)(2) as if the institution were significantly undercapitalized.

"(2) CONTENTS OF PLAN.—Any plan required under paragraph (1) shall specify the steps that the insured depository institution will take to correct the unsafe or unsound condition or practice. Capital restoration plans shall not be required under paragraph (1)(B).

"(h) PROVISIONS APPLICABLE TO CRITICALLY UNDERCAPITALIZED INSTITUTIONS.—

"(1) ACTIVITIES RESTRICTED.—Any critically undercapitalized insured depository institution shall comply with restrictions prescribed by the appropriate Federal banking agency under subsection (i).

"(2) PAYMENTS ON SUBORDINATED DEBT PROHIBITED.—

"(A) IN GENERAL.—A critically undercapitalized insured depository institution shall not, beginning 30 days after becoming critically undercapitalized, make any payment of principal or interest on the institution's subordinated debt.

"(B) EXCEPTIONS.—The Corporation may make exceptions to subparagraph (A) if—

"(i) the appropriate Federal banking agency has taken action with respect to the insured depository institution under paragraph (3)(A)(ii); and

"(ii) the Corporation determines that the exception would further the purpose of this section.

"(C) LIMITED EXEMPTION FOR CERTAIN SUBORDINATED DEBT.—Until July 15, 1996, subparagraph (A) shall not apply with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

"(D) ACCRUAL OF INTEREST.—Subparagraph (A) does not prevent unpaid interest from accruing on subordinated debt under the terms of that debt, to the extent otherwise permitted by law.

"(3) CONSERVATORSHIP, RECEIVERSHIP, OR OTHER ACTION REQUIRED.—

"(A) IN GENERAL.—The appropriate Federal banking agency shall, not later than 30 days after an insured depository institution becomes critically undercapitalized—

"(i) appoint a receiver (or, with the concurrence of the Corporation, a conservator) for the institution; or

"(ii) take such other action as the agency determines, with the concurrence of the Corporation, would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

"(B) REVIEW OF OTHER ACTION.—If a conservator or receiver is not appointed for the insured depository institution, the agency shall review its action under subparagraph (A)(ii) not less often than every 90 days and determine (with the concurrence of the Corporation) whether that action better achieves the purpose of this section than the appointment of a conservator or receiver.

"(C) APPOINTMENT OF RECEIVER REQUIRED IF OTHER ACTION FAILS TO RESTORE CAPITAL.—

"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the appropriate Federal banking agency shall appoint a receiver for the insured depository institution if the institution is critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the institution became critically undercapitalized.

"(ii) EXCEPTION.—Clause (i) does not require the appropriate Federal banking agency to appoint a receiver for an insured depository institution if—

"(I) on average during the calendar quarter described in clause (i), the institution has tangible equity in an amount not less than 60 percent of the level specified under subsection (c)(3)(A)(i), or the institution has submitted a plan in compliance with the requirements of subsection (e)(2) or section 5(t)(6)(A)(ii) of the Home Owners' Loan Act, the appropriate Federal banking agency has approved the plan, and the institution is in compliance with the plan;

"(II) the institution had significant operating earnings during that calendar quarter and the preceding calendar quarter;

"(III) the institution has made significant progress in correcting other deficiencies; and

"(IV) the Corporation determines that the appointment of a receiver would not further the purpose of this section.

"(i) RESTRICTING ACTIVITIES OF CRITICALLY UNDERCAPITALIZED INSTITUTIONS.—To carry out the purpose of this section, each appropriate Federal banking agency shall, by regulation or order—

"(1) restrict the activities of any critically undercapitalized insured depository institution; and

"(2) at a minimum, prohibit any such institution from doing any of the following without the appropriate Federal banking agency's prior written approval:

"(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency.

"(B) Extending credit for any highly leveraged transaction.

"(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order.

"(D) Making any material change in accounting methods.

"(E) Engaging in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act).

"(F) Paying excessive compensation or bonuses.

"(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas.

"(j) CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Subsections (e) through (i) (other than paragraph (3) of subsection (e)) shall not apply—

"(1) to an insured depository institution for which the Corporation or the Resolution Trust Corporation is conservator; or

"(2) to a bridge bank, none of the voting securities of which are owned by a person or agency other than the Corporation.

"(k) REVIEW REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS MATERIAL LOSS.—

"(1) IN GENERAL.—If a deposit insurance fund incurs a material loss with respect to an insured depository institution on or after July 1, 1993, the inspector general of the appropriate Federal banking agency shall—

"(A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—

"(i) ascertain why the institution's problems resulted in a material loss to the deposit insurance fund; and

"(ii) make recommendations for preventing any such loss in the future; and

"(B) provide a copy of the report to—

"(i) the Comptroller General of the United States;

"(ii) the Corporation (if the agency is not the Corporation);

"(iii) in the case of a State depository institution, the appropriate State banking supervisor; and

"(iv) upon request by any Member of Congress, to that Member.

"(2) MATERIAL LOSS INCURRED.—For purposes of this subsection:

"(A) LOSS INCURRED.—A deposit insurance fund incurs a loss with respect to an insured depository institution—

"(i) if the Corporation provides any assistance under section 13(c) with respect to that institution; and—

"(I) it is not substantially certain that the assistance will be fully repaid not later than 24 months after the date on which the Corporation initiated the assistance; or

"(II) the institution ceases to repay the assistance in accordance with its terms; or

"(ii) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the present value of the deposit insurance fund's outlays with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

"(B) MATERIAL LOSS.—A loss is material if it exceeds the greater of—

"(i) $25,000,000; or

"(ii) 2 percent of the institution's total assets at the time the Corporation initiated assistance under section 13(c) or was appointed receiver.

"(3) DEADLINE FOR REPORT.—The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event (except with respect to paragraph (1)(B)(iv)) as follows:

"(A) If the institution is described in paragraph (2)(A)(i), during the 6-month period beginning on the earlier of—

"(i) the date on which the institution ceases to repay assistance under section 13(c) in accordance with its terms, or

"(ii) the date on which it becomes apparent that the assistance will not be fully repaid during the 24-month period described in paragraph (2)(A)(i).

"(B) If the institution is described in paragraph (2)(A)(ii), during the 6-month period beginning on the date on which it becomes apparent that the present value of the deposit insurance fund's outlays with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

"(4) PUBLIC DISCLOSURE REQUIRED.—

"(A) IN GENERAL.—The appropriate Federal banking agency shall disclose the report upon request under section 552 of title 5, United States Code, without excising—

"(i) any portion under section 552(b)(5); or

"(ii) any information about the insured depository institution under paragraph (4) (other than trade secrets) or paragraph (8) of section 552(b).

"(B) EXCEPTION.—Subparagraph (A) does not require the agency to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could reasonably be ascertained.

"(5) GAO REVIEW.—The General Accounting Office shall annually—

"(A) review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section); and

"(B) verify the accuracy of 1 or more of those reports.

"(6) TRANSITION RULE.—During the period beginning on July 1, 1993, and ending on June 30, 1997, a loss incurred by the Corporation with respect to an insured depository institution—

"(A) with respect to which the Corporation initiates assistance under section 13(c) during the period in question, or

"(B) for which the Corporation was appointed receiver during the period in question, is material for purposes of this subsection only if that loss exceeds the greater of $25,000,000 or the applicable percentage of the institution's total assets at that time, set forth in the following table:

"For the following period:	The applicable percentage is:
July 1, 1993–June 30, 1994	7 percent
July 1, 1994–June 30, 1995	5 percent
July 1, 1995–June 30, 1996	4 percent
July 1, 1996–June 30, 1997	3 percent.

"(l) IMPLEMENTATION.—

"(1) REGULATIONS AND OTHER ACTIONS.—Each appropriate Federal banking agency shall prescribe such regulations (in consultation with the other Federal banking agencies), issue such orders, and take such other actions as are necessary to carry out this section.

"(2) WRITTEN DETERMINATION AND CONCURRENCE REQUIRED.—Any determination or concurrence by an appropriate Federal banking agency or the Corporation required under this section shall be written.

"(m) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of an appropriate Federal banking agency, the Corporation or a State to take action in addition to (but not in derogation of) that required under this section.

"(n) JUDICIAL REVIEW.—

"(1) JURISDICTION AND VENUE.—

"(A) FILING OF PETITION.—A person aggrieved by an action of an appropriate Federal banking agency under this section may obtain review of that action by filing, not later than 10 days after receiving notice of the agency action, a written petition requesting that the action be modified, terminated, or set aside.

"(B) PLACE FOR FILING.—A petition filed pursuant to this subsection shall be filed in

the United States Court of Appeals for the District of Columbia Circuit or the United States court of appeals for the circuit containing the home office of the insured depository institution whose condition is the basis for the agency action.

"(2) PERSON AGGRIEVED DEFINED.—For purposes of this subsection, a 'person aggrieved' by the action of an appropriate Federal banking agency under this section—

"(A) means any insured depository institution or company with respect to which action is taken under this section, and any company having control of that institution or company; and

"(B) includes any person dismissed pursuant to an order under this section requiring an insured depository institution to dismiss a director or senior executive officer.

"(3) SCOPE OF REVIEW.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), action taken by an appropriate Federal banking agency under this section shall be modified, terminated, or set aside only if the court finds on the record on which the agency acted that the agency's action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(B) ALTERNATIVE REVIEW OF CERTAIN AGENCY ACTIONS.—This subsection does not prohibit a person aggrieved by an order of an appropriate Federal banking agency appointing a conservator or receiver for an insured depository institution from pursuing any judicial review of the order that is otherwise available.

"(4) EXPEDITED REVIEW REQUIRED.—The United States courts of appeals shall expedite the review of petitions complaining of agency action under this section.

"(5) INJUNCTIVE RELIEF NOT AVAILABLE.—The commencement of proceedings for judicial review under this subsection shall not operate as a stay of any action taken by the appropriate Federal banking agency. No court shall have jurisdiction to stay, enjoin, or otherwise delay agency action taken under this section.

"(6) JURISDICTION WITHDRAWN.—Except as provided in this subsection, no court shall have jurisdiction over action taken by an appropriate Federal banking agency under this section.

"(o) TRANSITION RULES FOR SAVINGS ASSOCIATIONS.—

"(1) RTC'S ROLE DOES NOT DIMINISH CARE REQUIRED OF OTS.—

"(A) IN GENERAL.—In implementing this section, the appropriate Federal banking agency (and, to the extent applicable, the Corporation) shall exercise the same care as if the Savings Association Insurance Fund (rather than the Resolution Trust Corporation) bore the cost of resolving the problems of insured savings associations described in clauses (i) and (ii)(II) of section 21A(b)(3)(A) of the Federal Home Loan Bank Act.

"(B) REPORTS.—Subparagraph (A) does not require reports under subsection (k).

"(2) ADDITIONAL FLEXIBILITY FOR CERTAIN SAVINGS ASSOCIATIONS.—Subsections (e)(2), (f), and (h) shall not apply before July 1, 1994, to any insured savings association if—

"(A) before the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991—

"(i) the savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act; and

"(ii) the Director of the Office of Thrift Supervision had accepted the plan;

"(B) the plan remains in effect; and

"(C) the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.".

(b) DEADLINE FOR REGULATIONS.—Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) shall, after notice and opportunity for comment, promulgate final regulations under section 37 of the Federal Deposit Insurance Act (as added by subsection (a)) not later than 240 days after the date of enactment of this Act, and those regulations shall become effective not later than 270 days after that date of enactment.

(c) OTHER AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) ENFORCEMENT ACTION BASED ON UNSATISFACTORY ASSET QUALITY, MANAGEMENT, EARNINGS, OR LIQUIDITY.—Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by redesignating paragraph (8) as paragraph (9) and inserting after paragraph (7) the following:

"(8) UNSATISFACTORY ASSET QUALITY, MANAGEMENT, EARNINGS, OR LIQUIDITY AS UNSAFE OR UNSOUND PRACTICE.—If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.".

(2) CONFORMING AMENDMENTS RELATING TO FEDERAL BANKING AGENCIES' ENFORCEMENT AUTHORITY.—Section 8(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)) is amended—

(A) in the first sentence of paragraph (1), by inserting "or under section 37" after "section"; and

(B) in paragraph (2)(A)(ii), by inserting ", or final order under section 37" after "section".

(d) CONFORMING AMENDMENT TO SECTION 5(t)(7) OF THE HOME OWNERS' LOAN ACT.—Section 5(t)(7) of the Home Owners' Loan Act (12 U.S.C. 1464(t)(7)) is amended—

(1) in subsection (A), by inserting "under this Act" before the period; and

(2) in subsection (B), by inserting "under this Act" after "imposed by the Director".

(e) TRANSITION RULE REGARDING CURRENT DIRECTORS AND SENIOR EXECUTIVE OFFICERS.—

(1) DISMISSAL FROM OFFICE.—Section 37(f)(2)(F)(ii) of the Federal Deposit Insurance Act (as added by subsection (a)) shall not apply with respect to—

(A) any director whose current term as a director commenced on or before the date of enactment of this Act and has not been extended—

(i) after that date of enactment, or

(ii) to evade section 37(f)(2)(F)(ii); or

(B) any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act and whose contract of employment has not been renewed or renegotiated—

(i) after that date of enactment, or

(ii) to evade section 37(f)(2)(F)(ii).

(2) RESTRICTING COMPENSATION.—Section 37(f)(4) of the Federal Deposit Insurance Act (as added by subsection (a)) shall not apply with respect to any senior executive officer who accepted employment in his or her current position on or before the date of enactment of this Act and whose contract of employment has not been renewed or renegotiated—

(A) after that date of enactment, or

(B) to evade section 37(f)(4).

(f) EFFECTIVE DATE.—The amendments made by this section shall become effective 270 days after the date of enactment of this Act.

SEC. 206. STANDARDS FOR SAFETY AND SOUNDNESS.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 38. STANDARDS FOR SAFETY AND SOUNDNESS.

"(a) OPERATIONAL AND MANAGERIAL STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions and depository institution holding companies, prescribe—

"(1) standards relating to—

"(A) internal controls, information systems, and internal audit systems, in accordance with section 36;

"(B) loan documentation;

"(C) credit underwriting;

"(D) interest rate exposure;

"(E) asset growth; and

"(F) compensation, fees, and benefits, in accordance with subsection (c); and

"(2) such other operational and managerial standards as the agency determines to be appropriate.

"(b) ASSET QUALITY, EARNINGS, AND STOCK VALUATION STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions and depository institution holding companies, prescribe—

"(1) standards specifying—

"(A) a maximum ratio of classified assets to capital;

"(B) minimum earnings sufficient to absorb losses without impairing capital; and

"(C) a minimum ratio of market value to book value for publicly traded shares of the institution or company; and

"(2) such other standards relating to asset quality, earnings, and valuation as the agency determines to be appropriate.

"(c) COMPENSATION STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

"(1) standards prohibiting as an unsafe and unsound practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement that—

"(A) would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits; or

"(B) could lead to material financial loss to the institution;

"(2) standards specifying when compensation, fees, or benefits referred to in paragraph (1) are excessive, which shall require the agency to determine whether the amounts are unreasonable or disproportionate to the services actually performed by the individual by considering—

"(A) the combined value of all cash and noncash benefits provided to the individual;

"(B) the compensation history of the individual and other individuals with comparable expertise at the institution;

"(C) the financial condition of the institution;

"(D) comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

"(E) for postemployment benefits, the projected total cost and benefit to the institution;

"(F) any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and

"(G) other factors that the agency determines to be relevant; and

"(3) such other standards relating to compensation, fees, and benefits as the agency determines to be appropriate.

"(d) STANDARDS TO BE PRESCRIBED BY REGULATION.—Standards under subsections (a), (b), and (c) shall be prescribed by regulation.

"(e) FAILURE TO MEET STANDARDS.—

"(1) PLAN REQUIRED.—

"(A) IN GENERAL.—If the appropriate Federal banking agency determines that an insured depository institution or depository institution holding company fails to meet any standard prescribed under subsection (a), (b), or (c) the agency shall require the institution or company to submit an acceptable plan to the agency within the time allowed by the agency under subparagraph (C).

"(B) CONTENTS OF PLAN.—Any plan required under subparagraph (A) shall specify the steps that the institution or company will take to correct the deficiency. If the institution is undercapitalized, the plan may be part of a capital restoration plan.

"(C) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The appropriate Federal banking agency shall by regulation establish deadlines that—

"(i) provide institutions and companies with reasonable time to submit plans required under subparagraph (A), and generally require the institution or company to submit a plan not later than 30 days after the agency determines that the institution or company fails to meet any standard prescribed under subsection (a), (b), or (c); and

"(ii) require the agency to act on plans expeditiously, and generally not later than 30 days after the plan is submitted.

"(2) ORDER REQUIRED IF INSTITUTION OR COMPANY FAILS TO SUBMIT OR IMPLEMENT PLAN.—If an insured depository institution or depository institution holding company fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the appropriate Federal banking agency, the agency, by order—

"(A) shall require the institution or company to correct the deficiency; and

"(B) may do 1 or more of the following until the deficiency has been corrected:

"(i) Prohibit the institution or company from permitting its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, or restrict the rate at which the average total assets of the institution or company may increase from one calendar quarter to another.

"(ii) Require the institution or company to increase its ratio of tangible equity to assets.

"(iii) Take the action described in section 37(f)(2)(C).

"(iv) Require the institution or company to take any other action that the agency determines will better carry out the purpose of section 37 than any of the actions described in this subparagraph.

"(3) RESTRICTIONS MANDATORY FOR CERTAIN INSTITUTIONS.—In complying with paragraph (2), the appropriate Federal banking agency shall take 1 or more of the actions described in clauses (i) through (iii) of paragraph (2)(B) if—

"(A) the agency determines that the insured depository institution fails to meet any standard prescribed under subsection (a)(1) or (b)(1);

"(B) the institution has not corrected the deficiency; and

"(C) either—

"(i) during the 24-month period before the date on which the institution first failed to meet the standard—

"(I) the institution commenced operations; or

"(II) 1 or more persons acquired control of the institution; or

"(ii) during the 18-month period before the date on which the institution first failed to meet the standard, the institution underwent extraordinary growth, as defined by the agency.

"(f) DEFINITIONS.—For purposes of this section, the terms 'average' and 'capital restoration plan' have the same meanings as in section 37.

"(g) OTHER AUTHORITY NOT AFFECTED.—The authority granted by this section is in addition to any other authority of the Federal banking agencies.".

(b) REGULATIONS REQUIRED.—Each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) shall promulgate final regulations under section 38 of the Federal Deposit Insurance Act (as added by subsection (a) of this section) not later than March 1, 1993.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the earlier of—

(1) the date on which final regulations promulgated in accordance with subsection (b) become effective; or

(2) July 1, 1993.

SEC. 207. CONSERVATORSHIP AND RECEIVERSHIP AMENDMENTS TO FACILITATE PROMPT CORRECTIVE ACTION.

(a) ADDITIONAL GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER; CONSISTENT STANDARDS FOR NATIONAL, STATE MEMBER, AND STATE NONMEMBER BANKS.—Section 11(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(5)) is amended to read as follows:

"(5) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER.—The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

"(A) The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

"(B) Substantial dissipation of assets or earnings due to—

"(i) any violation of any statute or regulation; or

"(ii) any unsafe or unsound practice.

"(C) An unsafe or unsound condition to transact business.

"(D) Any willful violation of a cease-and-desist order which has become final.

"(E) Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

"(F) The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

"(G) The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 37(b)) without Federal assistance.

"(H) Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

"(i) cause insolvency or substantial dissipation of assets or earnings;

"(ii) weaken the institution's condition; or

"(iii) otherwise seriously prejudice the interests of the institution's depositors or the deposit insurance fund.

"(I) The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

"(J) The institution ceases to be an insured institution.

"(K) The institution is undercapitalized (as defined in section 37(b)), and—

"(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

"(ii) fails to become adequately capitalized when required to do so under section 37(f)(2)(A);

"(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 37(e)(2)(D); or

"(iv) materially fails to implement a capital restoration plan submitted and accepted under section 37(e)(2).

"(L) The institution—

"(i) is critically undercapitalized, as defined in section 37(b); or

"(ii) otherwise has substantially insufficient capital.".

(b) CONFORMING AMENDMENT TO AUTHORITY TO APPOINT RECEIVER FOR NATIONAL BANK.—Section 1 of the Act of June 30, 1876 (12 U.S.C. 191) is amended to read as follows:

"SECTION 1. The Comptroller of the Currency may, without prior notice or hearings, appoint the Federal Deposit Insurance Corporation as receiver for any national banking association if the Comptroller determines, in the Comptroller's discretion, that—

"(1) 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exist; or

"(2) the association's board of directors consists of fewer than 5 members.".

(c) CONFORMING AMENDMENT TO THE BANK CONSERVATION ACT.—Section 203(a) of the Bank Conservation Act (12 U.S.C. 203(a)) is amended to read as follows:

"(a) APPOINTMENT.—The Comptroller of the Currency may, without prior notice or hearings, appoint a conservator (which may be the Federal Deposit Insurance Corporation) to the possession and control of a bank whenever the Comptroller of the Currency determines that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exist.".

(d) CONFORMING AMENDMENTS TO THE HOME OWNERS' LOAN ACT.—Section 5(d)(2) of the Home Owners' Loan Act (12 U.S.C. 1464(d)(2)) is amended—

(1) by striking subparagraphs (A) through (D) and inserting the following:

"(A) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR INSURED SAVINGS ASSOCIATION.—The Director of the Office of Thrift Supervision may appoint a conservator or receiver for any insured savings association if the Director determines, in the Director's discretion, that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exists"; and

(2) by redesignating subparagraphs (E) through (I) as subparagraphs (B) through (F), respectively.

(e) ADDITIONAL PROVISIONS RELATING TO APPOINTMENT OF CONSERVATOR OR RECEIVER.—Section 11(c)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(9)) is amended to read as follows:

"(9) APPROPRIATE FEDERAL BANKING AGENCY MAY APPOINT CORPORATION AS CONSERVATOR

OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTION TO CARRY OUT SECTION 37.—

"(A) IN GENERAL.—The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

"(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

"(ii) the appointment is necessary to carry out the purpose of section 37.

"(B) NONDELEGATION.—The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

"(10) CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO DEPOSIT INSURANCE FUND.—The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

"(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

"(B) the appointment is necessary to reduce—

"(i) the risk that the deposit insurance fund would incur a loss with respect to the insured depository institution, or

"(ii) any loss that the deposit insurance fund is expected to incur with respect to that institution.

"(11) APPROPRIATE FEDERAL BANKING AGENCY SHALL NOT APPOINT CONSERVATOR UNDER CERTAIN PROVISIONS WITHOUT GIVING CORPORATION OPPORTUNITY TO APPOINT RECEIVER.—The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

"(12) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

"(A) the appointment of the Corporation or the Resolution Trust Corporation as conservator or receiver for that institution; or

"(B) an acquisition or combination under section 37(f)(2)(A)(iii).

"(13) ADDITIONAL POWERS.—In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

"(A) subject to subparagraph (B), this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver;

"(B) the Corporation shall apply the law of the State in which the institution is chartered insofar as that law gives the claims of depositors priority over those of other creditors or claimants; and

"(C) the Corporation as receiver of the institution may—

"(i) liquidate the institution in an orderly manner; and

"(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.".

(f) CONFORMING AMENDMENT TO THE FEDERAL RESERVE ACT.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following new subsection:

"(p) AUTHORITY TO APPOINT CONSERVATOR OR RECEIVER.—The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 11(c)(9) of the Federal Deposit Insurance Act.".

(g) EFFECTIVE DATE.—The amendments made by this section shall become effective 270 days after the date of enactment of this Act.

SEC. 208. BACKUP ENFORCEMENT AUTHORITY OF FDIC.

Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended to read as follows:

"(t) AUTHORITY OF FDIC TO TAKE ENFORCEMENT ACTION AGAINST INSURED DEPOSITORY INSTITUTIONS AND INSTITUTION-AFFILIATED PARTIES.—

"(1) RECOMMENDING ACTION BY APPROPRIATE FEDERAL BANKING AGENCY.—The Corporation, based on an examination of an insured depository institution by the Corporation or by the appropriate Federal banking agency or on other information, may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 7(j), this section, or section 18(j) with respect to any insured depository institution or any institution-affiliated party. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

"(2) FDIC'S AUTHORITY TO ACT IF APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

"(A) the insured depository institution is in an unsafe or unsound condition;

"(B) the institution is engaging in unsafe or unsound practices, and the recommended enforcement action will prevent the institution from continuing such practices; or

"(C) the institution's conduct or threatened conduct (including any acts or omissions) poses a risk to the deposit insurance fund, or may prejudice the interests of the institution's depositors.

"(3) EFFECT OF EXIGENT CIRCUMSTANCES.—

"(A) AUTHORITY TO ACT.—The Corporation may, upon a vote of the Board of Directors, and after notice to the appropriate Federal banking agency, exercise its authority under paragraph (2) in exigent circumstances without regard to the time period set forth in paragraph (2).

"(B) AGREEMENT ON EXIGENT CIRCUMSTANCES.—The Corporation shall, by agreement with the appropriate Federal banking agency, set forth those exigent circumstances in which the Corporation may act under subparagraph (A).

"(4) CORPORATION'S POWERS; INSTITUTION'S DUTIES.—For purposes of this subsection—

"(A) the Corporation shall have the same powers with respect to any insured depository institution and its affiliates as the appropriate Federal banking agency has with respect to the institution and its affiliates; and

"(B) the institution and its affiliates shall have the same duties and obligations with respect to the Corporation as the institution and its affiliates have with respect to the appropriate Federal banking agency.

"(5) REQUESTS FOR FORMAL ACTIONS AND INVESTIGATIONS.—

"(A) SUBMISSION OF REQUESTS.—A regional office of an appropriate Federal banking agency (including a Federal Reserve bank) that requests a formal investigation of or civil enforcement action against an insured depository institution shall submit the request concurrently to the chief officer of the appropriate Federal banking agency and to the Corporation.

"(B) AGENCIES REQUIRED TO REPORT ON REQUESTS.—Each appropriate Federal banking agency shall report semiannually to the Corporation on the status or disposition of all requests under subparagraph (A), including the reasons for any decision by the agency to approve or deny such requests.".

SEC. 209. CAPITAL MAINTENANCE COMMITMENTS.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(q) COMMITMENTS TO MAINTAIN THE CAPITAL OF INSURED DEPOSITORY INSTITUTIONS.—

"(1) IN GENERAL.—Any commitment made to any of the Federal banking agencies to maintain the capital of an insured depository institution may be enforced under this Act.

"(2) OTHER AUTHORITY NOT AFFECTED.—The authority granted by paragraph (1) is in addition to any other authority of the Federal banking agencies.".

SEC. 210. PASS-THROUGH INSURANCE COVERAGE.

(a) RESTRICTING CERTAIN PASS-THROUGH INSURANCE COVERAGE.—Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) is amended—

(1) by striking "(m)(1)" and inserting the following:

"(m) INSURED DEPOSIT.—

"(1) IN GENERAL.—";

(2) in paragraph (1), by striking "except trust funds which shall be insured as provided in subsection (i) of section 7 of this Act";

(3) in the last sentence of paragraph (1), by striking "and subsection (i) of section 7 of this Act"; and

(4) in paragraph (2), by inserting "DEPOSIT IN BRANCH OF FOREIGN BANK.—" after "(2)".

(b) INSURANCE OF DEPOSITS.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended—

(1) by amending subsection (a)(1) to read as follows:

"(a) INSURANCE OF DEPOSITS.—

"(1) IN GENERAL.—

"(A) DEPOSITS INSURED.—The Corporation shall insure the deposits in all insured depository institutions as provided in this Act.

"(B) AMOUNT INSURED.—The net amount of any depositor's insured deposits at any insured depository institution shall be $100,000."; and

(2) in subsection (a), by adding at the end the following new paragraphs:

"(8) PASS-THROUGH INSURANCE RESTRICTED TO INTERESTS IN TAX-QUALIFIED RETIREMENT PLANS AND CERTAIN IRREVOCABLE TRUSTS.—

"(A) IN GENERAL.—Deposits may not be insured on a pro rata or pass-through basis except that—

"(i) in the case of a plan meeting the requirements of section 401(a) or 403(b)(9) of the Internal Revenue Code of 1986 that includes a trust exempt from tax under section 501(a) of that Code and is a type of plan that was eligible to receive pro rata or pass-through insurance coverage as of July 15, 1991, or a plan meeting the requirements of section 457 of that Code, deposits may be insured on a pass-through basis with respect to each participant in the plan in an amount equal to the lesser of the present value of the vested accrued benefit of such individual participant or $100,000, unless such deposit arises under a contract between an insured depository institution and an employee benefit plan, and the contract expressly permits benefit-responsive withdrawals or transfers;

"(ii) in the case of deposits of an irrevocable trust established pursuant to a statute or written trust agreement (other than a tax-qualified retirement plan or irrevocable trust described in clause (i)), the deposits may be insured on a pass through basis with respect to each known beneficiary of the trust whose interest is noncontingent in an amount not to exceed the lesser of the present value of the beneficiary's noncontingent interest or $100,000;

"(iii) in the case of a custodial account held on deposit in an insured depository institution if—

"(I) the principal or beneficiary does not control where the funds are deposited;

"(II) the account is not maintained for investment purposes; and

"(III) the account is not maintained principally for the purpose of increasing insurance coverage,

the custodial funds shall be insured in an amount not to exceed $100,000 for each principal or beneficiary represented; and

"(iv) in the case of a custodial account maintained by a deposit broker or its agents at an insured depository institution, the custodial funds shall be insured in an amount not to exceed $100,000 for each principal or beneficiary represented in each capacity in which the principal or beneficiary places the deposit through the deposit broker.

"(B) SPECIAL RULES.—For purposes of this section—

"(i) amounts described in clauses (i), (iii), and (iv) of subparagraph (A) shall not be taken into account in determining the net amount due any participant, principal, or beneficiary, as appropriate, but

"(ii) amounts described in subparagraph (A)(ii) shall be taken into account in determining the net amount due any beneficiary.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) BENEFIT-RESPONSIVE WITHDRAWALS OR TRANSFERS.—The term 'benefit responsive withdrawal or transfer' means any withdrawal or transfer of funds deposited at an insured depository institution that—

"(I) occurs during a period for which the institution has guaranteed by contract to pay the plan 1 or more rates of interest; and

"(II) is made to pay benefits provided by an employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance without substantial penalty or adjustment.

"(ii) EMPLOYEE BENEFIT PLAN.—The term 'employee benefit plan' has the same meaning as in section 3(3) of the Employee Retirement Income Security Act of 1974 and includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

"(9) RESTRICTIONS ON PASS-THROUGH INSURANCE FOR DEPOSITS OF TRUSTS.—Notwithstanding paragraph (8)(A)(ii), deposits described in that paragraph may not be insured on a pro rata or pass-through basis—

"(A) if the trustee or an organizer of the trust solicits persons to transfer funds into the trust;

"(B) if interests in the trust are sold to beneficiaries;

"(C) if there are more than 10 settlors or grantors of the trust; or

"(D) in such other circumstances as the Board of Directors may prescribe.".

(c) CONFORMING AMENDMENT.—Section 7(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(i)) is amended to read as follows:

"(i) [Reserved].".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993, except that such amendments shall not apply to any specific time deposit made before July 15, 1991, until the stated maturity of the time deposit.

SEC. 211. BROKERED DEPOSITS.

(a) IN GENERAL.—Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended—

(1) in subsection (a), by striking "troubled institution" and inserting "insured depository institution that is not well capitalized and does not have a CAMEL rating of 1 or 2";

(2) in subsection (c)—

(A) by inserting "which is adequately capitalized and has a CAMEL rating of 1 or 2" after "insured depository institution"; and

(B) by adding at the end "Any waiver granted under this subsection shall be effective for not more than 90 days. Any application for renewal of the waiver for an additional 90-day period shall be deemed to be granted unless the Corporation denies the application not more than 15 days after receiving the application.";

(3) in subsection (d), by striking all after "unsound practice;" and inserting the following:

"(2) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; and

"(3) is consistent with the conservator's fiduciary duty to minimize the institution's losses.

Effective 90 days after the date on which the institution was placed in conservatorship, the institution may not accept such deposits.";

(4) by redesignating subsections (e) through (g) as subsections (f) through (h), respectively, and inserting after subsection (d) the following:

"(e) RESTRICTION ON INTEREST RATE PAID.—Any insured depository institution which, under subsection (c) or (d), accepts funds obtained, directly or indirectly, by or through a deposit broker, may not pay a rate of interest on such funds which, at the time that such funds are accepted, significantly exceeds—

"(1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or

"(2) the national rate paid on deposits of comparable maturity, as established by the Corporation, for deposits accepted outside the institution's normal market area.";

(5) in subsection (f), as redesignated, by striking "troubled"; and

(6) by striking subsection (h), as redesignated.

(b) NOTIFICATION AND RECORDKEEPING.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 29 the following:

"SEC. 29A. DEPOSIT BROKER NOTIFICATION AND RECORDKEEPING.

"(a) NOTIFICATION.—

"(1) IN GENERAL.—A deposit broker, as defined in section 29(g), shall not solicit or place any deposit with an insured depository institution, unless such deposit broker has provided the Corporation with written notice that it is a deposit broker.

"(2) TERMINATION OF DEPOSIT BROKER STATUS.—When a deposit broker referred to in paragraph (1) ceases to act as a deposit broker it shall provide the Corporation with a written notice that it is no longer acting as a deposit broker.

"(3) FORM AND CONTENT.—The notices required by paragraphs (1) and (2) shall be in such form and contain such information concerning the deposit solicitation and placement activities of a deposit broker as the Corporation may prescribe as necessary or appropriate to carry out the purposes of this subsection.

"(b) RECORDS.—The Corporation may prescribe regulations requiring each deposit broker that has filed a notice under subsection (a)(1) to maintain separate records relating to the total amounts and maturities of the deposits placed by such broker for each insured depository institution during specified time periods. Such regulations shall specify the format in which and the period for which such records shall be preserved, as well as the time period within which the deposit broker shall furnish to the Corporation copies of such records (or designated portions thereof) as the Corporation may request.

"(c) PERIODIC REPORTS.—

"(1) IN GENERAL.—The Corporation may prescribe regulations requiring each deposit broker that has filed a notice under subsection (a)(1) to file with the Corporation separate quarterly reports relating to the total amounts and maturities of the deposits placed by such broker for each depository institution during the applicable quarter. Such regulations shall specify the form and content of such reports, as well as the applicable reporting period.

"(2) DESIGNATED AGENT.—The Corporation may designate another entity as its agent for the purpose of receiving and maintaining reports under this subsection. If the Corporation designates such an agent the Corporation may, through its agent, prescribe and collect an appropriate quarterly fee from each deposit broker that filed reports with the agent during the applicable quarter, in an amount sufficient to defray the Corporation's cost of retaining the agent and to reflect the proportionate amount of the deposits placed with insured depository institutions by each broker during the applicable quarter.".

(c) DEPOSIT SOLICITATION RESTRICTED.—Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f) is amended by adding at the end the following:

"(h) DEPOSIT SOLICITATION RESTRICTED.—An insured depository institution that is undercapitalized, as defined in section 37, shall not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits—

"(1) in such institution's normal market areas; or

"(2) in the market area in which such deposits would otherwise be accepted.".

(d) DEADLINE FOR REGULATIONS.—The Corporation shall promulgate final regulations

to carry out the amendments made under subsections (a), (b), and (c) not later than 150 days after the date of enactment of this Act, and those regulations shall become effective not later than 180 days after that date of enactment, except that such regulations shall not apply to any specific time deposit made before that date of enactment until the stated maturity of the time deposit.

SEC. 212. RISK-BASED ASSESSMENTS.

(a) RISK-BASED ASSESSMENT SYSTEM.—Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)), as amended by section 102, is amended to read as follows:

"(b) ASSESSMENTS.—

"(1) RISK-BASED ASSESSMENT SYSTEM.—

"(A) RISK-BASED ASSESSMENT SYSTEM REQUIRED.—The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

"(B) PRIVATE REINSURANCE AUTHORIZED.—In carrying out this paragraph, the Corporation may—

"(i) obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution; and

"(ii) base that institution's semiannual assessment (in whole or in part) on the cost of the reinsurance.

"(C) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term 'risk-based assessment system' means a system for calculating a depository institution's semiannual assessment based on—

"(i) the probability that the deposit insurance fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

"(I) different categories and concentrations of assets;

"(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

"(III) any other factors the Corporation determines are relevant to assessing such probability;

"(ii) the likely amount of any such loss; and

"(iii) the revenue needs of the deposit insurance fund.

"(D) SEPARATE ASSESSMENT SYSTEMS.—The Board of Directors may establish separate risk-based assessment systems for large and small members of each deposit insurance fund.

"(E) FOREIGN DEPOSITS.—In carrying out this paragraph, the Corporation shall take into account the special assessment procedure for foreign deposits under paragraph (6).

"(2) SETTING ASSESSMENTS.—

"(A) ACHIEVING AND MAINTAINING DESIGNATED RESERVE RATIO.—

"(i) IN GENERAL.—The Board of Directors shall set semiannual assessments for insured depository institutions—

"(I) to maintain the reserve ratio of each deposit insurance fund at the designated reserve ratio; or

"(II) if the reserve ratio is less than the designated reserve ratio, to increase the reserve ratio to the designated reserve ratio as provided in paragraph (3).

"(ii) FACTORS TO BE CONSIDERED.—In carrying out clause (i), the Board of Directors shall consider the deposit insurance fund's—

"(I) expected operating expenses,

"(II) case resolution expenditures and income,

"(III) the effect of assessments on members' earnings and capital, and

"(IV) any other factors that the Board of Directors may deem appropriate.

"(iii) MINIMUM ASSESSMENT.—The semiannual assessment for each member of a deposit insurance fund shall be not less than $1,000.

"(iv) DESIGNATED RESERVE RATIO DEFINED.—The designated reserve ratio of each deposit insurance fund for each year shall be—

"(I) 1.25 percent of estimated insured deposits; or

"(II) a higher percentage of estimated insured deposits that the Board of Directors determines to be justified for that year by circumstances raising a significant risk of substantial future losses to the fund.

"(B) INDEPENDENT TREATMENT OF FUNDS.—The Board of Directors shall—

"(i) set semiannual assessments for members of each deposit insurance fund independently from semiannual assessments for members of any other deposit insurance fund; and

"(ii) set the designated reserve ratio of each deposit insurance fund independently from the designated reserve ratio of any other deposit insurance fund.

"(C) NOTICE OF ASSESSMENTS.—The Corporation shall notify each insured depository institution of that institution's semiannual assessment.

"(D) PRIORITY OF FINANCING CORPORATION AND FUNDING CORPORATION ASSESSMENTS.—Notwithstanding any other provision of this paragraph, amounts assessed by the Financing Corporation under section 21 of the Federal Home Loan Bank Act against Savings Association Insurance Fund members, shall be subtracted from the amounts authorized to be assessed by the Corporation under this paragraph.

"(E) MINIMUM ASSESSMENTS.—The Corporation shall design the risk-based assessment system for any deposit insurance fund so that, if the Corporation has borrowings outstanding under section 14 on behalf of that fund or the reserve ratio of that fund remains below the designated reserve ratio, the total amount raised by semiannual assessments on members of that fund shall be not less than the total amount that would have been raised if—

"(i) section 7(b) as in effect on July 15, 1991 remained in effect; and

"(ii) the assessment rate in effect on July 15, 1991 remained in effect.

"(F) TRANSITION RULE FOR SAVINGS ASSOCIATION INSURANCE FUND.—With respect to the Savings Association Insurance Fund, during the period beginning on the effective date of the amendments made by section 212(a) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 and ending on December 31, 1997—

"(i) subparagraph (A)(i)(II) shall apply with 'as provided in paragraph (3)' omitted; and

"(ii) subparagraph (E) shall apply with 'if section 7(b) as in effect on July 15, 1991 remained in effect.' substituted for 'if—' and clauses (i) and (ii).

"(G) SPECIAL RULE UNTIL THE INSURANCE FUNDS ACHIEVE THE DESIGNATED RESERVE RATIO.—Until a deposit insurance fund achieves the designated reserve ratio, the Corporation may limit the maximum assessment on insured depository institutions under the risk-based assessment system authorized under paragraph (1) to not less than 10 basis points above the average assessment on insured depository institutions under that system.

"(3) SPECIAL RULE FOR RECAPITALIZING UNDERCAPITALIZED FUNDS.—

"(A) IN GENERAL.—Except as provided in paragraph (2)(F), if the reserve ratio of any deposit insurance fund is less than the designated reserve ratio under paragraph (2)(A)(iv), the Board of Directors shall set semiannual assessment rates for members of that fund—

"(i) that are sufficient to increase the reserve ratio for that fund to the designated reserve ratio not later than 1 year after such rates are set; or

"(ii) in accordance with a schedule promulgated by the Corporation under subparagraph (B).

"(B) RECAPITALIZATION SCHEDULES.—For purposes of subparagraph (A)(ii), the Corporation shall by regulation promulgate a schedule that specifies, at semiannual intervals, target reserve ratios for that fund, culminating by the close of the period determined under subparagraph (C) in a reserve ratio that is equal to the designated reserve ratio.

"(C) DATE FOR ACHIEVING DESIGNATED RATIO.—A schedule promulgated under subparagraph (B) shall provide for achieving the designated reserve ratio not later than the earlier of—

"(i) 15 years after the date on which the schedule is implemented, or

"(ii) that number of years (rounded to the nearest whole number) after the date the schedule is implemented, determined as follows:

$$15 \times \left(1 - \frac{\text{reserve ratio}}{\text{designated reserve ratio}} \right)$$

"(D) AMENDING SCHEDULE.—The Corporation may, by regulation, amend a schedule promulgated under subparagraph (B), but such amendments may not extend the date specified in subparagraph (C).

"(E) APPLICATION TO SAIF MEMBERS.—This paragraph shall become applicable to Savings Association Insurance Fund members on January 1, 1998.

"(F) EXPEDITED PROCEDURE FOR EXTENDING SCHEDULE.—

"(i) IN GENERAL.—If, during the period, determined in subparagraph (C), when a fund's reserve ratio is being restored to the designated reserve ratio, the Corporation determines that maintaining assessments at levels sufficient to achieve the designated reserve ratio by the end of that period would significantly increase losses to the fund or would significantly impair the availability of credit, the following procedures shall apply:

"(I) REPORT REQUIRED.—The Corporation shall submit a report to the Congress that—

"(aa) sets forth a revised schedule of semiannual target reserve ratios for that fund, culminating in the achievement of the designated reserve ratio; and

"(bb) provides a detailed justification for the revision.

"(II) REQUIREMENT FOR CONGRESSIONAL CONSIDERATION.—The proposed revised schedule of semiannual target reserve ratios shall not be implemented unless the Congress, not later than 60 calendar days after receiving the report, enacts a joint resolution approving the proposed revision.

"(ii) PROCEDURES FOR EXPEDITED CONGRESSIONAL CONSIDERATION.—

"(I) JOINT RESOLUTION DEFINED.—For purposes of this clause, the term 'joint resolution' means only a joint resolution the matter after the resolving clause of which is as follows: 'That, pursuant to section 7(b)(3)(F) of the Federal Deposit Insurance Act, the Corporation may implement revisions to the schedule of semiannual target reserve ratios, culminating in the achievement of the designated reserve ratio for the

_____ Fund, as proposed in the report submitted to the Congress on _____.', with the first blank space being filled with the name of the Bank Insurance Fund or the Savings Association Insurance Fund, as appropriate, and the second blank being filled with the appropriate date.

"(II) INTRODUCTION.—On the day on which a report is submitted to the House of Representatives and the Senate under clause (i)(I), a joint resolution with respect to the revised schedule specified in such report shall be introduced (by request) in the House of Representatives by the chairman of the Committee on Banking, Finance and Urban Affairs, for himself and the ranking minority member of the Committee, or by the Members of the House designated by the chairman and ranking minority member; and shall be introduced (by request) in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or Members of the Senate designated by the majority leader and minority leader of the Senate. If either House is not in session on the day on which such a report is submitted, the joint resolution shall be introduced in that House, as provided in the preceding sentence, on the first day thereafter on which that House is in session.

"(III) REFERRAL TO COMMITTEE.—Any joint resolutions introduced in the House of Representatives shall be referred to the appropriate committee and all joint resolutions introduced in the Senate shall be referred to the Committee on Banking, Housing, and Urban Affairs.

"(IV) DISCHARGE FROM COMMITTEE.—If the committee of either House to which a joint resolution has been referred has not reported the joint resolution at the end of 30 days after its referral, the committee shall be discharged from further consideration of the joint resolution and of any other joint resolution introduced with respect to the same matter.

"(V) EXPEDITED FLOOR CONSIDERATION.—Any such joint resolution shall be considered in the Senate in accordance with section 601(b) of the International Security Assistance and Arms Export Control Act of 1976. For the purpose of expediting the consideration and enactment of joint resolutions under this subsection, a motion to proceed to the consideration of any such joint resolution after it has been reported by the appropriate committee shall be treated as highly privileged in the House of Representatives.

"(VI) JOINT RESOLUTION RECEIVED FROM OTHER HOUSE.—In the case of a joint resolution described in this clause, if, before the passage by one House of a joint resolution of that House, that House receives a resolution with respect to the same matter from the other House, then—

"(aa) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

"(bb) the vote on final passage shall be on the joint resolution of the other House.

"(VII) COMPUTING TIME PERIODS.—In computing the 60-day period referred to in clause (i)(II) and the 30-day period referred to in subclause (IV), there shall be excluded the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or because of adjournment of the Congress sine die.

"(4) SEMIANNUAL PERIOD DEFINED.—For purposes of this section, the term 'semiannual period' means a period beginning on January 1 of any calendar year and ending on June 30 of the same year, or a period beginning on July 1 of any calendar year and ending on December 31 of the same year.

"(5) RECORDS TO BE MAINTAINED.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of the institution's semiannual assessments. No insured depository institution shall be required to retain those records for that purpose for a period of more than 5 years from the date of the filing of any certified statement, except that when there is a dispute between the insured depository institution and the Corporation over the amount of any assessment, the depository institution shall retain the records until final determination of the issue.

"(6) SPECIAL ASSESSMENT TO RECOVER LOSSES ON FOREIGN DEPOSITS.—

"(A) IN GENERAL.—This paragraph shall apply if—

"(i) the Corporation incurs a loss with respect to an insured depository institution; and

"(ii) persons with foreign deposits at the institution receive more than they would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities.

"(B) SPECIAL ASSESSMENT REQUIRED.—The Corporation shall, as soon as practicable, recover the difference between—

"(i) the amount that persons with foreign deposits at the institution received, and

"(ii) the amount that the Corporation estimates those persons would have received if a receiver had been appointed for the institution on the relevant date and the applicable foreign deposits had been included as part of the receivership's liabilities,

by imposing 1 or more special assessments on all members of the deposit insurance fund of which the institution was or is a member, in proportion to the foreign deposits held by those members at the beginning of the semiannual period containing the relevant date. The Corporation shall base the estimate required by clause (ii) on the estimated loss that the Corporation will incur in the resolution actually undertaken with respect to the institution. Any calculation under this subparagraph shall be in the Corporation's sole discretion.

"(C) TIMING OF SPECIAL ASSESSMENTS.—

"(i) IN GENERAL.—Special assessments under subparagraph (B) shall begin not later than the semiannual period beginning 90 days after the date on which the aggregate amounts calculated under subparagraph (B) (with respect to all institutions that were or are members of the deposit insurance fund), and not yet assessed, exceed $1,000,000.

"(ii) INTEREST ON DELAYED ASSESSMENTS.—Any amount calculated under subparagraph (B) and not yet assessed shall bear interest at the daily average yield on 3-month Treasury obligations.

"(D) DEFINITIONS.—For purposes of this paragraph:

"(i) CAPITAL CATEGORIES.—The terms 'adequately capitalized' and 'significantly undercapitalized' have the same meanings as in section 37 of the Federal Deposit Insurance Act.

"(ii) FOREIGN DEPOSIT.—The term 'foreign deposit' means any obligation of an insured depository institution described in subparagraph (A) or (B) of section 3(l)(5).

"(iii) RELEVANT DATE.—The term 'relevant date' means the date on which the earliest of the following occurs with respect to an insured depository institution:

"(I) The institution is significantly undercapitalized, and has advances from a Federal Reserve bank outstanding for more than 5 consecutive days (without subsequently becoming adequately capitalized).

"(II) The Corporation initiates assistance under section 13(c) with respect to the institution.

"(III) A receiver or conservator is appointed for the institution.".

(b) CERTIFIED STATEMENTS AND PAYMENT PROCEDURES.—Section 7(c) of the Federal Deposit Insurance Act (12 U.S.C. 1817(c)) is amended to read as follows:

"(c) CERTIFIED STATEMENTS; PAYMENTS.—

"(1) CERTIFIED STATEMENTS REQUIRED.—

"(A) IN GENERAL.—Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's semiannual assessment.

"(B) FORM OF CERTIFICATION.—The certified statement required under subparagraph (A) shall—

"(i) be in such form and set forth such supporting information as the Board of Directors shall prescribe; and

"(ii) be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his or her knowledge and belief, the statement is true, correct and complete, and in accordance with this Act and regulations issued hereunder.

"(2) PAYMENTS REQUIRED.—

"(A) IN GENERAL.—Each insured depository institution shall pay to the Corporation the semiannual assessment imposed under subsection (b).

"(B) FORM OF PAYMENT.—The payments required under subparagraph (A) shall be made in such manner and at such time or times as the Board of Directors shall prescribe by regulation.

"(3) NEWLY INSURED INSTITUTIONS.—To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the semiannual period in which a depository institution becomes insured.".

(c) REGULATIONS.—To implement the risk-based assessment system required under section 7(b) of the Federal Deposit Insurance Act (as amended by subsection (a)), the Federal Deposit Insurance Corporation shall—

(1) provide notice of proposed regulations in the Federal Register, not later than December 31, 1992, with an opportunity for comment on the proposal of not less than 120 days; and

(2) promulgate final regulations not later than July 1, 1993.

(d) AUTHORITY TO PRESCRIBE REGULATIONS AND DEFINITIONS.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following:

"(f) AUTHORITY TO PRESCRIBE REGULATIONS AND DEFINITIONS.—Except to the extent that authority under this Act is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may—

"(1) prescribe regulations to carry out this Act; and

"(2) by regulation define terms as necessary to carry out this Act.".

(e) CONFORMING AMENDMENTS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 5(d)(3)(B)—

(A) by striking "average assessment base" and inserting "deposits"; and

(B) by striking "shall—" and all that follows through "(iii) shall be treated" and inserting "shall be treated";

(2) in section 7(a)(5) by striking "and for the computation of assessments provided in subsection (b) of this section";

(3) in section 7 by amending subsection (d) to read as follows:

"(d) CORPORATION EXEMPT FROM APPORTIONMENT.—Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or under any other authority."; and

(4) in the last sentence of section 8(q) by striking "upon" and inserting "with respect to".

(f) TRANSITION TO NEW ASSESSMENT SYSTEM.—To carry out the amendments made by this section, the Corporation may promulgate regulations governing the transition from the assessment system in effect on the date of enactment of this Act to the assessment system required under the amendments made by this section.

(g) EFFECTIVE DATE OF AMENDMENTS.—The amendments made by this section shall become effective on the earlier of—

(1) 180 days after the date on which final regulations promulgated in accordance with subsection (c) become effective; or

(2) January 1, 1994.

SEC. 213. RISK-BASED REINSURANCE.

(a) RISK-BASED REINSURANCE PILOT PROGRAM.—

(1) ESTABLISHMENT.—The Federal Deposit Insurance Corporation (hereafter referred to as the "Corporation") shall establish a pilot program to assess the viability of using a system of reinsurance to assist the Corporation in establishing risk-based assessment rates.

(2) PROGRAM DESCRIPTION.—Under the pilot program established in accordance with paragraph (1) the Corporation shall be required to obtain reinsurance from eligible reinsurers, which shall provide reinsurance to the Corporation for a percentage of the insured risks, not to exceed 10 percent, posed by the participating banks to the Corporation.

(3) PROGRAM PARTICIPATION.—

(A) IN GENERAL.—The Corporation shall select not more than 50 bank holding companies that have not less than $1,000,000,000 each in aggregate assets at the time of selection for participation, the banking affiliates of which would be the participating banks in the pilot program.

(B) ADDITIONAL REQUIREMENTS.—The Corporation shall establish any additional criteria for the selection of participating banks that it determines appropriate for the protection of the insurance funds and the public interest.

(4) ELIGIBLE REINSURERS.—

(A) IN GENERAL.—For purposes of this section, an eligible reinsurer shall include any qualified insurer that—

(i) meets appropriate criteria (including capital standards that, in the Corporation's judgment, will ensure that the reinsurer will be able to pay claims when called upon to do so) prescribed by the Corporation, subject to the requirements of any applicable State laws, for the qualification of reinsurers to offer risk-based reinsurance; and

(ii) meets any other criteria that the Corporation determines appropriate for the protection of the insurance funds and the public interest.

(B) INSTITUTION AFFILIATION.—Notwithstanding any other provision of law, a reinsurer may be an affiliate of a bank holding company or a savings and loan holding company, except that an insurance affiliate of such holding company may not offer reinsurance coverage for an affiliated bank.

(5) REINSURANCE ASSESSMENTS.—Under the pilot program, the Corporation shall be solely responsible for paying reinsurance charges to participating reinsurers on behalf of each participating bank from each such bank's overall assessment under section 7(b) of the Federal Deposit Insurance Act.

(6) ANNUAL REPORT TO CONGRESS.—The Corporation shall submit a report to the Congress annually on the progress of the pilot program established under paragraph (1).

(7) CORPORATION'S DISCRETION TO IMPLEMENT NATIONAL REINSURANCE SYSTEM.—Upon the termination of the pilot program established under this section, the Corporation may, by vote of the Board of Directors of the Corporation, implement a reinsurance system for all insured depository institutions under section 7A of the Federal Deposit Insurance Act, if the Corporation determines, and reports in writing to the Congress, that—

(A) a reinsurance system would be viable for insured depository institutions;

(B) reinsurance rates established under a reinsurance system can be at least as effective in measuring the relative risk to the deposit insurance funds posed by the insured depository institutions which would be covered by the system as any risk-based assessment system established under section 7(b) of the Federal Deposit Insurance Act, particularly the risks posed by profitable institutions that are adequately capitalized (as defined in section 37 of the Federal Deposit Insurance Act, as added by section 205);

(C) the Corporation can adequately measure and monitor the financial health of reinsurers; and

(D) it is in the public interest to implement a reinsurance system to assist the Corporation in establishing deposit insurance assessments for large insured depository institutions.

(8) IMPLEMENTATION DATE; DURATION.—The pilot program established under paragraph (1) shall be implemented not later than the effective date of the risk-based assessment system established by the Corporation under section 7(b) of the Federal Deposit Insurance Act, and shall terminate 3 years after such effective date.

(b) RISK-BASED REINSURANCE FOR LARGE INSTITUTIONS.—

(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 7 the following new section:

"SEC. 7A. RISK-BASED INSURANCE FOR LARGE INSTITUTIONS.

"(a) PURPOSE.—The purpose of this section is to establish a risk-based deposit insurance assessment rate system through reinsurance coverage for a percentage of the insured risk of large bank or large savings association failures, not to exceed 10 percent.

"(b) COVERED INSTITUTIONS.—For purposes of this section, the term 'covered institution' means a member of a deposit insurance fund that the Corporation finds, in accordance with regulations implementing this subsection—

"(1) has total assets of more than $1,000,000,000 on December 31, 1991, or thereafter; or

"(2) is owned by a bank holding company or a savings and loan holding company, respectively, that has total assets of more than $1,000,000,000 on December 31, 1991.

"(c) RISK-BASED ASSESSMENTS.—

"(1) TRANSITION PERIOD ASSESSMENTS.—After a covered institution enters into a reinsurance agreement under subsection (g), but prior to the date determination described in paragraph (2), each covered institution shall pay a deposit insurance assessment that is—

"(A) equal to the assessment determined under section 7(b); or

"(B) determined by scaling up the premium established by a reinsurance agreement under subsection (g) and applying that scaled-up rate to the institution's average assessment base,

whichever, in the judgment of the Corporation, better reflects the inherent risks of the institution, subject to adjustments authorized by subsection (d).

"(2) RISK-BASED REINSURANCE ASSESSMENTS.—After the Corporation determines that—

"(A) a sufficient number of covered institutions, as determined by the Corporation, are covered by reinsurance agreements; and

"(B) the risk-based premium based on scaling up the assessments charged under a reinsurance agreement, subject to adjustments under subsection (d), provides risk assessments that differentiate between banks according to risk at least as effectively as under the risk-based formula in section 7(b),

each covered institution, except for those that are not yet required to obtain a reinsurance agreement under the phase-in schedule established under subsection (e)(1), shall pay a deposit insurance assessment that is determined by scaling up the premium rate established by the reinsurance agreement under subsection (g) and applying that scaled-up rate to the institution's average assessment base, subject to adjustments authorized by subsection (d). A covered institution that fails to obtain a reinsurance agreement in a timely manner under the phase-in schedule established under subsection (e)(1) shall have its insurance assessments determined under the provisions of subsection (j)(1).

"(d) BANK INSURANCE FUND ADJUSTMENTS.—The Corporation shall make proportionate adjustments, under procedures established by regulation, to each covered institution's total deposit insurance assessment upwards or downwards, as necessary to ensure to the extent practicable and consistent with the public interest that all such assessments, in the aggregate, are sufficient to maintain the deposit insurance fund at or above the designated reserve ratio required by section 7(b)(1)(B), or to restore the deposit insurance fund to the designated reserve ratio within a reasonable period of time.

"(e) PHASE-IN SCHEDULE AND AMOUNT OF REINSURANCE.—

"(1) PHASE-IN SCHEDULE FOR OBTAINING REINSURANCE AGREEMENTS.—

"(A) ESTABLISHMENT; PUBLICATION.—The Corporation shall—

"(i) establish a timetable designed to ensure that, by the end of the phase-in period and to the maximum extent practicable, all covered institutions have obtained reinsurance under this section; and

"(ii) publish such timetable in the Federal Register.

"(B) CRITERIA.—The timetable established under subparagraph (A) shall—

"(i) require some covered institutions to begin to obtain reinsurance not later than 1 year following the end of the reinsurance pilot program established under section 213(a) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, if the Corporation recommends establishing a reinsurance system for setting risk-

based premiums for certain institutions under the provisions of section 7A of the Federal Deposit Insurance Act;

"(ii) require all covered institutions to obtain reinsurance contracts over a period of not less than 5 years or not more than 10 years after such date, unless the Corporation determines that a shorter or longer period would be in the public interest; and

"(iii) provide ample opportunity for the development of a competitive reinsurance market.

"(C) NOTIFICATION.—The Corporation shall notify each covered institution not less than 1 year before the institution will be required to obtain reinsurance.

"(2) LEVEL OF REINSURANCE.—The Corporation shall, in accordance with paragraph (3), establish a uniform reinsurance level that is not less than 3 percent nor more than 10 percent of the insured deposits of each covered institution.

"(3) CRITERIA FOR SETTING LEVEL OF COVERAGE.—For purposes of paragraph (2), the Corporation shall establish a level of reinsurance coverage that is sufficient to ensure—

"(A) that the assessment rates charged by reinsurers can be accurately scaled up to reasonably reflect the total insured risk of failure presented by each covered institution; and

"(B) that, over the transition period, there is a reasonable likelihood that enough reinsurance capacity is available to support a competitive reinsurance market.

"(4) PHASE-IN.—

"(A) IN GENERAL.—The Corporation shall—

"(i) require reinsurers to provide the level of reinsurance established under paragraph (2) not later than 5 years after the phase-in period under subsection (d)(1) begins; and

"(ii) establish interim reinsurance levels applicable during the 5-year transition period described in clause (i).

"(B) VARIATIONS.—The Corporation may permit variations from the phase-in schedules established under paragraph (1) and this paragraph if—

"(i) a substantial change in a covered institution's circumstances hinders the institution from complying with the phase-in schedule established under paragraph (1); or

"(ii) a covered institution cannot obtain reinsurance coverage at the specified time due to lack of market availability.

"(f) ELIGIBLE REINSURERS AND REINSURANCE CONTRACTS.—

"(1) IN GENERAL.—For purposes of this section, an 'eligible reinsurer' shall include any qualified insurer that—

"(A) meets appropriate criteria (including capital criteria that, in the Corporation's judgment, will ensure that the reinsurer will be able to pay claims when called upon to do so) prescribed by the Corporation, subject to the requirements of any applicable State laws, for the qualification of reinsurers to offer risk-based reinsurance to covered institutions;

"(B) offers reinsurance terms that reflect a risk-based approach to pricing; and

"(C) meets any other criteria that the Corporation determines appropriate for the protection of the insurance funds and the public interest.

"(2) INSTITUTION AFFILIATION.—An eligible reinsurer may be an affiliate of a bank holding company or a savings association holding company, except that an insurance affiliate may not offer reinsurance to an affiliated bank or savings association.

"(3) TERMS OF REINSURANCE CONTRACTS.—

"(A) The Corporation is authorized to establish general terms and conditions for reinsurance contracts, including, but not limited to, the length of such contracts, the amount of information pertaining to the reinsured institution held by the Corporation that the reinsurer will have access to, the frequency of price changes permitted, and the conditions for termination; and

"(B) The Corporation must approve all reinsurance agreements negotiated pursuant to subsection (g).

"(g) REINSURANCE AGREEMENTS.—

"(1) NEGOTIATIONS.—Eligible reinsurers shall negotiate directly with covered institutions to establish—

"(A) the price of reinsurance for that portion of the insured risk covered by the reinsurer; and

"(B) the rights of the reinsurer to review documents maintained by the covered institution in order to assess risk and determine the price.

Any agreements negotiated under this paragraph are subject to the approval of the Corporation under subsection (e)(3)(B) of this section.

"(2) INSURANCE FOR UNINSURED DEPOSITS.—An eligible reinsurer may offer insurance coverage for deposits that are not federally insured to any bank or savings association, whether or not it is covered by reinsurance with this section.

"(h) REINSURANCE REQUIREMENTS.—

"(1) COMPLIANCE EXTENSIONS.—If the Corporation finds that—

"(A) there is a substantial shortage of private sector reinsurance capacity at any time after the end of the phase-in schedule established under subsection (e)(1); or

"(B) because of a significant period of financial stress, it is required in the public interest;

the Corporation is authorized to suspend the requirement for a covered institution to obtain reinsurance for periods of 6 months. During such 6-month periods, deposit insurance assessments for all covered institutions shall be made in accordance with section 7(b). The Corporation shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and to the Committee on Banking, Finance and Urban Affairs of the House of Representatives each time it uses its authority under this subsection, setting forth the reasons for such use.

"(2) REINSURANCE PREMIUMS.—If the Corporation—

"(A) finds that the risk-based premium based on a reinsurance agreement charged a covered institution is significantly less than the premium that would be charged under the section 7(b) risk-based formula; and

"(B) believes that the reinsurance agreement-based assessment does not with reasonable accuracy reflect the inherent insured risks of the covered institution,

the premium for such institution shall be assessed under the section 7(b) risk-based formula. The Corporation shall give a covered institution whose premium would be changed under this paragraph and the reinsurer involved an opportunity to comment on the Corporation's findings not less than 30 days before changing the premium assessment for such covered institution. The Corporation shall return the premium charged any covered institution to the level based on scaling up the assessment charged under the reinsurance agreement, subject to adjustments authorized by subsection (d), if the Corporation finds that subparagraph (B) no longer applies.

"(i) PAYMENTS.—The premium negotiated between a covered institution and a reinsurer in accordance with subsection (g) shall be paid by the Corporation to the reinsurer on a payment schedule established by the Corporation. Such schedule shall provide that covered institutions shall promptly pay, and reinsurers will promptly be paid for, any premium increases during the term of a reinsurance agreement. Assessments under this section shall be paid by the institution to the Corporation in accordance with subsections (b)(2) and (c) through (h) of section 7.

"(j) FAILURE TO OBTAIN REINSURANCE.—

"(1) ASSESSMENT PENALTY.—Except as provided in subsection (k), upon the failure of a covered institution to obtain reinsurance or renew a reinsurance agreement as required under this section, the Corporation shall make a deposit insurance assessment on the institution that is at least 8 basis points higher than the deposit insurance assessment rate that would be charged that institution under the section 7(b) risk-based formula, or equal to the highest assessment rate charged any covered institution with reinsurance having the same rating under the Uniform Financial Institutions Rating System (hereafter 'CAMEL rating') derived from an evaluation of an institution's capital adequacy, asset quality, management, earnings, and liquidity, whichever is higher.

"(2) SPECIAL EXAMINATION.—For a covered institution that is subject to treatment under paragraph (1), the Corporation shall—

"(A) conduct an immediate full-scope examination of the institution; and

"(B) make adjustments to the institution's CAMEL rating, if appropriate.

"(3) TERMINATION OF INSURANCE.—After the transition period in subsection (e)(1) has ended, the Corporation shall not provide deposit insurance to any covered institution that is unable to obtain reinsurance for more than 2 consecutive years, unless reinsurance requirements are suspended under subsection (h)(1).

"(k) EFFECTIVE DATE.—This section shall become effective on the date the Corporation, under the procedures established in section 213(a)(7) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, reports to the Congress that it is prepared to begin implementing a national reinsurance system.".

(2) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended—

(A) by redesignating paragraphs (9) through (14) as paragraphs (10) through (15), respectively; and

(B) by inserting after paragraph (8) a new paragraph as follows:

"(9) shares of any company, the activities of which are limited solely to providing reinsurance in accordance with the requirements of section 7A of the Federal Deposit Insurance Act;".

SEC. 214. REAL ESTATE LENDING STANDARDS.

(a) IN GENERAL.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(u) REAL ESTATE LENDING.—

"(1) UNIFORM REGULATIONS.—Not more than 9 months after the date of enactment of the Comprehensive Deposit Insurance and Taxpayer Protection Act of 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—

"(A) secured by liens on interests in real estate; or

"(B) made for the purpose of financing the construction of a building or other improvements to real estate.

"(2) STANDARDS.—

"(A) CRITERIA.—In prescribing standards under paragraph (1), the agencies shall consider—

"(i) the risk posed to the deposit insurance funds by such extensions of credit;

"(ii) the need for safe and sound operation of insured depository institutions; and

"(iii) the availability of credit.

"(B) VARIATIONS PERMITTED.—In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

"(i) as may be required by Federal statute;

"(ii) as may be warranted, based on the risk to the deposit insurance fund; or

"(iii) as may be warranted, based on the safety and soundness of the institutions.

"(3) EFFECTIVE DATE.—The regulations adopted under paragraph (1) shall become effective not later than 15 months after the date of enactment of the Comprehensive Deposit Insurance and Taxpayer Protection Act of 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

"(4) LOAN-TO-VALUE RATIOS APPLICABLE IF REGULATIONS NOT ADOPTED AS REQUIRED.—The following provisions shall become effective 15 months after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 if the Federal banking agencies fail to adopt uniform regulations under paragraph (1) within the period specified in that paragraph:

"(A) IN GENERAL.—An insured depository institution shall not extend credit secured by real property if the extension of credit would exceed the following percentage of the appraised value of that property:

"(i) 1- TO 4-FAMILY DWELLING.—95 percent, if the extension of credit is to finance the purchase of, or to refinance outstanding indebtedness on, property improved by a completed 1- to 4-family dwelling.

"(ii) COMPLETED STRUCTURE.—80 percent, if the property is improved by 1 or more completed structures and—

"(I) none of the structures is a completed 1- to 4-family dwelling; or

"(II) the extension of credit is not described in clause (i).

"(iii) IMPROVED PROPERTY.—70 percent, if the property is improved but has no completed structure.

"(iv) UNDEVELOPED PROPERTY.—65 percent, if—

"(I) the property is undeveloped; and

"(II) the extension of credit is not an extension of credit to an active farming operation secured by agricultural land.

"(B) EXCEPTIONS.—Subparagraph (A) does not apply to any extension of credit on which the principal and interest are insured or guaranteed by a Federal agency, a federally related entity, or a State or local housing finance agency, as defined in regulations of the appropriate Federal banking agency.

"(C) REGULATORY AUTHORITY.—The appropriate Federal banking agency may adjust the limitations in subparagraph (A) if the agency determines that the limitation that would otherwise apply—

"(i) is unreasonable and limits safe and sound extensions of credit; or

"(ii) does not sufficiently curtail unsafe and unsound practices.".

(b) CONFORMING AMENDMENT.—Section 24(a) of the Federal Reserve Act (12 U.S.C. 371(a)) is amended by striking "such terms," and all that follows through the period and inserting "section 18(u) of the Federal Deposit Insurance Act and such restrictions and requirements as the Comptroller of the Currency may prescribe by regulation or order.".

SEC. 215. RESTRICTING RISKY BANK ACTIVITIES.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 23 the following new section:

"SEC. 24. BANK ACTIVITIES.

"(a) FDIC MAY RESTRICT RISKY BANK ACTIVITIES.—The Corporation may, by regulation or order—

"(1) prohibit or restrict any activity of an insured bank that poses a significant risk to the deposit insurance fund;

"(2) require that activities not prohibited under this section be conducted through a subsidiary; and

"(3) impose such other restrictions and requirements as the Corporation determines to be necessary to prevent a significant risk to the deposit insurance fund.

"(b) EXERCISE OF STATE-AUTHORIZED POWERS EXCEEDING THE POWERS OF A NATIONAL BANK.—

"(1) IN GENERAL.—An insured State bank shall not, directly or indirectly, engage as principal in any activity that is not permissible for a national bank unless—

"(A) the State bank is adequately capitalized, as defined in section 37; and

"(B) the Corporation has, by regulation or order, determined that engaging in that activity—

"(i) would pose no significant risk to the deposit insurance fund; and

"(ii) would be consistent with the purposes of this Act.

"(2) EXCEPTION FOR WELL-CAPITALIZED BANKS.—Paragraph (1) does not prohibit an insured State bank from engaging as principal, directly or indirectly, in an activity not permissible for a national bank if—

"(A) the bank is well-capitalized, as defined in section 37;

"(B) the bank has filed with the Corporation a notice describing the activity;

"(C) the Corporation has not, before the expiration of the 90-day period beginning on the date on which the notice is filed, determined that engaging in that activity—

"(i) would pose a significant risk to the deposit insurance fund; or

"(ii) would be inconsistent with the purposes of this Act.

"(c) EQUITY INVESTMENTS BY STATE BANKS.—

"(1) IN GENERAL.—An insured State bank shall not, directly or indirectly, acquire any equity investment of a type or in an amount that is not permissible for a national bank.

"(2) EXCEPTIONS.—Paragraph (1) does not prohibit an insured State bank from doing any of the following:

"(A) COMMUNITY DEVELOPMENT INVESTMENTS.—Acquiring or retaining investments designed primarily to promote the public welfare, including low- and moderate-income communities or families (such as by providing housing, services, or jobs).

"(B) INVESTMENTS THROUGH SEPARATELY CAPITALIZED SUBSIDIARIES.—Acquiring an equity investment of a type or in an amount that is not permissible for a national bank if all of the State bank's investments in and extensions of credit to the subsidiary are deducted from the bank's capital.

"(C) RISK RETENTION.—Acquiring not more than 10 percent of a corporation that only—

"(i) provides directors', trustees', and officers' liability insurance coverage, or bankers' blanket bond group insurance coverage for insured depository institutions; or

"(ii) reinsures such policies.

"(D) SAVINGS BANK LIFE INSURANCE.—Acquiring shares of a savings bank life insurance company, if the insured State bank is organized under the laws of Connecticut, Massachusetts, or New York.

"(E) BANKERS' BANKS.—Acquiring or retaining shares of a depository institution if—

"(i) the institution engages only in activities permissible for national banks;

"(ii) the institution is subject to examination and regulation by a State bank supervisor;

"(iii) 20 or more depository institutions own shares of the institution, and none of those institutions owns more than 15 percent of the institution's shares; and

"(iv) the institution's shares (other than directors' qualifying shares or shares held under or initially acquired through a plan established for the benefit of the institution's officers and employees) are owned only by the institution.

(F) CORPORATE EQUITY SECURITIES.—Acquiring common and preferred shares listed on a national securities exchange and shares of an investment company registered under the Investment Company Act of 1940, in an aggregate amount not exceeding 50 percent of the bank's capital, if the bank was engaged in investing in such securities as of September 30, 1991. A bank shall not acquire common or preferred shares of any issuer (other than a registered investment company) if, after the acquisition, the bank's investment in shares of that issuer would exceed 10 percent of the bank's capital.

"(d) CORPORATE DEBT SECURITIES NOT OF INVESTMENT GRADE.—

"(1) IN GENERAL.—An insured bank shall not, directly or indirectly, acquire any corporate debt security not of investment grade.

"(2) ACCOUNTING.—An insured bank retaining any corporate debt security not of investment grade shall account for that security as if the security were held for sale.

"(3) EXCEPTION.—Paragraphs (1) and (2) do not apply with respect to any corporate debt security acquired outside of the United States to the extent permitted by regulation or order of the Board of Governors of the Federal Reserve System under section 25 or 25A of the Federal Reserve Act.

"(4) DEFINITION.—The term 'corporate debt security not of investment grade' has the same meaning as in section 28(d)(4).

"(e) ACTIVITY DEFINED.—For purposes of this section, the term 'activity' includes acquiring any investment.

"(f) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of an appropriate Federal banking agency or a State to impose more stringent restrictions.".

(b) EFFECTIVE DATE.—Section 24 of the Federal Deposit Insurance Act (as added by subsection (a)) shall become effective upon the date of enactment of this Act, except that subsections (b) and (c) of section 24 shall become effective 2 years after that date of enactment.

(c) TRANSITION RULE FOR INVESTMENTS IN CORPORATE EQUITY SECURITIES.—

(1) IN GENERAL.—Notwithstanding section 24(c) of the Federal Deposit Insurance Act (as added by subsection (a))—

(A) during the 2 years following the date of enactment of this Act, an insured State bank or subsidiary of an insured State bank may acquire or retain corporate equity securities to the extent permitted by State law on May 14, 1991;

(B) during each of the 3 years following the effective date of section 24(c), each insured State bank and each subsidiary of an insured State bank shall reduce by not less than one-third the corporate equity securities that—

(i) it held on that effective date; and

(ii) are of a type or in an amount not permissible under section 24(c); and

(C) during the first 5 years following the effective date of section 24(c), an insured State bank or subsidiary of an insured State bank may acquire or retain any investment in any publicly traded index of corporate equity securities, to the extent permitted by State law on May 14, 1991.

(2) ACCOUNTING TREATMENT.—In calculating compliance with paragraph (1)(B), corporate equity securities held for investment by insured State banks and subsidiaries of insured State banks shall not be required to be marked to market.

(3) STUDY AND REPORT.—

(A) STUDY REQUIRED.—The Comptroller General shall conduct a study regarding investments in corporate equity securities by insured State banks and their subsidiaries. Such study shall examine—

(i) the extent to which insured State banks and their subsidiaries have invested in corporate equity securities;

(ii) the risks and returns on those investments;

(iii) their contribution to profitability;

(iv) the extent to which States limit the types and amounts of such investments; and

(v) whether such investments are consistent with the purposes of this Act.

(B) REPORT REQUIRED.—Not later than 18 months after the date of enactment of this section, the Comptroller General shall transmit to the Congress a report regarding the results of the study described in subparagraph (A), along with recommendations for such legislative or administrative actions as the Comptroller General deems appropriate.

(d) SAVINGS BANK LIFE INSURANCE GRANDFATHER RIGHTS.—Section 5(i)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(i)(4)) is amended by adding at the end the following:

"(C) Any Federal savings association that acquires, or that results from the conversion of, a savings bank chartered by a State that by State law authorizes its State chartered savings banks to sell or underwrite savings bank life insurance may sell or underwrite such insurance to the same extent that any savings bank chartered by that State may do so under State law.".

SEC. 216. SAFEGUARDS AGAINST INSIDER ABUSE.

(a) RECODIFICATION OF CURRENT LAW RESTRICTING EXTENSIONS OF CREDIT TO INSIDERS.—Section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) is amended to read as follows:

"(h) EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS.—

"(1) IN GENERAL.—No member bank may extend credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such a person, except to the extent permitted under paragraphs (2), (3), (4), and (6).

"(2) PREFERENTIAL TERMS PROHIBITED.—A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

"(A) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank; and

"(B) does not involve more than the normal risk of repayment or present other unfavorable features.

"(3) PRIOR APPROVAL REQUIRED.—A member bank may extend credit to a person described in paragraph (1) in an amount that, when aggregated with the amount of all other outstanding extensions of credit by that bank to each such person and that person's related interests, would exceed an amount prescribed by regulation of the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) only if—

"(A) the extension of credit has been approved in advance by a majority vote of that bank's entire board of directors; and

"(B) the interested party has abstained from participating, directly or indirectly, in the deliberations or voting on the extension of credit.

"(4) AGGREGATE LIMIT ON EXTENSIONS OF CREDIT TO ANY EXECUTIVE OFFICER OR PRINCIPAL SHAREHOLDER.—A member bank may extend credit to any executive officer or principal shareholder, or to any related interest of such a person, only if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to that person and that person's related interests, would not exceed the limits on loans to a single borrower established by section 5200 of the Revised Statutes. For purposes of this paragraph, section 5200 of the Revised Statutes shall be deemed to apply to a State member bank as if the State member bank were a national banking association.

"(5) [Reserved.]

"(6) OVERDRAFTS BY EXECUTIVE OFFICERS AND DIRECTORS PROHIBITED.—

"(A) IN GENERAL.—If any executive officer or director has an account at the member bank, the bank may not pay on behalf of that person an amount exceeding the funds on deposit in the account.

"(B) EXCEPTIONS.—Subparagraph (A) does not prohibit a member bank from paying funds in accordance with—

"(i) a written preauthorized, interest-bearing extension of credit specifying a method of repayment; and

"(ii) a written preauthorized transfer of funds from another account of the executive officer or director at that bank.

"(7) [Reserved.]

"(8) EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER OF CERTAIN AFFILIATES TREATED AS EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER OF MEMBER BANK.—For purposes of this subsection, any executive officer, director, or principal shareholder (as the case may be) of any bank holding company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.

"(9) DEFINITIONS.—For purposes of this subsection:

"(A) COMPANY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'company' means any corporation, partnership, business or other trust, association, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

"(ii) EXCEPTIONS.—The term 'company' does not include—

"(I) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act); or

"(II) a corporation the majority of the shares of which are owned by the United States or by any State.

"(B) CONTROL.—A person controls a company or bank if that person, directly or indirectly, or acting through or in concert with 1 or more persons—

"(i) owns, controls, or has the power to vote 25 percent or more of any class of the company's voting securities;

"(ii) controls in any manner the election of a majority of the company's directors; or

"(iii) has the power to exercise a controlling influence over the company's management or policies.

"(C) EXECUTIVE OFFICER.—A person is an 'executive officer' of a company or bank if that person participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank.

"(D) EXTENSION OF CREDIT.—A member bank extends credit by making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which a person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank.

"(E) [Reserved.]

"(F) PRINCIPAL SHAREHOLDER.—The term 'principal shareholder' means any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company. For purposes of paragraph (4), if a member bank has its main banking office in a city, town, or village with a population of less than 30,000, the preceding sentence shall apply with '18 percent' substituted for '10 percent'.

"(G) RELATED INTEREST.—A 'related interest' of a person is—

"(i) any company controlled by that person; and

"(ii) any political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

"(H) SUBSIDIARY.—The term 'subsidiary' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

"(10) BOARD'S RULEMAKING AUTHORITY.—The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this subsection.".

(b) REQUIRING DEPOSITORY INSTITUTIONS TO FOLLOW NORMAL CREDIT UNDERWRITING PROCEDURES WHEN EXTENDING CREDIT TO INSIDERS.—Section 22(h)(2) of the Federal Reserve Act (12 U.S.C. 375b(2)), as amended by subsection (a), is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by striking the period at the end of subparagraph (B) and inserting "; and"; and

(3) by inserting after subparagraph (B) the following new subparagraph:

"(C) the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.".

(c) APPLYING TO DIRECTORS THE LIMIT ON LOANS TO ONE BORROWER.—Section 22(h)(4) of the Federal Reserve Act (12 U.S.C. 375b(4)), as amended by subsection (a), is amended—

(1) by inserting ", DIRECTOR," after "AGGREGATE LIMIT ON EXTENSIONS OF CREDIT TO ANY EXECUTIVE OFFICER"; and

(2) by inserting ", director," after "A member bank may extend credit to any executive officer".

(d) LIMITING DEPOSITORY INSTITUTION'S AGGREGATE EXTENSIONS OF CREDIT TO INSIDERS.—

(1) IN GENERAL.—Section 22(h)(5) of the Federal Reserve Act (12 U.S.C. 375b(5)), as amended by subsection (a), is amended to read as follows:

"(5) AGGREGATE LIMIT ON EXTENSIONS OF CREDIT TO ALL EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—

"(A) IN GENERAL.—A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to its executive officers, directors, principal shareholders, and those persons' related interests would not exceed the bank's unimpaired capital and unimpaired surplus.

"(B) MORE STRINGENT LIMIT AUTHORIZED.—The Board may, by regulation, prescribe a limit that is more stringent than that contained in subparagraph (A).

"(C) BOARD MAY MAKE EXCEPTIONS FOR CERTAIN BANKS.—The Board may, by regulation, make exceptions to subparagraph (A) for member banks with less than $100,000,000 in deposits if the Board determines that the exceptions are important to avoid constricting the availability of credit in small communities or to attract directors to such banks. In no case may the aggregate amount of all outstanding extensions of credit to a bank's executive officers, directors, principal shareholders, and those persons' related interests be more than 2 times the bank's unimpaired capital and unimpaired surplus.".

(2) CONFORMING AMENDMENT.—Section 22(h)(1) of the Federal Reserve Act (12 U.S.C. 375b(1)), as amended by subsection (a), is amended by inserting "(5)," after "(4),".

(e) PROHIBITING INSIDERS FROM ACCEPTING UNAUTHORIZED EXTENSIONS OF CREDIT.—Section 22(h)(7) of the Federal Reserve Act (12 U.S.C. 375b(7)), as amended by subsection (a), is amended to read as follows:

"(7) PROHIBITION ON KNOWINGLY RECEIVING UNAUTHORIZED EXTENSION OF CREDIT.—No executive officer, director, or principal shareholder shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this subsection.".

(f) APPLYING UNIFORM RULES TO ALL COMPANIES CONTROLLING DEPOSITORY INSTITUTIONS.—Section 22(h)(8) of the Federal Reserve Act (12 U.S.C. 375b(8)), as amended by subsection (a), is amended by striking "bank holding".

(g) APPLYING SAFEGUARDS TO INSIDER TRANSACTIONS WITH DEPOSITORY INSTITUTION'S SUBSIDIARIES.—Section 22(h)(9)(E) of the Federal Reserve Act (12 U.S.C. 375b(9)(E)), as amended by subsection (a), is amended to read as follows:

"(E) MEMBER BANK.—The term 'member bank' includes any subsidiary of a member bank.".

(h) APPLYING UNIFORM RULES TO ALL PRINCIPAL SHAREHOLDERS.—Section 22(h)(9)(F) of the Federal Reserve Act (12 U.S.C. 375b(9)(F)), as amended by subsection (a), is amended by striking the last sentence.

(i) LIMITING SAVINGS ASSOCIATIONS' EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS.—Section 11(b)(1) of the Home Owners' Loan Act (12 U.S.C. 1468(b)(1)) is amended by striking "Section 22(h)" and inserting "Subsections (g) and (h) of section 22".

(j) PREVENTING SAVINGS ASSOCIATIONS FROM MAKING PREFERENTIAL EXTENSIONS OF CREDIT THROUGH CORRESPONDENT INSTITUTIONS.—Section 106(b)(2)(H)(i) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)(H)(i)) is amended by inserting ", a savings bank, and a savings association (as those terms are defined in section 3 of the Federal Deposit Insurance Act)" after "mutual savings bank".

(k) LIMITING STATE NONMEMBER BANK'S EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS; CLARIFYING THE PROHIBITION ON PREFERENTIAL EXTENSIONS OF CREDIT TO INSIDERS.—Section 18(j) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) is amended to read as follows:

"(j) RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES AND INSIDERS.—

"(1) TRANSACTIONS WITH AFFILIATES.—

"(A) IN GENERAL.—Sections 23A and 23B of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

"(B) AFFILIATE DEFINED.—For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 23A and 23B) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

"(2) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Subsections (g) and (h) of section 22 of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

"(3) AVOIDING EXTRATERRITORIAL APPLICATION TO FOREIGN BANKS.—

"(A) TRANSACTIONS WITH AFFILIATES.—Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

"(B) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch.

"(C) FOREIGN BANK DEFINED.—For purposes of this paragraph, the term 'foreign bank' has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.".

(l) EFFECTIVE DATE.—The amendments made by this section shall become effective upon the earlier of—

(1) the date on which final regulations under subsection (m)(1) become effective; or

(2) 150 days after the date of enactment of this Act.

(m) REGULATIONS.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System shall, not later than 120 days after the date of enactment of this Act, promulgate final regulations to implement the amendments made by this section, other than the amendments made by subsections (i) and (k).

(2) LIMITING EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS.—The Federal Deposit Insurance Corporation and Director of the Office of Thrift Supervision shall each, not later than 120 days after the date of enactment of this Act, promulgate final regulations prescribing the maximum amount that a nonmember insured bank or insured savings association (as the case may be) may lend under section 22(g)(4) of the Federal Reserve Act, as made applicable to those institutions by subsections (k) and (i), respectively.

(n) EXISTING TRANSACTIONS NOT AFFECTED.—The amendments made by this section do not affect the validity of any extension of credit or other transaction lawfully entered into on or before the effective date of those amendments.

(o) REPORTING OF CREDIT BY EXECUTIVE OFFICERS AND DIRECTORS.—An executive officer or director of an insured depository institution, a bank holding company, or a savings and loan holding company, the shares of which are not publicly traded, shall report annually to the board of directors of the institution or holding company the outstanding amount of any credit that was extended to such executive officer or director and that is secured by shares of the institution or holding company.

SEC. 217. PROTECTING DEPOSITORY INSTITUTIONS FROM ABUSIVE TRANSACTIONS WITH AFFILIATES.

(a) AMENDMENTS TO SECTION 23A OF THE FEDERAL RESERVE ACT.—Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) by striking "per centum" each place it appears and inserting "percent";

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

"(5) No bank holding company shall permit an insured depository institution that it controls to engage in any covered transaction if the amount of the covered transaction exceeds 5 percent of the institution's capital stock and surplus, unless not less than 5 days prior notice is provided to the Board and the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, if different.";

(3) in subsection (b)(1)(D), by amending clause (ii) to read as follows:

"(ii) any investment company, commodity pool, or other company engaged in substantially the same activities as an investment company or commodity pool for which a member bank or any affiliate is an investment adviser as defined in section 2(a)(20) of the Investment Company Act of 1940, or a commodity trading adviser as defined in section 2(a)(1)(A) of the Commodity Exchange Act, or performs activities substantially equivalent to those of an investment adviser or commodity trading adviser; and";

(4) in subsection (b)(2)(A), by inserting "and of which the member bank owns at least 80 percent of the voting stock" after "member bank";

(5) in subsection (b)(5), by inserting "that is principally engaged in deposit taking or lending activities" after "trust company";

(6) in subsection (b)(7)—

(A) in subparagraph (D), by striking "or" at the end thereof;

(B) in subparagraph (E) by inserting "to, or" after "standby letter of credit,"; and

(C) by inserting after subparagraph (E) the following new subparagraphs:

"(F) the assumption by a member bank of a liability of any affiliate, whether directly or through the transfer of the affiliate to the member bank; or

"(G) any other financial arrangement that the Board by regulation determines to be substantially equivalent to a transaction described in this paragraph;";

(7) in subsection (c)(1)—

(A) by inserting "to, or" after "letter of credit issued"; and

(B) by striking "at the time of the transaction";

(8) in subsection (c)(4)—

(A) by inserting "the member bank or" after "issued by"; and

(B) by inserting "to, or" after "letter of credit issued"; and

(9) in subsection (d)(5), by inserting ", if the company provides services solely to affiliated member banks" before the semicolon.

(b) AMENDMENTS TO SECTION 23B OF THE FEDERAL RESERVE ACT.—Section 23B(b)(2) of

the Federal Reserve Act (12 U.S.C. 371c-1(b)(2)) is amended by inserting "officers, directors, or employees of" after "of the bank or".

SEC. 218. INTERBANK LIABILITIES.

(a) REDUCING SYSTEMIC RISKS POSED BY LARGE BANK FAILURES.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 22 the following new section:

"INTERBANK LIABILITIES

"SEC. 23. (a) PURPOSE.—The purpose of this section is to limit the risks that the failure of a large depository institution (whether or not that institution is an insured depository institution) would pose to insured depository institutions.

"(b) AGGREGATE LIMITS ON INSURED DEPOSITORY INSTITUTIONS' EXPOSURE TO OTHER DEPOSITORY INSTITUTIONS.—The Board shall, by regulation or order, prescribe standards that have the effect of limiting the risks posed by an insured depository institution's exposure to any other depository institution.

"(c) EXPOSURE DEFINED.—

"(1) IN GENERAL.—For purposes of subsection (b), an insured depository institution's 'exposure' to another depository institution means—

"(A) all extensions of credit to the other depository institution, regardless of name or description, including—

"(i) all deposits at the other depository institution;

"(ii) all purchases of securities or other assets from the other depository institution subject to an agreement to repurchase; and

"(iii) all guarantees, acceptances, or letters of credit (including endorsements or standby letters of credit) on behalf of the other depository institution;

"(B) all purchases of or investments in securities issued by the other depository institution;

"(C) all securities issued by the other depository institution accepted as collateral for an extension of credit to any person; and

"(D) all similar transactions that the Board by regulation determines to be exposure for purposes of this section.

"(2) EXEMPTIONS.—The Board may, at its discretion, by regulation or order, exempt transactions from the definition of 'exposure' if it finds the exemptions to be in the public interest and consistent with the purpose of this section.

"(3) ATTRIBUTION RULE.—For purposes of this section, any transaction by an insured depository institution with any person is a transaction with another depository institution to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that other depository institution.

"(d) INSURED DEPOSITORY INSTITUTION.—For purposes of this section, the term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(e) RULEMAKING AUTHORITY; ENFORCEMENT.—The Board may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out the purpose of this section. The appropriate Federal banking agency shall enforce compliance with those regulations under section 8 of the Federal Deposit Insurance Act.".

(b) TRANSITION RULES.—The Board shall prescribe reasonable transition rules to facilitate compliance with section 23 of the Federal Reserve Act (as added by subsection (a)).

(c) EFFECTIVE DATE.—The amendment made by this section shall become effective 1 year after the date of enactment of this Act.

SEC. 219. REDUCING RISK TO PAYMENT SYSTEM.

(a) FINDINGS AND PURPOSE.—The Congress finds that—

(1) many financial institutions engage daily in thousands of transactions with other financial institutions, directly and through clearing organizations;

(2) the efficient processing of those transactions is important to a smoothly functioning economy;

(3) those transactions can be processed most efficiently by netting obligations among financial institutions, consistent with applicable contracts;

(4) netting procedures would reduce the systemic risk within the banking system and financial markets; and

(5) to ensure that those netting procedures are effective, they must be recognized as valid and legally binding even if a financial institution participating in the procedures is closed.

(b) BILATERAL NETTING.—

(1) NETTING CONTRACT TO BE ENFORCED.—Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted under any applicable netting contract.

(2) LIMIT ON OBLIGATION TO MAKE PAYMENT.—The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution arising under a single netting contract shall be equal to its net obligation under that contract to that other financial institution (and no such obligation shall exist if there is no net obligation).

(3) LIMIT ON ENTITLEMENT TO RECEIVE PAYMENT.—The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution arising under a single netting contract shall be equal to its net entitlement under that contract with respect to that other financial institution (and no such right shall exist if there is no net entitlement).

(4) FAILED FINANCIAL INSTITUTION IS ENTITLED ONLY TO ITS NET ENTITLEMENT.—Any net entitlement of a failed financial institution shall be paid to the failed financial institution under the applicable netting contract.

(c) CLEARING ORGANIZATION NETTING.—

(1) NETTING CONTRACT TO BE ENFORCED.—Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted under any applicable netting contract.

(2) LIMIT ON OBLIGATION TO MAKE PAYMENT.—The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract.

(3) LIMIT ON ENTITLEMENT TO RECEIVE PAYMENT.—The only right, if any, of a member of a clearing organization to receive payment with respect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract.

(4) FAILED FINANCIAL INSTITUTION IS ENTITLED ONLY TO ITS NET ENTITLEMENT.—Any net entitlement of a failed member shall be paid to the failed member under the applicable netting contract. The failed member shall have no recognizable claim against any member of the clearing organization for any amount based on the covered contractual payment entitlements other than the failed member's net entitlement.

(d) PREEMPTION.—No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, and no other provision of Federal or State law shall limit or delay application of the netting provisions of an otherwise enforceable netting contract under subsections (b) and (c).

(e) DEFINITIONS.—For purposes of this section:

(1) BROKER-DEALER.—The term "broker-dealer" means a company that is registered or licensed under Federal or State law to act as a securities broker or dealer.

(2) CLEARING ORGANIZATION.—The term "clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar organization that provides clearing, netting, or settlement services for its members, and—

(A) that is registered as a clearing agency under the Securities Exchange Act of 1934 (12 U.S.C. 78q-1(b));

(B) that performs clearing functions for a contract market designated under the Commodity Exchange Act (7 U.S.C. 1); or

(C) in which all members other than the clearing organization are financial institutions or other clearing organizations.

(3) COVERED CLEARING OBLIGATION.—The term "covered clearing obligation" means an obligation, subject to a netting contract, of a member of a clearing organization to make a payment to another member of a clearing organization.

(4) COVERED CONTRACTUAL PAYMENT ENTITLEMENT.—The term "covered contractual payment entitlement" means—

(A) an entitlement of a financial institution to receive a payment, subject to a netting contract, from another financial institution; and

(B) an entitlement of a member of a clearing organization to receive payment, subject to a netting contract, from another member of that clearing organization.

(5) COVERED CONTRACTUAL PAYMENT OBLIGATION.—The term "covered contractual payment obligation" means—

(A) an obligation of a financial institution to make payment, subject to a netting contract, to another financial institution; and

(B) a covered clearing obligation.

(6) DEPOSITORY INSTITUTION.—The term "depository institution" means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A));

(B) a branch or agency as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b));

(C) a corporation chartered under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.); or

(D) a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.).

(7) FAILED FINANCIAL INSTITUTION.—The term "failed financial institution" means a financial institution that—

(A) has failed to satisfy a covered contractual payment obligation when due;

(B) is the subject of insolvency, liquidation, bankruptcy, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

(8) FAILED MEMBER.—The term "failed member" means any member that—

(A) has failed to satisfy a covered contractual payment obligation when due;

(B) is the subject of insolvency, liquidation, bankruptcy, reorganization, receivership (including the appointment of a receiver), conservatorship, or similar proceedings; or

(C) has generally ceased to meet its obligations when due.

(9) FINANCIAL INSTITUTION.—The term "financial institution" means a broker-dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Board of Governors of the Federal Reserve System.

(10) FUTURES COMMISSION MERCHANT.—The term "futures commission merchant" means a company that is registered under Federal law to engage in the business of selling futures or options in commodities.

(11) MEMBER.—The term "member" means a member of or participant in a clearing organization, and includes the clearing organization.

(12) NET ENTITLEMENT.—The term "net entitlement" means the amount by which a financial institution's or member's covered contractual payment entitlements exceed its covered contractual payment obligations after netting under a netting contract.

(13) NET OBLIGATION.—The term "net obligation" means the amount by which a financial institution's or member's covered contractual payment obligations exceed its covered contractual payment entitlements after netting under a netting contract.

(14) NETTING CONTRACT.—The term "netting contract" means an agreement (including the rules of a clearing organization) between 2 or more financial institutions or members that—

(A) is governed by the laws of the United States or any subdivision thereof or any State;

(B) provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to those obligations or entitlements) among the parties to the agreement; and

(C) is not precluded by Federal banking, securities, or commodities laws.

(15) PAYMENT.—The term "payment" means a payment of United States dollars, another currency, or a composite currency, including a payment to liquidate an unmatured obligation.

(f) OTHER PAYMENT SYSTEMS NOT AFFECTED.—This section shall not affect the enforceability of a netting arrangement of any payment system not subject to this section.

SEC. 220. LEAST-COST RESOLUTION.

Section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by adding at the end the following new subsection:

"(1) LEAST-COST RESOLUTION REQUIRED.—

"(1) IN GENERAL.—The Corporation shall not, directly or indirectly, do any of the following with respect to any insured depository institution except to satisfy the Corporation's obligations to that institution's insured depositors at the least possible long-term cost to the deposit insurance fund:

"(A) Take any action under subsection (f)(1), (i)(3), (m), or (n) of section 11.

"(B) Take any action under subsection (c) or (k).

"(C) Expend any money from a deposit insurance fund, other than to pay for examination, supervision, and administration costs.

"(D) Assume or guarantee any liability.

"(2) DETERMINING LEAST-COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible long-term cost to the deposit insurance fund, the Corporation shall comply with the following provisions:

"(A) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

"(i) evaluate alternatives on a present-value basis, using a realistic discount rate;

"(ii) document that evaluation; and

"(iii) retain the documentation for not less than 5 years.

"(B) ECONOMIC CONDITIONS AND FINANCIAL STABILITY.—The Corporation shall not consider how the transaction would affect economic conditions or financial stability except insofar as the effects would result in quantifiable costs to the deposit insurance fund.

"(C) SPECIAL ASSESSMENTS ON FOREIGN DEPOSITS.—The Corporation shall not consider the proceeds of any special assessment on foreign deposits.

"(D) FOREGONE TAX REVENUES.—The Corporation shall treat Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, as if they were revenues foregone by the affected deposit insurance fund.

"(3) SYSTEMIC RISK.—

"(A) EMERGENCY ADVANCES BY TREASURY.—If, upon the written recommendation of the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of its members), the Secretary of the Treasury (in consultation with the President) determines in writing that—

"(i) the Corporation's compliance with paragraph (1) with respect to an insured depository institution would have serious adverse effects on economic conditions or financial stability; and

"(ii) an advance under this subparagraph would avoid or mitigate such adverse effects, the Secretary may advance to the Corporation the amount necessary to avoid or mitigate those effects.

"(B) FUNDS ADVANCED ARE NOT RESTRICTED BY PARAGRAPH (1).—Any action taken using funds advanced by the Secretary of the Treasury under subparagraph (A) is not an action taken under any subparagraph of paragraph (1).

"(C) REPAYMENT OF ADVANCES.—The Corporation shall recover the loss to the insurance fund, less any loss recovered through a special assessment on foreign deposits, arising from advances with respect to an insured depository institution under subparagraph (A) expeditiously from 1 or more special assessments on the members of the deposit insurance fund of which the insured depository institution is a member, equal to the product of—

"(i) an assessment rate established by the Corporation; and

"(ii) the amount of each member's average total assets during the semiannual period, minus the sum of—

"(I) the amount of the member's average total tangible equity;

"(II) the amount of the member's average total subordinated debt; and

"(III) the amount of the member's average total deposits that are deposits described in subparagraph (A) or (B) of section 3(l)(5).

"(D) INTEREST ON ADVANCES.—Advances under subparagraph (A) shall bear interest at a rate to be determined by the Secretary of the Treasury.

"(E) DOCUMENTATION REQUIRED.—The Secretary of the Treasury shall—

"(i) document any determination under subparagraph (A); and

"(ii) retain the documentation for review under subparagraph (F).

"(F) GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under subparagraph (A), including—

"(i) the basis for the determination;

"(ii) the purpose for which the advance was used; and

"(iii) the likely effect of the determination and advance on the incentives and conduct of insured depository institutions and uninsured depositors.

"(G) NOTICE.—The Secretary of the Treasury shall provide written notice of any determination under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and each notice shall describe the basis for the determination.

"(4) RULE OF CONSTRUCTION.—No provision of law shall be construed as permitting the Corporation to do anything prohibited by paragraph (1) or (2), unless the provision of law expressly amends this subsection.

"(5) PUBLIC DISCLOSURE REQUIRED.—

"(A) IN GENERAL.—The Corporation shall disclose documents referred to in paragraph (2)(A)(ii) upon request under section 552 of title 5, United States Code, without excising—

"(i) any portion under section 552(b)(5); or

"(ii) any information about the insured depository institution under paragraph (4) of section 552(b), other than trade secrets, or paragraph (8) of that section.

"(B) EXCEPTION.—Subparagraph (A) does not require the Corporation to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could be reasonably ascertained.

"(6) CLAIMS SETTLEMENT PROCEDURES.—The Corporation, in consultation with the other Federal banking agencies, shall establish procedures for resolving the claims of uninsured depositors and creditors other than depositors against a depository institution for which the Corporation has been appointed receiver. Such procedures shall—

"(A) ensure that insured depositors will have access to all insured funds as expeditiously as possible;

"(B) provide uninsured depositors and creditors other than depositors with early access to not more than 90 percent of the value of that portion of their claims that the Corporation determines is supported by the assets of the institution;

"(C) maintain the safety and effectiveness of the payment system; and

"(D) protect the stability of the deposit insurance system.

"(7) DISCRETIONARY DETERMINATIONS.—Any determination under this subsection shall be in the sole discretion of the Corporation or the Secretary of the Treasury, as the case may be. No court shall have jurisdiction to stay, enjoin, restrain, or otherwise delay action taken under this subsection or jurisdiction over any claim relating to any act or omission of the Corporation or the Secretary with respect to any determination under this subsection.".

(b) STUDY AND REPORT ON FDIC PAYMENTS ON UNINSURED DEPOSITS AND NONDEPOSIT LIABILITIES.—

(1) STUDY.—The Director of the Congressional Budget Office (hereafter referred to as the "Director") shall conduct a study on the effects of a reduction in payments by the Federal Deposit Insurance Corporation used to satisfy the obligations of depository institutions on the uninsured deposits of such institutions and to creditors of such institutions other than depositors. The study shall—

(A) include consideration of—

(i) any estimated savings accruing to the Federal deposit insurance funds as a result of such reduction;

(ii) the long-term benefits to insured depository institutions and the Federal deposit insurance funds of increased market discipline as a result of such reduction; and

(iii) any other relevant information on the effects of such reduction; and

(B) include an estimate of the total savings that would have accrued to the Federal deposit insurance funds during the years 1988 through 1991 if such payments by the Federal Deposit Insurance Corporation had been reduced by 10 percent.

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Director shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives on the Director's findings and conclusions resulting from the study conducted under paragraph (1).

SEC. 221. EARLY RESOLUTION.

(a) IN GENERAL.—It is the sense of the Senate that the Federal banking agencies should facilitate early resolution of troubled insured depository institutions whenever feasible if early resolution would have the least possible long-term cost to the deposit insurance fund, consistent with section 13(1) of the Federal Deposit Insurance Act (as added by section 220).

(b) GENERAL PRINCIPLES.—In encouraging the Federal banking agencies to pursue early resolution strategies, the Senate contemplates that any resolution transaction under section 13(c) of that Act would observe the following general principles:

(1) COMPETITIVE NEGOTIATION.—The transaction should be negotiated competitively, taking into account the value of expediting the process.

(2) RESULTING INSTITUTION ADEQUATELY CAPITALIZED.—Any insured depository institution created or assisted in the transaction (hereafter the "resulting institution") and any institution acquiring the troubled institution should be adequately capitalized, as defined in section 37 of the Federal Deposit Insurance Act (as added by section 205).

(3) SUBSTANTIAL PRIVATE INVESTMENT.—The transaction should involve substantial private investment.

(4) CONSOLIDATION.—The transaction should involve consolidation to the maximum extent consistent with section 13(1).

(5) CONCESSIONS.—Preexisting owners and debtholders of any troubled institution or its holding company should make substantial concessions.

(6) QUALIFIED MANAGEMENT.—Directors and senior management of the resulting institution should be qualified to perform their duties, and should not include individuals substantially responsible for the troubled institution's problems.

(7) FDIC'S PARTICIPATION.—The transaction should give the Federal Deposit Insurance Corporation an opportunity to participate in the success of the resulting institution.

(8) STRUCTURE OF TRANSACTION.—The transaction should, insofar as practical, be structured so that—

(A) the Federal Deposit Insurance Corporation—

(i) does not acquire a significant proportion of the troubled institution's problem assets;

(ii) succeeds to the interests of the troubled institution's preexisting owners and debtholders in proportion to the assistance the Corporation provides; and

(iii) limits the Corporation's assistance in term and amount; and

(B) new investors share risk with the Corporation.

(c) REPORT.—Two years after the date of enactment of this Act, the Federal Deposit Insurance Corporation shall submit a report to Congress analyzing the effect of early resolution on the deposit insurance funds.

SEC. 222. FEDERAL RESERVE DISCOUNT WINDOW ADVANCES.

(a) REDESIGNATING SECTIONS 10(a) AND 10(b) OF THE FEDERAL RESERVE ACT.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—

(1) by redesignating section 10(a) (12 U.S.C. 347a) as section 10A; and

(2) by redesignating section 10(b) (12 U.S.C. 347b) as section 10B.

(b) LIMITATIONS ON LIQUIDITY LENDING FOR DEPOSIT INSURANCE PURPOSES.—Section 10B of the Federal Reserve Act (as redesignated by subsection (a)) is amended—

(1) by striking "Any Federal Reserve bank" and inserting "(a) IN GENERAL.—Any Federal Reserve bank"; and

(2) by adding at the end the following:

"(b) LIMITATIONS ON ADVANCES.—

"(1) LIMITATION ON EXTENDED PERIODS.—Except as provided in paragraph (2), no advances to any undercapitalized depository institution by any Federal Reserve bank under this section may be outstanding for more than 60 days in any 120-day period.

"(2) VIABILITY EXCEPTION.—

"(A) IN GENERAL.—If—

"(i) the head of the appropriate Federal banking agency certifies in advance in writing to the Federal Reserve bank that any depository institution is viable; or

"(ii) the Board conducts an examination of any depository institution and the Chairman of the Board certifies in writing to the Federal Reserve bank that the institution is viable,

the limitation contained in paragraph (1) shall not apply during the 60-day period beginning on the date such certification is received.

"(B) EXTENSIONS OF PERIOD.—The 60-day period may be extended for additional 60-day periods upon receipt by the Federal Reserve bank of additional written certifications under subparagraph (A) with respect to each such additional period.

"(C) AUTHORITY TO ISSUE A CERTIFICATE OF VIABILITY MAY NOT BE DELEGATED.—The authority of the head of any agency to issue a written certification of viability under this paragraph may not be delegated to any other person.

"(D) EXTENDED ADVANCES SUBJECT TO PARAGRAPH (3).—Notwithstanding paragraph (1), an undercapitalized depository institution which does not have a certificate of viability in effect under this paragraph may have advances outstanding for more than 60 days in any 120-day period if the Board elects to treat—

"(i) such institution as critically undercapitalized under paragraph (3); and

"(ii) any such advance as an advance described in subparagraph (A)(i) of paragraph (3).

"(3) ADVANCES TO CRITICALLY UNDERCAPITALIZED DEPOSITORY INSTITUTIONS.—

"(A) LIABILITY FOR INCREASED LOSS.—Notwithstanding any other provision of this section, if—

"(i) in the case of any critically undercapitalized depository institution—

"(I) any advance under this section to such institution is outstanding without payment having been demanded as of the end of the 5-day period beginning on the date the institution becomes a critically undercap- italized depository institution; or

"(II) any new advance is made to such institution under this section after the end of such period; and

"(ii) after the end of that 5-day period, any deposit insurance fund in the Federal Deposit Insurance Corporation incurs a loss exceeding the loss that the Corporation would have incurred if it had liquidated that institution as of the end of that period,

the Board shall, subject to the limitations in subparagraph (B), be liable to the Federal Deposit Insurance Corporation for the excess loss, without regard to the terms of the advance or any collateral pledged to secure the advance.

"(B) LIMITATION ON EXCESS LOSS.—The liability of the Board under subparagraph (A) shall not exceed the lesser of the following:

"(i) The amount of the loss the Board or any Federal Reserve bank would have incurred on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A) if those increased advances had been unsecured.

"(ii) The interest received on the increases in the amount of advances made after the 5-day period referred to in subparagraph (A).

"(C) FEDERAL RESERVE TO PAY OBLIGATION.—The Board shall pay the Federal Deposit Insurance Corporation the amount of any liability of the Board under subparagraph (A).

"(D) REPORT.—The Board shall report to the Congress on any excess loss liability it incurs under subparagraph (A), as limited by subparagraph (B)(i), and the reasons therefore, not later than 6 months after incurring the liability.

"(4) NO OBLIGATION TO MAKE ADVANCES.—A Federal Reserve bank shall have no obligation to make, increase, renew, or extend any advance or discount under this Act to any depository institution.

"(5) DEFINITIONS.—

"(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(B) CRITICALLY UNDERCAPITALIZED.—The term 'critically undercapitalized' has the same meaning as in section 37 of the Federal Deposit Insurance Act.

"(C) DEPOSITORY INSTITUTION.—The term 'depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

"(D) UNDERCAPITALIZED DEPOSITORY INSTITUTION.—The term 'undercapitalized depository institution' means any depository institution which—

"(i) is undercapitalized, as defined in section 37 of the Federal Deposit Insurance Act; or

"(ii) has a composite CAMEL rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating

system) as of the most recent examination of such institution.

"(E) VIABLE.—A depository institution is 'viable' if the Board or the appropriate Federal banking agency determines, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution—

"(i) is not critically undercapitalized;

"(ii) is not expected to become critically undercapitalized; and

"(iii) is not expected to be placed in conservatorship or receivership.".

(c) BOARD'S AUTHORITY TO EXAMINE DEPOSITORY INSTITUTIONS AND AFFILIATES.—Section 11 of the Federal Reserve Act is amended by adding at the end the following:

"(n) To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any request for any such advance or discount by, such depository institution under this Act.".

(d) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect at the end of the 2-year period beginning on the date of enactment of this Act.

(e) CONFORMING AMENDMENTS REDESIGNATING SECTIONS 13a, 25(a), AND 25(b) OF THE FEDERAL RESERVE ACT.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—

(1) by redesignating section 13a (12 U.S.C. 348-52) as section 13A;

(2) by redesignating section 25(a) (12 U.S.C. 611-31) as section 25A; and

(3) by redesignating section 25(b) (12 U.S.C. 632) as section 25B.

SEC. 223. CROSS-GUARANTEE LIABILITY.

(a) IN GENERAL.—Section 5(e) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)) is amended—

(1) by amending the caption of the subsection to read as follows:

"(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS AND CONTROLLING COMPANIES FOR LOSSES TO CORPORATION.—";

(2) by amending subparagraph (A) of paragraph (1) to read as follows:

"(A) LIABILITY ESTABLISHED.—Any insured depository institution, any subsidiaries of that insured depository institution, and any controlling company shall be liable for any loss incurred by the Corporation, or any loss that the Corporation reasonably anticipates incurring, after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991—

"(i) in the case of an insured depository institution or any subsidiaries of that insured depository institution, in connection with—

"(I) the default of a commonly controlled insured depository institution; or

"(II) any assistance provided by the Corporation to a commonly controlled insured depository institution in danger of default; and

"(ii) in the case of a controlling company, in connection with—

"(I) the default of an insured depository institution controlled by such controlling company; or

"(II) any assistance provided by the Corporation to an insured depository institution in danger of default controlled by such controlling company.";

(3) by redesignating subparagraphs (B) and (C) of paragraph (1) as subparagraphs (C) and (D), respectively, and inserting the following after subparagraph (A):

"(B) LIMIT ON LIABILITY.—The aggregate liability of all controlling companies of an insured depository institution, other than insured depository institutions and subsidiaries of insured depository institutions, shall be not more than 5 percent of the insured depository institution's total assets at the time of the default or assistance described in subparagraph (A).''; and

(4) by adding at the end the following:

"(10) NO LIABILITY FOR CERTAIN AFFILIATES.—No affiliate of an insured depository institution, other than a controlling company or a commonly controlled depository institution (and any subsidiary of such insured depository institution), shall be liable, directly or indirectly, under this subsection.

"(11) LIABILITY NOT TO BE CONSTRUED AS CAPITAL MAINTENANCE COMMITMENT UNDER TITLE XI.—No liability under this subsection shall be deemed to be a commitment to maintain the capital of an insured depository institution under any provision of title 11, United States Code.

"(12) TRANSFER WITHIN ONE YEAR OF DEFAULT OR ASSISTANCE.—

"(A) PRESUMPTION.—Any transfer by a controlling company of an insured depository institution of assets to any affiliate that is not an insured depository institution, not more than 1 year before the insured depository institution controlled by such company defaults or receives assistance, shall be presumed to be an attempt to evade liability under this subsection and shall be invalid.

"(B) REBUTTABILITY.—If a controlling company described in subparagraph (A) transferred such assets on terms and under circumstances that would satisfy the standards of section 23B of the Federal Reserve Act as if the controlling company were a member bank, such transfer shall not be invalid under subparagraph (A).

"(C) REGULATIONS.—The Corporation may prescribe regulations to administer and carry out this paragraph."; and

(5) in paragraph (9)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively;

(B) by striking "COMMONLY CONTROLLED DEFINED.—" and inserting "DEFINITIONS.—

"(A) 'COMMONLY CONTROLLED'.—"; and

(C) by inserting at the end the following:

"(B) 'CONTROLLING COMPANY'.—For purposes of this subsection, the term 'controlling company' means any company having control of an insured depository institution.

"(13) PRESUMPTIVE SAFE HARBOR FOR CERTAIN PARTIALLY OWNED SUBSIDIARIES.—Except as otherwise provided by the Corporation, no subsidiary of an insured depository institution shall be liable under this subsection if the insured depository institution and its affiliates do not, in the aggregate, directly or indirectly control more of the subsidiary's voting shares, or have a greater aggregate ownership interest in the subsidiary, than does any 1 company not affiliated with the insured depository institution.

"(14) INSURED DEPOSITORY INSTITUTION SUBSIDIARIES.—For purposes of this subsection, other than paragraph (1)(A) the term 'insured depository institution' includes any subsidiary of an insured depository institution.".

(b) CONFORMING AMENDMENTS.—Section 5(e) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)) is amended—

(1) in subparagraph (D) of paragraph (1), as redesignated, by inserting "and controlling company" after "insured depository institution";

(2) in subparagraph (E) of paragraph (1), as redesignated—

(A) by inserting "or controlling company" after "insured depository institution"; and

(B) by striking "institution" and inserting "insured depository institution or controlling company";

(3) in paragraph (2)(A)(ii)—

(A) by striking "commonly controlled insured depository institution" and inserting "insured depository institution or controlling company"; and

(B) by striking "commonly controlled depository institution's" and inserting "insured depository institution or controlling company's";

(4) in paragraph (2)(A)(iii) by striking "commonly controlled depository institution" and inserting "insured depository institution or controlling company";

(5) in paragraph (2)(B)(i)—

(A) by inserting "or controlling company" after "insured depository institution";

(B) by striking "such institution's" and inserting "such insured depository institution's or controlling company's"; and

(C) by inserting "controlled or" before "commonly controlled";

(6) in paragraph (2)(B)(ii)—

(A) by inserting "or controlling company" after "insured depository institution";

(B) by striking "such institution's" and inserting "such insured institution's or controlling company's"; and

(C) by inserting "controlled or" before "commonly controlled";

(7) in paragraph (2)(C)—

(A) by inserting "or controlling company" after "insured depository institution"; and

(B) by inserting "or controlling company" after "the depository institution" each place such term appears;

(8) in paragraph (2)(D)—

(A) by inserting "or controlling companies" after "depository institutions" each place such term appears; and

(B) by inserting "or controlling company" after "depository institution" each place such term appears;

(9) in paragraph (3)(B), by inserting "or controlling companies" after "commonly controlled depository institutions" each place such term appears in clauses (ii) and (iii);

(10) in paragraph (4)—

(A) by inserting "or controlling company" after "insured depository institution" each place such term appears;

(B) by inserting "or company's" after "institution's"; and

(C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

(11) in paragraph (5), by striking the catchline and inserting "(5) EXEMPTIONS.—";

(12) in paragraph (5)(A) by inserting "or controlling company" after "insured depository institution";

(13) in paragraph (5)(B)—

(A) by striking "and all other" and inserting ", all other";

(B) by inserting "and all affiliated controlling companies" after "such depository institution"; and

(C) by striking "regard to" and inserting "using the exemption contained in";

(14) in paragraph (7), by striking "Any depository institution shall not be treated as commonly controlled" and inserting "An affiliate shall have no liability";

(15) in paragraph (7)(A), by striking "1 depository institution controls another" and inserting "control was acquired";

(16) in paragraph (7)(B)—

(A) by striking "the controlling bank and all other insured depository institution affiliates of such controlling bank" and inserting "all insured depository institution affiliates"; and

(B) by striking "regard to" and inserting "using the exemption contained in"; and

(17) in paragraph (8), by inserting "or controlling company" after "depository institution" the first place such term appears.

(c) EXISTING LIABILITY NOT AFFECTED.—The amendments made by this section do not affect any rights of the Corporation under section 5(e) of the Federal Deposit Insurance Act, as in effect on the day before the date of enactment of this Act.

(d) CLARIFYING GENERAL APPLICATION OF DEFINITIONS OF AFFILIATE AND SUBSIDIARY.—Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended—

(1) in subsection (w)—

(A) by striking paragraphs (4) and (5); and

(B) by redesignating paragraph (6) as paragraph (5); and

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

"(aa) SUBSIDIARY.—The term 'subsidiary'—

"(1) means any company that is owned or controlled directly or indirectly by another company; and

"(2) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

"(bb) AFFILIATE.—The term 'control' has the same meaning as in section 2 of the Bank Holding Company Act of 1956.".

SEC. 224. GRANTING DEPOSIT INSURANCE.

(a) IN GENERAL.—Section 4 of the Federal Deposit Insurance Act (12 U.S.C. 1814) is amended to read as follows:

"SEC. 4. ATTAINING INSURED STATUS.

"(a) INSURANCE PURSUANT TO CERTIFICATION BY OTHER FEDERAL BANKING AGENCY.—

"(1) IN GENERAL.—Any eligible depository institution shall become an insured depository institution when all of the following subparagraphs are satisfied:

"(A) APPLICATION.—The Corporation receives an application from the institution.

"(B) CERTIFICATE.—The Corporation receives from the certifying agency a certificate stating that—

"(i) the institution—

"(I) is authorized to transact the business of banking, in the case of a national member bank;

"(II) is a member of the Federal Reserve System, in the case of a bank described in subclause (II) or (III) of paragraph (2)(A)(ii); or

"(III) is authorized to transact business as a savings association, in the case of a Federal savings association; and

"(ii) the certifying agency has considered the factors enumerated in section 6, and determined that insuring the institution's deposits under this Act is in the public interest.

"(C) NO DENIAL.—Either—

"(i) any period for denying insurance referred to in paragraph (3)(D) expires; or

"(ii) the Corporation notifies the institution or the certifying agency in writing that the Board of Directors will not deny insurance under paragraph (3).

"(2) DENIAL OF INSURANCE BY CORPORATION.—

"(A) IN GENERAL.—The Board of Directors may, upon a vote of a majority of all members, deny insurance to any eligible depository institution if the Board determines that insuring the institution's deposits under this Act is not in the public interest.

"(B) STANDARD APPLICABLE.—In determining whether to deny insurance under subparagraph (A), the Corporation—

"(i) shall consider the factors described in paragraphs (1) through (6) of section 6; and

"(ii) shall give due deference to the certifying agency's determination with respect to those factors.

"(C) NOTICE REQUIRED.—If the Board of Directors denies insurance under subparagraph (A), the Corporation shall promptly notify the certifying agency, giving specific reasons for the denial.

"(D) DEADLINE FOR DENIAL.—The Board of Directors may deny insurance under subparagraph (A) only during the 120-day period beginning on the date on which subparagraphs (A) and (B) of paragraph (1) are satisfied, or such additional periods as the Corporation may prescribe by order.

"(3) DEFINITIONS.—For purposes of this subsection:

"(A) ELIGIBLE DEPOSITORY INSTITUTION.—The term 'eligible depository institution' means any depository institution that—

"(i) is engaged in the business of receiving deposits, other than trust funds; and

"(ii) is described in any of the following subclauses:

"(I) A national bank that is authorized to transact the business of banking.

"(II) A noninsured national nonmember bank that becomes a member of the Federal Reserve System.

"(III) A noninsured State bank that becomes a member of the Federal Reserve System (whether as a State bank or a national bank), except pursuant to section 9B of the Federal Reserve Act.

"(IV) A Federal savings association that is authorized to transact business as a savings association.

"(B) CERTIFYING AGENCY DEFINED.—The term 'certifying agency' means—

"(i) the Comptroller of the Currency, in the case of a national bank;

"(ii) the Board of Governors of the Federal Reserve System, in the case of a depository institution described in subclause (II) or (III) of subparagraph (A)(ii); and

"(iii) the Director of the Office of Thrift Supervision, in the case of a Federal savings association.

"(b) INSURANCE FOR INTERIM DEPOSITORY INSTITUTIONS.—

"(1) INTERIM FEDERAL DEPOSITORY INSTITUTIONS.—Any interim Federal depository institution that will not open for business shall become an insured depository institution when the appropriate Federal banking agency issues the interim Federal depository institution's charter.

"(2) INTERIM STATE DEPOSITORY INSTITUTIONS.—Any interim State depository institution that will not open for business shall become an insured depository institution upon approval by the appropriate Federal banking agency.

"(c) CONTINUATION OF INSURANCE.—

"(1) IN GENERAL.—Any depository institution that was an insured depository institution on the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 shall continue to be an insured depository institution after that date of enactment.

"(2) CHARTER CONVERSION.—Any depository institution that results from any of the following transactions shall continue to be an insured depository institution:

"(A) The conversion of an insured Federal depository institution to—

"(i) a State depository institution; or

"(ii) a Federal depository institution.

"(B) The conversion of an insured State depository institution to—

"(i) a Federal depository institution; or

"(ii) a State depository institution.

"(3) MERGER OR CONSOLIDATION.—Any depository institution that results from the merger or consolidation of insured depository institutions, or from the merger or consolidation of a noninsured depository institution with an insured depository institution, shall continue to be an insured depository institution.

"(4) FEDERAL RESERVE MEMBERSHIP.—Any insured depository institution that becomes a member of the Federal Reserve System, or any insured State bank that becomes a national member bank, shall continue to be an insured depository institution.".

(b) CONFORMING AMENDMENTS.—

(1) SECTION 5.—Section 5 of the Federal Deposit Insurance Act (12 U.S.C. 1815) is amended—

(A) in subsection (a)(1), by striking "(1) NATIONAL AND STATE NONMEMBER BANKS; STATE SAVINGS ASSOCIATIONS.—";

(B) in subsection (a), by striking paragraphs (2) through (7);

(C) in subsection (b)(6), by adding "and" at the end; and

(D) in subsection (b)(7), by striking "and" at the end; and

(E) in subsection (b), by redesignating paragraphs (6) and (7) as paragraphs (7) and (6), respectively.

(2) SECTION 6.—Section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816) is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (6), respectively.

SEC. 225. DISCLOSURE BY INSURED DEPOSITORY INSTITUTIONS AND THE FEDERAL BANKING AGENCIES.

(a) REPORTS OF FINANCIAL CONDITION BY INSURED DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—Section 7(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(3)) is amended—

(A) by striking "(3)" and inserting the following:

"(3) QUARTERLY REPORTS.—

"(A) IN GENERAL.—"; and

(B) by inserting after subparagraph (A) the following:

"(B) ADDITIONAL INFORMATION.—In accordance with regulations prescribed by the appropriate Federal banking agency, the report of condition required by subparagraph (A) shall, in the case of banks with total assets of more than $1,000,000,000, also contain—

"(i) to the extent feasible, estimates of the aggregate market value of assets and liabilities and the resulting estimated net worth and supporting data and assumptions used in preparing the estimates; and

"(ii) disaggregated reports of assets, including participation in highly-leveraged transactions, holdings of noninvestment grade securities, commercial and industrial loans by sector, and other assets as specified by the appropriate Federal banking agency.

"(C) REPORT ON SECURITIES HOLDERS AND NONBANKING ACTIVITIES.—Each depository institution shall submit to the appropriate Federal banking agency, concurrently with the report required by subparagraph (A), a report containing—

"(i) the names of the holders of more than 5 percent of the insured institution's equity securities and the maximum amount of securities held by each such holder during the preceding quarter; and

"(ii) a description of activities conducted by the institution and its subsidiaries that are not permitted for national banks, with data on the magnitude of the activity.

"(D) PUBLIC ACCESS TO REPORTS.—Each appropriate Federal banking agency shall make reports required under this subsection available to the public upon request pursuant to section 552 of title 5, United States Code. The provisions of paragraphs (4) and (8)

of section 552(b) of such title shall not apply to any such request. For the purpose of this subparagraph, beginning 75 days after the reporting date for such reports, section 552(a)(6)(A) of such title shall apply with respect to statistical information contained in those reports by substituting 'five' for 'ten' and section 552(a)(6)(B) shall not apply.".

(2) EFFECTIVE DATES.—The appropriate Federal banking agency shall promulgate final regulations requiring insured depository institutions to submit quarterly reports containing the information described in the amendments made by paragraph (1) effective for quarterly reports submitted for the quarter ending March 31, 1993.

(b) DISCLOSURE GUIDELINES.—The Federal Financial Institutions Coordination Council, in consultation with the Securities and Exchange Commission, shall facilitate the development of disclosure guidelines to carry out section 7(a)(3) of the Federal Deposit Insurance Act, as amended by subsection (a).

(c) REPORTS BY FEDERAL BANKING AGENCIES.—

(1) IN GENERAL.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by—

(A) redesignating subsections (b) through (g) as subsections (c) through (h); and

(B) inserting after subsection (a) the following new subsection:

"(b) REPORTS TO CONGRESS.—

"(1) IN GENERAL.—Each of the Federal banking agencies shall submit an annual report to the Congress which shall contain, for all insured depository institutions for which the agency is the appropriate Federal banking agency—

"(A) estimates of the number and aggregate assets of institutions likely to fail during each of the 2 years following submission of the report and of the costs to the deposit insurance funds as a result of such failures, and supporting data and assumptions used in preparing the estimates;

"(B) a report on the conduct by institutions and their subsidiaries of activities not permitted for national banks or for bank holding companies, by State and Federal charter status;

"(C) a list of all cease-and-desist orders, supervisory agreements, and capital restoration plans entered into in the previous 12 months, and an analysis of the extent of compliance with outstanding orders, agreements, and plans; and

"(D) a report on the number and aggregate assets of institutions that are insolvent and insured depository institutions that are—

"(i) critically undercapitalized;

"(ii) significantly undercapitalized;

"(iii) undercapitalized;

"(iv) adequately capitalized; and

"(v) well capitalized,

assigning each institution to the single capital category that best describes the institution in accordance with the definitions established under section 37(b).

"(2) METHOD OF FILING.—Reports required by this subsection shall be submitted to the Congress in accordance with the requirements of subsection (a)(2) and shall be made available to the public.".

(2) EFFECTIVE DATE.—The reports required pursuant to the amendments made by paragraph (1) shall be filed annually, not later than June 1 of the following year.

(d) INSURANCE FUND REPORTS.—Section 17(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1827(a)(1)) is amended by—

(1) striking "and" at the end of subparagraph (E);

(2) striking the period at the end of subparagraph (F), and inserting a semicolon; and

(3) inserting after subparagraph (F) the following:

"(G) information pertaining to failed depository institutions, including—

"(i) the name and total assets of each insured depository institution that failed during the 12-month period preceding submission of the report, including those that received assistance under section 13(c), and the actual or estimated cost of resolution or assistance to each such depository institution;

"(ii) for each failed institution, the location by State, the State or Federal charter status, and Federal Reserve System membership status;

"(iii) a breakdown of the number and aggregate assets of all failed institutions by region, State or Federal charter status, and Federal Reserve System membership status; and

"(iv) a description of concentrations of liabilities and assets of failed institutions, including a breakdown by State or Federal charter status, and Federal Reserve System membership status;

"(H) the number and aggregate assets of depository institutions on the problem bank list or any similar list that identifies institutions that may fail or require assistance or resolution within the foreseeable future, by State or Federal charter status and Federal Reserve System membership status, at the time of submission of the report;

"(I) an estimate of the number and aggregate assets of institutions that are likely to be included on the problem bank list or other list described in subparagraph (H) in each of the 2 years following submission of the report, by State or Federal charter status and Federal Reserve System membership status, and supporting data and assumptions used in preparing the estimate; and

"(J) the estimated resolution and assistance costs which are likely to be expended in each of the 2 years following submission of the report,

including an explanation of all data and assumptions used in developing estimates required by this paragraph.".

(e) CONFIDENTIAL ACCESS TO INFORMATION BY CBO; GAO AND CBO REVIEWS AND REPORTS.—

(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

"SEC. 39. REVIEW OF ESTIMATES; CONFIDENTIAL ACCESS TO CERTAIN INFORMATION.

"(a) IN GENERAL.—The Comptroller General and the Congressional Budget Office shall review the estimates by the Corporation under subparagraphs (I) and (J) of section 17(a)(1) and by the appropriate Federal banking agencies under section 17(b)(1)(A).

"(b) ACCESS TO INFORMATION.—To carry out subsection (a), each appropriate Federal banking agency shall, upon request, provide the Director of the Congressional Budget Office—

"(1) the agency's internal rating system and each institution's rating; and

"(2) a list, identifying individual insured institutions, of those institutions which the agency believes may fail within the foreseeable future or which the agency believes may require assistance or resolution.

"(c) SAFEGUARDS AGAINST DISCLOSURE.—The provisions of subsections (c) and (d) of section 714 of title 31, United States Code, shall apply to any information provided in response to a request made by the Director of the Congressional Budget Office under subsection (b), except that for the purpose of this section any reference in such subsections to the Comptroller General or the General Accounting Office shall be deemed to be a reference to the Director of the Congressional Budget Office.".

(2) CRIMINAL PENALTIES FOR DISCLOSURE BY CBO EMPLOYEES.—Section 1906 of title 18, United States Code, is amended—

(A) by inserting "or a Congressional Budget Office employee with access to information obtained under section 39 of the Federal Deposit Insurance Act" after "title 31" the first place it appears; and

(B) by inserting "or to which information obtained under such section 37 pertains" after "title 31" the second place it appears.

(3) REVIEWS AND REPORTS.—Section 17(g) of the Federal Deposit Insurance Act (12 U.S.C. 1827(g)), as redesignated by subsection (b)(1)(A), is amended—

(A) by inserting "(1)" after "(g)"; and

(B) by adding at the end the following:

"(2) The Comptroller General shall review the oversight of insured depository institutions by the Federal banking agencies to determine whether reports of conditions under section 7(a) require information to reasonably reflect the condition of institutions. The Comptroller General shall include in each report under paragraph (1) the results of such review and any recommendations to improve the reports so that—

"(A) the information required reasonably reflects the condition of depository institutions; and

"(B) the information provided facilitates regulatory actions, including prompt corrective action.

"(3) Each report under paragraph (1) shall also contain—

"(A) an audit of the failure estimates contained in the most recent reports under subparagraphs (I) and (J) of subsection (a)(1); and

"(B) an audit of the failure estimates contained in the most recent reports under subsection (b)(1).".

(f) THRIFT CALL REPORTS.—Section 5(v) of the Home Owners' Loan Act (12 U.S.C. 1464(v)) is amended—

(1) by amending paragraph (2) to read as follows:

"(2) PUBLIC DISCLOSURE.—Reports required under paragraph (1) and all information contained therein shall be available to the public upon request.";

(2) by striking paragraph (3); and

(3) by redesignating paragraphs (4) through (8) as paragraphs (3) through (7), respectively.

(g) FDIC ANNUAL AUDIT.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by striking subsections (e) through (h), as redesignated under section 219(b), and inserting the following:

"(e) AUDIT.—

"(1) IN GENERAL.—An annual audit of the financial transactions of the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, administered and maintained by the Corporation, shall be conducted, and reports on such audit shall be issued, in accordance with sections 9105 and 9106 of title 31, United States Code.

"(2) RECAPITALIZATION AUDIT.—An audit of the Corporation's compliance with any recapitalization schedule promulgated under subsection (b)(1)(C) that is in effect at the time of the audit required under paragraph (1) shall be made as part of such audit.

"(f) REPORT OF AUDIT.—A copy of the report on each audit conducted under sub-

section (d) shall be provided to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at the time that it is provided to the Corporation.".

(h) GOVERNMENT CORPORATION TREATMENT.—Section 21A(b)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(2)) is amended by striking "9105, 9107," and inserting "9107".

(i) RTC AUDIT COSTS.—Section 21A(k)(1)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1441(k)(1)(A)) is amended by adding at the end the following: "The Corporation shall reimburse the Comptroller General for the full cost of any audit conducted under this paragraph, as determined by the Comptroller General. All reimbursements received under this paragraph by the Comptroller General shall be deposited in the Treasury as miscellaneous receipts.".

(j) RESOLUTION FUNDING CORPORATION AUDIT.—Section 21B(i)(2)(C) of the Federal Home Loan Bank Act (12 1441b(i)(2)(C)) is amended by inserting "or an independent external auditor" after "Comptroller General".

(k) ADDITIONAL REPORTS.—Section 17 of the Federal Deposit Insurance Act (12 U.S.C. 1827) is amended by adding at the end the following new subsection:

"(h) ADDITIONAL REPORTS.—

"(1) IN GENERAL.—In addition to the reports required under subsections (a), (b), and (c) of this section, the Corporation shall submit to the Congress not later than October 31 of each year, the annual report on the activities and efforts of the Corporation.

"(2) CONTENTS OF REPORT.—Each annual report required under paragraph (1) shall include the following information with respect to the Corporation's assets and liabilities and to the assets and liabilities of institutions for which the Corporation serves as a receiver or conservator:

"(A) A statement of the total book value of all assets held or managed by the Corporation at the beginning and end of the reporting period.

"(B) A statement of the total book value of such assets which are under contract to be managed by private persons and entities at the beginning and end of the reporting period.

"(C) The number of employees of the Corporation at the beginning and end of the reporting period.

"(D) The total amounts expended on employee wages, salaries, and overhead, during such period which are attributable to—

"(i) contracting with, supervising, or reviewing the performance of private contractors, or

"(ii) managing or disposing of such assets.

"(E) A statement of the total amount expended on private contractors for the management of such assets.

"(F) A statement of the efforts of the Corporation to maximize the efficient utilization of the resources of the private sector during the reporting period and in future reporting periods and a description of the policies and procedures adopted to ensure adequate competition and fair and consistent treatment of qualified third parties seeking to provide services to the Corporation.".

SEC. 226. CONSENT TO BE BOUND BY THE FEDERAL DEPOSIT INSURANCE ACT.

Section 1 of the Federal Deposit Insurance Act (12 U.S.C. 1811) (as amended by section 201) is amended by adding at the end the following new subsection:

"(c) INSURED DEPOSITORY INSTITUTIONS CONSENT TO BE BOUND BY THIS ACT.—By becoming or remaining insured under this Act, an insured depository institution consents to be bound by this Act and by other Federal statutes relating to the safety and soundness of insured depository institutions.".

SEC. 227. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURER; DISCLOSURE BY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.—

(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 40. DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

"(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURERS.—

"(1) AUDIT REQUIRED.—Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing procedures and generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

"(2) PROVIDING COPIES OF AUDIT REPORT.—

"(A) PRIVATE DEPOSIT INSURER.—The private deposit insurer shall provide a copy of the audit report—

"(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; and

"(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed.

"(B) DEPOSITORY INSTITUTION.—Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

"(b) DISCLOSURE REQUIRED.—Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

"(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or similar instrument evidencing a deposit a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

"(2) ADVERTISING; PREMISES.—Include conspicuously in all advertising and at each place where deposits are normally received a notice that the institution is not federally insured.

"(3) ACKNOWLEDGMENT OF RISK.—Receive deposits only for the account of persons who have signed a written acknowledgment that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that they will get back their money.

"(c) MANNER AND CONTENT OF DISCLOSURE.—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section.

"(d) EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.—The Federal Trade Commission may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than $100,000 from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

"(e) ELIGIBILITY FOR FEDERAL DEPOSIT INSURANCE.—

"(1) IN GENERAL.—Except as permitted by the Federal Trade Commission, in consultation with the Federal Deposit Insurance Corporation, no depository institution (other than a bank, including an unincorporated bank) lacking Federal deposit insurance may use the mails or any instrumentality of interstate commerce to receive or facilitate receiving deposits, unless the appropriate supervisor of the State in which the institution is chartered has determined that the institution meets all eligibility requirements for Federal deposit insurance, including—

"(A) in the case of an institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act, all eligibility requirements set forth in the Federal Credit Union Act and regulations of the National Credit Union Administration; and

"(B) in the case of any other institution, all eligibility requirements set forth in this Act and regulations of the Corporation.

"(2) AUTHORITY OF FDIC AND NCUA NOT AFFECTED.—No determination under paragraph (1) shall bind, or otherwise affect the authority of, the National Credit Union Administration or the Corporation.

"(f) DEFINITIONS.—For purposes of this section:

"(1) APPROPRIATE SUPERVISOR.—The 'appropriate supervisor' of a depository institution means the agency primarily responsible for supervising the institution.

"(2) DEPOSITORY INSTITUTION.—The term 'depository institution' includes—

"(A) any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

"(B) any entity that, as determined by the Federal Trade Commission—

"(i) is engaged in the business of receiving deposits; and

"(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

"(3) LACKING FEDERAL DEPOSIT INSURANCE.—A depository institution lacks Federal deposit insurance if the institution is not either—

"(A) an insured depository institution; or

"(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act.

"(4) PRIVATE DEPOSIT INSURER.—The term 'private deposit insurer' means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

"(g) ENFORCEMENT.—Compliance with the requirements of this section, and any regulation prescribed or order issued under this section, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.".

(2) EFFECTIVE DATES.—Section 40 of the Federal Deposit Insurance Act (as added by paragraph (1)) shall become effective on the date of enactment of this Act, except that—

(A) paragraphs (1) and (2) of subsection (b) shall become effective 1 year after the date of enactment of this Act;

(B) during the period beginning 1 year after that date of enactment of this Act and ending 30 months after that date of enactment, subsection (b)(1) shall apply with ", and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money" omitted;

(C) subsection (e) shall become effective 2 years after that date of enactment; and

(D) subsection (b)(3) shall become effective 30 months after that date of enactment.

(3) CONFORMING AMENDMENT TO FEDERAL DEPOSIT INSURANCE ACT.—Effective 1 year after the date of enactment of this Act, section 28 of the Federal Deposit Insurance Act (12 U.S.C. 1831e) is amended—

(A) by striking subsection (h); and

(B) by redesignating subsection (i) as subsection (h).

(b) VIABILITY OF PRIVATE DEPOSIT INSURERS.—

(1) DEADLINE FOR INITIAL INDEPENDENT AUDIT.—The initial annual audit under section 40 (a)(1) of the Federal Deposit Insurance Act (as added by subsection (a)) shall be completed not later than 120 days after the date of enactment of this Act.

(2) BUSINESS PLAN REQUIRED.—Not later than 240 days after the date of enactment of this Act, any private deposit insurer shall provide a business plan to each appropriate supervisor of each State in which deposits are received by any depository institution lacking Federal deposit insurance the deposits of which are insured by a private deposit insurer. The business plan shall explain in detail why the private deposit insurer is viable, and shall, at a minimum—

(A) describe the insurer's—

(i) underwriting standards;

(ii) resources, including trends in and forecasts of assets, income, and expenses;

(iii) risk-management program, including examination and supervision, problem case resolution, and remedies; and

(B) include, for the preceding 5 years, copies of annual audits, annual reports, and annual meeting agendas and minutes.

(3) DEFINITIONS.—For purposes of this subsection, the terms "appropriate supervisor", "deposit", "depository institution", and "lacking Federal deposit insurance" have the same meaning as in section 40(f) of the Federal Deposit Insurance Act (as added by subsection (a)).

SEC. 228. UNINSURED WHOLESALE BANKS.

(a) VOLUNTARILY TERMINATING INSURED STATUS.—

(1) SECTION 8 DESIGNATIONS.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(A) in the section heading, by inserting "**involuntary**" after "**sec. 8.**"; and

(B) in subsection (a)—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively.

(2) VOLUNTARILY TERMINATING INSURED STATUS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting after section 8 the following new section:

"SEC. 8A. VOLUNTARILY TERMINATING STATUS AS INSURED DEPOSITORY INSTITUTION.

"(a) IN GENERAL.—Except as provided in subsection (b), an insured bank may, in accordance with regulations of the Corporation, voluntarily terminate its status as an insured depository institution if the institution provides written notice of its intent to terminate its insured status—

"(1) to the Corporation, not less than 6 months before the effective date of the termination; and

"(2) to its depositors, not less than 6 months before the effective date of the termination.

"(b) EXCEPTION.—The option to terminate insured status under subsection (a) shall not be available to—

"(1) an insured savings association;

"(2) an insured branch that is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978; or

"(3) any institution described in section 2(c)(2) of the Bank Holding Company Act of 1956.

"(c) ELIGIBILITY FOR INSURANCE TERMINATED.—A depository institution that voluntarily elects to terminate its insured status under subsection (a) shall not receive insurance any of its deposits or any other assistance authorized under this Act after the period specified in subsection (e)(1).

"(d) INSTITUTION MUST BECOME UNINSURED STATE MEMBER BANK OR TERMINATE DEPOSIT-TAKING ACTIVITIES.—Any institution that voluntarily terminates its status as an insured depository institution under this section may not, upon termination of insurance, accept any deposits unless the institution is an uninsured State member bank under section 9B of the Federal Reserve Act.

"(e) EXIT FEES.—

"(1) IN GENERAL.—Any institution that voluntarily terminates its status as an insured depository institution under this section shall pay an exit fee in an amount that the Corporation determines is sufficient to account for the institution's pro rata share of contingent and other liabilities of the relevant deposit insurance fund.

"(2) PROCEDURES.—The Corporation shall, by regulation, prescribe procedures for assessing any exit fee under this subsection.

"(f) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—

"(1) TRANSITION PERIOD.—The insured deposits of each depositor in an insured bank on the effective date of the voluntary termination of the institution's insured status, less all subsequent withdrawals from any deposits of such depositor, shall continue to be insured for a period of not less than 6 months nor more than 2 years, within the discretion of the Corporation. During that period, no additions to any such deposits, and no new deposits in the depository institution made after the effective date of the termination, shall be insured by the Corporation, and no early withdrawal penalties shall be charged on insured deposits with a term that exceeds the transition period provided by the Corporation under this paragraph.

"(2) TEMPORARY ASSESSMENTS; OBLIGATIONS AND DUTIES.—During the period specified in paragraph (1), a depository institution shall—

"(A) continue to pay assessments required under this Act as if it were an insured depository institution;

"(B) be subject to the authority of the Corporation and the duties and obligations of an insured depository institution under this Act; and

"(C) if the depository institution is closed due to an inability to meet the demands of its depositors, be subject to the same powers and rights of the Corporation with respect to the institution as in the case of an insured depository institution.

"(g) ADVERTISING.—

"(1) IN GENERAL.—An insured bank that voluntarily terminates its insured status under this section shall not advertise or hold itself out as having insured deposits, except that it may advertise the temporary insurance of deposits under subsection (f) if in the same connection, it shall also state with equal prominence—

"(A) that additions to deposits and new deposits made after the effective date of the termination are not insured; and

"(B) the date on which all insurance will terminate, as determined under subsection (f)(1).

"(2) CERTIFICATES OF DEPOSIT, OBLIGATIONS, AND SECURITIES.—Any certificate of deposit or other obligation or security issued by an insured bank after the effective date of the voluntary termination of its insured status under this section shall include a conspicuous notice that the instrument is not insured under this Act.

"(h) NOTICE REQUIREMENTS.—

"(1) NOTICE TO THE CORPORATION.—The notice to the Corporation of an institution's intent to terminate its insured status required under subsection (a) shall be in such form as the Corporation may require.

"(2) NOTICE TO DEPOSITORS.—The notice to depositors of an institution's intent to terminate its insured status required under subsection (a) shall be—

"(A) at such depositor's last address of record with the institution; and

"(B) in such manner and form as the Corporation finds to be necessary and appropriate to protect depositors.".

(3) APPROPRIATE FEDERAL BANKING AGENCY.—Section 3(q)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(2)(A)) is amended by inserting "and any uninsured State member bank" before the comma.

(b) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—

(1) EXEMPTION.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

"(j) SPECIAL EXEMPTION FOR HOLDING COMPANIES OF UNINSURED BANKS.—

"(1) EXEMPTION.—Except as provided in paragraph (2), if all of a bank holding company's subsidiary depository institutions are uninsured State member banks, as provided in section 9B of the Federal Reserve Act, that bank holding company may, notwithstanding subsection (a), acquire or retain direct or indirect ownership or control of—

"(A) shares of securities firms;

"(B) shares described in paragraphs (1) through (7) and (9) through (14) of subsection (c); and

"(C) shares of any company, the activities of which the Board, by regulation or order, has determined to be—

"(i) closely related to banking under subsection (c)(8); or

"(ii) financial, and appropriate for a bank holding company that is subject to this subsection.

"(2) SAVINGS PROVISION.—In the case of a bank holding company having control of any bank that voluntarily terminates its insured status under section 8A of the Federal Deposit Insurance Act, paragraph (1) shall not apply before the date on which all of the deposits of such bank cease to be insured in accordance with the transition period described in section 8A(f)(1) of the Federal Deposit Insurance Act.

"(3) APPROVAL REQUIRED.—

"(A) IN GENERAL.—The acquisition or retention of shares referred to in paragraph (1)(B) shall be subject to the same requirements, including any applicable Board approval or review, as would be applicable to a bank holding company that does not own any uninsured State member banks;

"(B) NONBANKING ACTIVITIES.—

"(i) PRIOR NOTICE REQUIRED.—No acquisition may be made under subparagraph (A) or (C) of paragraph (1) unless the company has provided the Board not less than 60 days prior written notice of the transaction, and during that period, the Board has not disapproved the transaction.

"(ii) EXTENSION FOR NEW ACTIVITIES.—Notwithstanding clause (i), in any case involving an activity for which the Board has not yet made a determination under paragraph (1)(C), the Board may extend the disapproval period for not more than an additional 90 days.

"(4) LIMITATION ON AFFILIATION OF UNINSURED STATE MEMBER BANKS AND OTHER DEPOSIT-TAKING INSTITUTIONS.—No uninsured State member bank may be an affiliate of—

"(A) any bank, other than an uninsured State member bank;

"(B) any savings association;

"(C) any institution described in section 2(c)(2); or

"(D) any institution that accepts initial deposits of $100,000 or less, other than—

"(i) on an incidental basis; and

"(ii) if the deposits—

"(I) are not insured under the Federal Deposit Insurance Act; and

"(II) are not more than 5 percent of the institution's total deposits.".

(2) DEFINITIONS.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 184) is amended—

(A) by adding at the end the following:

"(n) UNINSURED STATE MEMBER BANK.—For purposes of this Act, the term 'uninsured State member bank' means any institution that is an uninsured State member bank in accordance with section 9B of the Federal Reserve Act."; and

(B) in subsection (c)(1), by adding at the end the following:

"(C) An uninsured State member bank.".

(c) EXEMPTIONS FOR NONINSURED BANKS AND THEIR AFFILIATES.—

(1) MCFADDEN ACT.—Section 5155(h) of the Revised Statutes (12 U.S.C. 36(h)) is amended by adding at the end the following: "For purposes of this section, such terms shall not include banks that have voluntarily terminated their insured status under section 8A of the Federal Deposit Insurance Act, effective upon the expiration of the transition period provided for in subsection (f)(1) of such section.".

(2) BANKING ACT OF 1933.—Section 32 of the Banking Act of 1933 (12 U.S.C. 78) is amended by adding at the end the following: "This section does not prohibit any officer, director, partner, employee, or individual described in the preceding sentence from serving at the same time as an officer, director, or employee of an uninsured State member bank, as defined in section 9B of the Federal Reserve Act.".

(3) INSURED BANKS.—Section 3(e) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(e)) is amended by adding at the end the following: "This subsection does not apply to an uninsured State member bank that is controlled by a company that controls no banks other than uninsured State member banks.".

(d) UNINSURED STATE MEMBER BANKS.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

"SEC. 9B. UNINSURED STATE MEMBER BANKS.

"(a) APPLICATION FOR MEMBERSHIP AS UNINSURED STATE MEMBER BANK.—

"(1) APPLICATION REQUIRED.—Any bank organized under the general laws of any State, or incorporated by special law of any State, may apply to the Board of Governors of the Federal Reserve System to subscribe to the stock of the Federal Reserve bank organized within the district where the applying bank is located as an uninsured State member bank. Such application shall be treated as an application under, and shall be subject to, section 9.

"(2) APPROVAL OF MEMBERSHIP.—No bank may become an uninsured State member bank unless—

"(A) the Board has approved an application by the bank, under such regulations and subject to such restrictions or requirements as the Board may prescribe, to be an uninsured State member bank; and

"(B) in the case of a bank that is insured under the Federal Deposit Insurance Act, the bank has met all requirements under that Act for voluntary termination of deposit insurance.

"(b) GENERAL REQUIREMENTS APPLICABLE TO UNINSURED STATE MEMBER BANKS.—

"(1) FEDERAL RESERVE ACT.—Except as otherwise provided in this section, uninsured State member banks shall be member banks and shall be subject to the provisions of this Act that apply to member banks to the same extent and in the same manner as State member insured banks, except that an uninsured State member bank may terminate membership under this Act only with the Board's prior written approval, and on terms and conditions that the Board determines are appropriate to carry out this Act.

"(2) PROMPT CORRECTIVE ACTION.—An uninsured State member bank shall be deemed to be an insured depository institution for purposes of section 37 of the Federal Deposit Insurance Act except that—

"(A) the relevant capital levels and capital measures for each capital category shall be those specified by the Board for uninsured State member banks under subsection (c);

"(B) the provisions applicable to well-capitalized insured depository institutions shall be inapplicable to uninsured State member banks;

"(C) the provisions authorizing or requiring a receiver to be appointed for an institution shall not apply to an uninsured State member bank, and the Board is authorized or required (as the case may be) to terminate the uninsured State member bank's membership in the Federal Reserve System; and

"(D) for purposes of applying section 37 of the Federal Deposit Insurance Act to uninsured State member banks, all references in that section to the appropriate Federal banking agency or to the Corporation shall be deemed to be references to the Board.

"(3) ENFORCEMENT AUTHORITY.—Subsections (j) and (k) of section 7, subsections (b) through (n), (s), (u), and (v) of section 8, and section 19 of the Federal Deposit Insurance Act shall apply to an uninsured State member bank in the same manner and to the same extent as they apply to State member insured banks.

"(4) INTERNATIONAL LENDING SUPERVISION ACT.—For purposes of the International Lending Supervision Act, an uninsured State member bank shall be deemed to be a banking institution and the Board shall be the appropriate Federal banking agency for the bank and all of its affiliates.

"(5) BANK MERGER ACT.—An uninsured State member bank shall be subject to the Bank Merger Act in the same manner and to the same extent as if the uninsured State member bank were a State member insured bank.

"(c) SPECIFIC REQUIREMENTS APPLICABLE TO UNINSURED STATE MEMBER BANKS.—

"(1) LIMITATIONS ON DEPOSITS.—

"(A) MINIMUM AMOUNT.—Pursuant to regulations of the Board, no uninsured State member bank shall receive initial deposits of $100,000 or less, other than—

"(i) on an incidental basis; and

"(ii) if such deposits are not more than 5 percent of the institution's total deposits.

"(B) NO DEPOSIT INSURANCE.—Deposits at an uninsured State member bank are not insured deposits under the Federal Deposit Insurance Act.

"(C) ADVERTISING AND DISCLOSURE.—The Board shall prescribe regulations pertaining to advertising and disclosure by uninsured State member banks to ensure that such a bank notifies each depositor that deposits at the uninsured State member bank are not insured or otherwise guaranteed by the United States Government.

"(2) SPECIAL CAPITAL REQUIREMENTS APPLICABLE TO UNINSURED STATE MEMBER BANKS.—

"(A) MINIMUM CAPITAL LEVELS.—

"(i) IN GENERAL.—The Board shall, by regulation, adopt capital requirements for uninsured State member banks. The capital levels for uninsured State member banks shall be sufficiently higher than the capital levels for State member insured banks—

"(I) to account for the status of uninsured State member banks as institutions that accept deposits that are not insured under the Federal Deposit Insurance Act; and

"(II) to provide for the safe and sound operation of the uninsured State member bank without undue risk to creditors or other persons, including Federal Reserve banks, engaged in transactions with the bank.

"(ii) RELEVANT CAPITAL MEASURES.—The relevant capital measures for uninsured State member banks shall be the relevant capital measures described in section 37(c) of the Federal Deposit Insurance Act, except that the Board may specify different relevant capital measures applicable to uninsured State member banks than those applicable to insured depository institutions, as the Board determines appropriate to carry out this Act.

"(iii) MINIMUM LEVERAGE RATIO.—The minimum ratio of tangible equity to total assets of uninsured State member banks shall be not less than 150 percent of the corresponding ratio for insured State member banks.

"(B) CAPITAL CATEGORIES FOR PROMPT CORRECTIVE ACTION.—

"(i) IN GENERAL.—For purposes of applying section 37 of the Federal Deposit Insurance Act, the Board shall, by regulation, establish, for each relevant capital measure specified by the Board under subparagraph (A)(ii), the levels at which an uninsured State member bank is adequately capitalized, undercapitalized, and significantly undercapitalized by reference to the relevant minimum capital levels established for uninsured State member banks.

"(ii) CRITICAL CAPITAL LEVEL.—The Board shall, by regulation, establish the critical capital level for uninsured State member banks for purposes of section 37 of the Federal Deposit Insurance Act. The ratio shall not be less than 150 percent of the corresponding ratio for insured State member banks.

"(3) NONINTEREST-BEARING DEPOSIT.—Each uninsured State member bank shall maintain on deposit at the Federal Reserve bank in the district in which the member bank is located, a noninterest-bearing deposit in such amount of the uninsured State member bank's total deposits as the Board may prescribe. That deposit shall be in addition to any reserve, clearing balance, or liquidity requirements otherwise applicable to the uninsured State member bank.

"(4) ADDITIONAL REQUIREMENTS APPLICABLE TO UNINSURED STATE MEMBER BANKS.—In addition to any requirements otherwise applicable to State member banks or otherwise applicable under this section, the Board may, by regulation or order, for uninsured State member banks—

"(A) establish a special discount rate above the rate applicable to insured depository institutions;

"(B) limit transactions with affiliates to prevent an affiliate from gaining access to, or the benefits of, credit (including overdrafts) from a Federal Reserve bank;

"(C) establish special clearing balance requirements;

"(D) limit the availability and use of credit, and on the frequency of borrowing, from a Federal Reserve bank, including limitations or prohibitions on overdrafts at a Federal Reserve bank;

"(E) limit or condition the use of payment or payment-related services obtained from any Federal Reserve bank; and

"(F) establish any additional requirements that the Board determines to be appropriate or necessary to—

"(i) promote the safety and soundness of the uninsured State member bank, or

"(ii) protect creditors and other persons, including Federal Reserve banks, engaged in transactions with the uninsured State member bank.

"(5) EXEMPTIONS FOR UNINSURED STATE MEMBER BANKS.—The Board may, by regulation or order, exempt any uninsured State member bank from any provision applicable to a State member bank that is not an uninsured State member bank, provided that the Board finds that such exemption is not inconsistent with—

"(i) promoting the safety and soundness of the uninsured State member bank, and

"(ii) protecting creditors and other persons, including Federal Reserve banks, engaged in transactions with the uninsured State member bank.

"(6) NO EFFECT ON OTHER PROVISIONS.—This section shall not be construed to limit the Board's authority over member banks under any other provision of law, or to create any obligation for any Federal Reserve bank to make, increase, renew, or extend any advance or discount under this Act to any member bank or other depository institution.

"(d) CONSERVATORSHIP AUTHORITY.—The Board may appoint a conservator to take possession and control of an uninsured State member bank to the same extent and in the same manner as the Comptroller of the Currency is authorized to appoint a conservator for a national bank under section 203 of the Bank Conservation Act.

"(e) DEFINITIONS.—For purposes of this section—

"(1) the term 'uninsured State member bank' means a bank whose application to become an uninsured State member bank has been approved by the Board of Governors of the Federal Reserve System under this section; and

"(2) the term 'State member insured bank' means a State member bank, the deposits of which are insured under the Federal Deposit Insurance Act.".

SEC. 229. STUDY AND REPORT ON CORE BANKING.

(a) CONGRESSIONAL COMMISSION ON CORE BANKING.—The Speaker of the House of Representatives and the Majority Leader of the Senate, in consultation with the Minority Leaders of the House and the Senate, shall appoint a Congressional Commission on Core Banking (hereinafter referred to as the "Commission") to review all major policy issues regarding core banking in order to assist the Congress in evaluating the potential effect of core banking proposals.

(b) MEMBERSHIP.—The Commission shall consist of 9 members, 5 to be appointed by the Speaker of the House of Representatives, and 4 to be appointed by the Majority Leader of the Senate. The Commission shall include—

(1) 1 representative each from the Department of the Treasury, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation;

(2) 1 representative of organizations whose members consist of depository institutions insured by the Federal Deposit Insurance Corporation;

(3) 1 representative of consumer and public interest groups whose members are customers of such institutions;

(4) 3 independent banking experts; and

(5) 1 representative of the private sector who shall be designated Chairman of the Commission.

(c) PURPOSE OF THE COMMISSION.—The Commission shall evaluate the potential effect of core banking proposals on—

(1) the health and profitability of banks;

(2) limiting the scope of deposit insurance;

(3) the Bank Insurance Fund;

(4) credit availability;

(5) risk-taking;

(6) the flow of funds through banks, lending and loan losses, and deposit and loan spreads;

(7) industry consolidation; and

(8) institution size.

(d) CORE BANKING PROPOSALS DEFINED.—For purposes of this section, the Commission shall examine core banking proposals that include—

(1) limits on the interest rates that may be paid on deposits;

(2) limits on loans to 1 borrower that are more stringent than the limits under current law;

(3) net exposure limits; and

(4) changes in the bank holding company structure necessary to implement core banking.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to the President and the Congress with recommendations regarding core banking proposals.

(f) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 230. PRIORITY OF CLAIMS.

(a) IN GENERAL.—Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following:

"(s) PRIORITY OF CERTAIN CLAIMS.—

"(1) IN GENERAL.—Subject to paragraph (2), in any proceeding brought by the Corporation, any claim acquired under this section or section 12 or 13 against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other person employed by or providing services to an insured depository institution shall have priority over any claim against that person by a depositor, creditor, or shareholder of the insured depository institution other than a claim by another Federal agency or the United States.

"(2) NOTIFICATION.—

"(A) IN GENERAL.—If the Corporation receives written notice that a depositor, creditor, or shareholder of an insured depository institution has asserted a claim in a proceeding described in paragraph (1), a claim of the Corporation shall not have priority under paragraph (1) unless the Corporation—

"(i) not later than 180 days after receiving the notice (or if the Corporation acquires its claim after receipt of the notice, not later than 180 days after acquiring the claim)—

"(I) files with the court a statement that the Corporation intends to pursue its claim; and

"(II) diligently pursues that claim; and

"(ii) files suit not later than 1 year after receiving the notice (or, if the Corporation acquires its claim after receiving the notice, not later than 1 year after acquiring the claim), unless the court extends that period in accordance with subparagraph (B).

"(B) REQUESTS FOR EXTENSIONS.—

"(i) IN GENERAL.—At the Corporation's request, the court shall extend the period for the Corporation to file suit, unless the court finds that granting the extension would result in prejudice to a person's ability to prove the person's claim that would outweigh any harm to the Government resulting from denial of the extension.

"(ii) CONSIDERATION OF CORPORATION'S DILIGENCE.—In making a finding under clause (i), the court shall consider the Corporation's diligence in investigating its claim.

"(3) EFFECT OF PRIORITY.—

"(A) IN GENERAL.—The Corporation's priority shall apply to—

"(i) the prosecution of any suit, claim, or cause of action; and

"(ii) the execution of any judgment resulting from that claim.

"(B) LIMITATION.—Paragraph (1) does not give the Corporation priority as to an asset adjudicated to be unavailable to satisfy any judgment resulting from the Corporation's claim.".

(b) APPLICABILITY.—The amendment made by subsection (a) shall not apply to any claim of a depositor, creditor, or shareholder commenced before the date of enactment of this Act.

SEC. 231. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) one of the primary purposes of banking legislation is to restore the confidence of the American public in the soundness and equity of the United States banking system;

(2) public confidence in the soundness of the Bank Insurance Fund has been shaken by a Congressional Budget Office estimate that by the close of 1993, bank failures among large banks will cost the insurance fund approximately $15,000,000,000, compared to a $5,000,000,000 cost for the failures among small banks;

(3) public confidence in the equity of the deposit insurance system has been shaken by the too-big-to-fail policy—a policy which granted less Federal protection to the depositors in smaller banks, such as the Freedom National Bank in Harlem, than to depositors in larger banks, such as the Bank of New England;

(4) public confidence in the soundness and equity of the deposit insurance system has been shaken by the United States Government's practice of covering foreign deposits with Federal deposit insurance but not assessing those deposits with deposit insurance premiums;

(5) this practice has resulted in smaller community banks being charged deposit insurance premiums on a higher percentage of their deposit base than their larger competitors;

(6) foreign deposits are not insured deposits under the Federal Deposit Insurance Act; and

(7) this Act take important steps to address the too-big-to-fail policy and to end the unauthorized coverage of unassessed foreign deposits.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that any final banking legislation should make it clear that foreign depos-

its are not covered by deposit insurance unless those deposits are assessed for that coverage.

SEC. 232. DISCLOSURE OF CERTAIN INFORMATION.

(a) PUBLIC AVAILABILITY OF EXAMINATION INFORMATION.—

(1) IN GENERAL.—Each appropriate banking agency shall make available to the public copies of reports of all examinations of each failed depository institution that received funds, as defined in subsection (e), or of a holding company of such institution, that was performed by that banking agency or its predecessor, during the 5-year period preceding the transfer, failure, or receipt of funds. Each appropriate banking agency other than the National Credit Union Administration Board shall consult with the Federal Deposit Insurance Corporation or the Resolution Trust Corporation prior to making such reports available to the public.

(2) DELAY OF PUBLICATION.—

(A) THREATS TO SAFETY OR SOUNDNESS OF INSTITUTION.—If the appropriate banking agency makes a determination in writing that release of an examination report would seriously threaten the safety or soundness of an insured depository institution, such agency may initially delay release of the examination report for a reasonable period of time, not to exceed 12 months from the date of the transfer, failure, or receipt of funds described in subsection (e). Such determination may be renewed on an annual basis.

(B) ONGOING INVESTIGATIONS.—If the appropriate banking agency or the Resolution Trust Corporation determines in writing that release of a portion of an examination report would hinder an ongoing investigation of alleged negligence, or of other activity that would give rise to either administrative or civil proceedings, the portion of the examination report directly pertaining to the alleged negligence or other activity, may be withheld from release during the investigation, until a notice of charges is issued, a complaint is filed, or for a period not to exceed 24 months from the date of the transfer, failure, or receipt of funds described in subsection (e), whichever is earlier.

(C) DELAY PENDING CRIMINAL INVESTIGATION.—If the appropriate banking agency and the Attorney General of the United States or the attorney general of a State, in the case of a State-chartered depository institution, jointly determine that release of a portion of an examination report would hinder an ongoing investigation of alleged criminal activity, the portion of the examination report directly pertaining to the alleged crime may be withheld from release until the termination of such investigation, the issuance of an indictment, or for a period of not to exceed 5 years from the date of the transfer, failure or receipt of funds described in subsection (e), whichever is earlier. The Attorney General of the United States or of a State shall provide the Comptroller General of the United States with access to information regarding any such criminal investigation, and shall identify any law enforcement agencies or resources assigned to the investigation.

(3) EXCLUSION OF OPEN INSTITUTIONS.—

(A) OPEN INSTITUTIONS.—This subsection shall not apply to any open insured depository institution and shall not be construed to require disclosure to the public of any report of examination of any open insured depository institution.

(B) AFFILIATED SOLVENT INSTITUTIONS.—In connection with the release of an examination report of a holding company of a failed institution, nothing in this subsection shall be construed as requiring the release of any examination report information regarding any solvent depository institution that is also a subsidiary of such holding company.

(b) PROHIBITION OF CONFIDENTIAL SETTLEMENTS.—Notwithstanding any other provision of law or any rule, regulation, or order issued thereunder, all agreements or settlements of claims between the Resolution Trust Corporation or the Federal Deposit Insurance Corporation and any other party, where such agreement or claim relates to an institution described in subsection (e) shall be made available to the public.

(c) APPLICABILITY.—The requirements of subsection (a) shall apply—

(1) to any insured depository institution that has had its assets or liabilities, or any part thereof, transferred to the FSLIC Resolution Fund or the Resolution Trust Corporation;

(2) to any member of the Bank Insurance Fund that has failed and received funds, if during either the fiscal year in which the institution failed or the fiscal year in which the institution received funds, as defined in subsection (e), the Bank Insurance Fund—

(A) had outstanding loans, or had otherwise received funds, from the Department of the Treasury, the Federal Financing Bank, or any Federal Reserve Bank; or

(B) had a negative fund balance;

(3) to any member of the Savings Association Insurance Fund that has failed and received funds, if during either the fiscal year in which the institution failed or the fiscal year in which the institution received funds, as defined in subsection (e), the Savings Association Insurance Fund—

(A) had outstanding loans, or had otherwise received funds, from the Department of the Treasury, the Federal Financing Bank, or any Federal Reserve Bank; or

(B) had a negative fund balance; and

(4) to any insured credit union that has failed and received funds, if during either the fiscal year in which the credit union failed or the fiscal year in which the credit union received funds, as defined in subsection (e), the National Credit Union Share Insurance Fund—

(A) had outstanding loans, or had otherwise received funds, from the Department of the Treasury, the Federal Financing Bank, or any Federal Reserve Bank; or

(B) had a negative fund balance.

(d) REMOVAL OF CUSTOMER INFORMATION FROM EXAMINATION REPORTS.—In making available reports of examinations under subsection (a), the appropriate Federal banking agency shall excise the following:

(1) NONINSTITUTION-AFFILIATED PARTIES.—The names and all other identifying information for all persons who are not institution-affiliated parties of an insured depository institution.

(2) INSTITUTION-AFFILIATED PARTIES.—The names and any information related to an institution-affiliated party that is not relevant to the relationship between the insured depository institution and the institution-affiliated party.

(3) OPEN INSTITUTIONS.—The names and all other identifying information pertaining to open insured depository institutions.

(4) EXAMINERS.—Any reference to the examiners and other banking agency employees involved in the examination of the insured depository institution.

(5) WHISTLEBLOWERS.—All references to persons or entities that have provided information in confidence to a banking agency which may be utilized to pursue a civil or criminal action.

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

(1) an insured depository institution has "failed" if the Federal Deposit Insurance Corporation, Resolution Trust Corporation, or National Credit Union Administration Board—

(A) has been appointed as receiver or liquidator for such institution; or

(B) has exercised the power to provide assistance under section 13(c)(2) of the Federal Deposit Insurance Act or the analogous powers under section 21A of the Federal Home Loan Bank Act.

(2) an insured depository institution has "received funds" if the institution, its holding company, or an acquiring institution receives cash or other valuable consideration from the National Credit Union Administration Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any Federal Reserve bank that lends for more than 30 days while the insured depository institution is critically undercapitalized within the 1-year period prior to the failure of the insured depository institution whether in the form of a loan, a payment to depositors or other creditors, the assumption of liabilities, or otherwise;

(3) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that such term includes an insured credit union, as defined in section 101 of the Federal Credit Union Act; and

(4) the term "appropriate banking agency" means the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, or the National Credit Union Administration Board, and, in the case of a State-chartered depository institution, the appropriate State depository institution regulatory agency.

(f) ADDITIONAL DISCLOSURES BY FDIC, NCUA AND RTC.—

(1) BORROWERS.—Within 6 months after being appointed receiver or liquidator for any failed institution that received funds, as defined in subsection (e), the Federal Deposit Insurance Corporation, National Credit Union Administration, or the Resolution Trust Corporation, as appropriate, shall make available to the public the name and loan balance of any borrower who—

(A) was an executive officer, director, or principal shareholder of the institution, or a related interest of any such person, as such terms are defined in section 22(h) of the Federal Reserve Act (12 U.S.C. 375b); and

(B) at the time that the receiver was appointed, was more than 90 days delinquent on a loan.

(2) TRANSACTIONS.—Within 12 months after being appointed receiver or liquidator for any failed institution that received funds, as defined in subsection (e), the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, or the Resolution Trust Corporation shall make available, and update periodically thereafter, a list of pending and settled lawsuits brought by such agency involving transactions (other than those listed in paragraph (1)), that caused a material loss to such institution or to the deposit insurance fund.

(g) GAO AUDITS.—The Comptroller General shall selectively audit examination reports made available to the public by the appropriate Federal banking agencies under subsection (a), and disclosures made by the Federal Deposit Insurance Corporation, National Credit Union Administration, and Resolution Trust Corporation under subsection (f), to

assess compliance with the requirements of those subsections. The Comptroller General shall determine the nature, scope, and terms and conditions of audits conducted under this subsection.

SEC. 233. UTILIZING PRIVATE SECTOR.

Section 11(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(2)) is amended by adding at the end the following:

"(K) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management of and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, auction marketing, and brokerage services, if such services are available in the private sector and the Corporation determines utilization of such services are practical, efficient and cost effective recognizing all of the costs inherent in such contracts.".

SEC. 234. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) the Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) should protect insured depositors of banks and savings and loans at the least possible cost to the American taxpayer;

(2) as the number of failed institutions and assets in liquidation managed by the FDIC and RTC has grown, the Legal Division's case load of legal matters has expanded to about 100,000;

(3) the FDIC and RTC are the largest purchasers of legal services in the United States today;

(4) two recent studies by Price Waterhouse and Altman & Weil on behalf of the FDIC have concluded that—

(i) the FDIC and RTC may spend more than $1,000,000,000 this year on legal fees and expenses yet there is ineffective oversight or management of these expenses;

(ii) outside counsel are generally not selected on a competitive basis;

(iii) the FDIC and RTC have not instituted policies to insure that tasks are assigned to the firm best able to perform them in a cost-effective manner;

(iv) the FDIC generally pays hourly rates rather than arranging less costly fixed rate contracts;

(v) outside attorneys spend significant amounts of time performing tasks which do not require attorneys' skills; and

(vi) the FDIC and RTC have allowed persons and firms whose activities contributed to the decline of the banking and thrift industries to contract with and profit from the activities of the FDIC and RTC; and

(5) These practices undermine the faith of the American taxpayers in the use of taxpayer dollars to finance the cleanup of the banking and thrift industries.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the FDIC and RTC should take immediate steps to ensure that outside counsel are selected competitively on the basis of their ability to perform required tasks at the lowest possible cost to the taxpayer; and

(2) the FDIC and RTC should not contract with persons or firms whose activities contributed to the decline of the banking or thrift industries.

TITLE III—INTERSTATE BANKING AND COMBINATIONS

SEC. 301. INTERSTATE BANKING.

(a) IN GENERAL.—Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(d)) is amended—

(1) by striking "(d) Notwithstanding any other provision of this section, no" and inserting the following:

"(d) STATE BOUNDARIES.—

"(1) IN GENERAL.— Except as provided in paragraph (2), no"; and

(2) by adding at the end the following:

"(2) APPROVALS AUTHORIZED.—

"(A) ACQUISITION OF EXISTING BANKS.—Beginning 1 year after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, the Board may approve an application under this section to permit a bank holding company that is adequately capitalized and adequately managed to acquire any voting shares of, interest in, or all or substantially all of the assets of an existing bank located outside of the State in which the operations of such bank holding company's banking subsidiaries were principally conducted on July 1, 1966, or the date on which such company became a bank holding company, whichever is later.

"(B) EXISTING BANKS.—For purposes of this paragraph, a bank that does not open for business and has been chartered solely for the purpose of acquiring any voting shares of, interest in, or all or substantially all of the assets of an existing bank shall be deemed to be an existing bank and to have been in existence for the same period of time as the bank to be acquired for purposes of subparagraph (A).

"(C) COMMUNITY REINVESTMENT COMPLIANCE.—In determining whether to approve an application under subparagraph (A), the Board shall consider the applicant's record of compliance with applicable Federal and State community reinvestment laws.

"(D) STATE LAW.—A transaction approved under subparagraph (A) may occur without regard to whether such transaction is permitted under the law of the State in which the bank to be acquired is located.

"(3) CONCENTRATION AND OTHER LIMITS.—

"(A) IN GENERAL.—The Board may not approve an application under paragraph (2)(A) if—

"(i) the applicant controls, or upon completion of the acquisition would control, more than 10 percent of the insured depository institution assets of the United States, as determined under regulations of the Board;

"(ii) the applicant controls, or upon completion of the acquisition would control, 25 percent or more of the insured depository institution deposits in the State in which the bank to be acquired is located, as determined under regulations of the Board, except that a State may waive the applicability of this subparagraph; or

"(iii) the acquisition will result in the applicant directly or indirectly controlling a bank that has been in existence for a shorter period of time than is prescribed by the law of the State in which such bank is located in effect on the date the application is filed with the Board, only if such State law—

"(I) does not prescribe a period of more than 5 years: *Provided*, That, a law in existence on the date of enactment of the Comprehensive Deposit Insurance and Taxpayer Protection Act of 1991 which prescribes a period of more than five years shall be deemed to provide a period of five years; and

"(II) does not discriminate or have the effect of discriminating against out-of-State banks or bank holding companies.

"(B) EQUAL APPLICATION OF LAW.—In the case of a State referred to in subparagraph (A)(iii) that has in effect on the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 a law that specifies a time period described in subparagraph (A)(iii) applicable to out-of-State banks, such State law shall apply to in-State banks until such time as the State either repeals such law or amends such law to apply equally to in-State and out-of State banks.

"(C) NO EFFECT ON ANTITRUST LAWS.—Nothing in this paragraph shall be construed to affect the applicability of Federal or State antitrust laws that do not discriminate or have the effect of discriminating against out-of-State banks or bank holding companies.

"(4) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'adequately capitalized' has the same meaning as in section 37 of the Federal Deposit Insurance Act; and

"(B) the term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

SEC. 302. CONVERSION OF BANKS TO BRANCHES.

(a) IN GENERAL.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following new subsection:

"(h) INTERSTATE COMBINATIONS.—

"(1) IN GENERAL.—

"(A) COMBINATIONS AUTHORIZED.—Subject to paragraphs (6) and (7), on or after June 1, 1993, a bank holding company having subsidiary banks located in more than 1 State may combine 2 or more of such banks into a single, resulting bank by means of a merger, consolidation, or other transaction.

"(B) SURRENDER OF CHARTER AFTER COMBINATION.—On the date on which a combination authorized by this paragraph becomes effective, the charters of the banks (other than that of the resulting bank) that have been combined in accordance with subparagraph (A) into the resulting bank shall be surrendered to the regulatory authority that issued the charters.

"(C) EFFECT OF STATE PROHIBITION OF COMBINATIONS.—If, during the period beginning on June 1, 1993, and ending on the expiration of 3 years after the date of enactment of this subsection, a combination authorized by subparagraph (A) is effected in a State that elects to prohibit interstate combinations under paragraph (6), then that State may require such branch to be promptly converted back into a bank as it existed prior to such combination.

"(2) APPLICABILITY.—A combination under paragraph (1) may only be effected in the case of a merger, consolidation, or other transaction that is undertaken—

"(A) by a bank holding company that is adequately capitalized and adequately managed; or

"(B) by a bank holding company, subject to all other provisions of this subsection, that is critically undercapitalized if—

"(i) the transaction is approved as part of a capital restoration plan required under section 37 of the Federal Deposit Insurance Act;

"(ii) such plan contains not less than 1 element in addition to the transaction; and

"(iii) the transaction will result in a demonstrable and material improvement in the financial condition of the bank holding company.

"(3) ACTIVITIES OF THE RESULTING BANK.—

"(A) ADDITIONAL BRANCHES.—Following any combination effected under paragraph (1), the resulting bank may establish, acquire, and operate additional branches at any location where the resulting bank or a combined bank could have established or acquired and operated a branch under the ap-

plicable Federal or State law if it had not been a party to such combination.

"(B) INTRASTATE BRANCHING.—Except as expressly provided in this subsection, nothing in this subsection shall be deemed to amend, repeal, or preempt, either expressly or by implication, any Federal or State law relating to the establishment, acquisition, or operation of intrastate branches by national or State banks.

"(C) CONDITIONS.—Prior to granting approval to effect a combination under paragraph (1), the appropriate Federal banking agency shall consider the bank's rating under the Community Reinvestment Act of 1977 and the views of the appropriate State bank regulatory authorities regarding the bank's compliance with applicable State community reinvestment laws.

"(D) IMPOSITION OF SHARES TAX BY HOST STATES.—In order to assure that an out-of-State bank contributes a fair share to a host State's revenues, if any branch of an out-of-State bank established pursuant to paragraph (1) or subparagraph (A) of this paragraph continues in operation, a proportionate amount of the value of the shares of the out-of-State bank may be subject to any bank shares tax levied or imposed by any host State or political subdivision thereof based upon an allocation of net income, capital or net worth, and other factors employed in computing such value pursuant to an allocation method adopted by the host State's taxing authorities, if such method does not unconstitutionally discriminate against out-of-State banks or bank holding companies.

"(4) ACTIVITIES OF BRANCHES.—A State bank that establishes a branch or branches in accordance with paragraph (1) or subparagraph (A) of this paragraph may not conduct any activity at such branch or branches located in the host State that is not permitted for banks chartered by the host State.

"(5) APPLICABLE LAW.—

"(A) IN GENERAL.—

"(i) NATIONAL BANK BRANCHES.—Any branch of a national bank that is established as the result of a combination in accordance with paragraph (1) or paragraph (3)(A) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a national bank having its main office in that State.

"(ii) STATE BANK BRANCHES.—Any branch of a State-chartered bank that is established as the result of a combination in accordance with paragraph (1) or paragraph (3)(A) shall be subject to the laws of the host State with respect to intrastate branching, consumer protection, fair lending, and community reinvestment as if it were a branch of a bank chartered under the laws of such State and having offices only in such State.

"(B) FILING REQUIREMENT.—

"(i) IN GENERAL.—A host State may require any bank having its main office in another State that wishes to establish a branch within the host State as a result of a combination authorized by paragraph (1) to comply with filing requirements that—

"(I) are not discriminatory in nature; and

"(II) are similar in their effect to those that are imposed on a corporation having its main office in another State that is not engaged in the business of banking and that seeks to engage in business in the host State.

"(ii) FAILURE TO COMPLY.—The host State may preclude any bank referred to in clause (i) from establishing or operating a branch within the host State as the result of a combination authorized by paragraph (1) if that bank or its branch materially fails to comply with the filing requirements established by the host State.

"(6) STATE ELECTION TO PROHIBIT INTERSTATE COMBINATIONS.—

"(A) IN GENERAL.—Paragraph (1) does not apply to a bank holding company, the principle place of business of which is located in a State that has enacted, during the period beginning on January 1, 1990, and ending on the expiration of 3 years after the date of enactment of this subsection, a law that applies equally to all out-of-State national and all out-of-State State banks and that expressly prohibits interstate branching or the interstate combinations authorized under paragraph (1).

"(B) EFFECT OF PROHIBITION.—A bank located in a State that has in effect a prohibition described in subparagraph (A) may not be combined, and shall have no authority to be combined under paragraph (1), with a bank located outside of that State.

"(7) STATE ELECTION TO PERMIT INTERSTATE COMBINATIONS.—

"(A) COMBINATIONS PRIOR TO JUNE 1, 1993.—A combination under paragraph (1) may be undertaken before June 1, 1993, if each of the States in which 1 or more banks that are to be combined into a single, resulting bank is located either has in effect on the date of enactment of this subsection or enacts prior to June 1, 1993, a law expressly permitting interstate combinations by national and State-chartered banks. A State described in the preceding sentence may impose other conditions on the branch of the resulting bank located in that State if—

"(i) the conditions do not discriminate or have the effect of discriminating against out-of-State banks or bank holding companies; and

"(ii) the imposition of the conditions is not preempted by Federal law regarding the same subject.

"(B) COMBINATIONS AFTER JUNE 1, 1993.—A State that originally elected to prohibit interstate combinations as described in paragraph (6) may elect at any later time to permit interstate combinations authorized under paragraph (1) if such State enacts a law expressly permitting interstate combinations by national and State-chartered banks.

"(8) LIMITATIONS.—Nothing in paragraph (1) affects the applicability of Federal or State antitrust laws that do not discriminate or have the effect of discriminating against out-of-State banks or bank holding companies.

"(9) RESERVATION OF CERTAIN RIGHTS TO STATES.—Nothing in this subsection limits in any way the right of a State to—

"(A) determine the authority of State banks chartered in that State to establish and maintain branches; or

"(B) supervise, regulate, and examine State banks chartered by that State.

"(10) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'adequately capitalized' has the meaning given such term by section 37 of the Federal Deposit Insurance Act;

"(B) the term 'appropriate Federal banking agency' has the same meaning as in section 3 of the Federal Deposit Insurance Act;

"(C) the term 'combined bank' means any bank participating in a combination under paragraph (1), other than the resulting bank;

"(D) the term 'critically undercapitalized' has the same meaning as in section 37 of the Federal Deposit Insurance Act;

"(E) the term 'host State' means the State in which a bank establishes or maintains a branch other than the State in which the bank has its main office and is engaging in the business of banking;

"(F) the term 'insured depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act;

"(G) a bank shall be deemed to be 'located' in the State in which it was chartered or, in the case of a national bank, the State in which its main offices are located; and

"(H) the term 'resulting bank' means a banking subsidiary of a bank holding company that has resulted from a transaction effected under paragraph (1) involving the combination of 2 or more subsidiary banks of the bank holding company located in 2 or more States.".

(b) TAXATION.—

(1) STATE FRANCHISE OR OTHER NONPROPERTY TAXES.—The amendments made by this section and section 301 do not in any way affect, limit, impair, or preclude the right of any State or political subdivision of a State to impose a nondiscriminatory franchise tax or other nonproperty tax instead of a franchise tax as provided by section 3124 of title 31, United States Code.

(2) STATE METHODS OF TAXATION.—Subject to the provisions of subsection (h)(3)(c) of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), as amended by section 302, nothing in this section or section 301 shall be construed to either—

(A) prohibit or restrict any State or political subdivision of a State from applying any tax or method of taxation to a State bank or a national bank or branch thereof when such tax or tax method is otherwise permitted by or permissible under either the Constitution of the United States or any other Federal law; or

(B) allow any State or political subdivision of a State to apply any tax or method of taxation to a State bank or national bank or branch thereof when such tax or tax method is otherwise prohibited or restricted by either the Constitution of the United States or any other Federal law.

(c) CONFORMING AMENDMENT TO THE NATIONAL BANK ACT.—Section 5155(c) of the Revised Statutes (12 U.S.C. 36(c)) is amended in the first sentence by striking "A national banking association" and inserting "Except as provided in section 3(h) of the Bank Holding Company Act of 1956, a national banking association".

SEC. 303. AMENDMENTS TO FEDERAL DEPOSIT INSURANCE ACT AND THE ACT ENTITLED "AN ACT TO PROVIDE FOR THE CONSOLIDATION OF NATIONAL BANKING ASSOCIATIONS".

(a) FEDERAL DEPOSIT INSURANCE ACT AMENDMENTS.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended—

(1) in the first sentence of paragraph (1), by striking "No State" and inserting "Except as provided in section 3(h) of the Bank Holding Company Act of 1956, no State";

(2) by adding at the end the following:

"(3) COORDINATION OF EXAMINATION AUTHORITY.—

"(A) IN GENERAL.—A host State bank supervisory or regulatory authority may examine a branch chartered by a State other than that host State that resulted from a combination effected under section 3(h) of the Bank Holding Company Act of 1956 for the purpose of determining compliance with host State laws regarding banking, taxation, community reinvestment, fair lending, consumer protection, and permissible activities and to ensure that the activities of the branch—

"(i) are conducted in a manner that is consistent with sound banking principles; and

"(ii) do not constitute a serious risk to the safety and sound operation of the branch.

"(B) ENFORCEMENT.—In the event that a host State bank supervisory or regulatory authority determines that there is a violation of the law of the host State concerning the activities being conducted by the branch of a State bank or that such branch is being operated in a manner not consistent with sound banking principles or in an unsafe and unsound manner, such host State bank supervisory or regulatory authority may undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch in question were a bank chartered by that host State.

"(C) COOPERATIVE AGREEMENT.—The State bank supervisory or regulatory authorities from 1 or more States are authorized to enter into cooperative agreements to facilitate State regulatory supervision of State-chartered banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

"(D) FEDERAL REGULATORY AUTHORITY.—

"(i) INTERSTATE AGREEMENTS.—Nothing in this subsection limits in any way the authority of the appropriate Federal banking agency to examine any bank or branch of a bank for which the agency is the appropriate Federal banking agency.

"(ii) REVIEW OF INTERSTATE AGREEMENTS.—If the appropriate Federal banking agency determines that the States have failed to reach an agreement under subparagraph (C), or that such an agreement fails to adequately protect the Federal Deposit Insurance Fund, the appropriate Federal banking agency shall not defer to State examinations of the out-of-State branches.

"(4) DEFINITION.—For purposes of this subsection, the term 'host State' means the State in which a bank establishes or maintains a branch, other than the State in which the bank is chartered and engaging in the business of banking.".

(b) NATIONAL BANKING ASSOCIATIONS.—The Act entitled "An Act To provide for the consolidation of national banking associations", approved November 7, 1918 (12 U.S.C. 215 et seq.) is amended—

(1) in the first sentence of subsection (a) of the first section, by inserting ", or in any State in which a bank involved in an interstate acquisition or interstate combination authorized by section 3(d)(2) or 3(h) of the Bank Holding Company Act of 1956 is located," after "located in the same State";

(2) by inserting before the period at the end of subsection (d) of the first section ", except that the applicability of State law to an interstate acquisition or interstate combination undertaken in accordance with section 3(d)(2) or 3(h) of the Bank Holding Company Act of 1956 is determined in accordance with the provisions of those sections";

(3) in the first sentence of section 2(a), by inserting "or in any State in which a bank involved in an interstate acquisition or interstate combination authorized by section 3(d)(2) or 3(h) of the Bank Holding Company Act of 1956 is located," after "located within the same State,";

(4) in the sixth sentence of section 2(d), by inserting before the period ", except that the applicability of State law to the transaction undertaken pursuant to section 3(d)(2) or 3(h) of the Bank Holding Company Act of 1956 is determined in accordance with the provisions of those sections"; and

(5) in paragraph (4) of section 3, by inserting "or within any State in which a bank involved in an interstate acquisition or interstate combination authorized by section 3(d)(2) or 3(h) of the Bank Holding Company Act of 1956 is located," after "within the same State,".

SEC. 304. ACQUISITION OF NEW INTERSTATE BRANCHES BY NATIONAL AND STATE BANKS.

(a) ACQUISITION OF NEW INTERSTATE BRANCHES BY STATE BANKS.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following:

"(3) ACQUISITION OF NEW INTERSTATE BRANCHES.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, a host State may, expressly by statute and not merely by implication, permit all out-of-State national and State banks that are adequately capitalized and adequately managed to establish a branch in the host State other than by merger, consolidation, or other similar transaction. Such branch shall be operated in accordance with section 3(h) of the Bank Holding Company Act of 1956 and the provisions of that section shall apply to the branch as if the branch resulted from a combination effected in accordance with paragraph (1) of that section.

"(B) DEFINITION.—For purposes of this paragraph, the term 'host State' means the State in which a bank establishes a branch under subparagraph (A).".

(b) ACQUISITION OF NEW INTERSTATE BRANCHES BY NATIONAL BANKS.—Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended—

(1) by redesignating subsections (d) through (h) as subsections (e) through (i), respectively; and

(2) by inserting after subsection (c) the following:

"(d) INTERSTATE BRANCHING BY NATIONAL BANKS.—

"(1) APPROVALS AUTHORIZED.—Notwithstanding any other provision of law, the Comptroller of the Currency may approve an application under this section for a national bank to establish a branch in a State other than the State in which its principle place of business is located if the host State expressly permits, by statute and not merely by implication, all out-of-State national or State banks that are adequately capitalized and adequately managed to establish such a branch. Such branch shall be operated in accordance with section 3(h) of the Bank Holding Company Act of 1956, and the provisions of that section shall apply to the branch as if the branch resulted from a combination effected in accordance with paragraph (1) of that section.

"(2) DEFINITION.—For purposes of this subsection, the term 'host State' means the State in which a national bank establishes a branch under paragraph (1).".

SEC. 305. COMMUNITY REINVESTMENT ACT EVALUATION OF BANKS WITH INTERSTATE BRANCHES.

(a) IN GENERAL.—Section 807 of the Community Reinvestment Act of 1977 (12 U.S.C. 2906) is amended by adding the following subsections:

"(d) INSTITUTIONS WITH INTERSTATE BRANCHES.—

"(1) STATE-BY-STATE EVALUATION.—In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the appropriate Federal financial supervisory agency shall prepare—

"(A) a written evaluation of the entire institution's record of performance under this title, as required by subsections (a), (b), and (c) of this section; and

"(B) for each State in which the institution maintains 1 or more domestic branches, a separate written evaluation of the institution's record of performance within such State under this title, as required by subsections (a), (b), and (c).

"(2) MULTISTATE METROPOLITAN AREAS.—In the case of a regulated financial institution that maintains domestic branches in 2 or more States within a multistate metropolitan area, the appropriate Federal financial supervisory agency may prepare a separate written evaluation of the institution's record of performance within such metropolitan area under this title, as required by subsections (a), (b), and (c) of this section. If the agency prepares a written evaluation pursuant to this paragraph, the scope of the written evaluation required under paragraph (1)(B) shall be adjusted accordingly.

"(3) CONTENT OF STATE LEVEL EVALUATION.—A written evaluation prepared pursuant to paragraph (1)(B) of this subsection shall—

"(A) present the information required by subparagraphs (A) and (B) of subsection (b)(1) of this section separately for each metropolitan area in which the institution maintains 1 or more domestic branch offices and separately for the remainder of the nonmetropolitan area of the State if the institution maintains 1 or more domestic branch offices in such area; and

"(B) describe how the Federal financial supervisory agency has performed the examination of the institution, including a list of the individual branches examined.

"(4) DEFINITIONS.—For purposes of this section:

"(A) DOMESTIC BRANCH.—The term 'domestic branch' means any branch office or other facility of a regulated financial institution with the ability to accept deposits located in any State.

"(B) METROPOLITAN AREA.—The term 'metropolitan area' means any primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area as defined by the Director of the Office of Management and Budget, with a population of 250,000 or more, and any other area identified by the appropriate Federal financial supervisory agency.

"(C) STATE.—The term 'State' has the same meaning as provided in section 3(a) of the Federal Deposit Insurance Act.".

(b) SEPARATE PRESENTATION.—Section 807(b)(1) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(1)) is amended by adding at the end the following sentence: "A written evaluation shall contain the information required by subparagraphs (A) and (B) presented separately for each metropolitan area in which an insured depository institution maintains one or more domestic branch offices.".

SEC. 306. STATE TAX COMPLIANCE.

Section 5240 of the Revised Statutes (12 U.S.C. 484) is amended by adding at the end the following:

"(C) Notwithstanding subparagraph (A), lawfully authorized auditors, examiners, and other representatives acting on behalf of the State agency or agencies charged with the administration and collection of taxes imposed by such State or political subdivision thereof, may, to the extent necessary, review the books, records, and accounts of a depository institution, chartered under Federal law which has its main office or any branch located in that State, to determine any State or local tax liability and to ensure

compliance with the tax laws of the State or political subdivision thereof.".

SEC. 307. USE OF NAMES IN HOST STATE.

(a) BANK HOLDING COMPANY ACT OF 1956.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), as amended by section 302, is amended by adding at the end the following:

"(i) USE OF NAMES IN HOST STATE.—

"(1) IN GENERAL.—A bank holding company that seeks, directly or indirectly, to acquire or establish a bank in a host State shall provide the Board with the name or names under which the bank will operate in the host State.

"(2) PROHIBITION AGAINST SAME OR SIMILAR NAMES.—A bank holding company may not operate a bank in a host State if the proposed name of the bank is—

"(A) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(B) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(3) SUBSEQUENT USE OF SAME OR SIMILAR NAME.—Upon application by any person or institution that is adversely affected, the Board shall revoke permission of a bank holding company to operate a bank in a host State if the bank holding company uses or changes the name of, or uses an additional name for any of its banks in the host State, and the new or additional name is described in subparagraph (A) or (B) of paragraph (2). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

"(4) DEFINITION.—For purposes of this subsection, the term 'host State' means the State in which a bank holding company establishes or acquires a bank other than the State in which the operations of the bank holding company's banking subsidiaries were principally conducted on July 1, 1996, or the date on which the company became a bank holding company, whichever is later.".

(b) NATIONAL BANKS.—Section 5155(d) of the Revised Statutes (12 U.S.C. 36(d)), as added by section 304, is amended by adding at the end the following:

"(3) USE OF NAMES IN HOST STATE.—

"(A) IN GENERAL.—A bank that seeks, directly or indirectly, to acquire or establish a branch in a host State shall provide the Comptroller of the Currency with the name or names under which the branch will operate in the host State.

"(B) PROHIBITION AGAINST SAME OR SIMILAR NAMES.—A bank may not operate a branch in a host State if the proposed name of the branch is—

"(i) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(ii) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(C) SUBSEQUENT USE OF SAME OR SIMILAR NAME.—Upon application by any person or institution that is adversely affected, the Comptroller of the Currency shall revoke permission of a bank to operate a branch in a host State if the bank uses or changes the name of, or uses an additional name for any such branch in the host State, and the new or additional name is described in clause (i) or (ii) of subparagraph (B). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

"(D) DEFINITION.—For purposes of this paragraph, the term 'host State' means the State in which a bank establishes or acquires a branch other than the State in which the bank has its main office and is engaging in the business of banking.".

(c) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(3)), as amended by section 304, is amended by adding at the end the following:

"(C) USE OF NAMES IN HOST STATE.—

"(i) IN GENERAL.—A bank that seeks, directly or indirectly, to acquire or establish a branch in a host State shall provide the appropriate State regulatory authority with the name or names under which the branch will operate in the host State.

"(ii) PROHIBITION AGAINST SAME OR SIMILAR NAMES.—A bank may not operate a branch in a host State if the proposed name of the branch is—

"(I) identical or deceptively similar to a name being used by an existing bank or bank holding company in the host State; or

"(II) is likely to cause the public to be confused, deceived, or mistaken, due to a similarity or identity of names.

"(iii) SUBSEQUENT USE OF SAME OR SIMILAR NAME.—Upon application by any person or institution that is adversely affected, the appropriate State regulatory authority may revoke permission of a bank to operate a branch in a host State if the bank uses or changes the name of, or uses an additional name for any such branch in the host State, and the new or additional name is described in subclause (I) or (II) of clause (i). The preceding sentence does not preclude any adversely affected person from pursuing any available legal or administrative remedies.

SEC. 308. CONSIDERATION OF DISPLACED WORK FORCE.

It is the sense of the Senate that in reviewing proposed mergers and acquisitions, the appropriate Federal regulator consider the impact on employees of the existing and proposed institutions, including whether the institutions plan to provide reasonable notice to employees well in advance of any layoffs, whether the institutions plan to make any effort to ensure that laid-off employees receive priority in filling future vacancies, whether the institutions will provide specific severance benefits for laid-off employees, and whether and for how long benefits such as health and life insurance and pensions will be continued for laid-off employees.

SEC. 309. ATTORNEY GENERAL'S DETERMINATION ON COMPETITIVE FACTORS.

(a) ATTORNEY GENERAL'S REPORT.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)) is amended by adding at the end the following: "In every case, before acting on any application described in subsection (a), the Board shall give notice of the application to the Attorney General. The Attorney General shall provide a report on any application that presents significant issues regarding competitive factors. The Board shall consider any report by the Attorney General on the competitive factors involved in the transaction, unless the Board finds that it must act immediately in order to prevent the probable failure of the institutions involved in the transaction that is the subject of the application. Any report shall be furnished not later than 30 calendar days after the date on which it is requested, or not later than 10 calendar days after such date if the Board advises the Attorney General that an emergency exists requiring executive action.

(b) BANK HOLDING COMPANY ACT AMENDMENT.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended by adding at the end the following new subsection:

"(i) REPORT TO THE CONGRESS ON APPROVALS OF ANTICOMPETITIVE TRANSACTIONS.—The Board shall submit a report to the Congress on the day on which any merger or transaction is approved under this section that includes a justification for approving any merger or acquisition, or any portion thereof, that the Attorney General has determined in the report required under subsection (c) may have an anticompetitive effect in any market or for any product. The Board's justification shall include the information, data, facts, assumptions, and other factors upon which the Board relied in approving the merger or acquisition notwithstanding the determination of the Attorney General.".

(c) FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following new paragraph:

"(12) REPORT TO THE CONGRESS ON APPROVALS OF ANTICOMPETITIVE TRANSACTIONS.—The responsible agency shall submit a report to the Congress on the day on which any merger or transaction is approved under this subsection that includes a justification for approving any merger or acquisition, or any portion thereof, that the Attorney General has determined in the report required under paragraph (4) may have an anticompetitive effect in any market or for any product. The responsible agency's justification shall include the information, data, facts, assumptions, and other factors upon which the Board relied in approving the merger or acquisition notwithstanding the determination of the Attorney General.".

SEC. 310. REGULATIONS TO PROHIBIT BRANCHING FOR DEPOSIT PRODUCTION.

Not later than 180 days after the date of enactment of this Act, the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) shall promulgate regulations to prohibit any person from using any authority to engage in interstate branching primarily for the purpose of deposit production.

TITLE IV—JAMES MADISON-BILL OF RIGHTS COMMEMORATIVE COIN ACT

SEC. 401. SHORT TITLE.

This title may be cited as the "James Madison—Bill of Rights Commemorative Coin Act".

SEC. 402. COIN SPECIFICATIONS.

(a) FIVE DOLLAR GOLD COINS.—

(1) ISSUANCE.—The Secretary of the Treasury (hereafter in this title referred to as the "Secretary") shall mint and issue not more than 300,000 five dollar coins each of which shall—

(A) weigh 8.359 grams;

(B) have a diameter of .850 inches; and

(C) be composed of 90 percent gold and 10 percent alloy.

(2) DESIGN.—The design of the five dollar coins shall be emblematic of the first ten Amendments of the Constitution of the United States, known as the Bill of Rights. The Director of the United States Mint shall sponsor a nationwide open competition for the design of the five dollar coin beginning not later than 3 months after the date of the enactment of this title. The Director of the United States Mint shall convene the Design Panel established under subsection (e) which shall select 10 designs to be submitted to the Secretary who shall select the final design.

(b) ONE DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary shall mint and issue not more than 900,000 one dollar coins each of which shall—

(A) weigh 26.73 grams;

(B) have a diameter of 1.5 inches; and

(C) be composed of 90 percent silver and 10 percent copper.

(2) DESIGN.—The obverse design of the one dollar coins shall be emblematic of James Madison, the fourth President of the United States. The reverse design shall be emblematic of James Madison's home, Montpelier, between the years 1751 and 1836. The Director of the United States Mint shall sponsor a nationwide open competition for the design of the one dollar coin beginning not later than 3 months after the date of the enactment of this title. The Director of the United States Mint shall convene the Design Panel established under subsection (e) which shall select 10 designs to be submitted to the Secretary who shall select the final design.

(c) HALF DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary shall mint and issue not more than 1,000,000 half dollar coins each of which shall—

(A) weigh 12.50 grams;

(B) have a diameter of 30.61 millimeters; and

(C) be composed of 90 percent silver and 10 percent copper.

(2) DESIGN.—The design of the half dollar silver coins shall be emblematic of the first ten Amendments of the Constitution of the United States, known as the Bill of Rights. The Director of the United States Mint shall sponsor a nationwide open competition for the design of the half dollar coin beginning not later than 3 months after the date of the enactment of the Act. The Director of the United States Mint shall convene the Design Panel established under subsection (e) which shall select 10 designs to be submitted to the Secretary who shall select the final design.

(d) INSCRIPTIONS.—All coins minted and issued under this title shall bear a designation of the value of the coin, an inscription of the year of issue and inscriptions of the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(e) DESIGN PANEL.—The Design Panel referred to in subsections (a), (b), and (c) shall consist of the following members:

(1) The Chairperson of the Commission of Fine Arts.

(2) The president of the James Madison Memorial Fellowship Foundation.

(3) The Executive Director, National Numismatic Collection, the Smithsonian Institution.

(4) A representative member of the American Numismatic Association.

(5) A representative member of a national sculpture society or association.

(6) Two representatives of the United States Mint selected by the Director of the United States Mint.

The Secretary shall reimburse the members of the Design Panel for per diem expenses and other official expenses from the revenues received from the sale of the coins. The Design Panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.), and shall terminate following the selection process set forth in subsections (a), (b), and (c).

(f) LEGAL TENDER.—The coins issued under this title shall be legal tender as provided in section 5103 of title 31, United States Code.

SEC. 403. SOURCES OF BULLION.

(a) GOLD.—The Secretary shall obtain gold for minting coins under this title pursuant to the authority of the Secretary under existing law.

(b) SILVER.—The Secretary shall obtain silver for minting coins under this title only from stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.).

SEC. 404. ISSUANCE OF COINS.

(a) FIVE DOLLAR COINS.—The five dollar coins minted under this title may be issued in uncirculated and proof qualities and shall be struck at the United States Mint at West Point, New York.

(b) ONE DOLLAR COINS AND HALF DOLLAR COINS.—The one dollar and half dollar coins minted under this title may be issued in uncirculated and proof qualities, except that not more than one facility of the United States Mint may be used to strike any particular combination of denomination and quality.

(c) COMMENCEMENT OF ISSUANCE.—The coins authorized and minted under this title may be issued beginning on January 1, 1993.

(d) TERMINATION OF AUTHORITY.—Coins may not be minted under this title after December 31, 1993.

SEC. 405. SALE OF COINS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall sell the coins minted under this title at a price at least equal to the face value, plus the cost of minting and issuing the coins (including labor, materials, overhead, distribution, and promotional expenses).

(b) BULK SALES.—The Secretary shall make any bulk sales of the coins minted under this title at a reasonable discount.

(c) PREPAID ORDERS.—The Secretary shall accept prepaid orders for the coins minted under this title prior to the issuance of such coins. Sale prices with respect to such prepaid orders shall be at a reasonable discount.

(d) SURCHARGES.—All sales of coins minted under this title shall include a surcharge of $30 per coin for the five dollar coins, $6 per coin for the one dollar coins, and $3 per coin for the half dollar coins.

SEC. 406. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that minting and issuing coins under this title will not result in any net cost to the United States Government.

(b) PAYMENT FOR COINS.—A coin shall not be issued under this title unless the Secretary has received—

(1) full payment for the coin;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration Board.

(c) REPORTS TO CONGRESS.—Not later than fifteen days after the last day of each month, the Secretary shall transmit to the committee on Banking, Finance, and Urban Affairs of the House of Representatives and the committee on Banking, Housing, and Urban Affairs of the Senate a report detailing activities carried out under this title during such month. The report shall include a review of all marketing activities and a financial statement which details sources of funds, surcharges generated, and expenses incurred for manufacturing, materials, overhead, packaging, marketing, and shipping. No report shall be required after January 15, 1994. All remaining funds from the sale of the coins authorized under this title shall be deemed as surcharges and promptly be transmitted according to section 407 of this title.

SEC. 407. DISTRIBUTION OF SURCHARGES.

The surcharges received by the Secretary shall be transmitted promptly to the James Madison Memorial Fellowship Trust Fund established in 1986 by the James Madison Memorial Fellowship Act (20 U.S.C. 4501 et seq.). Such transmitted amounts shall qualify under section 811(a)(2) of that Act as funds contributed from private sources. In accordance with the purposes of the James Madison Fellowship Program, the funds transmitted to the Trust Fund shall be used to encourage teaching and graduate study of the Constitution of the United States, its roots, its formation, its principles, and its development.

SEC. 408. AUDITS.

The Comptroller General of the United States shall have the right to examine such books, records, documents, and other data as may be related to the expenditure of amounts transmitted under section 407 of this title. The expenditures and audit of surcharge funds deposited in the James Madison Memorial Fellowship Trust Fund under section 407 of this title shall be done in accordance with section 812 of the James Madison Memorial Fellowship Act (20 U.S.C. 4511). Annual reports shall be submitted by the Chairman of the James Madison Memorial Fellowship Foundation to both Houses of Congress on all expenditures of surcharge funds.

SEC. 409. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

(a) IN GENERAL.—Except as provided in subsection (b), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods and services necessary for carrying out the provisions of this title.

(b) EQUAL EMPLOYMENT OPPORTUNITY.—Subsection (a) shall not relieve any person entering into a contract under the authority of this title from complying with any law relating to equal employment opportunity.

TITLE V—CONSUMER PROTECTION

Subtitle A—Truth in Savings and Investments

SEC. 501. SHORT TITLE.

This subtitle may be cited as the "Truth in Savings and Investments Act".

SEC. 502. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that uniformity in calculating and disclosing the yields and basic terms of savings accounts and investment accounts would—

(1) better enable consumers to make informed decisions among savings and investment options; and

(2) increase competition among depository institutions and investment companies.

(b) PURPOSE.—The purpose of this subtitle is to require—

(1) standardization of the method of calculating yields which are payable on accounts and investments; and

(2) the clear and uniform disclosure of the key costs associated with such accounts and investments,

so that consumers can make meaningful comparisons among the competing claims of depository institutions and investment companies.

SEC. 503. DEFINITIONS.

For the purposes of this subtitle—

(1) ACCOUNT.—The term "account" means an account offered other than for a business purpose to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds. Such term includes a demand account, time account, negotiable order of withdrawal account, credit union share, share certificate, and share draft account.

(2) ANNUAL PERCENTAGE YIELD.—The term "annual percentage yield" means the total amount of interest that would be received on a $100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method that the Board shall prescribe by regulation.

(3) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(4) DEPOSITORY INSTITUTION.—The term "depository institution" has the same meaning as in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

(5) INTEREST.—The term "interest" includes a dividend paid with respect to a credit union share, share certificate, or share draft account which is an account under paragraph (1).

(6) MULTIPLE RATE ACCOUNT.—The term "multiple rate account" means an account that has 2 or more annual rates of simple interest which take effect in succeeding periods and which are known at the time of disclosure.

SEC. 504. DISCLOSURE OF YIELDS AND TERMS OF ACCOUNTS.

(a) IN GENERAL.—Except as provided in subsection (c), an advertisement, announcement, or solicitation initiated by any depository institution, or by any other entity, relating to any account—

(1) may not include a reference to a specific rate of interest payable on amounts held in such account, or to a specific yield or rate of earnings on amounts so held, other than a reference to the annual percentage yield; and

(2) shall, if it contains a reference to the annual percentage yield, state the information described in subsection (b) in a clear and conspicuous manner.

(b) INFORMATION REQUIRED TO BE DISCLOSED IF ANNUAL PERCENTAGE YIELD IS USED.—The information required to be disclosed by subsection (a)(2), to the extent applicable, is the following:

(1) The period during which such annual percentage yield is in effect.

(2) All minimum account balance and time requirements which must be met in order to earn the advertised yield (and, in the case of accounts for which more than 1 yield is stated, each annual percentage yield and the account minimum balance requirement associated with each such yield shall be in close proximity and have equal prominence).

(3) The minimum amount of the initial deposit which is required to open the account in order to obtain the yield advertised, if such minimum amount is greater than the minimum balance necessary to earn the advertised yield.

(4) A statement that regular fees or other conditions could reduce the yield.

(5) A statement that a penalty shall be imposed for early withdrawal.

(c) BROADCAST AND ELECTRONIC MEDIA AND OUTDOOR ADVERTISING EXCEPTION.—The Board may, by regulation, exempt—

(1) advertisements, announcements, or solicitations made by any broadcast or electronic medium,

(2) any outdoor advertising display not on the premises of the depository institution, or

(3) any advertising display on the premises of the depository institution or other entity offering the account or investment,

from any disclosure requirements described in paragraph (3) or (4) of subsection (b) if the Board finds that any such disclosure would be unnecessarily burdensome.

(d) MISLEADING DESCRIPTIONS OF FREE OR NO-COST ACCOUNTS PROHIBITED.—No advertisement, announcement, or solicitation made by any depository institution or by any other entity may refer to or describe an account as a free or no-cost account if—

(1) in order to avoid fees or service charges for any period—

(A) a minimum balance must be maintained in the account during such period; or

(B) the number of transactions are limited during such period; or

(2) any regular service or transaction fee is imposed.

(e) MISLEADING OR INACCURATE ADVERTISEMENTS PROHIBITED.—No depository institution or other entity shall make any advertisement, announcement, or solicitation relating to an account that is inaccurate or misleading or that misrepresents its deposit contracts.

SEC. 505. ACCOUNT SCHEDULE.

(a) IN GENERAL.—Each depository institution shall maintain a schedule of fees, charges, yields, and other terms applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the Board shall prescribe. The schedule for each class may be in the form of separate schedules or one comprehensive document. The Board shall specify, by regulation, which fees, charges, penalties, terms, conditions, and account restrictions must be included in a schedule required under this subsection. A depository institution need not include in such schedule any information not specified in such regulation.

(b) INFORMATION ON FEES AND CHARGES.—The schedule required under subsection (a) with respect to any account shall contain the following information:

(1) A description of all fees, periodic service charges, and penalties which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charges, or penalties (or the method by which such amounts will be calculated), and the circumstances under which any such amounts will be assessed.

(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each minimum balance is calculated.

(3) Any minimum amount required with respect to the initial deposit in order to open the account.

(c) INFORMATION ON YIELDS.—The schedule required under subsection (a) with respect to any account shall include the following information:

(1) Any annual percentage yield.

(2) The period during which any annual percentage yield will be in effect.

(3) Any annual rate of simple interest.

(4) The frequency with which interest will be compounded and credited.

(5) Any minimum balance which must be maintained to earn the rates and obtain the yields disclosed pursuant to this subsection and a clear description of how such minimum balance is calculated.

(6) A clear description of any minimum time requirement which must be met in order to obtain the yields disclosed pursuant to this subsection and any information described in paragraph (1), (2), (3), or (4) that will apply if any time requirement is not met.

(7) A statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of a withdrawal from, or the closing of, the account will not be paid by the depository institution or credited to the account by reason of such withdrawal or closing.

(8) Any provision or requirement relating to nonpayment of interest, including any charge or penalty for early withdrawal, and the conditions under which any such charge or penalty may be assessed.

The information described in paragraphs (1), (3), and (4) shall be provided for each period during which a different annual rate of simple interest is in effect (or, if applicable, the method for computing such information).

(d) OTHER INFORMATION.—The schedule required under subsection (a) shall include such other disclosures as the Board may determine to be necessary to allow consumers to understand and compare accounts, including frequency of interest rate adjustments, account restrictions, and renewal policies for time accounts.

(e) STYLE AND FORMAT.—Schedules required under subsection (a) shall be written in clear and plain language and be presented in a format designed to give consumers the ability to readily understand the terms of the accounts offered.

SEC. 506. DISCLOSURE REQUIREMENTS FOR CERTAIN ACCOUNTS.

The Board shall by regulation prescribe such modifications in the disclosure requirements under this subtitle relating to annual percentage yields as may be necessary to carry out the purposes of this subtitle in the case of—

(1) accounts with respect to which the determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a period of less than 1 year;

(2) variable rate accounts;

(3) accounts which, pursuant to law, do not guarantee payment of a stated rate; and

(4) multiple rate accounts.

SEC. 507. DISTRIBUTION OF SCHEDULES.

(a) IN GENERAL.—Any schedule required under section 505 shall be—

(1) made available to any person upon request; and

(2) provided to any potential customer before an account is opened or a service is rendered,

beginning not more than 6 months after the regulations issued by the Board take effect.

(b) NOTICE TO CURRENT ACCOUNT HOLDERS.—For any account for which the depository institution delivers an account statement on a quarterly or more frequent basis, the depository institution shall include on or with any regularly scheduled mailing posted or delivered within 6 months after the regulations issued by the Board take effect, a statement that the account holder has the right to request an account schedule containing the terms, charges, and interest rates of the account, and that the account holder may wish to request such an account schedule.

(c) DISTRIBUTION IN CASE OF CERTAIN INITIAL DEPOSITS.—If—

(1) a depositor is not physically present at an office of a depository institution at the time an initial deposit is accepted with respect to an account established by or for such person; and

(2) the schedule required under section 505(a) has not been furnished previously to such depositor,

the depository institution shall mail the schedule to the depositor at the address shown on the records of the depository institution for such account not later than 10 days after the date of the initial deposit.

(d) DISTRIBUTION OF NOTICE OF CERTAIN CHANGES.—If—

(1) any change is made in any term or condition which is required to be disclosed in

the schedule required under section 505(a) with respect to any account; and

(2) the change may reduce the yield or adversely affect any holder of the account,

all account holders who may be affected by such change shall be notified and provided with a description of the change by mail at least 30 days before the change takes effect. This subsection does not apply to changes in annual percentage yields of variable rate accounts.

(e) DISTRIBUTION IN CASE OF ACCOUNTS ESTABLISHED BY MORE THAN 1 INDIVIDUAL OR BY A GROUP.—If an account is established by more than 1 individual or for a person other than an individual, any distribution described in this section with respect to such account meets the requirements of this section if the distribution is made to 1 of the individuals who established the account or 1 individual representative of the person on whose behalf such account was established.

SEC. 508. PERIODIC STATEMENTS.

For any account for which a depository institution provides a periodic statement, the depository institution shall provide to each of its account holders on or accompanying each periodic statement a clear and conspicuous disclosure of—

(1) the annual percentage yield;

(2) the amount of interest earned; and

(3) any fees or charges imposed.

SEC. 509. PAYMENT OF INTEREST.

(a) DETERMINATION OF BALANCE ON WHICH INTEREST IS CALCULATED.—Except as provided in subsection (c), interest shall be calculated on the principal balance in an interest-bearing account at a depository institution by using—

(1) the average daily balance method, which is the sum of each day's closing balance divided by the number of days in the period, or

(2) the day of deposit to day of withdrawal method, as defined by the Board.

Each agency referred to in section 511 shall, in connection with its examination functions, examine the accuracy of depository institutions' balance calculations.

(b) DATE BY WHICH INTEREST MUST ACCRUE.—Interest on accounts that are subject to this Act shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act, subject to subsections (b) and (c) of such section.

(c) SPECIAL RULE FOR CREDIT UNIONS.—Subsection (a) shall not apply to an account at a depository institution described in section 19(b)(1)(A)(iv) of the Federal Reserve Act if the depository institution—

(1) calculates the accrual of interest or dividends by a method other than the method described in subsection (a) with respect to all funds, including cash, deposited in such account; and

(2) provides notice of interest payment policy in the manner required by section 605(e) of the Expedited Funds Availability Act.

(d) CALCULATED ON FULL AMOUNT OF PRINCIPAL.—Interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest disclosed pursuant to this subtitle.

(e) NO PARTICULAR METHOD OF COMPOUNDING INTEREST REQUIRED.—Subsection (d) shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting interest.

SEC. 510. REGULATIONS.

(a) IN GENERAL.—The Board, after consultation with each agency referred to in section 511(a) and after providing public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this subtitle. The regulations may contain any classification, differentiation, or other provision, and may provide an exception for any class of accounts which, in the judgment of the Board, may be necessary or proper to carry out the purposes of this subtitle, to prevent circumvention or evasion of the requirements of this subtitle, or to facilitate compliance with the requirements of this subtitle.

(b) MODEL FORMS AND CLAUSES.—

(1) IN GENERAL.—The Board shall publish model forms and clauses for common disclosures to facilitate compliance with this subtitle. In devising such forms, the Board shall consider the use by depository institutions of data processing or similar automated machines.

(2) USE OF FORMS AND CLAUSES DEEMED IN COMPLIANCE.—Nothing in this subtitle may be construed to require a depository institution to use any such model form or clause prescribed by the Board under this subsection. A depository institution shall be deemed to be in compliance with the disclosure provisions of this subtitle if the depository institution—

(A) uses any appropriate model form or clause published by the Board; or

(B) uses any such model form or clause and changes it by—

(i) deleting any information which is not required by this subtitle; or

(ii) rearranging the format,

if in making such deletion or rearranging the format, the depository institution does not affect the substance, clarity, or meaningful sequence of the disclosure.

(3) PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT.—The Board shall adopt model disclosure forms and clauses after giving appropriate notice and opportunity for public comment in accordance with section 553 of title 5, United States Code.

SEC. 511. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Compliance with the requirements imposed under this subtitle shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act (other than member banks of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act, by the Office of Thrift Supervision in the case of depository institutions described in clause (v) or (vi) of section 19(b)(1)(A) of the Federal Reserve Act;

(3) the Federal Credit Union Act, by the National Credit Union Administration Board in the case of Federal credit unions; and

(4) the Federal Trade Commission Act, by the Federal Trade Commission in the case of State-chartered credit unions.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) VIOLATION OF THIS SUBTITLE TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency referred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this subtitle shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each agency may exercise, for purposes of enforcing compliance with any requirement imposed under this subtitle, any other authority conferred on such agency by law.

(c) REGULATIONS BY AGENCIES OTHER THAN THE BOARD.—The authority of the Board to issue regulations under this subtitle does not impair the authority of any other agency referred to in subsection (a) to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this subtitle.

SEC. 512. CIVIL LIABILITY.

(a) CIVIL LIABILITY.—Except as otherwise provided in this section, any depository institution or other entity offering an account that fails to comply with any requirement imposed under this subtitle or any regulation prescribed under this subtitle with respect to any person who is an account holder is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that—

(i) as to each member of the class, no minimum recovery shall be applicable; and

(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; and

(3) in the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) CLASS ACTION AWARDS.—In determining the total amount of an award in a class action, the court shall consider, among other relevant factors—

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of failures of compliance;

(3) the resources of the depository institution;

(4) the number of persons adversely affected; and

(5) the extent to which the failure of compliance was intentional.

(c) BONA FIDE ERRORS.—

(1) GENERAL RULE.—A depository institution may not be held liable in any action brought under this section for a violation of this subtitle if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(2) EXAMPLES.—Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a depository institution's obligation under this subtitle is not a bona fide error.

(d) JURISDICTION.—Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year after the date of the occurrence of the violation involved.

(e) RELIANCE ON BOARD RULINGS.—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board, or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretation or approval under procedures prescribed by the Board, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) NOTIFICATION OF AND ADJUSTMENT FOR ERRORS.—A depository institution shall not be liable under this section or section 511 for any failure to comply with any requirement imposed under this subtitle with respect to any account if—

(1) before—

(A) the end of the 60-day period beginning on the date on which the depository institution discovered the failure to comply;

(B) any action is instituted against the depository institution by the account holder under this section with respect to such failure to comply; and

(C) any written notice of such failure to comply is received by the depository institution from the account holder,

the depository institution notifies the account holder of the failure of such institution to comply with such requirement; and

(2) the depository institution makes such adjustments as may be necessary with respect to such account to ensure that—

(A) the account holder will not be liable for any amount in excess of the amount actually disclosed with respect to any fee or charge;

(B) the account holder will not be liable for any fee or charge imposed under any condition not actually disclosed; and

(C) interest on amounts in such account will accrue at the annual percentage yield, and under the conditions actually disclosed (and credit will be provided for interest already accrued at a different annual percentage yield and under different conditions than the yield or conditions disclosed).

(g) MULTIPLE INTERESTS IN 1 ACCOUNT.—If more than 1 person holds an interest in any account—

(1) the minimum and maximum amounts of liability under subsection (a)(2)(A) for any failure to comply with the requirements of this subtitle shall apply with respect to such account; and

(2) the court shall determine the manner in which the amount of any such liability with respect to such account shall be distributed among such persons.

(h) CONTINUING FAILURE TO DISCLOSE.—

(1) CERTAIN CONTINUING FAILURES TREATED AS 1 VIOLATION.—Except as provided in paragraph (2), the continuing failure of any depository institution to disclose any particular term required to be disclosed under this subtitle with respect to a particular account shall be treated as a single violation for purposes of determining the amount of any liability of such institution under subsection (a) for such failure to disclose.

(2) SUBSEQUENT FAILURE TO DISCLOSE.—The continuing failure of any depository institution to disclose any particular term required to be disclosed under this subtitle with respect to a particular account after judgment has been rendered in favor of the account holder in connection with a prior failure to disclose such term shall be treated as a subsequent violation for purposes of determining liability under subsection (a).

(3) COORDINATION WITH SECTION 511.—This subsection shall not limit or otherwise affect the enforcement power under section 511 of any agency referred to in subsection (a) of such section.

SEC. 513. CREDIT UNIONS.

(a) IN GENERAL.—No regulation prescribed by the Board under this subtitle shall apply directly with respect to any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) REGULATIONS PRESCRIBED BY THE NCUA.—Within 90 days of the effective date of any regulation prescribed by the Board under this subtitle, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Board taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

SEC. 514. REVIEW OF DISCLOSURE REQUIREMENTS FOR OPEN-END MANAGEMENT INVESTMENT COMPANIES.

The Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 66. REVIEW OF DISCLOSURE REQUIREMENTS FOR YIELDS AND TERMS.

"Not later than January 1, 1993, and annually thereafter, the Commission and the Board of Governors of the Federal Reserve System shall consult with each other (and with any other agency they deem appropriate) to review the regulations prescribed under this Act and the Securities Act of 1933 and the regulations prescribed under the Truth in Savings and Investments Act to assure that such regulations are providing consumers the ability to compare savings and investments options effectively. If at any time as a result of such review, either the Commission or the Board finds that its regulations are not providing consumers the ability to compare savings and investments options effectively, the Commission or the Board, as the case may be, shall modify its regulations to assure that consumers have such ability.".

SEC. 515. EFFECT ON STATE LAW.

(a) IN GENERAL.—The provisions of this subtitle do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist.

(b) BALANCE ON WHICH INTEREST IS CALCULATED.—The provisions of this subtitle shall supersede any provisions of any State law relating to the determination of the balance on which interest is calculated to the extent such State law specifies the manner for determining the balance on which interest is calculated.

SEC. 516. EFFECTIVE DATE OF REGULATIONS.

The Board shall issue regulations to carry out this subtitle in final form not later than 9 months after the date of enactment of this Act. Such regulations shall take effect not later than 6 months after publication in final form.

Subtitle B—Fair Lending Enforcement

SEC. 521. SHORT TITLE.

This subtitle may be cited as the "Fair Lending Enforcement Act of 1991".

SEC. 522. APPRAISALS.

Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by adding at the end the following:

"(e) Each creditor shall promptly furnish an applicant, upon written request by the applicant made within a reasonable period of time of the application, a copy of the appraisal report used in connection with the applicant's application for a loan that is or would have been secured by a lien on residential real property. The creditor may require the applicant to reimburse the creditor for the cost of the appraisal.".

SEC. 523. CONSUMER COMPLIANCE PROGRAMS.

(a) FDIC.—The Federal Deposit Insurance Act is amended by adding at the end the following:

"SEC. 41. CONSUMER COMPLIANCE PROGRAM.

"(a) ESTABLISHMENT REQUIRED.—Each appropriate Federal banking agency shall establish a separate consumer compliance program. The head of the consumer compliance program shall report directly to the head of the agency.

"(b) DEFINITIONS.—For purposes of this section—

"(1) CONSUMER COMPLIANCE EXAMINATION.—The term 'consumer compliance examination' means an examination of an insured depository institution to determine the extent to which such institution is in compliance with all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws.

"(2) CONSUMER COMPLIANCE EXAMINER.—The term 'consumer compliance examiner' means an examiner who specializes in assessing compliance with all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws.

"(c) CONSUMER COMPLIANCE EXAMINATIONS.—

"(1) FREQUENCY.—The appropriate Federal banking agency shall conduct on-site consumer compliance examinations of each insured depository institution. Beginning not later than January 1, 1995, the agency shall conduct such an examination of each institution not less than once every 2 years, or as frequently as the agency conducts a regular on-site safety and soundness examination of each institution, whichever is less frequent.

"(2) CONDUCTED BY CONSUMER COMPLIANCE EXAMINERS.—Consumer compliance examinations shall be conducted by consumer compliance examiners under the supervision or oversight of the head of the consumer compliance program. Each appropriate Federal banking agency may consider the size of the

depository institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination each appropriate Federal banking agency shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from the public.

"(3) EXAMINATION UPON REQUEST UNDER CERTAIN CIRCUMSTANCES.—Any bank holding company or savings and loan holding company which controls an insured depository institution which determines that a consumer examination of such depository institution may be appropriate to expedite an application or notice for a deposit facility described in section 803(3) of the Community Reinvestment Act of 1977 may request in writing the appropriate consumer compliance program to conduct an examination of the depository institution pursuant to paragraph (1).

"(d) ADDITIONAL RESPONSIBILITIES.—In addition to the responsibilities established by subsection (c), the head of each consumer compliance program shall—

"(1) develop procedures for consumer compliance examinations and other procedures necessary to implement all applicable laws relating to consumer protection, including fair lending and community reinvestment laws;

"(2) train and supervise or oversee consumer compliance examiners;

"(3) develop career opportunities for consumer compliance examiners comparable to those for safety and soundness examiners;

"(4) respond to consumer complaints and inquiries;

"(5) undertake supervisory action and initiate enforcement proceedings with respect to all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws;

"(6) make recommendations to its agency concerning policies and adopt policies with respect to all applicable laws and regulations relating to consumer protection, including fair lending and community reinvestment laws; and

"(7) perform any other duties and functions related to the consumer compliance program.

"(e) EFFECTIVE DATE.—The establishment of separate consumer compliance programs in each of the agencies shall be completed no later than January 1, 1993.

"(f) REPORTS.—Each consumer compliance program shall prepare a description of its activities which shall be included in the agency's annual report to the Congress.".

(b) NATIONAL CREDIT UNION ADMINISTRATION.—Title I of the Federal Credit Union Act is amended by adding at the end the following:

"SEC. 130. CONSUMER COMPLIANCE PROGRAM.

"(a) ESTABLISHMENT REQUIRED.—The Board shall establish a separate consumer compliance program. The head of the consumer compliance program shall report directly to the Board.

"(b) DEFINITIONS.—For purposes of this section—

"(1) CONSUMER COMPLIANCE EXAMINATION.—The term 'consumer compliance examination' means an examination of an insured credit union to determine the extent to which such credit union is in compliance with all applicable laws and regulations relating to consumer protection, including fair lending laws.

"(2) CONSUMER COMPLIANCE EXAMINER.—The term 'consumer compliance examiner' means an examiner who specializes in assessing compliance with all applicable laws and regulations relating to consumer protection, including fair lending laws.

"(c) CONSUMER COMPLIANCE EXAMINATIONS.—

"(1) FREQUENCY.—The Board shall conduct on-site consumer compliance examinations of each insured credit union. Beginning not later than January 1, 1995, the Board shall conduct such an examination of each insured credit union not less than once every 2 years, or as frequently as the Board conducts a regular on-site safety and soundness examination of the institution, whichever is less frequent.

"(2) CONDUCTED BY CONSUMER COMPLIANCE EXAMINERS.—Consumer compliance examinations shall be conducted by consumer compliance examiners under the supervision or oversight of the head of the consumer compliance program. The Board may consider the size of the institution and the complexity of the consumer compliance examination issues presented in determining whether to assign to a particular examination a consumer compliance examiner who exclusively conducts consumer compliance examinations or an examiner who has only received specialized training in consumer compliance examinations. In making this determination the Board shall also consider whether substantive questions of compliance have been raised in previous examinations or in comments or complaints from members or the public.

"(d) ADDITIONAL RESPONSIBILITIES.—In addition to the responsibilities established by subsection (c), the head of the consumer compliance program shall—

"(1) develop procedures for consumer compliance examinations and other procedures necessary to implement all applicable laws relating to consumer protection, including fair lending laws;

"(2) train and supervise or oversee consumer compliance examiners;

"(3) develop career opportunities for consumer compliance examiners comparable to those for safety and soundness examiners;

"(4) respond to consumer complaints and inquiries;

"(5) undertake supervisory action and initiate enforcement proceedings with respect to all applicable laws and regulations relating to consumer protection, including fair lending laws;

"(6) make recommendations to the Board concerning policies and adopt policies with respect to all applicable laws and regulations relating to consumer protection, including fair lending laws; and

"(7) perform any other duties and functions related to the consumer compliance program.

"(e) EFFECTIVE DATE.—The establishment of a separate consumer compliance program shall be completed no later than January 1, 1993.

"(f) REPORTS.—The consumer compliance program shall prepare a description of its activities which shall be included in the Board's annual report to the Congress.".

(c) STATE CREDIT UNIONS.—Section 204 of the Federal Credit Union Act is amended by adding after the second sentence a new sentence to read: "The Board shall conduct consumer compliance examinations as set forth in section 130 of State chartered insured credit unions only if the appropriate State supervisory agency has not established an examination program similar to that described in section 130.

SEC. 524. ENFORCEMENT OF EQUAL CREDIT OPPORTUNITY ACT.

(a) PATTERN OR PRACTICE.—Section 706(g) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(g)) is amended by adding at the end the following: "Each of the agencies referred to in paragraphs (1), (2), and (3) of section 704(a) shall refer the matter to the Attorney General whenever it has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 701(a) of this title. Each of such agencies is authorized to refer the matter to the Attorney General whenever it has reason to believe that 1 or more creditors has violated section 701(a) of this title.".

(b) DAMAGES.—Section 706(h) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(h)) is amended by inserting "actual and punitive damages and" after "including".

(c) NOTICE TO HUD.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following:

"(k) Whenever an agency referred to in paragraph (1), (2), or (3) of section 704(a) has reason to believe that a violation of this title has occurred, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, and that the alleged violation would be a violation of the Fair Housing Act, and the agency does not refer the matter to the Attorney General pursuant to subsection (g), it shall—

"(1) notify the Secretary of Housing and Urban Development of the violation; and

"(2) notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act.".

SEC. 525. HOME MORTGAGE DISCLOSURE ACT.

(a) IN GENERAL.—Section 309 of the Home Mortgage Disclosure Act (12 U.S.C. 2808) is amended—

(1) by striking "depository" before "institution";

(2) by inserting "specified in section 303(2)(A)" after "institution"; and

(3) by adding at the end the following: "The Board, in consultation with the Secretary, may exempt institutions described in section 303(2)(B) that are comparable within their respective industries to institutions that are exempt under the preceding sentence.".

(b) EFFECTIVE DATE.—This section shall become effective on January 1, 1992.

Subtitle C—Basic Financial Services Accounts

SEC. 531. STUDY AND REPORT ON UTILIZING THE UNITED STATES POSTAL SERVICE TO PROVIDE GOVERNMENT CHECK CASHING SERVICES.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study examining current fees and practices of check cashing outlets and the potential for enhancing the access of low-income individuals to government check cashing services through the United States Postal Service.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall provide the Congress with a report regarding the results of the study described in subsection (a), along with any recommendations for Federal or State legislative or administrative action.

SEC. 532. STUDY AND REPORT ON DIRECT DEPOSIT PROGRAM FOR FEDERAL RECURRING PAYMENTS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study to assess the benefits and costs to the Federal Government of utilizing direct deposit versus paper checks to accomplish government payments. In conducting the study, the Comptroller General shall—

(1) consider the administrative cost savings, if any, to be accomplished through the utilization of direct deposit, such as reduced paperwork and personnel involvement, streamlined and cost-effective operations, and reduced postage expenses;

(2) consider the loss in interest earnings to the Federal Government as the result of the earlier relinquishment by the Government of directly deposited funds, using data on major beneficiary programs that utilize recurring Federal benefits payments;

(3) compare the relative costs and benefits to the Federal Government of direct deposit versus paper check payments of Government benefits; and

(4) identify societal costs and benefits of direct deposit with respect to safety, risk of loss to the individual and the Government, convenience, reliability, and timeliness of payments.

(b) REPORT REQUIRED.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall transmit to the Congress a report containing the results of the study described in subsection (a), along with any recommendations for legislative and administrative action that should be taken.

SEC. 533. GOVERNMENT RETURN OF ELECTRONIC PAYMENTS.

Section 3712(a) of title 31, United States Code, is amended—

(1) in paragraph (1)—

(A) by inserting "or that an electronic funds transfer has been acquired by an unauthorized party" after "If the Secretary of the Treasury determines that a Treasury check has been paid over a forged or unauthorized endorsement";

(B) by inserting "or may reclaim the amount of such electronic funds transfer from the receiving institution or the unauthorized party that acquired the benefits" after "guarantee of endorsements";

(C) by inserting "for payments issued before January 1, 1995" after "date of payment" in subparagraph (A);

(D) by striking "or" at the end of subparagraph (A);

(E) by redesignating subparagraph (B) as subparagraph (C); and

(F) by inserting after subparagraph (A) the following:

"(B) the expiration of the 180-day period beginning on the date of payment for payments issued on or after January 1, 1995; or";

(2) in paragraph (2)—

(A) by striking the following:

"(2) CIVIL ACTIONS.—(A) Except as provided in subparagraph (B), the United States may bring a civil action to enforce" and inserting the following:

"(2) CIVIL ACTIONS.—

"(A) 1 YEAR LIMIT.—Except as provided in subparagraph (B), the United States may bring a civil action—

"(i) to enforce";

(B) by striking the period at the end of subparagraph (A) and inserting "; or

"(ii) against the institution receiving an electronic funds transfer of a Government benefit that has been acquired by an unauthorized party or against the unauthorized party that acquired the benefit, not later than 1 year after the electronic funds transfer is received by the receiving institution.";

(C) in subparagraph (B)—

(i) by striking "(B)" and inserting the following:

"(B) 3-YEAR EXTENSION.—";

(ii) by striking "an endorser"; and

(iii) by striking "against the endorser" and inserting "to the party against which it may bring a civil action under subparagraph (A)".

Subtitle D—Miscellaneous

SEC. 551. HOME EQUITY LOAN CONSUMER PROTECTION ACT AMENDMENTS.

(a) MARGIN DISCLOSURE REQUIREMENT.—Section 127A(a)(2)(A) of the Truth in Lending Act (15 U.S.C. 1637a(a)(2)(A)) is amended by inserting after "rate will be computed" the following: ", including a statement of any margin that applies under the plan,".

(b) TERM CHANGED AFTER APPLICATION.—Section 137(d) of the Truth in Lending Act (15 U.S.C. 1647(d)) is amended by inserting after the first sentence the following new sentence: "If a creditor discloses different margins tied to the creditor's criteria for determining the consumer's creditworthiness, the failure to offer the consumer the lowest margin disclosed in connection with creditworthiness constitutes a changed term.".

(c) EFFECTIVE DATE.—Regulations implementing the amendments made by subsections (a) and (b) shall become effective on October 1, 1992.

SEC. 552. DIRECTIVE TO RELIEVE REGULATORY BURDEN.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, each appropriate Federal banking agency, in consultation with individuals representing depository institutions, consumers, community groups, and other interested parties, shall—

(1) review the policies, procedures, and recordkeeping and documentation requirements used by the agency to monitor and enforce compliance with designated consumer laws;

(2) determine whether those policies, procedures (including examination procedures), and requirements are unnecessarily burdensome for insured depository institutions;

(3) identify any revisions of those policies, procedures (including examination procedures), and requirements that could reduce burdens on insured depository institutions without in any respect diminishing either compliance with or enforcement of designated consumer laws; and

(4) implement any such revisions.

(b) INNOVATIVE ARRANGEMENTS.—Each appropriate Federal banking agency, in consultation with individuals representing depository institutions, consumers, community groups, and other interested parties, shall identify, and disseminate information regarding, innovative arrangements that can assist insured depository institutions in meeting their obligations under the Community Reinvestment Act of 1977 and other consumer laws, including the use of centralized loan pools to serve the credit needs of low- and moderate-income neighborhoods and families.

(c) REPORT.—Each appropriate Federal banking agency shall submit to the Congress a report describing the actions taken under subsections (a) and (b) not later than 1 year after the date of enactment of this Act.

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

(1) the terms "insured depository institution" and "appropriate Federal banking agency" have the same meanings as in section 3 of the Federal Deposit Insurance Act; and

(2) the term "designated consumer laws" means the Community Reinvestment Act of 1977, the Electronic Fund Transfer Act, the Equal Credit Opportunity Act, the Expedited Fund Availability Act, the Fair Housing Act, the Home Mortgage Disclosure Act of 1975, the National Flood Insurance Act of 1968, the Real Estate Settlement Procedures Act of 1974, the Right to Financial Privacy Act of 1978, and the Truth-in-Lending Act.

SEC. 553. EXPEDITED FUNDS AVAILABILITY ACT AMENDMENTS.

(a) AVAILABILITY OF CASH DEPOSITS.—Section 603(a) of the Expedited Funds Availability Act (12 U.S.C. 4002(a)) is amended—

(1) in paragraph (1)(A), by striking "staffed by individuals employed by such institution";

(2) in paragraphs (2)(B)(ii) and (2)(C)(ii), by striking "and is staffed by individuals employed by such institution";

(3) in paragraph (2)(F)—

(A) by striking clause (i); and

(B) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively; and

(4) by adding at the end the following:

"(3) EXTENSIONS.—In the case of a deposit subject to paragraph (1)(A) or (2) of this subsection that is deposited in a facility that is not staffed by individuals employed by such institution, the Board may, by regulation or order, extend the time by which such funds must be available for withdrawal by 1 business day if the Board determines that, operational constraints imposed by the location of the facility make it unreasonable to expect the receiving depository institution to make the funds available for withdrawal as provided in paragraph (1)(A) or (2).".

(b) ATM DEPOSITS.—Section 603(e) of the Expedited Funds Availability Act (12 U.S.C. 4002(e)) is amended—

(1) in paragraph (1)(C), by striking "the expiration of the 2-year period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act" and inserting "September 1, 1994"; and

(2) in paragraph (2)(D), by striking "the expiration of the 2-year period beginning on the date of enactment of the Cranston-Gonzalez National Affordable Housing Act" and inserting "September 1, 1994".

(c) SAFEGUARD EXCEPTIONS.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—

(1) in subsection (b), by inserting "(a)(2)," after "subsection";

(2) in subsection (c)(1), by striking "(F)" after "subsections (a)(2)";

(3) in subsection (d), by inserting "(a)(2)," after "subsections";

(4) in subsection (f)(1)(A)(i), by striking "day" and inserting "time period within which"; and

(5) in subsection (f), by adding at the end of paragraph (2) the following:

"(D) In the case of a deposit to which subsection (b)(1) or (b)(2) applies, the depository institution may, for nonconsumer accounts and other classes of accounts, as defined by the Board, that generally have a large number of such deposits, provide notice at or before the time it first determines that the subsection applies.

"(E) In the case of a deposit to which subsection (b)(3) applies, the depository institution may, subject to regulations of the Board, provide notice at the beginning of each time period it determines that the subsection applies. In addition to the requirements contained in paragraph (1)(A), the notice shall specify the time period for which the exception will apply.".

(d) LOSS ALLOCATION.—Section 611(f) of the Expedited Funds Availability Act (21 U.S.C. 4010(f)) is amended—

(1) by inserting "or other entities participating in the payments system, including the States and political subdivisions thereof on which checks are drawn," after "depository institutions"; and

(2) by inserting "finance charges, reasonable attorneys' fees, and other expenses related to the check," after "amount of the check giving rise to loss or liability,".

SEC. 554. TRUTH IN LENDING ACT AMENDMENT.

Section 104 of the Truth in Lending Act (15 U.S.C. 1603) is amended by adding at the end the following:

"(7) Credit transactions involving a consumer whose average annual income is more than $200,000 or whose net assets exceed $1,000,000 at the time of such transaction if the consumer—

"(A) receives an oral explanation and a clear and conspicuous written explanation of the consumer's right to disclosure under this title; and

"(B) signs a waiver of his or her right to such disclosure.

The Board shall prescribe the form and content of explanations and waivers required by this paragraph.".

SEC. 555. HOMEOWNERSHIP AMENDMENTS.

(a) ESTIMATES OF REAL ESTATE SETTLEMENT COSTS.—Section 5(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(d)) is amended by striking the last sentence and inserting "Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.".

(b) ADJUSTABLE RATE MORTGAGE CAPS.—Section 1204(d)(2) of the Competitive Equality Banking Act of 1987 (12 U.S.C. 3806(d)(2)) is amended by striking "any loan" and inserting "any consumer loan".

SEC. 556. DISCUSSION OF LENDING DATA.

(a) PUBLIC SECTIONS OF COMMUNITY REINVESTMENT ACT REPORTS.—Section 807(b)(1)(B) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(1)(B)) is amended by inserting "and data" after "facts".

(b) OTHER COMMUNITY REINVESTMENT ACT AMENDMENTS.—Section 807 of the Community Reinvestment Act of 1977 (12 U.S.C. 2906) is amended—

(1) in subsection (a)(1), by striking "depository institutions regulatory agency" and inserting "financial supervisory agency";

(2) in subsection (b)(1)(A)—

(A) by striking "depository institutions regulatory agency's" and inserting "financial supervisory agency's"; and

(B) by striking "depository institutions regulatory agencies" and inserting "financial supervisory agencies"; and

(3) in subsection (c), by striking "depository institutions regulatory agency" each place such term appears and inserting "financial supervisory agency".

SEC. 557. GAO REPORT ON DATA COLLECTION UNDER INTERSTATE BRANCHING.

(a) IN GENERAL.—The Comptroller General shall submit to the Congress, not later than 9 months after the date of enactment of this Act, a report that—

(1) examines statutory and regulatory requirements for insured depository institutions to collect and report deposit and lending data; and

(2) determines what modifications to such requirements are needed, so that implementing the interstate branching provisions contained in title III of this Act results in no material loss of information important to regulatory or congressional oversight of insured depository institutions.

(b) CONSULTATION.—The Comptroller General, in preparing the report required by this section, shall consult with individuals representing the appropriate Federal banking agencies, insured depository institutions, consumers, community groups, and other interested parties.

(c) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 558. NOTICE OF BRANCH CLOSING.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(r) NOTICE TO CUSTOMERS OF BRANCH CLOSING.—

"(1) IN GENERAL.—An insured depository institution that proposes to close a branch shall provide notice of the proposed closing to its customers.

"(2) CONTENTS OF NOTICE.—Notice under paragraph (1) shall consist of—

"(A) posting of a notice in a conspicuous manner on the premises of the branch proposed to be closed during not less than the 30-day period ending on the date proposed for that closing; and

"(B) including a notice in—

"(i) at least 1 of any regular account statements mailed to customers of the branch proposed to be closed, or

"(ii) in a separate mailing,

by not later than the beginning of the 90-day period ending on the date proposed for that closing.".

SEC. 559. STUDY AND REPORT ON COMMUNITY LENDING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study to—

(1) determine whether there are regulatory impediments to sound bank lending in low- and moderate-income neighborhoods and inner cities;

(2) assess whether the risk-based capital standards discourage sound lending for multifamily housing;

(3) evaluate the policy implications of giving banks direct incentives for sound lending in low- and moderate-income neighborhoods and inner cities, through Bank Insurance Fund assessments, risk-based capital standards, other bank regulatory policies, lending from the Federal Home Loan Bank System, or tax policy incentives;

(4) determine whether the underwriting policies of the secondary market agencies could be revised to encourage bank lending in low- and moderate-income neighborhoods and inner cities; and

(5) recommend legislative or regulatory changes to encourage sound, profitable lending in low- and moderate-income neighborhoods and inner cities.

(b) CONSULTATION.—The Comptroller General shall consult with State and local governments, nonprofit developers, community groups, financial institutions with experience in community lending, State housing finance agencies, and others with expertise in community lending.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall transmit to the Congress a report containing the findings from the study under subsection (a).

TITLE VI—FOREIGN BANK SUPERVISION AND REGULATION

Subtitle A—Foreign Bank Supervision Act

SEC. 601. SHORT TITLE.

This subtitle may be cited as the "Foreign Bank Supervision Act of 1991".

SEC. 602. REGULATION OF FOREIGN BANK OPERATIONS.

(a) ESTABLISHMENT AND TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—Section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) is amended by adding at the end the following new subsections:

"(e) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

"(1) PRIOR APPROVAL REQUIRED.—No foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company, without obtaining the prior approval of the Board.

"(2) POLICY CONSIDERATIONS.—In acting on an application under paragraph (1), the Board shall not make the size of the foreign bank the sole determinant factor and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country.

"(3) REQUIRED STANDARDS FOR APPROVAL.—The Board may not approve an application under paragraph (1) unless it determines that—

"(A) the foreign bank engages directly in the business of banking outside the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

"(B) the foreign bank has furnished to the Board the information it needs to adequately assess the application.

"(4) ADDITIONAL STANDARDS.—In acting on any application under paragraph (1), the Board may consider—

"(A) whether the appropriate authorities in the home country of the foreign bank have consented to the proposed establishment of a branch, agency or commercial lending company in the United States by the foreign bank;

"(B) the financial and managerial resources of the foreign bank, including its experience and capacity to engage in international banking and the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank;

"(C) whether the foreign bank has provided the Board with adequate assurances that it will make available to the Board such information on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with this Act, the Bank Holding Company Act of 1956, and other applicable Federal banking statutes; and

"(D) whether the foreign bank and its United States affiliates are in compliance with applicable United States law.

"(5) ESTABLISHMENT OF CONDITIONS.—Consistent with the standards for approval in paragraphs (2), (3), and (4), the Board may impose such conditions on its approval under this subsection as it deems necessary.

"(f) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

"(1) STANDARDS FOR TERMINATION.—The Board, after notice and opportunity for hearing and notice to any appropriate State supervisory agency or the Office of the Comptroller of the Currency, may order a foreign bank that operates a branch or agency or commercial lending company subsidiary in

the United States to terminate the activities of such branch, agency or subsidiary if the Board finds that—

"(A) the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; or

"(B)(i) there is reasonable cause to believe that such foreign bank, or any affiliate of such foreign bank, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

"(ii) as a result of such violation or practice, the continued operation of the foreign bank's branch, agency or commercial lending company subsidiary in the United States would not be consistent with the public interest or with the purposes of this Act, the Bank Holding Company Act of 1956, or the Financial Institutions Supervisory Act of 1966.

However, in making its findings under this paragraph, the Board shall not make size the sole determinant factor and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country.

"(2) DISCRETION TO DENY HEARING.—The Board may take the action described in paragraph (1) without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest.

"(3) EFFECTIVE DATE OF TERMINATION ORDER.—An order issued under paragraph (1) shall become effective within 120 days of its issuance or such longer time period as the Board may direct.

"(4) COMPLIANCE WITH STATE AND FEDERAL LAW.—Any foreign bank required to terminate activities conducted at offices or commercial lending company subsidiaries in the United States pursuant to this subsection shall comply with the requirements of applicable Federal and State law with respect to procedures for the closure or dissolution of such offices or subsidiaries.

"(5) ENFORCEMENT OF ORDERS.—The Board may in its discretion apply to any United States district court within a jurisdiction in which any office or subsidiary of the foreign bank against which the Board has issued an order under paragraph (1) is located, for the enforcement of any effective and outstanding order issued under this section, and the United States district courts shall have jurisdiction and power to order and require compliance therewith.

"(6) CRITERIA RELATING TO FOREIGN SUPERVISION.—Not later than 1 year after the date of enactment of this subsection, the Board, in consultation with the Secretary of the Treasury, shall develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board shall allow reasonable opportunity for public review and comment.

"(g) JUDICIAL REVIEW.—

"(1) JURISDICTION OF UNITED STATES COURTS OF APPEALS.—Any foreign bank against which the Board has issued an order under subsection (e) or (f) may obtain a review of such order in the United States Court of Appeals within any circuit wherein such foreign bank operates a branch, agency, or commercial lending company that has been required by such order to terminate its activities, or in the United States Court of Appeals for the District of Columbia Circuit, by filing in the court, within 30 days after the entry of the order of the Board, a petition praying that the order be modified or set aside.

"(2) PROCEDURES FOR JUDICIAL REVIEW.—A copy of such petition shall be forthwith transmitted to the Board by the clerk of the court, as appropriate, and thereupon the Board shall file in the court the record made before the Board, as provided in section 2112 of title 28.

"(3) SCOPE OF JUDICIAL REVIEW.—Upon the filing of such petition, the court shall have jurisdiction to affirm, modify or set aside the order of the Board and to require the Board to take such action with regard to the matter under review as the court deems proper. The findings of the Board as to the facts, if supported by substantial evidence, shall be conclusive.

"(4) EXCLUSIVE JURISDICTION.—Judicial review of any order issued under subsection (e) or (f) shall be exclusively as provided for in this subsection. No other court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any order under this section, or to review, modify, suspend, terminate, or set aside any such order.

"(h) CONSULTATION WITH STATE BANK LICENSING AUTHORITY.—The Board shall request and consider any views of the appropriate State bank licensing authority or the Comptroller of the Currency with respect to an application or action under subsection (e) or (f).

"(i) LIMITATIONS ON POWERS OF STATE BRANCHES AND AGENCIES.—

"(1) IN GENERAL.—After the end of the 1-year period beginning on the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, a State branch or State agency may not engage in any type of activity that is not permissible for a Federal branch unless—

"(A) the Board has determined that such activity is consistent with sound banking practice; and

"(B) in the case of an insured branch, the Federal Deposit Insurance Corporation has determined that the activity would pose no significant risk to the deposit insurance fund.

"(2) SINGLE BORROWER LENDING LIMIT.—A State branch or State agency shall be subject to the same limitations with respect to loans made to a single borrower as are applicable to a Federal branch or Federal agency under section 4(b).

"(3) OTHER AUTHORITY NOT AFFECTED.—This section does not limit the authority of the Board or any State supervisory authority to impose more stringent restrictions.".

(b) STANDARDS FOR APPROVAL OF FEDERAL BRANCHES AND AGENCIES.—Section 4(a) of the International Banking Act of 1978 (12 U.S.C. 3102(a)) is amended—

(1) by striking "(a) Except as provided in section 5," and inserting "(a) PRIOR APPROVAL REQUIRED.—

"(1) APPROVAL OF AGENCY.—Except as provided in section 5,"; and

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

"(2) BOARD CONDITIONS REQUIRED TO BE INCLUDED.—In considering any application for approval under this subsection, the Board and the Comptroller of the Currency shall include any condition imposed by the Board under section 7(e)(1) as a condition for the approval of such application by the agency.".

(c) STANDARDS FOR APPROVAL OF ADDITIONAL FEDERAL BRANCHES AND AGENCIES.—Section 4(h) of the International Banking Act of 1978 (12 U.S.C. 3102(h)) is amended—

(1) by striking "(h) A foreign bank" and inserting the following:

"(h) ADDITIONAL BRANCHES OR AGENCIES.—

"(1) APPROVAL OF AGENCY REQUIRED.—A foreign bank"; and

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

"(2) NOTICE TO AND COMMENT BY BOARD.—The appropriate Federal banking agency shall provide the Board with notice and an opportunity for comment on any application to establish an additional Federal branch or Federal agency under this subsection.".

(d) DISAPPROVAL FOR FAILURE TO AGREE TO PROVIDE NECESSARY INFORMATION.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B);

(2) by inserting "(1) COMPETITIVE FACTORS.—" before "The Board shall" the first time it appears;

(3) by inserting "(2) BANKING AND CONVENIENCE AND NEEDS FACTORS.—" before "In every case";

(4) by inserting "(4) TREATMENT OF CERTAIN BANK STOCK LOANS.—" before "Notwithstanding"; and

(5) by inserting after paragraph (2) the following new paragraph:

"(3) SUPERVISORY FACTORS.—The Board may disapprove any application under this section if the company or companies fail to provide the Board with adequate assurances that they will make available to the Board such information on the operations or activities of such company or companies and any affiliate of such company or companies that the Board deems necessary to determine and enforce compliance with this Act, or, in the case of an application involving a foreign bank, the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country.".

(e) CONFORMING AMENDMENTS.—

(1) AFFILIATE DEFINED.—Section 1(b)(13) of the International Banking Act of 1978 (12 U.S.C. 3101(13)) is amended—

(A) by inserting "affiliate," after "the terms" the first time it appears; and

(B) by inserting " 'securities affiliate'," before "and 'subsidiary' ".

(2) REPRESENTATIVE OFFICE DEFINED.—Section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101) is amended by inserting at the end of the following new paragraph:

"(15) 'representative office' means any office of a foreign bank located in any State of the United States that is not a Federal branch, Federal agency, State branch, State agency or subsidiary of a foreign bank.".

SEC. 603. CONDUCT AND COORDINATION OF EXAMINATIONS.

(a) AUTHORITY OF BOARD TO CONDUCT AND COORDINATE EXAMINATIONS.—Section 7(c) of the International Bank Act of 1978 (12 U.S.C. 3105(b)) is amended—

(1) by striking paragraph (1) and inserting in lieu thereof the following new paragraph:

"(1) EXAMINATION OF BRANCHES, AGENCIES AND AFFILIATES.—

"(A) IN GENERAL.—The Board may make examinations of each branch or agency of a foreign bank, of each commercial lending company or bank controlled by one or more foreign banks or by one or more foreign companies that control a foreign bank, and of any other office or affiliate of a foreign bank conducting business in the United States or any territory or dependency of the United States. The cost of such examinations shall be assessed against and paid by such foreign bank or company, as the case may be.

"(B) COORDINATION OF EXAMINATIONS.—The Board shall seek to coordinate its examinations under this paragraph with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and appropriate State supervisory authorities, including requesting, when the Board deems appropriate simultaneous examinations of all offices of a foreign bank and its affiliates operating in the United States. Nothing in this subparagraph shall be construed to prevent the Board from conducting any examination under subparagraph (A) that it deems appropriate.

"(C) ANNUAL ON-SITE EXAMINATION.—Each branch or agency of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of such branch or agency ended) in an on-site examination. In connection with such examination, the Board shall review the worldwide capital level of the foreign bank in order to determine whether the financial resources of such bank or company, including the capital level, are equivalent to those of a domestic bank holding company that would be permitted to engage in the activities the foreign bank conducts in the United States. Any determination that the foreign bank meets the capital equivalency requirement shall be made after consultation with the Secretary of the Treasury. An examination by the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the appropriate State supervisory authority may be used to satisfy the requirements of this subparagraph.

"(D) EFFECT OF FAILURE TO MAINTAIN EQUIVALENT CAPITAL.—If the Board finds at any time that any foreign bank does not have the required level of capital—

"(i) to engage in securities activities, the foreign branch or agency shall be treated as an insured depository institution under section 10(d) of the Bank Holding Company Act of 1956 in the same manner as an affiliated insured depository institution that becomes undercapitalized; and

"(ii) to engage in interstate banking operations, the Board shall—

"(I) review the operations of the foreign bank in the United States to determine whether the conditions for termination in subsection (f)(1)(C) are met or requirements for increasing capital or improving management should be imposed; and

"(II) to the extent that requirements imposed under subclause (I) can only be adequately verified if banking activities are carried out in a domestic banking subsidiary, require the foreign bank or company controlling the foreign bank to conduct all its banking activities in the United States through such a subsidiary."; and

(2) in paragraph (2), by inserting "REPORTING REQUIREMENTS.—" before "Each branch".

(b) COORDINATION OF EXAMINATIONS.—Section 4(b) of the International Banking Act of 1978 (12 U.S.C. 3102(b)) is amended by adding at the end thereof the following new sentence: "The Office of the Comptroller of the Currency shall coordinate examinations of the Federal branches and agencies of foreign banks with examinations conducted by the Board under section 7(c)(1) of this Act and, to the extent possible, shall participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under section 7(c)(1) of that Act.".

(c) PARTICIPATION IN COORDINATED EXAMINATIONS.—Section 10(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(2)) is amended by adding at the end the following new sentence: "The Board of Directors shall coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 7(c)(1) of the International Banking Act of 1978 and, to the extent possible, shall participate in any simultaneous examinations of the United States operations of a foreign bank requested by the Board of Governors under that section.".

SEC. 604. SUPERVISION OF FOREIGN BANKS' REPRESENTATIVE OFFICES.

Section 10 of the International Banking Act of 1978 (12 U.S.C. 3107) is amended by striking subsections (a) and (b) and inserting the following new subsections:

"(a) PRIOR APPROVAL TO ESTABLISH REPRESENTATIVE OFFICES.—

"(1) IN GENERAL.—No foreign bank may establish a representative office without the prior approval of the Board.

"(2) STANDARDS FOR APPROVAL.—In acting on any application under this paragraph to establish a representative office, the Board shall take into account the standards for approval set forth in section 7(e) and may impose any additional requirements that are necessary to carry out the purposes of this Act.

"(b) TERMINATION OF REPRESENTATIVE OFFICES.—The Board may order the termination of the activities of a representative office of a foreign bank on the basis of the same standards, procedures, and requirements as apply under, and subject to judicial review as provided in, section 7(f).

"(c) EXAMINATIONS.—The Board may make examinations of each representative office of a foreign bank, the cost of which shall be assessed against and paid by such foreign bank.

"(d) COMPLIANCE WITH STATE LAW.—This Act does not authorize the establishment of a representative office in any State in contravention of State law.".

SEC. 605. REPORTING STOCK LOANS.

Section 7(j)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(9)) is amended to read as follows:

"(9) REPORTING OF STOCK LOANS.—

"(A) REPORT REQUIRED.—Any financial institution and any affiliate thereof that has credit outstanding to any person or group of persons secured or to be secured by shares of an insured depository institution shall file a consolidated report with the appropriate Federal banking agency for the insured depository institution if such extensions of credit by the financial institution and its affiliates, in the aggregate, are secured or to be secured by 25 percent or more of any class of shares of the same insured depository institution.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) FINANCIAL INSTITUTION.—The term 'financial institution' means any insured depository institution and any foreign bank that is subject to the provisions of the Bank Holding Company Act of 1956 by virtue of section 8(a) of the International Banking Act of 1978.

"(ii) CREDIT OUTSTANDING.—The term 'credit outstanding' shall include—

"(I) any loan or extension of credit,

"(II) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, and

"(III) any other type of transaction that provides credit or financing to the person or group of persons.

"(iii) GROUP OF PERSONS.—The term 'group of persons' shall include any number of persons that the financial institution reasonably believes—

"(I) are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same insured depository institution at approximately the same time under substantially the same terms; or

"(II) have made, or propose to make, a joint filing under section 13 of the Securities Exchange Act of 1934 regarding ownership of the shares of the same insured depository institution.

"(C) INCLUSION OF SHARES HELD BY THE FINANCIAL INSTITUTION.—Any shares of the insured depository institution held by the financial institution or any of its affiliates as principal shall be included in the calculation of the number of shares in which the financial institution or its affiliates has a security interest for purposes of subparagraph (A).

"(D) TIMING AND CONTENT OF REPORT; COPY TO APPROPRIATE AGENCY FOR THE LENDING FINANCIAL INSTITUTION.—The report required by this paragraph shall be a consolidated report on behalf of the financial institution and all of its affiliates, and shall be filed in writing within 30 days of the time the financial institution or any of its affiliates believes that the 25 percent level referred to in subparagraph (A) has been met or exceeded. The report shall indicate the number and percentage of shares securing each relevant extension of credit, the identity of the borrower, and the number of shares held as principal by the financial institution and any of its affiliates. A copy of the report shall be filed with the appropriate Federal banking agency for the financial institution. Each appropriate Federal banking agency may require any additional information necessary to carry out its supervisory responsibilities.

"(E) EXCEPTIONS.—

"(i) EXCEPTION WHERE INFORMATION PROVIDED BY BORROWER.—Notwithstanding subparagraph (A), a financial institution and its affiliates shall not be required to report a transaction under this paragraph if the person or group of persons has disclosed the amount borrowed from the financial institution and its affiliates and the security interest of the financial institution and its affiliates to the appropriate Federal banking agency for the insured depository institution in connection with a notice filed under this subsection, an application filed under the Bank Holding Company Act of 1956 or the Savings and Loan Holding Company Act, or any other formal application that is filed with the appropriate Federal banking agency for the insured depository institution as a substitute for a notice under this subsection, such as an application for deposit insurance, membership in the Federal Reserve System, or a national bank charter.

"(ii) EXCEPTION FOR SHARES OWNED FOR MORE THAN 1 YEAR.—Notwithstanding subparagraph (A), a financial institution and its affiliates shall not be required to report a transaction involving a person or group of persons that has been the owner or owners of record of the stock for a period of 1 year or more or where the stock is that of a newly chartered bank prior to its opening.".

SEC. 606. COOPERATION WITH FOREIGN SUPERVISORS.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following new section:

"SEC. 15. COOPERATION WITH FOREIGN SUPERVISORS.

"(a) DISCLOSURE OF SUPERVISORY INFORMATION TO FOREIGN SUPERVISORS.—Notwith-

standing any other provision of law, the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency may disclose information obtained in the course of exercising supervisory or examination authority to any foreign bank regulatory or supervisory authority if such disclosure—

"(1) is determined to be necessary or appropriate by such agency; and

"(2) would not prejudice the interests of the United States.

"(b) REQUIREMENT OF CONFIDENTIALITY.—Prior to disclosure of any information to a foreign authority, the United States agency shall obtain as necessary the agreement of such foreign authority to maintain the confidentiality of such information to the extent possible under applicable law.

"(c) INFORMATION OBTAINED FROM FOREIGN SUPERVISORS.—The Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency shall not be compelled to disclose information obtained from a foreign supervisor if—

"(1) the foreign supervisor has in good faith determined and represented to such United States agency that public disclosure of such information would violate the laws applicable to that supervisor, and

"(2) the United States agency obtains such information pursuant to—

"(A) such procedure as the United States agency may authorize for use in connection with the administration or enforcement of the banking laws; or

"(B) a memorandum of understanding.

For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.".

SEC. 607. PENALTIES.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.), as amended by section 606, is amended by adding at the end the following new section:

"SEC. 16. PENALTIES.

"(a) CIVIL MONEY PENALTY.—

"(1) IN GENERAL.—Any foreign bank, and any branch, agency, other office, or subsidiary of a foreign bank that violates, and any individual who participates in a violation of, any provision of this Act, or any regulation or order issued pursuant thereto, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation continues.

"(2) ASSESSMENT PROCEDURES.—Any penalty imposed under paragraph (1) may be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)) for penalties imposed (under such section), and any such assessments shall be subject to the provisions of such section.

"(3) HEARING.—The foreign bank, branch, agency, other office, or subsidiary of a foreign bank, or other person against whom any penalty is assessed under this section shall be afforded an agency hearing if such foreign bank, branch, agency, other office, or subsidiary, or person submits a request for a hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)) shall apply to any proceeding under this section.

"(4) DISBURSEMENT.—All penalties collected under authority of this section shall be deposited into the Treasury.

"(5) VIOLATE DEFINED.—For purposes of this section, the term 'violate' includes taking any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(6) REGULATIONS.—The appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

"(b) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)) with respect to a foreign bank, or branch, agency, other office, or subsidiary of a foreign bank (including a separation caused by the termination of a location in the United States) shall not affect the jurisdiction or authority of the appropriate Federal banking agency to issue any notice or to proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such foreign bank or branch, agency, other office, or subsidiary of a foreign bank (whether such date occurs before, on, or after the date of enactment of this section).

"(c) PENALTY FOR FAILURE TO MAKE REPORTS.—

"(1) FIRST TIER.—Any foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, that—

"(A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such error—

"(i) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the appropriate Federal banking agency under this Act, within the period of time specified by the agency; or

"(ii) submits or publishes any false or misleading report or information; or

"(B) inadvertently transmits or publishes any report that is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. The foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late.

"(2) SECOND TIER.—Any foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, that—

"(A) fails to make, submit, or publish such reports or information as may be required under this Act or under regulations prescribed by the appropriate Federal banking agency pursuant to this Act, within the time period specified by the agency; or

"(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (1) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected.

"(3) THIRD TIER.—Notwithstanding paragraph (2), if any company knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (2) submits or publishes any false or misleading report or information, the appropriate Federal banking agency may, in its discretion, assess a penalty of not more than $1,000,000 or 1 percent of total assets of such foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, whichever is less, for each day during which such failure continues or such false or misleading information is not corrected.

"(4) ASSESSMENT OF PENALTIES.—Any penalty imposed under paragraphs (1), (2), or (3) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subsection (a) of this section (for penalties imposed under such subsection) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

"(5) HEARING.—Any foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, against which any penalty is assessed under this subsection shall be afforded an agency hearing if such foreign bank, or branch, agency, other office, or subsidiary of a foreign bank, submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act (12 U.S.C. 1818(h)) shall apply to any proceeding under this subsection.".

SEC. 608. POWERS OF AGENCIES RESPECTING APPLICATIONS, EXAMINATIONS, AND OTHER PROCEEDINGS.

Section 13(b) of the International Banking Act of 1978 (12 U.S.C. 3108(b)) is amended—

(1) by striking the heading and replacing it with "ENFORCEMENT.—";

(2) by inserting "(1)" before "In"; and

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

"(2) POWERS RESPECTING APPLICATIONS, EXAMINATIONS, AND OTHER PROCEEDINGS.—

"(A) IN GENERAL.—In the course of or in connection with an application, examination, investigation, or other proceeding under this Act, the Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, as appropriate, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or to cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum.

"(B) RULEMAKING AUTHORITY.—The Board, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation shall have the authority to issue rules and regulations to effectuate the purposes of section 13(b)(2)(A).

"(C) SUBPOENA POWER.—The attendance of witnesses and the production of documents provided for in this subsection may be required by subpoena or subpoena duces tecum from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted.

"(D) JUDICIAL REVIEW.—Any party to proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to require compliance therewith.

"(E) WITNESS FEES.—Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid to witnesses in the district courts of the United States.

"(F) SERVICE OF PROCESS.—Any service required under this subsection may be made by

registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide.

"(G) ATTORNEYS' FEES.—Any court having jurisdiction of any proceeding instituted under this Act may allow to any party that succeeds in having an agency order modified or set aside such reasonable expenses and attorneys' fees as it deems just and proper.

"(H) PENALTIES FOR NOT COMPLYING FOR EACH DAY THAT SUCH FAILURE OR REFUSAL CONTINUES.—Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $10,000 for each day that such failure or refusal continues, or to imprisonment for a term of not more than 1 year, or both.".

SEC. 609. PENALTIES FOR FAILURE TO COMPLY WITH AGENCY SUBPOENA.

(a) BANK HOLDING COMPANY ACT.—Section 5(f) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(f)) is amended in the last sentence by striking "$1000" and inserting "$10,000 for each day that such failure or refusal continues".

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 8(n) of the Federal Deposit Insurance Act (12 U.S.C. 1818(n)) is amended in the last sentence by striking "$1,000" and inserting "$10,000 for each day that such failure or refusal continues".

SEC. 610. CLARIFYING MANAGERIAL STANDARDS IN THE BANK HOLDING COMPANY ACT OF 1956.

Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end of paragraph (2) (as redesignated by section 602(d)) the following new sentence: "Consideration of the managerial resources of a company or bank shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or bank.".

SEC. 611. STANDARDS AND FACTORS IN THE HOME OWNERS' LOAN ACT.

Section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)) is amended—

(1) in paragraph (1), by inserting after subparagraph (B) the following:

"Consideration of the managerial resources of a company or savings association under subparagraph (B) shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.";

(2) in paragraph (2)—

(A) by inserting after the second sentence "Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association.";

(B) by striking "or" at the end of subparagraph (A);

(C) by striking the period at the end of subparagraph (B) and inserting a comma; and

(D) by inserting after subparagraph (B) the following new subparagraphs:

"(C) if the company fails to provide adequate assurances to the Director that the company will make available to the Director such information on the operations or activities of the company, and any affiliate of the company, as the Director determines to be appropriate to determine and enforce compliance with this Act, or

"(D) in the case of an application involving a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.".

SEC. 612. AUTHORITY OF FEDERAL BANKING AGENCIES TO ENFORCE CONSUMER STATUTES.

(a) AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT.—

(1) MAINTENANCE OF RECORDS AND PUBLIC DISCLOSURE.—Section 304(h) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(h)) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) the Office of the Comptroller of the Currency for national banks and Federal branches and Federal agencies of foreign banks;"; and

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

"(3) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;".

(2) ENFORCEMENT.—Section 305(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2804(b)) is amended—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks as defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), insured State branches of foreign banks, and any other depository institution not referred to in this paragraph or paragraph (2) or (3) of this subsection, by the Board of Directors of the Federal Deposit Insurance Corporation;"; and

(B) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(b) AMENDMENT TO THE TRUTH IN LENDING ACT.—Section 108(a) of the Truth in Lending Act (15 U.S.C. 1607(a)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(c) AMENDMENT TO THE FAIR CREDIT REPORTING ACT.—Section 621(b) of the Fair Credit Reporting Act (15 U.S.C. 1681s(b)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(d) AMENDMENT TO THE EQUAL CREDIT OPPORTUNITY ACT.—Section 704(a) of the Equal Credit Opportunity Act (15 U.S.C. 1691c(a)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(e) AMENDMENT TO THE FAIR DEBT COLLECTION PRACTICES ACT.—Section 814(b) of the Fair Debt Collection Practices Act (15 U.S.C. 1692l(b)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(f) AMENDMENT TO THE ELECTRONIC FUND TRANSFER ACT.—Section 917(a) of the Electronic Fund Transfer Act (15 U.S.C. 1693o(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;"; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(g) AMENDMENT TO THE FEDERAL TRADE COMMISSION ACT.—

(1) DEFINITIONS.—Section 4 of the Federal Trade Commission Act (15 U.S.C. 44) is amended by adding at the end the following new paragraph:

"'Banks' means the types of banks and other financial institutions referred to in section 18(f)(2)."

(2) ENFORCEMENT.—Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended—

(A) by striking paragraph (2) and inserting the following:

"(2) ENFORCEMENT.—Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act, in the case of—

"(A) national banks, banks operating under the code of law for the District of Columbia, and Federal branches and Federal agencies of foreign banks, by the divisions of consumer affairs established by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks and banks operating under the code of law for the District of Columbia), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks, by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation."; and

(B) by adding at the end the following:

"The terms used in this paragraph that are not defined in the Federal Trade Commission Act or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

(h) AMENDMENT TO THE EXPEDITED FUNDS AVAILABILITY ACT.—Section 610(a) of the Expedited Funds Availability Act (12 U.S.C. 4009(a)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) section 8 of the Federal Deposit Insurance Act in the case of—

"(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;"; and

(2) by adding at the end the following:

"The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).".

SEC. 613. CRIMINAL PENALTY FOR VIOLATING THE INTERNATIONAL BANKING ACT OF 1978.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.), as amended by sections 606 and 607, is amended by adding at the end the following:

"SEC. 17. CRIMINAL PENALTY.

"Whoever, with the intent to deceive, to gain financially, or to cause financial gain or loss to any person, knowingly violates any provision of this Act or any regulation or order issued by the appropriate Federal banking agency under this Act shall be imprisoned not more than 5 years or fined not more than $1,000,000 for each day during which a violation continues, or both.".

Subtitle B—Regulation of Foreign Banks and Subsidiaries

SEC. 621. AMENDMENTS TO THE INTERNATIONAL BANKING ACT OF 1978.

(a) SECTION 5.—Section 5 of the International Banking Act of 1978 (12 U.S.C. 3103) is amended by adding at the end the following new subsection:

"(d) STATE NOT REQUIRED TO LICENSE BRANCHES AND AGENCIES OF FOREIGN BANKS.—Nothing in this Act shall be construed to require a State to maintain laws or procedures for the establishment or operation of a State branch or a State agency by a foreign bank.".

(b) SECTION 6.—Section 6 of the International Banking Act of 1978 (12 U.S.C. 3104) is amended—

(1) by redesignating subsection (b) as subsection (b)(1);

(2) by designating the last undesignated paragraph as paragraph (2); and

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

"(c) RETAIL DEPOSIT-TAKING BY FOREIGN BANKS.—

"(1) IN GENERAL.—After the date of enactment of this subsection, notwithstanding any other provision of this Act or any provision of the Federal Deposit Insurance Act, in order to accept or maintain deposit accounts having balances of less than $100,000, a foreign bank shall—

"(A) establish 1 or more banking subsidies in the United States for that purpose; and

"(B) obtain Federal deposit insurance for any such subsidiary in accordance with the Federal Deposit Insurance Act.

"(2) EXCEPTION.—Deposit accounts with balances of less than $100,000 may be accepted or maintained in a branch of a foreign bank only if such branch was an insured branch on the date of the enactment of this subsection.".

(c) SECTION 7.—Section 7 of the International Banking Act of 1978 (12 U.S.C. 3105) is amended by adding at the end the following new subsection:

"(j) GUIDELINES ON EQUIVALENCE OF FOREIGN BANK CAPITAL.—Not later than 180 days after enactment of this subsection, the Board and the Secretary of the Treasury shall jointly publish in the Federal Register and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report—

"(1) analyzing the capital standards contained in the framework for measurement of capital adequacy established by the Supervisory committee of the Bank for International Settlements, foreign regulatory capital standards that apply to foreign banks conducting banking operations in the United States, and the relationship of the Basle and foreign standards to risk-based capital and leverage requirements for United States banks; and

"(2) establishing guidelines for the adjustments to be used by the Board in converting data on the capital of such foreign banks to

the equivalent risk-based capital and leverage requirements for United States banks for purposes of determining whether a foreign bank's capital level is equivalent to that imposed on United States banks for purposes of determinations under section 5(a), subsection (k), and this subsection.

An update shall be prepared annually explaining any changes in the analysis under paragraph (1) and resulting changes in the guidelines pursuant to paragraph (2).

"(k) EQUIVALENT CAPITAL AND OTHER FINANCIAL REQUIREMENTS.—

"(1) APPROVAL REQUIRED.—No foreign bank may engaged in the activities described in section 5(a)(5) without obtaining the prior approval of the Board.

"(2) DETERMINATION REQUIRED.—The Board shall disapprove an application under paragraph (1) unless it determines that the financial resources of such bank or company, including the capital level, are equivalent to those of a domestic bank holding company that would be permitted to engage in such activities in accordance with section 3(d) of the Bank Holding Company Act of 1956, after consultation with the Secretary of the Treasury regarding capital equivalency.

"(3) CRITERIA FOR DETERMINATION.—In making the determination in paragraph (1), the Board shall—

"(A) take into account differences in domestic and foreign accounting standards; and

"(B) assure that competitive equivalence between domestic and foreign banks is maintained.

"(4) REQUIREMENT FOR A SEPARATE SUBSIDIARY.—If the Board, taking into account differing regulatory or accounting standards, finds that adherence to capital requirements equivalent to those imposed on a domestic bank holding company under section 3(d) of the Bank Holding Company Act of 1956 can be verified only if banking activities are carried out in a domestic banking subsidiary within the United States, it may only approve an application under paragraph (1) subject to a requirement that the foreign bank or company controlling the foreign bank establish a domestic banking subsidiary in the United States.".

SEC. 622. STUDY AND REPORT ON SUBSIDIARY REQUIREMENTS FOR FOREIGN BANKS.

(a) IN GENERAL.—The Secretary of the Treasury (hereafter referred to as the "Secretary"), in consultation with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Attorney General, shall conduct a study of whether foreign banks should be required, as a general rule, to conduct banking operations in the United States through subsidiaries rather than branches. In conducting the study, the Secretary shall take into account—

(1) differences in accounting and regulatory practices abroad and the difficulty of assuring that the foreign bank meets United States capital and management standards and is adequately supervised;

(2) implications for the deposit insurance system;

(3) competitive equity considerations;

(4) national treatment of foreign financial institutions;

(5) the need to prohibit money laundering and illegal payments;

(6) safety and soundness considerations;

(7) implications for international negotiations for liberalized trade in financial services; and

(8) the tax liability of foreign banks.

(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a report on the results of the study under subsection (a). Any additional or dissenting views of participating agencies shall be included in the report.

(c) CHANGE IN POLICY.—If the participants in the study under subsection (a) agree that, in furtherance of the objectives set out in the study, foreign banks should be required to conduct their activities in the United States through a domestic banking subsidiary, the Board of Governors of the Federal Reserve System is authorized to implement the requirement by regulation. If individual participants expressing additional or dissenting views under subsection (b) conclude that changes in law or policy are needed to further the objectives set out in the study, those participants shall submit legislative proposals to the Congress within 30 days of the submission of the report under subsection (b).

Subtitle C—Fair Trade in Financial Services

SEC. 631. SHORT TITLE.

This title may be cited as the "Fair Trade in Financial Services Act of 1991".

SEC. 632. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR BANKS AND BANK HOLDING COMPANIES.

The International Banking Act of 1978 (12 U.S.C. 3101 et seq.) is amended by adding at the end the following:

"SEC. 18. NATIONAL TREATMENT.

"(a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States banks and bank holding companies that operate or seek to operate in those countries, and thereby end discrimination against United States banks and bank holding companies.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States banks and bank holding companies—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States banks and bank holding companies; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States banks and holding companies.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States banks or bank holding companies.

"(2) ACTION BY AGENCY.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, any Federal banking agency—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) among the factors the agency considers in evaluating any application or notice filed by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or disapprove the notice.

"(3) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) PREVENTING EXISTING ENTITIES FROM BEING USED TO EVADE THIS SECTION.—

"(1) IN GENERAL.—If a determination under subsection (d)(1) is in effect with respect to a foreign country, no bank, foreign bank described in section 8(a), branch, agency, commercial lending company, or other affiliated entity that is a person of that country shall, without prior approval pursuant to paragraph (3) or (4), directly or indirectly, in the United States—

"(A) commence any line of business in which it was not engaged as of the date on which that determination was published in the Federal Register; or

"(B) conduct business from any location at which it did not conduct business as of that date.

"(2) EXCEPTION.—Paragraph (1) shall not apply with respect to transactions under section 2(h)(2) of the Bank Holding Company Act of 1956.

"(3) STATE-SUPERVISED ENTITIES.—

"(A) This paragraph shall apply if—

"(i) the entity in question is an uninsured State bank or branch, a State agency, or a commercial lending company;

"(ii) the State requires the entity to obtain the prior approval of the State bank supervisor before engaging in the activity de-

scribed in subparagraph (A) or (B) of paragraph (1); and

"(iii) no other provision of Federal law requires the entity to obtain the prior approval of a Federal banking agency before engaging in that activity.

"(B) The State bank supervisor shall consult about the application with the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act). If the State bank supervisor approves the application, the supervisor shall notify the appropriate Federal banking agency and provide the agency with a copy of the record of the application. During the 45-day period beginning on the date on which the appropriate Federal banking agency receives the record, the agency, after consultation with the State bank supervisor—

"(i) may include the determination under subsection (d)(1) and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and other reports under subsection (b)(1) of this section among the factors the agency considers in evaluating the application; and

"(ii) may issue an order disapproving the activity in question based upon that determination and in consultation with the Secretary of the Treasury.

The period for disapproval under clause (ii) may, in the agency's discretion, be extended for not more than 45 days.

"(4) FEDERAL APPROVAL.—If the transaction is not described in paragraph (3)(A), the entity in question shall obtain the prior approval of the appropriate Federal banking agency.

"(5) INFORMING STATE SUPERVISORS.—The Secretary of the Treasury shall inform State bank supervisors of any determination under subsection (d)(1).

"(6) EFFECT ON OTHER LAW.—Nothing in this subsection shall be construed to relieve the entity in question from any otherwise applicable requirement of Federal law.

"(f) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States banks and bank holding companies if it offers them the same competitive opportunities (including effective market access) as are available to its domestic banks and bank holding companies.

"(g) PERSON OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country, or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(h) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Federal banking agencies shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Federal banking agencies, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a bank, foreign bank, branch, agency, commercial lending company, or other affiliated entity that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States banks and bank holding companies; or

"(ii) whether that country would permit United States banks and bank holding companies already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's banks and bank holding companies; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 633. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR SECURITIES BROKERS AND DEALERS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 36. NATIONAL TREATMENT.

"(a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States brokers and dealers that operate or seek to operate in those countries, and thereby end discrimination against United States brokers and dealers.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States brokers and dealers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States brokers or dealers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect,

to ensure that such country accords national treatment to United States brokers and dealers.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States brokers or dealers.

"(2) ACTIONS BY COMMISSION.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) NOTICE REQUIRED TO ACQUIRE BROKER OR DEALER.—

"(A) IN GENERAL.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered broker or dealer unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) COMMISSION MAY EXTEND 60-DAY PERIOD.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) EFFECTIVE DATE.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States brokers and dealers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic brokers and dealers.

"(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country; or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Commission, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to a broker or dealer that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States brokers and dealers; and

"(ii) whether that country would permit United States brokers or dealers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's brokers or dealers; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 634. EFFECTUATING THE PRINCIPLE OF NATIONAL TREATMENT FOR INVESTMENT ADVISERS.

The Investment Advisers Act of 1940 (12 U.S.C. 80b-1 et seq.) is amended by adding at the end the following new section:

"SEC. 223. NATIONAL TREATMENT.

"(a) PURPOSE.—This section is intended to encourage foreign countries to accord national treatment to United States investment advisers that operate or seek to operate in those countries, and thereby end discrimination against United States investment advisers.

"(b) REPORTS REQUIRED.—

"(1) CONTENTS OF REPORT.—The Secretary of the Treasury shall, not later than December 1, 1992, and biennially thereafter, submit to the Congress a report—

"(A) identifying any foreign country—

"(i) that does not accord national treatment to United States investment advisers—

"(I) according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988; or

"(II) on the basis of more recent information that the Secretary deems appropriate indicating a failure to accord national treatment; and

"(ii) with respect to which no determination under subsection (d)(1) is in effect;

"(B) explaining why the Secretary has not made, or has rescinded, such a determination with respect to that country; and

"(C) describing the results of any negotiations conducted pursuant to subsection (c)(1) with respect to that country.

"(2) SUBMISSION OF REPORT.—

"(A) IN GENERAL.—The report required by paragraph (1) may be submitted as part of a report submitted under section 3602 of the Omnibus Trade and Competition Act of 1988.

"(B) MOST RECENT REPORT DEFINED.—If the report required by paragraph (1) is submitted as part of a report under such section 3602, that report under section 3602 shall be the 'most recent report' for purposes of paragraph (1)(A)(i)(I).

"(c) NEGOTIATIONS REQUIRED.—

"(1) IN GENERAL.—The Secretary of the Treasury shall initiate negotiations with any foreign country—

"(A) in which, according to the most recent report under section 3602 of the Omnibus Trade and Competitiveness Act of 1988, there is a significant failure to accord national treatment to United States investment advisers; and

"(B) with respect to which no determination under subsection (d)(1) is in effect, to ensure that such country accords national treatment to United States investment advisers.

"(2) NEGOTIATIONS NOT REQUIRED.—Paragraph (1) does not require the Secretary of the Treasury to initiate negotiations with a foreign country if the Secretary—

"(A) determines that such negotiations would be fruitless or would impair national economic interests; and

"(B) gives written notice of that determination to the chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and of the Committee on Energy and Commerce of the House of Representatives.

"(d) DISCRETIONARY SANCTIONS.—

"(1) SECRETARY'S DETERMINATION.—The Secretary of the Treasury may, at any time, publish in the Federal Register a determination that a foreign country does not accord national treatment to United States investment advisers.

"(2) ACTIONS BY COMMISSION.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, the Commission—

"(A) may include that determination and the conclusions of the reports under section 3602 of the Omnibus Trade and Competitiveness Act of 1988 and paragraph (1) of this subsection among the factors the Commission considers (i) in evaluating any application filed by a person of that foreign country, or (ii) in determining whether to prohibit an acquisition for which a notice is required under paragraph (3) by a person of that foreign country; and

"(B) may, in consultation with the Secretary, deny the application or prohibit the acquisition.

"(3) NOTICE REQUIRED TO ACQUIRE INVESTMENT ADVISER.—

"(A) IN GENERAL.—If the Secretary of the Treasury has published in the Federal Register (and has not rescinded) a determination under paragraph (1) with respect to a foreign country, no person of that foreign country, acting directly or indirectly, shall acquire control of any registered investment adviser unless—

"(i) the Commission has been given notice 60 days in advance of the acquisition, in such form as the Commission shall prescribe by rule and containing such information as the Commission requires by rule or order; and

"(ii) the Commission has not prohibited the acquisition.

"(B) COMMISSION MAY EXTEND 60-DAY PERIOD.—The Commission may, by order, extend the notice period during which an acquisition may be prohibited under subparagraph (A) for an additional 180 days.

"(C) EFFECTIVE DATE.—The requirements of subparagraph (A) shall apply to any acquisition of control that is completed on or after the date on which the determination under paragraph (1) is published, irrespective of when the acquisition was initiated.

"(4) REVIEW.—The Secretary of the Treasury may, at any time, and shall, annually, review any determination under paragraph (1) and decide whether that determination should be rescinded.

"(e) NATIONAL TREATMENT DEFINED.—A foreign country accords national treatment to United States investment advisers if it offers them the same competitive opportunities (including effective market access) as are available to its domestic investment advisers.

"(f) PERSONS OF A FOREIGN COUNTRY DEFINED.—A person of a foreign country is a person that—

"(1) is organized under the laws of that country;

"(2) has its principal place of business in that country;

"(3) in the case of an individual—

"(A) is a citizen of that country; or

"(B) is domiciled in that country; or

"(4) is directly or indirectly controlled by a person described in paragraph (1), (2), or (3).

"(g) EXERCISE OF DISCRETION.—In exercising discretion under this section—

"(1) the Secretary of the Treasury and the Commission shall act in a manner consistent with the obligations of the United States under a bilateral or multilateral agreement governing financial services entered into by the President and approved and implemented by the Congress; and

"(2) the Commission, in consultation with the Secretary of the Treasury—

"(A) shall consider, with respect to an investment adviser that is a person of a foreign country and is already operating in the United States—

"(i) the extent to which that foreign country has a record of according national treatment to United States investment advisers; and

"(ii) whether that country would permit United States investment advisers already operating in that country to expand their activities in that country even if that country determined that the United States did not accord national treatment to that country's investment advisers; and

"(B) may further differentiate between entities already operating in the United States and entities that are not already operating in the United States, insofar as such differentiation is consistent with achieving the purpose of this section.".

SEC. 635. INVESTIGATION AND REPORT ON FINANCIAL INTERDEPENDENCE.

Subtitle G of title III of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5341 et seq.) is amended by adding at the end the following new section:

"SEC. 3605. INVESTIGATION AND REPORT ON FINANCIAL INTERDEPENDENCE.

"(a) INVESTIGATION REQUIRED.—The Secretary of the Treasury, in consultation and coordination with the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), and any other appropriate Federal agency or department to be designated by the Secretary of the Treasury, shall conduct an investigation to determine the extent of the interdependence of the financial services sectors of the United States and foreign countries whose financial services institutions provide financial services in the United States, or whose persons have substantial ownership interests in United States financial services institutions, and the economic, strategic, and other consequences of that interdependence for the United States.

"(b) REPORT.—The Secretary of the Treasury shall transmit a report on the results of the investigation under subsection (a) within 2 years after the date of enactment of this section to the President, the Congress, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the appropriate Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) and any other appropriate Federal agency or department as designated by the Secretary of the Treasury. The report shall—

"(1) describe the activities and estimate the scope of financial services activities conducted by United States financial services institutions in foreign markets (differentiated according to major foreign markets);

"(2) describe the activities and estimate the scope of financial services activities conducted by foreign financial services institutions in the United States (differentiated according to the most significant home countries or groups of home countries);

"(3) estimate the number of jobs created in the United States by financial services activities conducted by foreign financial services institutions and the number of jobs created in foreign countries by financial services activities conducted by United States financial services institutions;

"(4) estimate the additional jobs and revenues (both foreign and domestic) that would be created by the activities of United States financial services institutions in foreign countries if those countries offered such institutions the same competitive opportunities (including effective market access) as are available to those countries' domestic financial services institutions;

"(5) describe the extent to which foreign financial services institutions discriminate against United States persons in procurement, employment, providing credit or other financial services, or otherwise;

"(6) describe the extent to which foreign financial services institutions and other persons from foreign countries purchase or otherwise facilitate the marketing from the United States of government and private debt instruments and private equity instruments;

"(7) describe how the interdependence of the financial services sectors of the United States and foreign countries affects the autonomy and effectiveness of United States monetary policy;

"(8) describe the extent to which United States companies rely on financing by or through foreign financial services institutions, and the consequences of such reliance (including disclosure of proprietary information) for the industrial competitiveness and national security of the United States;

"(9) describe the extent to which foreign financial services institutions, in purchasing high technology products such as computers and telecommunications equipment, favor manufacturers from their home countries over United States manufacturers; and

"(10) contain other appropriate information relating to the results of the investigation under subsection (a).

"(c) DEFINITIONS.—As used in this section, the term 'financial services institution' means—

"(1) a broker, dealer, underwriter, clearing agency, transfer agent, or information processor with respect to securities, including government and municipal securities;

"(2) an investment company, investment manager, investment adviser, indenture trustee, or any depository institution, insurance company, or other organization operating as a fiduciary, trustee, underwriter, or other financial services provider;

"(3) any depository institution or depository institution holding company (as such terms are defined in section 3 of the Federal Deposit Insurance Act); and

"(4) any other entity providing financial services.".

SEC. 636. CONFORMING AMENDMENTS SPECIFYING THAT NATIONAL TREATMENT INCLUDES EFFECTIVE MARKET ACCESS.

(a) QUADRENNIAL REPORTS ON FOREIGN TREATMENT OF UNITED STATES FINANCIAL INSTITUTIONS.—Section 3602 of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5352) is amended—

(1) in paragraph (3), by striking "and securities companies" and inserting ", securities companies, and investment advisers"; and

(2) by adding at the end the following: "For purposes of this section, a foreign country denies national treatment to United States entities unless it offers them the same competitive opportunities (including effective market access) as are available to its domestic entities.".

(b) NEGOTIATIONS TO PROMOTE FAIR TRADE IN FINANCIAL SERVICES.—Section 3603(a)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5353(a)(1)) is amended by inserting "effective" after "banking organizations and securities companies have".

(c) PRIMARY DEALERS IN GOVERNMENT DEBT INSTRUMENTS.—Section 3502(b)(1) of the Omnibus Trade and Competitiveness Act of 1988 (22 U.S.C. 5342) is amended—

(1) by striking "does not accord to" and inserting "does not offer";

(2) by inserting "(including effective market access)" after "the same competitive opportunities in the underwriting and distribution of government debt instruments issued by such country"; and

(3) by striking "as such country accords to" and inserting "as are available to".

TITLE VII—BANK POWERS

SEC. 701. SHORT TITLE.

This subtitle may be cited as the "Depositor Protection and Anti-Fraud Act of 1991".

SEC. 702. LIMITATIONS ON CERTAIN NONDEPOSIT MARKETING ACTIVITIES IN RETAIL BRANCHES OF FDIC-INSURED DEPOSITORY INSTITUTIONS.

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

"(h) REGULATION OF CERTAIN NONDEPOSIT MARKETING ACTIVITIES IN RETAIL BRANCHES OF INSURED DEPOSITORY INSTITUTIONS.—

"(1) PROHIBITION ON SELLING CERTAIN INSTRUMENTS.—No financial institution may permit any evidence of indebtedness of, or ownership interest in, that institution or any affiliate to be sold or offered for sale in any of the following:

"(A) A domestic branch of that institution at which insured deposits are accepted.

"(B) That institution's head office, if it accepts insured deposits and is located in the United States.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any of the following:

"(A) A deposit in a financial institution.

"(B) A means of payment to a third party, such as a traveler's check, cashier's check, teller's check, or money order, or other similar negotiable instrument typically sold by financial institutions in the ordinary course of business.

"(C) An interest in an investment company registered under the Investment Company Act of 1940.

"(D) A sale of instruments in large dollar amounts to a sophisticated investor.

"(E) A sale of instruments pursuant to converting a financial institution from mutual to stock ownership if that conversion has been approved by the appropriate Federal banking agency and, where applicable, any appropriate State agency.

"(3) REGULATORY EXEMPTIONS.—The Commission may by regulation provide exemptions from paragraph (1) if it finds at a minimum—

"(A) the exemption is in the public interest;

"(B) the purchasers would not be likely to confuse the evidence of indebtedness or ownership interest with an insured deposit because of the manner in which it is sold or offered for sale, or for any other reason; and

"(C) sales of the evidence of indebtedness or ownership interest would be subject to the sales practices rules or standards of self-regulatory organization.".

(b) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Commission shall promulgate final regulations to administer and carry out the amendment made by this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective immediately upon the effective date of final regulations promulgated by the Commission under subsection (b), but in no event later than 270 days after the date of enactment of this Act.

SEC. 703. LIMITATIONS ON CERTAIN NONDEPOSIT MARKETING ACTIVITIES IN RETAIL BRANCHES OF FEDERALLY INSURED CREDIT UNIONS.

(a) IN GENERAL.—Section 205 of the Federal Credit Union Act (12 U.S.C. 1785) is amended by adding at the end the following new subsection:

"(j) REGULATION OF CERTAIN NONDEPOSIT MARKETING ACTIVITIES IN RETAIL BRANCHES OF INSURED CREDIT UNIONS.—

"(1) PROHIBITION ON SELLING CERTAIN INSTRUMENTS.—No insured credit union may permit any evidence of indebtedness of that credit union or any evidence of indebtedness of, or ownership interest in, any affiliate of that credit union to be sold or offered for sale in any of the following:

"(A) A domestic branch of that credit union at which insured shares are accepted.

"(B) That credit union's head office, if it accepts insured deposits and is located in the United States.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any of the following:

"(A) An insured share in an insured credit union.

"(B) A means of payment to a third party, such as a traveler's check, cashier's check, teller's check, or money order, or other similar negotiable instrument typically sold by federally insured depository institutions in the ordinary course of business.

"(C) An interest in an investment company registered under the Investment Company Act of 1940.

"(D) A sale of instruments in large dollar amounts to a sophisticated investor.

"(3) REGULATORY EXEMPTIONS.—The Board shall by regulation provide exemptions from paragraph (1) if it finds at a minimum:

"(A) the exemption is in the public interest;

"(B) the purchasers would not be likely to confuse the evidence of indebtedness or ownership interest with an insured share because of the manner in which it is sold or offered for sale, or for any other reason;

"(C) the evidence of indebtedness or ownership interest would be sold or offered for sale

on terms (including price) no less favorable for shareholders than for persons similarly situated who are not shareholders;

"(D) the seller or offeror institutes and follows procedures to determine before selling or offering to sell the instrument whether the instrument is appropriate for the purchaser;

"(E) no broker or a dealer registered under the Securities Exchange Act of 1934 (or any associated person) receives a greater commission in connection with a sale described in paragraph (1) than for a sale not described in paragraph (1) of like kind or similar principal amount; and

"(F) none of the following persons (other than a broker or dealer registered under the Securities Exchange Act of 1934, or an associated person) receives what is in substance a sales commission which is greater than the amount typical for the industry or that exceeds the amount that could have been received by a person subject to subparagraph (E) in connection with the sale or offer to sell described in paragraph (1):

"(i) The insured credit union.

"(ii) An affiliate of the insured credit union.

"(iii) An employee of the insured credit union or any of its affiliates, or any person under the direction or control of the insured credit union or any of its affiliates.

"(4) AFFILIATE DEFINED.—For the purposes of this subsection, the term 'affiliate' means any company that controls, is controlled by, or is under common control with another company.

"(5) ANNUAL REPORTS REQUIRED.—The Board shall report annually to the Chairman and the ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and the ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives on any differences between the Board's regulations under this subsection and the regulations adopted by the Securities and Exchange Commission under section 15(f) of the Securities Exchange Act of 1934. The report shall explain the reasons for any such differences, and shall be published in the Federal Register.

"(6) EFFECT ON SEC AUTHORITY.—Nothing contained in this subsection supersedes or limits the jurisdiction or authority conferred on the Securities and Exchange Commission, and no exemption from the provisions of this subsection shall affect the applicability of any of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act, or the rules and regulations thereunder.".

(b) REGULATIONS.—Not later than 210 days after the date of enactment of this Act, the National Credit Union Administration Board shall promulgate final regulations to administer and carry out the purposes of this section.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective immediately upon the effective date of final regulations promulgated under subsection (b), but in no event later than 300 days after the date of enactment of this Act.

SEC. 704. INSURANCE ACTIVITIES OF NATIONAL BANKS.

(a) REPEAL OF OBSOLETE PROVISION.—Chapter 461 of the Act of September 7, 1916 (39 Stat. 753; 12 U.S.C. 92 note), as amended, is further amended by striking "That in addition to the powers vested by law in national banking associations" and all that follows through "filing his application for insurance.".

(b) NEW PROVISION FOR INSURANCE ACTIVITIES OF NATIONAL BANKS.—The Revised Statutes are amended by adding the following new section after section 5136A (12 U.S.C. 24):

"SEC. 5136B. INSURANCE ACTIVITIES OF NATIONAL BANKS.

"(a) IN GENERAL.—A national bank may not provide insurance as agent or broker except pursuant to this section or section 5136 of the Revised Statutes.

"(b) AUTHORITY FOR NATIONAL BANKS TO ENGAGE IN INSURANCE ACTIVITIES PERMITTED FOR STATE BANKS.—

"(1) IN GENERAL.—A national bank or any of its branches may provide insurance as agent or broker in the same manner and to the same extent that a bank chartered in the State in which the national bank or branch is located is permitted to provide insurance as agent or broker.

"(2) SUBSIDIARIES OF NATIONAL BANKS.—A subsidiary of a national bank that is located in the same State as the national bank may provide insurance as agent or broker in the same manner and to the same extent that a subsidiary of a bank chartered in that State is permitted to provide insurance as agent or broker.

"(3) BANK CHARTERED IN THE STATE DEFINED.—For purposes of paragraph (1), the term 'bank chartered in the State' does not include any organization that is excluded from the definition of 'bank' in section 2(c)(2) of the Bank Holding Company Act (12 U.S.C. 1841(c)(2)).

"(c) AUTHORITY FOR NATIONAL BANKS TO ENGAGE IN INSURANCE AGENCY ACTIVITIES IN SMALL TOWNS.—

"(1) IN GENERAL.—A national bank may provide insurance as agent or broker in any small town in which the bank or any of its branches is located.

"(2) LIMITATIONS ON PERMISSIBLE CUSTOMERS.—Insurance provided pursuant to paragraph (1) in a small town in which a national bank or branch is located may only be provided to—

"(A) an individual who is a resident of or employed in the small town;

"(B) an individual to whom the bank or branch has provided insurance as agent or broker, without interruption, since such individual ceased to be a resident of, or ceased to be employed in, the small town;

"(C) a person who is engaged in business in the small town and has a business office in such town, so long as such insurance is provided either with respect to—

"(i) an employee (including an owner-employee) who resides in or is principally employed in the small town, or

"(ii) services or products provided in or from the small town; or

"(D) any other person, if the insurance is issued with respect to—

"(i) real property located in the small town; or

"(ii) personal property that is principally located or used in the small town.

"(3) GUARANTEES PROHIBITED.—No national bank that provides insurance pursuant to paragraph (1) may—

"(A) assume or guarantee the payment of any premium on any insurance policy issued through the agency of the bank by the insurance company for which the bank is acting as agent; or

"(B) guarantee the truth of any statement made by an insurance customer in filing such customer's application for insurance.

"(4) COMPLIANCE WITH STATE LAW.—A national bank or branch providing insurance pursuant to this subsection shall comply with the laws governing the provision of insurance of the State in which the bank or branch is located, unless such State law is preempted by Federal law.

"(5) SMALL TOWN DEFINED.—For purposes of this subsection (c), the term 'small town' means—

"(A) any place with a population not exceeding 5,000 (as shown by the preceding decennial census); and

"(B) any contiguous rural area, including rural communities, within 7.5 miles of the borders of a place described in subparagraph (A), except to the extent such contiguous rural area includes any part of an incorporated city or town that has a population exceeding 12,500 (as shown by the preceding decennial census).

"(d) AUTHORITY OF NATIONAL BANKS TO CONTINUE CERTAIN AGENCY ACTIVITIES.—

"(1) IN GENERAL.—A national bank or branch providing insurance pursuant to the provision repealed in section 771(a) of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 may continue to provide insurance as agent or broker from any place in which the national bank or branch was located on May 1, 1991, if—

"(A)(i) the national bank or branch was actually providing insurance from that place as of May 1, 1991;

"(ii) the insurance insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the national bank or branch was actually providing as of May 1, 1991; and

"(iii) the insurance is provided only in the contiguous region to the place in which the national bank or branch is located, except that such insurance may not be provided in any county in which the national bank or branch was not actually providing insurance as of May 1, 1991; or

"(B) the insurance is provided as agent or broker to an individual to whom insurance was actually provided by the national bank as of November 21, 1991.

"(2) LIMITATIONS ON PERMISSIBLE CUSTOMERS.—Insurance provided in a contiguous region by a national bank or branch pursuant to paragraph (1) may only be provided to—

"(A) an individual who is a resident of or employed in the contiguous region;

"(B) an individual to whom the bank or branch has provided insurance as agent or broker, without interruption, since such individual ceased to be a resident of, or ceased to be employed in, the contiguous region;

"(C) a person who is engaged in business in the contiguous region and has a business office in such contiguous region, so long as such insurance is provided either with respect to—

"(i) an employee (including an owner-employee) who resides in or is principally employed in the contiguous region, or

"(ii) services or products provided in or from the contiguous region; or

"(D) any other person, if the insurance is issued with respect to—

"(i) real property located in the contiguous region; or

"(ii) personal property that is principally located or used in the contiguous region.

"(3) CONTIGUOUS REGION DEFINED.—For purposes of this subsection, the term 'contiguous region' means the county in which the national bank or branch is located and any county bordering on the county in which the national bank or branch is located, except for—

"(A) any incorporated city or town with a population exceeding 30,000 (as shown by the preceding decennial census); or

"(B) any metropolitan area, as determined by the Office of Management and Budget.

"(4) COMPLIANCE WITH STATE LAW.—A national bank or branch providing insurance pursuant to this subsection shall comply with the laws governing the provision of insurance of the State in which the bank or branch is located, unless such State law is preempted by Federal law.

"(e) STATE DEFINED.—For purposes of this section, the term 'State' has the same meaning as in section 3 of the Federal Deposit Insurance Act.".

(c) NATIONAL BANK INSURANCE ACTIVITIES THAT ARE INCIDENTAL TO BANKING ACTIVITIES.—The paragraph designated the "Seventh" of section 5136 of the Revised Statutes (12 U.S.C. 24 (Seventh)), as redesignated by this section, is amended by adding at the end the following: "A national banking association may engage in activities pursuant to this paragraph that constitute providing insurance as principal, agent, or broker, but only if such activities were lawfully engaged in by one or more national banks before May 1, 1991. For the purposes of the previous sentence, activities were not lawfully engaged in before May 1, 1991, to the extent that they are finally adjudged as unlawful under laws in effect on May 1, 1991. A national banking association providing insurance pursuant to this paragraph shall comply with the laws governing the provision of insurance of the State in which such banking association is located, unless such State law is preempted by Federal law.".

(d) PROHIBITION ON MISREPRESENTATION AND NOTICE TO CUSTOMERS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(t) MISREPRESENTATION OF GUARANTEES AND CUSTOMER DISCLOSURE.—

"(1) MISREPRESENTATION OF GUARANTEES.—It shall be unlawful for any person selling or offering to sell insurance in accordance with section 771 of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991 or other authority to represent or imply in any manner whatsoever that such insurance—

"(A) is guaranteed or approved by the United States or any agency or officer thereof; or

"(B) is insured under this Act.

"(2) CUSTOMER DISCLOSURE.—

"(A) IN GENERAL.—An insured depository institution shall prominently disclose in writing to the institution's customers pursuant to regulations prescribed by the appropriate Federal banking agency, that insurance products offered, recommended, sponsored, or sold by the institution—

"(i) are not deposits;

"(ii) are not insured under this Act;

"(iii) are not guaranteed by the insured depository institution; and

"(iv) are not otherwise the obligation of the insured depository institution.

"(B) PROHIBITION ON JOINT MARKETING ACTIVITIES.—No insurance products may be offered, recommended, or sold on the premises of an insured depository institution or to customers of the institution as part of joint marketing activities unless the person marketing such insurance products prominently discloses to its customers in writing, in addition to the disclosures required in subparagraph (A), that such person is not an insured depository institution and is separate and distinct from the insured depository institution with which it shares marketing activities.

"(3) ENFORCEMENT.—The provisions of this subsection shall be enforced in accordance with section 8.

"(4) REGULATIONS.—The appropriate Federal banking agencies shall promulgate regulations to implement this subsection not later than 1 year after the date of enactment of this subsection.".

SEC. 705. INTERSTATE INSURANCE AGENCY ACTIVITIES OF BANKING SUBSIDIARIES OF BANK HOLDING COMPANIES.

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following new section:

"SEC. 13. INTERSTATE INSURANCE AGENCY ACTIVITIES OF BANKING SUBSIDIARIES.

"(a) IN GENERAL.—No bank holding company may permit any subsidiary bank to provide insurance as agent or broker beyond the borders of the State in which the subsidiary bank is principally located, unless—

"(1) the statutes of the host State expressly authorize a bank principally located in another State to provide insurance in such host State, by language to that effect and not merely by implication;

"(2) the insurance is provided through a branch of the subsidiary bank, so long as the branch—

"(A) is located in the State in which the insurance is provided;

"(B) is otherwise authorized by State or Federal law to provide such insurance; and

"(C) is engaged primarily in banking activities, not insurance activities;

"(3) the insurance is provided pursuant to subsection (d) of section 5136B of the Revised Statutes, except that such insurance may not be provided—

"(A) in any place in the host State that is more than 7.5 miles from the place in which the national bank or branch is located; or

"(B) any incorporated cities or towns with a population exceeding 12,500 (as shown by the preceding decennial census);

"(4) the insurance—

"(A) insures against the same types of risks as, or is otherwise functionally equivalent to, insurance that the subsidiary bank or any subsidiary of that bank was providing as of May 1, 1991, beyond the borders of the State in which the subsidiary bank is principally located, and

"(B) is not provided pursuant to a statute enacted by a State after May 1, 1990;

"(5) the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by the bank holding company and any subsidiary (including the subsidiary bank) in the event of the death, disability, or involuntary unemployment of the debtor; or

"(6) the insurance is placed on real or personal property if a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit document.

"(b) APPLICATION.—The restrictions of subsection (a) shall not apply to any non-bank subsidiary of a bank.

"(c) DEFINITIONS.—

"(1) PLACE IN WHICH INSURANCE IS PROVIDED.—For purposes of this section, the place in which insurance is provided includes the place in which an individual who purchases such insurance is domiciled.

"(2) PRINCIPALLY LOCATED DEFINED.—For purposes of this section, the State in which a bank is principally located is—

"(A) the State in which the bank is chartered; or

"(B) if the bank is a national bank, the State in which the bank has its main office.

"(3) HOST STATE DEFINED.—For purposes of this section, the term 'host State' means a State in which a bank provides insurance other than the State in which the bank is principally located.

"(d) NO AFFECT ON BANK HOLDING COMPANY INSURANCE ACTIVITIES.—Nothing in this section shall be deemed to affect the ability of a bank holding company to engage, directly or indirectly, in insurance activities that are permissible under sections 4(a)(2) and 4(c)(8).".

SEC. 706. SAFEGUARDS FOR SALE OF INSURANCE.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by inserting the following new section at the appropriate place:

"SEC. ____. SAFEGUARDS FOR SALE OF INSURANCE BY INSURED INSTITUTIONS.

"(a) PROMINENT DISCLOSURE THAT INSURANCE PRODUCTS ARE NOT FEDERALLY INSURED.—Pursuant to regulations issued by the Corporation, an insured depository institution shall prominently disclose in writing to each of its customers that insurance products sold, offered, or recommended by the insured depository institution are not deposits and are not insured by the Corporation, and, to the extent applicable, are neither guaranteed by nor otherwise an obligation of an insured depository institution.

"(b) NO FAVORING OF CAPTIVE AGENTS.—No insured depository institution may, directly or indirectly—

"(1) require as a condition of providing any product or service to any customer, or any renewal of any contract for providing such product or service, that the customer acquire, finance, or negotiate any policy or contract of insurance through a particular insurer, agent, or broker;

"(2) in connection with a loan or extension or credit that requires a borrower to obtain insurance, reject an insurance policy solely because such policy has been issued or underwritten by any person who is not an affiliate of such institution; or

"(3) impose any discriminatory requirement on any insurance agent who is not affiliated with the insured depository institution that is not imposed on any insurance agent that is affiliated with such institution.

"(c) NO SOLICITATION OF CERTAIN INSURANCE BEFORE PROVIDING LOAN COMMITMENTS.—

"(1) IN GENERAL.—No insured depository institution may, directly or indirectly, solicit the purchase of any insurance required under the terms of any proposed loan or extension of credit from such insured depository institution to a customer before the customer has received a written commitment with respect to such loan or extension of credit.

"(2) EXCEPTION FOR INSURANCE REQUIRED FOR CREDIT AGREEMENT.—Nothing in this section shall prevent an insured depository institution from placing insurance on real or personal property if a customer has failed to provide reasonable evidence of required insurance in accordance with the terms of a loan or credit document.

"(d) RESTRICTIONS ON USE OF NONPUBLIC CUSTOMER INFORMATION.—

"(1) IN GENERAL.—No insured depository institution may use, directly or indirectly, any nonpublic customer information for the purpose of providing insurance, except with the prior written consent of the customer.

"(2) EXCEPTION FOR CREDIT-RELATED INSURANCE.—For purposes of paragraph (1), the term 'insurance' does not include insurance—

"(A) provided to assure the repayment of the outstanding balance due on an extension

of credit in the event of the death, disability, or involuntary unemployment of the debtor;

"(B) provided on real or personal property obtained by or on behalf of an insured depository institution in the event a debtor has failed to provide reasonable evidence of required insurance in accordance with an extension of credit; or

"(C) provided to assure the repayment of outstanding balances due in connection with an extension of credit in the event of the loss or damage to property used as collateral on such extension of credit.

"(3) RECORDS OF CUSTOMER CONSENT.—Any insured depository institution that obtains the consent of any customer to disclose nonpublic customer information shall maintain appropriate records or other evidence of such consent.

"(4) DEFINITIONS.—

"(A) CUSTOMER DEFINED.—For purposes of this section, the term 'customer' means any person who, after January 1, 1992, establishes a credit relationship with an insured depository institution.

"(B) NONPUBLIC CUSTOMER INFORMATION DEFINED.—For purposes of this section, the term 'nonpublic customer information' means information obtained from an individual by an insured depository institution in connection with a loan or extension of credit, but does not include—

"(i) customers' names and addresses (unless a customer has specified otherwise);

"(ii) information that could be obtained from unaffiliated credit bureaus or similar companies in the ordinary course of business; or

"(iii) information that is customarily provided to unaffiliated credit bureaus or similar companies in the ordinary course of business by insured depository institutions that do not provide insurance.

"(5) ADDITIONAL RESTRICTIONS.—The Corporation may, by regulation or order, prescribe such additional restrictions and requirements as may be necessary or appropriate to avoid any significant risk to insured depository institutions, protect customers, and avoid conflicts of interest or other abuses.".

SEC. 707. INSURANCE UNDERWRITING IN BANK RESTRICTED.

(a) IN GENERAL.—Section 24 of the Federal Deposit Insurance Act (as added by section 211(a) of the Act) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

"(f) INSURANCE UNDERWRITING.—

"(1) IN GENERAL.—No insured State bank or any of its subsidiaries may provide insurance as principal except to the extent that a national bank may lawfully provide insurance as principal.

"(2) CONTINUATION OF EXISTING ACTIVITIES.—Notwithstanding paragraph (1), an insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on November 21, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

"(3) EXCEPTION FOR CERTAIN FEDERALLY REINSURED CROP INSURANCE.—Notwithstanding paragraph (1), an insured State bank or any of its subsidiaries that provided insurance on or before September 30, 1991, that was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to provide such insurance.".

(b) EFFECTIVE DATE; TRANSITION RULE.—

(1) EFFECTIVE DATE.—The amendment made by this section shall take effect 90 days after the date of enactment of this Act.

(2) TRANSITION RULE.—An insured State bank or subsidiary of an insured State bank that, as of the date of enactment of this Act, was lawfully engaged in any activity prohibited by this section may continue to engage in that activity during the period ending one year after that date of enactment.

TITLE VIII—THRIFT-TO-BANK CONVERSIONS

SEC. 801. SHORT TITLE.

This title may be cited as the "Thrift-To-Bank Conversion Act of 1991".

SEC. 802. STREAMLINING CONVERSION PROCEDURES.

(a) AMENDMENT TO THE NATIONAL BANK ACT.—Section 5154 of the Revised Statutes (12 U.S.C. 35) is amended to read as follows:

"SEC. 5154. ORGANIZATION OF SAVINGS ASSOCIATIONS OR STATE BANKS AS NATIONAL BANKS.

"(a) CONVERSION AUTHORITY.—A savings association or State bank, as defined in section 3 of the Federal Deposit Insurance Act, including a bank or savings association owned in mutual form, may be converted into a national bank if—

"(1) the institution has capital sufficient to entitle it to become a national bank under applicable provisions of law; and

"(2) such conversion—

"(A) is approved by the vote of not less than 51 percent of the total outstanding votes of the institution's shareholders or members;

"(B) would not be in contravention of any applicable Federal or State law; and

"(C) is approved by the Comptroller of the Currency (hereafter in this section referred to as the 'Comptroller').

"(b) POST-CONVERSION RIGHTS, DUTIES, AND AUTHORITIES.—After the conversion of a depository institution into a national bank in accordance with subsection (a)—

"(1) the directors of the depository institution may continue to be directors of the national bank until others are elected or appointed in accordance with applicable Federal law;

"(2) the directors of the institution may execute the articles of association and organization certificate by a majority of the directors of the depository institution, and such certificate shall declare that the owners of 51 percent of the capital stock or 51 percent of the total outstanding votes, as the case may be, have authorized the directors to make such certificate and to convert the depository institution into a national bank; and

"(3) a majority of the directors, after executing the articles of association and the organization certificate, shall have power to execute all other papers and to do whatever may be required to make its organization perfect and complete as a national bank.

"(c) SHARE AMOUNTS AFTER CONVERSION.—The shares of a depository institution that converts to a national bank in accordance with this section may continue to be for the same amount each as they were before the conversion.

"(d) STOCKHOLDER AND EMPLOYEE RIGHTS.—When the Commission has given to a converting depository institution a certificate that the provisions of this title have been complied with, the converted depository institution, and all of its stockholders, officers, and employees shall have the same powers and privileges, and shall be subject to the same duties, liabilities, and regulations, in all respects, as have been prescribed under Federal law for institutions originally organized as national banks.

"(e) RETENTION OF ASSETS.—The Commission may, in its discretion and subject to such conditions as it may prescribe, permit a depository institution that converts to a national bank under this section to retain and carry, at a value determined by the Commission, such of the assets of the converting depository institution that do not conform to the legal requirements relative to assets acquired and held by national banks.

"(f) INCLUSION OF 'NATIONAL' IN INSTITUTION'S NAME.—The name of an institution resulting from a conversion under this section shall include the word 'national'.".

(b) AMENDMENT TO THE HOME OWNERS' LOAN ACT.—Section 5(i) of the Home Owners' Loan Act (12 U.S.C. 1464(i)) is amended—

(1) by redesignating paragraph (4) as paragraph (8); and

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

"(4) CONVERSION OF FEDERAL OR STATE SAVINGS ASSOCIATION TO NATIONAL BANK.—

"(A) IN GENERAL.—A Federal savings association or a State savings association may convert into a national bank if such conversion—

"(i) is agreed to by a vote of members or security holders, in person or by proxy, at a special meeting called to consider such action, as specified by section 5154 of the Revised Statutes; and

"(ii) complies in all other respects with the requirements of section 5154 of the Revised Statutes and any regulations issued thereunder.

"(B) NOTICE.—Notice of the meeting referred to in subparagraph (A)(i) shall be given in accordance with paragraph (3)(A)(iii).

"(C) EFFECTIVE DATE.—A conversion under this paragraph shall be effective on the date that all the provisions of this Act and section 5154 of the Revised Statutes are fully complied with, and upon the issuance of a certificate of authority to commence banking by the Comptroller of the Currency in accordance with section 5169 of the Revised Statutes.

"(D) REGULATORY AUTHORITY.—The Comptroller of the Currency may prescribe such rules or regulations applicable to a national bank that results from the conversion of a Federal savings association or a State savings association under this paragraph, including any requirement that the resulting national bank assume and maintain any liquidation account obligations of the converting institution, that the Comptroller of the Currency determines to be appropriate.

"(E) APPROVAL REQUIREMENTS.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), no approval is required under this section for the conversion of any savings association into a national bank, other than the approval of the Comptroller of the Currency, as prescribed by section 5154 of the Revised Statutes.

"(ii) EXCEPTION.—If a mutual savings association converts into a national bank, approval by the Comptroller of the Currency shall be required for that aspect of the conversion which relates to the conversion of the institution to the stock form of ownership.

"(iii) STATE SAVINGS ASSOCIATION CONVERSIONS.—Approval of a State savings association conversion to a national bank under this paragraph, shall be subject to any applicable laws of the State in which the home office of the State savings association is located.

"(5) CONVERSION OF FEDERAL SAVINGS ASSOCIATION TO STATE BANK.—

"(A) IN GENERAL.—A Federal savings association that is adequately capitalized (as defined in section 37 of the Federal Deposit Insurance Act) may convert into a State bank organized pursuant to the laws of the State in which the home office of such Federal savings association is located if—

"(i) the State permits the conversion of a Federal savings association into a State bank; and

"(ii) such conversion—

"(I) is determined upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, as specified by the law of the State in which the home office of the Federal savings association is located, and

"(II) complies in all other respects with the requirements of such State law for the conversion of a Federal savings association into a State bank.

"(B) NOTICE.—Notice of the meeting referred to in subparagraph (A)(i) shall be given in accordance with paragraph (3)(A)(iii).

"(C) EFFECTIVE DATE.—A conversion under this paragraph shall be effective upon the date that all the provisions of this Act shall have been fully complied with, and upon the issuance of a new charter by the State in which the savings association is located.

"(D) REGULATORY AUTHORITY.—The appropriate State regulatory authority may prescribe such rules or regulations applicable to a bank that results from the conversion of a Federal savings association, including any requirement that the resulting bank assume and maintain any liquidation account obligations of the converting institution, that such regulatory authority determines to be appropriate.

"(E) APPROVAL REQUIREMENTS.—

"(i) IN GENERAL.—Except as provided in clause (ii), no approval shall be required for the conversion of any Federal savings association into a State bank other than the approval of the appropriate State regulatory authority of the State in which the home office of the Federal savings association is located.

"(ii) EXCEPTION.—If a Federal mutual savings association converts into a State bank, approval by the Office of Thrift Supervision shall be required for that aspect of the conversion which relates to the conversion of the institution to the stock form of ownership.

"(6) CONVERSIONS BY STATE SAVINGS ASSOCIATIONS TO STATE BANKS.—

"(A) NO APPROVAL FOR CONVERSION.—Except as provided in subparagraph (B), no approval shall be required under this subsection for the conversion of a State savings association, as defined in section 3(b)(3) of the Federal Deposit Insurance Act, into a State bank other than the approval of the appropriate State regulatory authority of the State in which the home office of the State savings association is located.

"(B) CONVERSION TO STOCK FORM OF OWNERSHIP.—If a State mutual savings association converts to a State bank under this paragraph, approval by the Comptroller of the Currency shall be required for that aspect of the conversion which relates to the conversion of the institution to the stock form of ownership.

"(7) DEFINITION OF STATE BANK.—For purposes of paragraphs (5) and (6), the term 'State bank' shall have the same meaning as in section 3(a)(2) of the Federal Deposit Insurance Act.".

(c) SAFEGUARDS ON CERTAIN SAVINGS BANKS.—

(1) IN GENERAL.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(t) SAFEGUARDS ON CERTAIN SAVINGS BANKS.—The following provisions shall apply to any insured savings bank resulting from a conversion under section 5(i)(5) of the Home Owners' Loan Act and any savings bank that is a direct or indirect successor to that savings bank:

"(1) RISKY ACTIVITIES.—Section 28 shall apply to the savings bank in the same manner and to the same extent as if the savings bank were a savings association.

"(2) LOANS TO ONE BORROWER.—Section 5200 of the Revised Statutes shall apply to the savings bank in the same manner and to the same extent as if the savings bank were a national bank.

"(3) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

"(A) IN GENERAL.—In determining compliance with any applicable capital standards, all of the savings bank's investments in and extensions of credit to any subsidiary engaged in activities not permissible for a national bank shall be deducted from the savings bank's capital.

"(B) EXCEPTIONS.—

"(i) AGENCY ACTIVITIES.—Subparagraph (A) does not apply with respect to a subsidiary engaged, solely as agent for its customers, in activities not permissible for a national bank unless the Corporation, in its sole discretion, determines that, in the interests of safety and soundness, this subparagraph should cease to apply to that subsidiary.

"(ii) MORTGAGE BANKING SUBSIDIARIES.—Subparagraph (A) does not apply with respect to the savings bank's investments in and extensions of credit to a subsidiary engaged solely in mortgage banking activities.

"(C) TRANSITIONAL RULE.—

"(i) INCLUSION IN CAPITAL.—Notwithstanding subparagraph (A), if a savings bank's subsidiary was, as of April 12, 1989, engaged in activities not permissible for a national bank, the savings bank may include in calculating capital the applicable percentage (set forth in clause (ii)) of the lesser of—

"(I) the savings bank's investments in and extensions of credit to the subsidiary on April 12, 1989; or

"(II) the savings bank's investments in and extensions of credit to the subsidiary on the date as of which the savings bank's capital is being determined.

"(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is as follows:

"For the following period:	The acceptable percentage is:
Prior to July 1, 1992 ..	75
July 1, 1992–June 30, 1993	60
July 1, 1993–June 30, 1994	40
Thereafter	0.

"(iii) FDIC'S DISCRETION TO PRESCRIBE LESSER PERCENTAGE.—The Corporation may prescribe, by order, with respect to a particular savings bank, an applicable percentage that is less than the percentage prescribed by clause (ii) if the Corporation determines, in its sole discretion, that the use of the greater percentage would, under the circumstances, constitute an unsafe or unsound practice or be likely to result in the bank's being in an unsafe or unsound condition.

"(4) TRANSACTIONS WITH AFFILIATES.—The savings bank may not engage in any transaction that would be prohibited under section 11(a)(1) of the Home Owners' Loan Act if the savings bank were a savings association.

"(5) PARENT COMPANY SUBJECT TO BANK HOLDING COMPANY ACT OF 1956.—Section 10(*l*)(1) of the Home Owners' Loan Act does not apply with respect to the savings bank.".

(2) CONFORMING AMENDMENT TO HOME OWNERS' LOAN ACT.—Section 10(*l*)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(*l*)(1)) is amended by striking "other provision of law," and inserting "provision of the Bank Holding Company Act of 1956, but subject to section 18(t)(5) of the Federal Deposit Insurance Act,".

SEC. 803. RETENTION OF EXISTING IN-STATE BRANCHES BY SAVINGS ASSOCIATIONS THAT CONVERT TO NATIONAL BANKS.

Section 5155(b) of the Revised Statutes (12 U.S.C. 36(b)) is amended—

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

(2) by inserting after paragraph (1) the following:

"(2) A national bank resulting from the conversion of a Federal or State savings association (as such terms are defined in section 3 of the Federal Deposit Insurance Act) may retain and operate as a branch any office that was a branch of the savings association immediately prior to conversion if such office—

"(A) is located in the same State in which the national bank has its main office; and

"(B) was lawfully and continuously operated by the savings association as a branch for a period of not less than 2 years prior to such conversion.

"(3) Notwithstanding paragraph (2), a national bank resulting from the conversion of a Federal or State savings association that was, prior to such conversion, a subsidiary of a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956), may not retain and operate as a branch any office that would otherwise not be permitted for a national bank.".

SEC. 804. NO RECAPTURE OF THRIFT RESERVES ON CONVERSION.

(a) IN GENERAL.—It is the sense of the Congress that it would be in the public interest to enact legislation as follows: Notwithstanding any other provision of law to the contrary, a domestic building and loan association, mutual savings bank, or cooperative bank to which section 593 of the Internal Revenue Code of 1986 applies which becomes a bank within the meaning of section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) and continues to meet the requirements of section 7701(a)(19)(C) of the Internal Revenue Code of 1986 shall not be required to treat as income for Federal income tax purposes any amounts previously deducted by such institutions under section 593 of such Code because it ceases to meet any other requirement of section 7701(a)(19) of such Code.

(b) CONFORMING TAX LEGISLATION.—Not later than 90 days after the date of enactment of this Act, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, a draft of amendments to the Internal

Revenue Code of 1986 necessary to reflect the provisions of subsection (a).

TITLE IX—FINANCIAL INSTITUTIONS ENFORCEMENT IMPROVEMENTS ACT

SEC. 901. SHORT TITLE.

This title may be cited as the "Financial Institutions Enforcement Improvements Act".

Subtitle A—Termination of Charters, Insurance, and Offices

SEC. 911. REVOKING CHARTER OF FEDERAL DEPOSITORY INSTITUTIONS CONVICTED OF MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

(a) NATIONAL BANKS.—Section 5239 of the Revised Statutes (12 U.S.C. 93) is amended by adding at the end the following:

"(c) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—

"(A)(i) CONVICTION OF TITLE 18 OFFENSES.—If a national bank, a Federal branch, or Federal agency has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Office of the Comptroller of the Currency a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Office of the Comptroller of the Currency shall issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

"(B) CONVICTION OF TITLE 31 OFFENSES.—If a national bank, a Federal branch, or a Federal agency is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Office of the Comptroller of the Currency may issue to the national bank, Federal branch, or Federal agency a notice of the Comptroller's intention to terminate all rights, privileges, and franchises of the bank, Federal branch, or Federal agency and schedule a pretermination hearing.

"(C) JUDICIAL REVIEW.—Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

"(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Comptroller of the Currency shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the bank, Federal branch, or Federal agency has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to any Federal deposit insurance fund or the Resolution Trust Corporation; and

"(E) whether the bank, Federal branch, or Federal agency maintained at the time of the conviction, according to the review of the Comptroller of the Currency, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, a bank, a Federal branch, or a Federal agency that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(4) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within a national bank, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of the bank or its holding company. If the institution is a Federal branch or Federal agency (as those terms are defined under section 1(b) of the International Banking Act of 1978) of a foreign institution, the term 'senior management officials' means those individuals who exercise major supervisory control within any branch of that foreign institution located within the United States. The Comptroller of the Currency shall by regulation specify which officials of a national bank shall be treated as senior management officials for the purpose of this subsection.".

(b) FEDERAL SAVINGS ASSOCIATIONS.—Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended by adding at the end the following:

"(w) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—

"(A)(i) CONVICTION OF TITLE 18 OFFENSES.—If a Federal savings association has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Director of the Office of Thrift Supervision a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Director of the Office of Thrift Supervision shall issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

"(B) CONVICTION OF TITLE 31 OFFENSES.—If a Federal savings association is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Director of the Office of Thrift Supervision may issue to the savings association a notice of the Director's intention to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

"(C) JUDICIAL REVIEW.—Subsection (d)(1)(B)(vii) shall apply to any proceeding under this subsection.

"(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Office of Thrift Supervision shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the association has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to any Federal deposit insurance fund or the Resolution Trust Corporation; and

"(E) whether the association maintained at the time of the conviction, according to the review of the Director of the Office of Thrift Supervision, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, a savings association that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(4) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within a savings association, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of the savings association or its holding company. The Office of Thrift Supervision shall by regulation specify which officials of a savings association shall be treated as senior management officials for the purpose of this subsection.".

(c) FEDERAL CREDIT UNIONS.—Title I of the Federal Credit Union Act (12 U.S.C. 1752 et seq.) is amended by adding at the end the following new section:

"SEC. 131. FORFEITURE OF ORGANIZATION CERTIFICATE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

"(a) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1)(A) CONVICTION OF TITLE 18 OFFENSES.—If a credit union has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(B) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Board shall issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

"(2) CONVICTION OF TITLE 31 OFFENSES.—If a credit union is convicted of any offense punishable under section 5322 of title 31, United States Code, after receiving written notification from the Attorney General, the Board may issue to such credit union a notice of its intention to terminate all rights, privileges, and franchises of the credit union and schedule a pretermination hearing.

"(3) JUDICIAL REVIEW.—Section 206(j) shall apply to any proceeding under this section.

"(b) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited

under subsection (a), the Board shall consider—

"(1) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(2) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(3) whether the credit union has fully cooperated with law enforcement authorities with respect to the conviction;

"(4) whether there will be any losses to the credit union share insurance fund; and

"(5) whether the credit union maintained at the time of the conviction, according to the review of the Board, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(c) SUCCESSOR LIABILITY.—This section does not apply to a successor to the interests of, or a person who acquires, a credit union that violated a provision of law described in subsection (a), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this section or regulations prescribed under this section.

"(d) DEFINITION.—For purposes of this section, the term 'senior management officials' means those individuals who exercise major supervisory control within a credit union, including members of the board of directors. The Board shall by regulation specify which officials of a credit union shall be treated as senior management officials for the purpose of this section.".

SEC. 912. TERMINATING INSURANCE OF STATE DEPOSITORY INSTITUTIONS CONVICTED OF MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.

(a) STATE BANKS AND SAVINGS ASSOCIATIONS.—

(1) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end the following new subsection:

"(v) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—

"(A)(i) CONVICTION OF TITLE 18 OFFENSES.—If an insured State depository institution, including a State branch of a foreign institution, has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Corporation a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) NOTICE OF TERMINATION; TERMINATION HEARING.—After receipt of written notification from the Attorney General by the Corporation of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a).

"(B) CONVICTION OF TITLE 31 OFFENSES.—If an insured State depository institution, including a State branch of a foreign institution, is convicted of any offense punishable under section 5322 of title 31, United States Code, after receipt of written notification from the Attorney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

"(C) NOTICE TO STATE SUPERVISOR.—The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

"(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board of Directors shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the institution has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to the Federal deposit insurance funds or the Resolution Trust Corporation; and

"(E) whether the institution maintained at the time of the conviction, according to the review of the Corporation, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) NOTICE TO STATE BANKING SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

"(A) notify the State banking supervisor of any State depository institution described in paragraph (1) and the Office of Thrift Supervision, where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

"(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

"(4) DEPOSITS UNINSURED.—Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with section 8(a)(7).

"(5) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(6) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within an insured depository institution, including members of the board of directors and individuals who own or control 10 percent or more of the outstanding voting stock of such institution or its holding company. If the institution is a State branch of a foreign institution, the term 'senior management officials' means those individuals who exercise major supervisory control within any branch of that foreign institution located within the United States. The Board of Directors shall by regulation specify which officials of an insured State depository institution shall be treated as senior management officials for the purpose of this subsection.".

(2) TECHNICAL AMENDMENT.—Section 8(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(3)) is amended by inserting "of this subsection or subsection (v)" after "subparagraph (B)".

(b) STATE CREDIT UNIONS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following new subsection:

"(u) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

"(1) IN GENERAL.—(A)(i) If an insured State credit union has been convicted of any criminal offense described in section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Board a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

"(ii) After written notification from the Attorney General to the Board of Directors of such a conviction, the Board shall issue to such insured credit union a notice of its intention to terminate the insured status of the insured credit union and schedule a hearing on the matter, which shall be conducted as a termination hearing pursuant to subsection (b) of this section, except that no period for correction shall apply to a notice issued under this subparagraph.

"(B) If a credit union is convicted of any offense punishable under section 5322 of title 31, United States Code, after prior written notification from the Attorney General, the Board may initiate proceedings to terminate the insured status of such credit union in the manner described in subparagraph (A).

"(C) The Board shall simultaneously transmit a copy of any notice under this paragraph to the appropriate State financial institutions supervisor.

"(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board shall consider—

"(A) the degree to which senior management officials knew of, or were involved in, the solicitation of illegally derived funds or the money laundering operation;

"(B) whether the interest of the local community in adequate depository and credit services would be threatened by the forfeiture of the franchise;

"(C) whether the credit union has fully cooperated with law enforcement authorities with respect to the conviction;

"(D) whether there will be any losses to the credit union share insurance fund; and

"(E) whether the credit union maintained at the time of the conviction, according to the review of the Board, a program of money laundering deterrence and compliance that clearly exceeded federally required deterrence and compliance measures; adequately monitored the activities of its officers, employees, and agents to ensure compliance; and promptly reported suspected violations to law enforcement authorities.

"(3) NOTICE TO STATE CREDIT UNION SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board shall—

"(A) notify the commission, board, or authority (if any) having supervision of the credit union described in paragraph (1) at least 10 days prior to the effective date of the order of the termination of the insured status of such credit union; and

"(B) publish notice of the termination of the insured status of the credit union.

"(4) DEPOSITS UNINSURED.—Upon termination of the insured status of any State credit union pursuant to paragraph (1), the deposits of such credit union shall be treated in accordance with section 206(d)(2).

"(5) SUCCESSOR LIABILITY.—This subsection does not apply to a successor to the interests of, or a person who acquires, an insured credit union that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for purposes of evading this subsection or regulations prescribed under this subsection.

"(6) DEFINITION.—For purposes of this subsection, the term 'senior management officials' means those individuals who exercise major supervisory control within an insured credit union, including members of the board of directors. The Board shall by regulation specify which officials of an insured State credit union shall be treated as senior management officials for the purpose of this subsection.".

SEC. 913. REMOVING PARTIES INVOLVED IN CURRENCY REPORTING VIOLATIONS.

(a) FDIC-INSURED INSTITUTIONS.—

(1) VIOLATION OF REPORTING REQUIREMENTS.—Section 8(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(2)) is amended to read as follows:

"(2) SPECIFIC VIOLATIONS.—Whenever the appropriate Federal banking agency determines that—

"(A) an institution-affiliated party committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, unless such violation was inadvertent or unintentional;

"(B) an officer or director of an insured depository institution knew that an institution-affiliated party of the insured depository institution violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii); or

"(C) an officer or director of an insured depository institution committed any violation of the Depository Institution Management Interlocks Act,

the agency may serve upon such party, officer, or director a written notice of its intention to remove such party from office. In determining whether an officer or director should be removed as a result of the application of subparagraph (B), the agency shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.".

(2) FELONY CHARGES.—Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended to read as follows:

"(1)(A) Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

"(ii) a criminal violation of section 1956 or 1957 of title 18, United States Code, or an offense punishable under section 5322 of title 31, United States Code,

the appropriate Federal banking agency may, if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution. A copy of such notice shall also be served upon the depository institution.

"(B) A suspension or prohibition under subparagraph (A) shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency.

"(C)(i) In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against such party in connection with a crime described in subparagraph (A)(i), and at such time as such judgment is not subject to further appellate review, the agency may, if continued service or participation by such party may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution except with the consent of the appropriate agency.

"(ii) In the event of such a judgment of conviction or agreement in connection with a violation described in subparagraph (A)(ii), the agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution except with the consent of the appropriate agency.

"(D) A copy of such order shall also be served upon such depository institution, whereupon such party (if a director or an officer) shall cease to be a director or officer of such depository institution. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.".

(b) CREDIT UNIONS.—

(1) VIOLATION OF REPORTING REQUIREMENTS.—Section 206(g)(2) of the Federal Credit Union Act (12 U.S.C. 1786(g)(2)) is amended to read as follows:

"(2) SPECIFIC VIOLATIONS.—Whenever the Board determines that—

"(A) an institution-affiliated party committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, unless such violation was inadvertent or unintentional;

"(B) an officer or director of an insured credit union knew that an institution-affiliated party of the insured credit union violated any such provision or any provision of law referred to in subsection (i)(1)(A)(ii); or

"(C) an officer or director of an insured credit union committed any violation of the Depository Institution Management Interlocks Act,

the Board may serve upon such party, officer, or director a written notice of its intention to remove him from office. In determining whether an officer or director should be removed as a result of the application of subparagraph (B), the Board shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.".

(2) FELONY CHARGES.—Section 206(i)(1) of the Federal Credit Union Act (12 U.S.C. 1786(i)(1)) is amended to read as follows:

"(1)(A) Whenever any institution-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in—

"(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

"(ii) a criminal violation of section 1956 or 1957 of title 18, United States Code, or an offense punishable under section 5322 of title 31, United States Code,

the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the credit union. A copy of such notice shall also be served upon the credit union.

"(B) A suspension or prohibition under subparagraph (A) shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Board.

"(C)(i) In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against such party in connection with a crime described in subparagraph (A)(i), and at such time as such judgment is not subject to further appellate review, the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board.

"(ii) In the event of such a judgment of conviction or agreement in connection with a violation described in subparagraph (A)(ii), the Board shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board.

"(D) A copy of such order shall also be served upon such credit union, whereupon such party (if a director or an officer) shall cease to be a director or officer of such credit union. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such party from office or to prohibit further participation in credit union affairs, pursuant to paragraph (1), (2), or (3) of subsection (g) of this section. Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the Board.".

SEC. 914. UNAUTHORIZED PARTICIPATION.

Section 19(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1829(a)(1)) is amended by inserting "or money laundering" after "breach of trust".

SEC. 915. ACCESS BY STATE FINANCIAL INSTITUTION SUPERVISORS TO CURRENCY TRANSACTIONS REPORTS.

Section 5319 of title 31, United States Code, is amended—

(1) in the first sentence, by striking "to an agency" and inserting "to an agency, including any State financial institutions supervisory agency,"; and

(2) by inserting after the second sentence the following new sentence: "The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes.".

SEC. 916. RESTRICTING STATE BRANCHES AND AGENCIES OF FOREIGN BANKS CONVICTED OF MONEY LAUNDERING OFFENSES.

Section 7(d) of the International Banking Act of 1978 (12 U.S.C. 3105(d)) is amended to read as follows:

"(d) PROCEEDINGS RELATED TO CONVICTION FOR MONEY LAUNDERING OFFENSES.—

"(1) NOTICE OF INTENTION TO ISSUE ORDER.—If the Board finds or receives written notice from the Attorney General that—

"(A) any foreign bank which operates a State agency, a State branch which is not an insured branch, or a State commercial lending company subsidiary,

"(B) any State agency,

"(C) any State branch which is not an insured branch,

"(D) any State commercial lending subsidiary, or

"(E) any director or senior executive officer of any such foreign bank, agency, branch, or subsidiary,

has been found guilty of any money laundering offense, the Board shall issue a notice to the agency, branch, or subsidiary of the Board's intention to commence a termination proceeding under subsection (f).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) INSURED BRANCH.—The term 'insured branch' has the meaning given such term in section 3(s) of the Federal Deposit Insurance Act.

"(B) MONEY LAUNDERING OFFENSE DEFINED.—The term 'money laundering offense' means any offense under section 1956, 1957, or 1960 of title 18, United States Code, or punishable under section 5322 of title 31, United States Code.

"(C) SENIOR EXECUTIVE OFFICERS.—The term 'senior executive officers' has the meaning given to such term by the Board pursuant to section 32(f) of the Federal Deposit Insurance Act.".

Subtitle B—Nonbank Financial Institutions and General Provisions

SEC. 921. IDENTIFICATION OF FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Chapter 53 of title 31, United States Code, is amended by inserting after section 5326 the following:

"§ 5327. Identification of financial institutions

"By January 1, 1993, the Secretary shall prescribe regulations providing that each depository institution identify its customers which are financial institutions as defined in subparagraphs (H) through (Y) of section 5312(a)(2) and the regulations thereunder and which hold accounts with the depository institution. Each depository institution shall report the names of and other information about these financial institution customers to the Secretary at such times and in such manner as the Secretary shall prescribe by regulation. No person shall cause or attempt to cause a depository institution not to file a report required by this section or to file a report containing a material omission or misstatement of fact. The Secretary shall provide these reports to appropriate State financial institution supervisory agencies for supervisory purposes.".

(b) CIVIL PENALTY.—Section 5321(a) of title 31, United States Code, is amended by adding at the end the following paragraph:

"(7)(A) The Secretary may impose a civil penalty on any person or depository institution, within the meaning of section 5327, that willfully violates any provision of section 5327 or a regulation prescribed thereunder.

"(B) The amount of any civil money penalty imposed under subparagraph (A) shall not exceed $10,000 for each day a report is not filed or a report containing a material omission or misstatement of fact remains on file with the Secretary.".

(c) CHAPTER ANALYSIS.—The chapter analysis for chapter 53 of title 31, United States Code, is amended by adding at the end the following new item:

"5327. Identification of financial institutions.".

SEC. 922. PROHIBITION OF ILLEGAL MONEY TRANSMITTING BUSINESSES.

(a) IN GENERAL.—Chapter 95 of title 18, United States Code, is amended by adding at the end the following section:

"§ 1960. Prohibition of illegal money transmitting businesses

"(a) Whoever conducts, controls, manages, supervises, directs, or owns all or part of a business, knowing the business is an illegal money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

"(b) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to—

"(1) the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws;

"(2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale;

"(3) the remission or mitigation of such forfeitures; and

"(4) the compromise of claims and the award of compensation to informers with respect to such forfeitures;

shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

"(c) As used in this section—

"(1) the term 'illegal money transmitting business' means a money transmitting business that affects interstate or foreign commerce in any manner or degree and which is knowingly operated in a State—

"(A) without the appropriate money transmitting State license; and

"(B) where such operation is punishable as a misdemeanor or a felony under State law;

"(2) the term 'money transmitting' includes but is not limited to transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

"(3) the term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

(b) CHAPTER ANALYSIS.—The chapter analysis for chapter 95 of title 18, United States Code, is amended by adding at the end the following item:

"1960. Prohibition of illegal money transmitting businesses.".

SEC. 923. COMPLIANCE PROCEDURES.

Section 5318(a)(2) of title 31, United States Code, is amended by inserting "or to guard against money laundering" before the semicolon.

SEC. 924. NONDISCLOSURE OF ORDERS.

Section 5326 of title 31, United States Code, is amended by adding at the end the following:

"(c) NONDISCLOSURE OF ORDERS.—No financial institution or officer, director, employee or agent of a financial institution subject to an order under this section may disclose the existence of, or terms of, the order to any person except as prescribed by the Secretary.".

SEC. 925. IMPROVED RECORDKEEPING WITH RESPECT TO CERTAIN INTERNATIONAL FUNDS TRANSFERS.

(a) IN GENERAL.—Section 21(b) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(b)) is amended—

(1) by striking "(b) Where" and inserting "(b)(1) Where"; and

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

"(2) TRANSFERS OF FUNDS.—

"(A) IN GENERAL.—Before October 1, 1992, the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board') in consultation with State banking departments shall jointly prescribe such final regulations as may be appropriate to require insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks, or other similar instruments to maintain records of payment orders which—

"(i) involve international transactions; and

"(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks, or similar instruments;

that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(B) FACTORS FOR CONSIDERATION.—In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—

"(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

"(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

"(C) AVAILABILITY OF RECORDS.—Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary upon request.".

(b) CONFORMING AMENDMENTS.—Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) is amended—

(1) in the first sentence of subsection (c), by striking "the Secretary shall" and inserting "the regulations prescribed under subsection (b) shall";

(2) in subsection (d), by striking "regulations of the Secretary" and inserting "regulations issued under subsection (b)";

(3) in subsection (e), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require";

(4) in subsection (f), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require"; and

(5) in subsection (g), by striking "Secretary may prescribe" and inserting "regulations issued under subsection (b) may require".

SEC. 926. USE OF CERTAIN RECORDS.

Section 1112(f) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412(f)) is amended—

(1) in paragraph (1), by inserting "or the Secretary of the Treasury" after "the Attorney General"; and

(2) in paragraph (2), by inserting "and only for criminal investigative purposes relating to money laundering and other financial crimes by the Department of the Treasury" after "the Department of Justice".

SEC. 927. SUSPICIOUS TRANSACTIONS AND FINANCIAL INSTITUTION ANTI-MONEY LAUNDERING PROGRAMS.

(a) REPORTING REQUIREMENT.—Section 5324 of title 31, United States Code, is amended by inserting "or section 5325 or the regulations thereunder" after "section 5313(a)" each place it appears.

(b) SUSPICIOUS TRANSACTIONS AND ENFORCEMENT PROGRAMS.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

"(g) REPORTING OF SUSPICIOUS TRANSACTIONS.—

"(1) IN GENERAL.—The Secretary may require financial institutions to report suspicious transactions relevant to possible violation of law or regulation.

"(2) NOTIFICATION PROHIBITED.—A financial institution that voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

"(3) LIABILITY FOR DISCLOSURES.—Any financial institution not subject to the provisions of section 1103(c) of the Right to Financial Privacy Act of 1978, or officer, employee, or agent thereof, that makes a voluntary disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, shall not be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

"(h) ANTI-MONEY LAUNDERING PROGRAMS.—In order to guard against money laundering through financial institutions, the Secretary may require financial institutions to carry out anti-money laundering programs, including at a minimum—

"(1) the development of internal policies, procedures, and controls,

"(2) the designation of a compliance officer,

"(3) an ongoing employee training program, and

"(4) an independent audit function to test programs.

The Secretary may promulgate minimum standards for such programs.".

SEC. 928. REPORT ON CURRENCY CHANGES.

The Secretary of the Treasury, in consultation with the Attorney General and the Administrator of Drug Enforcement, shall report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, not later than 90 days after the date of enactment of this Act, on the advantages for money laundering enforcement, and any disadvantages, of—

(1) changing the size, denominations, or color of United States currency; or

(2) providing that the color of United States currency in circulation in countries outside the United States will be of a different color than currency circulating in the United States.

SEC. 929. REPORT ON BANK PROSECUTIONS.

(a) IN GENERAL.—The Attorney General, after obtaining the views of all interested agencies, shall determine to what extent compliance with the Money Laundering Control Act (18 U.S.C. 1956 and 1957), the Bank Secrecy Act (31 U.S.C. 5322), criminal referral reporting obligations, and cooperation with law enforcement authorities generally, would be enhanced by the issuance of guidelines for the prosecution of financial institutions for violations of such Acts. Such guidelines, if issued, shall reflect the standards for anti-money laundering programs issued under section 5318(h) of title 31, United States Code.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Attorney General shall transmit to the Congress a report on such determination.

SEC. 930. ANTI-MONEY LAUNDERING TRAINING TEAM.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a team of experts to assist and provide training to foreign governments and agencies thereof in developing and expanding their capabilities for investigating and prosecuting violations of money laundering and related laws.

(b) AUTHORIZATION.—There is authorized to be appropriated not more than $1,000,000 to carry out this section.

SEC. 931. MONEY LAUNDERING REPORTING REQUIREMENTS.

(a) OBJECTIVE.—The objective of the United States in dealing with the problem of international money laundering is to ensure that countries adopt comprehensive domestic measures against money laundering and cooperate with each other in narcotics money laundering investigations, prosecutions, and related forfeiture actions. The President shall report annually to Congress on bilateral and multilateral efforts to meet this objective. This report shall be submitted with the report required under section 481(e) of the Foreign Assistance Act of 1961.

(b) CONTENTS OF REPORT.—The report shall include—

(1) information on bilateral and multilateral initiatives pursued by the Department of State, the Department of Justice, and the Department of the Treasury, and other Government agencies, individually or collectively, to achieve the anti-money laundering objective of the United States;

(2) information on relevant bilateral agreements and on the actions of international organizations and groups;

(3) information on the countries which have ratified the United Nations Convention on Illicit Traffic in Narcotic Drugs and Other Psychotropic Substances and on measures adopted by governments and organizations to implement the money laundering provisions of the United Nations Convention, the recommendations of the Financial Action Task Force, the policy directive of the European Community, the legislative guidelines of the Organization of American States, and similar declarations;

(4) information on the extent to which each major drug producing and drug transit country, as specified in section 481 of the Foreign Assistance Act of 1961, and each additional country that has been determined by the Department of the Treasury, the Department of Justice, the Department of State, and the Office of National Drug Control Policy, in consultation, to be significant in the fight against money laundering—

(A) has adequate mechanisms to exchange financial records in narcotics money laundering and narcotics-related investigations and proceedings; and

(B) has adopted laws, regulations, and administrative measures considered necessary to prevent and detect narcotics-related money laundering, including whether a country has—

(i) criminalized narcotics money laundering;

(ii) required banks and other financial institutions to know and record the identity of customers engaging in significant transactions, including large currency transactions;

(iii) required banks and other financial institutions to maintain, for an adequate time, records necessary to reconstruct significant transactions through financial institutions in order to be able to respond quickly to information requests from appropriate government authorities in narcotics-related money laundering cases;

(iv) required or allowed financial institutions to report suspicious transactions;

(v) established systems for identifying, tracing, freezing, seizing, and forfeiting narcotics-related assets; and

(vi) addressed the problem of international transportation of illegal-source currency and monetary instruments;

(5) details of significant instances of noncooperation with the United States in narcotics-related money laundering and other narcotics-related cases; and

(6) a summary of initiatives taken by the United States or any international organization, including the imposition of sanctions, with respect to any country based on that country's actions with respect to narcotics-related money laundering matters.

(c) SPECIFICITY OF REPORT.—The report should be in sufficient detail to assure the Congress that concerned agencies—

(1) are pursuing a common strategy with respect to achieving international cooperation against money laundering which includes a summary of United States objectives on a country-by-country basis; and

(2) have agreed upon approaches and responsibilities for implementation of the strategy, not limited to the conduct of negotiations to achieve treaties and agreements.

Subtitle C—Money Laundering Improvements

SEC. 941. JURISDICTION IN CIVIL FORFEITURE CASES.

Section 1355 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "The district"; and

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

"(b)(1) A forfeiture action or proceeding may be brought in—

"(A) the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred, or

"(B) any other district where venue for the forfeiture action or proceeding is specifically provided for in section 1395 of this title or any other statute.

"(2) Whenever property subject to forfeiture under the laws of the United States is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought as provided in paragraph (1), or in the United States District court for the District of Columbia.

"(c) In any case in which a final order disposing of property in a civil forfeiture action or proceeding is appealed, removal of the property by the prevailing party shall not deprive the court of jurisdiction. Upon motion of the appealing party, the district court or the court of appeals shall issue any order necessary to preserve the right of the appealing party to the full value of the property at issue, including a stay of the judgment of the district court pending appeal or requiring the prevailing party to post an appeal bond.".

SEC. 942. CIVIL FORFEITURE OF FUNGIBLE PROPERTY.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 984. Civil forfeiture of fungible property

"(a) This section shall apply to any action for forfeiture brought by the United States.

"(b)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or other fungible property, it shall not be—

"(A) necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture;

"(B) a defense that the property involved in such an offense has been removed and replaced by identical property.

"(2) Except as provided in subsection (c), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

"(c) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 2 years from the date of the offense.

"(d) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be taken against funds deposited by a financial institution (as defined in section 20 of this title) into an account with another financial institution unless the depositing institution knowingly engaged in the offense that is the basis for the forfeiture.".

(b) RETROACTIVE APPLICATION.—The amendments made by this section shall apply retroactively.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"984. Civil forfeiture of fungible property.".

SEC. 943. ADMINISTRATIVE SUBPOENAS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 985. Administrative subpoenas

"(a) For the purpose of conducting a civil investigation in contemplation of a civil forfeiture proceeding under this title or the Controlled Substances Act, the Attorney General may—

"(1) administer oaths and affirmations;

"(2) take evidence; and

"(3) by subpoena, summon witnesses and require the production of any books, papers, correspondence, memoranda, or other records that the Attorney General deems relevant or material to the inquiry.

A subpoena issued pursuant to subsection (a) may require the attendance of witnesses and the production of any such records from any place in the United States at any place in the United States designated by the Attorney General.

"(b) The same procedures and limitations as are provided with respect to civil investigative demands in subsections (g), (h), and (j) of section 1968 of title 18, United States Code, apply with respect to a subpoena issued under this section. Process required by such subsections to be served upon the custodian shall be served on the Attorney General. Failure to comply with an order of the court to enforce such subpoena shall be punishable as contempt.

"(c) In the case of a subpoena for which the return date is less than 5 days after the date of service, no person shall be found in contempt for failure to comply by the return date if such person files a petition under subsection (b) not later than 5 days after the date of service.

"(d) A subpoena may be issued pursuant to this subsection at any time up to the commencement of a judicial proceeding under this section.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"985. Administrative subpoenas.".

SEC. 944. PROCEDURE FOR SUBPOENAING BANK RECORDS.

(a) IN GENERAL.—Chapter 46 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 986. Subpoenas for bank records

"(a) At any time after the commencement of any action for forfeiture brought by the United States under this title or the Controlled Substances Act, any party may request the Clerk of the Court in the district in which the proceeding is pending to issue a subpoena duces tecum to any financial institution, as defined in section 5312(a) of title 31, United States Code, to produce books, records and any other documents at any place designated by the requesting party. All parties to the proceeding shall be notified of the issuance of any such subpoena. The procedures and limitations set forth in section 985 of this title shall apply to subpoenas issued under this section.

"(b) Service of a subpoena issued pursuant to this section shall be by certified mail. Records produced in response to such a subpoena may be produced in person or by mail, common carrier, or such other method as may be agreed upon by the party requesting the subpoena and the custodian of records. The party requesting the subpoena may require the custodian of records to submit an affidavit certifying the authenticity and completeness of the records and explaining the omission of any record called for in the subpoena.

"(c) Nothing in this section shall preclude any party from pursuing any form of discovery pursuant to the Federal Rules of Civil Procedure.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 46 of title 18, United States Code, is amended by adding at the end the following:

"986. Subpoenas for bank records.".

SEC. 945. DELETION OF REDUNDANT AND INADVERTENTLY LIMITING PROVISION IN 18 U.S.C. 1956.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking "section 1341 (relating to mail fraud) or section 1343 (relating to wire fraud) affecting a financial institution, section 1344 (relating to bank fraud),"; and

(2) by striking "section 1822 of the Mail Order Drug Paraphernalia Control Act (100 Stat. 3207-51; 21 U.S.C. 857)" and inserting "section 422 of the Controlled Substances Act".

SEC. 946. STRUCTURING TRANSACTIONS TO EVADE CMIR REQUIREMENT.

(a) IN GENERAL.—Section 5324 of title 31, United States Code, is amended—

(1) by inserting "(a)" before "No person"; and

(2) by adding at the end the following:

"(b) No person shall, for the purpose of evading the reporting requirements of section 5316—

"(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

"(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.".

(b) CONFORMING AMENDMENT.—Section 5321(a)(4)(C) of title 31, United States Code, is amended by striking "under section 5317(d)".

(c) FORFEITURE.—

(1) TITLE 18.—Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "5324" and inserting "5324(a)".

(2) TITLE 31.—Section 5317(c) of title 31, United States Code, is amended by inserting after the first sentence "Any property, real or personal, involved in a transaction or attempted transaction in violation of section 5324(b), or any property traceable to such property, may be seized and forfeited to the United States Government.".

SEC. 947. CLARIFICATION OF DEFINITION OF FINANCIAL INSTITUTION.

(a) SECTION 1956.—Section 1956(c)(6) of title 18, United States Code, is amended by striking "and the regulations" and inserting "or the regulations".

(b) SECTION 1957.—Section 1957(f)(1) of title 18, United States Code, is amended by striking "financial institution (as defined in section 5312 of title 31)" and inserting "financial institution (as defined in section 1956 of this title)".

SEC. 948. DEFINITION OF FINANCIAL TRANSACTION.

(a) SECTION 1956.—Section 1956(c) of title 18, United States Code, is amended—

(1) in paragraph (4)(A)—

(A) by inserting "or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft," after "monetary instruments,";

(B) by striking "which in any way or degree affects interstate or foreign commerce,"; and

(C) by inserting "which in any way or degree affects interstate or foreign commerce" after "(A) a transaction"; and

(2) in paragraph (3), by inserting "use of a safe deposit box," before "or any other payment".

(b) SECTION 1957.—Section 1957(f)(1) of title 18, United States Code, is amended by insert-

ing ", including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title," before "but such term does not include".

SEC. 949. OBSTRUCTING A MONEY LAUNDERING INVESTIGATION.

Section 1510(b)(3)(B)(i) of title 18, United States Code, is amended by striking "or 1344" and inserting "1344, 1956, 1957, or chapter 53 of title 31".

SEC. 950. AWARDS IN MONEY LAUNDERING CASES.

Section 524(c)(1)(B) of title 28, United States Code, is amended by inserting "or of sections 1956 and 1957 of title 18, sections 5313 and 5324 of title 31, and section 6050I of title 26, United States Code" after "criminal drug laws of the United States".

SEC. 951. PENALTY FOR MONEY LAUNDERING CONSPIRACIES.

Section 1956 of title 18, United States Code, is amended by inserting at the end the following new subsection:

"(g) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 952. TECHNICAL AND CONFORMING AMENDMENTS TO MONEY LAUNDERING PROVISION.

(a) TRANSPORTATION.—Subsections (a)(2) and (b) of section 1956 of title 18, United States Code, are amended by striking "transportation" each time such term appears and inserting "transportation, transmission, or transfer".

(b) TECHNICAL CORRECTION.—Section 1956(a)(3) of title 18, United States Code, is amended by striking "represented by a law enforcement officer" and inserting "represented".

SEC. 953. PRECLUSION OF NOTICE TO POSSIBLE SUSPECTS OF EXISTENCE OF A GRAND JURY SUBPOENA FOR BANK RECORDS IN MONEY LAUNDERING AND CONTROLLED SUBSTANCE INVESTIGATIONS.

Section 1120(b)(1)(A) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3420(b)(1)(A)) is amended by inserting before the semicolon "or crime involving a violation of the Controlled Substance Act, the Controlled Substances Import and Export Act, section 1956 or 1957 of title 18, sections 5313, 5316 and 5324 of title 31, or section 6050I of title 26, United States Code".

SEC. 954. DEFINITION OF PROPERTY FOR CRIMINAL FORFEITURE.

Section 982(b)(1)(A) of title 18, United States Code, is amended by striking "(c)" and inserting "(b), (c),".

SEC. 955. EXPANSION OF MONEY LAUNDERING AND FORFEITURE LAWS TO COVER PROCEEDS OF CERTAIN FOREIGN CRIMES.

(a) IN GENERAL.—Sections 981(a)(1)(B) and 1956(c)(7)(B) of title 18, United States Code, are amended by—

(1) inserting "(i)" after "against a foreign nation involving"; and

(2) inserting "(ii) kidnaping, robbery, or extortion, or (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978" after "Controlled Substances Act)".

(b) RETROACTIVE APPLICATION.—All amendments to the civil forfeiture statute, section 981 of title 18, United States Code, made by this section and elsewhere in this Act shall apply retroactively.

SEC. 956. ELIMINATION OF RESTRICTION ON DISPOSAL OF JUDICIALLY FORFEITED PROPERTY BY THE TREASURY DEPARTMENT AND THE POSTAL SERVICE.

Section 981(e) of title 18, United States Code, is amended by striking "The authority granted to the Secretary of the Treasury and the Postal Service pursuant to this subsection shall apply only to property that has been administratively forfeited.".

SEC. 957. NEW MONEY LAUNDERING PREDICATE OFFENSES.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by striking "or" before "section 16";

(2) by inserting "section 1708 (theft from the mail)," before "section 2113"; and

(3) by inserting before the semicolon; ", any felony violation of section 9(c) of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the Foreign Corrupt Practices Act".

SEC. 958. AMENDMENTS TO THE BANK SECRECY ACT.

(a) TITLE 31.—Title 31, United States Code, is amended—

(1) in section 5324, by inserting ", section 5325, or the regulations issued thereunder" after "section 5313(a)" each place such term appears;

(2) in section 5321(a)(5)(A), by inserting "or any person willfully causing" after "willfully violates".

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 21(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(j)(1)) is amended by inserting ", or any person who willfully causes such a violation," after "gross negligence violates".

(c) RECORDKEEPING.—Public Law 91-508 (12 U.S.C. 1951 et seq.) is amended—

(1) in section 125(a), by inserting "or any person willfully causing a violation of the regulation," after "applies,"; and

(2) in section 127, by inserting ", or willfully causes a violation of" after "Whoever willfully violates".

TITLE X—ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the "Asset Conservation and Deposit Insurance Protection Act of 1991".

SEC. 1002. ASSET CONSERVATION AND DEPOSIT INSURANCE PROTECTION.

(a) CERCLA AMENDMENTS.—The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by inserting after section 126 the following new section:

"SEC. 127. ASSET CONSERVATION.

"(a) LIABILITY LIMITATIONS.—

"(1) IN GENERAL.—The liability of an insured depository institution or mortgage lender under this Act or subtitle I of the Solid Waste Disposal Act for the release or threatened release of petroleum or a hazardous substance at, from, or in connection with property—

"(A) acquired through foreclosure;

"(B) held, directly or indirectly, in a fiduciary capacity;

"(C) held by a lessor pursuant to the terms of an extension of credit; or

"(D) subject to financial control or financial oversight pursuant to the terms of an extension of credit,

shall be limited to the actual benefit conferred on such institution or such mortgage lender by a removal, remedial, or other response action undertaken by another party.

"(2) SAFE HARBOR.— An insured depository institution or mortgage lender shall not be liable under this Act or subtitle I of the Solid Waste Disposal Act and shall not be deemed to have participated in management, as described in section 101(20)(A), based solely on the fact that the institution or lender—

"(A) holds a security interest or abandons or releases its security interest in the collateral before foreclosure;

"(B) has the unexercised capacity to influence operations at or on property in which it has a security interest;

"(C) includes in the terms of its extension of credit covenants, warranties, or other terms and conditions that relate to the borrower's compliance with environmental laws;

"(D) monitors or enforces the terms and conditions of the extension of credit;

"(E) monitors or undertakes one or more inspections of the property;

"(F) requires the borrower to cleanup the property prior to or during the term of the extension of credit;

"(G) provides financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the property;

"(H) restructures, renegotiates, or otherwise agrees to alter the terms and conditions of the extension of credit;

"(I) exercises whatever other remedies at law or in equity may be available under applicable law for the borrower's breach of any term or condition of the extension of credit; or

"(J) declines to take any of the actions described in this paragraph.

"(b) ACTUAL BENEFIT.—For the purpose of this section, the actual benefit conferred on an institution or lender by a removal, remedial, or other response action shall be equal to the net gain, if any, realized by such institution or lender due to such action. For purposes of this subsection, the 'net gain' shall not exceed the amount realized by the institution or lender on the sale of property.

"(c) EXCLUSION.—The limitations on liability provided under subsection (a)(1) and (a)(2) shall not apply to any person that has caused or significantly and materially contributed to the release of petroleum or a hazardous substance that forms the basis for liability described in subsection (a)(1) and (a)(2).

"(d) ENVIRONMENTAL ASSESSMENTS.—

"(1) DEPOSITORY INSTITUTIONS.—The Federal Deposit Insurance Corporation, in consultation with the Administrator of the Environmental Protection Agency, shall promulgate regulations to implement this section. Such regulations shall include requirements for insured depository institutions to develop and implement adequate procedures to evaluate actual and potential environmental risks that may arise from or at property prior to making an extension of credit that involves a security interest in such property. The regulations may provide for different types of environmental assessments in order to account for different levels of risk that may be posed by different classes of collateral. Failure to comply with the environmental assessment regulations promulgated under this subsection shall be deemed to be a violation of a regulation promulgated under the Federal Deposit Insurance Act.

"(2) MORTGAGE LENDERS.—The Federal Deposit Insurance Corporation, in consultation with the Administrator of the Environmental Protection Agency, shall promulgate regulations that are substantially similar to those promulgated under paragraph (1) to assure that mortgage lenders develop and implement procedures to evaluate actual and

potential environmental risks that may arise from or at property prior to making an extension of credit secured by such property. The regulations may provide for different types of environmental assessments in order to take into account the level of risk that may be posed by particular classes of collateral.

"(3) FINAL REGULATIONS.—Final regulations required to be promulgated pursuant to paragraph (1) shall be issued within 180 days after the date of enactment of this section.

"(e) DEFINITIONS.—For purposes of this section:

"(1) The term 'property acquired through foreclosure' or 'acquires property through foreclosure' means property acquired, or the act of acquiring property, from a nonaffiliated party by an insured depository institution or mortgage lender—

"(A) through purchase at sales under judgment or decree, power of sales, nonjudicial foreclosure sales, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

"(B) through conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

"(C) through any other formal or informal manner by which the insured depository institution or mortgage lender temporarily acquires, for subsequent disposition, possession of collateral in order to protect its security interest.

Property is not acquired through foreclosure if the insured depository institution or mortgage lender does not seek to sell or otherwise divest such property at the earliest practical, commercially reasonable time, taking into account market conditions and legal and regulatory requirements.

"(2) The term 'mortgage lender' means—

"(A) a company (other than an insured depository institution) that—

"(i) is regularly engaged in the business of making extensions of credit secured, in whole or in part, by property to nonaffiliated parties, and

"(ii) substantially and materially complies with the environmental assessment requirements imposed under subsection (d), after final regulations under that subsection become effective;

"(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or other entity that is regularly engaged in the business of buying and selling mortgage loans or interests therein, if such Association, Corporation, or entity requires institutions from which it purchases mortgages (or other obligations) to comply substantially and materially with the requirements of subsection (d), after final regulations under that subsection become effective; and

"(C) any person regularly engaged in the business of insuring or guaranteeing against a default in the payment of an extension of credit to nonaffiliated parties, secured in whole or in part by real property, and extended by a mortgage lender (as such term is defined in subparagraph (A) of this paragraph), or an insured depository institution.

"(3) The term 'fiduciary capacity' means acting for the benefit of a nonaffiliated person as a bona fide—

"(A) trustee;

"(B) executor;

"(C) administrator;

"(D) custodian;

"(E) guardian of estates;

"(F) receiver;

"(G) conservator;

"(H) committee of estates of lunatics; or

"(I) any similar capacity.

"(4) The term 'extension of credit' includes lease transactions that are functionally equivalent to a secured loan.

"(5) The term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act, and shall also include—

"(A) a federally insured credit union;

"(B) a bank or association chartered under the Farm Credit Act of 1971; and

"(C) a leasing company that is an affiliate of an insured depository institution (as such term is defined in this paragraph).

"(6) The term 'release' has the same meaning as in section 101(22), and also includes the threatened release, use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(7) The term 'hazardous substance' has the same meaning as in section 101(14).

"(8) The term 'security interest' includes rights under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, lease, or any other right accruing to a creditor under the terms of an extension of credit to secure the repayment of money, the performance of a duty or some other obligation.

"(f) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party subject to the provisions of this section. Nothing in this section shall be construed to create any liability for any party.

"(g) EFFECTIVE DATE.—This section shall become effective upon the date of its enactment, except that it shall not affect any administrative or judicial claims that have been formally filed as of such date.".

(b) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 42. ASSET CONSERVATION.

"(a) GOVERNMENTAL ENTITIES.—

"(1) BANKING AND LENDING AGENCIES.—Except as provided in paragraph (2), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of petroleum or a hazardous substance at or from property (including any right or interest therein) acquired—

"(A) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries;

"(B) in connection with the provision of loans, discounts, advances, guarantees, insurance or other financial assistance; or

"(C) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

"(2) APPLICATION OF STATE LAW.—Nothing in this section shall be construed as preempting, affecting, applying to, or modifying any State law, or any rights, actions, cause of action, or obligations under State law, except that liability under State law shall not exceed the value of the agency's interest in the asset giving rise to such liability.

"(3) LIMITATION.—The immunity provided by paragraph (1) shall not apply to any entity that has caused or significantly and materially contributed to the release of petroleum or a hazardous substance that forms the basis for liability described in paragraph (1).

"(4) SUBSEQUENT PURCHASER.—The immunity provided by paragraph (1) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

"(A) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

"(B) is or was affiliated with or related to a party described in subparagraph (A);

"(C) fails to agree to take reasonable steps necessary to remedy the release or threatened release in a manner consistent with the purposes of applicable environmental laws; or

"(D) causes or materially and significantly contributes to any additional release or threatened release on the property.

"(5) FEDERAL OR STATE ACTION.—Notwithstanding paragraph (4), if a Federal agency or State environmental agency is required to take remedial action due to the failure of a subsequent purchaser to carry out, in good faith, the agreement described in paragraph (4)(C), such subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of such remedial action. However, any such reimbursement shall not exceed the full fair market value of the property following completion of the remedial action.

"(b) LIEN EXEMPTION.—Any property transferred pursuant to subsection (a)(4) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of petroleum or a hazardous substance known to exist at the time of the transfer.

"(c) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in subsection (a)(1).

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

"(1) the term 'Federal banking or lending agency' means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, a Federal Reserve Bank, a Federal Home Loan Bank, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, and the Small Business Administration, in any of their capacities, and their agents;

"(2) the term 'hazardous substance' has the same meaning as in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; and

"(3) the term 'release' has the same meaning as in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and also includes the threatened release, use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(e) SAVINGS CLAUSE.—Nothing in this section shall affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party subject to the provisions of this section. Noth-

ing in this section shall be construed to create any liability for any party.".

TITLE XI—MISCELLANEOUS

Subtitle A—Presidential Insurance Commission

SEC. 1101. SHORT TITLE.

This subtitle may be cited as the "Presidential Insurance Commission Act of 1991".

SEC. 1102. FINDINGS.

The Congress finds that—

(1) the property and casualty insurance, life insurance, health insurance, and reinsurance industries play a major and vital role in the capital formation and lending in the United States economy;

(2) at the end of 1989, life and health and property and casualty insurers combined controlled just under $1,800,000,000,000 in assets invested in the United States;

(3) these insurer assets represented slightly less than 18 percent of the financial assets of all non-governmental financial intermediaries in the United States;

(4) of total United States assets, insurers controlled—

(A) 50.7 percent of all United States held corporate and foreign bonds;

(B) 32.1 percent of all tax-exempt bonds;

(C) 13.8 percent of United States Treasury securities;

(D) 18.2 percent of Federal agency securities;

(E) 12.2 percent of mortgages;

(F) 14.7 percent of corporate equities;

(G) 10.3 percent of open market paper; and

(H) 12 percent of all other United States assets; and

(5) a Presidential commission should be established to carry out the duties described in section 1104.

SEC. 1103. ESTABLISHMENT.

There is established a Presidential Commission on Insurance (hereafter in this subtitle referred to as the "Commission").

SEC. 1104. DUTIES OF THE COMMISSION.

(a) IN GENERAL.—The Commission shall assess the condition of the property and casualty insurance, life insurance, and reinsurance industries, including consideration of—

(1) the present and long-term financial health of the companies in such industries and the importance of that financial health to other aspects of the national economy, including the impact on other financial institutions;

(2) the effect of the decline of real estate values and noninvestment grade bond holdings on the financial health of the companies in such industries;

(3) the effect of current and projected guaranty fund assessments, under different insolvency scenarios, on the financial health of the companies in such industries;

(4) the effect of residual markets on the competitiveness of voluntary insurance markets and on the financial health of the companies in such industries;

(5) the causes of company insolvencies in the last 5 years;

(6) the effect of State and Federal liability systems, including with respect to long-term liability, on insurance industry solvency and the appropriateness of the present allocation of Federal and State responsibilities in the underlying liability systems;

(7) the effect of State regulation of companies in such industries with respect to—

(A) solvency (including the quality and consistency of regulation and the adequacy of insurance regulatory resources);

(B) consumer protection and competition (including pricing, product development, the adequacy of information to consumers, the transfer by companies of the policies of individual policyholders between companies, and any other relevant matters);

(C) reinsurance (including the authority of State regulators to regulate offshore reinsurers doing business in the United States); and

(D) the appropriateness of the present allocation of Federal and State responsibilities in regulating insurance;

(8) the efficiency of the present system for liquidation of insolvent insurance companies;

(9) the adequacy of State and Federal civil and criminal enforcement authority and activity; and whether any State law or regulatory action inhibits competition or efficiency or impairs insurer solvency;

(10) the condition of current State guaranty funds, including consideration of—

(A) the adequacy of assured payout to policyholders, including an assessment of the sufficiency of existing State guaranty associations to guarantee all policyholders payments, up to the limits of coverage under the funds, under a variety of industry insolvency scenarios;

(B) the effect of proposed changes in these funds by the National Association of Insurance Commissioners, including consideration of the timeliness with which such changes are likely to be adopted and implemented;

(C) the capability of a post-insolvency assessment system to meet large insolvencies in a timely manner;

(D) the effect on policyholders of differences in the amount of liability coverage offered by the funds from State to State and of differences in eligibility rules from State to State; and

(E) the appropriateness of the extent of protection provided to individual policyholders and corporate policyholders;

(11) the effect of Federal, State, and local taxes on the solvency of companies in such industries, and the effect of State tax-offsets for guaranty fund assessments on taxpayers under a variety of industry insolvency scenarios; and

(12) whether there are some forms of catastrophic risks that deserve special insurance treatment.

(b) REPORT.—On the basis of the Commission's findings under subsection (a), the Commission shall submit the report required by section 1108.

SEC. 1105. MEMBERSHIP AND COMPENSATION.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 25 members, including—

(1) the Secretary of the Treasury;

(2) the Secretary of Labor;

(3) the Secretary of Transportation;

(4) the Secretary of Commerce;

(5) the Chairman of the Federal Trade Commission;

(6) the Attorney General of the United States;

(7) 5 Members of the United States House of Representatives appointed by the Speaker of the House of Representatives from the committees of appropriate jurisdiction, of which 3 shall be appointed upon the recommendation of the Chairmen of such committees and 2 shall be appointed upon the recommendation of the Minority Leader;

(8) 5 Members of the United States Senate appointed by the President pro tempore of the Senate, of which 3 shall be appointed upon the recommendation of the Chairmen of the Committee on Banking, Housing, and Urban Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary, and 2 shall be appointed upon the recommendation of the Minority Leader; and

(9) 9 members, who are not Federal employees, who have expertise in insurance, financial services, antitrust, liability law and consumer issues, at least 1 of whom has expertise in State regulation of insurance, at least 2 of whom has expertise in the business of insurance and at least 2 of whom have expertise in consumer issues, to be appointed by the President.

(b) DESIGNEES.—An appropriate designee of any member described in paragraphs (1) through (8) of subsection (a) may serve on the Commission in the place of such member and under the same terms and conditions as such member.

(c) CONSULTATION BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall consult with—

(1) the Chairman of the Board of Governors of the Federal Reserve System;

(2) the Chairperson of the Federal Deposit Insurance Corporation; and

(3) the Chairman of the Securities and Exchange Commission,

with respect to all financial and other matters within their respective jurisdictions that are under consideration by the Commission.

(d) ELIGIBILITY.—No member or officer of the Congress, or other member or officer of the Executive Branch of the United States Government may be appointed to be a member of the Commission pursuant to paragraph (6) of subsection (a).

(e) TERMS.—

(1) IN GENERAL.—Each member shall be appointed for the life of the Commission.

(2) VACANCY.—A vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

(f) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission appointed pursuant to subsection (a)(6) shall be compensated at a rate equal to the annual rate of basic pay for GS-18 of the General Schedule.

(2) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) QUORUM.—

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

(2) APPROVAL OF ACTIONS.—All recommendations and reports of the Commission required by this subtitle shall be approved only by a majority vote of a quorum of the Commission.

(h) CHAIRPERSON.—The President shall select 1 member appointed pursuant to subsection (a)(6) to serve as the Chairperson of the Commission.

(i) MEETINGS.—The Commission shall meet at the call of the Chairperson or a majority of the members.

SEC. 1106. POWERS OF COMMISSION.

(a) HEARINGS AND SESSIONS.—The Commission may—

(1) hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate; and

(2) administer oaths or affirmations to witnesses appearing before the Commission,

for the purpose of carrying out this subtitle.

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

(c) SUBPOENA POWER.—

(1) IN GENERAL.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Commission.

(2) ADMINISTRATIVE ASPECTS OF SUBPOENA.—

(A) ATTENDANCE OR PRODUCTION AT DESIGNATED SITE.—The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(B) FEES AND TRAVEL EXPENSES.—Persons served with a subpoena under this subsection shall be paid the same fees and mileage for travel within the United States that are paid witnesses in Federal courts.

(C) NO LIABILITY FOR OTHER EXPENSES.—The Commission and the United States shall not be liable for any expense, other than an expense described in subparagraph (B), incurred in connection with the production of any evidence under this subsection.

(3) CONFIDENTIALITY.—Information obtained under this section which is deemed confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Commission determines that the withholding thereof is contrary to the national interest. The provisions of the preceding sentence shall not apply to the publication or disclosure of data that are aggregated in a manner that ensures protection of the identity of the person furnishing such data.

(4) FAILURE TO OBEY A SUBPOENA.—

(A) APPLICATION TO COURT.—If a person refuses to obey a subpoena issued under paragraph (1), the Commission may apply to a district court of the United States for an order requiring that person to appear before the Commission to give testimony or produce evidence, as the case may be, relating to the matter under investigation.

(B) JURISDICTION OF COURT.—The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business.

(C) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as civil contempt.

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

(6) SERVICE OF PROCESS.—All process of any court to which application is to be made under paragraph (3) may be served in the judicial district in which the person required to be served resides or may be found.

(d) OBTAINING OFFICIAL DATA.—

(1) AUTHORITY.—Notwithstanding any provision of section 552a of title 5, United States Code, the Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out this subtitle.

(2) PROCEDURE.—Upon request of the Chairperson of the Commission, the head of that department or agency shall furnish the information requested to the Commission.

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

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

SEC. 1107. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—Subject to such regulations as the Commission may prescribe, the Chairperson may appoint and fix the pay of such personnel as the Chairperson considers appropriate.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(c) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the Chairperson may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the annual rate of basic pay payable for GS-18 of the General Schedule.

(d) STAFF OF FEDERAL AGENCIES.—Upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this subtitle.

SEC. 1108. REPORT.

Not later than January 31, 1993, the Commission shall submit to the President and the Congress a final report containing a detailed statement of its findings, together with any recommendations for legislation or administrative action that the Commission considers appropriate, in accordance with the requirements of section 1124.

SEC. 1109. TERMINATION.

The Commission shall terminate not later than 60 days following submission of the report required by section 1128.

SEC. 1110. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $3,000,000 to carry out the purposes of this subtitle.

Subtitle B—General Provisions

SEC. 1121. CREDIT UNIONS.

(a) FULL FAITH AND CREDIT.—Section 201 of the Federal Credit Union Act (12 U.S.C. 1781) (hereafter referred to in this section as the "Act") is amended—

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

(2) by inserting after subsection (a) the following:

"(b) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to the obligation to pay to pay insured accounts under this title.".

(b) INVESTMENT IN OTHER FINANCIAL INSTITUTIONS.—

(1) CENTRAL CREDIT UNIONS.—

(A) IN GENERAL.—Section 107(7) of the Act (12 U.S.C. 1757(7)) is amended—

(i) by striking subparagraph (G); and

(ii) by redesignating subparagraphs (H) through (K) as subparagraphs (G) through (J), respectively.

(B) EFFECTIVE DATE.—This amendment shall take effect 1 year from the date of enactment of this section.

(2) DEPOSITS.—Section 107(8) of the Act (12 U.S.C. 1757(8)) is amended to read as follows:

"(8) to make or maintain—

"(A) deposits in national banks, or in banks or institutions the accounts of which are insured by the Federal Deposit Insurance Corporation, and

"(B) in the case of Federal credit unions or credit unions authorized by the Department of Defense operating suboffices on American military installations in foreign countries or trust territories of the United States, demand deposit accounts in banks located in those countries or trust territories, if such banks are correspondents of banks described in subparagraph (A) subject to such regulations as may be issued by the Board;".

(3) CORPORATE CREDIT UNIONS.—Section 120(a) of the Act (12 U.S.C. 1766(a)) is amended—

(A) in the second sentence by striking "central credit union chartered by the Board" and inserting "Corporate credit union as defined by the Board"; and

(B) by adding the following sentence at the end: "The Board shall by regulation establish (i) limits on loans and investments by a corporate credit union to a single obligor, and (ii) minimum capital requirements for corporate credit unions.".

(c) STRENGTHENING NATIONAL CREDIT UNION SHARE INSURANCE FUND.—Section 202 of the Act (12 U.S.C. 1782) is amended—

(1) in subsection (c)(1)(A), by striking clause (ii) and redesignating clause (iii) as clause (ii);

(2) by amending subsection (c)(2) to read as follows:

"(2)(A) At such times as the Board prescribes (but not more than twice in any calendar year), each insured credit union shall pay to the fund a premium charge for insurance in an amount stated as a percentage of insured shares. The percentage shall be the same for all insured credit unions.

"(B) Premium charges assessed during a calendar year shall not, in the aggregate, exceed one-twelfth of 1 percent of insured shares, except upon a unanimous vote of the Board members.

"(C) The Board may assess a premium charge only if—

"(i) the equity level of the fund is less than 1.3 percent of the aggregate amount of the insured shares in all insured credit unions; and

"(ii) the premium charge does not exceed the amount necessary to restore the fund to that level.

"(D) If the equity level of the fund is less than 1.2 percent of the aggregate amount of the insured shares in all insured credit unions, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the fund to and maintain the fund at that level.

"(E) If the equity level of the fund is not less than 1.2 percent of the aggregate amount of the insured shares in all insured credit unions, the Board may assess a premium charge only—

"(i) upon a unanimous vote of the Board members; and

"(ii) in an amount not exceeding one-twelfth of 1 percent of insured shares.";

(3) by striking subsection (c)(3) and inserting the following:

"(3) If any loans to the fund from the Federal Government and the interest thereon have been repaid and the fund exceeds the normal operating level at the end of an insurance year, the Board shall effect for that insurance year a pro rata distribution to in-

sured credit unions of the maximum possible amount that does not reduce the fund below the normal operating level.";

(4) in subsection (h)—

(A) by amending paragraph (2) to read as follows:

"(2) the term 'normal operating level' when applied to the fund, means an amount of fund equity as established by the Board and equal to not less than 1.2 percent and not more than 1.5 percent of the aggregate amount of the insured shares in all insured credit unions;";

(B) by redesignating paragraph (3) as paragraph (5); and

(C) by inserting after paragraph (2) the following:

"(3) the term 'available assets level', when applied to the fund, means an amount, determined as the sum of cash and unencumbered investments (as authorized pursuant to section 203(c) and carried at market value) minus direct liabilities of the fund and contingent liabilities for which no provision for losses has been made, stated as a percentage of the aggregate amount of the insured shares in all insured credit unions;

"(4) the term 'equity level' means the amount of fund capitalization (including insured credit unions' 1 percent capitalization deposits and the fund's retained earnings balance) stated as a percentage of the aggregate amount of the insured shares in all insured credit unions; and"; and

(5) by adding at the end the following:

"(i) MONITORING AND PUBLISHING ASSET LEVEL.—The Board shall closely monitor, and publish at least semiannually, the available asset level of the fund.".

(d) MINIMUM CAPITAL REQUIREMENT.—

(1) IN GENERAL.—Section 116(a) of the Act (12 U.S.C. 1762(a)) is amended—

(A) in paragraph (1), by inserting before the period at the end the following: ", then (C) 3.5 percent of gross income until the regular reserve is equal to 7 percent of the total outstanding loans and risk assets"; and

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

"(4) A credit union in existence for more than 5 years and holding reserves and undivided earnings equal to less than a minimum capital level stated as a percentage of total assets and established by regulation of the Board, shall be subject to a formal written supervisory agreement with the Board. Such agreement shall include an operating plan to reach the minimum capital level within a period established by the Board. In establishing minimum capital levels under this paragraph, the Board shall consider the differences among credit unions, and shall give recently formed credit unions a reasonable time in which to build capital through retained earnings.".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall become effective on January 1, 1993.

(e) LOAN TO ONE BORROWER LIMIT.—

(1) IN GENERAL.—Section 107(5)(A) of the Act (12 U.S.C. 1757(5)(A)) is amended—

(A) in clause (viii), by inserting "and" after the semicolon; and

(B) in clause (ix), by striking the semicolon and all that follows through the end of clause (x) and inserting a period.

(2) LOAN PROVISIONS.—Section 107(5) of the Act (12 U.S.C. 1757(5)) is amended by adding at the end the following new subparagraph:

"(F)(i) Loans must be approved by the credit committee or a loan officer, but no loan may be made to any member if, upon the making of that loan, the member would be indebted to the Federal credit union upon loans made to such member in an aggregate amount exceeding the greater of—

"(I) $100,000,

"(II) 20 percent of the credit union's reserves and undivided earnings, or

"(III) 1.5 percent of the credit union's assets.

"(ii) In calculating compliance with the limits in subclauses (I) through (III) of clause (i), any loan on which the United States, its agencies, or any State has fully guaranteed the principal and interest shall be disregarded, and with respect to any other loan guaranteed by the United States, its agencies, or any State, one-half of the portion guaranteed shall be disregarded.

"(iii) In the case of loans by a credit union for farming or fishing purposes to persons deriving their livelihood primarily from farming or fishing, where the membership of the credit union substantially consists of such persons, clause (i)(III) shall apply with '3 percent' substituted for '1.5 percent'.".

"(iv) The Board may, by regulation, establish other limits for certain credit unions or classes of loans, consistent with protecting the share insurance fund.".

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1) and (2) shall become effective 180 days after the date of enactment of this Act.

(f) AMENDMENT TO AUTHORIZE NCUA BOARD TO PLACE FEDERALLY INSURED, STATE-CHARTERED CREDIT UNIONS INTO LIQUIDATION.—Section 207(a)(1) of the Act (12 U.S.C. 1787(a)(1)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting the following after subparagraph (A):

"(B) Notwithstanding any other provision of this Act or other law, the Board shall have power and jurisdiction to appoint itself as liquidating agent of any State-chartered credit union insured under this title, and close such credit union, if it determines that the credit union is insolvent or bankrupt. In such cases, the Board shall have the power and duties specified in this section applicable to liquidations of Federal credit unions.

"(C)(i) Except as provided in clause (ii), the authority conferred by subparagraph (B) shall not be exercised without the written approval of the State official having jurisdiction over the State-chartered credit union that the grounds specified for such exercise exist.

"(ii) If such approval has not been received within 30 days of receipt of notice by the State that the Board has determined such grounds exist, and the Board has responded in writing to the State's written reasons, if any, for withholding approval, then the Board may proceed without State approval only by unanimous vote of the Board.".

(g) CENTRAL LIQUIDITY FACILITY; REDUCED BORROWING AUTHORITY AND PROHIBITIONS ON LOANS OR GUARANTEES TO PRIVATE SHARE INSURERS.—Section 307(a) of the Act (12 U.S.C. 1795f(a)) is amended—

(1) in paragraph (4)(A) by striking "twelve" and inserting "2";

(2) by striking paragraph (16); and

(3) by redesignating paragraphs (17) and (18) as paragraphs (16) and (17), respectively.

(h) STRENGTHENING REMOVAL AND PROHIBITION AUTHORITY.—Section 206(g)(1) of the Federal Credit Union Act (12 U.S.C. 1786(g)(1)) is amended to read as follows:

"(g) REMOVAL AND PROHIBITION AUTHORITY.—

"(1) AUTHORITY TO ISSUE ORDER.—The Board may serve upon an institution-affiliated party a written notice of the Board's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured credit union, if the Board determines that—

"(A) the institution-affiliated party has, directly or indirectly—

"(i) violated—

"(I) any law or regulation;

"(II) any cease-and-desist order which has become final;

"(III) any condition imposed in writing by the Board in connection with the grant of any application or other request by such credit union; or

"(IV) any written agreement between such credit union and the Board;

"(ii) engaged or participated in any unsafe or unsound practice in connection with any insured credit union or business institution; or

"(iii) committee or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty; and

"(B)(i) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

"(I) such insured credit union or business institution has suffered or is likely to suffer financial loss or other damage that may have a significant effect on the financial condition of that credit union;

"(II) the interests of the credit union's members have been or could be prejudiced in a manner that may have a significant effect on the financial condition of that credit union; or

"(III) such party has received financial gain or other benefit by reason of such violation, practice, or breach; or

"(ii) such violation, practice, or breach—

"(I) involves personal dishonesty on the part of such party; or

"(II) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured credit union or business institution.".

(i) REPEAL OF AUTHORITY TO BORROW FROM FARM CREDIT BANKS.—Section 107(9) of the Act (12 U.S.C. 1757(9)) is amended—

(1) by inserting a semicolon after "paid-in and unimpaired capital and surplus"; and

(2) by striking all that follows the semicolon.

(j) EFFECTIVE DATE.—The amendment made by subsection (c)(2) shall become effective on July 1, 1992.

SEC. 1122. STRENGTHENING FEDERAL BANKING AGENCIES' AUTHORITY TO REMOVE PERSONS GUILTY OF MISCONDUCT.

Section 8(e)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(1)) is amended to read as follows:

"(e) REMOVAL AND PROHIBITION AUTHORITY.—

"(1) AUTHORITY TO ISSUE ORDER.—The appropriate Federal banking agency may serve upon an institution-affiliated party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution, if the agency determines that—

"(A) the institution-affiliated party has, directly or indirectly—

"(i) violated—

"(I) any law or regulation;

"(II) any cease-and-desist order which has become final;

"(III) any condition imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by such depository institution; or

"(IV) any written agreement between such depository institution and such agency;

"(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

"(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty; and

"(B)(i) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

"(I) such insured institution or business institution has suffered or is likely to suffer financial loss or other damage that may have a significant effect on the financial condition of that institution;

"(II) the interest of the insured depository institution's depositors have been or could be prejudiced in a manner that may have a significant effect on the financial condition of that institution; or

"(III) such party has received financial gain or other benefit by reason of such violation, practice, or breach; or

"(ii) such violation, practice, or breach—

"(I) involves personal dishonesty on the part of such party; or

"(II) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution.".

SEC. 1123. EMERGENCY LIQUIDITY.

Section 13 of the Federal Reserve Act (12 U.S.C. 343) is amended in the third paragraph by striking "of the kinds and maturities made eligible for discount for member banks under other provisions of this Act".

SEC. 1124. DISCLOSURE OF SECURITIES INVESTOR PROTECTION ACT COVERAGE.

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

"(i) DISCLOSURE OF SECURITIES INVESTOR PROTECTION ACT COVERAGE.—

"(1) IN GENERAL.—It shall be unlawful for any broker or dealer required to be registered under this Act, or for any person associated with such broker or dealer (other than a natural person or financial institution), to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security by any customer in contravention of the rules and regulations prescribed under this subsection.

"(2) DISCLOSURE RULES.—The Commission shall, by rule, set forth standards for the disclosure by brokers and dealers required to be registered under this Act, and persons associated with such brokers or dealers (other than a natural person or financial institution), to customers of information concerning coverage under the Securities Investor Protection Act of 1970 (hereafter referred to as 'SIPA'). The rules of the Commission shall require every broker or dealer required to be registered under this Act—

"(A) to provide each customer with a written notification of SIPA coverage that discloses—

"(i) the current Securities Investor Protection Corporation (hereafter referred to as 'SIPC') membership status of such person; and

"(ii) a general description, prescribed by SIPC, of the operation of SIPA, the method and extent of customer protection provided under SIPA, the property that is protected under SIPA, and a statement indicating that SIPA does not protect against a decline in the market value of securities; and

"(B) to include conspicuously in any periodic statement sent to a customer regarding a securities transaction—

"(i) a clear statement as to the current SIPC membership status of such person; and

"(ii) any other information regarding SIPA coverage that the Commission finds necessary or appropriate in the public interest or for the protection of investors.

"(3) EXEMPTIONS.—The Commission, as it determines consistent with the public interest and the protection of investors, may exempt, by rule or order, any person or class of persons, or any transaction or class of transactions from the requirements of this subsection.

"(4) DEFINITIONS.—The Commission shall, by rule, define the terms used in this subsection, except that—

"(A) the term 'customer' shall not include a broker, a dealer, a municipal securities dealer, or other such persons as the Commission shall provide in such rule; and

"(B) the term 'security', for purposes of and as used in this subsection, shall not include any security as the Commission shall provide in such rule.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the earlier of 1 year after the date of enactment of this Act or the effective date of rules and regulations prescribed by the Commission to implement the amendment made by subsection (a).

SEC. 1125. HIRING AND COMPENSATION AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION.

(a) AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 4(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(b)) is amended to read as follows:

"(b) APPOINTMENT AND COMPENSATION OF STAFF.—

"(1) APPOINTMENT AND COMPENSATION.—The Commission shall fix the compensation and number of, and appoint and direct, employees of the Commission. Rates of basic pay for all employees of the Commission may be set and adjusted by the Commission without regard to the provisions of chapter 51, subchapters III and VIII of chapter 53, and chapter 54 of title 5, United States Code.

"(2) ADDITIONAL COMPENSATION AND BENEFITS.—The Commission may provide additional compensation and benefits to employees of the Commission if the same type of compensation or benefits are then being provided by any Federal bank regulatory agency or, if not then being provided, could be provided by such an agency under applicable provisions of law, rule, or regulation. In setting and adjusting the total amount of compensation and benefits for employees of the Commission, the Commission shall seek to maintain comparability with the Federal bank regulatory agencies. For the purpose of this paragraph, the term 'Federal bank regulatory agency' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration Board.".

(b) CONFORMING AMENDMENTS TO TITLE 5, UNITED STATES CODE.—

(1) Section 3132(a)(1) of title 5, United States Code, is amended—

(A) in subparagraph (C), by striking "or" after the semicolon;

(B) in subparagraph (D), by inserting "or" after the semicolon; and

(C) by adding at the end the following:

"(E) the Securities and Exchange Commission;".

(2) Section 5373 of title 5, United States Code, is amended—

(A) in paragraph (3), by striking "or" after the semicolon;

(B) in paragraph (4), by striking the period and inserting "; or"; and

(C) by adding at the end the following:

"(5) section 4(b) of the Securities Exchange Act of 1934.".

(c) EFFECTIVENESS OF AMENDMENTS.—The authority provided under subsections (a) and (b) of this section may be exercised at any time following the expiration of 180 days from the date of enactment, provided that the Chairman of the Commission shall in connection with such exercise certify in writing, with explanation, to the President and the Congress, after consultation with the Director of the Office of Personnel Management, that—

(1) the Securities and Exchange Commission, with the assistance of the Office of Personnel Management, has attempted to solve the Commission's difficulties in recruitment and/or retention of high-quality personnel through use of the flexibilities provided by the Federal Employees Pay Comparability Act of 1990; and

(2) despite such attempt, the Securities and Exchange Commission is faced with continuing or serious difficulties in recruitment and/or retention of high-quality personnel.

SEC. 1126. LIMITATION ON SECURITIES PRIVATE RIGHTS OF ACTION.

(a) EFFECT ON PENDING CAUSES OF ACTION.—The limitation for any private civil action arising under section 10(b) of the Securities Exchange Act of 1934 that was commenced on or before June 19, 1991, shall be the limitation provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991.

(b) EFFECT ON DISMISSED CAUSES OF ACTION.—Any private civil action arising under section 10(b) of the Securities Exchange Act of 1934 that commenced on or before June 19, 1991—

(1) which was dismissed as time barred subsequent to June 19, 1991; and

(2) which would have been timely filed under the limitation provided by the laws applicable in the jurisdiction, including principles of retroactivity, as they existed on June 19, 1991,

may be refiled and reinstated (including any disposition) not later than 60 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991.

(c) DEFINITIONS.—The terms used in this section shall have the same meanings as in the Securities Exchange Act of 1934.

SEC. 1127. CONVERSIONS DURING MORATORIUM.

(a) IN GENERAL.—Section 5(d)(2)(C) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(C)) is amended—

(1) in clause (i), by striking "deposits of each" and inserting "deposits of the transferor".

(2) by striking "or" at the end of clause (ii);

(3) by striking the period at the end of clause (iii) and inserting "; or" and

(4) by adding at the end the following:

"(iv) in the case of a transaction described in clause (ii), (iii), or (iv) of subparagraph (B), the resulting or assuming bank or savings association agrees to make pro rata insurance premium payments to both the Bank Insurance Fund and the Savings Association Insurance Fund at the applicable assessment rates in effect for each Fund, with—

"(I) the percentage of deposits subject to assessment by each Fund equal to the per-

centage of the combined deposits assessable by such Fund at the time of the conversion transaction, as determined by the Corporation, and

"(II) the same percentage used to apportion any losses between the 2 funds arising from any failure of the combined institution.".

(b) FEES.—Section 5(d)(2)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(2)(E)) is amended by inserting ", other than a conversion described in subparagraph (C)(iv)," before "shall pay".

(c) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—Section 5(c) of the Home Owners' Loan Act (12 U.S.C. 1464(c)) is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

"(A) IN GENERAL.—If, under section 5(d)(2)(C) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank that is a member of the Bank Insurance Fund, the Director may permit the savings association to retain any such asset during the 2-year period beginning on the date of the acquisition.

"(B) EXTENSION.—The Director may extend the 2-year period described in subparagraph (A) for not more than 1 year at a time and not more than 2 years in the aggregate, if the Director determines that the extension is consistent with the purposes of this Act.".

SEC. 1128. QUALIFIED THRIFT LENDER TEST.

(a) REDUCING TEST FROM 70 PERCENT TO 65 PERCENT.—Section 10(m)(1)(B) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)(B)) is amended by striking "70" and inserting "65".

(b) INCREASING AMOUNT OF LIQUID ASSETS EXCLUDABLE FROM PORTFOLIO ASSETS.—Section 10(m)(4)(B)(iii) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(B)(iii)) is amended by striking "10 percent" and inserting "20 percent".

(c) INCREASING THE PERCENTAGE OF QUALIFYING CONSUMER LOANS.—Section 10(m)(4)(C)(iii)(VI) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(iii)(VI)) is amended by striking "5 percent" and inserting "10 percent".

(d) FEDERAL HOME LOAN BANK STOCK.—

(1) IN GENERAL.—Section 10(m)(4)(C)(ii) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)(C)(ii)) is amended by adding at the end the following:

"(VI) Shares of stock issued by any Federal home loan bank.".

(2) DOUBLE-COUNTING NOT PERMITTED.—Section 10(m)(5) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(5)) is amended by adding at the end the following:

"(C) In determining the amount of a savings association's qualified thrift investments, the same asset shall not, directly or indirectly, be counted more than once.".

(e) MONTHLY AVERAGING PERMISSIBLE FOR CERTAIN SAVINGS ASSOCIATIONS.—Section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) is amended by adding at the end the following:

"(8) MONTHLY AVERAGING PERMISSIBLE FOR CERTAIN SAVINGS ASSOCIATIONS.—If a savings association has total assets of less than $1,000,000,000, paragraph (1)(B) shall apply with 'monthly' substituted for 'daily or weekly'.".

(f) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—Section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) is amended by adding at the end the following new paragraph:

"(8) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

"(A) IN GENERAL.—For purposes of this subsection, if, under section 5(d)(2)(C) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank that is a member of the Bank Insurance Fund, any asset acquired from the bank that is not a qualified thrift investment shall not be treated as a portfolio asset of the savings association during the 2-year period beginning on the date of the acquisition.

"(B) EXTENSION.—The Director may, with respect to not more than 30 percent of the total assets acquired from the bank that are not qualified thrift investments, extent the 2-year period described in subparagraph (A) for not more than 1 year if the Director determines that the extension if consistent with the purposes of this Act.".

SEC. 1129. CONSUMER LENDING BY FEDERAL SAVINGS ASSOCIATIONS.

Section 5(c)(2)(D) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(2)(D)) is amended in the second sentence by striking "30 percent" and inserting "35 percent".

SEC. 1130. NONCONTROLLING INVESTMENTS IN BANKS AND BANK HOLDING COMPANIES BY CERTAIN INVESTMENT FUNDS.

(a) IN GENERAL.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended by adding at the end the following new subsections:

"(q) QUALIFIED INVESTOR.—The term 'qualified investor' means an investment company (whether or not registered under the Investment Company Act of 1940), investment partnership, endowment, pension fund, or any other company that the Board determines by order or regulation to be principally engaged in investing, that is not controlled by any company other than a qualified investor or a limited adviser as permitted in this Act.

"(r) LIMITED ADVISER.—The term 'limited adviser' means a company that—

"(1) has been determined by the Board, by order or regulation, to be principally engaged in investing and providing investment advice;

"(2) acts as an adviser to one or more qualified investors in connection with any investment by such qualified investor or investors in a bank or bank holding company;

"(3) does not, directly or indirectly, own or control for its own account 10 percent or more of any class of voting shares of the bank or bank holding company and does not, directly or indirectly, have power to vote, in any capacity, 25 percent or more of the voting shares of the bank or bank holding company;

"(4) does not have a direct or indirect economic interest in the bank or bank holding company equal to 25 percent or more of the profits of the bank or bank holding company or of the profits due to one or more qualified investors in connection with an investment in the bank or bank holding company;

"(5) does not have any director, officer, partner or employee in common with the bank or bank holding company and does not have any representative serving in any such capacity at the bank or bank holding company;

"(6) does not advise the bank or bank holding company regarding any management or policy decision, whether on behalf of a qualified investor or otherwise; and

"(7) does not have any significant business relationship with the bank or bank holding company, and no other company that is an affiliate of the adviser has any significant business relationship with the bank or bank holding company.".

(b) EXCEPTION FOR INVESTMENTS BY QUALIFIED INVESTORS.—Paragraph (5) of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)) is amended by adding at the end the following new subparagraph—

"(G) QUALIFIED INVESTORS.—

"(i) Except as provided in clause (ii), no qualified investor is a bank holding company solely by virtue of its ownership or control of voting shares of a bank or bank holding company if the qualified investor—

"(I) directly or indirectly, owns, controls or has power to vote less than 25 percent of the shares of any class of voting securities of the bank or bank holding company, and less than 25 percent of the total equity of the bank or bank holding company;

"(II) is and remains at all times a passive investor in the bank or bank holding company, and does not participate in the management or operations of the bank or bank holding company, except that a qualified investor that is permitted under subclause (IV) to have director representation at a bank or bank holding company shall not be in violation of this subclause by virtue of having a representative serve as a director of the bank or bank holding company;

"(III) does not have any significant business relationship with the bank or bank holding company, and no other company that is an affiliate of the qualified investor has any significant business relationship with the bank or bank holding company; and

"(IV) does not have any director, officer, partner or employee in common with the bank or bank holding company and does not have any representative serving in any such capacity at the bank or bank holding company, except that a qualified investor that owns or controls less than 15 percent of the voting shares of a bank or bank holding company may have no more than one representative serving as a director of the bank or bank holding company.

"(ii) Notwithstanding clause (i), a qualified investor is a bank holding company if the Board determines, after notice and opportunity for hearing, that the qualified investor exercises a controlling influence over the management or policies of a bank or bank holding company.

"(H) LIMITED ADVISERS.—

"(i) Except as provided in clause (ii), no company is a bank holding company solely by virtue of its role as adviser to one or more qualified investors in connection with the acquisition of shares of a bank or bank holding company if—

"(I) the company is and remains a limited adviser with respect to the investment;

"(II) the qualified investors advised by the adviser, and the limited adviser, do not, directly or indirectly, own, control, or have power to vote, in the aggregate, 25 percent or more of any class of voting shares of the same bank or bank holding company of 25 percent or more of the total equity of such bank or bank holding company; and

"(III) in the case of a limited adviser that advises any number of qualified investors that, including the limited adviser, seek to own, control, or have power to vote, in the aggregate, 25 percent or more of any class of voting shares of the same bank or bank holding company or 25 percent or more of the total equity of such bank or bank holding company—

"(aa) each qualified investor advised by the adviser retains the right to vote and dispose of the shares the investor acquires in the bank or bank holding company;

"(bb) the limited adviser does not communicate in any way with the management or other shareholders of the bank or bank holding company regarding the management or policies of the bank or bank holding company;

"(cc) following the acquisition of shares by the qualified investors, the limited adviser does not provide any advice to, or communicate in any manner with, the qualified investors, or any person that holds an interest in any of the qualified investors, regarding any matter related to the shares or the management or policies of the bank or bank holding company; and

"(dd) following the acquisition of shares by the qualified investors, the limited adviser does not, directly or indirectly, own, control or have power to vote 5 percent or more of any class of voting securities of the bank, bank holding company or any qualified investor in the bank or bank holding company.

"(ii) Notwithstanding clause (i), a limited adviser is a bank holding company if the Board determines, after notice and opportunity for hearing, that the limited adviser, or any investor advised by the adviser, exercises a controlling influence over the management or policies of a bank or bank holding company.".

SEC. 1131. LIMITING LIABILITY FOR FOREIGN DEPOSITS.

(a) AMENDMENT TO THE FEDERAL RESERVE ACT.—Section 25 of the Federal Reserve Act (12 U.S.C. 601) is amended by adding at the end the following:

"11. Limitations on liability.

"A member bank shall not be required to repay any deposit made at a foreign branch of the bank if the branch cannot repay the deposit due to—

"(i) an act of war, insurrection, or civil strife, or

"(ii) an action by a foreign government or instrumentality (whether de jure or de facto) in the country in which the branch is located,

unless the member bank has expressly agreed in writing to repay the deposit under those circumstances. The Board is authorized to prescribe such regulations as it deems necessary to implement this paragraph.".

(b) AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.—

(1) SOVEREIGN RISK.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

"(t) SOVEREIGN RISK.—Section 25(11) of the Federal Reserve Act shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.".

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 3(l)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)(5)) is amended to read as follows:

"(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State unless—

"(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and payable at, an office located in any State; and

"(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State.".

(c) EXISTING CLAIMS NOT AFFECTED.—The amendments made by this section shall not be construed to affect any claim arising from events (described in section 25(11) of the Federal Reserve Act, as added by subsection (a)) that occurred before the date of enactment of this Act.

SEC. 1132. CERTAIN WRONGFULLY WITHDRAWN DEPOSITS TREATED AS INSURED DEPOSITS.

(a) IN GENERAL.—Section 3(m) of the Federal Deposit Insurance Act (12 U.S.C. 1813(m)) is amended by adding at the end the following:

"(3) WRONGFULLY WITHDRAWN DEPOSITS.—In its capacity as conservator or receiver of a depository institution, the Corporation shall treat as an 'insured deposit' any deposit at the institution at any time prior to the Corporation's appointment as conservator or receiver—

"(A) which was, through the negligence or misconduct of the institution or any of its employees, permitted to be wrongfully or fraudulently withdrawn by a person other than the depositor, without the knowledge or consent of the depositor; and

"(B) for the recovery of which the depositor has diligently sought private relief against the perpetrator of the wrongful withdrawal, and would have received relief from the institution that had permitted the wrongful withdrawal, but due to acquisition of the institution by the Corporation, the institution is unable to satisfy the judgment.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any wrongful or fraudulent withdrawal of deposits occurring after January 1, 1987.

SEC. 1133. PROVIDING SERVICES TO INSURED DEPOSITORY INSTITUTIONS.

Section 21A of the Home Owners' Loan Act (12 U.S.C. 1441a) is amended by adding at the end the following:

"(q) CONTINUATION OF OBLIGATION TO PROVIDE SERVICES.—No person obligated to provide services to an insured depository institution at the time the Resolution Trust Corporation is appointed conservator or receiver for the institution, shall fail to provide those services to any person to whom the right to receive those services was transferred by the Resolution Trust Corporation after August 9, 1989, unless the refusal is based on the transferee's failure to comply with any material term or condition of the original obligation. This subsection does not limit any authority of the Resolution Trust Corporation as conservator or receiver under section 11(e) of the Federal Deposit Insurance Act.".

SEC. 1134. STUDY AND REPORT ON REIMBURSING FINANCIAL INSTITUTIONS AND OTHERS FOR PROVIDING FINANCIAL RECORDS.

(a) STUDY REQUIRED.—The Attorney General, in consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System and other appropriate banking regulatory agencies, shall conduct a study of the effect of amending the Right to Financial Privacy Act by allowing reimbursement to financial institutions for assembling or providing financial records on corporations and other entities not currently covered under section 1115(a) of such Act (12 U.S.C. 3415). The study shall also include analysis of the effect of allowing nondepository licensed transmitters of funds to be reimbursed to the same extent as financial institutions under that section.

(b) REPORT.—Before the end of the 180-day period beginning on the date of enactment of this Act, the Attorney General shall submit a report to the Congress on the results of the study conducted pursuant to subsection (a).

SEC. 1135. REMOVING COST LIMITATION ON CONSTRUCTION OF FEDERAL RESERVE BANK BUILDINGS.

The ninth paragraph of section 10 of the Federal Reserve Act (12 U.S.C. 522) is amended to read as follows:

"No Federal Reserve bank shall have the authority hereafter to enter into any contract or contracts for the erection of any building of any kind or character, or to authorize the erection of any building without the prior approval of the Board of Governors.".

SEC. 1136. $1 COINS.

(a) COLOR AND CONTENT.—Section 5112(b) of title 31, United States Code, is amended—

(1) in the first sentence by striking "dollar,"; and

(2) by inserting after the fourth sentence, the following: "The $1 coins authorized under subsection (a)(1) shall be golden in color, shall have an unreeded edge, shall have tactile features on the surface that aid the visually handicapped to differentiate the $1 coin from other circulating coins, and shall be minted and fabricated in the United States. The $1 coin should have similar metallic anticounterfeiting properties as existing United States clad coinage.".

(b) CHRISTOPHER COLUMBUS $1 COIN.—Section 5112(d)(1) of title 31, United States Code, is amended by striking the sixth sentence and inserting the following: "The obverse side of the $1 coin shall have a design symbolizing the 500th anniversary of the discovery of the New World by Christopher Columbus.".

(c) CIRCULATION DATE.—Not later than 18 months after the date of enactment of this Act, the Secretary of the Treasury shall place into circulation $1 coins authorized by section 5112(a)(1) of title 31, United States Code, in accordance with the amendments made by subsections (a) and (b).

(d) SEIGNIORAGE.—Seigniorage from production of $1 coins referred to in subsection (a) shall be used to offset the reverse seigniorage resulting from the destruction of Susan B. Anthony $1 coins in Government storage. Additional seigniorage from production of $1 coins referred to in subsection (a) shall be used to retire the national debt.

SEC. 1137. PURCHASED MORTGAGE SERVICING RIGHTS.

(a) IN GENERAL.—Notwithstanding section 5(t)(4) of the Home Owners' Loan Act, each appropriate Federal banking agency shall determine, with respect to insured depository institutions for which it is the appropriate Federal regulator, the amount of readily marketable purchased mortgage servicing rights that may be included in calculating such institution's tangible capital, risk-based capital, or leverage limit, if—

(1) such servicing rights are valued at not more than 90 percent of their fair market value; and

(2) the fair market value of such servicing rights is determined not less often than quarterly.

(b) DEFINITION.—For purposes of this section, the terms "appropriate Federal banking agency" and "insured depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 1138. CREDIT CARD INTEREST RATES.

(a) Section 107 of the Truth in Lending Act (15 U.S.C. 1606) is amended by adding at the end thereof the following:

"(f) The annual percentage rate applicable to an extension of credit obtained by use of a credit card may not exceed by more than 4 percentage points the rate established under section 6621(a)(2) of the Internal Revenue Code of 1954, as determined by the Board.".

(b) Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end thereof the following:

"(c) A card issuer shall clearly and conspicuously disclose on initial applications for a credit card—

"(1) the annual percentage rate applicable to extensions of credit by means of that credit card or means for determining that rate; and

"(2) any annual or other fee imposed for the issuance or use of that credit card.".

(c) This section shall have an effective date of January 1, 1992.

SEC. 1139. RESTATEMENT AND REORGANIZATION OF SECTION 5136 OF THE REVISED STATUTES.

(a) RESTATEMENT AND REORGANIZATION OF SECTION 5136 OF THE REVISED STATUTES.—

(1) IN GENERAL.—Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended to read as follows:

"SEC. 5136. CORPORATE POWERS OF NATIONAL BANKS.

"(a) GENERAL POWERS.—Upon filing articles of association and an organization certificate, a national bank shall become, as of the date of the execution of the organization certificate, a corporation which shall have, in the name designated in that certificate, the following powers:

"(1) CORPORATE SEAL.—To adopt and use a corporate seal.

"(2) SUCCESSION.—To have succession from February 25, 1927, or from the date of the execution of the organization certificate (if that date is later than February 25, 1927) until—

"(A) such time as the bank is dissolved by an act of shareholders owning not less than ⅔ of the stock of such bank;

"(B) the franchise is forfeited—

"(i) by reason of violation of law; or

"(ii) by a general or special Act of Congress; or

"(C) the bank's affairs are placed in the control of the Federal Deposit Insurance Corporation, as receiver, and finally wound up by that Corporation.

"(3) CONTRACTS.—To enter into contracts.

"(4) LITIGATION.—To sue and be sued in its corporate capacity, and to complain and defend in any action brought by or against the national bank in any court of competent jurisdiction.

"(5) OFFICERS.—To elect or appoint directors to the bank's board of directors and, by that board of directors, to—

"(A) appoint a president, vice president, cashier, and other officers;

"(B) define the duties of officers;

"(C) require bonds of those officers and fix the penalty of those bonds; and

"(D) dismiss any officer at the pleasure of the directors and appoint another to fill the position.

"(6) BYLAWS.—To prescribe, by the board of directors, bylaws not inconsistent with law regulating the manner in which—

"(A) stock of the bank may be transferred;

"(B) the directors of the bank are appointed or elected;

"(C) the officers of the bank may be appointed;

"(D) the property of the bank may be transferred;

"(E) the general business of the bank may be conducted; and

"(F) the privileges granted to the bank by law may be exercised and enjoyed.

"(7) BANKING POWERS.—To exercise, by the board of directors or officers or agents authorized by that board and subject to any other provision of law, all such incidental powers as shall be necessary to carry on the business of banking, including the following:

"(A) Discounting and negotiating promissory notes, drafts, bills of exchange, and other evidence of debt.

"(B) Receiving deposits.

"(C) Buying and selling exchange, coin, and bullion.

"(D) Loaning money on personal security.

"(E) Obtaining, issuing, and circulating notes according to the provisions of this title.

"(8) CONTRIBUTIONS.—To contribute to community funds or charitable, philanthropic, or benevolent instrumentalities conducive to the public welfare, such sums as the board of directors may determine to be expedient and in the interests of the national bank if that bank is located in a State the laws of which do not expressly prohibit State banking institutions from contributing to such funds or instrumentalities.

"(9) INVESTMENT IN TANGIBLE PERSONAL PROPERTY.—To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net lease basis. The investment may not exceed 10 percent of the national bank's assets.

"(b) BANKING POWERS RELATED TO SECURITIES ACTIVITIES AND COMMERCIAL PAPER.—

"(1) SECURITIES UNDERWRITING PROHIBITED.—Except as otherwise provided in this subsection or any other provision of law, no national bank may underwrite any issue of securities.

"(2) BUYING AND SELLING SECURITIES AS AGENT FOR CUSTOMER.—Except as otherwise provided in this section or any other provision of law, no national bank may purchase or sell any security unless the purchase or sale is made—

"(A) for the account of a customer;

"(B) by the bank—

"(i) upon the order of the customer; or

"(ii) in the bank's capacity as trustee, executor, administrator, custodian, managing agent, or guardian of estates with respect to the account of the customer; and

"(C) without recourse.

"(3) EXCEPTIONS.—

"(A) BANK SECURITIES AND BANK INVESTMENTS FOR THE BANK'S OWN ACCOUNT.—Paragraph (2) shall not apply to the purchase or sale by a national bank of—

"(i) any security of which the national bank is the issuer; or

"(ii) any investment security or other security which the bank is purchasing or has purchased in accordance with subsection (c).

"(B) ISSUANCE AND SALE OF CERTAIN GNMA GUARANTEED SECURITIES.—Notwithstanding paragraph (2) or any other provision of this section, a national bank may issue and sell securities that are guaranteed by the Government National Mortgage Association under section 306(g) of the National Housing Act.

"(C) BANK-ELIGIBLE SECURITIES.—Paragraphs (1) and (2) shall not apply with respect to any bank-eligible security, subject to the limitations contained in subsection (c)(3)(B).

"(c) BANKING POWERS RELATED TO PURCHASING INVESTMENT SECURITIES FOR THE BANK'S OWN ACCOUNT.—

"(1) LIMITED AUTHORITY TO BUY FOR BANK'S OWN ACCOUNT FOR INVESTMENT.—Except as provided in paragraphs (2) through (10), a national bank's authority to purchase investment securities or other securities for the bank's own account under this section shall be subject to the following limitations:

"(A) CORPORATE STOCK.—Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation.

"(B) MAXIMUM INVESTMENT AMOUNT FOR SECURITIES ISSUED BY ANY SINGLE ISSUER.—The total amount of investment securities held by the bank (for the bank's own account) which were issued by any 1 person, or for which such person is the obligor, may not exceed at any time the amount which is equal to the sum of—

"(i) 10 percent of the capital stock of the bank which is actually paid in and unimpaired; and

"(ii) 10 percent of the bank's unimpaired surplus fund,

except that this subparagraph shall not require any bank to dispose of investment securities lawfully held by the bank on August 23, 1935.

"(2) BANKERS' BANKS.—

"(A) ACQUISITION OF SHARES ALLOWED.—Notwithstanding paragraph (1), a national bank may purchase for the bank's own account shares of an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act) or a bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956), if—

"(i) the outstanding shares of the bank or company are owned exclusively (except to the extent of directors' qualifying shares required by law) by depository institutions (as defined in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act) or depository institution holding companies; and

"(ii) the bank or company, and all subsidiaries of the bank or company, are engaged exclusively in providing services for other depository institutions and officers, directors, and employees of those depository institutions.

"(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by any national bank in any bank or holding company referred to in subparagraph (A)—

"(i) may not exceed, at any time, the sum of—

"(I) 10 percent of the national bank's capital stock; and

"(II) 10 percent of the national bank's paid in and unimpaired surplus fund; and

"(ii) may not include more than 5 percent of any class of voting securities of that bank or company.

"(3) BANK-ELIGIBLE SECURITIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), a national bank may purchase or sell bank-eligible securities for the bank's own account.

"(B) MAXIMUM INVESTMENT AMOUNT IN THE CASE OF CERTAIN SECURITIES.—The total amount of bank-eligible securities described in subparagraph (N), (O), (P), or (Q) of subsection (d)(2) that may be held by a national bank at any time—

"(i) in connection with being an underwriter of those securities or buying and selling, as principal, those securities under subsection (b); or

"(ii) for the bank's own account,

shall not exceed an amount equal to the sum of 10 percent of the capital stock of the national bank actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.

"(C) SPECIAL RULE FOR CERTAIN COMMITMENTS.—For purposes of subparagraph (B), any bank-eligible securities referred to in that subparagraph as to which any national

bank is under a commitment shall be deemed to be held by the national bank.

"(4) MORTGAGE RELATED SECURITIES.—

"(A) IN GENERAL.—Notwithstanding paragraph (1), a national bank may purchase for the bank's own account—

"(i) securities offered and sold pursuant to section 4(5) of the Securities Act of 1933; or

"(ii) mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934).

"(B) REGULATIONS.—Any purchase by a national bank of securities under subparagraph (A) shall be subject to such limitations and restrictions as the Comptroller of the Currency may prescribe by regulation, including regulations concerning—

"(i) the minimum size of the issue (at the time of initial distribution) with respect to any such security; and

"(ii) a minimum aggregate sales price with respect to any such security.

"(5) SAFE-DEPOSIT BUSINESS.—

"(A) ACQUISITION OF SHARES ALLOWED.—Notwithstanding paragraph (1), a national bank may, in connection with the bank's carrying on the business commonly known as the 'safe-deposit business', purchase the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business.

"(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by any national bank in any corporation referred to in subparagraph (A) shall not exceed an amount equal to the sum of—

"(i) 15 percent of the capital stock of the national bank actually paid in and unimpaired; and

"(ii) 15 percent of the bank's unimpaired surplus fund.

"(6) NATIONAL HOUSING CORPORATIONS.—Notwithstanding paragraph (1), a national bank may—

"(A) purchase for the bank's own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968; and

"(B) invest in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act.

"(7) STATE HOUSING CORPORATIONS.—

"(A) ACQUISITION OF SHARES AND OTHER INVESTMENTS ALLOWED.—Notwithstanding paragraph (1), a national bank may—

"(i) purchase for the bank's own account shares of stock issued by any State housing corporation incorporated in the State in which the national bank is located; and

"(ii) invest in loans and commitments for loans to any such corporation.

"(B) MAXIMUM INVESTMENT AMOUNT.—The total amount of stock held by a national bank in any corporation referred to in subparagraph (A) and the amount of investments in loans and commitments for loans to such corporation by the bank shall not exceed an amount equal to the sum of—

"(i) 5 percent of the national bank's capital stock actually paid in and unimpaired; and

"(ii) 5 percent of the bank's unimpaired surplus fund.

"(8) AGRICULTURAL CREDIT CORPORATIONS.—

"(A) ACQUISITION OF SHARES AND OTHER INVESTMENTS ALLOWED.—Notwithstanding paragraph (1), a national bank may purchase for the bank's own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including breeding, raising, fattening, or marketing livestock.

"(B) MAXIMUM INVESTMENT AMOUNT.—Unless the national bank owns at least 80 percent of the stock of an agricultural credit corporation described in subparagraph (A), the total amount of stock held by the national bank in any such corporation shall not exceed an amount equal to 20 percent of the unimpaired capital and surplus of the national bank.

"(9) QUALIFIED CANADIAN GOVERNMENT OBLIGATIONS.—

"(A) IN GENERAL.—A national bank may deal in, underwrite, and purchase for its own account qualified Canadian Government obligations, to the same extent that it may deal in, underwrite, and purchase for its own account obligations of the United States or general obligations of any State or of any political subdivision thereof.

"(B) DEFINITIONS.—

"(i) QUALIFIED CANADIAN GOVERNMENT OBLIGATIONS.—For purposes of this paragraph, the term 'qualified Canadian Government obligations' means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, the State, or the political subdivision. The term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

"(I) the obligation of the agent is assumed in the agent's capacity as agent for Canada or the Province or the political subdivision; and

"(II) Canada, the Province, or the political subdivision on whose behalf the agent is acting with respect to the obligation is ultimately and unconditionally liable for the obligation.

"(ii) PROVINCE OF CANADA.—For purposes of this paragraph, the term 'Province of Canada' means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

"(10) ADDITIONAL LIMITATIONS PRESCRIBED IN REGULATIONS.—The authority of a national bank under this section to purchase investment securities for the bank's own account shall be subject to such additional limitations and restrictions as the Comptroller of the Currency may prescribe by regulation.

"(d) DEFINITIONS.—

"(1) INVESTMENT SECURITIES.—For purposes of this section, the term 'investment securities' means marketable obligations, evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes, and/or debentures commonly known as investment securities under such further definition of the term 'investment securities' as may by regulation be prescribed by the Comptroller of the Currency.

"(2) BANK ELIGIBLE SECURITY.—For purposes of this section, the term 'bank-eligible security' means any of the following investment securities:

"(A) Obligations of the United States.

"(B) General obligations of any State or any political subdivision of any State.

"(C) Obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969.

"(D) Obligations issued—

"(i) under authority of the Federal Farm Loan Act; or

"(ii) by the thirteen banks for cooperatives, any bank for cooperatives, or the Federal Home Loan Banks.

"(E) Obligations insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act.

"(F) Obligations insured by the Secretary of Housing and Urban Development pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of those insured obligations are guaranteed as to principal and interest by the United States.

"(G) Obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association.

"(H) Mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act.

"(I) Obligations of the Federal Financing Bank.

"(J) Obligations of the Environmental Financing Authority.

"(K) Obligations or other instruments or securities of the Student Loan Marketing Association.

"(L) Such obligations of any local public agency (as defined in section 110(h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary of Housing and Urban Development in which the local public agency agrees to borrow from the Secretary, and the Secretary agrees to lend to that local public agency, moneys in an aggregate amount which (together with any other moneys irrevocably committed to the payment of interest on those obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of those obligations, which moneys under the terms of the agreement are required to be used for those payments.

"(M) Such obligations of a public housing agency (as defined in the United States Housing Act of 1937) as are secured—

"(i) by an agreement between that agency and the Secretary of Housing and Urban Development in which the agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the agency, prior to the maturity of those obligations, moneys in an amount which (together with any other moneys irrevocably committed to the payment of interest on those obligations) will suffice to pay the principal of those obligations with interest to maturity thereon, which moneys under the terms of that agreement are required to be used for the purpose of paying the principal of and the interest on those obligations at their maturity;

"(ii) by a pledge of annual contributions under an annual contributions contract between that agency and the Secretary of Housing and Urban Development if that contract contains the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and if the maximum sum and the maximum period specified in that contract pursuant to such section 6(g), shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on those obligations; or

"(iii) by a pledge of both annual contributions under an annual contributions contract containing the covenant by the Secretary of Housing and Urban Development which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between that agency and the Secretary in which the agency agrees to bor-

row from the Secretary and the Secretary agrees to lend to the agency, prior to the maturity of the obligations involved, moneys in an amount that (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on those obligations) will suffice to provide for the payment when due of all installments of principal and interest on those obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on those obligations at their maturity.

"(N) Obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation.

"(O) Obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account.

"(P) Obligations issued by the Tennessee Valley Authority.

"(Q) Obligations issued by the United States Postal Service.".

(2) RULE OF CONSTRUCTION.—The amendment made by paragraph (1)—

(A) may not be construed to make any substantive change in the meaning of any provision of section 5136 of the Revised Statutes (as in effect on the day before the effective date of the amendment); and

(B) shall not affect any regulation prescribed, any order issued, any interpretation provided, or any action taken before the effective date of the amendment under or pursuant to that section (as in effect on the day before that date).

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) FEDERAL RESERVE ACT.—The 20th paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 335) is amended by striking "paragraph 'Seventh' of" and inserting "subsections (b), (c), and (d) of".

(2) NATIONAL HOUSING ACT.—Section 514 of the National Housing Act (12 U.S.C. 1733) is amended by striking "paragraph seventh of" and inserting "subsections (b) and (c) of".

(3) INTERNATIONAL BANKING ACT.—Section 4(g)(1) of the International Banking Act of 1978 (12 U.S.C. 3102(g)(1)) is amended by striking "paragraph 'Seventh' of" and inserting "subsection (c) of".

SEC. 1140. SENSE OF THE SENATE REGARDING THE REPEAL OF THE LUXURY EXCISE TAX ON BOATS.

It is the sense of the Senate that—

(1) the luxury excise tax on boats has imposed an unfair burden on boat workers, manufacturers, and retailers;

(2) the luxury excise tax on boats has caused the loss of up to 19,000 jobs in the boat building industry and thousands more in the retailing industry;

(3) middle-class workers and small businesses, not the wealthy, are harmed by the tax;

(4) the luxury excise tax on boats is costing the Government more in lost income tax receipts, payroll tax receipts, additional unemployment compensation, and compliance and enforcement costs than the revenue generated by such tax on boats;

(5) the luxury excise tax forces small business people to become tax collectors and enforcers for the Internal Revenue Service;

(6) the luxury excise tax on boats is harming one of America's strongest domestic industries and aiding our foreign competitors;

(7) the luxury excise tax on boats is contributing to the depth and severity of the recession and helping ensure that economic recovery will be more difficult; and

(8) the Congress should immediately adopt legislation to repeal the luxury excise tax on boats.

SEC. 1141. ACT NOT TO AFFECT APPLICATION OF INTERNAL REVENUE CODE.

Any reference in the Internal Revenue Code of 1986 to a bank holding company shall not include any bank holding company that—

(1) engages (directly or indirectly) in any activity that was not permitted, and that the Board of Governors of the Federal Reserve System could not have permitted, under the Bank Holding Company Act of 1956 as in effect on the day before the date of enactment of this Act; or

(2) owns or controls (directly or indirectly) shares of any company if the holding of those shares was not permitted, and could not have been permitted by the Board of Governors of the Federal Reserve System, under the Bank Holding Company Act of 1956 as in effect on the day before the date of enactment of this Act.

SEC. 1142. COMMUNITY DEVELOPMENT AUTHORITY OF NATIONAL BANKS.

Section 5136 of the Revised Statutes (12 U.S.C. 24), as amended by section 716, is further amended by adding at the end of subsection (a) the following new paragraph:

"(10) COMMUNITY DEVELOPMENT.—To make investments designed primarily to promote the public welfare, including low- and moderate-income communities or families (such as by providing housing, services, or jobs). The national bank may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. The Comptroller shall limit a bank's investments in any 1 project and a bank's aggregate investments under this paragraph. In no case shall a bank's aggregate investments under this paragraph exceed an amount equal to the sum of 10 percent of the bank's capital stock actually paid in and unimpaired and 10 percent of the bank's unimpaired surplus fund.".

SEC. 1143. IMMUNITY.

Section 6001(1) of title 18, United States Code, is amended by inserting "the Board of Governors of the Federal Reserve System," after "the Atomic Energy Commission,".

SEC. 1144. CREDITABILITY OF SERVICE.

(a) CHAPTER 83.—Section 8332 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(n) Any employee who—

"(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

"(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.".

(b) CHAPTER 84.—Section 8411 of title 5, United States Code, is amended by adding at the end the following new subsection:

"(g) Any employee who—

"(1) served in a position in which the employee was excluded from coverage under this subchapter because the employee was covered under a retirement system established under section 10 of the Federal Reserve Act; and

"(2) transferred without a break in service to a position to which the employee was appointed by the President, with the advice and consent of the Senate, and in which position the employee is subject to this subchapter,

shall be treated for all purposes of this subchapter as if any service that would have been creditable under the retirement system established under section 10 of the Federal Reserve Act was service performed while subject to this subchapter if any employee and employer deductions, contributions or rights with respect to the employee's service are transferred from such retirement system to the Fund.".

(c) APPLICABILITY.—The amendment made by this section shall apply with respect to any individual who transfers to a position in which he or she is subject to subchapter III of chapter 83 or chapter 84 of title 5, United States Code, on or after October 1, 1991.

SEC. 1145. DELEGATED PROCESSING.

(Section 328(a) of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1713, note) is amended in the first sentence, by inserting before the period "or other individuals and entities expressly approved by the Department of Housing and Urban Development".

SEC. 1146. LOW-INCOME HOUSING COVENANTS.

Section 515(p)(4) of the Housing Act of 1949 (42 U.S.C. 1485(p)(4)) is amended by adding at the end "The preceding sentence shall not be interpreted as authorizing the Secretary to—

"(A) limit the ability of a housing credit agency to require an owner of housing, in order to receive a low-income housing tax credit, to enter into a restrictive covenant, in such form and for such period as the housing credit agency deems appropriate, to maintain the occupancy characteristics of the project as specified in such covenant described in subparagraph (B) of section 42(h)(6) of the Internal Revenue Code of 1986; or

"(B) deny or delay approval of financing under this section by reason of the existence, or occupancy terms, of any such restrictive covenant.".

SEC. 1147. EXAMINATION AND SUPERVISION FEES FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—Section 5240 of the Revised Statutes (12 U.S.C. 482) is amended—

(1) by striking the fourth undesignated paragraph and inserting the following:

"The Comptroller of the Currency is authorized to impose and collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of his or her office. Such assessments, fees, and other charges shall be set to meet the Comptroller's expenses in carrying out authorized activities.";

(2) by striking "In addition to the expense of examination" and all that follows through "to cover the expenses thereof.".

(b) TECHNICAL AMENDMENT.—Section 5240 of the Revised Statutes is amended in the second undesignated paragraph (12 U.S.C. 481)—

(1) by striking the second sentence;

(2) by striking the third sentence and inserting "If any affiliate of a national bank refuses to pay any assessments, fees, or other charges imposed by the Comptroller of the Currency pursuant to this section or fails to make such payment not later than 60 days after the date on which they are imposed, the Comptroller of the Currency may impose such assessments, fees, or charges against the affiliated national bank, and such assessments, fees, or charges shall be paid by such national bank. If the affiliation is with 2 or more national banks, such assessments, fees, or charges may be imposed on, and collected from, any or all of such national banks in such proportions as the Comptroller of the Currency may prescribe.";

(3) in the fourth sentence, by inserting "or from other fees or charges imposed pursuant to this section" after "assessments on banks or affiliates thereof"; and

(4) in the fifth sentence—

(A) by inserting ", fees, or charges" before "may be deposited"; and

(B) by inserting "or of other fees or charges imposed pursuant to this section" before the period.

(c) ASSESSMENT AUTHORITY OF THE OFFICE OF THRIFT SUPERVISION.—Section 9 of the Home Owners' Loan Act (12 U.S.C. 1467) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

"(a) EXAMINATION OF SAVINGS ASSOCIATIONS.—The cost of conducting examinations of savings associations pursuant to section 5(d) shall be assessed by the Director against each such savings association as the Director deems necessary or appropriate.

"(b) EXAMINATION OF AFFILIATES.—The cost of conducting examinations of affiliates of savings associations pursuant to this Act may be assessed by the Director against each affiliate that is examined as the Director deems necessary or appropriate.";

(2) by amending subsection (k) to read as follows:

"(k) FEES FOR EXAMINATIONS AND SUPERVISORY ACTIVITIES.—The Director may assess against institutions for which the Director is the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, fees to fund the direct and indirect expenses of the Office as the Director deems necessary or appropriate. The fees may be imposed more frequently than annually at the discretion of the Director.".

SEC. 1148. INTERAGENCY SHARING OF INFORMATION.

Section 11 of the Federal Deposit Insurance Act (12 U.S.C. 1821) is amended by adding at the end the following new subsection:

"(s) PRIVILEGES.—

"(1) IN GENERAL.—The transfer or use of any information by, between, or among—

"(A) any appropriate Federal banking agency;

"(B) the Resolution Trust Corporation;

"(C) the Farm Credit Administration;

"(D) the Farm Credit System Insurance Corporation; or

"(E) the National Credit Union Administration,

and any other agency of the Federal Government, in any capacity, shall not constitute a waiver of any privilege applicable to such information.

"(2) DEFINITION OF PRIVILEGE.—For purposes of this subsection—

"(A) the term 'agency of the Federal Government' has the same meaning as in section 6 of title 18, United States Code; and

"(B) the term 'privilege' includes any work product, attorney-client, or other privilege recognized under Federal or State law that is available to an agency of the Federal Government.".

SEC. 1149. APPLICATION OF STATE LAW FOR INSURANCE PURPOSES.

Section 5136A(c)(4) of the Revised Statutes, as added by section 771, is amended to read as follows:

"(4) COMPLIANCE WITH STATE LAW.—A national bank or branch and any State bank or branches providing insurance pursuant to this subsection shall comply with the laws governing the provision of insurance of the State in which the bank or branch is located, unless such State law is preempted by Federal law.".

SEC. 1150. ADDITIONAL WHISTLEBLOWER PROTECTIONS.

(a) ADDITIONAL COVERAGE ESTABLISHED UNDER FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 33(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(a)) is amended to read as follows:

"(a) IN GENERAL.—

"(1) EMPLOYEES OF DEPOSITORY INSTITUTIONS.—No insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding any possible violation of any law or regulation by the depository institution.

"(2) EMPLOYEES OF BANKING AGENCIES.—No Federal banking agency, Federal home loan bank, or Federal Reserve bank may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any such agency or bank or to the Attorney General regarding any possible violation of any law or regulation by—

"(A) any depository institution or any such bank or agency;

"(B) any director, officer, or employee of any depository institution or any such bank; or

"(C) any officer or employee of the agency that employs such employee.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 33(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831j(c)) is amended by inserting ", Federal home loan bank, Federal Reserve bank, or Federal banking agency" after "depository institution".

(3) DEFINITION.—Section 33 of the Federal Deposit Insurance Act (12 U.S.C. 1831j) is amended by adding at the end the following new subsection:

"(e) FEDERAL BANKING AGENCY DEFINED.—For purposes of subsection (a) and (c), the term 'Federal banking agency' means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Comptroller of the Currency, and the Office of Thrift Supervision.".

(b) ADDITIONAL COVERAGE ESTABLISHED UNDER FEDERAL CREDIT UNION ACT.—

(1) IN GENERAL.—Section 213(a) of the Federal Credit Union Act (12 U.S.C. 1790b(a)) is amended to read as follows:

"(a) IN GENERAL.—

"(1) EMPLOYEES OF CREDIT UNIONS.—No insured credit union may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Board or the Attorney General regarding any possible violation of any law or regulation by the credit union or any director, officer, or employee of the credit union.

"(2) EMPLOYEES OF THE ADMINISTRATION.—The Administration may not discharge or otherwise discriminate against any employee (including any employee of the National Credit Union Central Liquidity Facility) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Administration or the Attorney General regarding any possible violation of any law or regulation by—

"(A) any credit union or the Administration;

"(B) any director, officer, or employee of any credit union; or

"(C) any officer or employee of the Administration.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 213(c) of the Federal Credit Union Act (12 U.S.C. 1790b(c)) is amended by inserting "or the Administration" after "credit union".

(c) COVERAGE FOR EMPLOYEES OF RTC AND RTC CONTRACTORS.—Section 21A of the Federal Home Loan Bank Act (12 U.S.C. 1441a) is amended by adding at the end the following new subsection:

"(q) RTC AND RTC CONTRACTOR EMPLOYEE PROTECTION REMEDY.—

"(1) PROHIBITION AGAINST DISCRIMINATION.—The Corporation and any person who is performing, directly or indirectly, any function or service on behalf of the Corporation may not discharge or otherwise discriminate against any employee (including any employee of the Federal Deposit Insurance Corporation in such corporation's capacity as manager of the Corporation or any personnel referred to in subsection (b)(9)(B)(ii)) with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Corporation, the Attorney General, or any appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) regarding any possible violation of any law or regulation by the Corporation or such person or any director, officer, or employee of the Corporation or the person.

"(2) ENFORCEMENT.—Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of paragraph (1) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

"(3) REMEDIES.—If the district court determines that a violation has occurred, the court may order the Corporation or the person that committed the violation to—

"(A) reinstate the employee to the employee's former position;

"(B) pay compensatory damages; or

"(C) take other appropriate actions to remedy any past discrimination.

"(4) LIMITATION.—The protections of this section shall not apply to any employee who—

"(A) deliberately causes or participates in the alleged violation of law or regulation; or

"(B) knowingly or recklessly provides substantially false information to the Corpora-

tion, the Attorney General, or any appropriate Federal banking agency.".

SEC. 1151. REAL ESTATE LOAN PORTFOLIOS.

No Federal financial regulatory agency shall criticize an investment or a loan made by a federally insured depository institution or consider the loan to be nonperforming solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless the loan or investment may affect the institution's safety and soundness.

SEC. 1152. SENSE OF THE CONGRESS REGARDING THE CREDIT CRUNCH.

(a) FINDINGS.—The Congress finds that—

(1) during the past year and a half a credit crunch of crisis proportions has taken hold of the economy and grown increasingly severe, particularly for real estate;

(2) to date, the credit crisis has shown no sign of improvement with its effects being felt broadly throughout the Nation as business failures soar, financial institutions weaken, real estate values decline, and State and local property tax bases further erode;

(3) approximately $200,000,000,000 of the nearly $400,000,000,000 in commercial real estate loans now held by commercial banks are coming due within the next 2 years;

(4) banks for a variety of reasons, are reluctant to renew these maturing real estate loans;

(5) both pension funds in the United States, with assets of nearly $2,000,000,000,000, and a stronger and more active secondary market for commercial real estate debt and equity could play a more significant role in providing liquidity and credit to the real estate and banking sectors of the economy;

(6) many regulatory practices encourage banks to reduce their real estate lending without regard to long-term historical risk; and

(7) the stability of real estate has suffered during the past decade from dramatic changes in tax rules.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) immediate and carefully coordinated action should be taken by the Congress and the President to arrest the credit crisis referred to in subsection (a) and provide a healthy and efficient marketplace that works for owners, lenders, and investors, and

(2) that efforts should be undertaken to explore measures that—

(A) modernize and simplify the rules that apply to pension investment in real estate to remove unnecessary barriers to pension funds seeking to invest in real estate;

(B) strengthen the secondary market for commercial real estate bad debt and equity by removing arbitrary obstacles to private forms of credit enhancement;

(C) foster a balanced regulatory environment among supervisors and examiners in the field with respect to commercial, multifamily and single-family real estate by ending market-to-market, liquidation-based, appraisals; encouraging loan renewals; and, fully communicating the supervisory policy to bank examiners in the field; and

(D) promote a rational tax system for real estate owners and operators.

SEC. 1153. REPORTS OF INFORMATION REGARDING SAFETY AND SOUNDNESS OF DEPOSITORY INSTITUTIONS.

(a) REPORTS TO APPROPRIATE FEDERAL BANKING AGENCIES.—

(1) IN GENERAL.—The Attorney General, the Secretary of the Treasury, and the head of any other agency or instrumentality of the United States shall report to the appropriate Federal banking agency any information regarding any matter that could have a significant effect on the safety or soundness of any depository institution doing business in the United States.

(2) EXCEPTIONS.—

(A) INTELLIGENCE INFORMATION.—

(i) IN GENERAL.—The Director of Central Intelligence shall report to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consultation with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury shall report the intelligence information to the appropriate Federal banking agency.

(ii) PROCEDURES FOR RECEIPT OF INTELLIGENCE INFORMATION.—Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for the receipt of intelligence information that are adequate to protect the intelligence information.

(B) CRIMINAL INVESTIGATIONS; SAFETY OF GOVERNMENT INVESTIGATORS.—If the Attorney General or his designee determines that the reporting of a particular item of information pursuant to paragraph (1) might jeopardize a pending criminal investigation or the safety of Government investigators, the Attorney General shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation or the safety of the investigators; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information while permitting the Federal banking agency to ensure the safety and soundness of any depository institution.

(C) GRAND JURY INVESTIGATIONS; CRIMINAL PROCEDURE.—Paragraph (1) shall not—

(i) apply to the receipt of information by an agency or instrumentality in connection with a pending grand jury investigation; or

(ii) be construed to require disclosure of information prohibited by rule 6 of the Federal Rules of Criminal Procedure.

(b) PROCEDURES FOR RECEIPT OF REPORTS.—

(1) IN GENERAL.—Within 90 days after the date of enactment of the Comprehensive Deposit Insurance Reform and Taxpayer Protection Act of 1991, each appropriate Federal banking agency shall establish procedures for receipt of a report by an agency or instrumentality made in accordance with subsection (a)(1). The procedures established in accordance with this subsection shall ensure adequate protection of information contained in a report, including access control and information accountability.

(2) PROCEDURES RELATED TO EACH REPORT.—Upon receipt of a report in accordance with subsection (a)(1), the appropriate Federal banking agency shall—

(A) consult with the agency or instrumentality that furnished the report regarding the adequacy of the procedures established pursuant to aragraph (1), and

(B) adjust the procedures to ensure adequate protection of the information contained in the report.

(c) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal banking agency" and "depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act.

SEC. 1154. TECHNICAL CORRECTIONS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 3(q)(2)(E), by striking "Depository Institutions Supervisory Act" and inserting "Financial Institutions Supervisory Act of 1966";

(2) in section 7(a)(8), by striking "the the" and inserting "the";

(3) in section 7(*l*)(7), by striking "the value of";

(4) in section 7(m)(5)(A), by striking "institution" the second time it appears;

(5) in the third sentence of section 8(a)(7), by striking "the period" the first time it appears;

(6) in paragraphs (3) and (4) of section 8(b), by striking "subsection (u)" and inserting "subsections (u) and (v)";

(7) in section 8(b)(6)(F), by inserting "appropriate" before "banking";

(8) in section 8(c)(2), by striking "injuction" and inserting "injunction";

(9) in section 8(g)(2), by striking "depository institution" each time it appears and inserting "bank".

(10) in section 8(o), by striking "board of directors" each time it appears and inserting "Board of Directors";

(11) in section 8(r)(2), by striking "therof" and inserting "thereof";

(12) in section 11(a)(2), by striking the designation "(b)" and inserting the designation "(B)";

(13) in section 11(c)(6)(B), by striking "Owner's" and inserting "Owners'";

(14) in section 11(d)(2)(B)(iii), by striking "is" and inserting "are";

(15) in section 11(d)(8)(B)(ii), by inserting "provide" after "disallowed,";

(16) in section 11(d)(16)(B)(iv), by striking "dispositions" and inserting "disposition";

(17) in section 11(e)(12)(B), by striking "directors or officers" and inserting "directors' or officers'";

(18) in section 11(i)(3)(A), by striking "or" the last time it appears and inserting "of";

(19) in section 11(q)(1), by striking "decided" in the second sentence and inserting "held";

(20) in section 13(f)(6)(A), by striking "has in default" and inserting "is in default";

(21) in section 13(i), by redesignating paragraphs (11) and (13) as paragraphs (10) and (11), respectively;

(22) in section 18(k)(4)(C)(ii), by striking "Board" and inserting "Corporation";

(23) in section 30(e)(1)(A), by striking "venders" and inserting "vendors";

(24) in section 31(b)(1), by striking "Board of Directors" and inserting "board of directors"; and

(25) in section 34(a)(1)(A)(iii), by striking "and" and inserting "or".

SEC. 1155. DISCRIMINATION AGAINST REORGANIZED DEBTORS.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end the following new paragraph:

"(9) A Federal banking agency may not, by regulation or otherwise, designate, or require an insured institution or an affiliate to designate, a corporation as highly leveraged or a transaction with a corporation as a highly leveraged transaction solely because such corporation is or has been a debtor or bankrupt under title 11, United States Code, if, after confirmation of a plan of reorganization, such corporation would not otherwise be highly leveraged.".

SEC. 1156. REAL ESTATE APPRAISAL PROCEDURES.

(a) EXTENSION OF EFFECTIVE DATE.—Section 1119(a)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(1)) is amended—

(1) by striking "July 1, 1991" and inserting "January 1, 1993"; and

(2) by striking paragraph (2) and inserting the following:

"(2) STATE REQUIREMENTS.—No State may require that appraisals in connection with federally related transactions be conducted by State certified or licensed appraisers prior to the date contained in paragraph (1).".

(b) WAIVER BASED ON SHORTAGE OF APPRAISERS.—Section 1119(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by inserting "(1) IN GENERAL.—" before "Subject to the approval of the Council";

(2) by inserting at the end of the first sentence the following: "or that there are other relevant reasons for such action";

(3) by striking the last sentence and inserting the following: "A waiver may be granted upon the motion of the State, a Federal agency, or a unit of general local government."; and

(4) by adding at the end the following:

"(2) TIMING.—The Appraisal Subcommittee shall determine whether to grant a request by an agency, State, or unit of general local government for a waiver under paragraph (1) not later than 60 days after such request is submitted.

"(3) DURATION.—A waiver granted under this subsection shall remain in effect for a period of 1 year.

"(4) DUPLICATIVE REQUESTS FOR WAIVER.—If a State is granted a waiver under this subsection, the Appraisal Subcommittee is not required to consider similar requests by units of general local government.

"(5) REGULATIONS RELATING TO WAIVERS.—The Appraisal Subcommittee shall promulgate and implement regulations to carry out this subsection not later than March 31, 1992.".

(c) DE MINIMUS EXCEPTION.—

(1) IN GENERAL.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—

(A) by inserting "(a) IN GENERAL.—" before "In determining"; and

(B) by adding at the end the following:

"(b) DE MINIMUS EXCEPTION.—The Federal financial institutions regulatory agencies shall exempt from the requirement for an appraisal by a State certified or by a State licensed appraiser—

"(1) any 1- to 4-unit single family residential transaction having a value of $100,000 or less; and

"(2) any other transaction having a value of $200,000, or less;

except that such agencies may establish a different value for the purposes of paragraph (1) or (2) if such agencies determine that unique economic conditions, geographic considerations, or other factors make such action appropriate.

"(c) HOME EQUITY LOANS.—The Federal financial institutions regulatory agencies shall establish and implement a separate de minimus standard applicable to home equity loans not later than 6 months after the date of enactment of this subsection.".

SEC. 1157. SANCTION FOR FINANCING THE USE OR ACQUISITION OF CHEMICAL OR BIOLOGICAL WEAPONS.

Section 81 of the Arms Export Control Act (22 U.S.C. 2751 et seq.) is amended by amending subsection (c)(1) to read as follows:

"(c) SANCTIONS.—

"(1) DESCRIPTION OF SANCTION.—The sanctions to be imposed pursuant to subsection (a)(1) are, except as provided in paragraph (2) of this subsection, that—

"(A) the United States Government shall not procure, or enter into any contract for the procurement of, any goods or services from any person described in subsection (a)(3); and

"(B) the foreign person is prohibited from conducting business in the United States if the foreign person is a bank, financial institution, or insurer, or any subsidiary thereof, and if the President determines that the foreign person knowingly and materially contributed to the efforts of any foreign country, project, or entity described in subsection (a)(2) to use, develop, produce, stockpile, or otherwise acquire chemical or biological weapons.".

SEC. 1158. SANCTION FOR FINANCING CHINESE SLAVE LABOR.

(a) SANCTION.—A foreign person which is a bank, financial institution, or insurer, and any parent, subsidiary, affiliate and successor entity of that foreign person, shall be prohibited from conducting business in the United States if the President determines that on, or after the date of enactment, the foreign person has knowingly and materially contributed to the efforts of the People's Republic of China, to develop, produce, market, transport, or sell goods produced by forced or prison labor within the meaning of section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307).

(b) TERMINATION OF SANCTION.—A sanction imposed pursuant to this section shall apply for a period of at least 12 months following the imposition of the sanction and shall cease to apply thereafter only if the President determines and certifies to the Congress that reliable information indicates that the foreign person with respect to which the determination was made under subsection (a) has ceased to aid or abet efforts by the People's Republic of China to develop, produce, market, transport, or sell goods produced by forced or prison labor.

(c) WAIVER.—

(1) The President may waive the application of a sanction imposed on any person pursuant to this section, after the end of the 12-month period beginning on the date on which the sanction was imposed on that person, if the President determines and certifies to the Congress that such waiver is important to the national security interests of the United States.

(2) If the President decides to exercise the waiver authority provided in paragraph (1), the President shall so notify the Congress not less than 20 days before the waiver takes effect. Such notification shall include a report fully articulating the rationale and circumstances which led the President to exercise the waiver authority.

(d) DEFINITION.—For purposes of this section, the term "foreign person" means—

(1) an individual who is not a citizen of the United States or an alien admitted for permanent residence to the United States; or

(2) a corporation, partnership, or other entity which is created or organized under the laws of a foreign country or which has its principal place of business outside the United States.

SEC. 1159. EMPLOYMENT RETIREMENT INCOME SECURITY ACT.

Section 4001(a)(14) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1301(a)(14)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by adding "and" at the end of subparagraph (B); and

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

"(C)(i) notwithstanding any other provision of this title, during any period in which an individual possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an affected air carrier of which he was an accountable owner, whether through the ownership of voting securities, by contract, or otherwise, the affected air carrier shall be considered to be under common control not only with those persons described in subparagraph (B), but also with all related persons; and

"(ii) for purposes of this subparagraph, the term—

"(I) 'affected air carrier' means an air carrier, as defined in section 101(3) of the Federal Aviation Act of 1958, that holds a certificate of public convenience and necessity under section 401 of such Act for route number 147, as of November 12, 1991;

"(II) 'related person' means any person which was under common control (as determined under subparagraph (B)) with an affected air carrier on October 10, 1991, or any successor to such related person;

"(III) 'accountable owner' means any individual who on October 10, 1991, owned directly or indirectly through the application of section 318 of the Internal Revenue Code of 1986 more than 50 percent of the total voting power of the stock of an affected air carrier;

"(IV) 'successor' means any person that acquires, directly or indirectly through the application of section 318 of the Internal Revenue Code of 1986, more than 50 percent of the total voting power of the stock of a related person, more than 50 percent of the total value of the securities (as defined in section 3(20) of this Act) of the related person, more than 50 percent of the total value of the assets of the related person, or any person into which such related person shall be merged or consolidated; and

"(V) 'individual' means a living human being;".

SEC. 1160. SENSE OF THE CONGRESS REGARDING COMPETITIVE SOLICITATION OF RESOLUTION PROPOSALS.

(a) IN GENERAL.—It is the sense of the Congress that in order to minimize the cost to the Insurance Fund, the FDIC when resolving troubled insured depository institutions, should vigorously solicit competing proposals from a wide spectrum of potentially interested acquirers and investors and, in so doing, should use a competitive bidding framework that affords a fair and impartial opportunity for participation by qualified and interested acquirers and investors and that is designed to produce the lowest-cost transaction with respect to each particular institution.

(b) DOCUMENTATION.—The FDIC should document its evaluation of proposals by qualified acquirers or investors. Such documentation should include, but is not limited to—

(1) reducing all last offers to comparables;

(2) comparing all last offers using the same principles;

(3) describing the assumptions used to compare, accept and/or reject any offer or last offer;

(4) stating the reason(s) for cessation of negotiations with any potential acquirer or investor, if any; and

(5) stating why the final agreement is the best obtainable by the FDIC.

SEC. 1161. REAL ESTATE.

(a)(1) The Senate believes that the responsibility to establish national banking policy should rest with the Congress and not Federal financial regulatory agencies.

(2) The Senate believes that this responsibility is especially true with regard to whether insured depository institutions, in particular, bank holding companies, should be permitted to engage in real estate brokerage.

(3) The Federal Reserve Board may, pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)), permit bank holding companies to engage in those non-banking activities which are "reasonably related to the business of banking or are a proper incident thereto".

(4) The Senate believes that real estate activities, other than those expressly approved for national banks pursuant to the National Bank Act, may not be directly related to the business of banking or incidental to banking, for purposes of the Bank Holding Company Act.

(5) Congress believes that Congress, not the regulatory avenue should determine whether or not bank holding companies should be permitted to engage in real estate brokerage.

(b) It is the sense of the Senate that Congress, not the Federal Reserve Board should determine whether or not real estate brokerage is "closely related to banking" for section 4(c)(8) of the Bank Holding Company Act of 1956.

SEC. 1162. UNITED STATES POLICY TOWARD YUGOSLAVIA.

(a)(1) Since attacks against the people and territory of the Republic of Croatia by armed forces responding to direction from the Republic of Serbia are continuing despite numerous cease-fire agreements negotiated under the auspices of the European Community.

(2) Since losses of life, property, and displacement of persons have already reached grievous levels and are continuing to rise as the result of continued violation of cease-fires.

(3) Since attacks against the Republic of Croatia represent an effort to change post-war borders by force.

(4) Since it is a fundamental principle essential for the future peace of Europe that borders not be changed by force.

(b) The sense of the Senate that, if the Croatian Government adheres in good faith to the terms of cease-fires negotiated by the European Community, and if those parties now conducting military operations against the Republic of Croatia refuse to comply immediately with the terms of such cease-fires, the policy of the United States should be—

(1) to consult promptly with the EC, with other countries on a bilateral basis, and with the United Nations on the question of recognizing, upon request, those Republics such as Slovenia and Croatia that have declared their sovereignty and independence and have agreed to cooperate with EC efforts;

(2) to take whatever steps are needed under existing legal authorities to bring the United States into conformity with sanctions and other punitive measures agreed to by the EC for its own members and recommended by them for others, and to take action parallel to those proposed by the EC for applying "positive compensatory measures" to be applied to those parties that "cooperate in a peaceful way towards a comprehensive political solution on the basis of EC proposals";

(3) to offer humanitarian assistance to those republics that require such assistance on an emergency basis in light of conflict taking place on their territories;

(4) to place the Republic of Serbia on notice that continued military action will cause the United States to support EC efforts to call for mandatory United Nations Security Council measures as a response to an act of aggression;

(5) to require of all authorities a clear and binding commitment to protect the rights of minorities living within the borders mutually recognized by the republics and provinces of Yugoslavia in 1974 and to seek formal commitment on their part to accept international inspection and, if necessary, arbitration, to protect those rights; and

(6) to lend strong support to all EC and other international activities aimed at bringing about a restoration of peace and respect for the principle that territorial disputes shall not be settled by the use of violence.

SEC. 1163. CREDIT CARD SALES.

Section 11 of the Federal Deposit Insurance Act is amended by adding a new paragraph (14) to subsection (e) as follows:

"(14) CREDIT CARD SALES.—

"(A) NOTIFICATION.—Any insured depository institution shall notify the Corporation in writing prior to entering into any agreement relating to the sale of credit card receivables, if the institution is:

"(i) not in compliance with the minimum applicable core capital requirements; or

"(ii) not adequately capitalized as defined in section 205 of the Comprehensive Deposit Insurance Return and Taxpayers Protection Act of 1991.

"(B) WAIVER BY THE CORPORATION.—After receipt of the written notice required in subparagraph (A), the Corporation, in its sole discretion and upon such terms and conditions as it may prescribe, may waive its right to repudiate the agreement if the Corporation determines that such a waiver is in the best interests of the Bank Insurance Fund or the Savings Association Insurance Fund.

"(C) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to limit the ability of the Corporation to otherwise waive its rights to repudiate any agreement or lease under this section.

"(D) NO BREACH OF DUTY.—In granting any waiver of its right to repudiate a contract or lease, including any waiver granted under subparagraph (B), the Corporation, in any capacity, shall not be liable to any person for any damages as a result of such action nor shall any court have jurisdiction to enjoin, restrain or affect the exercise of such powers by the Corporation.

"(E) EFFECT OF WAIVER ON SUCCESSORS.—Where the Corporation has waived its right to repudiate pursuant to subparagraph (B), any restriction contained or incorporated by reference in a sales agreement on the manner in which any customer or any list of customers of the selling institution may be solicited or otherwise dealt with shall be binding upon a receiver or conservator of the institution and the Corporation shall require any entity which subsequently purchases or acquires such selling institution, or substantially all of the assets or liabilities of such institution, to assume, and agree to be bound by, such restrictions on the manner in which any such customer or lists of customers of the selling institution may be solicited or otherwise dealt with, as if the acquiring entity were the selling institution: *Provided, however*, That nothing herein shall be read to inhibit or restrict such subsequently acquiring entity's ability to offer any service or product to any group of prospective customers as identified without use of or reference to any such prior customer status or list, or to require such entity to discontinue or restrict any of its preexisting customer relationships. Nothing herein shall apply to a transaction in which the Corporation arranges for a depository institution to purchase only insured deposits.

"(F) CREDIT CARD CUSTOMER LIST.—Notwithstanding any other provision of this paragraph (14), if any consummated agreement reached at arms length relating to the sale or transfer of credit card receivables by an insured depository institution provides for the sale of the exclusive use of any credit card customers list of the selling institution, the Corporation shall prohibit the use of such list by any person other than as provided by the terms of such previous agreement as part of any transaction undertaken pursuant to sections 11 or 13 of this Act.

"(G) FRAUDULENT TRANSACTIONS EXCLUDED.—No provision of this paragraph shall be construed to interfere with the Corporation's rights to repudiate any contract undertaken with the intent to hinder, delay or defraud the institution, the creditors of such institution or the Corporation.".

SEC. 1164. SPECIAL INSURED DEPOSITS.

For purposes of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), the deposits of the Freedom National Bank of New York that—

(1) were deposited by a charitable organization, as such term is defined by New York State law; and

(2) were deposits of such bank on the date of its closure by the Office of the Comptroller of the Currency,

shall be considered to have been insured deposits, as such term is defined in section 3 of the Federal Deposit Insurance Act.

TITLE XII—WORLD CUP USA 1994 COMMEMORATIVE COIN ACT

SEC. 1201. SHORT TITLE.

This TITLE may be cited as the "World Cup USA 1994 Commemorative Coin Act".

SEC. 1202. DENOMINATIONS.

(a) FIVE DOLLAR GOLD COINS.—The Secretary of the Treasury (hereafter in this title referred to as the "Secretary") shall issue not more than 750,000 five dollar coins which shall weigh 8.359 grams, have a diameter of 0.850 inches, and shall contain 90 percent gold and 10 percent alloy.

(b) ONE DOLLAR SILVER COINS.—The Secretary shall issue not more than 5,000,000 one dollar coins which shall weigh 26.73 grams, have a diameter of 1.500 inches, and shall contain 90 percent silver and 10 percent copper.

(c) HALF DOLLAR CLAD COINS.—The Secretary shall issue not more than 5,000,000 half dollar coins which shall be minted to the specifications for half dollar coins contained in section 5112(b) of title 31, United States Code.

(d) LEGAL TENDER.—The coins issued under this title shall be legal tender as provided in section 5103 of title 31, United States Code.

(e) NUMISMATIC ITEMS.—For purposes of section 5132(a)(1) of title 31, United States Code, all coins minted under this title shall be considered to be numismatic items.

SEC. 1203. SOURCES OF BULLION.

(a) GOLD.—The Secretary shall obtain gold for the coins minted under this title pursu-

ant to the authority of the Secretary under existing law.

(b) SILVER.—The Secretary shall obtain silver for the coins minted under this title from stockpiles established under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.).

SEC. 1204. DESIGN.

(a) DESIGN REQUIREMENTS.—The design of each coin authorized hereunder shall include the official 1994 World Cup logo adopted by World Cup USA 1994, Inc., the organizing committee for the event (hereafter referred to as the "Organizing Committee") and shall reflect the unique appeal of soccer. On each coin authorized hereunder there shall be a designation on the value of the coin, and inscriptions of the words "United States of America", "E Pluribus Unum", "In God We Trust", "Liberty" and "World Cup USA 1994".

(d) DESIGN COMPETITION.—The Director of the United States Mint shall sponsor a nationwide open competition for the design of each coin authorized hereunder beginning not later than 3 months and concluding not later than 9 months after the date of the enactment of this title. The Director of the United States Mint shall select 10 designs for each coin to be submitted to the Secretary, who shall select the final design for each such coin in consultation with the Organizing Committee.

SEC. 1205. SALE OF COINS.

(a) SALE PRICE.—Notwithstanding any other provision of law, the coins issued under this title 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, marketing and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales at a reasonable discount.

(c) PREPAID ORDERS AT A DISCOUNT.—The Secretary shall accept prepaid orders for the coins prior to the issuance of such coins. Sales under this subsection shall be at a reasonable discount.

(d) SURCHARGE REQUIRED.—All sales shall include a surcharge of $35 per coin for the five dollar coins, $7 per coin for the one dollar coins, and $1 for the half dollar coins.

(e) WORLD CUP COMMUNITIES.—The Secretary shall use best efforts to market World Cup coins in the United States with particular focus on communities in which World Cup games are held.

(f) INTERNATIONAL SALES.—The Secretary, in cooperation with the Organizing Committee, shall develop an International Marketing Program to promote and sell coins outside the United States.

SEC. 1206. ISSUANCE OF THE COINS.

(a) PERIOD FOR ISSUANCE.—The coins authorized under this title shall be minted and available for issue no later than January 3, 1994, but shall be issued only during 1994.

(b) PROOF AND UNCIRCULATED COINS.—The coins authorized under this title shall be issued in uncirculated and proof qualities.

(c) BUREAU OF THE MINT.—Not more than one facility of the Bureau of the Mint may be used to strike any particular combination of denomination and quality.

SEC. 1207. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

No provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out the provisions of this title. Nothing in this section shall relieve any person entering into a contract under the authority of this title from complying with any law relating to equal employment opportunity.

SEC. 1208. DISTRIBUTION OF SURCHARGES.

All surcharges which are received by the Secretary from the sale of coins issued under this title shall be promptly paid by the Secretary to the Organizing Committee. Such amounts shall be used by the Organizing Committee for purposes of organizing and staging the 1994 World Cup, with ten percent of such funds to be made available through the United States Soccer Federation Foundation, Inc. for distribution to institutions providing scholastic scholarships to qualified students.

SEC. 1209. AUDITS.

The Comptroller General shall have the right to examine such books, records, documents and other data of the Organizing Committee as may be related to the expenditure of amounts paid under section 1208.

SEC. 1210. COINAGE PROFIT FUND.

Notwithstanding any other provision of law—

(1) all amounts received from the sale of coins issued under this title shall be deposited in the coinage profit fund;

(2) the Secretary shall pay the amounts authorized under this title from the coinage profit fund to the Organizing Committee; and

(3) the Secretary shall charge the coinage profit fund with all expenditures under this title.

SEC. 1211. FINANCIAL ASSURANCES.

(a) NOT NET COST.—The Secretary shall take such actions as may be necessary to ensure that the minting and issuance of the coins referred to in section 1202 shall not result in any net cost to the Federal Government.

(b) PAYMENT ASSURANCES.—No coin shall be issued under this act unless the Secretary has received—

(1) full payment therefor;

(2) security satisfactory to the Secretary to indemnify the United States for full payment;

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

TITLE XIII—WHITE HOUSE COMMEMORATIVE COIN ACT OF 1991

SEC. 1301. SHORT TITLE.

This title may be cited as the "White House Commemorative Coin Act of 1991".

SEC. 1302. COIN SPECIFICATIONS.

(a) ONE DOLLAR SILVER COINS.—

(1) ISSUANCE.—The Secretary of the Treasury (hereafter referred to as the "Secretary") shall issue not more than 500,000 one dollars coins which shall weigh 26.73 grams, have a diameter of 1.500 inches, and contain 90 percent silver and 10 percent copper.

(2) DESIGN.—The design of such dollar coins shall be emblematic of the 200th anniversary of the laying of the cornerstone of the White House. On each such one dollar coin there shall be a designation of the value of the coin, an inscription of the year "1992", and inscriptions of the words, "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum".

(b) LEGAL TENDER.—The coins issued under this title shall be legal tender, as provided in section 5103 of title 31, United States Code.

SEC. 1303. SOURCES OF BULLION.

The Secretary shall obtain silver for the coins minted under this title only from stockpiles established under the strategic and Critical Minerals Stock Piling Act (50 U.S.C. 98 et seq.).

SEC. 1304. SELECTION OF DESIGN.

The design for each coin authorized by this title shall be selected by the Secretary after consultation with the Curator of the White House, the Commission of Fine Arts, and the White House Historical Association.

SEC. 1305. SALE OF COINS.

(a) SALE OF COINS.—Notwithstanding any other provision of law, the coins issued under this title 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, marketing, and shipping).

(b) BULK SALES.—The Secretary shall make bulk sales at a reasonable discount.

(c) PREPAID ORDERS AT A DISCOUNT.—The Secretary shall accept prepaid orders for the coins prior to their issuance. Sales under this subsection shall be at a reasonable discount.

(d) SURCHARGE REQUIRED.—All sales shall include a surcharge of $10 per coin.

SEC. 1306. ISSUANCE OF COINS.

(a) PERIOD FOR ISSUANCE.—The coins authorized under this title—

(1) shall be issued beginning not later than May 1, 1992; and

(2) may not be issued after November 1, 1993.

(b) PROOF AND UNCIRCULATED QUALITIES.—The coins authorized under this title shall be issued in uncirculated and proof qualities, except that not more than 1 facility of the Bureau of the Mint may be used to strike any particular quality.

SEC. 1307. GENERAL WAIVER OF PROCUREMENT REGULATIONS.

No provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for carrying out this Act. Nothing in this section relieves any person entering into a contract under the authority of this title from complying with any law relating to equal employment opportunity.

SEC. 1308. DISTRIBUTION OF SURCHARGES.

The total surcharges received by the Secretary from the sale of the coins in accordance with section 5 shall be promptly paid by the Secretary to the White House Endowment Fund (hereafter referred to as the "Fund")—

(1) to supplement the Fund for an endowment to be used as a permanent source of support for the White House collection of fine art and historic furnishings; and

(2) to be used for the maintenance of the historic public rooms of the White House.

SEC. 1309. AUDITS.

The Comptroller General shall have the right to examine such books, records, documents, and other data of the Fund as may be related to the expenditure of amounts paid under section 1308.

SEC. 1310. COINAGE PROFIT FUND.

Notwithstanding any other provision of law—

(1) all amounts received from the sale of coins issued under this title shall be deposited in the coinage profit fund;

(2) the Secretary shall pay the amounts authorized to be paid to the Fund under section 1308 from the coinage profit fund; and

(3) the Secretary shall charge the coinage profit fund with all expenditures under this title.

SEC. 1311. FINANCIAL ASSURANCES.

(a) NO NET COST TO THE GOVERNMENT.—The Secretary shall take such actions as may be necessary to ensure that the minting and issuance of the coins referred to in section 1302

shall not result in any net cost to the Federal Government.

(b) ADEQUATE SECURITY FOR PAYMENT REQUIRED.—No coin shall be issued under this title unless the Secretary has received—

(1) full payment therefor;

(2) security satisfactory to the Secretary to indemnify the United States for full payment; or

(3) a guarantee of full payment satisfactory to the Secretary from a depository institution whose deposits are insured under the Federal Deposit Insurance Act or the National Credit Union Act.

SEC. 1312. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

MESSAGES FROM THE HOUSE

At 9:50 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its clerks, announced that the Speaker has made the following modification in the appointment of the managers on the part of the House in the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2950) to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs, and for mass transit programs, and for other purposes:

As additional conferees from the Committee on Government Operations, for consideration of title IV of the Senate amendment and modifications committed to conference: Mr. CONYERS and Mr. HORTON.

ENROLLED BILL SIGNED

At 12:19 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 2629. An act to amend the Small Business Act to assist the development of small business concerns owned and controlled by women.

The enrolled bill was subsequently signed by the President pro tempore [Mr. BYRD].

At 3:20 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolutions, each without amendment:

S.J. Res. 184. Joint resolution designating the month of November 1991, as "National Accessible Housing Month";

S.J. Res. 207. Joint resolution to designate the period commencing on November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, each as "National Adoption Week"; and

S.J. Res. 217. Joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian".

The message also announced that the House has passed the bill (S. 543) to reform Federal deposit insurance, protect the deposit insurance funds, recapitalize the Bank Insurance Fund, improve supervision and regulation of insured depository institutions, and for other purposes, with amendments; it insists upon its amendments to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses, and appoints Mr. GONZALES, Mr. ANNUNZIO, Mr. NEAL of North Carolina, Mr. HUBBARD, Mr. LAFALCE, Ms. OAKAR, Mr. VENTO, Mr. BARNARD, Mr. SCHUMER, Mr. FRANK of Massachusetts, Mr. ERDREICH, Mr. CARPER, Mr. TORRES, Mr. KLECZKA, Mr. WYLIE, Mr. LEACH, Mr. MCCOLLUM, Mrs. ROUKEMA, Mr. BEREUTER, Mr. RIDGE, Mr. ROTH, Mr. MCCANDLESS, and Mr. BAKER as managers of the conference on the part of the House.

The message further announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 3031. An act to provide a statutory charter, and to authorize appropriations, for the National Telecommunications and Information Administration, and for other purposes;

H.R. 3365. An act to amend title 31, United States Code, to restrict the authority of newly established Government-related corporations to borrow from the Treasury and to require an annual evaluation of the impact of public borrowing by such corporations on the public debt;

H.R. 3866. An act to provide for the designation of the Flower Garden Banks National Marine Sanctuary;

H.J. Res. 201. Joint resolution designating the week beginning December 1, 1991, and the week beginning November 15, 1992, each as "Geography Awareness Week";

H.J. Res. 212. Joint resolution to designate the week beginning February 16, 1992, as "National Visiting Nurse Associations Week";

H.J. Res. 300. Joint resolution designating the month of May 1992 as "National Trauma Awareness Month"; and

H.J. Res. 376. Joint resolution designating December 1, 1991, as "World AIDS Day."

At 4:55 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 680) to amend the International Travel Act of 1961 to assist in the growth of international travel and tourism into the United States, and for other purposes; with amendments, in which it requests the concurrence of the Senate:

The message also announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1104. An act to declare certain portions of Pelican Island, Texas, nonnavigable.

ENROLLED JOINT RESOLUTIONS SIGNED

At 6:06 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolutions:

S.J. Res. 184. Joint resolution designating the month of November 1991, as "National Accessible Housing Month";

S.J. Res. 207. Joint resolution to designate the period commencing on November 24, 1991, and ending on November 30, 1991, and the period commencing on November 22, 1992, and ending on November 28, 1992, each as "National Adoption Week"; and

S.J. Res. 217. Joint resolution to authorize and request the President to proclaim 1992 as the "Year of the American Indian".

MEASURES PLACED ON THE CALENDAR

The Committee on Banking, Housing, and Urban Affairs was discharged from the further consideration of the following bill, which was placed on the calendar:

H.R. 26. An act to require the Federal depository institution regulatory agencies to take additional enforcement actions against depository institutions engaging in money laundering, and for other purposes.

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2130. An act to authorize appropriations for the National Oceanic and Atmospheric Administration for fiscal year 1992.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on today, November 23, 1991, he had presented to the President of the United States the following enrolled bills:

S. 1563. An act to authorize appropriations to carry out the National Sea Grant College Program Act, and for other purposes; and

S. 1568. An act to amend the Act incorporating The American Legion so as to redefine eligibility for membership therein.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment:

S. 461. A bill to amend the Wild and Scenic Rivers Act of 1968 by designating segments of the Lamprey River in the State of New Hampshire for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes (Rept. No. 102-230).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 549. A bill to amend the Wild and Scenic Rivers Act by designating a segment of the Lower Merced River in California as a component of the National Wild and Scenic Rivers System (Rept. No. 102-231).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment:

S. 606. A bill to amend the Wild and Scenic Rivers Act by designating certain segments of the Allegheny River in the Commonwealth of Pennsylvania as a component of the National Wild and Scenic Rivers System, and for other purposes (Rept. No. 102-232).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

S. 1552. A bill to amend the Wild and Scenic Rivers by designating the White Clay Creek in Delaware and Pennsylvania for study for potential addition to the National Wild and Scenic Rivers System, and for other purposes (Rept. No. 102-233).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment:

S. 1770. A bill to convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center, and for other purposes (Rept. No. 102-234).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S.J. Res. 23. A joint resolution to consent to certain amendments enacted by the legislature of the State of Hawaii to the Hawaiian Homes Commission Act, 1920 (Rept. No. 102-235).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 543. A bill to establish the Manzanar National Historic Site in the State of California, and for other purposes (Rept. No. 102-236).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 990. A bill to authorize additional appropriations for land acquisition at Monacacy National Battlefield, Maryland (Rept. No. 102-237).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 2370. A bill to expand the boundaries of Stones River National Battlefield, Tennessee, and for other purposes (Rept. No. 102-238).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, without amendment:

H.R. 3387. A bill to amend the Pennsylvania Avenue Development Corporation Act of 1972 to authorize appropriations for implementation of the development plan for Pennsylvania Avenue between the Capitol and the White House, and for other purposes (Rept. No. 102-239).

By Mr. JOHNSTON, from the Committee on Energy and Natural Resources, with amendments:

H.R. 476. A bill to designate certain rivers in the State of Michigan as components of the National Wild and Scenic Rivers System, and for other purposes (Rept. No. 102-240).

By Mr. BENTSEN, from the Committee on Finance, with an amendment in the nature of a substitute and an amendment to the title:

H.R. 3595. A bill to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the medicaid program and to maintain the treatment of intergovernmental transfers as such a source.

Mr. BENTSEN. Mr. President, I would like to file a measure that was approved by the Finance Committee on Friday, November 22—a committee amendment, in the nature of a substitute, to H.R. 3595, the Medicaid Moratorium Amendments of 1991.

Mr. President, I ask unanimous consent that the text of the amendment and an explanatory statement be printed in the RECORD following my remarks.

Yesterday, the Finance Committee also reported another measure, without recommendation, to implement an agreement reached between the administration and the National Governors' Association regarding State sources of funding for the Medicaid program. Final language for that bill is not yet available, but I will file it on behalf of the committee as soon as it is available.

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

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicaid Moratorium Amendments of 1991".

SEC. 2. MORATORIUM ON THE ISSUANCE OF FINAL REGULATIONS AND ON THE USE OF DONATIONS AND PROVIDER-SPECIFIC TAXES BY STATES TO RECEIVE FEDERAL MATCHING FUNDS UNDER MEDICAID.

(A) MORATORIUM ON ISSUANCE OF FINAL REGULATIONS.—

(1) DELAY IN CHANGES IN REGULATIONS CONCERNING DONATIONS AND PROVIDER-SPECIFIC TAXES.—Section 8431 of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100-647) is amended by striking "December 31, 1991" and inserting "April 1, 1992".

(2) MAINTAINING TREATMENT OF INTERGOVERNMENTAL TRANSFERS.—Such section is further amended by—

(A) by inserting "(a) IN GENERAL.—" before "The Secretary"; and

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

"(b) MAINTAINING TREATMENT OF INTERGOVERNMENTAL TRANSFERS.—The Secretary shall not issue any regulation prior to April 1, 1992, that changes the treatment (specified in section 433.45(a) of title 42, Code of Federal Regulations) of public funds as a source of State share of financial participation under title XIX of the Social Security Act, including the treatment of such funds as a source of State share of financial participation under such title notwithstanding the fact that the public agency contributing the funds provides services under the State plan under such title.".

(3) MORATORIUM ON CHANGES IN TREATMENT OF DISPROPORTIONATE SHARE HOSPITALS.—Such section is further amended by adding at the end the following new subsection:

"(c) MORATORIUM ON CHANGES IN TREATMENT OF DISPROPORTIONATE SHARE HOSPITALS.—The Secretary shall not issue any regulation prior to April 1, 1992, regarding standards for qualification as a disproportionate share hospital or payment adjustments for such hospitals under title XIX of the Social Security Act".

(b) FREEZE ON STATE DONATIONS AND PROVIDER-SPECIFIC TAXES.—Section 8431 of the Technical and Miscellaneous Revenue Act of 1988, as amended by subsection (a), is further amended by adding at the end the following new subsection:

"(d) FREEZE ON STATE DONATIONS AND PROVIDER-SPECIFIC TAXES.—

"(1) DETERMINATIONS OF FEDERAL MATCHING PAYMENTS DURING MORATORIUM PERIOD.—

"(A) IN GENERAL.—For purposes of determining the amount to be paid to a State under section 1903(a)(1) of the Social Security Act for the period of January 1 through March 31, 1992, the total amount expended during such period as medical assistance under the State plan shall be reduced by the amount determined under subparagraph (B).

"(B) AMOUNTS SPECIFIED.—The amount determined under this subparagraph shall be such amount of revenues from provider-specific taxes and provider donations as exceeds the sum of—

"(i) the total amount of any revenues received by the State (and by any units of local government in the State) during such period from provider-specific taxes pursuant to State or local legislation as enacted or adopted on or before November 22, 1991; plus

"(ii) the total amount of any revenues received by the State (and by any units of local government in the State), from provider donations under donation programs in effect on September 30, 1991, that do not exceed 25 percent of such revenues received in Federal fiscal year 1991.

"(2) MORATORIUM ON STATE TREATMENT OF DISPROPORTIONATE SHARE HOSPITALS.—For the period of January 1, 1992, through March 31, 1992, a State may not—

"(A) designate as a disproportionate share hospital any hospital that is not so designated pursuant to a State plan amendment that was submitted on or before September 30, 1991; or

"(B) change the formula or rates upon which Federal reimbursement is based for disproportionate share hospitals during such period.".

(c) RELATED PROVISIONS.—Section 8431 of the Technical and Miscellaneous Revenue Act of 1988, as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(e) RELATED PROVISIONS.—

"(1) MORATORIUM ON REVISIONS OF ESTIMATED AMOUNTS.—In estimating under section 1903(d)(1) of the Social Security Act the amount to which a State will be entitled for a quarter under subsections (a) and (b) of section 1903 of such Act for a quarter beginning on January 1, 1992, and ending on and including March 31, 1992, the Secretary may not withhold any amounts estimated to be expended during the quarter (or reduce any amount so estimated pursuant to section 1903(d)(2)(A) of such Act) solely because the amounts are attributable to provider donations, intergovernmental transfers, or provider-paid taxes.

"(2) PROHIBITION ON PENALTIES AND OTHER REGULATORY ACTIONS PERTAINING TO PERIOD OF MORATORIUM.—The Secretary may not assess a penalty or take any compliance, disallowance, or other regulatory action against a State under or pursuant to title XIX of the Social Security Act on the basis of the State's use of provider donations, intergovernmental transfers, or taxes (whether or not of general applicability) paid by, assessed against, or received from an individual or entity providing medical assistance under the State plan under such title to receive Federal matching funds under such title for quarters beginning on or after January 1, 1992, and ending on or before April 1, 1992.".

(d) DEFINITIONS.—Section 8431 of the Technical and Miscellaneous Revenue Act of 1988, as amended by subsection (c), is further amended by adding at the following new subsection:

"(f) DEFINITIONS.—For purposes of this section—

"(1) 'donation' means any voluntary payment, in cash or in kind, including any gift, contribution, presentation, or award;

"(2) 'health care provider' means any individual or entity that furnishes health care items or services for which it receives remuneration;

"(3) 'provider' includes any—

"(A) health care provider;

"(B) corporation, partnership, association, or organization formed by or on behalf of health care providers;

"(C) person who has an ownership or control interest (as defined in section 1124(a)(3) of the Social Security Act) in a health care provider;

"(D) employee, spouse, parent, child, or sibling of an individual described in subparagraph (A) or (C); and

"(E) individual or entity that is a major customer or supplier of a health care provider;

"(4) 'provider donation' means a donation by or on behalf of a provider;

"(5) 'provider specific tax' means a tax assessed under State or local law whose applicability is limited to health care providers or health care services (a tax is limited to health care providers or health care services if no other entity, item, or activity is subject to the identical tax); and

"(6) 'tax' means any mandatory payment imposed by a State or unit of government subordinate to a State, including any assessment, fee, charge, or duty.".

(e) BUDGETARY TREATMENT.—

(1) NO SEQUESTRATION.—Notwithstanding any other provision of law, there shall be no sequestration under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 as a result of the provisions of (and amendments made by) this Act.

(2) NO ASSUMPTION WITH REGARD TO REGULATION.—The budget submitted pursuant to section 1105 of title 31, United States Code, shall be prepared in a manner that does not assume any effects (including potential effects) on Federal expenditures resulting from the issuance of any regulation that relates to—

(A) provider-specific taxes;

(B) provider donations;

(C) intergovernmental transfers; and

(D) standards for qualifying as a disproportionate hospital or payments for such hospitals under title XIX of the Social Security Act, and

that is not a final regulation by the submission date of such budget.

Amend the title so as to read: "An Act to provide for a moratorium on the issuance of final regulations and on the use of donations and provider-specific taxes by States to receive Federal matching funds under medicaid."

COMMITTEE AMENDMENT TO H.R. 3595. THE MEDICAID MORATORIUM AMENDMENTS OF 1991

The Committee amendment (in the nature of a substitute) to H.R. 3595, would do the following:

(A) MORATORIUM ON ISSUANCE OF FINAL REGULATIONS

A moratorium would be imposed on HCFA's issuance of final regulations on the States' use of provider donations until April 1, 1992.

A moratorium would be imposed on HCFA's issuance of final regulations on the States' use of provider-specific taxes until April 1, 1992.

A moratorium would be imposed on HCFA's issuance of final regulations on the States' use of intergovernmental transfers until April 1, 1992.

A moratorium would be imposed on HCFA's issuance of final regulation on payments to or designation of disproportionate share hospitals until April 1, 1992.

(B) FREEZE ON STATE DONATION AND TAX REVENUES

For the period from January 1, 1992 to April 1, 1992, States would be prohibited from increasing the amount of the State share of Medicaid expenditures derived from voluntary donations above one-fourth of the amount derived from such donations during FY 1991 pursuant to programs in effect on September 30, 1991.

For the period from January 1, 1992 to April 1, 1992, there would be no Federal matching for the State share of Medicaid expenditures derived from taxes on any type of Medicaid provider that were not established pursuant to State or local legislation as enacted or adopted on or before November 22, 1991. There could be no additional types of entities taxed or increase in the tax rate during the moratorium.

For the period from January 1, 1992 to April 1, 1992, States could not designate as a disproportionate share hospital any hospital that is not so designated pursuant to a state plan amendment submitted on or before September 30, 1991, or change the formula or rate for determining reimbursement to disproportionate share hospitals.

(C) RELATED PROVISIONS

Prohibition on penalty actions related to moratorium period HCFA would be prohibited from taking any disallowance, penalty, compliance, or other action to recover Federal matching funds paid to a state solely because the State's expenditures on which the matching funds were based were paid for with revenues derived from voluntary donations, provider-specific taxes, or intergovernmental transfers. The prohibition would apply for State expenditures made during the period of the moratorium.

Prohibition on revision of estimated amounts with respect to the moratorium period, HCFA would be prohibited from reducing quarterly expenditure estimates submitted by the States or from withholding amounts paid in quarterly grants to the States solely because the expenditures would be paid for with revenues derived from voluntary donations, provider-specific taxes or intergovernmental transfers.

(D) BUDGETARY TREATMENT

No sequestration would be imposed under Part C of the Balanced Budget and Emergency Deficit Control Act of 1985 as a result of the provisions of (and amendments made by) this Act.

The Office of Management and Budget would be prohibited from assuming, for purposes of the President's FY 1993 budget baseline, any effects or potential effects on Federal expenditures resulting from any regulation that is not a final regulation relating to provider-specific taxes, voluntary donations, inter-governmental transfers, disproportionate share payments, or designation of disproportionate share hospitals until Title XIX.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MURKOWSKI:

S. 2032. A bill to amend the Alaska Native Claims Settlement Act to settle claims arising from the contamination of transferred lands, and for other purposes; to the Select Committee on Indian Affairs.

By Mr. DASCHLE:

S. 2033. A bill to expand the exclusion of services of election officials and workers from social security earnings; to the Committee on Finance.

By Mr. McCAIN:

S. 2034. A bill to establish certain requirements for the Secretary of the Interior to undertake environmental cleanup at the Phoenix Indian School property; to the Select Committee on Indian Affairs.

By Mr. DOLE:

S. 2035. A bill to amend the Federal Election Campaign Act of 1971 to tighten the prohibition of fraudulent misrepresentation of campaign authority; to the Committee on Rules and Administration.

By Mr. KASTEN:

S. 2036. A bill to improve the access of all individuals to health care and long-term care and to provide cost control through the reform of procedures relating to medical malpractice, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI:

S. 2032. A bill to amend the Alaska Native Claims Settlement Act to settle claims arising from the contamination of transferred lands, and for other purposes; to the Select Committee on Indian Affairs.

ANCSA LAND TRANSFER EQUITY ACT OF 1991

• Mr. MURKOWSKI. Mr. President, this year marks the 20th anniversary of the Alaska Native Claims Settlement Act. ANCSA, as it is commonly referred to, granted Alaska's Natives 44 million acres of land in Alaska and monetary compensation for the loss of title to their ancestral lands.

Enactment of this legislation in 1971 was a watershed event for the State of Alaska and Alaska Natives. The land grants and compensation contained in ANCSA are unprecedented. This law created business corporations based on existing Alaska Native communities instead of the old-style reservation system. These Alaska Native corporations became responsible for investing their monetary compensation and managing their lands and natural resources to the benefit of their all-Native shareholders. It set up a system whereby Alaska Natives could determine their own successes.

Many in Congress thought ANCSA would fail when it was passed 20 years ago. The settlement was a unique and untried model. Since 1971 the bill has been amended 38 times in efforts to fine tune it.

NEED FOR LEGISLATION

Mr. President, I rise today to introduce legislation that will fine tune this dynamic law once again. The ANCSA Land Transfer Equity Act of 1991 will correct a longstanding situation that has inhibited the ability of many of these Native corporations to realize

the full value of their lands as was intended by Congress.

Native corporations have already received title to 34 million acres of their original 44 million acre entitlement. Unfortunately, it has come to light that the Federal Government has transferred parcels of land to Native corporations that are contaminated with hazardous and toxic materials.

Mr. President, the Federal Government entered into a contract with Alaska Natives when ANCSA was enacted and the Federal Government has violated this contract by transferring land with hazardous waste on it. That was not supposed to be part of the deal. The whole point of ANCSA was to provide Native corporations with the means to provide for their people. The burden of hazardous waste liability seriously undermines the intent of this law and places great financial hardship on Alaska's Natives.

IMPACT ON NATIVE LANDS

Native corporations in Alaska are just starting to discover the size and scope of hazardous wastesites on lands transferred by the Federal Government. The Shee Atika Native Corporation in Sitka, AK, received the old Fort Ray site on the Alice and Charcoal Islands. There are 15 old transformers containing PCB-laden oil on the site and many of the buildings on the site are unusable due to asbestos contamination.

Twenty-two sites contaminated with hazardous waste are already listed on a preliminary Bureau of Land Management report. Old lighthouses, old Army and Navy sites, old mining sites, old Bureau of Indian Affairs schools, old canneries, and other problems make up the list. All of these sites contained this contamination before the land was transferred to the Native corporation.

LEGISLATION

Mr. President, my legislation will address this situation in a simple and equitable manner.

An affected Native corporation will be required to notify the Secretary of the Interior of contaminated sites. Within 1 year of notification, the Secretary is required to reach a settlement with Native corporation under which the Government either removes the hazardous substances or replaces the land with other contaminant-free lands of equal value. If the Native corporation contributed or generated hazardous wastes, they would be responsible for their actions.

CONCLUSION

The purpose of ANCSA is to come to fair and just settlement of all aboriginal land claims by Native groups of Alaska. Transfers of contaminated lands could hardly be construed as fair or just. The Department of Interior has indicated that they have some problems with my bill, however, they have not yet advised me of specific concerns or if, as I believe they should, even agreed that this is a serious problem. I believe that it is time to address this issue and I believe this is a fair way to satisfy Native corporations' rights and the Federal Government's responsibility under ANCSA. I look forward to working with the Department to resolve this issue and hope we can accomplish what is in the best interest of both the Department and the Alaska Native corporations.•

By Mr. DASCHLE:

S. 2033. A bill to expand the exclusion of services of election officials and workers from Social Security coverage; to the Committee on Finance.

EXPANSION OF EXCLUSION OF ELECTION OFFICIALS AND WORKERS FROM SOCIAL SECURITY COVERAGE

• Mr. DASCHLE. Mr. President, I rise today to introduce legislation to increase the Social Security exemption for election officials and election workers employed by State and local governments.

When Congress passed the Omnibus Budget Reconciliation Act of 1990, it extended Social Security requirements to include all election officials who earn $100 or more annually. These workers must be a member of a retirement plan operated by the State or local government or be required to pay the full Social Security tax.

Most election officials will exceed this $100 limit in just 2 days. Election officials in South Dakota and throughout the country are remarkably dedicated individuals who work 14- to 16-hour days while earning only minimum wage. The average election official in Minnehaha County, SD, earns approximately $120 to $225 a year, depending on the number of elections held. It is estimated that very few election officials anywhere in the country will actually earn more than $500 per year.

Many election supervisors anticipate the imposition of the Social Security requirements on election officials will have severe consequences for recruiting. It is expected that the reduction in income coupled with the requirement to fill out additional paperwork will deter many from serving in the election process. Moreover, retired volunteers, who make up a large portion of the work force, may fear that working on election day will jeopardize the benefits they currently receive from Social Security.

I have been informed by the secretary of state in South Dakota and numerous county auditors that the Social Security tax on election officials will not only negatively effect recruitment, but it will also increase the overall cost of administering elections. According to county auditors, Minnehaha County employs over 300 election officials on election day and, because their income is so near minimum wage, it pays both the employer and the employee share of the Social Security tax. This is estimated to cost Minnehaha County $10,000 in 1992. For more populated counties, the additional cost could reach well over $100,000. Moreover, counties will also face additional costs in accounting and paperwork required to implement the Social Security tax for election officials.

As a result, I am introducing a bill that will increase the Social Security exemption for election officials and election workers employed by State and local governments from $100 to $500. If counties in South Dakota and throughout the country are expected to continue recruiting an ample number of qualified individuals as election officials, it is imperative that we raise their Social Security exemption to $500. By so doing, we ensure the integrity of the election process and eliminate any undue administrative costs incurred by our counties that are responsible for its implementation.•

By Mr. McCAIN:

S. 2034. A bill to establish certain requirements for the Secretary of the Interior to undertake environmental cleanup at the Phoenix Indian School property; to the Select Committee on Indian Affairs.

ENVIRONMENTAL CLEANUP AT THE PHOENIX INDIAN SCHOOL

Mr. McCAIN. Mr. President, today, I'm introducing legislation which will require the Secretary of the Interior to remove asbestos bearing buildings and infrastructure constructed by the Federal Government on the Indian school property located in Phoenix, AZ.

Pursuant to the provisions of the Arizona-Idaho Conservation Act—Public Law 100-696—the Indian school property will be transferred from Federal ownership through a land exchange and purchase agreement.

Consummation of the agreement will provide significant benefits to the city of Phoenix, through the acquisition of important parkland and economic development; to the Federal Government, through the acquisition of land to expand the Big Cypress National Preserve; to Arizona's Native American population, through the creation of an Indian education trust fund; and to needy veterans, through the construction of a State veterans nursing home facility.

The only remaining obstacle to the finalization of this vital exchange and its associated benefits is a question over who will clean up asbestos within Federal buildings located on the Indian school property.

Mr. President, under the laws of this Nation, asbestos is considered to be a hazardous substance. In the case of the Indian school buildings, the Federal Government was responsible for putting the asbestos in place. By any measure of fairness, the Government should also be responsible for removing it.

I remind my colleagues, remediation of asbestos is a commitment we have made at military bases which will be closed or realigned. We have the same obligation as we transfer land held by the Department of the Interior.

I'm disappointed that the Secretary of the Interior does not appear to agree with that analysis. The Department refuses to remove asbestos from the Federal buildings on the Indian school property. While I hope that ongoing discussions with the Secretary will produce a fair and equitable resolution, until such time as we can resolve this matter, this legislation is necessary.

Clearly, accepting Federal responsibility for asbestos removal at the Indian school site is fair and in the national interest. Proper removal of asbestos will avoid potential Federal liability should the material cause sickness or injury. In addition, if the cleanup issue is not resolved and the land transfer and purchase agreement is vacated, the significant national benefits I mentioned previously will be lost. Recovering those losses will cost us a price far in excess of what would be required to complete the asbestos cleanup.

I hope that the Secretary will fully consider the implications of the Department's reluctance to accept responsibility. An unyielding adherence to an unfortunate policy threatens the public good.

We have an historic opportunity to create a large park and economic development for a major city, to protect vital wetlands, to provide significant resources for Indian education, and to construct facilities to care for aging veterans. Seizing that opportunity, as we must, requires the highest level of flexibility and cooperation, not reckless brinkmanship.

Again, this legislation will require the Secretary to demolish unwanted Phoenix Indian School buildings and remove asbestos from those structures and infrastructure which will remain on the site. Doing so will eliminate a health hazard, fulfill a Federal responsibility, and secure this important exchange and the many associated benefits for all concerned.

My colleague Congressman RHODES is introducing a companion bill in the House. I urge both the House and Senate to act expeditiously on this important matter.

By Mr. DOLE:

S. 2035. A bill to amend the Federal Election Campaign Act of 1971 to tighten the prohibition of fraudulent misrepresentation of campaign authority; to the Committee on Rules and Administration.

PROHIBITION OF FRAUDULENT MISREPRESENTATION OF CAMPAIGN AUTHORITY

Mr. DOLE. Mr. President, the 1992 Presidential election campaign is now underway. Candidates are spreading out through the States, money is being raised, and, if 1988 is any indicator, many Americans who think they are contributing to a candidate are being hoodwinked.

This is a lesson that I have learned the hard way. During my 1988 Presidential campaign, many Americans received a mailing from a group calling themselves Americans for Dole. The mailing urged its readers to take their place in history, and to send a check to Americans for Dole at P.O. Box 90271 in Washington, DC.

At the bottom of the letter, in very small type, no doubt unnoticed by the addressee, many of whom are elderly, was a disclaimer saying that Americans for Dole was "not authorized by any candidate or candidates' committee."

Those were about the only words on the letter that were truthful, Mr. President. Neither myself nor my committee authorized or had anything to do with Americans for Dole; nor did my campaign receive any of the reported $4 million they received from contributors who thought their money would go to support my campaign.

You see, Mr. President, Americans for Dole was really an effort to deceive Americans for someone else's gain. I have seen heartbreaking videotapes of elderly people, convinced they were giving to someone they respected, only to learn that they had fallen into a fundraising fraud. It is not right, and it ought to stop.

The scam did not stop with Americans for Dole. In fact, just a few P.O. boxes down from what many were led to believe was my campaign address was an organization called Americans for Bush.

And this group sent out an eloquent four-page letter urging Americans to help then Vice President Bush.

Again, small type on the bottom explains that the committee is not authorized by any candidate or candidate's committee.

With the number of Presidential candidates in the Democratic Party, you can bet that groups out to make a quick buck will soon be preying upon the American public once again.

Mr. President, it is my belief that, before the end of the year, Congress can send a bill to President Bush which would take a major step in putting these fly-by-night operations out of business.

So, I am introducing legislation to do just that. My bill would amend the Federal Election Campaign Act of 1971 by requiring anyone representing that they are soliciting or accepting a contribution on behalf of a candidate or political committee to actually pay any contribution received to the candidate or committee, and to inform them of the name of the contributor.

This proposal is similar to others that have been debated in Congress in recent sessions, but I was concerned that they did not go far enough. I was concerned that those sending misleading mailings would simply point to the small disclaimers at the bottom of their letters and say that these disclaimers mean they should be let off the hook.

Therefore, my legislation also requires that any such disclaimer will not be admissible in evidence in a legal proceeding unless the disclaimer is printed in the same size and given the same prominence as the most prominent display of a candidate's or political committee's name.

Mr. President, this is not a partisan proposal. Democrats, as well as Republicans, have been bilked—and will continue to be bilked—unless something is done.

We ask ourselves, "why are the American people so cynical about politics these days?"

Just look at some of these scams, and you will know the reason why.

Mr. President, my legislation is simple and straightforward. I believe it will get the job done and restore a little bit of respectability to the political process.

Mr. President, I send the bill to the desk and ask for it as an appropriate referral.

Mr. President, I might say that I have discussed this amendment with the distinguished chairman of of the Judiciary Committee, Senator BIDEN, and others, and there is still maybe some way to include it in some bill yet this year because, sure as I am standing here, there are going to be Americans for Senator HARKIN, Americans for KERREY, Americans for Wilder, and all the time they will be raking in the money; the candidates will never see it and a lot of well-intentioned people are simply being ripped off by someone and they ought to be severely penalized.

By Mr. KASTEN:

S. 2036. A bill to improve the access of all individuals to health care and long-term care and to provide cost control through the reform of procedures relating to medical malpractice, and for other purposes; to the Committee on Finance.

ACCESS TO HEALTH CARE FOR ALL AMERICANS ACT

• Mr. KASTEN. Mr. President, I rise today to introduce a strategy to address the serious health care problems facing my State and the rest of the country.

Action needs to be taken soon to address soaring health care costs which are depriving people of adequate health care. Health care costs are already eating up 12 percent of our gross national product, and this figure is jumping rapidly. Up to 37 million Americans are without health care insurance.

The magnitude and complexity of this problem requires that Congress,

the administration, and the American people work aggressively to form a consensus on how to move ahead. While many of us can agree that an overhaul of America's health care system is needed, we are divided over the solution and realize that comprehensive reform is not achievable during this Congress.

I believe strongly that there are certain actions we can take immediately to expand the access and availability of health care and control the escalating costs. Before the 102d Congress concludes, Congress should take action on small employer insurance market reform and on certain cost control measures in the area of medical malpractice and managed care.

Mr. President, I would hope that we will not wait until next year to extend the current tax deduction for health insurance costs of self-employed individuals and farmers. I would prefer that we pass legislation which I have sponsored the last two Congresses that increases permanently this deduction from 25 to 100 percent. But at the very least, if Congress is not going to afford the self-employed the same treatment given to large employers then it should extend the current deduction scheduled to expire at the end of this year.

Earlier this year, I joined with Senator BENTSEN, Senator DURENBERGER, and others in cosponsoring legislation to address the availability and cost of health insurance offered to small business owners. As ranking member of the Senate Small Business Committee, I hear often from small business owners in my State and across the country about the skyrocketing premiums which are hindering them from offering health insurance to their employees or else forcing them to drop coverage. This legislation is similar to a bipartisan small business initiative that overwhelmingly passed the Wisconsin State Assembly and is working its way through the State senate.

The GOP Health Care Task Force proposal, S. 1936, sponsored by Senator CHAFEE and the other members of the task force, including myself, contains similar small business health insurance language. This bill also contains needed cost control measures, such as medical malpractice reform and managed care initiatives. While I have reservations about certain provisions of the bill, I believe that this proposal provides an important contribution to the ongoing debate.

The legislation I am introducing today builds on these efforts. It contains four titles: Small employer market reform; cost control proposals; rural health improvement initiatives; and long-term care incentives.

SMALL EMPLOYER INSURANCE REFORM

Between 31 and 37 million Americans are without health insurance and in Wisconsin, approximately 500,000 residents lack coverage—65 percent of the uninsured are employed by small firms. According to surveys conducted by small business groups while small employers want to offer health care coverage they often simply can't afford it. A 1991 survey conducted by the Metropolitan Milwaukee Association of Commerce found that 80 percent of the respondents cited rate increases of up to 80 percent in the last year.

Several factors drive up the cost of health insurance policies: Expensive State mandates, unequal tax treatment, and certain insurance practices. My bill would establish basic health insurance policies that insurers would be required to offer—policies which would be free from State mandates. In addition, self-employed individuals and farmers would be allowed to deduct 100 percent of their health care costs—the same tax treatment offered to large businesses. This legislation would also establish Federal standards governing the sale of health insurance to small firms.

COST CONTROL CONTAINMENT

Managed care plans offer the hope of controlling runaway health care costs. Instead of reimbursing providers retrospectively on a fee-for-service basis, these plans allow employers and insurers to contract prospectively with providers and therefore exercise greater control over health care expenditures.

This bill would require the Secretary of Health and Human Services to develop standards for managed care plans that insurers would be required to meet. In addition, this legislation would preempt State antimanaged care laws for plans that meet these standards.

For years, I have fought for product liability reform in order to reduce the destructive impact excessive liability costs have on our economy. In keeping with these efforts, this bill contains medical malpractice reform provisions to reduce the cost of malpractice premiums and defensive medicine. The cost of medical liability is estimated to cost $15 billion annually and is estimated to account for roughly 15 percent of total expenditures on physician services.

RURAL HEALTH CARE INITIATIVES

Unfortunately, the quality of rural health care is reaching a critical point in Wisconsin. According to the University of Wisconsin's Office of Rural Health, almost 1 in 5 Wisconsin residents live in health professional shortage areas, with less than 1 medical professional for every 3,500 residents. People do not have ready access to primary care and must travel as much as an hour to reach the nearest doctor.

This legislation addresses the access problem by expanding the National Health Service Corps, which is staffed by health providers who agree to serve in exchange for financial assistance with their educational expenses. After their education, they agree to practice in a health professional shortage area.

In addition, my bill increases funding for area health education centers which have proven to be effective in providing education and clinical instruction in underserved areas.

LONG-TERM CARE

Finally, this legislation addresses the long-term care crisis we are facing in this country. My bill would provide senior citizens and other Americans with tax-based assistance to purchase long-term care insurance. It would also allow individuals to roll over funds held in IRA's to long-term care insurance without penalty

Mr. President, this legislation contains proposals that Congress could enact now to provide immediate relief to the uninsured and medically underserved people in this country. I hope that Congress and the administration will be able to work together next year on these initial steps to improve the access and affordability of health care for this country.●

ADDITIONAL COSPONSORS

S. 644

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. 644, a bill to amend the Budget Enforcement Act of 1990 to allow offsetting transfers among discretionary spending categories.

S. 1725

At the request of Mr. DIXON, the names of the Senator from Virginia [Mr. WARNER], and the Senator from Missouri [Mr. BOND] were added as cosponsors of S. 1725, a bill to authorize the minting and issuance of coins in commemoration of the quincentenary of the first voyage to the New World by Christopher Columbus and to establish the Christopher Columbus Quincentenary Scholarship Foundation and an Endowment Fund, and for related purposes.

S. 1886

At the request of Mr. MCCONNELL, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 1886, a bill to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the medicaid program and to maintain the treatment of intergovernmental transfers as such a source.

SENATE JOINT RESOLUTION 99

At the request of Mr. GLENN, the name of the Senator from California [Mr. SEYMOUR] was added as a cosponsor of Senate Joint Resolution 99, a joint resolution designating November 24-30, 1991, and November 22-28, 1992, as "National Family Caregivers Week."

SENATE JOINT RESOLUTION 125

At the request of Mr. PACKWOOD, his name was added as a cosponsor of Sen-

ate Joint Resolution 125, a joint resolution to designate October 1991 as "Polish American Heritage Month."

AMENDMENTS SUBMITTED

TREATY ON CONVENTIONAL ARMED FORCES IN EUROPE

COHEN EXECUTIVE AMENDMENT NO. 1432

Mr. COHEN proposed an amendment to condition No. 5 of the resolution of ratification to Treaty Doc. No. 102-8, the Treaty on Conventional Armed Forces in Europe, as follows:

In the language proposed to be inserted by the Committee amendment, strike subparagraph (C) of condition (5) and insert in lieu thereof the following:

"(C) shall, if he has made the determination and decision described in subparagraph (B)—

"(i) submit for the Senate's advice and consent any change in the obligations of the states parties under the Treaty that is designed to accommodate such circumstances and is agreed to by all states parties, unless such change is a minor matter of an administrative or technical nature; or

"(ii) if no such change in the obligations of the states parties is agreed to by all states parties but the President determines nonetheless that continued adherence of the Treaty would serve the national security interests of the United States, seek the Senate's advice and consent to such continued adherence, notwithstanding the changed circumstance affecting the Treaty's object and purpose.".

SMITH (AND WALLOP) EXECUTIVE AMENDMENT NO. 1433

Mr. SMITH (for himself and Mr. WALLOP) proposed an amendment to the resolution of ratification to Treaty Doc. 102-8, supra, as follows:

Add after Condition (a)(5)(C), the following condition:

"(6) U.S. OBLIGATION TO THE TERMS OF THE TREATY.—The United States shall not be bound by the terms of the Treaty unless and until the Congress has received, pursuant to public law 99-145, the President's Soviet Noncompliance with Arms Control Agreement report and the President has certified through the report that the Soviet Union is not in violation or probable violation of the terms of the CFE Treaty and protocols thereto.".

RESERVATION OF CERTAIN HOUSING ASSISTANCE

RIEGLE (AND CRANSTON) AMENDMENT NO. 1434

Mr. MITCHELL (for Mr. RIEGLE, for himself and Mr. CRANSTON) proposed an amendment to the bill (H.R. 3576) to amend the Cranston-Gonzalez National Affordable Housing Act to reserve assistance under the HOME Investment Partnerships Act for certain insular areas, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. RESERVATION OF ASSISTANCE.

Section 217(a) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(a)) is amended—

(1) in the first sentence of paragraph (1), by inserting "and after reserving amounts for the insular areas under paragraph (3)" before the first comma; and

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

"(3) INSULAR AREAS.—

"(A) IN GENERAL.—For each fiscal year, of any amount approved in an appropriations Act to carry out this title, the Secretary shall reserve for grants to the insular areas an amount that reflects—

"(i) their share of the total population of eligible jurisdictions; and

"(ii) any adjustments that the Secretary determines are reasonable in light of available data that are related to factors set forth in subsection (b)(1)(B).

"(B) SPECIFIC CRITERIA.—The Secretary shall provide for the distribution of amounts reserved under this paragraph among the insular areas in accordance with specific criteria to be set forth in a regulation promulgated by the Secretary after notice and public comment.

"(C) TRANSITIONAL PROVISIONS.—For fiscal year 1992, the reservation for insular areas specified in subparagraph (A) shall be made from any funds which become available for reallocation in accordance with the provisions of section 216(6)(A).".

SEC. 2. DEFINITIONS.

Section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704) is amended—

(1) in paragraph (1), by striking "Guam" and all that follows through "the Marshall Islands" and inserting "the insular areas"; and

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

"(24) The term 'insular areas' means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.".

SEC. 3. EXTENSION OF TIME TO SUBMIT CDBG STATEMENT.

Notwithstanding any other provision of law, the City of Petersburg, Virginia is authorized to submit not later than 10 days following the enactment of this Act, and the Secretary of Housing and Urban Development shall consider and accept, the final statement of community development objectives and projected use of funds required by section 104(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(a)(1)) in connection with a grant to the City of Petersburg under title I of such Act for fiscal year 1991.

SEC. 4. LOW-INCOME HOUSING COVENANTS.

Section 515(p)(4) of the Housing Act of 1949 (42 U.S.C. 1485(p)(4)) is amended by adding at the end "The preceding sentence shall not be interpreted as authorizing the Secretary to—

"(A) limit the ability of a housing credit agency to require an owner of housing, in order to receive a low-income housing tax credit, to enter into a restrictive covenant, in such form and for such period as the housing credit agency deems appropriate, to maintain the occupancy characteristics of the project as prescribed in section 42(h)(6) of the Internal Revenue Code of 1986; or

"(B) deny or delay closing of financing under this section by reason of the existence, or occupancy terms, of any such restrictive covenant.".

BREAUX (AND JOHNSTON) AMENDMENT NO. 1435

Mr. MITCHELL (for Mr. BREAUX, for himself and Mr. JOHNSTON) proposed an amendment to amendment No. 1434 proposed by Mr. MITCHELL (for Mr. RIEGLE) to the bill H.R. 3576, supra, as follows:

At the appropriate place, insert

SEC. . Notwithstanding the time limit set forth in section 1363(c) of the National Flood Insurance Act of 1968 (42 U.S.C. 4104(c) and (d)), St. Charles Parish, Louisiana, may file an appeal with the Director of the Federal Emergency Management Agency with respect to certain flood elevation determinations for the area in and near the Ormond Country Club Estates located in St. Charles Parish, Louisiana, not later than June 1, 1992.

SILVIO O. CONTE NATIONAL FISH AND WILDLIFE REFUGE

BURDICK (AND CHAFEE) AMENDMENT NO. 1436

Mr. MITCHELL (for Mr. BURDICK, for himself and Mr. CHAFEE) proposed an amendment to the bill (H.R. 794) to establish the Silvio O. Conte National Fish and Wildlife Refuge along the Connecticut River, and for other purposes, as follows:

On page 26, strike lines 13 through 25, insert in lieu thereof the following, and redesignate titles II and III and the sections therein accordingly:

SEC. 109. INTERPRETATION AND EDUCATION CENTER.

(a) IN GENERAL.—The Secretary is authorized to construct, administer, and maintain at appropriate sites within the refuge, or pursuant to subsection (b) cooperate in the construction, operation and maintenance at an appropriate site, not more than four aquatic resources and wildlife interpretation and education centers, known as Silvio Conte National Fish and Wildlife Refuge Education Centers, along with administrative facilities, to provide opportunities for the study, understanding, and enjoyment of aquatic resources and wildlife in its natural habitats.

(b) COOPERATIVE AGREEMENTS.—The Secretary is authorized:

(1) to enter agreements to share the construction and operation of and the land acquisition for the center, including the costs thereof, with state and local governments and other public and private entities;

(2) to utilize appropriated or donated funds for construction, operation and maintenance expenses, provided that Federal interests arising from such expenditures are protected by a long-term lease, agreement, or transfer of property interest; and

(3) to interpret the Connecticut River's aquatic and wildlife resources in the context to the region's cultural, geological, and ecological history.

SEC. 110. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this Act.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. ESTABLISHMENT AND TERMS OF SILVIO O. CONTE MEMORIAL SCHOLARSHIP FUND.

(a) IN GENERAL.—In recognition of Silvio O. Conte's longstanding contribution and devo-

tion to the conservation of our Nation's natural resources, and his life-long commitment to education, the Director of the United States Fish and Wildlife Service, hereinafter referred to as the Director, is authorized to enter into an agreement with the National Fish and Wildlife Foundation, hereinafter referred to as the Foundation, and the University of Massachusetts/Amherst, hereinafter referred to as the University, to establish the Silvio O. Conte Memorial Scholarship Fund. The purpose of the agreement is to encourage students to enter the fields of fisheries and wildlife ecology and conservation, natural resources policy and administration, or ecology by establishing a scholarship fund at the University.

(b) TERMS OF AGREEMENT.—Notwithstanding the provisions of the Federal Grant and Cooperative Agreements Act of 1977 (31 U.S.C. 6301–6308), the agreement authorized under subsection (a) of this section shall direct that the University shall:

(1) establish the Silvio O. Conte Memorial Scholarship Fund for the purpose of awarding scholarships for a period not exceeding three years to eligible candidates in advanced degree programs in the fields of fisheries and wildlife ecology and conservation, natural resources policy and administration, or ecology;

(2) invest funds provided by the Director, the Foundation and any other conributors in interest-bearing accounts;

(3) award scholarships annually utilizing the interest generated from such investment accounts minus the amount equal to inflation;

(4) match the scholarship awards with in-kind contributions of equal value, such as waivers of tuition or fees or the provision of other financial aid;

(5) establish eligibility criteria based upon financial needs, academic achievement, and potential contribution of the profession;

(6) announce the availability of the scholarship in a manner which ensures that it is widely distributed and that minority and socially-disadvantaged candidates are made aware of the opportunity;

(7) upon request by the Director, make available the investment accounts for his inspection; and

(8) prepare and provide to the Director annually a report regarding the expenditures from the investment accounts which shall include the number of scholarships awarded, the amount of each scholarship, and the share of each scholarship provided by the University.

(c) AUTHORIZATION.—The Director is authorized to make a one-time contribution of up to $50,000 to the University to establish the Silvio O. Conte Memorial Scholarship Fund.

(d) TERMINATION OF AGREEMENT.—At such time as the parties agree to terminate the agreement authorized under subsection (a) of this section, the principle and interest in the account shall be deposited in the Migratory Bird Conservation Fund.

SEC. 202. WILDLIFE INTERPRETATION AND EDUCATION CENTER.

Title II of Public Law 100-610 is amended by adding at the end the following new section:

"Section 208. Wildlife Interpretation and Education Center.

"(a) The Secretary is authorized to construct, administer, and maintain at an appropriate site, a wildlife interpretation and education or visitor center.

"(b) The Secretary is authorized—

"(1) to enter agreements to share the construction and operation of and the land acquisition for the center, including the costs thereof, with state and local governments and other public and private entities;

"(2) to utilize appropriated or donated funds for construction, operation and maintenance expenses, provided that Federal interests arising from such expenditures are protected by a long-term lease, agreement, or transfer of property interest; and

"(3) to interpret the Pettaquamscutt Cove region's aquatic and wildlife resources in the context of the region's cultural, geological, and ecological history.".

SANFORD AMENDMENT NO. 1437

Mr. MITCHELL (for Mr. SANFORD) proposed an amendment to the bill H.R. 794, supra, as follows:

Add at the appropriate place in the bill the following new section:

SEC. . COST-SHARING FOR STATE COASTAL WETLANDS GRANTS.

(a) FEDERAL SHARE.—Section 305(d)(1) of the Coastal Wetlands Planning, Protection and Restoration Act (16 U.S.C. 3954(d)(1)) is amended by striking "has established a trust fund, from which the principal is not spent, for the purpose of acquiring coastal wetlands, other natural area or open spaces." and inserting in lieu thereof—

"has established and is using one of the following for the purpose of acquiring coastal wetlands, other natural areas or open spaces:"

"(A) a trust fund from which the principal is not spent; or

"(B) a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees or taxes, cigarette taxes, tax checkoffs, or motor vehicle license plate fees."

(b) EFFECTIVE DATE.—This amendment shall apply to grants awarded in fiscal year 1992 and each fiscal year thereafter.

DECONCINI AMENDMENT NO. 1438

Mr. MITCHELL (for Mr. DECONCINI) proposed an amendment to the bill H.R. 794, supra, as follows:

On page 27, strike lines 1 through 13.

ADDITIONAL STATEMENTS

NEW PHYSICIAN FEE SCHEDULE

• Mr. CRAIG. Mr. President, as this session of the Congress draws to a close, many problems remain unresolved. One problem, that I am very concerned about is the new physician fee schedule. The final regulations for the new fee schedule will not be out until Monday, November 25, leaving no time for any problems to be resolved prior to implementation in January.

I have received numerous letters from senior citizens in my State sharing their problems about finding a doctor, because they are on Medicare. Health care providers in Idaho are on the low end of the reimbursement scale already. Therefore, any further reduction only enhances the access problem for seniors in my State.

Mr. President, I have also received many letters from doctors who are outraged at the continual cuts in reimbursements, and fed up with the paperwork hassles of Medicare. Some of those letters have been from doctors who say they simply cannot afford to take new Medicare patients. Idaho has a shortage of health care providers. The problems that have occurred with the new physician fee schedule have only aggravated this situation. Not only do we have the worst doctor-to-patient ratio in the Nation, but now some of those doctors are limiting or refusing to take Medicare patients. Our rural doctors work long hours and cover large, under-served areas. The Government cannot expect them to continue to participate in a program that continues to cut reimbursements while piling on additional paperwork hassles.

Mr. President, I met with Dr. Wilensky to discuss various aspects of the regulations. Let me take a moment to say that I greatly appreciate her efforts in trying to resolve the problems in the preliminary regulations. We discussed various concerns that doctors from Idaho had expressed to me, to include the behavioral offset which is the most onerous problem to the doctors—especially for those who have no control of their patient flow and depend on referrals. It is my understanding, after our conversation, that in order to keep the fee schedule budget neutral, HCFA is required to keep the behavioral offset at 6 percent. It frustrates me that because of budget rules, the intent of Congress cannot be carried out and now we must look at legislative ways of resolving remaining problems.

Legislation has been introduced, S. 1810, which addresses a number of the problems that were highlighted in the proposed regulations. I support the intent of this legislation but have grave reservations about its cost. Mr. President, after a long and careful review of this bill I have decided not to cosponsor S. 1810 at this time. Not only is the cost of the bill almost $6 billion, but no offset has been found in the budget, and this flaw prevents the legislation from moving. Therefore, it is no solution. I agree with the message the bill is sending, but I cannot cosponsor this bill without an offset to cover the price tag.

Mr. President, it is my hope that when the final regulations are published, most of the problems with the new fee schedule will be resolved. However, should that not be the case, this Senator will be looking for solutions that can win passage, and are fiscally responsible.•

S. 1942—THE REGULATORY REVIEW SUNSHINE ACT

• Mr. GLENN. Mr. President, the Committee on Government Affairs, of which I am chairman, is responsible for overseeing the process by which the ex-

ecutive branch implements law. The committee has a long and proud record, going back many years, of making sure that process is as open and fair as possible. The Federal Advisory Committee Act and the Government in the Sunshine Act are two excellent examples of how this committee has contributed to greater openness and accountability in the executive branch.

In 1980, Congress created OMB's Office of Information and Regulatory Affairs [OIRA], through enactment of the Paperwork Reduction Act [PRA]. The act gave OIRA the responsibility of reducing the Government paperwork burden and increasing the efficiency of Government information activities.

The arrival of a new administration created a new set of priorities for OIRA. President Reagan issued Executive orders 12291 and 12498 which gave OIRA major responsibility for regulatory review. The 1980 act did not anticipate these Executive Orders and therefore did not establish procedures for public participation in OIRA regulatory review.

Members of the committee recognized the importance of shedding light into the shadows of OIRA regulatory review. In 1982, Senator RUDMAN and LEVIN proposed a floor amendment that would have brought the light of day to OIRA regulatory review. In 1986, an administrative agreement was reached in conjunction with reauthorization of the Paperwork Reduction Act that required partial public disclosure of the OIRA process.

That agreement did not pull the curtain back far enough. In 1989, Senator BINGAMAN introduced legislation to reauthorize the Paperwork Reduction Act that contained extensive sunshine provisions to cover regulatory review. Those provisions were in the legislation reported out by this committee on June 7, 1990.

When the administration threatened a veto of the legislation, we negotiated a compromise with them to put regulatory review procedures in an Executive order to be issued upon passage of the PRA. Well, as many know, this bipartisan agreement was killed in the waning moments of the session by a series of anonymous Republican rolling holds.

I was satisfied with last year's compromise agreement and I wanted to move the legislation when the Senate reconvened early this year. But when I went to reintroduce our compromise, the administration backed away from its support.

In addition, I learned this year that at the same time we were negotiating with the administration on regulatory review procedures for OMB, the White House was establishing the Council on Competitiveness as the new overseer of agency rulemaking.

On April 17 of this year, Senators LEVIN, KOHL, and I wrote the Vice President inquiring as to the Council's role in regulatory review. We received a response back from Al Hubbard, Executive Director of the Council, that included only fact sheets and press releases on the Council. The three of us then sent another letter requesting that our original inquiry be properly answered.

However, it was not until October 22, after Senator LEVIN and I met with Vice President Quayle and alerted him of our October 24 hearing, that we received a response to our questions addressed some 6 months before. Even then, that response did not fully answer our questions.

The committee held hearings on regulatory review on October 24 and November 15. Both times we invited a representative of the Council to testify. Both times we were refused.

I heard just the other day that the Council's Deputy Director, David McIntosh, recently spoke before the Chamber of Commerce on the Council's role in regulatory review. There is some irony in the fact that while Mr. McIntosh is willing to speak before the Chamber of Commerce, he is not willing to do so before a Senate committee.

It is clear to me that the council has taken the scepter of regulatory review from OMB. It is also clear to me that the Council has not respected this committee's repeated requests for information about its participation in agency rulemaking.

In response to repeated stonewalling by the administration, I introduced legislation, S. 1942—the Regulatory Review Sunshine Act, on November 7 that would open up the Council and OMB's regulatory review activities to the public eye. The committee marked up the bill on November 22 and reported it out by a vote of 8 to 3.

I have been burned twice by the administration and certain Republicans on regulatory review. I want to move this bill to the Senate floor as expeditiously as possible. The issues of openness and accountability resonate powerfully with the American public and they deserve a response to the Council's secretive decisions on rules that literally impact thousands of lives.●

S. 243, THE OLDER AMERICANS ACT REAUTHORIZATION AMENDMENTS OF 1991

● Mr. BROWN. Mr. President, I rise today to express concern about the status of S. 243, the Older Americans Act Reauthorization Amendments of 1991. The Senate passed S. 243 on November 12 and appointed conferees. In the past 11 days, the House of Representatives has not acted to appoint conferees.

The programs reauthorized by this act are crucial to the well-being of millions of older Americans. It is important that the House appoint conferees to meet with Members of the Senate to resolve the remaining two points of difference which exist on this bill—the McCain amendment on Social Security earnings test repeal and the Brown amendment to secure continuation of the toll free lines for Medicare beneficiaries and providers.

It is my hope that a conference on S. 243 will be held before we adjourn.●

W.S. WHITE, JR., CHAIRMAN OF AMERICAN ELECTRIC POWER CO., RETIRES

● Mr. GLENN. Mr. President, an internationally recognized leader in the electric utility industry, W.S. White, Jr., is retiring from his position as chairman of the American Electric Power Co. at the end of this year.

Mr. White is the sixth chairman of the board in the 85-year history of American Electric Power, an office he has held since 1976. He also served as chief executive officer of AEP and all its subsidiary companies from 1976 until the end of 1990. Under his direction, the Columbus, OH, headquartered American Electric Power has been a valuable corporate citizen of Ohio and the six other States that comprise the operating area of the AEP system.

In 1984, Mr. White became the first American to be elected president of CIGRE, the Paris-based International Conference on Large High-Voltage Electric Systems. CIGRE fosters the technical exchange of new information on literally every aspect of research, development and operation of high-voltage transmission systems throughout the world.

Mr. White's international credentials were again recognized in 1989, when he was named by President Bush to a Presidential delegation to Poland in order to assist in its economic reform and to support its transition to a democratic government.

In 1989, Mr. White received the James H. McGraw Award for Electric Utilities from Electrical World magazine. According to the citation, Mr. White received the honor "for the continued leadership he provides for his company and the utility industry; for his championing of innovation; and for his high standards." In addition, the award stated, "Under his leadership, AEP has continued and extended the company's long-held reputation for innovation in technical and management areas."

Under Mr. White's leadership, AEP has achieved another international first by successfully converting the Wm. H. Zimmer Generating Station near Cincinnati, OH, from a nuclear to a coal-fired facility, using a high percentage of the equipment intended for the original nuclear plant. This was accomplished ahead of schedule, under budget, with the most modern pollution abatement equipment so the plant meets the very stringent environment requirements set by the Clean Air Act of 1990.

With his direction, AEP has also become a national leader in the development of clean coal technology. AEP is demonstrating the capability of its pressurized fluidized bed combustion [PFBC] process at its Tidd PFBC demonstration plant near Steubenville, OH. This method has the capability of burning high-sulfur coals while eliminating 90 percent of the sulfur dioxide emissions and approximately half of the nitrogen oxide emissions.

During his years as chairman, American Electric Power [AEP] has constructed and placed in service four 1,300-kilowatt generating units—including the one at Zimmer—that are the largest and most efficient coal-fired units in the world. During that time, AEP has also completed its 2,022-mile network of 765,000-volt transmission lines, and now operates more miles of 765,000-volt lines than all other U.S. electric utility companies combined.

A member of the National Academy of Engineering, Mr. White is also president of Ohio Valley Electric Corp., and its subsidiary, Indiana-Kentucky Electric Corp. Together, these two utilities, which are owned by a consortium of electric utilities in the Midwest, supply all of the electric energy requirements of the U.S. Department of Energy's uranium-enrichment plant at Piketon, OH.

A native of Norfolk County, VA, Mr. White is a U.S. Navy veteran of World War II and an electrical engineering graduate of Virginia Polytechnic Institute and State University. He earned a master's degree from Massachusetts Institute of Technology, where he was a Sloan fellow.

In addition, Mr. White has been particularly active in civic and community affairs in his home city of Columbus, OH, where he has served as general chairman of the United Way Campaign; director and member of the executive committee of the Columbus Area Chamber of Commerce, and a director of the Riverside Methodist Hospital. He is also chairman of Greater Columbus Convention Center Board of Trustees, a trustee of Battelle Memorial Institute, a director of the Bank of New York, and a director of Methodist Theological School of Ohio.

Mr. White's dedicated 43-year career with the AEP system has been highlighted by many significant contributions to the reliability and dependability of our Nation's electric energy supply. His contributions also extend to the enhancement of international developments in the supply of electric energy. His leadership, expertise, and good counsel will be missed and Mr. White is deserving of our Nation's gratitude for his efforts on behalf of our country's electric utility industry.●

WE MUST REFLECT THE CHANGING WORLD

● Mr. KERRY. Mr. President, in the past 2 years, we have seen tumultuous changes in the world order that few, if any, would have predicted a year or two in advance of their occurrence. The cold war, and the confrontation of the two nuclear superpowers, which had the Iron Curtain as its symbolic and actual focal point, is over.

The Eastern European nations that had been captive satellites of the Soviet Union rapidly experienced democratic spontaneous combustion.

The much-feared Communist bulwark, the Soviet Union, has ceased to exist as a meaningful entity, destroyed by the centrifugal forces of individual liberty, revulsion over totalitarian abuses, and disgust and impatience with the abject failure of the state-controlled economic system to provide an acceptable standard of living for its people.

Mr. President, for 40 years our fear of Soviet expansionism was arguably the most significant force in determining how this Nation would spend a substantial portion of its gross national product. While those expenditures had some beneficial spinoff effects for civilian America, in the largest measure what we spent for increasingly expensive and complex armaments represented amounts we could not spend to improve our standard of living, and to combat social problems and meet human needs.

In previous years, many felt that the ultimate course of the changes in the Soviet Union was uncertain. But it is now clear—following the abortive coup in the summer—that the changes in the Soviet Union are irreversible, and that the Soviets no longer possess the will to threaten or harm the United States.

To be sure, there are still thousands of nuclear weapons and a sobering conventional arsenal located on the territory of the former Soviet Union. It is vital that we do all we can to hasten the disposal and deactivation of as much of this weaponry as possible. And, while it remains in existence and useable, we cannot, and must not, become complacent and dismiss the harm it could wreak should circumstances change dramatically among the Republics of the former Soviet Union.

Nonetheless, the great majority of close observers of the Soviet system and culture agree that the cold war is now a relic. It is a wonderfully appealing prospect—a joyous prospect—that our nation finally can cease the investment of massive resources—financial, intellectual, and other—in defending against the Soviet threat. To be sure, we continue to have—and will have for the foreseeable future—very significant national security needs. The world is an uncertain place, and can pose significant threats. Saddam Hussein aptly demonstrated this reality. We must be ready and equipped to deal with such threats. But the nature of that threat, and the nature of the force structure and armaments we must have to be ready for it—and, further, to deter those who would challenge the interests of the United States or the principles of international relations and conduct it values and honors—is very different today than it was even a year ago.

Mr. President, the Defense appropriations bill on which we voted today is, in many respects, a relic even as we vote on it. The Federal budget process necessarily entails significant lead time. It is a sheer impossibility to develop and enact a nearly $300 billion budget in a brief period of time. It is equally impossible to turn an ocean liner on a dime. The fact is that the dramatic events to which I earlier referred altered the world's fabric—after the complexion of this bill had already been determined.

If we were just beginning to write this bill today, rather than many months ago, I am fully confident it would be a different bill. But as much as I wish this institution and this and other bills could be instantly reflective of major changes in the world, it would be entirely unrealistic and unreasonable to insist that be the case. Insistence on the impossible is certain to be disappointing.

Unquestionably the Senate's Subcommittee on Defense, its distinguished chairman, Mr. INOUYE, and ranking Republican, Mr. STEVENS, and its capable staff, and the full Appropriations Committee, worked diligently to produce this bill. They deserve our appreciation and the Nation's appreciation for the effort they have invested.

And some of the changes in this bill from last year are appealing. While the bill could not, in fact, be turned on a dime, in many key respects it acknowledges that change is occurring and begins to make adjustments. Funding is reduced for the MX missile and eliminated for Tomahawk nuclear cruise missiles. Funding is reduced for research and development on kinetic energy antisatellite weapons. No additional B-2 bombers will be procured unless both Houses of the Congress affirmatively vote for such procurement.

The bill also has some important assistance for Massachusetts at a time when my State is in difficult economic shape and so many people are out of work or underemployed, or at risk.

The bill includes $6 million for Northeastern University to build an Advanced Materials Research and Development Center. The center will be extremely important for United States defense needs, especially fighter aircraft, weapons programs, and logistical support systems.

Most of the over $30 million necessary to build the center is going to

come from the university and private sources even though it will be extremely useful to the national interest. But, in order to insure that it gets built it needs this Federal support as well.

The bill also includes $2 million to fund the Center for Complex Systems at Brandeis University in Waltham, MA. This center has previously received Federal appropriations of $7 million. The university expects to offer several million in a matching grant to complete the project.

Researchers at the center specialize in basic and applied brain research, which has application to medical problems such as Alzheimer's disease, drug addiction, and learning disabilities. Their study of the brain involves multidisciplinary efforts in neurosciences, linguistics, computer science, psychology, chemistry, and physics. At the center, Brandeis has included more relevant disciplines under one umbrella than any other institution attempting to work on the brain and nervous system.

The bill also provides $15 million for the Woods Hole Oceanographic Institution to refurbish two WHOI research vessels and get them out of dry dock. The vessels are operated jointly by the WHOI, the Office of Naval Research [ONR], and Scripps Oceanography Institute in La Jolla.

These ships are vital to oceanographic research and will greatly enhance U.S. capabilities in the fields of biological, physical, and chemical oceanographic research.

And the bill also includes $29 million for Boston University to build a research facility.

Thus, on balance, I believe the work of the committee warrants support as it finishes the process begun a year ago, especially given the committee's willingness to take advantage of Massachusetts' special resources to strengthen our long-term national research capabilities.

While I am therefore supporting this bill, it is essential that the Congress recognize, and with respect to defense expenditures, that the Armed Services Committees and the Defense Appropriations Subcommittees in particular recognize, that the world has changed. As work begins in the near future to fashion the fiscal year 1993 defense authorization and appropriations bills, recognition of the changing world order must be reflected in those bills.

Business as usual no longer can be accepted, and this Senator no longer will accept it.

Mr. President, we have no need for additional strategic nuclear weapons or delivery systems. We have more than enough tactical nuclear weapons and delivery systems. Next year's defense bills must so reflect.

While I have always supported and will continue to support reasonable research and development efforts to be certain our defense know-how remains second to none, we have no further need for applied research aimed at creating a star wars system to defend against a Soviet nuclear attack that will never come—a system, I might add, that could not have been workably implemented in any event. The 1993 bills should so reflect.

We have reason to celebrate, Mr. President—because of the sweeping and welcome changes we have witnessed in the Soviet Union and Eastern Europe in the past 2 years, because the world is a safer place as a result, and because we can now reduce the share of our national wealth we invest in national security programs and reinvest some of that wealth in ways that will improve the health, the education, and the living standards of our people while reducing, as well our overwhelming national debt.

Today is the line of demarcation. This Defense appropriations bill is the last in a long line. Within it can be seen signs of the tremendous changes that can and must come in future years.●

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER [Mr. CRANSTON]. Without objection, it is so ordered.

ADJOURNMENT FOR 10 SECONDS

Mr. MITCHELL. Mr. President, I now move that the Senate stand in adjournment for 10 seconds; that upon reconvening, the Journal of the proceedings be deemed approved to date; the call of the calendar be waived; that no motions for resolutions come over under the rule; and that the morning hour be deemed to have expired; and that the time for the two leaders be waived.

The motion was agreed to, and at 7:05 and 36 seconds p.m. on Saturday, November 23, 1991, the Senate adjourned until 7:05 and 46 seconds p.m., the same day.

AFTER ADJOURNMENT

SATURDAY, NOVEMBER 23, 1991

The Senate met at 7:05 and 46 seconds p.m., pursuant to adjournment, and was called to order by Hon. ALAN CRANSTON, a Senator from the State of California.

MEDICAID MORATORIUM AMENDMENTS ACT OF 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 353, H.R. 3595, Medicaid Moratorium Amendments Act of 1991.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3595) to delay until September 30, 1992, the issuance of any regulations by the Secretary of Health and Human Services changing the treatment of voluntary contributions and provider-specific taxes by States as a source of a State's expenditures for which Federal financial participation is available under the medicaid program and to maintain the treatment of intergovernmental transfers as such a source.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

Mr. DOLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

MOTION TO PROCEED

Mr. MITCHELL. Mr. President, I move that the Senate proceed to the consideration of Calendar No. 353, H.R. 3595, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the motion to proceed to H.R. 3595, the Medicaid Moratorium Amendments of 1991.

George Mitchell, Lloyd Bentsen, Paul Simon, Pat Leahy, Alan Cranston, Edward Kennedy, Al Gore, Daniel P. Moynihan, Claiborne Pell, Wendell Ford, Dale Bumpers, Frank R. Lautenberg, Kent Conrad, Jim Sasser, Max Baucus, and Daniel K. Inouye.

MOTION TO PROCEED TO H.R. 3595 WITHDRAWN

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

TIME-LIMITATION AGREEMENT—H.R. 3807

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Sen-

ate considers Calendar No. 342, H.R. 3807, the Conventional Forces in Europe Treaty Implementation Act of 1991, that it be considered under the following limitations:

That no motion to commit be in order; that the only first-degree amendments in order to the bill be the following, with relevant second-degree amendments in order to the Nunn-Lugar-Boren amendment and the Boren-Cohen and others amendment.

And the first-degree amendments are: a Nunn-Lugar—Boren authorizing amendment subject to appropriations regarding $500 million for dismantling nuclear weapons in the Soviet Union, subject to verification; a Boren-Cohen and others amendment regarding emergency military airlift to Soviet Union for humanitarian purposes; a Cranston-Pell amendment regarding nuclear weapons enhancing security through the promotion of democracy in the Soviet Union; and a Danforth amendment regarding TWA [PBGC]; and further that this agreement may be vitiated by the majority leader after consultation with the Republican leader prior to 10 a.m., on Monday, November 25.

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

ORDERS FOR MONDAY, NOVEMBER 25, 1991

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 10 a.m. Monday, November 25; that following the prayer, the Journal of Proceedings be deemed approved to date; the time for the two leaders be reserved for their use later in the day; and the Senate proceed immediately to the consideration of Calendar No. 342, H.R. 3807, an act to amend the Arms Export Control Act to authorize the President to transfer battle tanks, artillery pieces, et cetera, to NATO member countries in conjunction with implementation of the CFE Treaty; that at 12 noon, H.R. 3807 be temporarily laid aside, the Senate have 1 hour of debate on the motion to invoke cloture on the motion to proceed to H.R. 3595, the Medicaid Moratorim Amendments of 1991, immediately preceding the 1 hour of debate from 1 p.m. to 2 p.m. reserved under the previous order for debate on the CFE Treaty; and that the votes in relation to the matters just listed occur in the following order at 2 p.m. on Monday;

First, the Smith condition to the resolution of ratification of the CFE Treaty; second, adoption of the resolution of ratification of the CFE Treaty; and, third, waiving the mandatory live quorum under rule XXII, on the motion to invoke cloture on the motion to proceed to H.R. 3595.

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

RECESS UNTIL MONDAY, NOVEMBER 25, 1991, AT 10 A.M.

Mr. MITCHELL. Mr. President, if there is no further business to come before the Senate, and if the distinguished Republican leader has no further statement, I ask unanimous consent that the Senate stand in recess until 10 a.m. Monday, as under the previous order.

There being no objection, the Senate, at 7:15 p.m., recessed until Monday, November 25, 1991, at 10 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 23, 1991:

NUCLEAR REGULATORY COMMISSION

E. GAIL DE PLANQUE, OF NEW JERSEY, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE TERM OF 5 YEARS EXPIRING JUNE 30, 1995.

ENVIRONMENTAL PROTECTION AGENCY

HERBERT TATE, OF NEW JERSEY, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.